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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION
16

17
18 Pamela Kincaid, Doug Deatherage, Charlene
Clay, Cynthia Greene, Joanna Garcia, Randy
19 Johnson, Sandra Thomas, Alphonso Williams,
and Jeannine Nelson, Individually on Behalf of
20 Themselves and All Others Similarly Situated,
Plaintiffs,

21 v.

22 City of Fresno, Alan Autry, Jerry Dyer, Greg
Garner, Reynaud Wallace, John Rogers, Phillip
23 Weathers, Will Kempton, James Province, and
Daryl Glenn, individually and in their official
24 capacities; DOES 1-100, inclusive,

25 Defendants.
26

Civil Action No.: 06-CV-1445-OWW

CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR
DAMAGES**

DEMAND FOR JURY TRIAL

1 Plaintiffs Pamela Kincaid, Doug Deatherage, Charlene Clay, Cynthia Greene, Joanna
2 Garcia, Randy Johnson, Sandra Thomas, Alphonso Williams, and Jeannine Nelson
3 individually on behalf of themselves and others similarly situated, complain against
4 defendants as follows:

5 **Nature of the Case**

6 1. This action arises out of an ongoing policy and practice of defendant City of
7 Fresno, joined in by the remaining defendants, of confiscating and destroying the property
8 of homeless people who live in Fresno. Defendants' unlawful actions deprive plaintiffs and
9 similarly situated homeless people of personal belongings that are critical to their survival,
10 such as clothing, medication, tents and blankets, as well as of irreplaceable personal
11 possessions, such as family photographs, personal records and documents, and even the
12 ashes of a deceased relative contained in an urn.

13 2. As alleged with more particularity below, defendants regularly engage in what
14 amount to raids of areas where homeless people live, during which defendants intentionally
15 and indiscriminately take and destroy personal property owned by homeless people in the
16 area and immediately destroy that property.

17 3. These ongoing raids are conducted either without notice or with inadequate
18 notice and in a manner that prevents plaintiffs and other homeless persons similarly situated
19 from retrieving their personal property to avoid its destruction. In many cases, members of
20 the plaintiff Class are physically restrained or ordered by members of the Fresno Police
21 Department to stand by while their few personal possessions are seized and destroyed,
22 leaving them even more destitute and defenseless. Further, as a part of this policy and
23 practice, defendants provide no means for plaintiffs or other similarly situated homeless
24 people to claim or retrieve their personal possessions once seized. Rather, all property is
25 immediately and summarily destroyed, so that it is lost forever.

26 4. Plaintiffs, on their own behalf and on behalf of all similarly situated persons
27 in the City of Fresno, California, claim that the intentional taking and destruction of their
28 personal property constitutes a violation by defendants of plaintiffs' federal and state

1 constitutional rights to be free from unreasonable search and seizure and to due process of
2 law, a violation of plaintiffs' rights under California Civil Code § 2080, *et seq.* and Civil
3 Code §§ 52 and 52.1, as well as additional state law claims complained of herein. Plaintiffs
4 seek preliminary and permanent injunctive relief on behalf of themselves and other
5 homeless persons similarly situated enjoining defendants from taking and destroying their
6 personal property in violation of their constitutional, statutory and common law rights.

7 5. Plaintiffs further seek a declaratory judgment that the policies and practices of
8 defendants as alleged herein are unlawful under the federal and state constitutional
9 provisions and statutory rights complained of herein.

10 6. In addition to their primary claims on behalf of the class for injunctive and
11 declaratory relief, the plaintiffs seek statutory, actual and punitive damages resulting from
12 defendants' intentional destruction of their personal property in violation of plaintiffs'
13 constitutional rights, under the United States and California Constitutions, and under
14 California Government Code § 815.6, California Civil Code § 2080 *et seq.*, California Civil
15 Code §§ 52 and 52.1, and the common law doctrine of conversion.

16 **Jurisdiction and Venue**

17
18 7. This Court has jurisdiction based on 28 U.S.C. § 1331 and 1343, and
19 supplemental jurisdiction over state law claims under 28 U.S.C. § 1367.

20 8. Venue is proper in this District in that the events and conduct arise to the
21 violations complained of occurred in this District. In addition, the defendants performed
22 their duties and committed the conduct complained of herein within this District.

23 **Parties**

24
25 9. Plaintiff Pamela Kincaid is a resident of the City of Fresno and at all relevant
26 times herein was and now is homeless.

27 10. Plaintiff Doug Deatherage is a resident of the City of Fresno and at all
28 relevant times herein was and now is homeless.

1 11. Plaintiff Charlene Clay is a resident of the City of Fresno and at all relevant
2 times herein was homeless, but has since obtained permanent housing.

3 12. Plaintiff Cynthia Greene is a resident of the City of Fresno and at all relevant
4 times herein was and now is homeless.

5 13. Plaintiff Joanna Garcia is a resident of the City of Fresno and at all relevant
6 times herein was and now is homeless.

7 14. Plaintiff Randy Johnson is a resident of the City of Fresno and at all relevant
8 times herein was and now is homeless.

9 15. Plaintiff Sandra Thomas is a resident of the City of Fresno and at all relevant
10 times herein was and now is homeless.

11 16. Plaintiff Alphonso Williams is a resident of the City of Fresno and at all
12 relevant times herein was and now is homeless.

13 17. Plaintiff Jeannine Nelson is a resident of the City of Fresno and at all
14 relevant times herein was homeless, but has since obtained permanent housing.

15 18. Defendant City of Fresno (“Fresno”) is a municipal corporation, duly
16 organized and existing under the laws of the State of California.

17 19. Defendant Alan Autry is the Mayor of the City of Fresno and has either
18 directed or ratified the unlawful conduct alleged herein.

19 20. Defendant Jerry Dyer is Chief of the Fresno Police Department, and in that
20 capacity is responsible for the operations of the Police Department.

21 21. Defendant Greg Garner is a Captain of the Fresno Police Department and has
22 personally directed and taken part in the unlawful practices and policies alleged in this
23 complaint.

24 22. Defendant Reynaud Wallace is an officer of the Fresno Police Department
25 and has personally directed and taken part in the unlawful practices and policies alleged in
26 this complaint.

27 23. Defendant John Rogers is the Manager of the Community Sanitation
28 Division of the City of Fresno and in that capacity is responsible for the operations of the

1 Community Sanitation Division.

2 24. Defendant Phillip Weathers is an employee of the Community Sanitation
3 Division of the City of Fresno and has personally directed and taken part in the unlawful
4 practices and policies alleged in this complaint.

5 25. Defendant Will Kempton is the Director of the California Department of
6 Transportation (“Caltrans”), and in that capacity is responsible for the enforcement,
7 operation and execution of all duties vested by law in that agency.

8 26. Defendant James Province is a Caltrans employee and is the Caltrans
9 Superintendent for the Fresno area.

10 27. Defendant Daryl Glenn is a Caltrans employee who directs Caltrans’ Special
11 Programs People program in the Fresno area.

12 28. All of the above individual defendants are sued in their individual and
13 official capacities, except defendant Kempton who is sued only in his official capacity and
14 only for violations of federal law.

15 29. Plaintiffs are informed and believe that DOES 1 through 50 at all relevant
16 times herein were officers and employees of the City of Fresno, including the Fresno Police
17 Department and the Community Sanitation Division of the City of Fresno, and that DOES
18 51 through 100 were officers and employees of Caltrans. Plaintiffs are ignorant of the true
19 names and capacities of defendants sued herein as DOES 1 through 100 and therefore sue
20 said defendants by such fictitious names. Plaintiffs will amend this complaint to allege their
21 true names and capacities when ascertained. Plaintiffs are informed and believe that each of
22 the DOE defendants is liable for, and proximately caused, the injuries and violations of
23 constitutional and statutory rights complained of herein. Plaintiffs will ask leave to amend
24 this complaint to insert further charging allegations when such facts are ascertained.

25 30. Plaintiffs are informed and believe that the acts of defendants complained of
26 herein were undertaken in the execution of customs, policies and practices of authorized
27 policymakers of the defendant City of Fresno and were joined in and/or implemented by the
28 remaining defendants, and each of them, acting as the agent, servant, employee and/or in

1 concert, and/or in conspiracy with each of said other defendants. Each of the defendants
2 caused, and is liable for, the unconstitutional and unlawful conduct and resulting injuries by,
3 among other things, personally participating in said conduct or acting jointly or conspiring
4 with others who did so; by authorizing, acquiescing or setting in motion policies, plans and
5 actions that led to the unlawful conduct; by failing to take action to prevent the unlawful
6 conduct; by failing and refusing with deliberate indifference to maintain adequate training
7 and supervision; and by ratifying the unlawful conduct taken by employees under their
8 direction and control, including failing to take remedial and disciplinary action.

9 31. The acts complained of herein were intentionally and jointly committed, and
10 will continue to be committed jointly and systematically by defendants unless restrained by
11 this Court.

12 **Class Allegations**
13

14 32. The claims set forth hereinafter are brought by plaintiffs on their own behalf
15 and as representatives of a Class of similarly situated persons pursuant to Rules 23(a),
16 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all homeless
17 persons in the City of Fresno whose personal belongings have been or will be taken and
18 destroyed by one or more of the defendants.

19 33. The members of the Class are so numerous that individual joinder of all
20 members is impossible. Plaintiffs are informed and believe on that basis allege that the
21 members of the Class will exceed 100 in number.

22 34. There are common questions of law and fact that predominate over any
23 questions affecting only individual Class members. Among the common questions of law
24 and fact are the following:

25 a. Whether defendants' policies, practices and conduct of taking and
26 destroying the personal property of homeless people, without providing either adequate
27 notice or the opportunity to retrieve personal possessions before they are destroyed, and
28

1 without a legitimate governmental interest, violated and continues to violate the class
2 members' state and federal constitutional rights against unreasonable search and seizure;

3 b. Whether defendants' policies, practices and conduct of taking and
4 destroying the personal property of homeless people, without providing either adequate
5 notice or the opportunity to retrieve personal possessions before they are destroyed, violated
6 and continues to violate the class members' due process rights under the California and
7 United States Constitutions;

8 c. Whether defendants' conduct of taking and destroying the personal
9 property of homeless people, without providing either adequate notice or the opportunity to
10 retrieve personal possessions before they were destroyed, and without a reasonable basis or
11 legitimate governmental interest, violated and continues to violate class members rights
12 under California Civil Code §§ 52 and 52.1, Civil Code § 2080, California Government
13 Code § 815.6 and the common law tort of conversion; and

14 d. Whether injunctive relief restraining further unconstitutional and unlawful
15 acts by defendants should be ordered by the Court and, if so, the nature of that injunctive
16 relief.

17 35. Plaintiffs will fairly and adequately protect the interests of the Class. They
18 have retained counsel who are experienced and competent in class-action and civil rights
19 litigation. Plaintiffs have no interests that are adverse or antagonistic to interests of other
20 members of the Class.

21 36. A class action is superior to any other method in order to secure a fair and
22 efficient adjudication of this controversy. As the primary relief sought is injunctive in
23 nature, the burden and expense make in impractical for class members to seek redress
24 individually for the wrongs done to them. The nature and amount of monetary damages
25 sustained by each Class member is very similar in nature and may be established by
26 common proof. Individual litigation by each class member would necessarily and
27 substantially burden the operation of the judicial system.

Factual Allegations

1
2 37. Between 4,400 to 8,800 of Fresno’s approximately 440,000 residents are
3 homeless, according to a recent report by a consortium of local government agencies and
4 providers. (Fresno Madera Continuum of Care Plan To End Homelessness at 10-11,
5 attached as Exhibit A hereto.) However, services for low-income people in need of shelter
6 are extremely scarce. “[O]nly 1.4% of the homeless population [is] sheltered . . . leaving
7 more than 98% of the homeless population unsheltered and receiving no services.” (*Id.* at
8 13.) The report indicates that there is currently an “overwhelming need for homeless
9 assistances,” with a gap of approximately 7,000 shelter/housing spaces in the Fresno-
10 Madera area. (*Id.*) The lack of shelter for women is particularly acute. Naomi House, one
11 of the few shelters in Fresno for women, has capacity for only 25 women on any given
12 night. On information and belief, a lottery is held every day to choose which women will
13 be allowed to stay in the shelter on that night. Those who are not successful in this lottery
14 are turned away, and often end up staying on the streets nearby.

15 38. For more than a year, defendants have engaged in an ongoing and continuing
16 policy and practice of raids on those Fresno residents who are unsheltered, in which they
17 take and destroy the personal property of these individuals. Defendants have intensified this
18 ongoing practice since May, 2006. No legitimate or lawful basis exists for this wholesale
19 confiscation and destruction of the personal property of plaintiffs and the plaintiff Class.
20 None of these actions were authorized by a warrant. In many cases, the property the
21 defendants have taken and destroyed represents substantially all the possessions of these
22 homeless men and women.

23 39. On or about May 3, 2006, defendants raided several areas in Fresno where
24 they knew a significant number of plaintiffs and members of the plaintiff Class resided,
25 including an area on the west side of E Street near Santa Clara Avenue, abutting Highway
26 99. On information and belief, this area is owned and controlled by defendant Caltrans. In
27 this raid, Fresno employees used a bulldozer to destroy and dispose of all the personal
28 property of plaintiffs in their path. Plaintiffs had no adequate notice that defendants would

1 destroy their property. Defendants made no attempt to save items that belonged to people,
2 and in fact restrained efforts by homeless people to retrieve their personal property in order
3 to prevent it from being taken and destroyed. Nor did defendants make any provisions for
4 people to claim their property after it had been seized. Rather all plaintiffs' property that
5 was seized was summarily destroyed.

6 40. On or about May 25, 2006, defendants returned to conduct a further raid on
7 areas that had previously been raided, including the area of E Street abutting Highway 99.
8 Acting at the direction of and pursuant to the policy of the City of Fresno, City of Fresno
9 employees systematically took and destroyed all of the personal property of plaintiffs and
10 members of the plaintiff Class that they could find. Using a large bulldozer with a
11 mechanical "grabber" on the front, defendants dumped all of the personal property of
12 members of the plaintiff Class into a waiting garbage truck for immediate destruction, even
13 though it was obvious that much of what they were taking and destroying was personal
14 property owned by members of the plaintiff Class.

15 41. On or about June 22, 2006, defendants again confiscated and destroyed the
16 personal property of members of the plaintiff Class. In this raid, defendants seized and
17 destroyed property not only on the west side of E Street near Santa Clara Avenue, but also
18 in adjacent areas. As with the previous raids, representatives of the Fresno Police
19 Department acting at the direction and pursuant to the policy of the City of Fresno,
20 prevented homeless people, including members of the plaintiff Class, from retrieving their
21 personal possessions and made no attempts to save personal belongings from destruction or
22 to store them so that they could be claimed later by their owners. The week before this raid,
23 on or about June 15, 2006, the Fresno Police Department issued a memorandum addressed
24 to "All Campers on Ventura/E" stating that "On Thursday, June 22, 2006 we will be coming
25 through this area to do a clean up of Ventura, "E", Santa Clara & "G." streets. We will start
26 at 8:00 a.m. If you have property in these areas, please remove it or we will take it as
27 trash." This notice was inadequate to provide meaningful and effective notice to those who
28 would be affected by defendants' unlawful conduct, both because of the manner in which it

1 was given and because defendants knew or should have known that many members of the
2 plaintiff Class would not receive the notice or understand that their personal possessions
3 were going to be taken and destroyed by defendants. Moreover, the defendants began their
4 systematic destruction of the personal property of plaintiffs and the plaintiff Class before
5 8:00 a.m., making the notice further inadequate and misleading. Defendants also continued
6 with their policy of destroying property even while it was being claimed by the owners.

7 42. On or about July 1, 2006, defendants continued their unlawful seizures of the
8 property of plaintiffs and members of the plaintiff class. Early in the morning on July 1,
9 2006, members of the Fresno Police Department, complete with squad cars, a paddy wagon,
10 and a flatbed truck arrived near the intersection of E Street and Santa Clara Avenue and
11 began seizing property in multiple areas in the vicinity. Fresno Police Department
12 representatives unlawfully and without cause or basis confiscated shopping carts that were
13 the property of the homeless, including members of the plaintiff Class, loaded the carts onto
14 the flatbed truck and hauled them away and disposed of them. At no time did defendants,
15 or any of them, make an effort to determine the ownership of the carts or their contents, or
16 to allow plaintiffs or members of the plaintiffs' Class to make a claim for the return of their
17 personal possessions.

18 43. On or about August 26, 2006, defendants again returned to the area near E
19 Street and Santa Clara Avenue in Fresno and repeated the systematic confiscation of the
20 property of plaintiffs and members of the plaintiff Class. City of Fresno employees again
21 systematically confiscated all of the personal property of plaintiffs and/or members of
22 plaintiff Class that they could locate and again threw it into City of Fresno garbage trucks
23 for destruction. Defendant made no attempt to save valuable personal possessions but
24 rather again seized and immediately destroyed all of the property of plaintiffs and/or
25 members of the plaintiff Class. Defendants again continued their practice of destroying all
26 the property they found regardless of the fact that it was being claimed by its owners.
27 Defendants again made no provision of any kind to allow plaintiffs and/or members of the
28 plaintiff Class to claim or retrieve their property.

1 44. Early in the morning on or about October 8, 2006, members of the Fresno
2 Police Department came to an area near H Street and San Benito where plaintiffs and/or
3 members of the plaintiff Class were found. The Fresno Police Officers, without cause or
4 basis, confiscated all of the shopping carts possessed by plaintiffs and members of the
5 plaintiff Class and took them away for destruction. The Fresno Police Officers dumped all
6 the contents of all the shopping carts onto the ground resulting in damage to that property.
7 Plaintiffs' shopping carts were not stolen and no legal basis existed to confiscate them. No
8 provision was made for plaintiffs or members of the plaintiff Class to retrieve their carts,
9 which are essential to their ability to move their property from one place to another.

10 45. Early in the morning on or about October 11, 2006, members of the Fresno
11 Police Department returned to the area near H Street and San Benito Street in the City of
12 Fresno where several homeless people were found. These Police Officers forced all of the
13 homeless in this area to get out of their tents and to stand in lines while they were searched,
14 despite the fact that there was no basis for this search and treatment. A Fresno Police
15 Officer then stated to all present that they intended to return very soon to again take and
16 destroy any property of the homeless found in that area and that the Police and other
17 defendants would "do what I have to do to get you guys out of here."

18 46. Some of the raids conducted pursuant to Fresno's unconstitutional policy
19 were conducted on property belonging to Caltrans. On information and belief, officials and
20 employees of Caltrans were notified in advance by Fresno of these raids, including but not
21 limited to the operations on June 22, 2006 and August 26, 2006, and acquiesced in, and
22 ratified, these raids by their acts and failures to act, including but not limited to granting
23 permission for Fresno to conduct these clean-up operations, with knowledge of the unlawful
24 and unconstitutional conduct by City officials in seizing and destroying the property of the
25 homeless during these raids on Caltrans property.

26 47. Such acts and omissions include but are not limited to the following: On
27 June 16, 2006, defendant Wallace of the Fresno Police Department sent an email to
28 defendant Glenn of Caltrans stating that Fresno would be conducting a "clean-up" operation

1 at Ventura and E St. on June 22 2006. Attached to the email was a memorandum from
2 defendant Capt. Garner of the Fresno Police Department to “All Campers on Ventura/E,”
3 which stated that any property not removed from the area “we will take as trash.” This
4 email was forwarded to the Caltrans Fresno Area Superintendent, defendant Province. As
5 described below, the City did conduct an operation on Caltrans property on June 22, 2006,
6 and property of the homeless was unlawfully seized and destroyed. On June 23, 2006,
7 defendant Wallace sent another email to defendant Glenn, requesting a meeting with him or
8 his supervisor “to discuss a long term fix for the campers @ Ventura/E. as you know as
9 soon as we clean they come right back... our hands are somewhat tied being that it is Cal
10 Trans property and it’s a real eyesore for anyone entering the city from 99.” On August 25,
11 2006, Caltrans issued an encroachment permit which authorized the City to conduct a
12 cleanup operation and to construct a fence at the same location. As described above, the
13 City acted the following day pursuant to this permit and conducted a cleanup operation on
14 August 26, 2006, during which the property of the homeless was unlawfully seized and
15 destroyed. On information and belief, in addition to the property that was the subject of the
16 August 26, 2006 operation, Caltrans owns other property in the City of Fresno on which
17 homeless people live and/or keep their belongings.

18 48. Plaintiffs and members of the plaintiff Class have suffered the loss of
19 property, damage and treatment described in the foregoing paragraphs on one or more
20 occasions set forth above.

21 49. Plaintiff Pamela Kincaid’s personal property has been confiscated and
22 destroyed by Defendants on at least two occasions. Approximately one year ago, almost all
23 of her possessions were seized and destroyed in one of defendants’ raids, including her
24 identification; her birth certificate; her telephone/address book; and family photos, which
25 contained the only pictures she had of her sister, her daughter, and her deceased mother.
26 Approximately 2 months ago, defendants seized her shopping cart, a toolbox, and various
27 tools that she used to make crafts, such as jewelry and “dreamcatchers,” which she was able
28 to sell to make a little income. This property was not abandoned and it was obviously

1 valuable property. She was given no opportunity to save or retrieve her property.

2 50. Plaintiff Doug Deatherage's personal property has been confiscated and
3 destroyed by Defendants on at least two occasions. On or around June 22, 2006, he and his
4 girlfriend had a tent on a strip of land between E Street and the highway in Fresno.
5 Defendants arrived and began putting items in a dump truck, so plaintiff Deatherage moved
6 his and his girlfriend's belongings to the other side of the street. Believing that his property
7 would be safe there because a police officer had told them it was okay to move their
8 belongings to that side of the street, plaintiff Deatherage left his girlfriend with their
9 belongings and went to the store. When he returned, their property had been confiscated,
10 and all attempts to move it again or save it had been summarily denied by the Fresno police.
11 In this raid, most of plaintiff Deatherage's property was destroyed, including his tent; his
12 sleeping bag; all the clothes except the ones he was wearing at the time; shoes; a coat;
13 personal hygiene supplies; an antique stamp collection; and personal papers, including
14 letters from his family. On or about August 26, 2006, defendants confiscated and destroyed
15 nearly all of his remaining possessions in the same area, including clothes and shoes that he
16 had been able to acquire since the previous raid. Again, plaintiff Deatherage was given no
17 opportunity to save or retrieve his personal property.

18 51. Plaintiff Charlene Clay's personal property has been seized and destroyed by
19 defendants on at least two occasions. Sometime during the first two weeks of April 2006,
20 she and her husband were staying on a hill off of G Street in Fresno. While they were at the
21 Poverello House, a local service provider, they heard that the City was taking people's
22 property. Plaintiff Clay went as fast as she could to where she had left her belongings, but
23 when she arrived, almost everything she owned had already been seized, including: her
24 false teeth; her medications; a small TV and laptop computer; a bike; dog food; blankets
25 and sleeping bags; and her and her husband's clothes and personal papers. Again on
26 October 8, 2006, she and her husband were under a bridge at San Benito and H Street.
27 Fresno police officers arrived without warning and confiscated homeless people's shopping
28 carts and took them away.

1 52. Plaintiff Cynthia Greene has had some or all of her belongings seized by
2 Defendants approximately five times since January 2006. Property of plaintiff Greene's
3 that Defendants have confiscated include: photographs of her deceased relatives (her father,
4 mother, and brother); bicycles; tent and bedding; and winter gear such as rain suits and an
5 umbrella, resulting in her getting sick as a result of being out in the rain without any shelter.
6 In the last such raid, on or about August 27, 2006, defendants confiscated plaintiff Greene's
7 belongings with a bulldozer truck, even as she and other homeless women were trying to
8 move their belongings. In this raid, the Fresno employees destroyed her property including
9 medication; her tent and blankets; her personal papers and identification; and her backpack.

10 53. Plaintiff Joanna Garcia has had her personal property confiscated and
11 destroyed by defendants on approximately five occasions since January 2006. The property
12 destroyed in these raids include: tents; blankets; personal papers; clothing; photographs of
13 her grandmother and her son; and a lock of her son's hair. In the most recent raid, on or
14 about August 27, 2006, Fresno police officers seized and destroyed her property in the E
15 Street area, even as she was attempting to move it to save it from destruction. Items seized
16 and destroyed by defendants in this raid included: medication, including inhalers for asthma
17 and antibiotics; food; tents and sleeping bags.

18 54. Plaintiff Randy Johnson, Sr. had his personal property confiscated by
19 defendants in April 2006. During this raid, Fresno city employees seized and destroyed his
20 shopping cart, which had in it such items as: blood pressure medication; clothing; blankets;
21 and family photographs.

22 55. Plaintiff Sandra Thomas had her personal property confiscated and destroyed
23 by defendants in the E Street area on June 26, 2006. Despite making substantial efforts to
24 save her property by moving it across the street and obtaining permission from a private
25 property owner and Defendant Wallace to store her property while she recycled and ate
26 breakfast, defendants destroyed all of her property except one cart which was saved by a
27 bystander over Defendant Wallace's protests. The property destroyed includes: shelter
28 items; backpack; drivers license; social security identification card and her grandmother's

1 wedding band. That night Ms. Thomas was forced to sleep on the street due to lack of
2 shelter, which resulted in her contracting pneumonia.

3 56. Plaintiff Alphonso Williams had his personal property confiscated and
4 destroyed by defendants on at least two occasions. In the fall of 2005, while Mr. Williams
5 attempted to comply with their direction that he move his property, Fresno city workers
6 destroyed all of his property including shelter; blankets; medication; wedding photos;
7 family portraits and his wife's wheelchair. In August of 2006, Fresno city workers
8 destroyed all of Mr. Williams' property again and threatened him with tasers when he
9 attempted to reclaim his property.

10 57. Plaintiff Jeannine Nelson had her personal property confiscated and
11 destroyed by defendants on at least two occasions. In March of 2006, City of Fresno police
12 officers gave her ten minutes to move all of her property before they forced her to throw
13 away the property that she was not able to transport. Ms. Nelson lost pillows, blankets,
14 clothing, jackets, food, shoes and paperwork. In June of 2006, a City of Fresno police
15 officer pushed Ms. Nelson's cart into an irrigation canal of rushing water, despite her
16 possession of written permission from the private property owner of the land upon which
17 she occupied. The property destroyed includes: her cart; birth certificates; medical files
18 with which she applied for social security disability; identification card; clothing; toiletries;
19 bedding; food; asthma medications and a nebulizer machine which she used to help her
20 breathe.

21 **Requisites for Relief**

22 58. Defendants' policies, actions and conduct have resulted and will result in
23 irreparable injury to plaintiffs. Plaintiffs have no plain, adequate or complete remedy at law
24 to address the wrongs described herein. Defendants have made it plain by their actions, the
25 ongoing nature of their activities, and their public statements that they intend to continue the
26 unlawful conduct described above. Defendant City of Fresno has a policy and practice of
27 confiscating and destroying the personal property of plaintiffs and members of the plaintiff
28 class without legal basis and the remaining defendants have and will continue to participate

1 in implementing this policy and practice unless and until restrained by an injunctive decree
2 of this Court.

3 59. The acts of defendants as alleged above constituted violations of established
4 constitutional rights of plaintiffs, and defendants could not reasonably have thought that
5 their conduct in intentionally seizing and immediately destroying all of plaintiffs' personal
6 property as alleged herein was consistent with plaintiffs' constitutional rights.

7 60. An actual controversy exists between plaintiffs and defendants in that
8 defendants have engaged in the unlawful and unconstitutional conduct as alleged herein and
9 intend to continue this unlawful conduct as an ongoing practice and policy of Fresno
10 whereas plaintiffs claim that these practices are unlawful and unconstitutional and therefore
11 seek a declaration of rights with respect to this controversy.

12 61. As a direct and proximate result of the unconstitutional and unlawful
13 policies, practices and conduct of defendants, plaintiffs and members of the plaintiff class
14 have suffered, and will continue to suffer damages, including but not limited to deprivation
15 and destruction of property, including clothing, bedding, medication, personal documents
16 and other personal possession, leaving them without their essential personal belongings
17 necessary for shelter, health, well-being and personal dignity.

18 62. The acts of defendants were willful, wanton, malicious, and oppressive and
19 done with conscious disregard and deliberate indifference for plaintiffs and their rights.

20 63. Plaintiffs have filed administrative claims with the City of Fresno pursuant
21 to California Government Code § 910 *et seq.*

22 **First Claim for Relief**
23 **(Denial of Constitutional Right Against Unreasonable Search and Seizure- Fourth**
24 **Amendment)**

25 64. Plaintiffs reallege and incorporate here paragraphs 1 through 55 above, as
26 though fully set forth.

27 65. Defendants' above-described policies, practices and conduct violate
28 plaintiffs' right to be free from unreasonable searches and seizures under the Fourth

1 Amendment to the United States Constitutional and 42 U.S.C. § 1983.

2 **Second Claim for Relief**
3 **(Denial of Constitutional Right to Due Process of Law- Fourteenth Amendment)**

4 66. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
5 though fully set forth.

6 67. Defendants' above-described policies, practices and conduct violate
7 plaintiffs' right to due process of law under the Fourteenth Amendment of the United States
8 Constitution and 42 U.S.C. § 1983.

9 **Third Claim for Relief**
10 **(Denial of Constitutional Right to Equal Protection of the Laws – Fourteenth
11 Amendment)**

12 68. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
13 though fully set forth.

14 69. Defendants' above-described policies, practices and conduct are intended
15 and designed to single out homeless people and have the purpose and effect of depriving
16 homeless people of their property and of driving homeless people from the City of Fresno.
17 These policies and actions are based on defendants' animus towards this disfavored group
18 and lacks a rational relationship to any legitimate governmental interest. In adopting and
19 implementing these policies and practices with the intent to harm and disadvantage
20 homeless persons in the City of Fresno, the defendants have violated the Equal Protection
21 Clause of the United States Constitution and 42 U.S.C. § 1983.

22 **Fourth Claim for Relief**
23 **(Denial of Constitutional Right Against Unreasonable Search and Seizure -
24 California Constitution, Article 1, § 13)**

25 70. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
26 though fully set forth.

27 71. Defendants' above-described policies, practices and conduct violated
28 plaintiffs' right to be free from unreasonable searches and seizures under Article 1, § 13 of
the California Constitution.

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Fifth Claim for Relief
(Denial of Constitutional Right to Due Process of Law- California Constitution, , Article 1, § 7(A))

72. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as though fully set forth.

73. Defendants’ above-described policies, practices and conduct violate plaintiffs’ right to due process of law under Article 1, § 7(A) of the California Constitution.

Sixth Claim for Relief
(Denial of Constitutional Right to Equal Protection of the Laws – California Constitution, Article 1, § 7(A))

74. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as though fully set forth.

75. Defendants’ above-described policies, practices and conduct were and are intended and designed to single out homeless people and have the purpose and effect of depriving homeless people of their property and of driving homeless people from the City of Fresno. These policies and actions are based on defendants’ animus towards this disfavored group and lacks a rational relationship to any legitimate state interest. In adopting and implementing these policies and practices with the intent to harm and disadvantage homeless persons in the City of Fresno, the defendants have violated the Equal Protection Clause of the California Constitution, Article 1, § 7(A).

Seventh Claim for Relief
(California Civil Code § 2080 *et seq.* and Government Code § 815.6)

76. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as though fully set forth.

77. Defendants’ above-described policies, practices and conduct violated California Civil Code § 2080 *et seq.*, in that, among other things, defendants have failed to safeguard the personal property of plaintiffs and members of the plaintiff Class found on public land, failed to inform the owners of the personal property within a reasonable time of finding this property, failed to document the property found, and failed to make restitution

1 of the property to its owners or to make arrangements to permit them to retrieve it all of
2 which are mandatory duties under Code of Civil Procedure § 2080 for which defendants are
3 liable and defendant public entities are liable under Government Code § 815.6.

4 **Eighth Claim for Relief**
5 **(California Civil Code § 52.1)**

6 78. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
7 though fully set forth.

8 79. Defendants' above-described policies, practices and conduct constitute
9 interference, and attempted interference, by threats, intimidation and coercion, with
10 plaintiffs' exercise and enjoyment of rights secured the Constitutions and laws of the United
11 States and California, in violation of California Civil Code § 52.1.

12 **Ninth Claim for Relief**
13 **(Common Law Conversion)**

14 80. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
15 though fully set forth.

16 81. Plaintiffs were at all relevant times the owners of personal property
17 confiscated and destroyed by defendants as alleged above. Plaintiffs remain entitled to the
18 possession of their personal property. The personal property confiscated and destroyed by
19 defendants included tents, clothing, medication, medical devices, prescriptions, personal
20 items and documents, all of which were particularly valuable to plaintiffs in part because
21 these belongings amounted to much if not all of the relatively few possessions that plaintiffs
22 owned.

23 82. Defendants' above-described policies, practices and conduct denied
24 plaintiffs the possession of their property and constituted an unlawful conversion of that
25 property to the possession and control of defendants. Defendants have since refused to
26 return this personal property to plaintiffs, but instead have destroyed this property.

1 **Prayer for Relief**

2 WHEREFORE, plaintiffs seek relief from this Court the as follows:

- 3 1. For an order certifying the proposed plaintiff class, together with any
4 necessary and appropriate subclasses under Federal Rule of Civil Procedure
5 23;
- 6 2. For a temporary restraining order, preliminary injunction and permanent
7 injunction, enjoining and restraining defendants from continuing or repeating
8 the unlawful policies, practices and conduct complained of herein;
- 9 3. For a declaratory judgment that defendants’ policies, practices and conduct as
10 alleged herein were in violation of plaintiffs’ rights under the United States
11 Constitution, the California Constitution, the laws of the United States and the
12 laws of California;
- 13 4. For the return of plaintiffs’ property;
- 14 5. For damages in amount according to proof but in no event less than \$4,000
15 per incident under California Civil Code §§ 52 and 52.1 and Cal.
16 Government § 815.6;
- 17 6. For punitive and exemplary damages to be determined in accordance with
18 proof;
- 19 7. For attorneys fees as provided by law;
- 20 8. For costs of suit; and
- 21 9. For such other and further relief as the Court may deem just and proper.
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February 22, 2007

Respectfully submitted,

HELLER EHRMAN LLP

LAWYERS' COMMITTEE FOR CIVIL RIGHTS

ACLU FOUNDATION OF NORTHERN
CALIFORNIA

By /s/ Paul Alexander
Paul Alexander
Attorneys for Plaintiffs