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

17  
18 Pamela Kincaid, Doug Deatherage, Charlene  
Clay, Cynthia Greene, Joanna Garcia, and  
19 Randy Johnson, Individually on Behalf of  
Themselves and All Others Similarly Situated,  
20 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.

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

**CLASS ACTION**

**FIRST 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, and Randy Johnson, individually on behalf of themselves and others similarly  
3 situated, complain against defendants as follows:

4 **Nature of the Case**

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

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

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

25 4. Plaintiffs, on their own behalf and on behalf of all similarly situated persons  
26 in the City of Fresno, California, claim that the intentional taking and destruction of their  
27 personal property constitutes a violation by defendants of plaintiffs' federal and state  
28 constitutional rights to be free from unreasonable search and seizure and to due process of

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

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

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

15  
16 **Jurisdiction and Venue**

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

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

22  
23 **Parties**

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

26 10. Plaintiff Doug Deatherage is a resident of the City of Fresno and at all  
27 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 and now is homeless.

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

11 16. Defendant Alan Autry is the Mayor of the City of Fresno and has either  
12 directed or ratified the unlawful conduct alleged herein.

13 17. Defendant Jerry Dyer is Chief of the Fresno Police Department, and in that  
14 capacity is responsible for the operations of the Police Department.

15 18. Defendant Greg Garner is a Captain of the Fresno Police Department and has  
16 personally directed and taken part in the unlawful practices and policies alleged in this  
17 complaint.

18 19. Defendant Reynaud Wallace is an officer of the Fresno Police Department  
19 and has personally directed and taken part in the unlawful practices and policies alleged in  
20 this complaint.

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

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

27

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

4           23. Defendant James Province is a Caltrans employee and is the Caltrans  
5 Superintendent for the Fresno area.

6           24. Defendant Daryl Glenn is a Caltrans employee who directs Caltrans’ Special  
7 Programs People program in the Fresno area.

8           25. All of the above individual defendants are sued in their individual and  
9 official capacities, except defendant Kempton who is sued only in his official capacity and  
10 only for violations of federal law.

11           26. Plaintiffs are informed and believe that DOES 1 through 50 at all relevant  
12 times herein were officers and employees of the City of Fresno, including the Fresno Police  
13 Department and the Community Sanitation Division of the City of Fresno, and that DOES  
14 51 through 100 were officers and employees of Caltrans. Plaintiffs are ignorant of the true  
15 names and capacities of defendants sued herein as DOES 1 through 100 and therefore sue  
16 said defendants by such fictitious names. Plaintiffs will amend this complaint to allege their  
17 true names and capacities when ascertained. Plaintiffs are informed and believe that each of  
18 the DOE defendants is liable for, and proximately caused, the injuries and violations of  
19 constitutional and statutory rights complained of herein. Plaintiffs will ask leave to amend  
20 this complaint to insert further charging allegations when such facts are ascertained.

21           27. Plaintiffs are informed and believe that the acts of defendants complained of  
22 herein were undertaken in the execution of customs, policies and practices of authorized  
23 policymakers of the defendant City of Fresno and were joined in and/or implemented by the  
24 remaining defendants, and each of them, acting as the agent, servant, employee and/or in  
25 concert, and/or in conspiracy with each of said other defendants. Each of the defendants  
26 caused, and is liable for, the unconstitutional and unlawful conduct and resulting injuries by,  
27 among other things, personally participating in said conduct or acting jointly or conspiring  
28 with others who did so; by authorizing, acquiescing or setting in motion policies, plans and

1 actions that led to the unlawful conduct; by failing to take action to prevent the unlawful  
2 conduct; by failing and refusing with deliberate indifference to maintain adequate training  
3 and supervision; and by ratifying the unlawful conduct taken by employees under their  
4 direction and control, including failing to take remedial and disciplinary action.

5 28. The acts complained of herein were intentionally and jointly committed, and  
6 will continue to be committed jointly and systematically by defendants unless restrained by  
7 this Court.

8  
9 **Class Allegations**

10 29. The claims set forth hereinafter are brought by plaintiffs on their own behalf  
11 and as representatives of a Class of similarly situated persons pursuant to Rules 23(a),  
12 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all homeless  
13 persons in the City of Fresno whose personal belongings have been or will be taken and  
14 destroyed by one or more of the defendants.

15 30. The members of the Class are so numerous that individual joinder of all  
16 members is impossible. Plaintiffs are informed and believe on that basis allege that the  
17 members of the Class well exceed 100 in number.

18 31. There are common questions of law and fact that predominate over any  
19 questions affecting only individual Class members. Among the common questions of law  
20 and fact are the following:

21 a. Whether defendants' policies, practices and conduct of taking and  
22 destroying the personal property of homeless people, without providing either adequate  
23 notice or the opportunity to retrieve personal possessions before they are destroyed, and  
24 without a legitimate governmental interest, violated and continues to violate the class  
25 members' state and federal constitutional rights against unreasonable search and seizure;

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

1 and continues to violate the class members' due process rights under the California and  
2 United States Constitutions;

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

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

12 32. Plaintiffs will fairly and adequately protect the interests of the Class. They  
13 have retained counsel who are experienced and competent in class-action and civil rights  
14 litigation. Plaintiffs have no interests that are adverse or antagonistic to interests of other  
15 members of the Class.

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

23 **Factual Allegations**

24 34. Between 4,400 to 8,800 of Fresno's approximately 440,000 residents are  
25 homeless, according to a recent report by a consortium of local government agencies and  
26 providers. (Fresno Madera Continuum of Care Plan To End Homelessness at 10-11,  
27 attached as Exhibit A hereto.) However, services for low-income people in need of shelter  
28 are extremely scarce. "[O]nly 1.4% of the homeless population [is] sheltered . . . leaving

1 more than 98% of the homeless population unsheltered and receiving no services.” (*Id.* at  
2 13.) The report indicates that there is currently an “overwhelming need for homeless  
3 assistances,” with a gap of approximately 7,000 shelter/housing spaces in the Fresno-  
4 Madera area. (*Id.*) The lack of shelter for women is particularly acute. Naomi House, one  
5 of the few shelters in Fresno for women, has capacity for only 25 women on any given  
6 night. On information and belief, a lottery is held every day to choose which women will  
7 be allowed to stay in the shelter on that night. Those who are not successful in this lottery  
8 are turned away, and often end up staying on the streets nearby.

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

17           36. On or about May 3, 2006, defendants raided several areas in Fresno where  
18 they knew a significant number of plaintiffs and members of the plaintiff Class resided,  
19 including an area on the west side of E Street near Santa Clara Avenue, abutting Highway  
20 99. On information and belief, this area is owned and controlled by defendant Caltrans. In  
21 this raid, Fresno employees used a bulldozer to destroy and dispose of all the personal  
22 property of plaintiffs in their path. Plaintiffs had no adequate notice that defendants would  
23 destroy their property. Defendants made no attempt to save items that belonged to people,  
24 and in fact restrained efforts by homeless people to retrieve their personal property in order  
25 to prevent it from being taken and destroyed. Nor did defendants make any provisions for  
26 people to claim their property after it had been seized. Rather all plaintiffs’ property that  
27 was seized was summarily destroyed.



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

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

1 8:00 a.m., making the notice further inadequate and misleading. Defendants also continued  
2 with their policy of destroying property even while it was being claimed by the owners.

3 39. On or about July 1, 2006, defendants continued their unlawful seizures of the  
4 property of plaintiffs and members of the plaintiff class. Early in the morning on July 1,  
5 2006, members of the Fresno Police Department, complete with squad cars, a paddy wagon,  
6 and a flatbed truck arrived near the intersection of E Street and Santa Clara Avenue and  
7 began seizing property in multiple areas in the vicinity. Fresno Police Department  
8 representatives unlawfully and without cause or basis confiscated shopping carts that were  
9 the property of the homeless, including members of the plaintiff Class, loaded the carts onto  
10 the flatbed truck and hauled them away and disposed of them. At no time did defendants,  
11 or any of them, make an effort to determine the ownership of the carts or their contents, or  
12 to allow plaintiffs or members of the plaintiffs' Class to make a claim for the return of their  
13 personal possessions.

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

25 41. Early in the morning on or about October 8, 2006, members of the Fresno  
26 Police Department came to an area near H Street and San Benito where plaintiffs and/or  
27 members of the plaintiff Class were found. The Fresno Police Officers, without cause or  
28 basis, confiscated all of the shopping carts possessed by plaintiffs and members of the

1 plaintiff Class and took them away for destruction. The Fresno Police Officers dumped all  
2 the contents of all the shopping carts onto the ground resulting in damage to that property.  
3 Plaintiffs' shopping carts were not stolen and no legal basis existed to confiscate them. No  
4 provision was made for plaintiffs or members of the plaintiff Class to retrieve their carts,  
5 which are essential to their ability to move their property from one place to another.

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

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

22 44. Such acts and omissions include but are not limited to the following: On  
23 June 16, 2006, defendant Wallace of the Fresno Police Department sent an email to  
24 defendant Glenn of Caltrans stating that Fresno would be conducting a "clean-up" operation  
25 at Ventura and E St. on June 22 2006. Attached to the email was a memorandum from  
26 defendant Capt. Garner of the Fresno Police Department to "All Campers on Ventura/E,"  
27 which stated that any property not removed from the area "we will take as trash." This  
28 email was forwarded to the Caltrans Fresno Area Superintendent, defendant Province. As

1 described below, the City did conduct an operation on Caltrans property on June 22, 2006,  
2 and property of the homeless was unlawfully seized and destroyed. On June 23, 2006,  
3 defendant Wallace sent another email to defendant Glenn, requesting a meeting with him or  
4 his supervisor “to discuss a long term fix for the campers @ Ventura/E. as you know as  
5 soon as we clean they come right back... our hands are somewhat tied being that it is Cal  
6 Trans property and it’s a real eyesore for anyone entering the city from 99.” On August 25,  
7 2006, Caltrans issued an encroachment permit which authorized the City to conduct a  
8 cleanup operation and to construct a fence at the same location. As described above, the  
9 City acted the following day pursuant to this permit and conducted a cleanup operation on  
10 August 26, 2006, during which the property of the homeless was unlawfully seized and  
11 destroyed. On information and belief, in addition to the property that was the subject of the  
12 August 26, 2006 operation, Caltrans owns other property in the City of Fresno on which  
13 homeless people live and/or keep their belongings.

14 45. Plaintiffs and members of the plaintiff Class have suffered the loss of  
15 property, damage and treatment described in the foregoing paragraphs on one or more  
16 occasions set forth above.

17 46. Plaintiff Pamela Kincaid’s personal property has been confiscated and  
18 destroyed by Defendants on at least two occasions. Approximately one year ago, almost all  
19 of her possessions were seized and destroyed in one of defendants’ raids, including her  
20 identification; her birth certificate; her telephone/address book; and family photos, which  
21 contained the only pictures she had of her sister, her daughter, and her deceased mother.  
22 Approximately 2 months ago, defendants seized her shopping cart, a toolbox, and various  
23 tools that she used to make crafts, such as jewelry and “dreamcatchers,” which she was able  
24 to sell to make a little income. This property was not abandoned and it was obviously  
25 valuable property. She was given no opportunity to save or retrieve her property.

26 47. Plaintiff Doug Deatherage’s personal property has been confiscated and  
27 destroyed by Defendants on at least two occasions. On or around June 22, 2006, he and his  
28 girlfriend had a tent on a strip of land between E Street and the highway in Fresno.

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

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

25           49. Plaintiff Cynthia Greene has had some or all of her belongings seized by  
26 Defendants approximately five times since January 2006. Property of plaintiff Greene's  
27 that Defendants have confiscated include: photographs of her deceased relatives (her father,  
28 mother, and brother); bicycles; tent and bedding; and winter gear such as rain suits and an

1 umbrella, resulting in her getting sick as a result of being out in the rain without any shelter.  
2 In the last such raid, on or about August 27, 2006, defendants confiscated plaintiff Greene's  
3 belongings with a bulldozer truck, even as she and other homeless women were trying to  
4 move their belongings. In this raid, the Fresno employees destroyed her property including  
5 medication; her tent and blankets; her personal papers and identification; and her backpack.

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

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

### 18 **Requisites for Relief**

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

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

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

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

16           56. The acts of defendants were willful, wanton, malicious, and oppressive and  
17 done with conscious disregard and deliberate indifference for plaintiffs and their rights.

18           57. Plaintiffs have filed administrative claims with the City of Fresno pursuant  
19 to California Government Code § 910 *et seq.*

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

23           58. Plaintiffs reallege and incorporate here paragraphs 1 through 55 above, as  
24 though fully set forth.

25           59. Defendants' above-described policies, practices and conduct violate  
26 plaintiffs' right to be free from unreasonable searches and seizures under the Fourth  
27 Amendment to the United States Constitutional and 42 U.S.C. § 1983.

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

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

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

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

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

63. Defendants’ above-described policies, practices and conduct 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 governmental 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 United States Constitution and 42 U.S.C. § 1983.

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

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

65. Defendants’ above-described policies, practices and conduct violated 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))**

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

67. 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))**

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

69. 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)**

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

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

8 73. 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 74. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as  
15 though fully set forth.

16 75. 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 76. 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.

**Prayer for Relief**

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

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

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December 13, 2006

Respectfully submitted,  
  
HELLER EHRMAN LLP  
  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
  
ACLU FOUNDATION OF NORTHERN  
CALIFORNIA

By /s/ Paul Alexander  
Paul Alexander  
Attorneys for Plaintiffs

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