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28 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 STOVALL, all as individuals and
on behalf of the class of similarly situated
individuals,

Plaintiffs,

Case No.: 18-cv-00155 DOC KES

FIRST AMENDED 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

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
20 region’s homeless population 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 6. Now the final 2019 PIT has been released and the numbers are
18 devastating. With a more accurate process than earlier years, the increase in
19 people experiencing homelessness in the County is up more than 42 percent from
20 the 2017 PIT. While the greatest increases are in the North and Central SPAs, the
21 South SPA cities saw an increase of over 11 percent from the 2017 PIT count,
22 bringing the total of individuals experiencing homelessness in South County to
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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 approximately 763 persons. This number is greater than the 701 year-round
2 emergency shelter beds reported in the 2019 PIT for the entire county.

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

4 7. The consequences of the county and municipal governments’
5 abdication of responsibility are significant. Deaths of homeless people in Orange
6 County rose to 210 in 2017, with at least one homeless person dying in nearly all
7 of the 28 cities throughout Orange County. And although the statistics for 2018
8 are not yet complete, a recent report released by the Orange County Sheriff’s
9 Department found that even more unhoused persons—about 250—died last year.
10 Based on the currently available numbers, homeless people died last year in all but
11 one of the Defendant cities. The one exception is Aliso Viejo, which has the largest
12 number of individuals who stayed at the ASL in Laguna Beach in 2017 other than
13 residents of the City of Laguna Beach.

14 8. In a 2017 interview, CEO and Founder of the Illumination Foundation
15 (“IF”), Paul Leon, stated that his organization alone provided inpatient medical care
16 to approximately 70 individuals who were living on the streets. Leon’s assessment
17 was that 90 percent of that number would otherwise have died if they were still
18 unsheltered and not living in the IF facility with medical support.

19 9. Responding to the medical requirements of individuals who are
20 unhoused puts an enormous financial and personnel stress on the public health
21 system. Individuals “experiencing homelessness have high rates of chronic mental
22 and physical health conditions, co-occurring disorders and barriers to health care
23 and affordable housing.” Am. Pub. Health Ass’n, Policy No. 20178, Housing and
24 Homelessness is a Public Health Issue (Nov. 7, 2017) (“APHA 11-7-17”).
25 According to the HUD Annual Homeless Assessment Report to Congress, 32% of
26 more than half a million people experiencing homelessness on a single night in
27 2016 were unsheltered. According to the 2017 Point-in-Time count, half of those
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1 experiencing homelessness in Orange County are unsheltered on any night, 50%
2 above the national average. APHA 11-7-17.

3 **HYPOTHERMIA:**

4 10. An estimated 700 unsheltered individuals die from exposure to the
5 elements each winter across the country. Unsheltered individuals are at a high risk
6 of developing life-threatening, exposure-related conditions such as hypothermia
7 and frostbite in the winter and heat stroke in the summer. In addition to the
8 immediate act, a person who experiences hypothermia or hyperthermia and
9 recovers may, nonetheless, suffer lasting brain damage and impairment of other
10 organs, leading to an increased risk of dying from unrelated health conditions in
11 the future. For example, frostbite may result in the loss of blood flow to
12 extremities, resulting in gangrene, a particular threat to individuals with circulatory
13 issues and diabetes.

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

15 11. Hypothermia occurs when a body loses heat faster than it creates it
16 and body temperature falls below 95 Fahrenheit. Hypothermia is generally caused
17 by prolonged exposure to cold weather, wearing clothes that inadequate to protect
18 against weather conditions and the inability to get out of wet clothes and get to a
19 warm, dry location. See [https://www.mayoclinic.org/diseases-](https://www.mayoclinic.org/diseases-conditions/hypothermia/symptoms-causes/syc-20352682)
20 [conditions/hypothermia/symptoms-causes/syc-20352682](https://www.mayoclinic.org/diseases-conditions/hypothermia/symptoms-causes/syc-20352682). Wet clothing causes a
21 20-fold increase in heat loss. See *The Healthcare of Homeless Persons, A Manual*
22 *of Communicable Diseases & Common Problems in Shelters & on the Streets*,
23 James J. O'Connell, M.D., Editor (2004). When body temperature drops, the heart,
24 nervous system and other organs begin to fail and, if unresolved, may lead to
25 death.

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

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

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

23 15. These are the temperatures being experienced by unsheltered
24 individuals in Orange County over the last several months. On February 17, 2019,
25 the daytime temperatures in Irvine, Mission Viejo, San Juan Capistrano, San
26 Clemente, and Aliso Viejo were forecast to be around 56 degrees, with nighttime
27 temperatures of 37-38, and winds of 10-20 knots. *Orange County Register,*
28 *2/17/19, p. A17; Orange County Register, 2/21/19, p. A22.* On February 21,

1 2019, the temperatures were one to two degrees lower throughout South County,
2 while the winds remained the same. These temperatures are more than 10 degrees
3 below normal, while rainfall for the month is already more than twice normal for
4 this time of year. *Id.*, 2/21/19, p. A22. For people experiencing homelessness, the
5 risk of hypothermia or other serious illness is significantly increased in these wet,
6 windy conditions.

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

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

15 **SOUTH COUNTY SHELTERS:**

16 18. The Alternative Sleep Location (ASL) in Laguna Beach is the only
17 low-barrier shelter in South County. It is a very small shelter, with a capacity of
18 45 beds in trailers, open only at night. The facility opened following a settlement
19 in a lawsuit challenging police enforcement of anti-camping laws against homeless
20 individuals in Laguna Beach.

21 19. According to Homeless Management Information System (HMIS)
22 data, of 401 people who stayed at the ASL and who provided a “last known
23 permanent address,” more than half of these individuals reported an address in
24 Orange County but outside of Laguna Beach. Only 11 percent of the guests
25 reported a last known address in the City. Aliso Viejo topped the list of other
26 Orange County cities with 28 individuals, totaling seven percent of the population

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³ <https://media.ocgov.com/go/occr/animal/about/newsdetails.asp?News!D+5083.8/TargetID=87>

1 at the ASL. Mission Viejo had the second largest number of guests at the ASL,
2 with 13 individuals, followed by San Clemente with 10 individuals.

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

8 21. Starting on February 4, 2019, the ASL introduced a pilot program,
9 “enrolling” clients and, for the broader group of those experiencing homelessness,
10 opening the shelter on a drop-in basis for showers, laundry, mail, lunch, computer
11 access and social services from 10 a.m. to 1 p.m. Under the new program, only
12 persons enrolled in the new program will be allowed in the shelter from 5 p.m. to
13 10 a.m. No drop-in services will be offered during these hours.

14 22. Those individuals approved for the enrollment program are offered
15 overnight places at the shelter for 30 days, extendable if the person actively
16 pursues housing solutions in that time period. Each enrolled person is assigned a
17 housing coordinator to help create a housing plan. For now, enrollment is
18 restricted to persons who meet the city’s “locals” conditions and prioritization
19 criteria set by the ASL.

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

26 **PAST LITIGATION IN ORANGE COUNTY:**

27 24. Plaintiff ORANGE COUNTY CATHOLIC WORKER filed a lawsuit
28 against the County of Orange and the cities of Orange, Anaheim and Costa Mesa

1 on January 29, 2018. Case No. 18-cv-01115 DOC - JDE (C.D. Cal.). The lawsuit
2 challenged the County's intended closure of the Santa Ana Riverbed encampment.

3 25. In response to the Court's order to end the encampment at the
4 Riverbed, and the Court's subsequent order to end the encampment at the Santa
5 Ana Civic Center, the County Board of Supervisors (BOS) voted to open three
6 temporary emergency shelters to provide placements for the majority of the
7 approximately 1200 people displaced from the Riverbed and Civic Center. The
8 three temporary facilities were to be located in Irvine, Huntington Beach and
9 Laguna Niguel. The announced intention of the BOS was to open the Irvine
10 location first and then, if more space was needed, open the temporary facility in
11 Huntington Beach and, if more additional space was needed, open the temporary
12 facility in Laguna Niguel.

13 26. The County's plan was met with intense opposition from each
14 community. Nearly 600 Irvine residents traveled to the BOS meeting to protest
15 against the plan. Despite having the third largest number of homeless individuals
16 of any City in the County,⁴ 199 in the 2017 Point-in-Time count,⁵ Irvine and
17 officials and residents adamantly argued that there was no place in Irvine – the
18 largest land mass city in the County - that could accommodate an emergency
19 shelter, let alone any shelter.⁶ The City identified multiple zones where shelters
20 could be placed by right. In Appendix D to the City's 2013 Housing Element, the
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24 ⁴ In Appendix D to the 2013 Irvine General Plan, the City identified a far greater
25 number of homeless individuals in the City, which appears to be an error.
26 “Irvine's share of the regional unsheltered homeless population is estimated to be
27 2,280 individuals.”

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

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

1 City wrote that emergency shelters are permitted by right in the IBC Multi-Use,
2 General Industrial, Medical and Science, Business Park, and Institutional zones.
3 Despite that representation to the California HCD, the City threatened to sue the
4 County if a shelter was opened. The City listed these properties as a necessary
5 statutory requirement for the City's General Plan to be approved by the State of
6 California. Without meeting this requirement, the City would not be permitted to
7 approve any permits for development in the entire City, including permits for all of
8 the upscale residences at the former military base.

9 27. In late April 2018, the South County Mayors counter-proposed use of
10 a former elementary school in Silverado Canyon. Subsequently, the possibility of
11 using the now closed juvenile detention facility in the Cleveland National Forest
12 was also raised. Neither site was appropriate. Both were isolated and did not meet
13 the requirements of SB2 to ensure that facilities for unhoused persons were close to
14 transportation so that individuals can get to work, access social services, medical
15 appointments, and other basic resources.

16 28. It is unlikely that even homeless persons with an income from a low-
17 wage job or disability can find rental housing in South County that is affordable.
18 On June 1, 2017, HUD issued a report finding that the vacancy rate in Anaheim,
19 Santa Ana, and Irvine declined from 2010 to 2017 from 5.9 % to 3.6%, and
20 average rents rose 3% in May 2017 alone.⁷ Almost 90,000 people are on the
21 County's housing authority waiting lists hoping for access to affordable housing.⁸

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25 ⁷ U.S. Dep't of Housing and Urban Development, Office of Policy Development
26 and Research, *Comprehensive Housing Market Analysis Anaheim-Santa Ana-
27 Irvine, California*, [https://www.huduser.gov/portal/publications/pdf/AnaheimCA-
28 comp-17](https://www.huduser.gov/portal/publications/pdf/AnaheimCA-comp-17).

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

1 29. The lack of adequate and appropriate resources was reinforced in a
2 2017 report issued by United Way, prepared with the University of California
3 Irvine and the Association of California Cities. The report, “Homelessness in
4 Orange County: The Costs to Our Community,” found that 75 percent of homeless
5 individuals surveyed lived in Orange County for at least six years, with most more
6 than 10 years.⁹ Cutting against the stereotypes that homeless individuals are
7 substance abusers or mentally ill, the United Way report found that the single
8 greatest factor leading to homelessness in Orange County, by far, is “the gap
9 between the availability of affordable housing and work that pays a wage sufficient
10 to enable the economically marginal to access that housing.”¹⁰

11 30. Each of the Defendants has failed to meet the requirements in state
12 law to provide for people experiencing homelessness in their jurisdiction as a
13 necessary prerequisite to approval of the entities General Plan for development.
14 While the County has created several hundred more low-barrier and bridge shelter
15 beds over the last three years, it is nowhere near the number of beds needed to
16 address their responsibility. None of the municipal defendants has made any
17 attempt to meet this need and most have blocked efforts to place shelters in their
18 communities.

19 31. Moreover, none of the municipal Defendants have met the specific
20 statutory obligation to identify how the entity will meet the needs of homeless
21 individuals in their jurisdiction. Each Defendant has simply listed most of the
22 same shelters in other cities, predominantly Santa Ana and Anaheim. At the same
23 time, all of the municipal defendants have continued to enforce, or threaten
24 enforcement of local and state Penal Code provisions criminalizing homelessness

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

¹⁰ *Id.*, p. 34.

1 through laws that make it unlawful to be present, have property, sit or sleep in a
2 public place even if a person is without a home.

3 32. The need to respond to the increasing numbers of unsheltered
4 individuals in Orange County is hardly new and neither is the disfavored approach
5 of criminalizing - rather than housing - people who are homeless. More than a
6 decade ago, the Orange County Grand Jury issued a report on “The Homeless
7 Crisis in Orange County.” The report noted then that “[h]omelessness is on the
8 rise, often misunderstood, and is inextricably linked to poverty.” From 1990 to
9 2005 the homeless population increased at a far greater rate than the overall
10 increase in population in the County. The Grand Jury report concluded that
11 addressing the problem “does not appear to be a priority with the Board of
12 Supervisors.” The Grand Jury listed a series of measures to address the crisis then
13 being considered by various municipal entities in the County, including plans to
14 add housing for homeless individuals at the former El Toro Marine Air Station;
15 shelters in San Clemente, Buena Park, Westminster, La Habra and Cypress, and a
16 very “humanistic” outreach approach by the Santa Ana Police Department and
17 Orange County Sheriff’s Department. A dozen years later, few, if any, of these
18 intentions have been realized.

19 33. The 2005 Grand Jury Report also reviewed the history of proposals in
20 similar reports, going back to 1988 and found that few of the earlier
21 recommendations were implemented. The Report proves that, over the past 25
22 years, the primary response of the County and the Cities has been to treat the
23 visible presence of homeless people as a blight, without significantly reducing the
24 number of residents on the street each night. These approaches include
25 criminalizing homelessness by arresting homeless individuals for loitering, making
26 it illegal to sleep in public places at night, seizing and destroying homeless
27 people’s property, and engaging in a pattern of warrantless stops and
28 interrogations. The identical practices have been repeatedly challenged and

1 enjoined by judges of the Central District in Los Angeles and the Ninth Circuit,
2 uniformly rejecting these practices criminalizing homelessness as a violation of the
3 First, Fourth, Eighth and Fourteenth Amendments.

4 34. The 2017-2018 Grand Jury Report, “Where There’s Will, There’s a
5 Way Housing Orange County’s Chronically Homeless,” issued in late May, 2018,
6 echoed the conclusions in the 2005 Grand Jury Report. It cited the lack of political
7 will and cooperation between the County and the cities as a significant factor in the
8 inability to develop and implement a comprehensive plan to address the unhoused
9 population in the County, emphasizing the extraordinary cost benefits to providing
10 housing and services as a proactive measure.

11 35. Beyond the financial costs to the government from having a
12 significant unsheltered population living on the streets and in the parks, the Grand
13 Jury underscored the dire consequences for people left to survive on the streets. As
14 discussed above, people experiencing homelessness are more susceptible to illness
15 and infection because of exposure to the elements, poor nutrition and other factors.
16 The consequence is that the average life expectancy for an unhoused person in the
17 United States of only 50 years, almost 50 percent less than the 78-year life
18 expectancy for the housed population.

19 36. Defendants’ approach is even more indefensible when viewed against
20 the directives by the United States Interagency Council on Homelessness
21 (“USICH”), composed of nineteen federal cabinet and agency heads to organize
22 federal efforts to end homelessness. The most recent USICH report, “Ending
23 Homelessness for People Living in Encampments,” emphasized the importance of
24 “intensive and persistent outreach and engagement,” but underscored that outreach
25 is meaningless without real options for placements and services.

26 37. The San Clemente plaintiffs illustrate this point. The City contracted
27 with Mercy House to provide services, but the only shelter option offered is the
28 Courtyard in Santa Ana. That is not a realistic option for a number of reasons.

1 First, the Court restricted other cities across the County from “dumping”
2 individuals off at the Courtyard when those same cities lacked shelters in their own
3 jurisdictions. This disfavored practice led to increased numbers of homeless
4 individuals in Santa Ana and Anaheim, the two cities in the County that have
5 carried more than their share of the obligation to address homelessness.

6 38. Requiring individuals to travel to Santa Ana or Anaheim to find
7 shelter is an impossible challenge for those with disabilities for a number of
8 reasons. As the County has now recognized, among other deficiencies, the
9 Courtyard is not structured to accommodate individuals with significant
10 disabilities, as many unsheltered individuals have.

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

23 40. In April 2018, to ensure that there was space for individuals being
24 relocated from the nearby Santa Ana Civic Center, the Court limited the County
25 from placing people who were not Santa Ana residents at the Courtyard and also
26 directed that other cities, acting through contract agencies such as CityNet, stop
27 transporting people to the Courtyard to ensure that there was space for individuals
28 being relocated from the nearby Santa Ana Civic Center encampment. Until the

1 Court's directive, people were regularly dropped off there by hospitals, various
2 cities' police, social workers contracted with other cities in the County, and others
3 with nowhere else to bring homeless people.

4 41. The only other options for low-barrier facilities are the winter
5 emergency shelters at the armories in Santa Ana and Fullerton, both of which
6 suffer from numerous deficiencies. People sleep on thin mats on the floor, making
7 it difficult for anyone with a physical disability to accommodate to as a matter of
8 course. There is no provision for persons with psychological trauma. Moreover,
9 the armories only accept people who are able to come and go at the restricted
10 hours. For those who work, need to attend court or school or meet with service
11 providers, restricted entrance and exit hours impose an additional and often
12 insurmountable hurdle. Both armories require individuals to leave very early in the
13 morning and preclude readmission until the evening. Beginning this year, the
14 armories will not allow walk-ups. People must leave the area in the morning and
15 come back in the late afternoon on a scheduled bus. While this change was, no
16 doubt, made to discourage individuals from moving to nearby parks to wait all day
17 until the armory reopened, the impact of this policy change is devastating. There is
18 no place for unsheltered individuals to stay safely during the day without facing a
19 threat of citation or arrest if they are in public places with or without their property.

20 42. The third reason why transporting people from South County to Santa
21 Ana and Anaheim is an untenable and unlawful solution is that it makes it nearly
22 impossible for homeless individuals to get to jobs and services in South County.
23 San Clemente is 31.5 miles from Santa Ana. By public transportation, the travel
24 time is nearly 2 hours once a person gets to the train transit sites at either end,
25 which involve walking slightly more than a mile at each end. For a disabled
26 individual, the one-mile walk can take considerable time, because of physical
27 mobility and cognitive impairments. For an individual with circulatory problems
28 and other medical conditions, the walk to get to the train may be physically

1 impossible. For someone such as Plaintiff Duane Nichols, it may be un navigable
2 because of his visual disability. Finally, for any unsheltered person, the cost of the
3 train may be prohibitive and they have no place to put their property.

4 43. In addition to the Courtyard and Bridges, there are private facilities
5 providing a continuum of options for unhoused persons. Each has strict limitations
6 on eligibility for services. Nearly all have significant time constraints on how long
7 a person may reside at the facility, ranging from one night to six months. Some
8 require a referral and/or a background check for entry, which can delay entry for
9 days or weeks. Some are restricted by gender, some for pregnant women, and
10 some only for women or families with children. Still others, such as the Rescue
11 Mission in Tustin, require participation in sectarian worship as a condition of
12 receiving services. Most have a blanket prohibition on pets other than registered
13 service animals despite the fact that federal and state Fair Housing laws apply to
14 public and private shelters and, with federal and state disability protections, require
15 that emotional assistance animals be allowed as a reasonable accommodation.

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

28

1 45. Another shelter, Colette’s House in Huntington Beach, is open only to
2 women and children. In this six-month transitional program, women are required
3 to have a job and work 32 hours per week. No animals are allowed. Colette’s
4 House is a small shelter and is usually at capacity.

5 46. Friendship Shelter operates the Alternative Sleeping Location (ASL)
6 in Laguna Beach in South County. The shelter has only 45 beds, all of which are
7 usually filled each night. In addition to the ASL, Friendship Shelter operates a
8 second facility in Laguna Beach that is a 60-day self-sufficiency program.
9 According to Friendship Shelter’s website, the 32-person facility always has a
10 waiting list and is only available to individuals who are able to work.

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

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

22 48. 1982, the California Legislature passed the California Housing
23 Accountability Act. California Government Code § 65589.5. Formerly known as
24 the Anti-NIMBY law, the statute bans discrimination against housing for lower-
25 income households. The legislature declared that the provision of housing for all
26 Californians is a “priority of the highest order.” §65580.

27 49. Pursuant to this statute, every city and county is required to adopt a
28 General Plan governing the use of land and development projects in its jurisdiction.

1 One of seven mandatory components to the General Plan is a “housing element,”
2 that must be addressed and approved by the State of California’s Housing and
3 Community Development Department (“HCD”). The Housing Element is
4 prepared every 10 years, with updates in between. Submission to, and approval of,
5 the Housing Element by HCD is a necessary prerequisite for local governments to
6 qualify for public funding for various development programs.

7 50. Each local entity must act consistently with its General Plan and
8 housing element. All land use decisions, zoning codes, the General Plan and all
9 other ordinances and policies affecting land use must be consistent with the
10 housing element. §65580.5, §65860. All local land-use decisions, including site
11 specific plans, must be consistent with the adopted General Plan. §65454.

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

23 52. Each entity must also designate at least one location where a year-
24 round shelter may be operated without further approval by the local government.
25 The shelter must have sufficient capacity to meet the entity’s entire local need for
26 emergency shelter. The designated location may then be used by right, subject
27 only to reasonable zoning restrictions. On information and belief, none of the
28 municipal defendants has fully complied with this requirement.

1 53. The express legislative intent of SB2 was to expand the Housing
2 Accountability Act to prevent local entities from denying a proposal to create an
3 eligible facility if it is needed and otherwise consistent with the locality’s zoning
4 and development standards. Recognizing the NIMBY-ism the statute was enacted
5 to combat, the Legislature expressly prohibited the ability of local entities to
6 impose hurdles such as “a conditional use permit or any discretionary” approval
7 from the local government. §65583(a)(4)(A).

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

1 zones can accommodate at least one emergency shelter). §65589.5(d)(1)-(5). On
2 information and belief, Plaintiffs allege that this requirement has not been met. It
3 certainly was not met by the County when the BOS proposed three locations in
4 South County for emergency shelters to respond to the closure of the Riverbed and
5 Civic Center encampments, only to withdraw the proposal in the face of
6 community pressure fueled by former Supervisor Todd Spitzer but in direct
7 violation of Government Code §65589.5(d)(1)-(5). Local entities may satisfy the
8 mandate of SB2 in several ways. Jurisdictions that are successfully implementing
9 a supportive housing program model under the entity's 10-year plan to End
10 Chronic Homelessness are credited for supportive housing units created under the
11 10-year plan if the entity can demonstrate that the units are identified in the 10-
12 year plan and are either currently vacant or have all funding needed to construct
13 the units during the planning period. Local entities may also meet the requirements
14 of SB2 by entering into a multi-jurisdiction agreement provided that any
15 emergency shelter will be opened within two years of the start of the planning
16 period. Gov. Code §65583(d)(1). Entities involved in a joint project must adopt an
17 agreement which, among other conditions, assigns a portion of the new shelter to
18 each jurisdiction. Specifically, the agreement "shall allocate a portion of the new
19 shelter capacity to each jurisdiction as credit toward its emergency shelter need ..."
20 §65583(d)(1)(2). Also, the housing element for each participating local
21 government must set out the following: the method for allocating bed capacity for
22 the shelter; how the jurisdiction's emergency shelter need is met by the proposed
23 facility; the amount of the financial contribution each entity will make for the
24 development, operation and ongoing management of the shelter; the amount and
25 source of money to be contributed to the shelter; and, finally, that the aggregate
26 total capacity claimed by each participating entity in its housing element is not
27 greater than the total beds available at the shelter. § 65583(d)(1)(3)(A)-(C). In
28 other words, if several cities enter in a multi-jurisdiction agreement for a 200-bed

1 shelter, they may not each claim all 200 beds as evidence that they have complied
2 with the mandate to provide shelter resources. There is no such agreement in
3 existence involving any City in South County that would satisfy this alternative.
4 On information and belief, the ASL in Laguna Beach receives no funding from any
5 other City and, by priority, serves Laguna Beach residents first. The City has
6 enacted admission policies to determine whether an individual has sufficient ties to
7 residency in Laguna Beach to qualify for admission and services at the ASL.
8 Persons who do not meet these standards are turned away or required to wait and
9 see if there is an empty bed on any given night not claimed by a qualified resident
10 of Laguna Beach. Nearly every city in the County and the County currently rely on
11 the same shelters to demonstrate that they are meeting the need for emergency
12 shelter identified in each entity's housing element. Because each housing element
13 lists the same facilities, most of which are in Santa Ana or Anaheim, there is no
14 possible way that most local entities in Orange County can show they meet the
15 need for emergency shelter identified in their housing elements. Thus, most, if not
16 all, of the local entities in Orange County are in violation of the requirements of
17 the Housing Accountability Act, as amended by SB2.

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

19 55. In its General Plan, the Defendant County states it is proactive in
20 responding to the needs of the homeless population. When the County prepared its
21 2013-2021 General Plan, there was only one small emergency shelter located in the
22 unincorporated area of the County – American Family Housing in Midway City,
23 with a maximum capacity of 20 persons. Recognizing the significant shortfall
24 between available and needed emergency shelter, and to encourage additional
25 shelter facilities, the County amended its Zoning Code to allow shelters by-right in
26 the commercial and industrial portions of the Housing Opportunities Overlay Zone.
27 This added 177 acres that meet the requirements of SB2 as locations that are
28

1 served by transit and other critical resources and available for additional
2 emergency shelters.

3 56. Over the course of the past several years, multiple cities in the
4 County, including Fullerton, Irvine, Huntington Beach and Laguna Niguel, have
5 blocked the County's plans to locate new emergency shelters in their communities
6 for reasons other than those allowed by the Housing Accountability Act. In each
7 instance, the cities acted based on NIMBYism and failed, completely, to provide
8 any justification for the denial that complies with the requirements of SB2.

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

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

1 emergency shelter at the Fullerton Armory, the City has required that admission to
2 a winter emergency shelter be by referral only.

3 59. After losing out on the initial Santa Ana and Fullerton sites, the
4 County then identified the former bus terminal in Santa Ana as the location for the
5 first – and only – year-round, low-barrier emergency shelter in the County. The
6 shelter opened in 2016 with approximately 250 beds, but soon rose to over 400
7 individuals sleeping there each night, evincing the undisputable demand for shelter
8 among people experiencing homelessness in Orange County. The Courtyard
9 shelter continues to operate at or slightly above the number on a nightly basis,
10 limited only by orders of the District Court restricting a higher capacity because of
11 the challenges overcrowding presents to a service population experiencing multiple
12 disabilities.

13 60. One goal of the Courtyard was to provide a place where people
14 encamped in the nearby Santa Ana Civic Center could go. Because of the
15 desperate need throughout the County for emergency shelter space, people from
16 other communities soon filled the beds and the Civic Center encampment
17 continued for nearly two more years, until the Court ordered it disbanded in March
18 2018.

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

28

1 62. Immediately after the County vote, all three cities objected
2 vigorously, ultimately forcing the BOS to rescind the vote. Irvine transported
3 nearly 600 people by chartered bus to the BOS meeting where the proposal was
4 ultimately withdrawn. The City sued the County, raising claims of Brown Act
5 violations in the site approval process and characterizing the planned emergency
6 shelter as a “public nuisance.” At the same time, Irvine touted its affordable
7 housing work. But, affordable housing is not a substitute for housing for homeless
8 persons as required by State law by Government Code § 65530 et seq., the
9 Housing Accountability Act and SB2. None of the three proposed cities has an
10 emergency shelter in its geographic boundary, as Irvine implicitly conceded in its
11 lawsuit touting only its efforts to include “affordable” housing. The shelter
12 resources each City lists in its Housing Element are in other cities or restrict
13 services based on employability, gender, pregnancy status, families with minor
14 children and other categories.

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

25
26
27
28 ¹¹ www.sco-oc.org/wp-content/uploads/2014/05/Shelters.pdf

1 64. The South Coast Outreach list of Emergency Shelters and Housing
2 Programs is the same list that nearly every entity puts forward. Irvine’s Housing
3 Element illustrates this point. In its most recent Housing Element Appendix D:
4 SB2 Compliance Sites Inventory, Irvine reported that its share of the regional
5 unsheltered homeless persons was estimated to be 2,280 people, which Plaintiffs
6 believe may be an error in the Housing Element. City of Irvine Housing Element,
7 Appendix D-1. At a minimum, Irvine has responsibility for more than 100
8 unsheltered persons. Yet, there is no facility for homeless individuals in the entire
9 city.

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

22 66. The only actual significant *housing* listed which is located in Irvine is
23 the Irvine Inn, categorized by the City as “Homeless Services Facilities Serving
24 Irvine” and described as a “192-unit Single Room Occupancy (SRO) facility.”¹³ In
25

26
27
28 ¹² “Homeless Facilities Serving Irvine.” City of Irvine 2015 Housing Element
Supplement, C-66.

¹³ *Id.*

1 early 2018, the Inn’s website listed rent for a studio apartment at \$548 to \$731 a
 2 month.¹⁴ The website contains a cryptic caveat that “income restrictions apply on
 3 some apartments.” *Id.* 2019 websites show the rent at \$855 a month.¹⁵ For a
 4 person working 40 hours a week at minimum wage, this rent is almost 60 percent
 5 of after-tax income. This rent is approximately four times General Relief and
 6 nearly 100 percent of government disability income.¹⁶ it is The marketing on the
 7 website is directed to students at UCI and Irvine Valley College. It is highly
 8 unlikely that the Irvine Inn meets the City’s obligations to provide shelter for
 9 homeless persons.

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

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

22
 23
 24
 25 ¹⁴ <https://www.irvineinnapts.com/floorplans.aspx>.

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

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 69. In addition to its residents' expressed views that their property values
2 somehow exempt them from the Housing Element requirements, Irvine and
3 Huntington Beach objected to the proposed BOS emergency shelter locations
4 because they are toxic sites, unusable for human habitation. Neither City offered
5 any other SB2 site to the County and neither City identified any mitigating
6 conditions that could lawfully be required. Instead, they expressed the position
7 that no emergency shelter was appropriate in their cities under any circumstances.
8 In filing their 2013 Housing Elements, each represented to the California
9 Department of Housing and Community Development (HCD) that the general
10 locations the County now sought to use were appropriate SB2 sites.

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

12 70. California Government Code § 815.6 provides that:

13 Where a public entity is under a mandatory duty imposed by an
14 enactment that is designed to protect against the risk of a
15 particular kind of injury, the public entity is liable for an injury
16 of that kind proximately caused by its failure to discharge the
17 duty unless the public entity establishes that it exercised
18 reasonable diligence to discharge the duty.

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

1 **CLASS ALLEGATIONS**

2 72. The claims set forth in this action are brought by each of the
3 individual Plaintiffs on their own behalf and on behalf of all of those similarly
4 situated putative class members pursuant to Federal Rule of Civil Procedure
5 23(b)(2).

6 73. The Class is defined as:

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

10 74. The members of the class are so numerous that individual joinder of
11 all members is impracticable, if not impossible. Plaintiffs are informed and believe
12 on that basis that members of the class will exceed 400 in number, which is
13 approximately the number of people experiencing homeless in South County
14 included in the 2017 Point-in-Time Count.

15 75. There are common questions of law and fact that predominate over
16 any questions affecting only individual class members in this instance.

17 76. Among the common questions of law and fact are the following:

- 18 a. Whether the Defendants, and each of them, have met their statutory duty
19 to provide low-income housing and a continuum of shelter facilities as
20 required by California Government Code § 65589.5;
- 21 b. Whether the Defendants, and each of them, have enforced or threatened to
22 enforce policies, practices and customs of citing or arresting people
23 experiencing homelessness for alleged violations of camping, keeping
24 property in public places, loitering and other similar quality-of-life
25 criminal acts when there is no available shelter space;
- 26 c. Whether Defendants, and each of them, through their policies, practices
27 and customs, have failed to address and provide reasonable
28

1 accommodation for people with disabilities experiencing homelessness in
2 violation of state and federal statutory rights for disabilities;

3 d. Whether injunctive relief restraining further unconstitutional and unlawful
4 acts by Defendants, and each of them, should be ordered by the Court and,
5 if so, the nature of that injunctive relief;

6 77. The Class Representatives will fairly and adequately protect the
7 interests of the Class. They have retained counsel who are experienced and
8 competent in class-action and civil rights litigation. The Class Representatives
9 have no interests that are adverse or antagonistic to those of other Class members.

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

18 79. Plaintiffs are informed and believe and on that basis allege that
19 Defendants, and each of them, have acted on grounds generally applicable to
20 the class, making injunctive or declaratory relief appropriate for the class as a
21 whole.

22 PARTIES

23 Plaintiffs:

24 80. Plaintiff **HOUSING IS A HUMAN RIGHT ORANGE COUNTY**
25 (“**HHROC**”) is a coalition of entities and individuals working together to achieve
26 supportive, affordable, and permanent housing for homeless individuals in Orange
27 County, with appropriate and adequate wrap around services as needed. The
28 participants in **HHROC** go to where they understand unsheltered individuals to be

1 and provide much-needed support that the County of Orange, cities and
2 municipalities fail to provide. This includes, but is not limited to, creating
3 community through preparing and sharing meals, collecting and distributing
4 clothing; assist with making appointments and transporting individuals to
5 doctor/dentist, DMV, Social Services, and veterinarian appointments. They
6 provide this assistance throughout County, including in South County.

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

18 82. Plaintiff **ORANGE COUNTY CATHOLIC WORKER (“OCCW”)**
19 operates a community at Isaiah House in Santa Ana. In furtherance of its mission,
20 Isaiah House of the Orange County Catholic Worker has served poor people
21 with dignity since 1987, providing meals, shelter, food, clothing, showers, and
22 emergency assistance to homeless persons throughout the area. In addition,
23 **OCCW** has provided emergency housing to individuals without shelter options,
24 They are frequently called by the Public Defender and the County Jail in Santa
25 Ana to provide shelter to homeless women who are arrested and prosecuted for
26 alleged crimes. Over the past year and presently, **OCCW** has provided shelter
27 to women from South County. Currently, **OCCW** is providing shelter to
28 women who have been forced to relocate to Santa Ana because of the lack of

1 appropriate local options, if any, in Irvine and San Juan Capistrano. In the
2 past year, **OCCW** has also housed other women from South County cities when
3 they could not find shelter locally.

4 83. Plaintiff **EMERGENCY SHELTER COALITION OF SAN**
5 **CLEMENTE (“ESC”)** is now, and at all times since its incorporation on July 30,
6 2018 was, a non-profit organization under the laws of the State of California. The
7 members of the **ESC** share a common goal to establish a year-round emergency
8 shelter and resource center in San Clemente to provide people experiencing
9 homelessness with a safe place to sleep, engage in fundamental daily life activities
10 and obtain counseling and referral services. The members of **ESC** include
11 individuals who are residents of, employed in, or recreate in the City and who
12 devote their time and resources to assisting persons experiencing homelessness in
13 San Clemente, regardless of the reason. Because of the lack of resources
14 throughout South County, **ESC** and its board members provide assistance to
15 persons experiencing homelessness in the region. Because of the lack of services
16 throughout South County, the **ESC** provides assistance to individuals experiencing
17 homelessness not only in San Clemente, but almost every city in South County,
18 including numerous unsheltered individuals from San Juan Capistrano, Dana Point,
19 Mission Viejo and other cities that have similarly failed to provide assistance to
20 unsheltered individuals in their respective communities in South County.

21 84. Beginning in or about 2014, **ESC** was engaged in litigation with the
22 City of San Clemente to compel the City to bring itself into compliance with its
23 statutory duties under Government Code §65588(e) to adopt an updated Housing
24 Element that (1) establishes at least one zone in which emergency shelters are
25 permitted by right without any discretionary approvals by the City; (2)
26 demonstrates adequate capacity to meet the City’s need for emergency shelter; and
27 (3) promulgates standards designed to encourage and facilitate the development of
28 emergency shelters in appropriate locations, including at least one year-round

1 facility. In August 2016, the Hon. Robert J. Moss of the Orange County Superior
2 Court entered judgment in favor of **ESC**, directing the City to revise its Housing
3 Element to conform to its statutory obligations.

4 85. The City has a legal obligation to address how it would provide for
5 the needs of homeless individuals in the 2013 Housing Element submitted to the
6 California Department of Housing and Community Development (“HCD”) as a
7 statutory condition of approval of the City’s General Plan. Despite the success of
8 the **ESC**’s litigation, the City has still not met its responsibilities. The City first
9 created and limited the Emergency Shelter Overlay Zone to the local Business
10 Park. The City knew or should have known that this proposed location did not
11 meet the requirements under SB2 because, among other bases, the Business Park is
12 located miles away from the City’s downtown area, is not served by public
13 transportation, and is composed of very expensive buildings not conducive to a
14 shelter. **ESC** continues to work toward developing a shelter in the Emergency
15 Shelter Overlay Zone identified as a result of the successful litigation by **ESC**.

16 86. Plaintiff **DUANE NICHOLS** is a 60-year-old veteran who is
17 homeless in San Clemente. He is eligible to upgrade his original “Other than
18 Honorable” discharge. He has no income at present. Because of his significant
19 disabilities and the distance involved, he is unable to get to a County office to
20 apply for General Relief or any other form of public assistance.

21 87. Over the course of the past six months, he has been contacted a few
22 times by Mercy House, the contract services outreach agent for San Clemente. The
23 primary assistance offered by Mercy House was an offer to transport Mr. Nichols
24 to the Courtyard in Santa Ana or the ASL in Laguna Beach. OCSD deputies
25 threaten him with jail if he does not go to a shelter, but neither the Courtyard or the
26 ASL are viable options because both are generally at or over capacity every night,
27 with people sleeping on the sidewalks around the facilities. Both require a referral
28 for admission or give priority to local residents. During one recent rain storm,

1 Mercy House came with law enforcement and offered motel rooms with two
2 people in a room for two nights only. When Mr. Nichols arrived at the motel, he
3 learned that there were 4 people in a very small room and that they would only be
4 sheltered for one night, returning him to the streets.

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

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

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

23 91. Until about two years ago, Mr. James kept his belongings in a storage
24 unit. At that time, he had income from SSI. When his SSI was terminated
25 unexpectedly, he could no longer pay for the storage unit and thereafter kept
26 everything he owned with him. He always leaves his property neatly packed. In
27 early February 2019, all of his possessions were taken from the location where he
28 left them daily for two years. He approached a person in the area that he

1 understood to be a City employee, asked about his possessions, and was informed
2 that the City did not retain the property. Mr. James lost everything he owned,
3 including his sleeping bag, blankets, cowboy boots he had had since he was a child
4 and other sentimental items and family pictures, his birth certificate, and all of his
5 personal papers.

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

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

19 94. In addition **MR. STOVALL** has other disabling conditions, including
20 a hip problem and herniated disks in his neck. All of these infirmities make it very
21 difficult for him to walk without leaning on a shopping cart. He has been approved
22 for hip replacement surgery but cannot recuperate while living on the street.

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

27
28 **Defendants:**

1 96. Defendant **ORANGE COUNTY** is a government entity with the capacity to
2 sue and be sued. The Board of Supervisors is the governing entity for the County.
3 The Board of Supervisors is responsible for developing and implementing the
4 General Plan, including addressing the need for housing and shelter for low-
5 income and homeless individuals. The departments of the COUNTY include the
6 Orange County Sheriff. Employees of the COUNTY have engaged in the acts
7 complained of herein pursuant to the policies, practices and customs of the
8 COUNTY.

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

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

27 99. Defendant **ALISO VIEJO** is a government entity with the capacity to
28 sue and be sued. Employees and elected officials of **ALISO VIEJO** have engaged

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

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

28

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

21 102. The Defendant **CITY OF SAN CLEMENTE** is a government entity
22 with the capacity to sue and be sued. The Orange County Sheriff's Department is
23 the contract law enforcement agency, acting as employees, for the City, charged
24 with enforcing City law within its geographic boundaries. One department of the
25 Defendant City is the San Clemente Maintenance Department. Employees of the
26 City have engaged in unlawful activity, taking property without notice that they
27 know or should know is the essential property of unsheltered homeless individuals
28 in San Clemente, who have no to leave their property during the day while they go

1 to services, work and attend to other daily tasks. Although the OCSD has stopped
2 arresting homeless individuals for quality-of-life violations, deputies continue to
3 threaten citation or arrest if homeless people do not leave public spaces where they
4 have a constitutional right to be and remain.

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

17 104. Over the past several months, the **CITY OF SAN CLEMENTE**,
18 through its employees and agents, has fostered a climate of fear directed at people
19 experiencing homelessness in the city. Homeless individuals have been barred
20 from locations where they previously stayed, largely out of sight. They were told
21 by the OCSD, the contract LEO for San Clemente, that they not be at the train
22 station except limited purposes, could not stay at the beach or a public grassy area
23 where they had stayed, and other similar relocations every time they moved. They
24 have been forced into more public spaces where they have become the target of
25 residents virulently opposed to the presence of homeless individuals. For example,
26 as part of a concerted campaign to force homeless individuals out of public view
27 and out of the city, several individuals have parked their trucks in such a manner as
28 to have the fumes from the exhaust blow in the direction of homeless individuals

1 on public sidewalks, where they have a right to be under *Martin v. City of Boise* in
2 a municipality that lacks any shelter beds. These individuals have left their trucks
3 running to maximize the toxic impact of the engine exhaust. Others have made it a
4 point to transit the sidewalk with wheelchairs, challenging ADA compliance.
5 Some, if not most or all of the individuals are able-bodied as evinced by the fact
6 that these individuals are observed rotating who is being pushed and who is sitting
7 in the wheelchair. Still others scream at the homeless individuals in public spaces
8 while law enforcement does nothing.

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

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

25
26 **FIRST CAUSE OF ACTION**
27 **Violation of Eighth and Fourteenth Amendments (42 U.S.C.§1983)**
28 **(Against All Defendants)**

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

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

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

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

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

26 112. There is an actual controversy between Plaintiffs and the Defendants
27 concerning the threat of citation if Plaintiffs remain and sleep on public property
28 with their personal possessions when they have no alternative location to be that

1 will not violate Defendants’ laws. Plaintiffs desire a judicial determination of
2 their rights and duties and a declaration as to Defendants’ constitutional
3 obligations.

4
5 **SECOND CAUSE OF ACTION**
6 **Violation of First and Fourth Amendment; 42 U.S.C. 1983**
7 **(Against All Defendants)**

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

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

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

27 **THIRD CAUSE OF ACTION**
28 **Right To Due Process Of Law; 42 U.S.C. § 1983; Fourteenth Amendment**
(Against All Defendants)

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

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

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

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

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

27 121. As a direct and proximate cause of the aforementioned acts of
28 Defendants, Plaintiffs and the Plaintiff Class suffered injuries in that, in doing the

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

7
8 **FOURTH CAUSE OF ACTION**
9 **VIOLATION OF 14TH AMENDMENT; SUBSTANTIVE DUE PROCESS;**
10 **CALIFORNIA GOVERNMENT CODE § 65583 *et seq.*; CALIFORNIA**
11 **CIVIL CODE § 815.6**

12 **(Against All Defendants)**

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

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

21 124. An enactment includes a federal or state constitutional provision, a
22 statute, charter provision, ordinance or properly adopted regulation.

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

1 126. 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.

8 127. 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.

16 128. 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)**

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

26 130. 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.

1 131. 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).

5 132. 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.

8 133. 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

11 134. 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)**

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

22 136. 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

1 137. 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.

6 138. 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.

10 139. 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)**

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

20 141. 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.

24 142. 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.

1 143. 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.

7 144. 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.

10 145. 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 **EIGHTH CAUSE OF ACTION**
15 **Violation of California Government Code §11135**
16 **(Against All Defendants)**

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

19 147. California Government Code section 11135 provides that:

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

1 148. 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.

4 149. 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.

8 150. 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**
 (Against All Defendants)

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

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

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

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

3 154. Plaintiffs have no adequate remedy at law.

4 155. 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.

10 156. 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.

13 157. 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.

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18 Dated: May 13, 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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