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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

HOUSING IS A HUMAN RIGHT
ORANGE COUNTY, an unincorporated
association; ORANGE COUNTY
CATHOLIC WORKER, an unincorporated
association; EMERGENCY SHELTER
COALITION, a non-profit corporation;
DUANE NICHOLS, DARREN JAMES,
BRUCE STROEBEL, all as individuals and
on behalf of the class of similarly situated
individuals,

Case No.: 18-cv-00155 DOC KES
COMPLAINT: CIVIL RIGHTS
42 U.S.C. § 1983: 1st, 4th, 5th, 8th
and 14th Amendments; 42 U.S.C. §
12132, 12133 (ADA); Cal. Const.
Article I, §§7,13; Cal. Civ. Code
§§52.1; Cal. Gov. Code §11135;
Cal. Gov. Code § 65583 *et seq.*; Cal.
Civ. Code § 815.6

Plaintiffs,

v.

THE COUNTY OF ORANGE, THE CITY
OF IRVINE, THE CITY OF ALISO VIEJO,
THE CITY OF DANA POINT, THE CITY
OF SAN JUAN CAPISTRANO, THE CITY
OF SAN CLEMENTE,

Defendants.

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1 **JURISDICTION AND VENUE**

2 1. This is an action for injunctive and declaratory relief and damages for
3 the individual plaintiffs pursuant to 42 U.S.C. § 1983 for violations of Plaintiffs’
4 rights under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the
5 United States Constitution, as well as federal statutory law applicable to
6 individuals with disabilities. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and
7 1343 based on questions of federal statutory and constitutional law, and under the
8 Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202. Jurisdiction for
9 Plaintiffs’ supplemental state law claims is based on 28 U.S.C. § 1367(a).

10 2. Venue is proper in the Southern Division of the Central District in that
11 the events and conduct complained of herein all occurred in Orange County.

12 **FACTUAL ALLEGATIONS**

13 **THE NUMBER OF HOMELESS INDIVIDUALS IN ORANGE COUNTY:**

14 3. Orange County has one of the largest homeless populations in the
15 State with nearly half unsheltered. In 2016, the federal Department of Housing and
16 Urban Development (HUD) reported to Congress a total of 3,028 homeless
17 individuals in the Santa Ana/Anaheim/Orange County Continuum of Care (COC),
18 which put the region at the top of all the smaller regional city/county COC’s. That
19 number increased to 4,792 in the 2017 HUD report to Congress, putting the region
20 just 167 people below the state of Hawaii.

21 4. The numbers submitted by the County were based on the 2017 Point-
22 in-Time (“PIT”) count, which grossly understated the total number of unsheltered
23 homeless individuals in the County, particularly in two of the largest cities, Santa
24 Ana and Anaheim. In January 2017, approximately 1200 individuals were camped
25 in the Riverbed and almost 500 were camped in the Santa Ana Civic Center. Just a
26 few months before the January 2017 PIT, Anaheim conducted a census that
27 identified just over 900 homeless individuals in the city, more than twice the
28 number in the 2017 PIT. Similarly, the OC Health Care Agency conducted a

1 census in late summer 2016 just in the Santa Ana Civic Center and counted 461
2 individuals, The numbers of unsheltered individuals in the 2017 Count, by Service
3 Provider Area (SPA) are 936 in the North SPA, 1,362 in the Central SPA, and 286
4 in the South SPA. As noted, these numbers are likely a gross undercount.

5 5. The initial results of the 2019 PIT report approximately 3700
6 individuals living on the street and in vehicles, up from the approximately 2400 in
7 the 2017 PIT.¹ In addition, another 1300 people experiencing homelessness were
8 counted at shelters, down considerably from the 2017 PIT.² On information and
9 belief, six shelters were not included in the PIT count in January but will be
10 included in the final totals. County officials applied in a different process for
11 conducting the 2019 PIT, asserting that the 2019 count would produce a more
12 accurate result. *Id.* Many of the volunteers involved in the 2019 count expressed
13 concerns that recent sweeps by local law enforcement dispersed communities of
14 people experiencing homelessness to avoid citation or arrest, calling into question
15 whether the 2019 PIT, like the 2017 PIT, would still result in a significant
16 undercount of people experiencing homelessness in Orange County.

17 **DEATHS OF UNHOUSED INDIVIDUALS IN ORANGE COUNTY:**

18 6. The consequences of the county and municipal governments'
19 abdication of responsibility are significant. Deaths of homeless people in Orange
20 County rose in 210 to 2017, with at least one homeless person dying in nearly all
21 of the 28 cities throughout Orange County. And although the statistics for 2018
22 are not yet complete, a recent report released by the Orange County Sheriff's
23 Department found that even more unhoused persons—about 250—died last year.

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26 ¹ Spencer Custodio, *Over 3400 Homeless People on OC Streets, According to*
27 *Initial Headcount*, VOICE OF OC (Jan. 25, 2019),
28 [https://voiceofoc.org/2019/01/over-3400-homeless-people-on-oc-streets-according-](https://voiceofoc.org/2019/01/over-3400-homeless-people-on-oc-streets-according-to-initial-headcount/)
[to-initial-headcount/](https://voiceofoc.org/2019/01/over-3400-homeless-people-on-oc-streets-according-to-initial-headcount/)

² *Id.*

1 Based on the currently available numbers, homeless people died last year in all but
2 one of the Defendant cities. The one exception is Aliso Viejo, which has the largest
3 number of individuals who stayed at the ASL in Laguna Beach in 2017 other than
4 residents of the City of Laguna Beach.

5 7. In a 2017 interview, CEO and Founder of the Illumination
6 Foundation, Paul Leon, stated that his organization alone provided inpatient
7 medical care to approximately 70 individuals who were living on the streets. Leon's
8 assessment was that 90 percent of that number would otherwise have died if they
9 were still unsheltered and not living in the IF facility.

10 8. Responding to the medical requirements of individuals who are
11 unhoused puts an enormous financial and personnel stress of the public health
12 system. Individuals "experiencing homelessness have high rates of chronic mental
13 and physical health conditions, co-occurring disorders and barriers to health care
14 and affordable housing." Am. Pub. Health Ass'n, Policy No. 20178, Housing and
15 Homelessness is a Public Health Issue (Nov. 7, 2017) ("APHA 11-7-17").
16 According to the U.S. Department of Housing and Urban Development ("HUD")
17 Annual Homeless Assessment Report to Congress, 32% of more than half a million
18 people experiencing homelessness on a single night in 2016 were unsheltered.
19 According to the 2017 Point-in-Time count, half of those experiencing
20 homelessness in Orange County are unsheltered on any night, 50% above the
21 national average. APHA 11-7-17.

22 **HYPOTHERMIA:**

23 9. An estimated 700 unsheltered individuals die from exposure to the
24 elements each winter across the country. Unsheltered individuals are at a high risk
25 of developing life-threatening, exposure-related conditions such as hypothermia
26 and frostbite in the winter and heat stroke in the summer. In addition to the
27 immediate act, a person who experiences hypothermia or hyperthermia and
28 recovers may, nonetheless, suffer lasting brain damage and impairment of other

1 organs, leading to an increased risk of dying from unrelated health conditions in
2 the future. For example, frostbite may result in the loss of blood flow to
3 extremities, resulting in gangrene, a particular threat to individuals with circulatory
4 issues and diabetes.

5 <https://www.cdc.gov/disasters/winter/staysafe/hypothermia.html>.

6 10. Hypothermia occurs when a body loses heat faster than it creates it
7 and body temperature falls below 95 Fahrenheit. Hypothermia is generally caused
8 by prolonged exposure to cold weather, wearing clothes that inadequate to protect
9 against weather conditions and the inability to get out of wet clothes and get to a
10 warm, dry location. See [https://www.mayoclinic.org/diseases-](https://www.mayoclinic.org/diseases-conditions/hypothermia/symptoms-causes/syc-20352682)
11 [conditions/hypothermia/symptoms-causes/syc-20352682](https://www.mayoclinic.org/diseases-conditions/hypothermia/symptoms-causes/syc-20352682). Wet clothing causes a
12 20-fold increase in heat loss. See *The Healthcare of Homeless Persons, A Manual*
13 *of Communicable Diseases & Common Problems in Shelters & on the Streets*,
14 James J. O'Connell, M.D., Editor (2004). When body temperature drops, the heart,
15 nervous system and other organs begin to fail and, if unresolved, may lead to
16 death.

17 11. Individuals experiencing homelessness are already at greater risk of
18 illness than the housed population. By some estimates, the number is three to six
19 times greater risk of illness for unhoused individuals. [www.nhchc.org/wp-](http://www.nhchc.org/wp-content/uploads/2012/01/Dec2007HealingHands.pdf)
20 [content/uploads/2012/01/Dec2007HealingHands.pdf](http://www.nhchc.org/wp-content/uploads/2012/01/Dec2007HealingHands.pdf).

21 12. A report by the Mayo Clinic lists a number of factors for hypothermia,
22 all but one of which puts many unhoused persons of greater risk of developing
23 hypothermia. They include fatigue, older age, mental illness that may interfere
24 with judgment, substance abuse that impairs judgment, diabetes and other medical
25 conditions that impact the body's ability to regulate its temperature, and some
26 medications, including antidepressants, antipsychotics, pain medication and
27 sedatives. *Id.* Environmental conditions become more of a threat when the
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1 individual has a preexisting infection or sepsis. *The Healthcare of Homeless*
2 *Personi, Part II, "Accidental Hypothermia and Frostbite,"* p. 190-91.

3 13. Southern California cities, in particular, often tout the good weather
4 here as a draw for persons experiencing homelessness around the country, even
5 though no statistical evidence supports that assertion. Yet, even with our "good
6 weather," hypothermia is a very real threat when the temperature drops below 50
7 degrees Fahrenheit. Although this is a baseline temperature, both precipitation and
8 wind will lower the effective temperature and create a risk of hypothermia even
9 when the temperature is above 50 degrees. For example, if the temperature is 57
10 degrees with a wind of 15 mph, the effective temperature will be 53 degrees. *See*
11 https://www.wpc.ncep.noaa.gov/html/windchillbody_txt.html. If, as recently is the
12 case in Orange County, the night temperature drops to 37 degrees, a wind of 15
13 knots reduces the effective temperature to 28 degrees, well below freezing. *Id.*

14 14. These are the temperatures being experienced by unsheltered
15 individuals in Orange County over the last several months. On February 17, 2019,
16 the daytime temperatures in Irvine, Mission Viejo, San Juan Capistrano, San
17 Clemente, and Aliso Viejo were forecast to be around 56 degrees, with nighttime
18 temperatures of 37-38, and winds of 10-20 knots. *Orange County Register,*
19 *2/17/19, p. A17; Orange County Register, 2/21/19, p. A22.* On February 21,
20 2019, the temperatures were one to two degrees lower throughout South County,
21 while the winds remained the same. These temperatures are more than 10 degrees
22 below normal, while rainfall for the month is already more than twice normal for
23 this time of year. *Id., 2/21/19, p. A22.* For people experiencing homelessness, the
24 risk of hypothermia or other serious illness is significantly increased.

25 15. The County recognizes the serious threat cold, windy and wet weather
26 present to the unhoused. Because of the severe winter weather, Orange County
27 opened the Santa Ana and Fullerton armories all day from Thursday, February 14
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1 through Saturday morning, February 16 at 6 a.m, after which the armories will
2 return to limited access hours from 7 p.m. to 6 a.m.

3 16. When the National Weather Service issued an alert regarding severe
4 cold temperatures, the County government issued a notice to people to protect their
5 pets from the adverse effects of cold weather, including hypothermia.³

6 **SOUTH COUNTY SHELTERS:**

7 17. The Alternative Sleep Location (ASL) in Laguna Beach is the only
8 low-barrier shelter in South County. It is a very small shelter, with a capacity of
9 45 beds in trailers, open only at night. The facility opened following a settlement
10 in a lawsuit challenging police enforcement of anti-camping laws against homeless
11 individuals in Laguna Beach.

12 18. According to Homeless Management Information System (HMIS)
13 data, of 401 people who stayed at the ASL and who provided a “last known
14 permanent address,” more than half of these individuals reported an address in
15 Orange County but outside of Laguna Beach. Only 11 percent of the guests
16 reported a last known address in the City. Aliso Viejo topped the list of other
17 Orange County cities with 28 individuals, totaling seven percent of the population
18 at the ASL. Mission Viejo had the second largest number of guests at the ASL,
19 with 13 individuals, followed by San Clemente with 10 individuals.

20 19. Until recently, the facility did not open until 6 p.m. and required
21 people seeking entry to arrive no later than 8 p.m. The City provided limited free
22 transportation to and from the facility, which is located in Laguna Beach Canyon.
23 The shelter closed for the day at 7:30 a.m. This month, a van service was
24 instituted, providing more opportunities to travel to and from the ASL.

25 20. Starting on February 4, 2019, the ASL introduced a pilot program,
26 “enrolling” clients and, for the broader group of those experiencing homelessness,
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28 ³ <https://media.ocgov.com/go/occr/animal/about/newsdetails.asp?News!D+5083.8/TargetID=87>

1 opening the shelter on a drop-in basis for showers, laundry, mail, lunch, computer
2 access and social services from 10 a.m. to 1 p.m. Under the new program, only
3 persons enrolled in the new program will be allowed in the shelter from 5 p.m. to
4 10 a.m. No drop-in services will be offered during these hours

5 21. Those individuals approved for the enrollment program are offered
6 overnight places at the shelter for 30 days, extendable if the person actively
7 pursues housing solutions in that time period. Each enrolled person is assigned a
8 housing coordinator to help create a housing plan. For now, enrollment is
9 restricted to persons who meet the city's "locals" conditions and prioritization
10 criteria set by the ASL.

11 22. The ASL is full nearly every night, with individuals sleeping outside,
12 where they are often subjected to questioning and harassment by the police. The
13 only recommendation the ASL suggests for alternative shelter is the County winter
14 shelter program at the two armories in the North and Central SPA. Those
15 suggestions are not practical because of the limited options for transit to those
16 facilities, as well as recently-imposed restrictions on admission.

17 **PAST LITIGATION IN ORANGE COUNTY:**

18 23. Plaintiff ORANGE COUNTY CATHOLIC WORKER filed a lawsuit
19 against the County of Orange and the cities of Orange, Anaheim and Costa Mesa
20 on January 29, 2018. Case No. 18-cv-01115 DOC - JDE (C.D. Cal.). The lawsuit
21 challenged the County's intended closure of the Santa Ana Riverbed encampment.

22 24. In response to the Court's order to end the encampment at the
23 Riverbed, and the Court's subsequent order to end the encampment at the Santa
24 Ana Civic Center, the County Board of Supervisors (BOS) voted to open three
25 temporary emergency shelters to provide placements for the majority of the
26 approximately 1200 people displaced from the Riverbed and Civic Center. The
27 three temporary facilities were to be located in Irvine, Huntington Beach and
28 Laguna Niguel. The announced intention of the BOS was to open the Irvine

1 location first and then, if more space was needed, open the temporary facility in
2 Huntington Beach and, if more additional space was needed, open the temporary
3 facility in Laguna Niguel.

4 25. The County’s plan was met with intense opposition from each
5 community. Nearly 600 Irvine residents traveled to the BOS meeting to protest
6 against the plan. Despite having the third largest number of homeless individuals
7 of any City in the County,⁴ 199 in the 2017 Point-in-Time count,⁵ Irvine and
8 officials and residents adamantly argued that there was no place in Irvine – the
9 largest land mass city in the County - that could accommodate an emergency
10 shelter, let alone any shelter. ⁶ In Appendix D to the City’s 2013 Housing
11 Element, the City wrote that emergency shelters are permitted by right in the IBC
12 Multi-Use, General Industrial, Medical and Science, Business Park, and
13 Institutional zones. Despite that representation to the California HCD. The City
14 identified multiple zones where shelters could be placed by right, The City listed
15 these properties as a necessary statutory requirement for the City’s General Plan to
16 be approved by the State of California. Without meeting this requirement, the City
17 would not be permitted to approve any permits for development in the entire City,
18 including permits for all of the upscale residences at the former military base.

19 26. In late April 2018, the South County Mayors counter-proposed use of
20 a former elementary school in Silverado Canyon. Subsequently, the possibility of
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23 ⁴ In Appendix D to the 2013 Irvine General Plan, the City identified a far greater
24 number of homeless individuals in the City, which appears to be an error.
25 “Irvine’s share of the regional unsheltered homeless population is estimated to be
26 2,280 individuals.”

27 ⁵ Only Santa Ana and Anaheim had more homeless persons in the 2017 PIT count.

28 ⁶ In the 2017 Point-in-Time Count, Huntington Beach had the sixth largest
homeless count with 119 individuals.

1 using the now closed juvenile detention facility in the Cleveland National Forest
2 was also raised. Neither site was appropriate. Both were isolated and did not meet
3 the requirements of SB2 to ensure that facilities for unhoused persons were close to
4 transportation so that individuals can get to work, access social services, medical
5 appointments, and other basic contacts.

6 27. It is unlikely that even homeless persons with an income from a low-
7 wage job or disability can find rental housing in South County that is affordable.
8 On June 1, 2017, the federal Housing and Urban Development (“HUD”)
9 department issued a report finding that the vacancy rate in Anaheim, Santa Ana,
10 and Irvine declined from 2010 to 2017 from 5.9 % to 3.6%, and average rents rose
11 3% in May 2017.⁷ Almost 90,000 people are on the County’s housing authority
12 waiting lists hoping for access to affordable housing.⁸

13 28. The lack of adequate and appropriate resources was reinforced in a
14 2017 report issued by United Way, prepared with the University of California
15 Irvine and the Association of California Cities. The report, “Homelessness in
16 Orange County: The Costs to Our Community,” found that 75 percent of homeless
17 individuals surveyed lived in Orange County for at least six years, with most more
18 than 10 years.⁹ Cutting against the stereotypes that homeless individuals are
19 substance abusers or mentally ill, the United Way report found that the single
20 greatest factor leading to homelessness in Orange County, by far, is “the gap
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23 ⁷ U.S. Dep’t of Housing and Urban Development, Office of Policy Development
24 and Research, *Comprehensive Housing Market Analysis Anaheim-Santa Ana-*
25 *Irvine, California*, [https://www.huduser.gov/portal/publications/pdf/AnaheimCA-](https://www.huduser.gov/portal/publications/pdf/AnaheimCA-comp-17)
26 [comp-17](https://www.huduser.gov/portal/publications/pdf/AnaheimCA-comp-17).

27 ⁸ Susan Price, *An Assessment of Homeless Services in Orange County*,
28 [http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REP-](http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REPORT_10.18.2016.pdf)
29 [ORT_10.18.2016.pdf](http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REPORT_10.18.2016.pdf), pg. 21

30 ⁹ *Homelessness in Orange County: The Costs to Our Community*, available at
31 unitedwayoc.org/wp-content/uploads/2017/08/united-way, p. 31.

1 between the availability of affordable housing and work that pays a wage sufficient
2 to enable the economically marginal to access that housing.”¹⁰

3 29. Each of the Defendants has failed to meet the requirements in state
4 law to provide for people experiencing homelessness in their jurisdiction as a
5 necessary prerequisite to approval of the entities General Plan for development.
6 While the County has created several hundred more low-barrier and bridge shelter
7 beds over the last three years, it is nowhere near the number of beds needed to
8 address their responsibility. None of the municipal defendants has made any
9 attempt to meet this need and most have blocked efforts to place shelters in their
10 communities.

11 30. Moreover, none of the municipal Defendants have met the specific
12 statutory obligation to identify how the entity will meet the needs of homeless
13 individuals in their jurisdiction. Each Defendant has simply listed most of the
14 same shelters in other cities, predominantly Santa Ana and Anaheim. At the same
15 time, all of the municipal defendants have continued to enforce, or threaten
16 enforcement of local and state Penal Code provisions criminalizing homelessness
17 through laws that make it unlawful to be present, have property, sit or sleep in a
18 public place even if a person is without a home.

19 31. The need to respond to the increasing numbers of unsheltered
20 individuals in Orange County is hardly new and neither is the disfavored approach
21 of criminalizing - rather than housing - people who are homeless. More than a
22 decade ago, the Orange County Grand Jury issued a report on “The Homeless
23 Crisis in Orange County.” The report noted then that “[h]omelessness is on the
24 rise, often misunderstood, and is inextricably linked to poverty.” From 1990 to
25 2005 the homeless population increased at a far greater rate than the overall
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¹⁰ *Id.*, p. 34.

1 increase in population in the County. The Grand Jury report concluded that
2 addressing the problem “does not appear to be a priority with the Board of
3 Supervisors.” The Grand Jury listed a series of measures to address the crisis then
4 being considered by various municipal entities in the County, including plans to
5 add housing for homeless individuals at the former El Toro Marine Air Station;
6 shelters in San Clemente, Buena Park, Westminster, La Habra and Cypress, and a
7 very “humanistic” outreach approach by the Santa Ana Police Department and
8 Orange County Sheriff’s Department. A dozen years later, few, if any, of these
9 intentions have been realized.

10 32. The 2005 Grand Jury Report also reviewed the history of proposals in
11 similar reports, going back to 1988 and found that few of the earlier
12 recommendations were implemented. The Report proves that, over the past 25
13 years, the primary response of the County and the Cities has been to treat the
14 visible presence of homeless people as a blight, without significantly reducing the
15 number of residents on the street each night. These approaches include
16 criminalizing homelessness by arresting homeless individuals for loitering, making
17 it illegal to sleep in public places at night, seizing and destroying homeless
18 people’s property, and engaging in a pattern of warrantless stops and
19 interrogations. The identical practices have been repeatedly challenged and
20 enjoined by judges of the Central District in Los Angeles and the Ninth Circuit,
21 uniformly rejecting these practices criminalizing homelessness as a violation of the
22 First, Fourth, Eighth and Fourteenth Amendments.

23 33. The 2017-2018 Grand Jury Report, “Where There’s Will, There’s a
24 Way Housing Orange County’s Chronically Homeless,” issued in late May, 2018,
25 echoed the conclusions in the 2005 Grand Jury Report. It cited the lack of political
26 will and cooperation between the County and the cities as a significant factor in the
27 inability to develop and implement a comprehensive plan to address the unhoused
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1 population in the County, emphasizing the extraordinary cost benefits to providing
2 housing and services as a proactive measure.

3 34. Beyond the financial costs to the government from having a
4 significant unsheltered population living on the streets and in the parks, the Grand
5 Jury underscored the dire consequences for people left to survive on the streets. As
6 discussed above, people experiencing homelessness are more susceptible to illness
7 and infection because of exposure to the elements, poor nutrition and other factors.
8 The consequence is that the average life expectancy for an unhoused person in the
9 United States of only 50 years, almost 50 percent less than the 78-year life
10 expectancy for the housed population.

11 35. Defendants' approach is even more indefensible when viewed against
12 the directives by the United States Interagency Council on Homelessness
13 ("USICH"), composed of nineteen federal cabinet and agency heads to organize
14 federal efforts to end homelessness. The most recent USICH report, "Ending
15 Homelessness for People Living in Encampments," emphasized the importance of
16 "intensive and persistent outreach and engagement," but underscored that outreach
17 is meaningless without real options for placements and services.

18 36. The San Clemente plaintiffs illustrate this point. The City contracted
19 with Mercy House to provide services, but the only shelter option offered is the
20 Courtyard in Santa Ana. That is not a realistic option for a number of reasons.
21 First, the Court restricted other cities across the County from "dumping"
22 individuals off at the Courtyard when those same cities lacked shelters in their own
23 jurisdictions. This disfavored practice led to increased numbers of homeless
24 individuals in Santa Ana and Anaheim, the two cities in the County that have
25 carried more than their share of the obligation to address homelessness.

26 37. Requiring individuals to travel to Santa Ana or Anaheim to find
27 shelter is an impossible challenge for those with disabilities for a number of
28 reasons. As the County has now recognized, among other deficiencies, the

1 Courtyard is not structured to accommodate individuals with significant
2 disabilities, as many unsheltered individuals have.

3 38. The physical factors at the Courtyard do not provide adequate
4 reasonable accommodation of disabilities. For persons with a trauma-enhanced
5 disability, the conditions in the Courtyard, as well as the two County-run
6 emergency winter shelters at the armories, exacerbate their mental health
7 conditions. The numbers at the Courtyard are near or above 400 persons each
8 night, sleeping in close quarters on small cots with no privacy for women. On
9 most nights, people camp on the sidewalk outside the Courtyard because they
10 cannot get a bed inside. Because the Courtyard is not near any other shelter, a
11 person who shows up and is told that the Courtyard is full has no choice but to
12 sleep outside because it is too late to find transportation and get to other shelters to
13 ask for a bed, such as the armories, before they close for the night. Most of the
14 year, there is no other shelter available.

15 39. In April 2018, to ensure that there was space for individuals being
16 relocated from the nearby Santa Ana Civic Center, the Court limited the County
17 from placing people who were not Santa Ana residents at the Courtyard and also
18 directed that other cities, acting through contract agencies such as CityNet, stop
19 transporting people to the Courtyard to ensure that there was space for individuals
20 being relocated from the nearby Santa Ana Civic Center encampment. Until the
21 Court's directive, people were regularly dropped off there by hospitals, various
22 cities' police, social workers contracted with other cities in the County, and others
23 with nowhere else to bring homeless people.

24 40. The only other options for low-barrier facilities are the winter
25 emergency shelters at the armories in Santa Ana and Fullerton, both of which
26 suffer from numerous deficiencies. People sleep on thin mats on the floor, making
27 it difficult for anyone with a physical disability to accommodate to as a matter of
28 course. There is no provision for persons with psychological trauma. Moreover,

1 the armories only accept people who are able to come and go at the restricted
2 hours. For those who work, need to attend court or school or meet with service
3 providers, restricted entrance and exit hours impose an additional and often
4 insurmountable hurdle. Both armories require individuals to leave very early in the
5 morning and preclude readmission until the evening. Beginning this year, the
6 armories will not allow walk-ups. People must leave the area in the morning and
7 come back in the late afternoon on a scheduled bus. While this change was, no
8 doubt, made to discourage individuals from moving to nearby parks to wait all day
9 until the armory reopened, the impact of this policy change is devastating. There is
10 no place for unsheltered individuals to stay safely during the day without facing a
11 threat of citation or arrest if they are in public places with or without their property.

12 41. The third reason why transporting people from South County to Santa
13 Ana and Anaheim is an untenable and unlawful solution is that it makes it nearly
14 impossible for homeless individuals to get to jobs and services in South County.
15 San Clemente is 31.5 miles from Santa Ana. By public transportation, the travel
16 time is nearly 2 hours once a person gets to the train transit sites at either end,
17 which involve walking slightly more than a mile at each end. For a disabled
18 individual, the one-mile walk can take considerable time, because of physical
19 mobility and cognitive impairments. For an individual with circulatory problems
20 and other medical conditions, the walk to get to the train may be physically
21 impossible. For someone such as Plaintiff Duane Nichols, it may be unnavigable
22 because of his visual disability. Finally, for any unsheltered person, the cost of the
23 train may be prohibitive and they have no place to put their property.

24 42. In addition to the Courtyard and Bridges, there are private facilities
25 providing a continuum of options for unhoused persons. Each has strict limitations
26 on eligibility for services. Nearly all have significant time constraints on how long
27 a person may reside at the facility, ranging from one night to six months. Some
28 require a referral and/or a background check for entry, which can delay entry for

1 days or weeks. Some are restricted by gender, some for pregnant women, and
2 some only for women or families with children. Still others, such as the Rescue
3 Mission in Tustin, require participation in sectarian worship as a condition of
4 receiving services. Most have a blanket prohibition on pets other than registered
5 service animals despite the fact that federal and state Fair Housing laws apply to
6 public and private shelters and, with federal and state disability protections, require
7 that emotional assistance animals be allowed as a reasonable accommodation.

8 43. For example, the Salvation Army Hospitality House in Santa Ana is
9 listed in the Housing Element of most of the cities in Orange County as a resource
10 for each city's unsheltered population. This facility offers only 25 beds for
11 transitional housing and 25 beds for emergency shelter, all for men. To stay there,
12 a man must be able-bodied and employable. Service animals are admitted only
13 with federal paperwork. No emotional assistance animals are allowed. Attendance
14 is required at a pre-dinner meeting that includes a sectarian religious service with
15 prayer. Clients must arrive between 3:30 and 5:00 p.m. Men seeking admission
16 must arrive by 3:30 in the afternoon to enter a lottery for any available emergency
17 shelter beds. If not selected, they can wait until 5:00 to see if a man who is already
18 approved missed curfew. There are almost always more applicants than beds. In
19 January 2018, between 2 and 12 lottery beds were available nightly.

20 44. Another shelter, Colette's House in Huntington Beach, is open only to
21 women and children. In this six-month transitional program, women are required
22 to have a job and work 32 hours per week. No animals are allowed. Colette's
23 House is a small shelter and is usually at capacity.

24 45. Friendship Shelter operates the Alternative Sleeping Location (ASL)
25 in Laguna Beach in South County. The shelter has only 45 beds, all of which are
26 usually filled each night. In addition to the ASL, Friendship Shelter operates a
27 second facility in Laguna Beach that is a 60-day self-sufficiency program.

28

1 According to Friendship Shelter’s website, the 32-person facility always has a
2 waiting list and is only available to individuals who are able to work.

3 46. The Rescue Mission in Tustin is one of the larger private shelters in
4 the County, with approximately 200 beds available. However, it requires persons
5 to submit to an intensive Christian religious program as a condition of receiving
6 services. In addition, the Rescue Mission does not permit individuals to bring in
7 certain prescriptions containing opioids which are commonly prescribed for mental
8 health conditions, especially panic and anxiety disorders. This leaves people with
9 lawful medical prescriptions at risk of psychological deterioration and, in some
10 cases, has produced suicidal ideation from the sudden and complete withdrawal of
11 prescribed medications. Individuals are not allowed to have assistance animals
12 other than registered service animals.

13 **The Duty to Provide Housing and Shelter**

14 47. 1982, the California Legislature passed the California Housing
15 Accountability Act. California Government Code § 65589.5. Formerly known as
16 the Anti-NIMBY law, the statute bans discrimination against housing for lower-
17 income households. The legislature declared that the provision of housing for all
18 Californians is a “priority of the highest order.” §65580.

19 48. Pursuant to this statute, every city and county is required to adopt a
20 General Plan governing the use of land and development projects in its jurisdiction.
21 One of seven mandatory components to the General Plan is a “housing element,”
22 that must be addressed and approved by the State of California’s Housing and
23 Community Development Department (“HCD”). The Housing Element is
24 prepared every 10 years, with updates in between. Submission to, and approval of,
25 the Housing Element by HCD is a necessary prerequisite for local governments to
26 qualify for public funding for various development programs.

27 49. Each local entity must act consistently with its General Plan and
28 housing element. All land use decisions, zoning codes, the General Plan and all

1 other ordinances and policies affecting land use must be consistent with the
2 housing element. §65580.5, §65860. All local land-use decisions, including site
3 specific plans, must be consistent with the adopted General Plan. §65454.

4 50. In 2007, the Legislature reiterated its intent to provide for the needs of
5 residents of all income levels and special communities, including seniors, disabled
6 persons and individuals experiencing homelessness, when it passed Senate Bill 2
7 (SB2). SB2 extended the protections of the 1982 Housing Accountability Act to
8 emergency shelters and clarified that it also covers transitional and supportive
9 housing. This measure imposed increased requirements on cities and counties for
10 low-income housing, emergency shelters and transitional/supportive housing.
11 Each city and county must evaluate its need for shelters and provide a comparison
12 to available facilities to address the identified need. The need for emergency
13 shelters must be assessed annually and seasonally. §65583(a)(7). On information
14 and belief, none of the defendants has complied with this requirement.

15 51. Each entity must also designate at least one location where a year-
16 round shelter may be operated without further approval by the local government.
17 The shelter must have sufficient capacity to meet the entity's entire local need for
18 emergency shelter. The designated location may then be used by right, subject
19 only to reasonable zoning restrictions. On information and belief, none of the
20 municipal defendants has fully complied with this requirement.

21 52. The express legislative intent of SB2 was to expand the Housing
22 Accountability Act to prevent local entities from denying a proposal to create an
23 eligible facility if it is needed and otherwise consistent with the locality's zoning
24 and development standards. Recognizing the NIMBY-ism the statute was enacted
25 to combat, the Legislature expressly prohibited the ability of local entities to
26 impose hurdles such as "a conditional use permit or any discretionary" approval
27 from the local government. §65583(a)(4)(A).

28

1 53. The statute enumerated factors that may be imposed on a proposed
2 facility. These include, but are not limited to, the number of beds or persons
3 served, off-street parking restrictions, outside lighting, etc. §65583(a)(4)(A)(i)-
4 (viii). However, the local entity has the burden to establish that any restrictions
5 imposed on a proposed facility, as well as any permit processing standards applied,
6 are objective and directly advance the creation of emergency shelters. If the local
7 entity has an existing shelter that satisfies the statute’s intent, a conditional use
8 permit or similar prerequisite may be required to open a new shelter in the same
9 community. The Housing Accountability Act provides that an entity shall not
10 “disapprove” a proposed emergency shelter unless it makes written findings, based
11 on substantial evidence, that one of five exceptions are met. §65589.5(d). The
12 allowed exceptions are: (1) the jurisdiction has met or exceeded the need for
13 emergency shelter identified in its housing element; (2) the project would
14 adversely impact the public health or safety in a significant, quantifiable, direct and
15 unavoidable way that cannot be mitigated; (3) denial is required to comply with
16 specified state or federal law and there is no way to comply without rendering the
17 shelter project infeasible; (4) the shelter is proposed on land zoned for agriculture
18 or resource preservation; and, (5) the shelter is inconsistent with both the zoning
19 ordinance and general plan land use designation (but this reason is not allowed if
20 the city failed to identify the mandated “by right” zones, or that its zones have
21 sufficient capacity to accommodate the need and failed to demonstrate that the
22 zones can accommodate at least one emergency shelter). §65589.5(d)(1)-(5). On
23 information and belief, Plaintiffs allege that this requirement has not been met. It
24 certainly was not met by the County when the BOS proposed three locations in
25 South County for emergency shelters to respond to the closure of the Riverbed and
26 Civic Center encampments, only to withdraw the proposal in the face of
27 community pressure fueled by former Supervisor Todd Spitzer but in direct
28 violation of Government Code §65589.5(d)(1)-(5). Local entities may satisfy the

1 mandate of SB2 in several ways. Jurisdictions that are successfully implementing
2 a supportive housing program model under the entity's 10-year plan to End
3 Chronic Homelessness are credited for supportive housing units created under the
4 10-year plan if the entity can demonstrate that the units are identified in the 10-
5 year plan and are either currently vacant or have all funding needed to construct
6 the units during the planning period.

7 1. Local entities may also meet the requirements of SB2 by entering into
8 a multi-jurisdiction agreement provided that any emergency shelter will be opened
9 within two years of the start of the planning period. Gov. Code §65583(d)(1).

10 Entities involved in a joint project must adopt an agreement which, among other
11 conditions, assigns a portion of the new shelter to each jurisdiction. Specifically,
12 the agreement "shall allocate a portion of the new shelter capacity to each
13 jurisdiction as credit toward its emergency shelter need ..." §65583(d)(1)(2).

14 Also, the housing element for each participating local government must set out the
15 following: the method for allocating bed capacity for the shelter; how the
16 jurisdiction's emergency shelter need is met by the proposed facility; the amount
17 of the financial contribution each entity will make for the development, operation
18 and ongoing management of the shelter; the amount and source of money to be
19 contributed to the shelter; and, finally, that the aggregate total capacity claimed by
20 each participating entity in its housing element is not greater than the total beds
21 available at the shelter. § 65583(d)(1)(3)(A)-(C). In other words, if several cities
22 enter in a multi-jurisdiction agreement for a 200-bed shelter, they may not each
23 claim all 200 beds as evidence that they have complied with the mandate to
24 provide shelter resources. There is no such agreement in existence involving any
25 City in South County that would satisfy this alternative. On information and
26 belief, the ASL in Laguna Beach receives no funding from any other City and, by
27 priority, serves Laguna Beach residents first. The City has enacted admission
28 policies to determine whether an individual has sufficient ties to residency in

1 Laguna Beach to qualify for admission and services at the ASL. Persons who do
2 not meet these standards are turned away or required to wait and see if there is an
3 empty bed on any given night not claimed by a qualified resident of Laguna Beach.

4 2. Nearly every city in the County and the County currently rely on the
5 same shelters to demonstrate that they are meeting the need for emergency
6 shelter identified in each entity's housing element. Because each housing element
7 lists the same facilities, most of which are in Santa Ana or Anaheim, there is no
8 possible way that most local entities in Orange County can show they meet the
9 need for emergency shelter identified in their housing elements. Thus, most, if not
10 all, of the local entities in Orange County are in violation of the requirements of
11 the Housing Accountability Act, as amended by SB2.

12 **The County's Efforts to Open Additional Shelters**

13 3. In its General Plan, the Defendant County states it is proactive in
14 responding to the needs of the homeless population. When the County prepared its
15 2013-2021 General Plan, there was only one small emergency shelter located in the
16 unincorporated area of the County – American Family Housing in Midway City,
17 with a maximum capacity of 20 persons. Recognizing the significant shortfall
18 between available and needed emergency shelter, and to encourage additional
19 shelter facilities, the County amended its Zoning Code to allow shelters by-right in
20 the commercial and industrial portions of the Housing Opportunities Overlay Zone.
21 This added 177 acres that meet the requirements of SB2 as locations that are
22 served by transit and other critical resources and available for additional
23 emergency shelters.

24 4. Over the course of the past several years, multiple cities in the
25 County, including Fullerton, Irvine, Huntington Beach and Laguna Niguel, have
26 blocked the County's plans to locate new emergency shelters in their communities
27 for reasons other than those allowed by the Housing Accountability Act. In each
28

1 instance, the cities acted based on NIMBYism and failed, completely, to provide
2 any justification for the denial that complies with the requirements of SB2.

3 5. In 2013, the County identified two locations as potential sites for
4 emergency shelters. The first was in Santa Ana. Although the city originally
5 approved the County's proposal, its approval was rescinded after community
6 objections. The County then identified a location in Fullerton in a commercial site.
7 The County BOS approved the purchase of the site in early January 2013. Two
8 years earlier, following the killing by Fullerton Police of Kelly Thomas, a mentally
9 ill homeless man, Fullerton created a homelessness task force. The task force
10 issued a report in 2012 with eight recommendations, one of which was to establish
11 a year-round emergency shelter in the City in partnership with the County. To date,
12 that has not happened.

13 6. Instead, when the County proposed a location in the city for the first
14 emergency shelter in the area, Fullerton asked that the project be delayed to allow
15 the City to review it further. Ultimately, based on objections by the community,
16 the City blocked the shelter, resulting in a lawsuit against the City by non-profit
17 groups. The lawsuit alleged that the City's actions violated Government Code §
18 65589.5. Last fall, the Fullerton City Council has again rejected a proposal to
19 create a shelter in the city, concluding first that it was "too soon" to make the
20 decision and then, after a local election was completed, rejecting the proposal. The
21 City has now committed financial support to two new shelters in the Northern
22 SPA, both located in other cities. In addition, as a condition of opening the winter
23 emergency shelter at the Fullerton Armory, the City has required that admission to
24 a winter emergency shelter be by referral only.

25 7. After losing out on the initial Santa Ana and Fullerton sites, the
26 County then identified the former bus terminal in Santa Ana as the location for the
27 first – and only – year-round, low-barrier emergency shelter in the County. The
28 shelter opened in 2016 with approximately 250 beds, but soon rose to over 400

1 individuals sleeping there each night, evincing the undisputable demand for shelter
2 among people experiencing homelessness in Orange County. The Courtyard
3 shelter continues to operate at or slightly above the number on a nightly basis,
4 limited only by orders of the District Court restricting a higher capacity because of
5 the challenges overcrowding presents to a service population experiencing multiple
6 disabilities.

7 8. One goal of the Courtyard was to provide a place where people
8 encamped in the nearby Santa Ana Civic Center could go. Because of the
9 desperate need throughout the County for emergency shelter space, people from
10 other communities soon filled the beds and the Civic Center encampment
11 continued for nearly two more years, until the Court ordered it disbanded in March
12 2018.

13 9. With the relocation a year ago of more than 750 unsheltered people
14 living at the Riverbed and the Court's order to dismantle the Civic Center
15 encampment, the County Board of Supervisors voted to approve three additional
16 locations for short-term emergency shelters while it developed and implemented a
17 long-term plan for addressing homelessness because the beds at the Courtyard and
18 Bridges, a referral-only facility in Anaheim, were full. The vote to approve
19 additional sites occurred in late March 2018. Each proposed site was on County-
20 owned land in an SB2 zone. Three locations were announced: Irvine, Huntington
21 Beach and Laguna Niguel, all in South County.

22 10. Immediately after the County vote, all three cities objected
23 vigorously, ultimately forcing the BOS to rescind the vote. Irvine transported
24 nearly 600 people by chartered bus to the BOS meeting where the proposal was
25 ultimately withdrawn. The City sued the County, raising claims of Brown Act
26 violations in the site approval process and characterizing the planned emergency
27 shelter as a "public nuisance." At the same time, Irvine touted its affordable
28 housing work. But, affordable housing is not a substitute for housing for homeless

1 persons as required by State law by Government Code § 65530 et seq., the
2 Housing Accountability Act and SB2. None of the three proposed cities has an
3 emergency shelter in its geographic boundary, as Irvine implicitly conceded in its
4 lawsuit touting only its efforts to include “affordable” housing. The shelter
5 resources each City lists in its Housing Element are in other cities or restrict
6 services based on employability, gender, pregnancy status, families with minor
7 children and other categories.

8 11. The November 2016 list of Emergency Shelters and Housing
9 Programs available on the website of South County Outreach documents the lack
10 of facilities in this region specifically and the County generally.¹¹ Approximately
11 three dozen resources offer housing for unsheltered families, women with children,
12 pregnant women, single women and domestic violence survivors. Many, if not
13 most, of these are private facilities run by religious groups. Some of these
14 programs have prerequisites to admission, such as a \$300 fee or a referral from an
15 emergency shelter program. There are only seven facilities that accept single men.
16 Of these, some allow only a one-night stay, others limit a stay to 14 days, while
17 still others require that a person be employable.

18 12. The South Coast Outreach list of Emergency Shelters and Housing
19 Programs is the same list that nearly every entity puts forward. Irvine’s Housing
20 Element illustrates this point. In its most recent Housing Element Appendix D:
21 SB2 Compliance Sites Inventory, Irvine reported that its share of the regional
22 unsheltered homeless persons was estimated to be 2,280 people, which Plaintiffs
23 believe may be an error in the Housing Element. City of Irvine Housing Element,
24 Appendix D-1. At a minimum, Irvine has responsibility for more than 100
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27
28 ¹¹ www.sco-oc.org/wp-content/uploads/2014/05/Shelters.pdf

1 unsheltered persons. Yet, there is no facility for homeless individuals in the entire
2 city.

3 13. Irvine identified Families Forward as its primary provider. On
4 information and belief, based on a review of the Families Forward website,
5 Plaintiffs allege that this organization cannot satisfy Irvine's SB2 mandate.
6 Families Forward does not provide emergency services. Applicants must include a
7 minor child and go through a review process. Families Forward's website
8 acknowledges that it does not provide emergency aid and advises individuals in
9 need of emergency shelter to contact OC 2-1-1. In any event, Families Forward is
10 a relatively small organization that maintains a few apartments throughout Orange
11 County where it places families that meet all of its criteria. Other than this
12 organization, Irvine's July 2015 Housing Element update lists 13 resources in
13 Santa Ana and other cities.¹² These include the Salvation Army facilities in Santa
14 Ana and Tustin, and a number of entities that only offer service referrals.

15 14. The only actual significant *housing* listed which is located in Irvine is
16 the Irvine Inn, categorized by the City as "Homeless Services Facilities Serving
17 Irvine" and described as a "192-unit Single Room Occupancy (SRO) facility."¹³ In
18 early 2018, the Inn's website listed rent for a studio apartment at \$548 to \$731 a
19 month.¹⁴ The website contains a cryptic caveat that "income restrictions apply on
20 some apartments." *Id.* 2019 websites show the rent at \$855 a month.¹⁵ For a
21 person working 40 hours a week at minimum wage, this rent is almost 60 percent
22 of after-tax income. This rent is approximately four times General Relief and
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26 ¹² "Homeless Facilities Serving Irvine." City of Irvine 2015 Housing Element
27 Supplement, C-66.

¹³ *Id.*

¹⁴ <https://www.irvineinnapts.com/floorplans.aspx>.

¹⁵ See https://www.apartmentratings.com/ca/santa-ana/irvine-inn_

1 nearly 100 percent of government disability income.¹⁶ it is The marketing on the
2 website is directed to students at UCI and Irvine Valley College. It is highly
3 unlikely that the Irvine Inn meets the City’s obligations to provide shelter for
4 homeless persons.

5 15. The current Irvine Inn website states that its waiting list for
6 apartments is closed until further notice. Moreover, the Inn as an absolute “no
7 pets” policy, which is likely unlawful under federal and state Fair Housing and
8 disability laws.

9 16. Most of the “Homeless Facilities” listed in the Irvine Housing
10 Element Supplement are the same resources on every city’s list. Many of these are
11 in Santa Ana, which is approximately seven miles from Irvine. For a homeless
12 person without a car, the bus ride is at least an hour, with multiple transfers. For
13 those without funds for a bus ticket, it is a very long walk. Yet, Irvine residents
14 who attended the BOS meeting were adamant that there is no appropriate place for
15 a shelter in the entire City, despite the requirements of identifying broad swaths of
16 land in the General Plan in compliance with Government Code §65583.

17 17. In addition to its residents’ expressed views that their property values
18 somehow exempt them from the Housing Element requirements, Irvine and
19 Huntington Beach objected to the proposed BOS emergency shelter locations
20 because they are toxic sites, unusable for human habitation. Neither City offered
21 any other SB2 site to the County and neither City identified any mitigating
22 conditions that could lawfully be required. Instead, they expressed the position
23 that no emergency shelter was appropriate in their cities under any circumstances.

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27 ¹⁶ See https://ca.db101.org/ca/programs/income_support/ss_disability/ssi/.
28 California's State Supplemental Payment is \$160.72. Combined with the Federal
Benefit Rate of \$750, this allows an individual a total benefit of \$910.72.

1 In filing their 2013 Housing Elements, each represented to the California
2 Department of Housing and Community Development (HCD) that the general
3 locations the County now sought to use were appropriate SB2 sites.

4 **Liability for Failure to Provide Housing and Shelter**

5 18. California Government Code § 815.6 provides that:

6 Where a public entity is under a mandatory duty imposed by an
7 enactment that is designed to protect against the risk of a
8 particular kind of injury, the public entity is liable for an injury
9 of that kind proximately caused by its failure to discharge the
10 duty unless the public entity establishes that it exercised
11 reasonable diligence to discharge the duty.

12 19. The requirement to provide for housing and shelter for low-income
13 and homeless individuals in the General Plan and to adhere to the requirements of
14 the government code is an “obligatory duty which a governmental entity is
15 required to perform,” not a permissive one. Failure to meet this duty gives rise to
16 liability whether the underlying enactment allows a private right of action or is
17 self-executing. The term “enactment” includes “a constitutional provision, statute,
18 charter provision, ordinance or regulation.” Cal. Govt. Code §810.6. To date, the
19 County and each Defendant City has failed to meet the mandatory duty created by
20 California Government Code § 65583 *et seq.*, known as the California Housing
21 Accountability Act.

22 **CLASS ALLEGATIONS**

23 20. The claims set forth in this action are brought by each of the
24 individual Plaintiffs on their own behalf and on behalf of all of those similarly
25 situated putative class members pursuant to Federal Rule of Civil Procedure
26 23(b)(2).

27 21. The Class is defined as:
28

1 All persons who are experiencing homelessness in South County and are
2 unable to access a shelter offering a reasonable accommodation for their
3 disabilities, if any.

4 22. The members of the class are so numerous that individual joinder of
5 all members is impracticable, if not impossible. Plaintiffs are informed and believe
6 on that basis that members of the class will exceed 400 in number, which is
7 approximately the number of people experiencing homeless in South County
8 included in the 2017 Point-in-Time Count.

9 23. There are common questions of law and fact that predominate over
10 any questions affecting only individual class members in this instance.

11 24. Among the common questions of law and fact are the following:

- 12 a. Whether the Defendants, and each of them, have met their statutory duty
13 to provide low-income housing and a continuum of shelter facilities as
14 required by California Government Code § 65589.5;
- 15 b. Whether the Defendants, and each of them, have enforced or threatened to
16 enforce policies, practices and customs of citing or arresting people
17 experiencing homelessness for alleged violations of camping, keeping
18 property in public places, loitering and other similar quality-of-life
19 criminal acts when there is no available shelter space;
- 20 c. Whether Defendants, and each of them, through their policies, practices
21 and customs, have failed to address and provide reasonable
22 accommodation for people with disabilities experiencing homelessness in
23 violation of state and federal statutory rights for disabilities;
- 24 d. Whether injunctive relief restraining further unconstitutional and unlawful
25 acts by Defendants, and each of them, should be ordered by the Court and,
26 if so, the nature of that injunctive relief;

27 25. The Class Representatives will fairly and adequately protect the
28 interests of the Class. They have retained counsel who are experienced and

1 competent in class-action and civil rights litigation. The Class Representatives
2 have no interests that are adverse or antagonistic to those of other Class members.

3 26. A class action is superior to any other method to secure a fair and
4 efficient adjudication of this controversy. As the primary relief sought is
5 injunctive in nature, the burden and expense make it impractical for class
6 members to seek redress individually for the wrongs done to them. The nature
7 and amount of monetary damages sustained by each Class member is very
8 similar in nature and may be established by common proof. Individual
9 litigation by each class member would necessarily burden the judicial system
10 and run the risk of inconsistent judgments.

11 27. Plaintiffs are informed and believe and on that basis allege that
12 Defendants, and each of them, have acted on grounds generally applicable to
13 the class, making injunctive or declaratory relief appropriate for the class as a
14 whole.

15 **PARTIES**

16 **Plaintiffs:**

17 28. Plaintiff **HOUSING IS A HUMAN RIGHT ORANGE COUNTY**
18 (**“HHROC”**) is a coalition of entities and individuals working together to achieve
19 supportive, affordable, and permanent housing for homeless individuals in Orange
20 County, with appropriate and adequate wrap around services as needed. The
21 participants in **HHROC** go to where they understand unsheltered individuals to be
22 and provide much-needed support that the County of Orange, cities and
23 municipalities fail to provide. This includes, but is not limited to, creating
24 community through preparing and sharing meals, collecting and distributing
25 clothing; assist with making appointments and transporting individuals to
26 doctor/dentist, DMV, Social Services, and veterinarian appointments. They
27 provide this assistance throughout County, including in South County.

28

1 29. The members of **HHROC** expend their own funds to provide this
2 assistance, including purchasing food and other items needed by persons
3 experiencing homeless. The members of **HHROC**, and each of them, pay taxes to
4 the County of Orange when they make these purchases. On information and belief,
5 each of the municipal Defendants receives funds derived from the payment of
6 taxes to the County. Because of the lack of adequate shelter for people
7 experiencing homeless in Orange County, including in South County, **HHROC** is
8 required to shift and expend resources to providing immediate direct services, as
9 described above, and redirected its time and money from its primary focus of
10 achieving supportive, affordable and permanent housing for people experiencing
11 homelessness in the County.

12 30. Plaintiff **ORANGE COUNTY CATHOLIC WORKER (“OCCW”)**
13 operates a community at Isaiah House in Santa Ana. In furtherance of its mission,
14 Isaiah House of the Orange County Catholic Worker has served poor people
15 with dignity since 1987, providing meals, shelter, food, clothing, showers, and
16 emergency assistance to homeless persons throughout the area. In addition,
17 **OCCW** has provided emergency housing to individuals without shelter options,
18 They are frequently called by the Public Defender and the County Jail in Santa
19 Ana to provide shelter to homeless women who are arrested and prosecuted for
20 alleged crimes. Over the past year and presently, **OCCW** has provided shelter
21 to women from South County. Currently, **OCCW** is providing shelter to
22 women who have been forced to relocate to Santa Ana because of the lack of
23 appropriate local options, if any, in Irvine and San Juan Capistrano. In the
24 past year, **OCCW** has also housed other women from South County cities when
25 they could not find shelter locally.

26 31. Plaintiff **EMERGENCY SHELTER COALITION OF SAN**
27 **CLEMENTE (“ESC”)** is now, and at all times since its incorporation on July 30,
28 2018 was, a non-profit organization under the laws of the State of California. The

1 members of the **ESC** share a common goal to establish a year-round emergency
2 shelter and resource center in San Clemente to provide people experiencing
3 homelessness with a safe place to sleep, engage in fundamental daily life activities
4 and obtain counseling and referral services. The members of **ESC** include
5 individuals who are residents of, employed in, or recreate in the City and who
6 devote their time and resources to assisting persons experiencing homelessness in
7 San Clemente, regardless of the reason. Because of the lack of resources
8 throughout South County, **ESC** and its board members provide assistance to
9 persons experiencing homelessness in the region. Because of the lack of services
10 throughout South County, the **ESC** provides assistance to individuals experiencing
11 homelessness not only in San Clemente, but almost every city in South County,
12 including numerous unsheltered individuals from San Juan Capistrano, Dana Point,
13 Mission Viejo and other cities that have similarly failed to provide assistance to
14 unsheltered individuals in their respective communities in South County.

15 32. Beginning in or about 2014, **ESC** was engaged in litigation with the
16 City of San Clemente to compel the City to bring itself into compliance with its
17 statutory duties under Government Code §65588(e) to adopt an updated Housing
18 Element that (1) establishes at least one zone in which emergency shelters are
19 permitted by right without any discretionary approvals by the City; (2)
20 demonstrates adequate capacity to meet the City's need for emergency shelter; and
21 (3) promulgates standards designed to encourage and facilitate the development of
22 emergency shelters in appropriate locations, including at least one year-round
23 facility. In August 2016, the Hon. Robert J. Moss of the Orange County Superior
24 Court entered judgment in favor of **ESC**, directing the City to revise its Housing
25 Element to conform to its statutory obligations.

26 33. The City has a legal obligation to address how it would provide for
27 the needs of homeless individuals in the 2013 Housing Element submitted to the
28 California Department of Housing and Community Development ("HCD") as a

1 statutory condition of approval of the City's General Plan. Despite the success of
2 the ESC's litigation, the City has still not met its responsibilities. The City first
3 created and limited the Emergency Shelter Overlay Zone to the local Business
4 Park. The City knew or should have known that this proposed location did not
5 meet the requirements under SB2 because, among other bases, the Business Park is
6 located miles away from the City's downtown area, is not served by public
7 transportation, and is composed of very expensive buildings not conducive to a
8 shelter. **ESC** continues to work toward developing a shelter in the Emergency
9 Shelter Overlay Zone identified as a result of the successful litigation by **ESC**.

10 34. Plaintiff **DUANE NICHOLS** is a 60-year-old veteran who is
11 homeless in San Clemente. He is eligible to upgrade his original "Other than
12 Honorable" discharge. He has no income at present. Because of his significant
13 disabilities and the distance involved, he is unable to get to a County office to
14 apply for General Relief or any other form of public assistance.

15 35. Over the course of the past six months, he has been contacted a few
16 times by Mercy House, the contract services outreach agent for San Clemente. The
17 primary assistance offered by Mercy House was an offer to transport Mr. Nichols
18 to the Courtyard in Santa Ana or the ASL in Laguna Beach. OCSD deputies
19 threaten him with jail if he does not go to a shelter, but neither the Courtyard or the
20 ASL are viable options because both are generally at or over capacity every night,
21 with people sleeping on the sidewalks around the facilities. Both require a referral
22 for admission or give priority to local residents. During one recent rain storm,
23 Mercy House came with law enforcement and offered motel rooms with two
24 people in a room for two nights only. When Mr. Nichols arrived at the motel, he
25 learned that there were 4 people in a very small room and that they would only be
26 sheltered for one night, returning him to the streets.

27 36. Mr. Nichols is physically, medically and visually disabled. He uses a
28 tricycle for mobility assistance. Recently, a medical professional accompanied the

1 outreach workers from Mercy House. Although Mr. Nichols was offered medical
2 medical assistance, in order to do so he is required to check in at the Family
3 Assistance Ministries (“FAM”). His compound disabilities make it difficult, if not
4 impossible, for him to get to the FAM location. He suffers from COPD, blood clot
5 issues, hip problems, limited vision and severe arthritis. Moreover, he fears losing
6 his property because he has no place to leave his property when he goes to FAM
7 and cannot transport it with him. With great difficulty, he has made the trip to
8 FAM several times to check in with a FAM caseworker but is repeatedly told only
9 to come back in two weeks.

10 37. Mr. Nichols sleeps in the parking lot at the train station. On many
11 nights, he is awakened by sirens as deputies arrive and threaten him with arrest if
12 he does not leave. He has been ordered by OCSD personnel to leave the City.

13 38. Plaintiff **DARREN JAMES** is disabled and homeless, living in San
14 Clemente. For about two years, he has stayed in the same area but over the past
15 several months, law enforcement have roused him in the middle of the night,
16 telling him to move or be arrested.

17 39. Until about two years ago, Mr. James kept his belongings in a storage
18 unit. At that time, he had income from SSI. When his SSI was terminated
19 unexpectedly, he could no longer pay for the storage unit and thereafter kept
20 everything he owned with him. He always leaves his property neatly packed. In
21 early February 2019, all of his possessions were taken from the location where he
22 left them daily for two years. He approached a person in the area that he
23 understood to be a City employee, asked about his possessions, and was informed
24 that the City did not retain the property. Mr. James lost everything he owned,
25 including his sleeping bag, blankets, cowboy boots he had had since he was a child
26 and other sentimental items and family pictures, his birth certificate, and all of his
27 personal papers.

28

1 40. Like Mr. Harris, in the last three or four months, law enforcement
2 approached Mr. James at night, woke him up and told him that he had to move or
3 face arrest. On information and belief, he understands that he is being threatened
4 for sleeping in public, even though there are no shelter beds available in South
5 County to accommodate him.

6 41. Plaintiff **BRUCE STROEBEL** grew up in Irvine and it was his
7 primary residence until the family home was sold after his mother's death.
8 Presently, he sleeps outdoors in Irvine. When it rains, he seeks shelter under a
9 building overhang. He has a congenital heart defect that makes it hard for him to
10 breathe and limits his mobility. As a consequence, he has circulatory issues that
11 cause his feet to swell, compounding his mobility issues. It is hard for him to
12 manage these health conditions without shelter, and the stress of being unsheltered
13 is damaging to his heart condition.

14 42. In addition **MR. STROEBEL** has other disabling conditions,
15 including a hip problem and herniated disks in his neck. All of these infirmities
16 make it very difficult for him to walk without leaning on a shopping cart. He has
17 been approved for hip replacement surgery but cannot recuperate while living on
18 the street.

19 43. Mr. **STROEBEL** has friends in Irvine who help him with the tasks of
20 daily living. His doctors are also in the vicinity. Even if he could get into the
21 Courtyard, he would not have anyone to help him with his physical mobility issues
22 and could not navigate the travel from there to his doctor's appointments.
23

24 **Defendants:**

25 44. Defendant **ORANGE COUNTY** is a government entity with the capacity to
26 sue and be sued. The Board of Supervisors is the governing entity for the County.
27 The Board of Supervisors is responsible for developing and implementing the
28 General Plan, including addressing the need for housing and shelter for low-

1 income and homeless individuals. The departments of the COUNTY include the
2 Orange County Sheriff. Employees of the COUNTY have engaged in the acts
3 complained of herein pursuant to the policies, practices and customs of the
4 COUNTY.

5 45. The OCSD is the contract law enforcement entity for 13 cities in the
6 County, most of which are in South County, including but not limited to San
7 Clemente. The OCSD has engaged with homeless individuals in contract cities
8 and enforced local ordinances in those jurisdictions that mirror the ordinances
9 criminalizing homelessness in the Defendant County and cities. The OCSD has
10 also applied and threatened to apply the County's "quality-of-life" ordinances to
11 compel members of the Plaintiff class to move from public spaces when they have
12 no other place they can lawfully be. In each of the defendant municipalities, law
13 enforcement has made it clear that homeless persons are not welcome in the city,
14 their mere presence is a crime, and they will be ticketed or arrested if they remain.

15 46. Defendant **IRVINE** is a government entity with the capacity to sue
16 and be sued. According to the 2017 PIT, the City of **IRVINE** had 199 people
17 experiencing homelessness, nearly two-thirds of the total of 286 unsheltered
18 individuals counted in the 2017 PIT. The departments of the City include the
19 Irvine Police Department. Employees and elected officials of **IRVINE** have
20 engaged in the acts complained of herein pursuant to the policies, practices and
21 customs of the city. The actions of the City of **IRVINE** are described more fully
22 above, including the blockage of any emergency shelter in the City.

23 47. Defendant **ALISO VIEJO** is a government entity with the capacity to
24 sue and be sued. Employees and elected officials of **ALISO VIEJO** have engaged
25 in the acts complained of herein pursuant to the policies, practices and customs of
26 the city. The City has failed to meet its obligations to provide for the needs of
27 homeless individuals in the City. In its 2013 Housing Element, the City provided
28 minimal information on how it would address the needs of homeless individuals in

1 its community. Instead, the City relied on Orange County Housing Authority
2 (OCHA) rental assistance programs and Shelter Plus Care for homeless individuals
3 with significant disabilities. 2013 Aliso Viejo General Plan H-13. In addition, the
4 City identified \$13,500 expended over eight years to Laura's House, a domestic
5 violence organization serving all of Orange County. The City also identified
6 \$29,340 spent over an unidentified period of time to South County Outreach,
7 which provides crisis food and funding, mostly for housed individuals. The City's
8 Housing Element did not identify a single shelter or a by-right location for a shelter
9 in the City to meet the needs of persons experiencing homelessness in Aliso Viejo.
10 On information and belief, Plaintiffs allege that the City of Aliso Viejo has not
11 amended its Housing Element as it addresses the special needs of homeless
12 individuals, despite the requirement to provide periodic amendments and despite
13 the fact that 28 individuals who identified Aliso Viejo as their last residence were
14 served by the ASL in Laguna Beach in 2017.

15 48. Defendant **DANA POINT** is a government entity with the capacity to
16 sue and be sued. The departments of the City include the Dana Point Police
17 Department. Employees of the City have engaged in the acts complained of herein
18 pursuant to the policies, practices and customs of the city. The City has failed to
19 meet its obligations to provide for the needs of homeless individuals in the City.
20 On information and belief, Plaintiffs allege that the City is the enforcement agency
21 for individuals cited by State Park Rangers for camping on the beach area in Dana
22 Point. In that role, Dana Point continues the prosecution of homeless persons cited
23 in the City for violating state laws prohibiting camping in public.

24 49. Defendant **SAN JUAN CAPISTRANO** is a government entity with
25 the capacity to sue and be sued. Employees and agents of **SAN JUAN**
26 **CAPISTRANO** have engaged in the acts complained of herein pursuant to the
27 policies, practices and customs of the CITY. The City has failed to meet its
28 obligations to provide for the needs of homeless individuals in the City. On

1 information and belief, Plaintiffs allege that the City has failed to identify an
2 appropriate by-right shelter location and has, in fact, rejected every suggestion of
3 an potential location by community groups serving homeless individuals in the
4 City. At the same time, the City has threatened homeless individuals in its
5 jurisdiction with citation and arrest if they remain in public places, forcing many
6 people into remote areas where they cannot readily obtain any assistance. The City
7 is more than 20 miles from Santa Ana and Anaheim, even if the City could
8 somehow shift its mandatory obligations to already concentrated numbers of
9 shelters in those two cities. Because of the lack of services in the City, persons
10 experiencing homelessness in San Juan Capistrano travel to San Clemente to
11 receive assistance from Plaintiff ESC. Some of the members of ESC also provide
12 essential services to people experiencing homelessness in San Juan Capistrano. In
13 addition, Family Assistance Ministries provides some resources in San Clemente,
14 Laguna Beach and Dana Point, but none of this involves housing for unsheltered
15 individuals since all of their facilities are restricted to families with children.

16 50. The Defendant **CITY OF SAN CLEMENTE** is a government entity
17 with the capacity to sue and be sued. The Orange County Sheriff's Department is
18 the contract law enforcement agency, acting as employees, for the City, charged
19 with enforcing City law within its geographic boundaries. One department of the
20 Defendant City is the San Clemente Maintenance Department. Employees of the
21 City have engaged in unlawful activity, taking property without notice that they
22 know or should know is the essential property of unsheltered homeless individuals
23 in San Clemente, who have no to leave their property during the day while they go
24 to services, work and attend to other daily tasks. Although the OCSD has stopped
25 arresting homeless individuals for quality-of-life violations, deputies continue to
26 threaten citation or arrest if homeless people do not leave public spaces where they
27 have a constitutional right to be and remain.

28

1 51. The **CITY OF SAN CLEMENTE** was previously sued by the
2 organizational Plaintiff ESC based on the City's failure to comply with the
3 mandatory requirements of Gov. Code §§65583 et seq., in that the City failed to
4 identify any site within the City that met the requirements of state law to allow
5 operation by right of a shelter serving homeless individual without additional
6 governmental restrictions on the entity. The Orange County Superior Court
7 enjoined the City from approving any development plans until it was in
8 compliance. Although the City then identified a zone where a shelter could be
9 located and operated by right, the property was, in fact, not feasible and the City
10 knew or should have known that. At present, there is no location in the City that is
11 approved and meets the requirements of §§65583 et seq.

12 52. Each of the Defendants, their employees and agents, participated
13 personally in the unlawful conduct challenged herein and, to the extent that they
14 did not personally participate, authorized, acquiesced, set in motion, or otherwise
15 failed to take necessary steps to prevent the acts that resulted in the unlawful
16 conduct and the harm suffered by Plaintiffs. Each acted in concert with each other.
17 The Defendants developed and implemented a coordinated plan to increase
18 enforcement actions against the homeless community in the Riverbed and
19 surrounding cities. The challenged acts caused the violation of Plaintiffs' rights.

20 53. The identities and capacities of defendants DOES 1 through 10 are
21 presently unknown to plaintiffs, and on this basis, Plaintiffs sue them by fictitious
22 names. Plaintiffs will amend the Complaint to substitute the true names and
23 capacities of the DOE defendants when ascertained. Plaintiffs are informed,
24 believe, and thereon allege that DOES 1 through 10 are, and at all times relevant
25 herein were, employees and/or agents of the Defendant COUNTY and Defendant
26 CITIES and are responsible for the acts and omissions complained of herein.
27 Defendants DOES 1 through 10 are sued in their official and individual capacities.
28

1 **FIRST CAUSE OF ACTION**
2 **Violation of Eighth and Fourteenth Amendments (42 U.S.C.§1983)**
3 **(Against All Defendants)**

4 54. Plaintiffs reallege and incorporate the allegations set forth in the
5 preceding paragraphs as though fully set forth hereat.

6 55. The acts and omissions of Defendants, and each of them, as described
7 herein, violate the constitutional rights of Plaintiffs to be free from actual or
8 threatened cruel and unusual punishment. By virtue of their status as homeless and
9 disabled, and the absence and insufficiency of shelter or housing in South County,
10 Plaintiffs have no way to comply with the laws Defendants have sought and
11 continue to seek to enforce against them.

12 56. Plaintiffs further allege that it violates their substantive due process
13 rights to threaten them with citation and arrest for sleeping and keeping their
14 property in public places when there is inadequate shelter available. The
15 Defendants, and each of them, lack adequate and appropriate shelters to provide a
16 safe place for the Plaintiff class to sleep and simply be. Instead, Defendants
17 enforce “quality-of-life” violations and expect members of the Plaintiff class to
18 move out into neighboring cities, in which similar ordinances prevent them from
19 lawfully residing without shelter, having their property in public places, and
20 loitering laws prohibit their mere presence in these jurisdictions.

21 57. The citation and threats of citation for behavior such as sleeping in or
22 keeping personal property on public space when there is inadequate shelter
23 available violates the Eighth and Fourteenth Amendments of the United States
24 Constitution and Article 7, §17 of the California Constitution.

25 58. Each Defendant has a custom, policy, and/or practice of encouraging
26 its officers, employees and agents to threaten citations and arrest of homeless
27 persons for the unavoidable behavior of sleeping or having property in public
28 based on their unhoused status.

1 59. There is an actual controversy between Plaintiffs and the Defendants
2 concerning the threat of citation if Plaintiffs remain and sleep on public property
3 with their personal possessions when they have no alternative location to be that
4 will not violate Defendants' laws. Plaintiffs desire a judicial determination of
5 their rights and duties and a declaration as to Defendants' constitutional
6 obligations.

7
8 **SECOND CAUSE OF ACTION**
9 **Violation of First and Fourth Amendment; 42 U.S.C. 1983**
10 **(Against All Defendants)**

11 60. Plaintiffs reallege and incorporate the allegations set forth in the
12 preceding paragraphs as though fully set forth hereat.

13 61. On information and belief, each of the Defendants, through their
14 employees and agents, ordered individuals in their respective jurisdictions who
15 appear to law enforcement to be homeless to move along from public places where
16 they have a right to be pursuant to the First Amendment. The detentions and
17 interrogations constitute an unlawful seizure as they were done without reasonable
18 suspicion or probable cause to believe that the individual had or was about to
19 commit a crime other than a purported violation of a law necessitated by their
20 status as homeless individuals plus the lack of available shelter. Plaintiffs, as
21 everyone else, have a First Amendment right to be present in a public space, to
22 "loiter" in a public space for no reason and to not be excluded from that space by
23 threat, intimidation or coercion for alleged crimes directly related to their status as
24 individuals experiencing homelessness who have no place to live other than in
25 public spaces.

26 62. As a direct consequence of Defendants' past and threatened future
27 actions, Plaintiffs have suffered and will continue to suffer a violation of their
28 constitutional rights. Plaintiffs have suffered damages in the form of pain and
suffering as a result of Defendants' policies, practices and customs.

THIRD CAUSE OF ACTION

**Right To Due Process Of Law; 42 U.S.C. § 1983; Fourteenth Amendment
(Against All Defendants)**

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63. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth hereat.

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64. The due process clause of the Fourteenth Amendment prohibits government officials, and those acting in concert with them as their employees and agents, from depriving persons of their rights without due process of law.

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65. In addition, Plaintiffs' right to due process of law was violated by each of the Defendants through the application of constitutionally vague laws used to threaten intimidate, and coerce Plaintiffs to leave public space to avoid citation or arrest for, *inter alia*, "camping" in public, loitering, and placing their possessions on public property when they have no other place to engage in daily life activities. Defendants' laws violate the Fourteenth Amendment because they are so vague as to be impossible to comply with. Provisions similar to the Defendants' loitering ordinances listed above have been repeatedly found unconstitutionally vague and overbroad in the past.

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66. The acts and omissions of Defendants, as described herein, violate the constitutional rights of Plaintiffs under the Due Process Clause of the United States Constitution. The wrongful conduct complained of herein was the product of the policies, practices or customs of the Defendants, and was not the product of accident or inadvertence, and was not random. In so doing, Defendants were deliberately indifferent to the rights of Plaintiffs and the class they represent and acted in willful and reckless disregard of the rights of Plaintiffs and the class.

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67. Plaintiffs allege that the failure and refusal of the Defendants, and each of them, to comply with the mandatory duty to provide for the needs of the class members to stay where they are protected from the adverse weather elements, puts them in immediate danger and constitutes a state-created danger to a community that predominantly suffers from one or more significant disabilities.

1 68. As a direct and proximate cause of the aforementioned acts of
2 Defendants, Plaintiffs and the Plaintiff Class suffered injuries in that, in doing the
3 acts complained of herein, Defendants acted knowingly and with deliberate
4 indifference to their statutory obligations and to Plaintiffs' disabilities and the harm
5 substantially likely to occur to them as the result of Defendants' unlawful policies
6 and practices, including the omission to act. Defendants have accomplished these
7 unlawful acts by using federal and state funds in ways that discriminate against
8 qualified disabled persons.

9
10 **FOURTH CAUSE OF ACTION**
11 **VIOLATION OF 14TH AMENDMENT; SUBSTANTIVE DUE PROCESS;**
12 **CALIFORNIA GOVERNMENT CODE § 65583 *et seq.*; CALIFORNIA**
13 **CIVIL CODE § 815.6**
14 **(Against All Defendants)**

15 69. Plaintiffs reallege and incorporate the allegations set forth in the
16 preceding paragraphs as though fully set forth hereat.

17 70. California Civil Code § 815.6 provides for liability against a public
18 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class
19 of persons protected by the enactment; (3) the enactment is intended to protect the
20 type of injury complained of by the plaintiffs; (4) the violation of the enactment is
21 the proximate cause of the injury; and, (5) the public entity did not exercise
22 reasonable diligence in discharging its duty established by the enactment.

23 71. An enactment includes a federal or state constitutional provision, a
24 statute, charter provision, ordinance or properly adopted regulation.

25 72. The Fourteenth Amendment of the United States Constitution, Article
26 I, § 7 of the California Constitution, California Civil Code § 52.1, and California
27 Government Code § 65583 *et seq.* are all enactments within the meaning of
28 California Civil Code § 815.6. Plaintiffs and the Plaintiff Class are in the class of
persons protected by these enactments.

1 73. The aforementioned enactments, applied to Plaintiffs separately and
2 together, constitute mandatory duties within the meaning of California Civil Code
3 § 815.6 and were designed to protect against the kind of injuries alleged herein.
4 As described hereinabove, Defendants did not exercise reasonable diligence in
5 discharging their duty established by the enactments identified above to refrain
6 from violating the constitutional and statutory rights of Plaintiffs and the Class.
7 Pursuant to California Government Code.

8 74. As a direct and proximate result of the aforementioned acts of
9 Defendants, Plaintiffs and the Plaintiff Class suffered injuries as a direct result of
10 the failure of each of the Defendants to comply with Government Code § 65583 *et*
11 *seq.* with respect to people experiencing homelessness in their respective
12 jurisdictions. Plaintiffs are unable to obtain appropriate housing or shelter and are
13 threatened, cited and, in some instances arrested, for living in public places when
14 there is no available shelter or housing, let alone shelter or housing that will
15 provide a reasonable accommodation of their individual disabilities.

16 75. Plaintiffs and the Plaintiff Class seek injunctive and declaratory relief
17 and damages for the individual Plaintiffs. The damages sought by the individual
18 Plaintiffs are incidental to the injunctive relief sought in this action.

19
20 **FIFTH CAUSE OF ACTION**
21 **Violation of Americans with Disabilities Act**
22 **42 U.S.C. §§ 12132, 12133; 29 U.S.C. § 794a**
23 **(Against All Defendants)**

24 76. Plaintiffs incorporate and reallege all preceding paragraphs as if fully
25 set forth hereat.

26 77. Defendants, and each of them, their agents and employees, have failed
27 to provide for the needs of disabled homeless individuals in their jurisdictions and
28 have, instead, offered services that fail to provide reasonable accommodations to
people experiencing homelessness in South County.

1 78. By the implementation of their policies and programs, by both
2 commission and omission, Defendants' actions have the effect of subjecting the
3 Plaintiffs and other qualified individuals with disabilities to discrimination based
4 on their disability in violation of 29 C.F.R. § 35.130(b)(3).

5 79. Defendants, and each of them, have expended federal and state funds
6 to accomplish their unlawful acts, including funding from the federal and state
7 governments to the County and expended at the County and municipal level.

8 80. As a consequence of Defendants' unlawful actions, Plaintiffs and the
9 class they represent have suffered and continue to suffer damages and are entitled
10 to compensation therefore, as well as declaratory and injunctive relief. s

11 81. As individuals with disabilities, Plaintiffs are eligible and qualified for
12 programs operated by the Defendant County but cannot access those programs
13 without assistance and reasonable accommodations. The failure of the County is
14 compounded by the failures of the municipal defendants to meet their independent
15 obligations under state law to provide for the needs of disabled and homeless
16 individuals in their respective jurisdictions.

17 **SIXTH CAUSE OF ACTION**
18 **Violation of California Civil Code § 52.1**
19 **(Against All Defendants)**

20 82. Plaintiffs reallege and incorporate the allegations set forth in the
21 proceeding paragraphs as through fully set forth hereat.

22 83. The Defendants' conduct, as described herein, interferes by threats,
23 intimidation, or coercion, or attempts to interfere by threats, intimidation, or
24 coercion, with the exercise and enjoyment of Plaintiffs' rights as secured by the
25 First, Fourth, Eighth, and Fourteenth Amendments to the United States
26 Constitution or laws of the United States, and of the rights secured by the
27 Constitution or laws of the state of California.

28

1 84. Defendants have engaged in concerted and repeated conduct to cite
2 and arrest Plaintiffs under unconstitutional ordinances, on their face and as applied,
3 and threatened to cite and arrest them repeatedly. Defendants engaged in coercive
4 and intimidating tactics by conducting unwarranted stops and collecting
5 information on Plaintiffs to push them out of Defendants' respective jurisdictions.

6 85. Defendants' actions are the proximate cause of the harm suffered by
7 the individual Plaintiffs, as well as the failure to fulfill the statutory obligation to
8 provide for homeless individuals within their respective jurisdictions, and Plaintiffs
9 are entitled to compensation for their pain and suffering.

10 86. Defendants' continued unlawful acts against and affecting the
11 Plaintiffs and the class they represent is ongoing and will continue unless and until
12 the Court enjoins this unlawful conduct.

13
14 **SEVENTH CAUSE OF ACTION**
15 **RIGHT TO DUE PROCESS OF LAW; 42 U.S.C. § 1983**
16 **FIFTH AND FOURTEENTH AMENDMENTS; ART. I, § 7**
17 **(By Plaintiff DARREN JAMES against the CITY OF SAN CLEMENTE)**

18 87. Plaintiffs reallege and incorporate the allegations set forth in the
19 preceding paragraphs as though fully set forth hereat.

20 88. The CITY OF SAN CLEMENTE, their employees and agents, owed
21 Plaintiff DARREN JAMES a duty under the due process clauses of the Fifth and
22 Fourteenth Amendments to the U.S. Constitution and Article I, § 7 of the
23 California Constitution to protect the personal property of the Plaintiffs.

24 89. Despite this well-defined duty, Defendant CITY of San Clemente
25 provided Plaintiff with no notice that his property was at risk of being seized
26 and/or destroyed and did not act to preserve the property or provide any means of
27 reclaiming it in a timely manner, even though Defendant CITY was put on notice
28 by past court decisions, including decisions at the Ninth Circuit Court of Appeals,
that such notice and preservation of property was required.

1 90. Plaintiff is informed and believes that the acts of Defendant CITY,
2 and its employees and agents, were intentional in failing to protect and preserve
3 Plaintiff's property and that, at minimum, Defendant CITY was deliberately
4 indifferent to the likelihood that the property would be seized and destroyed
5 without due process based on the past occurrences of these same constitutional and
6 statutory violations of the law.

7 91. Defendant CITY OF SAN CLEMENTE seized and destroyed the
8 personal property of the Plaintiff DARREN JAMES without due process, lawful
9 justification, or just compensation.

10 92. As a direct and proximate consequence of the acts of Defendant's
11 agents and employees, Plaintiff DARREN JAMES has suffered loss of his personal
12 property and are entitled to compensatory damages for their property and other
13 injury to their person.

14
15 **EIGHTH CAUSE OF ACTION**
16 **Violation of California Government Code §11135**
17 **(Against All Defendants)**

18 93. Plaintiffs reallege and incorporate the allegations set forth in the
19 proceeding paragraphs as though fully set forth hereat.

20 94. California Government Code section 11135 provides that:
21 No person ... shall, on the basis of race, national origin, ethnic group
22 identification, religion, age, sex, sexual orientation, color, genetic
23 information, or disability, be unlawfully denied full and equal access to the
24 benefits of, or be unlawfully subjected to discrimination under, any program
25 or activity that is conducted, operated, or administered by the state or by any
26 state agency, is funded directly by the state, or receives any financial
27 assistance from the state.
28

1 95. The Defendants, and each of them, are entities subject to the
2 requirements and prohibitions of section 11135 in that they receive public monies
3 and financial assistance from state agencies and other state funds.

4 96. The term “disability” applies to both mental, medical and physical
5 disabilities as defined in California Government Code section 12926. The
6 Defendants, and each of them, directly and through their contractors and agents,
7 discriminated against Plaintiffs on the basis of their disabilities.

8 97. As a direct and proximate result of Defendants’ actions, and those of
9 its contractors and agents, Plaintiffs and the Plaintiff Class experienced and
10 continue to experience direct injury, including pain and suffering.

11
12 **NINTH CAUSE OF ACTION**
13 **TAXPAYERS’ SUIT : DECLARATORY AND INJUNCTIVE RELIEF**
14 **California Code of Civil Procedure § 526a**
15 **(Against All Defendants)**

16 98. Plaintiffs reallege and incorporate the allegations set forth in the
17 preceding paragraphs as though fully set forth here.

18 99. Plaintiffs, and each of them, have been assessed and are liable to pay
19 taxes in and to the County of Orange. On information and belief. Plaintiffs allege
20 that the taxes collected by the County of Orange are dispensed to the Defendant
21 municipalities to support various programs and services, including the provision of
22 services to people experiencing homelessness. Plaintiffs and the class they
23 represent have suffered and, unless the Court restrains Defendants, will continue to
24 suffer irreparable harm.

25 100. Plaintiffs are informed and believe, and on that basis allege, that the
26 conduct of Defendants, their employees, agents and contractors, has been and,
27 unless restrained, will continue to be deleterious to the constitutional and statutory
28 rights of Plaintiffs and the general public. Plaintiffs thereby seek to enforce

1 important rights affecting the public interest within the meaning of California Code
2 of Civil Procedure § 1021.5.

3 101. Plaintiffs have no adequate remedy at law.

4 102. Unless the Defendants are enjoined from continuing the unlawful
5 course of conduct for engagement with the Class, Plaintiffs will suffer ongoing and
6 irreparable injury to their rights. Plaintiffs seek injunctive relief pursuant to
7 California Code of Civil Procedure § 526a and the substantive standards reflected
8 in the claims stated above, for which injunctive and declaratory relief are
9 appropriate remedies.

10 103. Defendants have expended public monies and threaten and will
11 continue to spend such monies to implement and engage in the illegal conduct
12 described herein.

13 104. Pursuant to California Code of Civil Procedure §§526 and 526a, and
14 the constitutional and statutory provisions set forth above, the Plaintiffs and
15 Plaintiff Class, as taxpayers and as injured parties entitled to relief, seek
16 declaratory and injunctive relief, damages for the individual plaintiffs, and an
17 accounting to prevent continued harm and to protect themselves and the public
18 from the defendants' unlawful policies and practices. Said damages to the
19 individual plaintiffs is incidental to the injunctive relief sought for the class.

20
21
22 **WHEREFORE**, Plaintiffs pray as follows:

- 23 1. For an order enjoining and restraining the Defendants, and each of
24 them, their employees and agents, from citing or arresting and
25 threatening to cite or arrest individuals for violations of quality of life
26 violations, including but not limited to camping, property or loitering
27 laws application in public spaces in each jurisdiction, no matter how
28 titled, when there is no adequate shelter or other placement available;

- 1 2. For a declaratory judgment that Defendants’ policies, practices and
2 conduct as alleged herein violate Plaintiffs’ rights under the United
3 States and California constitutions and federal and state statutory laws
4 identified herein;
- 5 3. For a declaratory judgment that Defendants failed to meet their
6 mandatory duty to provide for shelter and housing for homeless and
7 extremely low-income residents of their jurisdictions, as codified in
8 Gov. Code §§65583 et seq.;
- 9 4. For an order enjoying the issuance of all development permits in the
10 Defendant jurisdictions unless and until Defendants are in full
11 compliance with the Housing Accountability Act , Gov. Code
12 §§65583 et seq.;
- 13 5. For damages to the individual plaintiffs in an amount to be determined
14 according to proof based on their federal claims only;
- 15 6. For costs of suit and attorney fees as provided by law;
- 16 7. For such other relief as the Court deems just and proper.

17
18 Dated: February 27, 2019

Respectfully submitted,

19 LAW OFFICE OF CAROL A. SOBEL
20 ELDER LAW & DISABILITY RIGHTS CENTER
21 SCHONBRUN SEPLOW HARRIS & HOFFMAN

22 /s/ Carol Sobel
23 By: CAROL A. SOBEL
24 Attorneys for Plaintiffs
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