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15 ATTORNEYS FOR PLAINTIFFS.

16 UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

18 HOUSING IS A HUMAN RIGHT
19 ORANGE COUNTY, an unincorporated
20 association; EMERGENCY SHELTER
21 COALITION, a non-profit corporation;
22 DUANE NICHOLS, DARREN JAMES,
23 as individuals,

24 Plaintiffs,

25 v.

26 THE COUNTY OF ORANGE, THE CITY
27 OF SAN CLEMENTE, and DOES 1-4;

28 Defendants.

Case No.: 8:19-cv-00388-PA-JDE

**SECOND AMENDED
COMPLAINT: CIVIL RIGHTS**

(Filed pursuant to order of the Court)

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 Eighth Amendment to the United States Constitution. Jurisdiction
5 exists pursuant to 28 U.S.C. § 1331 and 1343 based on questions of federal law,
6 and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

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

9 **FACTUAL ALLEGATIONS**

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

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

18 4. The numbers submitted by the County were based on the 2017 Point-
19 in-Time (“PIT”) count, which grossly understated the total number of unsheltered
20 homeless individuals in the County, particularly in two of the largest cities, Santa
21 Ana and Anaheim. In January 2017, approximately 1200 individuals were camped
22 in the Riverbed and almost 500 were camped in the Santa Ana Civic Center. Just a
23 few months before the January 2017 PIT, Anaheim conducted a census that
24 identified just over 900 homeless individuals in the city, more than twice the
25 number in the 2017 PIT. Similarly, the OC Health Care Agency conducted a
26 census in late summer 2016 just in the Santa Ana Civic Center and counted 461
27 individuals. The numbers of unsheltered individuals in the 2017 Count, by Service
28 Provider Area (SPA) are 936 in the North SPA, 1,362 in the Central SPA, and 286

1 in the South SPA. As noted, these numbers are likely a gross undercount.

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

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

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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),
[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/)
28 [to-initial-headcount/](https://voiceofoc.org/2019/01/over-3400-homeless-people-on-oc-streets-according-to-initial-headcount/)

² *Id.*

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

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

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

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

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

5 11. Southern California cities, in particular, often tout the good weather
6 here as a draw for persons experiencing homelessness around the country, even
7 though no statistical evidence supports that assertion.

8 12. The County recognizes the serious threat cold, windy and wet weather
9 present to the unhoused. When the National Weather Service issued an alert
10 regarding severe cold temperatures, the County government issued a notice to
11 people to protect their pets from the adverse effects of cold weather, including
12 hypothermia.³

13 13. Because of the severe winter weather, Orange County opened the
14 Santa Ana and Fullerton armories all day from Thursday, February 14 through
15 Saturday morning, February 16 at 6 a.m., after which the armories will return to
16 limited access hours from 7 p.m. to 6 a.m. The emergency winter shelter armories
17 are only available in the Central and North Service Provider Areas. The County
18 has placed no facilities, temporary or otherwise, in the South SPA.

19 **SOUTH COUNTY SHELTERS:**

20 14. The Alternative Sleep Location (ASL) in Laguna Beach is the only
21 low-barrier shelter in South County. It is a very small shelter, with a capacity of
22 45 beds in deteriorating trailers. Until recently, it was open only at night. The
23 facility opened following a settlement in a lawsuit challenging police enforcement
24 of anti-camping laws against homeless individuals in Laguna Beach.

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28 ³[https://media.ocgov.com/go/occr/animal/about/newsdetails.asp?News!D+5083.8/
TargetID=87](https://media.ocgov.com/go/occr/animal/about/newsdetails.asp?News!D+5083.8/TargetID=87)

1 15. Until recently, the facility did not open until 6 p.m. and required
2 people seeking entry to arrive no later than 8 p.m. The City provided limited free
3 transportation to and from the facility, which is located in Laguna Beach Canyon.
4 The shelter closed for the day at 7:30 a.m. In or around the spring of 2019, a van
5 service was instituted, providing more opportunities to travel to and from the ASL.

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

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

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

24 19. According to Homeless Management Information System (HMIS)
25 data, of 401 people who stayed at the ASL in 2017 and who provided a “last
26 known permanent address,” more than half of these individuals reported an address
27 in Orange County but outside of Laguna Beach. Only 11 percent of the guests
28 reported a last known address in the City. Aliso Viejo topped the list of other

1 Orange County cities with 28 individuals, totaling seven percent of the population
2 at the ASL. Mission Viejo had the second largest number of guests at the ASL,
3 with 13 individuals, followed by San Clemente with 10 individuals.

4 **PAST LITIGATION IN ORANGE COUNTY:**

5 20. The Orange County Catholic Worker filed a lawsuit against the
6 County of Orange and the cities of Orange, Anaheim and Costa Mesa on January
7 29, 2018. Case No. 18-cv-01115 DOC - JDE (C.D. Cal.). The lawsuit challenged
8 the County’s intended closure of the Santa Ana Riverbed encampment.

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

19 22. The County’s plan was met with intense opposition from each
20 community. Nearly 600 Irvine residents traveled to the BOS meeting to protest
21 against the plan. Despite having the third largest number of homeless individuals
22 of any City in the County,⁴ 199 in the 2017 Point-in-Time count,⁵ Irvine and
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25 ⁴ In Appendix D to the 2013 Irvine General Plan, the City identified a far greater
26 number of homeless individuals in the City, which appears to be an error.
27 “Irvine’s share of the regional unsheltered homeless population is estimated to be
28 2,280 individuals.”

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

1 officials and residents adamantly argued that there was no place in Irvine – the
2 largest land mass city in the County - that could accommodate an emergency
3 shelter, let alone any shelter. The City identified multiple zones where shelters
4 could be placed by right. In Appendix D to the City’s 2013 Housing Element, the
5 City wrote that emergency shelters are permitted by right in the IBC Multi-Use,
6 General Industrial, Medical and Science, Business Park, and Institutional zones.
7 Despite that representation to the California HCD, the City threatened to sue the
8 County if a shelter was opened. The City listed these properties as a necessary
9 statutory requirement for the City’s General Plan to be approved by the State of
10 California. Without meeting this requirement, the City would not be permitted to
11 approve any permits for development in the entire City, including permits for all of
12 the upscale residences at the former military base.

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

20 24. It is unlikely that even homeless persons with an income from a low-
21 wage job or disability can find rental housing in South County that is affordable.
22 On June 1, 2017, HUD issued a report finding that the vacancy rate in Anaheim,
23 Santa Ana, and Irvine declined from 2010 to 2017 from 5.9 % to 3.6%, and
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1 average rents rose 3% in May 2017 alone.⁶ Almost 90,000 people are on the
2 County’s housing authority waiting lists hoping for access to affordable housing.⁷

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

13 26. Each of the Defendants has failed to meet the requirements in state
14 law to provide for people experiencing homelessness in South County as a
15 necessary prerequisite to approval of the entities General Plan for development.
16 While the County has created several hundred more low-barrier and bridge shelter
17 beds over the last three years, it is nowhere near the number of beds needed to
18 address their responsibility. San Clemente has not made any attempt to meet this
19 need and repeatedly blocked efforts to place shelters in its City. The most recent
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22 ⁶ U.S. Dep’t of Housing and Urban Development, Office of Policy Development
23 and Research, *Comprehensive Housing Market Analysis Anaheim-Santa Ana-*
24 *Irvine, California*, [https://www.huduser.gov/portal/publications/pdf/AnaheimCA-](https://www.huduser.gov/portal/publications/pdf/AnaheimCA-comp-17)
25 [comp-17](https://www.huduser.gov/portal/publications/pdf/AnaheimCA-comp-17).

26 ⁷ Susan Price, *An Assessment of Homeless Services in Orange County*,
[http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REP-](http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REPORT_10.18.2016.pdf)
27 [ORT_10.18.2016.pdf](http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REPORT_10.18.2016.pdf), pg. 21

28 ⁸ *Homelessness in Orange County: The Costs to Our Community*, available at
unitedwayoc.org/wp-content/uploads/2017/08/united-way, p. 31.

⁹ *Id.*, p. 34.

1 instance occurred in early September, when the City Council, once again, rejected
2 a proposal to open a 35-bed shelter.

3 27. San Clemente in the meantime has continued to threaten enforcement
4 of local and state Penal Code provisions criminalizing homelessness through laws
5 that make it unlawful to be present, have property, sit or sleep in a public place
6 even if a person is without a home.

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

23 29. The 2005 Grand Jury Report also reviewed the history of proposals in
24 similar reports, going back to 1988 and found that few of the earlier
25 recommendations were implemented. The Report proves that, over the past 25
26 years, the primary response of the County and the Cities has been to treat the
27 visible presence of homeless people as a blight, without significantly reducing the
28 number of residents on the street each night. These approaches include

1 criminalizing homelessness by arresting homeless individuals for loitering, making
2 it illegal to sleep in public places at night, seizing and destroying homeless
3 people’s property, and engaging in a pattern of warrantless stops and
4 interrogations. The identical practices have been repeatedly challenged and
5 enjoined by judges of the Central District in Los Angeles and the Ninth Circuit,
6 uniformly rejecting these practices criminalizing homelessness as a violation of the
7 First, Fourth, Eighth and Fourteenth Amendments.

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

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

23 32. Defendants’ approach is even more indefensible when viewed against
24 the directives by the United States Interagency Council on Homelessness
25 (“USICH”), composed of nineteen federal cabinet and agency heads to organize
26 federal efforts to end homelessness. The most recent USICH report, “Ending
27 Homelessness for People Living in Encampments,” emphasized the importance of
28 “intensive and persistent outreach and engagement,” but underscored that outreach

1 is meaningless without real options for placements and services.

2 33. The San Clemente plaintiffs illustrate this point. The City contracted
3 with Mercy House to provide services, but the only shelter option offered is the
4 Courtyard in Santa Ana. That is not a realistic option for a number of reasons.
5 First, the Court restricted other cities across the County from “dumping”
6 individuals off at the Courtyard when those same cities lacked shelters in their own
7 jurisdictions. This disfavored practice led to increased numbers of homeless
8 individuals in Santa Ana and Anaheim, the two cities in the County that have
9 carried more than their share of the obligation to address homelessness.

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

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

27 36. In April 2018, to ensure that there was space for individuals being
28 relocated from the nearby Santa Ana Civic Center encampment, the Court

1 temporarily restricted the County from placing additional people who were not
2 Santa Ana residents at the Courtyard and also directed that other cities, acting
3 through contract agencies such as CityNet, stop transporting people to the
4 Courtyard to ensure that there was space for individuals being relocated from the
5 nearby Santa Ana Civic Center encampment. Until the Court's directive, people
6 were regularly dropped off there by hospitals, various cities' police, social workers
7 and outreach agencies contracted with other cities in the County, and others with
8 nowhere else to bring homeless people. Several hundred individuals were then
9 relocated to the Courtyard temporarily when the Santa Ana Civic Center
10 encampment was removed.

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

27 38. The third reason why transporting people from South County to Santa
28 Ana and Anaheim is an untenable and unlawful solution is that it makes it nearly

1 impossible for homeless individuals to get to jobs and services in South County.
2 San Clemente is 31.5 miles from Santa Ana. By public transportation, the travel
3 time is nearly 2 hours once a person gets to the train transit sites at either end,
4 which involve walking slightly more than a mile at each end. For a disabled
5 individual, the one-mile walk can take considerable time, because of physical
6 mobility and cognitive impairments. For an individual with circulatory problems
7 and other medical conditions, the walk to get to the train may be physically
8 impossible. For someone such as Plaintiff Duane Nichols, it may be unnavigable
9 because of his visual disability. Finally, for any unsheltered person, the cost of the
10 train may be prohibitive and they have no place to put their property.

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

23 40. For example, the Salvation Army Hospitality House in Santa Ana is
24 listed in the Housing Element of most of the cities in Orange County as a resource
25 for each city's unsheltered population. This facility offers only 25 beds for
26 transitional housing and 25 beds for emergency shelter, all for men. To stay there,
27 a man must be able-bodied and employable. Service animals are admitted only
28 with federal paperwork. No emotional assistance animals are allowed. Attendance

1 is required at a pre-dinner meeting that includes a sectarian religious service with
2 prayer. Clients must arrive between 3:30 and 5:00 p.m. Men seeking admission
3 must arrive by 3:30 in the afternoon to enter a lottery for any available emergency
4 shelter beds. If not selected, they can wait until 5:00 to see if a man who is already
5 approved missed curfew. There are almost always more applicants than beds. In
6 January 2018, between 2 and 12 lottery beds were available nightly.

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

11 42. Friendship Shelter operates the Alternative Sleeping Location (ASL)
12 in Laguna Beach in South County. The shelter has only 45 beds, all of which are
13 usually filled each night. In addition to the ASL, Friendship Shelter operates a
14 second facility in Laguna Beach that is a 60-day self-sufficiency program.
15 According to Friendship Shelter's website, the 32-person facility always has a
16 waiting list and is only available to individuals who are able to work.

17 43. The Rescue Mission in Tustin is one of the larger private shelters in
18 the County, with approximately 200 beds available. However, it requires persons
19 to submit to an intensive Christian religious program as a condition of receiving
20 services. It also requires people be employed, which is a significant barrier for
21 many of the unsheltered individuals in South County, who are seniors, disabled or
22 both. In addition, the Rescue Mission does not permit individuals to bring in
23 certain prescriptions containing opioids which are commonly prescribed for mental
24 health conditions, especially panic and anxiety disorders. This leaves people with
25 lawful medical prescriptions at risk of psychological deterioration and, in some
26 cases, has produced suicidal ideation from the sudden and complete withdrawal of
27 prescribed medications. Individuals are not allowed to have assistance animals
28 other than registered service animals.

1 **THE COUNTY’S EFFORTS TO OPEN ADDITIONAL SHELTERS:**

2 54. In its General Plan, the Defendant County states it is proactive in
3 responding to the needs of the homeless population. When the County prepared its
4 2013-2021 General Plan, there was only one small emergency shelter located in the
5 unincorporated area of the County – American Family Housing in Midway City --
6 with a maximum capacity of 20 persons. Recognizing the significant shortfall
7 between available and needed emergency shelter, and to encourage additional
8 shelter facilities, the County amended its Zoning Code to allow shelters by-right in
9 the commercial and industrial portions of the Housing Opportunities Overlay Zone.
10 This added 177 acres that meet the requirements of SB2 as locations that are
11 served by transit and other critical resources and available for additional
12 emergency shelters.

13 55. Over the course of the past several years, multiple cities in the
14 County, including Fullerton, Irvine, Huntington Beach and Laguna Niguel, have
15 blocked the County’s plans to locate new emergency shelters in their communities
16 for reasons other than those allowed by the Housing Accountability Act. In each
17 instance, the cities acted based on NIMBYism and failed, completely, to provide
18 any justification for the denial that complies with the requirements of SB2.

19 56. In 2013, the County identified two locations as potential sites for
20 emergency shelters. The first was in Santa Ana. Although the city originally
21 approved the County’s proposal, its approval was rescinded after community
22 objections. The County then identified a location in Fullerton in a commercial site.
23 The County BOS approved the purchase of the site in early January 2013. Two
24 years earlier, following the killing by Fullerton Police of Kelly Thomas, a mentally
25 ill homeless man, Fullerton created a homelessness task force. The task force
26 issued a report in 2012 with eight recommendations, one of which was to establish
27 a year-round emergency shelter in the City in partnership with the County. To date,
28 that has not happened.

1 57. Instead, when the County proposed a location in the city for the first
2 emergency shelter in the area, Fullerton asked that the project be delayed to allow
3 the City to review it further. Ultimately, based on objections by the community,
4 the City blocked the shelter, resulting in a lawsuit against the City by non-profit
5 groups. The lawsuit alleged that the City’s actions violated Government Code §
6 65589.5. Last fall, the Fullerton City Council has again rejected a proposal to
7 create a shelter in the city, concluding first that it was “too soon” to make the
8 decision and then, after a local election was completed, rejecting the proposal. The
9 City has now committed financial support to two new shelters in the Northern
10 SPA, both located in other cities. In addition, as a condition of opening the winter
11 emergency shelter at the Fullerton Armory, the City has required that admission to
12 a winter emergency shelter be by referral only, although it remains open to all
13 unsheltered individuals in the County.

14 58. After losing out on the initial Santa Ana and Fullerton sites, the
15 County then identified the former bus terminal in Santa Ana as the location for the
16 first – and only – year-round, low-barrier emergency shelter in the County. The
17 shelter opened in 2016 with approximately 250 beds, but soon rose to over 400
18 individuals sleeping there each night, evincing the undisputable demand for shelter
19 among people experiencing homelessness in Orange County. The Courtyard
20 shelter continues to operate at or slightly above the number on a nightly basis,
21 limited only by orders of the District Court restricting a higher capacity because of
22 the challenges overcrowding presents to a service population experiencing multiple
23 disabilities.

24 59. One goal of the Courtyard was to provide a place where people
25 encamped in the nearby Santa Ana Civic Center could go. Because of the
26 desperate need throughout the County for emergency shelter space, people from
27 other communities soon filled the beds and the Civic Center encampment
28 continued for nearly two more years, until the Court ordered it disbanded in March

1 2018.

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

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

25 62. The November 2016 list of Emergency Shelters and Housing
26 Programs available on the website of South County Outreach documents the lack
27
28

1 of facilities in this region specifically and the County generally.¹⁰ Approximately
2 three dozen resources offer housing for unsheltered families, women with children,
3 pregnant women, single women and domestic violence survivors. Many, if not
4 most, of these are private facilities run by religious groups. Some of these
5 programs have prerequisites to admission, such as a \$300 fee or a referral from an
6 emergency shelter program. There are only seven facilities that accept single men.
7 Of these, some allow only a one-night stay, others limit a stay to 14 days, while
8 still others require that a person be employable.

9 63. The South Coast Outreach list of Emergency Shelters and Housing
10 Programs is the same list that nearly every entity puts forward to meet the
11 requirements for approval of a General Plan.

12 **PARTIES**

13 **Plaintiffs:**

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

25 _____
26
27
28 ¹⁰ www.sco-oc.org/wp-content/uploads/2014/05/Shelters.pdf

1 provide this assistance throughout County, including in South County.

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

13 66. Plaintiff **EMERGENCY SHELTER COALITION OF SAN**
14 **CLEMENTE (“ESC”)** is now, and at all times since its incorporation on July 30,
15 2018 was, a non-profit organization under the laws of the State of California. The
16 members of the **ESC** share a common goal to establish a year-round emergency
17 shelter and resource center in San Clemente to provide people experiencing
18 homelessness with a safe place to sleep, engage in fundamental daily life activities
19 and obtain counseling and referral services. The members of **ESC** include
20 individuals who are residents of, employed in, or recreate in the City and who
21 devote their time and resources to assisting persons experiencing homelessness in
22 San Clemente, regardless of the reason. Because of the lack of resources
23 throughout South County, **ESC** and its board members provide assistance to
24 persons experiencing homelessness in the region. Because of the lack of services
25 throughout South County, the **ESC** provides assistance to individuals experiencing
26 homelessness not only in San Clemente, but almost every city in South County,
27 including numerous unsheltered individuals from San Juan Capistrano, Dana Point,
28

1 Mission Viejo and other cities that have similarly failed to provide assistance to
2 unsheltered individuals in their respective communities in South County.

3 67. Beginning in or about 2014, **ESC** was engaged in litigation with the
4 City of San Clemente to compel the City to bring itself into compliance with its
5 statutory duties under Government Code §65588(e) to adopt an updated Housing
6 Element that (1) establishes at least one zone in which emergency shelters are
7 permitted by right without any discretionary approvals by the City; (2)
8 demonstrates adequate capacity to meet the City’s need for emergency shelter; and
9 (3) promulgates standards designed to encourage and facilitate the development of
10 emergency shelters in appropriate locations, including at least one year-round
11 facility. In August 2016, the Hon. Robert J. Moss of the Orange County Superior
12 Court entered judgment in favor of **ESC**, directing the City to revise its Housing
13 Element to conform to its statutory obligations. **ESC** continues to work toward
14 developing a shelter in the Emergency Shelter Overlay Zone identified as a result
15 of the successful litigation by **ESC**.

16 68. 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 69. 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 rainstorm,

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

16 71. Mr. Nichols used to sleep in the parking lot at the train station. On
17 many nights, he was awakened by sirens as deputies arrived and threatened him
18 with arrest if he did not leave. He was ordered by OCSD personnel to leave the
19 City.

20 72. Mr. Nichols stays at the San Clemente campsite location on Avenida
21 Pico in San Clemente, which is the former parking lot for the Sewage Treatment
22 Plant. He is there because he does not want to be arrested despite the fact that the
23 conditions at the campsite exacerbate his disabilities. Mr. Nichols has medication
24 which needs to be temperature controlled but has been forced to camp in a location
25 without shade throughout the hottest part of the summer. In addition, Mr. Nichols
26 has difficulty walking without a tricycle that he uses to get around. Because there
27 is no source of drinking water located in the camp, Mr. Nichols uses his tricycle to
28 get drinking water. To do so, Mr. Nichols must travel a quarter mile downhill to

1 the light, cross the street, and then travel up a steep grade to get to the park across
2 the street. This is not accessible with his tricycle except with great difficulty that
3 further impacts his health. Because of Mr. Nichols' vision disability, it is not safe
4 for him to jaywalk directly across the street to the park; nor is requiring persons
5 with mobility disabilities to jaywalk to access clean water and toilets a reasonable
6 accommodation under the ADA.

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

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

23 75. Like Mr. Nichols, law enforcement approached Mr. James at night,
24 woke him up and told him that he had to move or face arrest. He understood that
25 he was being threatened for sleeping in public, even though there were no shelter
26 beds available in South County to accommodate him. In early summer 2019, Mr.
27 James was placed in housing by the Friendship Shelter. He is currently no longer
28 camping in San Clemente.

1 76. Mr. James suffered trauma and emotional distress by being repeatedly
2 threatened with arrest when he had nowhere else to go.

3 **Defendants:**

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

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

22 79. Defendant DOES 1-4 are employees of the City of San Clemente who
23 threw away Plaintiff DARREN JAMES’ personal possessions. Mr. James had his
24 possessions go missing during a City cleaning, and a city employee on site told Mr.
25 James that his possessions had not been retained by the city. On information and
26 belief, Mr. JAMES alleges that a city employee seized and destroyed Mr. James’
27 possessions in the course of the cleaning, even though the City employee(s) knew
28 or should have known that the property was not abandoned and, in any event,

1 should have preserved the property so that Mr. James would have had an
2 opportunity reclaim it. The names of the DOE defendants are currently unknown.

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

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

27 82. Over the past several months, the **CITY OF SAN CLEMENTE**,
28 through its employees and agents, has fostered a climate of fear directed at people

1 experiencing homelessness in the city. Homeless individuals have been barred
2 from locations where they previously stayed, largely out of sight. They were told
3 by the OCSD, the contract LEO for San Clemente, that they not be at the train
4 station except limited purposes, could not stay at the beach or a public grassy area
5 where they had stayed, and other similar relocations every time they moved. They
6 have been forced into more public spaces where they have become the target of
7 residents virulently opposed to the presence of homeless individuals. For example,
8 as part of a concerted campaign to force homeless individuals out of public view
9 and out of the city, several individuals have parked their trucks in such a manner as
10 to have the fumes from the exhaust blow in the direction of homeless individuals
11 on public sidewalks, where they have a right to be under *Martin v. City of Boise* in
12 a municipality that lacks any shelter beds. These individuals have left their trucks
13 running to maximize the toxic impact of the engine exhaust. Others have made it a
14 point to transit the sidewalk with wheelchairs, challenging ADA compliance.
15 Some, if not most or all of the individuals are able-bodied as evinced by the fact
16 that these individuals are observed rotating who is being pushed and who is sitting
17 in the wheelchair. Still others scream at the homeless individuals in public spaces
18 while law enforcement does nothing.

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

27 84. The identities and capacities of defendants DOES 1 through 10 are
28 presently unknown to plaintiffs, and on this basis, Plaintiffs sue them by fictitious

1 names. Plaintiffs will amend the Complaint to substitute the true names and
2 capacities of the DOE defendants when ascertained. Plaintiffs are informed,
3 believe, and thereon allege that DOES 1 through 10 are, and at all times relevant
4 herein were, employees and/or agents of the Defendant COUNTY and Defendant
5 CITIES and are responsible for the acts and omissions complained of herein.
6 Defendants DOES 1 through 10 are sued in their official and individual capacities.

7 **FIRST CAUSE OF ACTION**

8 **Violation of Eighth and Fourteenth Amendments (42 U.S.C.§1983)**

9 **(By All Plaintiffs Against All Defendants)**

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

12 86. The acts and omissions of Defendants, and each of them, as described
13 herein, violated the constitutional rights of Plaintiffs to be free from actual or
14 threatened cruel and unusual punishment. By virtue of their status as homeless and
15 disabled, and the absence and insufficiency of shelter or housing in South County,
16 Plaintiffs had no way to comply with the laws Defendants sought to enforce
17 against them.

18 87. The Orange County Sheriff’s Department acted as an agent of the City
19 of San Clemente in enforcing the municipal ordinances against camping and
20 loitering, and at the City’s request roused and threatened unhoused people such as
21 James and Nichols with arrest.

22 88. Plaintiffs further allege that it violated their substantive due process
23 rights to threaten them with citation and arrest for sleeping and keeping their
24 property in public places when there is inadequate shelter available. The
25 Defendants, and each of them, lack adequate and appropriate shelters to provide a
26 safe place for the Plaintiff class to sleep and simply be. Instead, Defendant San
27 Clemente, by and through the Orange County Sheriff’s Department, enforced
28 “quality-of-life” violations and, prior to the urgency ordinance, expected Plaintiffs

1 James and Nichols to move out into neighboring cities, in which similar ordinances
2 prevent them from lawfully residing without shelter, having their property in
3 public places, and loitering laws prohibit their mere presence in these jurisdictions.

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

8 90. Each Defendant has a custom, policy, and/or practice of encouraging
9 its officers, employees and agents to threaten enforcement of City ordinances and
10 citations and arrest of homeless persons for the unavoidable behavior of sleeping
11 or having property in public based on their unhoused status. This custom, policy
12 and/or practice harmed both Nichols and James by depriving them of sleep and
13 causing them emotional distress.

14 **SECOND CAUSE OF ACTION**

15 **RIGHT TO DUE PROCESS OF LAW; 42 U.S.C. § 1983**

16 **FIFTH AND FOURTEENTH AMENDMENTS**

17 **(By Plaintiff JAMES against the CITY OF SAN CLEMENTE and DOES 1-4)**

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

20 92. The CITY OF SAN CLEMENTE, and their employees and agents,
21 including DOES I-4, owed Plaintiff DARREN JAMES a duty under the due
22 process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution
23 to protect the personal property of the Plaintiffs.

24 93. Despite this well-defined duty, Defendant CITY of San Clemente and
25 DOES 1-4 provided Plaintiff with no notice that his property was at risk of being
26 seized and/or destroyed and did not act to preserve the property or provide any
27 means of reclaiming it in a timely manner, even though Defendant CITY was put
28

1 on notice by past court decisions, including decisions at the Ninth Circuit Court of
2 Appeals, that such notice and preservation of property was required.

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

9 95. Defendant CITY OF SAN CLEMENTE seized and destroyed the
10 personal property of the Plaintiff DARREN JAMES without due process, lawful
11 justification, or just compensation. On information and belief, Defendant CITY
12 OF SAN CLEMENTE and Does 1-4 executed this procedure pursuant to its
13 policies and protocols regarding property left in public.

14 96. As a direct and proximate consequence of the acts of Defendant's
15 agents and employees, including DOES I-4, Plaintiff DARREN JAMES has
16 suffered loss of his personal property and is entitled to compensatory damages for
17 their property and other injury to their person.

18 **THIRD CAUSE OF ACTION**

19 **FOURTH AND FOURTEENTH AMENDMENTS**

20 **VIOLATION OF RIGHT TO BE FREE FROM UNLAWFUL PROPERTY**
21 **SEIZURE**

22 **(By Darren James Against Defendant San Clemente)**

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

25 98. The CITY OF SAN CLEMENTE, and its employees and agents,
26 including DOES I-4, seized and summarily destroyed the property of Plaintiff
27 DARRELL JAMES without a warrant or prior notice. The property was not
28 abandoned.

1 99. The seizure and immediate destruction of Mr. James’ personal
2 property when it was left at a location where he had been for two years, and where
3 Defendants were aware he stayed, violated his rights under the Fourth Amendment
4 against seizure of personal property without a warrant. On information and belief,
5 Defendant CITY OF SAN CLEMENTE and DOES 1-4 executed this procedure
6 pursuant to its policies and protocols regarding cleaning up property left in public.

7 100. As a direct and proximate consequence of the acts of Defendant’s
8 agents and employees, including DOES I-4, Plaintiff DARREN JAMES has
9 suffered loss of his personal property and is entitled to compensatory damages for
10 his property, including pain and suffering as a result of the loss of irreplaceable
11 personal items.

12
13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiffs pray as follows:

- 15 1. For damages to the individual plaintiffs in an amount to be
- 16 determined according to proof based on their federal claims only;
- 17 2. For a declaratory judgment that Defendants’ policies, practices and
- 18 conduct as alleged herein violate Plaintiffs’ rights under the United
- 19 States Constitution identified herein;
- 20 3. For costs of suit and attorney fees as provided by law;
- 21 4. For such other relief as the Court deems just and proper.

22
23 Dated: September 16, 2019 Respectfully submitted,

24 LAW OFFICE OF CAROL A. SOBEL
25 ELDER LAW & DISABILITY RIGHTS CENTER
26 SCHONBRUN SEPLOW HARRIS & HOFFMAN

27 By: /s/ Carol Sobel
28 CAROL A. SOBEL
Attorney for Plaintiffs.