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12 *Attorneys for Plaintiffs*

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 Kenneth Glover; David Sestini;
17 Douglas Frederes Jr.; Jeffrey Aiken;
18 Katrina Aune; John Miller; Lisa
19 Holbrook, Richard Owens, James Scott
20 Rudolph, and Michael Newman,
individually, and on behalf of all others
similarly situated

21 Plaintiffs,

22 vs.

23 CITY OF LAGUNA BEACH; THE
LAGUNA BEACH POLICE
24 DEPARTMENT, a California charter
city

25 Defendants.

CASE NO. 8:15-CV-01332-AG-DFM

CLASS ACTION

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

Title II of the Americans with Disabilities
Act; Section 504 of the Rehabilitation Act
of 1973; the Eighth and Fourteenth
Amendments and California Constitution,
Art. I. sec. 7, 17

Judge: Hon. Andrew J. Guilford
Ctrm: 10D

1 against disabled, homeless persons, based on their status, as appropriate and legally
2 permissible.

3 7. Many homeless individuals with disabilities cannot access the City's
4 homelessness program. Many cannot tolerate the crowded, noisy, and chaotic
5 environment of the ASL. Some can only stay in the ASL environment for a short
6 period before they experience deterioration in their mental condition that forces
7 them to leave. Others are kicked out because their disabilities prevent them from
8 being able to conform to the ASL's requirements. Sometimes there are no spots left
9 in the ASL. When homeless individuals with disabilities cannot access the ASL,
10 they have no safe, legal place to sleep within the City, and are at risk of criminal
11 citation for merely sleeping or lying down with their belongings. The risk of
12 criminal sanctions adds increased anxiety and fear to the inherent stress and dangers
13 of living outdoors. And as individuals remain unsheltered, their mental and
14 physical health worsens. Without shelter or other supports, many become
15 incarcerated.

16 8. Despite knowing that the vast majority of homeless persons in Laguna
17 Beach have disabilities and that many of these individuals cannot access the ASL
18 because of their disabilities, the City has failed to create safe accessible sleeping
19 alternatives, and has persisted in its strategy of heavy law enforcement. Numerous
20 disabled, homeless persons who cannot access or who have been excluded from the
21 City's homelessness program, have been cited for sleeping or resting in public –
22 innocent activities they cannot avoid while they remain in Laguna Beach. LBPB
23 uses a variety of prohibitions to target those they find sleeping in public outdoor
24 spaces, including California Penal Code ("Penal Code") section 647(e) (prohibits
25 "lodging" in public), and Laguna Beach Municipal Code ("L.B.M.C.") sections
26 8.30.030 (prohibits "camping" in public), 18.05.020 (beach curfew). Many
27 disabled, homeless individuals who receive these citations are unable to pay the fine
28 and/or are unable to travel to appear in court. Therefore, many of these citations go

1 to warrant, exposing disabled, homeless individuals living in Laguna Beach to more
2 fines, which they have no means to pay, and/or jail time.

3 9. Homeless individuals who are unable to access the ASL often travel
4 dangerous routes to avoid interactions with the police which may result in
5 harassment or citation. For example, individuals may travel on foot along the dark,
6 winding roadway back to town or seek refuge in the canyon around the shelter.
7 These options are risky – in at least five high-profile incidents in the past several
8 years, homeless persons have been killed or seriously injured along this roadway or
9 in the canyon.

10 10. Because of this discriminatory, unlawful and unconstitutional conduct
11 of the City and the LBPD, Plaintiffs bring this action for preliminary and permanent
12 injunctive relief, declaratory relief, and nominal damages. This action is based
13 upon the rights secured to Plaintiffs by Title II of the Americans with Disabilities
14 Act, 42 U.S.C. § 12132 (the “ADA”); Section 504 of the Rehabilitation Act of 1973
15 (the “Rehabilitation Act”) and under the Eighth and Fourteenth Amendments to the
16 United States Constitution, and Article I, sections 7 and 17 of the California
17 Constitution.

18 **PARTIES**

19 **Plaintiffs**

20 11. Plaintiffs are chronically homeless individuals with disabilities who
21 live in Laguna Beach. Each Plaintiff has either experienced homelessness for an
22 extended period or has repeatedly cycled in and out of homelessness, and each has a
23 disability. As disabled, homeless individuals living in Laguna Beach, Plaintiffs
24 face constant scrutiny as they try to navigate and cope with the resources and
25 restraints that comprise the City’s homelessness program, including the limited,
26 often inaccessible, ASL and risks of criminal citation when they cannot access this
27 shelter. The constant scrutiny often worsens their mental and physical health. Each
28 Plaintiff needs an accessible alternative to the ASL.

1 **Kenneth Glover**

2 12. Plaintiff KENNETH GLOVER is a forty-seven-year-old, chronically
3 homeless Orange County native. He was raised in Laguna Niguel and Dana Point,
4 but moved to Laguna Beach in 2011 and considers it his home. Glover was
5 employed as a commercial fisherman, but lost his job during the recession. He has
6 been diagnosed with depression and alcoholism.

7 13. Despite living in Laguna Beach for four years, Glover is not
8 considered a “Laguna Beach homeless resident” by the City. While currently
9 housed through a county program,¹ when he used the ASL he could only sleep there
10 when he won the lottery for an empty space. For several years, Glover used the
11 lottery system to obtain sleeping space about twice per week. Plaintiff Glover
12 found staying at the ASL very stressful; he experienced difficulty sleeping there
13 because of the noise and commotion, and often had nightmares while staying there.

14 14. On nights when he did not get a space at the ASL, Plaintiff Glover had
15 no legal place to sleep. On September 6, 2012, Glover slept in the parking lot of
16 the ASL after having been turned away. He was discovered by police the next
17 morning and cited for violating Penal Code section 647(e). On another occasion, he
18 was discovered by police at around 9:30 p.m. after being put on the “alternate” list
19 for the ASL. The LBPD told Glover he had to leave town and provided him with a
20 bus pass to get to the Armory Shelter in Fullerton. However, after the long bus ride
21 from Laguna Beach to Fullerton, the Armory Shelter had already closed its doors
22 for the evening and Glover was forced to sleep outdoors in an unfamiliar city.
23 After that, Glover tried to avoid sleeping in the ASL parking lot. Instead, Glover
24 would journey two and a half miles along Laguna Canyon Road by foot or bike in
25 the dark to find a place to sleep on the beach or in surrounding areas where he could
26 avoid the police and local residents. In 2012, Glover was riding his bicycle along

27 _____
28 ¹ Soon after this action was filed, Glover was placed in housing by Orange County
through a one-time, limited-funded grant.

1 Laguna Canyon Road after being unable to secure a spot at the ASL and was hit by
2 a car. As a result of the accident, he acquired a disabling injury to his right hand
3 that has made it more difficult to find work.

4 15. Glover was not always successful in avoiding LBPD's attention – he
5 was cited for sleeping on the beach in violation of L.B.M.C. section 18.05.020 on
6 May 30, 2014, and June 7, 2014. In addition, he was cited for “camping” under
7 L.B.M.C. section 8.30.030 on March 22, 2014. During this period, an LBPD
8 officer asked Glover whether there was anything the officer could do to get Glover
9 to leave the City for good.

10 16. Shortly before the inception of this action, Glover stopped seeking
11 shelter at the ASL because the extreme anxiety of the experience – not knowing
12 whether he would get a spot, having to travel back downtown to seek a safe place to
13 hide if he did not or having to cope with the noisy, crowded environment if he did –
14 became unbearable and caused a deterioration in his mental health. Plaintiff Glover
15 has sought medical treatment for his increased anxiety related to finding a place to
16 hide and sleep each night.

17 **David Sestini**

18 17. Plaintiff DAVID SESTINI (“Sestini”) is a fifty-three-year-old,
19 chronically homeless man who grew up in Orange and Los Angeles Counties. He
20 has lived in Laguna Beach since July 2012. He has bipolar disorder, depression,
21 anxiety, alcoholism, chronic obstructive pulmonary disease (COPD), and heart
22 spasms. In 2006 he received a traumatic head injury from a bicycle accident,
23 leaving him with cluster headaches and balance and memory problems that
24 continue today. Sestini became homeless four years ago after he left a sober living
25 facility because he could not tolerate the living environment. Sestini has difficulty
26 keeping work because of his physical and mental health issues and is frequently
27 hospitalized.

28 18. The City does not consider Sestini to be a Laguna Beach resident;

1 therefore, he can only sleep at the ASL when he wins a lottery spot. On the nights
2 he does not obtain a space at the shelter, he sleeps on local park benches. In the
3 cold winter months, Sestini travels to Fullerton to sleep at the Armory, but this
4 alternative is not available year round.

5 19. On the morning of July 25, 2013, the LBPD cited Sestini just outside
6 the shelter for illegal lodging under Penal Code section 647(e). Plaintiff Sestini had
7 slept spent most of the night sleeping inside the shelter, but had moved outside at
8 approximately 5:00 a.m. to avoid an argument with another person staying there.
9 The citing officer did not give Sestini any alternatives or respond when Sestini told
10 him why he was sleeping outside.

11 20. In the last year, Sestini has been kicked out of the ASL several times
12 because he experiences difficulty related to his bipolar disorder and anxiety
13 controlling his emotions and conforming his behavior within the stressful shelter
14 environment. When kicked out of the ASL, Plaintiff Sestini experienced extreme
15 stress looking for a place to sleep without attracting the attention of the LBPD; the
16 stress exacerbated his breathing and heart conditions. After being kicked out of the
17 shelter for two weeks during the fall of 2014, Sestini was overcome with worries
18 about losing his job, started having suicidal thoughts and was committed to an
19 inpatient psychiatric ward for several weeks.

20 21. Recently, Sestini was permanently banned from the shelter. Sestini
21 has no safe, legal place to sleep.

22 **Douglas Frederes**

23 22. Plaintiff DOUGLAS FREDERES, JR. ("Frederes") is a thirty-five-
24 year-old, chronically homeless man who grew up in South Orange County.
25 Currently incarcerated, Frederes lived in Laguna Beach for at least three years, with
26 the exception of a seven-month stint in Las Vegas when he was forced to leave
27 town due to intense harassment by the LBPD. Frederes was diagnosed with bipolar
28 disorder at the age of fourteen and spent several months in a mental health facility;

1 he often has paranoia. As a result, he has a difficult time finding and keeping work.
2 In the past, he has performed work in carpentry, as a machinist, and in working
3 with granite and marble, but he has not held a paid position since 2009.

4 23. The City never considered Frederes to be a Laguna Beach resident;
5 therefore, he could only sleep at the ASL when he won a space in the nightly
6 lottery. Frederes slept at the shelter often, but eventually stopped using the ASL
7 because he found that its noisy and chaotic environment caused him significant
8 stress and worsened his mental health symptoms. In addition, Frederes has been
9 kicked out of the shelter because of difficulties arising from his mental illness,
10 getting along with the other homeless individuals who use the shelter and
11 conforming his behavior to that required by shelter staff. As a result, Frederes
12 frequently slept on the beach or elsewhere instead. Frederes has been cited at least
13 14 times while sleeping outdoors in Laguna Beach, including three times under
14 L.B.M.C. section 8.30.030 (May 12, 2013, July 20, 2013, and January 20, 2014),
15 six times under L.B.M.C. section 18.05.020 (July 13, 2013, January 27, 2014,
16 February 4, 2014, February 15, 2014, August 13, 2014, and July 15, 2015), four
17 times under California Penal Code section 647(e) (March 27, 2013, April 16, 2013,
18 April 25, 2013, and August 10, 2013), and once under L.B.M.C. section 18.04.020
19 (July 31, 2015), an ordinance not in force at the time of the citation.² In addition,
20 LBPD members recently pressured Frederes to leave town again. Because Frederes
21 had no income and no money, he could not afford transportation out of town, and in
22 any case, there was nowhere else for him to go.

23 **Jeffrey Aiken**

24 24. Plaintiff JEFFREY AIKEN (“Aiken”) is a 54-year-old homeless
25 veteran who has lived in Laguna Beach for two years. He grew up in Orange
26 County, graduated from Orange Coast College in 1983, and served for 10 years in

27 _____
28 ² Provisions of this ordinance were repealed in March 2009, following an earlier
legal challenge. *See infra* ¶¶ 43-44.

1 the Air Force until he was discharged for disability in 1998. He has not had steady
2 employment since his discharge. Aiken has mental disabilities including
3 depression and schizophrenia, and physical disabilities including a knee injury and
4 a brain injury.

5 25. While currently housed,³ Aiken slept the ASL when he won a lottery
6 spot, as the City did not consider him to be a Laguna Beach resident. Aiken found
7 the environment stressful because some of the other occupants were frequently
8 agitated or intoxicated. When he could not stay at the shelter, Aiken slept in a
9 location in Laguna Canyon that he keeps a closely guarded secret, or on the beach.
10 Because he was sometimes forced to sleep outside, Aiken has been cited for beach
11 curfew violations under L.B.M.C. section 18.05.020 and a violation of the
12 L.B.M.C. section 8.30.030 for sleeping in public on April 15, 2014. More recently,
13 he received a warning for sleeping in the ASL parking lot after being turned away
14 the evening of April 9, 2015.

15 **Katrina Aune**

16 26. Plaintiff KATRINA AUNE (“Aune”) is a thirty-five-year-old native of
17 Vancouver, Canada who has been homeless in Laguna Beach since late-2011 or
18 early-2012. Aune has two children, aged 9 and 12, both of whom have permanent
19 housing. Aune has depression, post-traumatic stress disorder, and obsessive
20 compulsive disorder.

21 27. While currently housed through a county program,⁴ Aune stayed at the
22 ASL intermittently for the last three or four years. Because the City did not consider
23 her a Laguna Beach resident, she had to rely on winning a lottery spot. Even on
24 nights where Aune was able to obtain a spot at the shelter, she found it difficult to
25 sleep because of the noise and commotion. She also felt harassed and threatened by

26 ³ Plaintiff Aiken was placed in housing by Orange County through a one-time,
27 limited-funded grant in March 2016.

28 ⁴ Soon after Plaintiffs’ filed a motion for preliminary injunction, Aune was placed in
housing by Orange County through a one-time, limited-funded grant.

1 other shelter occupants. On nights that Aune did not win a spot, she slept in the
2 shelter parking lot or sometimes at the beach in the vicinity of others for safety.
3 Aune considers sleeping outside “torture” because the police frequently interrupted
4 her sleep. Aune has been ticketed by the LBPD for illegal lodging on at least one
5 occasion on September 15, 2013 and received a verbal warning for sleeping in the
6 shelter parking lot in early April 2015. Her emotional state was deteriorating from
7 the constant stress of sleeping at the shelter and outdoors.

8 **John Miller**

9 28. Plaintiff JOHN MILLER (“Miller”) is a 50-year-old man who attended
10 high school in Laguna Beach and lived and worked in Laguna Beach after high
11 school. Miller has not worked since 2002 due to his disabilities, and has received
12 disability benefits from the Social Security Administration for the past twelve
13 years. Nevertheless, his modest income is not enough to enable him to obtain
14 housing, and he was homeless in Laguna Beach for three to five years. Miller has
15 been diagnosed with clinical depression, as well as several chronic health
16 conditions including Chronic Obstructive Pulmonary Disease, chronic back pain,
17 neuropathy, and early onset Parkinson’s Disease. In addition, he has Post-
18 Traumatic Stress Disorder. Further, Miller has been prescribed medications, one of
19 which incapacitates him and makes him vulnerable to victimization.

20 29. While currently housed through a county program,⁵ Miller previously
21 slept at the ASL. Often, he found that the noise, chaos and unsanitary conditions at
22 the ASL aggravated his mental health and forced him to sleep elsewhere.
23 Sometimes being at the ASL caused him to be severely depressed to the point that
24 he could not engage in self-care activities, such as eating, and had suicidal thoughts.

25 _____
26 ⁵ Soon after Plaintiffs filed a motion for preliminary injunction, Miller was placed in
27 housing by Orange County through a one-time limited-funded grant.

28 ⁶ Soon after Plaintiffs filed a motion for preliminary injunction, Holbrook was
placed in housing provided by Orange County through a one-time, limited-funded
grant.

1 When Miller could not tolerate the ASL, he had no safe, legal place to sleep and
2 had to sleep outside in Laguna Beach, where he risked scrutiny from the LBPD. He
3 received a ticket under Penal Code section 647(e) on October 5, 2015, after this
4 action was filed.

5 **Lisa Holbrook**

6 30. Plaintiff LISA HOLBROOK (“Holbrook”) is a 49-year-old woman
7 who has been homeless in Laguna Beach for four years. She first became homeless
8 after ovarian cancer in her twenties and thirties left her disabled and unable to work.
9 She was diagnosed with anxiety ten years ago and with bipolar disorder two years
10 ago.

11 31. The City of Laguna Beach does not consider Holbrook to be a resident.
12 While currently housed through a county program,⁶ Plaintiff Holbrook has slept in
13 the ASL using the lottery system. Even when Holbrook was able to win a spot in
14 the ASL lottery, she experienced difficulty coping with the noisy, chaotic
15 conditions at the ASL which aggravated the symptoms of her anxiety and bipolar
16 disorder. She was sometimes harassed by other residents or by the LBPD in the
17 parking lot. These experiences made her irritable and anxious, worsened her
18 insomnia, and triggered panic attacks. Other times, she was kicked out of the ASL
19 because her symptoms made it difficult to stay calm. On nights where she could
20 not stay in the ASL environment due to her disabilities, Holbrook was forced to
21 sleep outside, which terrified her, and where she ran the risk of being cited by the
22 LBPD for sleeping in public.

23 **James Scott Rudolph**

24 32. Plaintiff JAMES SCOTT RUDOLPH lives in Laguna Beach and first
25 became homeless in 2007. He has depression, anxiety, and takes prescribed

26 _____
27 ⁶ Soon after Plaintiffs filed a motion for preliminary injunction, Holbrook was
28 placed in housing provided by Orange County through a one-time, limited-funded
grant.

1 medication to manage his symptoms. Because of his psychiatric disability, Plaintiff
2 Rudolph finds it extremely difficult to be around a lot of people. He also has
3 physical disabilities for which he has been hospitalized, including hepatitis C. He
4 has limited use of his right hand, which has hindered his ability to work.

5 33. Plaintiff Rudolph has stayed at the ASL one time, but he found the
6 crowd and noise too intimidating and as a result he experienced extreme anxiety.
7 He has never returned to the ASL to sleep.

8 34. Mr. Rudolph has received citations for sleeping outdoors in public
9 spaces.

10 **Richard Owens**

11 35. Plaintiff RICHARD OWENS is in his 40s and grew up in South
12 Orange County around Laguna Beach. He has been homeless for seven years. He
13 has bipolar disorder, anxiety disorder, and seizures. He has been involuntarily
14 hospitalized in psychiatric units. He has also been diagnosed with COPD. He has
15 had two strokes.

16 36. The City of Laguna Beach does not consider Owens to be a “resident,”
17 so he has to enter a lottery to obtain a spot at the ASL. He usually stays at the ASL
18 two times a week. Because of his disabilities, Owens has difficulty staying at the
19 ASL because the environment makes it very difficult for him to manage his mental
20 health symptoms. The crowded conditions of ASL make him feel anxious and
21 stressed out.

22 37. The ASL’s rules and regulations are also difficult for Owens because
23 of his disabilities. For example, no one is allowed to leave the ASL after 8 p.m.
24 and ASL staff lock the gate. Owens feels “caged in” and is unable to get away from
25 a situation that is triggering the symptoms of his disabilities. He once left the ASL
26 after he won a space through the lottery because he needed to go outside the ASL
27 for a while to get some distance between him and another person at the ASL who
28 he was having trouble with. ASL staff would not let him go out and then come back

1 in, so he just left. He has also been banned temporarily from using the ASL
2 because he had a disagreement with another resident at the ASL.

3 38. As a “non-resident” homeless individual, under the City’s
4 homelessness program, Plaintiff Owens is not permitted to store his heavy camping
5 backpack at the ASL. As a result Owens must constantly carry his belongings to
6 and from the ASL, exacerbating his COPD. He feels like he is going to run out of
7 breath, which increases his anxiety.

8 **Michael Newman**

9 39. Plaintiff MICHAEL NEWMAN is 52 years old. Before becoming
10 homeless in 2009, he lived in Laguna Beach for ten years. He has been diagnosed
11 with clinical depression and also has sleep apnea, a hernia and a lower back
12 condition.

13 40. Newman often sleeps at the ASL, but finds that the crowded and
14 unsanitary conditions and chaotic environment at the ASL contributes to his
15 depression and suicidal ideation. Also, because he is made to sleep on the floor on a
16 thin mat at the ASL, his physical disabilities make it difficult for him to get up and
17 down to sleep unless he supplements it with additional padding such as a mattress
18 pad that he rolls up and wraps in a sleeping bag. He has to carry his heavy bedding
19 and additional private property to and from the storage bin behind the ASL
20 building, which can aggravate his hernia and lower back condition.

21 41. Newman has been banned or threatened to be banned from the ASL on
22 a few occasions because his disabilities make it difficult for him to conform to the
23 rules, which are strict, ever-changing, and arbitrarily enforced. Many of these
24 experiences – including difficulties accessing shelter or coping with the shelter
25 environment, citation and harassment at the hands of the police, and declining
26 mental and physical health – are shared by other disabled, homeless persons living
27 in Laguna Beach.

1 **Defendants**

2 42. Defendant Laguna Beach is a municipal entity, organized as a charter
3 city under the laws of the State of California, with the capacity to be sued.
4 Defendant Laguna Beach is the legal and political governmental entity responsible
5 for the actions of the LBPD, its officials, its agents, and its employees. Defendant
6 Laguna Beach is sued in its own right and on the basis of the acts of its officials,
7 agents, and employees, including the LBPD.

8 43. Defendant LBPD provides law enforcement services in Laguna Beach
9 and enforces Laguna Beach’s municipal code and the California Penal Code.

10 44. Each of the acts complained of was undertaken and each violation of
11 Plaintiffs’ rights occurred pursuant to the unlawful policies, practices, and customs
12 of Defendants.

13 45. Each Defendant was acting on behalf of Laguna Beach or at the
14 direction of another Defendant on Laguna Beach’s behalf.

15 46. The acts of each Defendant were authorized, ratified, and/or condoned
16 by the relevant policy makers for Defendant Laguna Beach and/or LBPD.

17 47. Thus, each of the complained violations of law, were intentionally
18 committed by Defendants, their officials, agents, and employees, acting under color
19 of law.

20 **STATEMENT OF FACTS**

21 **Chronic Homelessness in Laguna Beach**

22 48. The homeless population of Laguna Beach is comprised of persons
23 who are almost exclusively individuals with disabilities who are chronically
24 homeless, *i.e.* those “with a mental or physical disability who experience long-term
25 or repeated homelessness.” City of Laguna Beach Homeless Task Force Final
26 Recommendations at 3-4 (2008). Defendants are aware that the vast majority of
27 homeless persons living in Laguna Beach are disabled. *See id.*; Christa Woodall,
28 *Addressing Laguna Beach’s Homeless*, O.C. Register, Sept. 5, 2007 (quoting Police

1 Chief as estimating that half of City’s homeless population “battle mental illness,
2 most without acknowledging the problem”); *see also* City of Laguna Beach’s
3 Housing Element, 2013-2021 (“Individuals with a disability . . . comprise the
4 greatest majority of Laguna’s homeless at 80% . . .”).

5 49. Mental and physical disabilities are both causes and consequences of
6 homelessness. While persons with disabilities have a greater risk of homelessness,
7 studies also show that the adversity and stress of homelessness can lead to the
8 development or exacerbation of disabilities. Further, unsheltered homeless persons
9 have a greater risk of experiencing violence and physical health problems, which
10 can cause or exacerbate psychiatric and other disabilities.

11 50. Living in a shelter is impossible for some chronically homeless people
12 with mental and physical disabilities. Nationally and in Orange County,
13 chronically homeless persons are significantly more likely than other homeless
14 persons to be living in public places rather than in a homeless shelter. Meanwhile,
15 the unhealthy and unsafe conditions associated with prolonged homelessness
16 worsen the symptoms of mental and physical disabilities, making it even less likely
17 for individuals to access shelter facilities.

18 51. For chronically homeless persons with disabilities, the most effective
19 way to address their homelessness is to provide permanent housing with wrap-
20 around services such mental health care and case management services. Permanent
21 supportive housing using a “Housing First” approach is recognized by the federal
22 government and experts as the best means of housing and stabilizing individuals
23 experiencing extended or repeated periods of homelessness who also have a
24 disabling condition. U.S. Interagency Council on Homelessness, *Opening Doors:
25 Federal Strategic Plan to Prevent and End Homelessness* 18 (2010) (“For people
26 experiencing chronic homelessness, the research is clear that permanent supportive
27 housing using a Housing First approach is the solution.”). Research has
28 demonstrated that permanent supportive housing is both effective at permanently

1 reducing homelessness and saves taxpayers money as compared to the costs of
2 emergency shelter and of cycling homeless persons through the criminal justice
3 system. *Id.* (reviewing results of 13 studies demonstrating that it is cheaper to
4 provide permanent supportive housing as compared to the costs of chronic
5 homelessness, including jail and health care costs).

6 **Laguna Beach Homelessness Program**

7 ***Sipprelle* Litigation and Settlement**

8 52. The City, through LBPD, has a history of targeting disabled, homeless
9 persons for increased law enforcement, harassment, and scrutiny – and has been put
10 on notice that such conduct violates the rights of these disabled, homeless
11 individuals.

12 53. In December 2008, the ACLU of Southern California and co-counsel
13 filed suit on behalf of several disabled, homeless individuals challenging the City’s
14 policy and practice of enforcing Laguna Beach Municipal Code (“L.B.M.C.”)
15 section 18.04.020⁷ against disabled, homeless persons in a manner that criminalized
16 sleeping in all public places at night and conducting “sweeps” of beaches, parks,
17 and other public places at night and in the early morning to wake and harass
18 sleeping homeless persons, as well as other enforcement tactics that targeted
19 disabled, homeless individuals. *Sipprelle v. City of Laguna Beach*, No. 08-01447
20 (C.D. Cal. filed Dec. 23, 2008). The lawsuit sought injunctive and declaratory
21 relief and included claims for violating plaintiffs’ rights to due process, freedom
22 from cruel and unusual punishment, and under Title II of the ADA.

23 54. The case settled extremely quickly, without any decision from the
24 Court. In March 2009, the City of Laguna Beach repealed portions of L.B.M.C.

25 _____
26 ⁷ L.B.M.C. section 18.04.020 provided that “No person shall pitch a tent or camp or
27 sleep upon any beach, park, public street, alley or passageway, or sleep in any
28 automobile parked at any place within the city; provided that between the hours of
seven a.m. and seven p.m. it shall not be unlawful to sleep upon any beach within
the city.”

1 section 18.04.020 pertaining to camping and sleeping in public places. In the
2 settlement agreement, Defendants further agreed to limit enforcement of Penal
3 Code section 647(e) against homeless persons for camping or sleeping in public for
4 a period of two years.

5 55. Despite the terms of the settlement, in November 2009, the City
6 adopted its current homelessness program that combines tough police enforcement
7 of newly enacted sleeping bans with operating a small shelter for homeless
8 individuals referred to as the “Alternative Sleeping Location” or “ASL.”

9 **Renewed Enforcement**

10 56. Soon after the expiration of the *Sipprelle* settlement agreement, the
11 City of Laguna Beach resumed its targeted harassment of disabled, homeless
12 individuals. The City enacted L.B.M.C. section 8.30.030, a new ordinance
13 criminalizing camping and sleeping in public areas. LAGUNA BEACH, CAL., CODE §
14 8.30.030 (the “New Ordinance”). Like the prior ordinance, the New Ordinance
15 makes it unlawful to sleep in public parks and beaches at night, on any public street
16 or sidewalk, or on City property and to camp in any public place. Camping is
17 defined broadly to include “residing in or using any public areas for living
18 accommodation or lodging purposes . . . with one’s possessions or while storing
19 one’s possessions.” LAGUNA BEACH, CAL., CODE § 8.30.020. It is impracticable
20 for an unsheltered homeless individual to sleep in compliance with the ordinance.

21 57. LBPD officers routinely issue misdemeanor citations to disabled,
22 homeless individuals for sleeping outdoors -- sometimes as violations of the New
23 Ordinance, but more commonly as violations of Penal Code section 647(e), which
24 defines disorderly conduct, a misdemeanor, to include “lodg[ing] in any building,
25 structure, vehicle, or place, whether public or private, without the permission of the
26 owner or person entitled to the possession or in control of it.”

27 58. The City also enforces a beach curfew under which the beaches are
28 closed from 1:00 a.m. to 5:00 a.m. each night. LAGUNA BEACH, CAL., CODE §

1 18.05.010. Ostensibly, “no person shall enter, remain or stay on any city beach or
2 in any city park at any time when such beach or park is closed.” *Id.* § 18.05.020.
3 Yet, the L.B.M.C. also provides a number of exceptions for nearly every other
4 activity one would engage in at the beach – except sleeping. *Id.* § 18.05.040
5 (permitting walking, jogging, fishing, or grunion hunting, . . .scuba diving, surfing,
6 or swimming in the ocean” while beaches are “closed”).

7 59. LBPD frequently enforces the New Ordinance and Penal Code section
8 647(e) against individuals who sleep outdoors because they cannot access the ASL
9 – either because the individuals failed to win a lottery spot or because the
10 individuals cannot tolerate the ASL due to their mental or physical disabilities.
11 Moreover, the City has relied more heavily on the beach curfew ordinances to
12 punish the same underlying conduct.

13 **Alternative Sleeping Location**

14 60. At the same time the City enacted the New Ordinance, the City
15 authorized and funded the creation and operation of the ASL, a small shelter-like
16 congregate living facility. The City contends that the existence of the ASL allows it
17 to legally enforce laws prohibiting sleeping, camping, or lodging in public – despite
18 its limited sleeping capacity (45) and its accessibility problems.

19 61. The ASL is operated by Friendship Shelter and funded by the City
20 (partially through federal Community Development Block Grant (“CDBG”) funds
21 received through Orange County). It is located approximately two-and-a-half miles
22 outside of the downtown area, along Laguna Canyon Road – a dark, twisting two-
23 lane roadway which runs from downtown Laguna Beach inland through Laguna
24 Canyon towards the City of Irvine. A van is provided to transport homeless
25 individuals from the downtown area to the ASL in the evening. Access to the ASL
26 is limited – on any given night 5-15 people are turned away because of a lack of
27 capacity. The City-funded van does not transport homeless individuals back to the
28 downtown area, or anywhere else, if they are turned away from the ASL.

1 62. The ASL is housed in a mobile modular unit. It sleeps forty-five
2 individuals in one room. Individuals sleep on the floor on thin mats, which makes
3 it difficult, if not impossible, for disabled, homeless individuals with physical
4 disabilities from getting up and down from the floor to sleep or go to the bathroom.
5 ASL staff often does not assist disabled, homeless individuals up and down, either
6 because they lack the desire, training, or authority, which often results in disabled,
7 homeless individuals urinating on themselves where they lay.

8 63. The ASL has three bathrooms, including one with a roll-in shower
9 designated for individuals with physical disabilities. Shelter staff restricts the
10 amount of time a homeless individual can be in the bathroom to use the facilities
11 and/or shower. Time restrictions are arbitrarily determined and enforced, and often
12 do not account for the needs of disabled, homeless individuals.

13 64. At the City's behest, the ASL gives priority to those who can
14 demonstrate that they are "local Laguna Beach residents." To meet the residency
15 requirement, homeless individuals must demonstrate that an immediate family
16 member currently lives in Laguna Beach, that they attended K-12 school in Laguna
17 Beach, that they leased or paid utilities for residential property in Laguna Beach, or
18 that the LBPD knows them to have been members of the Laguna Beach homeless
19 community for at least 18 months. However, these criteria are not applied evenly
20 and LBPD officers, generally, and the LBPD's "Community Outreach Officer,"
21 specifically, is given full discretion to determine who is a "local Laguna Beach
22 resident." Many disabled, homeless persons who have lived in Laguna Beach for
23 longer than 18 months are nevertheless deemed not to be "local Laguna Beach
24 residents" and are therefore less likely to be able to access the ASL. Homeless
25 individuals have been deemed to be non-residents even when they have multiple
26 interactions with the LBPD over an 18-month period.

27 65. An individual who does not meet this City residency requirement can
28 only receive shelter by appearing at the ASL in person each night and adding his or

1 her name to a waitlist. ASL staff members conduct a lottery using the names from
2 the waitlist to determine who can stay at the shelter on that night. Individuals
3 whose names are not selected in this lottery cannot stay at the ASL, and there is no
4 other legal place for them to sleep within the City. In addition, because the City-
5 funded van does not transport individuals that are turned away back to the
6 downtown area, individuals typically end up stranded two-and-a-half miles up the
7 dark and isolated Laguna Canyon Road. Their options are limited to sleeping in the
8 shelter parking lot, sleeping in the canyon near the shelter, undertaking the
9 dangerous trek back to the downtown area and beaches to find a place to sleep, or
10 attempt to navigate public transportation to unfamiliar places, a task many disabled,
11 homeless individuals are unable to do because of their disabilities.

12 66. The ASL is extremely crowded, noisy, and chaotic. Chronically
13 homeless individuals who have certain mental health conditions – such as PTSD,
14 bipolar disorder, severe depression and anxiety, and schizophrenia – cannot tolerate
15 this environment. Some cannot stay at the shelter for even a night, while others can
16 stay for a short time before needing to leave. Still others try to stay at the ASL but
17 are forced to leave because their disabilities prevent them from being able to
18 conform their conduct to that required by ASL staff. Those who do stay at the ASL
19 report not being able to sleep because of the noise and the anxiety caused by the
20 crowded, chaotic environment, as well as worsening mental and physical health
21 symptoms.

22 67. Those who come to try the lottery must wait outside. However, there
23 are no accessible portable toilets, drinking water, picnic tables, mats, chairs,
24 benches or awnings for shade or shelter from the rain in the area outside of the
25 ASL.⁸ There are portable toilets, benches, and drinking fountains at the City's dog
26

27 ⁸ There are at least two water supplies located in the parking lot of the ASL. The
28 City has caged and/or locked the valves to these water supplies so they are
inaccessible to homeless individuals.

1 park, which is located right next to the ASL parking lot, but it is difficult for
2 disabled, homeless individuals to access them. There is a gate that goes directly
3 from the ASL parking lot to the dog park, but shortly after the ASL was opened, the
4 gate was padlocked, preventing easy access. In order to access these amenities, a
5 disabled, homeless individual must walk a long distance around the dog park to
6 enter from the farthest side from the ASL. These barriers around the ASL make it
7 more difficult for homeless individuals with disabilities to participate in the lottery
8 or to wait for a shelter spot.

9 68. Recently, Defendants prohibited homeless individuals from being
10 around the ASL when the ASL is closed during the day, and discontinued allowing
11 “non-resident” homeless persons to store their personal property at the ASL. These
12 restrictions make it difficult for “non-resident” disabled, homeless individuals, and
13 especially those with mobility impairments, to access the ASL.

14 69. Shelter and housing options for chronically homeless persons with
15 disabilities are extremely limited in Laguna Beach. Friendship Shelter (the non-
16 profit that manages the ASL) also operates a transitional shelter that is constantly
17 full with a waitlist and otherwise is not appropriate for many chronically homeless
18 persons. Friendship Shelter also runs a small, scattered-site permanent supportive
19 housing program that serves the entire South Orange County area. This program
20 caters to the needs of disabled or chronically homeless persons; however, this
21 program is typically full with only rare openings.

22 70. Recognizing the dire need for permanent supportive housing to shelter
23 and treat Laguna Beach’s disabled, homeless population, Friendship Shelter and
24 several partner organizations have proposed creating a new permanent supportive
25 housing development. If built, this could significantly lower the number of
26 disabled, homeless persons who are unsheltered and untreated in Laguna Beach. In
27 addition, the proposed shelter is projected to result in cost-savings to the City,
28 overall. The City has not approved the proposal.

1 71. Individuals turned away from the ASL are stranded several miles out
 2 of town and have limited options for lodging. None of those options complies with
 3 the law. Individuals sleeping in the ASL parking lot have been cited by LBPD
 4 officers even after explaining to the officers that they were turned away from the
 5 ASL and had nowhere else to go. To avoid such citations, some individuals leave
 6 the immediate area of the ASL and sleep in the brushy areas in the nearby canyon
 7 instead. Others make their way back to the downtown or beach areas to seek a
 8 hidden place to sleep. Both of these options are dangerous. In several high-profile
 9 incidents in the last few years, homeless persons have died or been seriously injured
 10 while traveling on the dark, winding stretch of Laguna Canyon Road between the
 11 ASL and downtown or in the canyon. However, LBPD officers also seek out and
 12 cite, warn, threaten, and intimidate disabled, homeless persons for sleeping in the
 13 canyon area, downtown, or at the beaches. No matter where they go, disabled,
 14 homeless persons cannot escape punishment and discrimination in Laguna Beach.

CLASS ALLEGATIONS

15
 16 72. Plaintiffs seek to have a class certified under Rule 23(b)(2) of the
 17 Federal Rules of Civil Procedure.

18 73. The class represented by the individual plaintiffs is defined as the class
 19 of all persons who (a) are chronically homeless at the time judgment is entered; (b)
 20 live in the City of Laguna Beach; and (c) have a mental and/or physical disability.

21 74. The class is so numerous that joinder of all members is impractical.
 22 Plaintiffs believe that currently between 40-100 disabled, homeless persons are
 23 subject to Defendants' unlawful policies, practices and customs. There are
 24 questions of law and fact in common to all members of the class. The claims of the
 25 representative parties are typical of the claims of the class members. The
 26 representative parties will fairly and adequately represent the interests of the class.

27 75. Defendants' policy or practice will affect all members of the class in
 28 the same way, because each class member has been discriminated against, as well

1 as been, and continues to be denied the benefit of a safe, legal place to sleep by the
2 City's homelessness program, and has been subjected to law enforcement efforts
3 for engaging in the necessary activity of sleeping in public. Injunctive relief
4 requiring the creation of an alternative accessible safe and legal place to sleep,
5 which is free from discrimination by reason of a person's disability, and a cessation
6 of enforcement, as well as declaratory relief declaring the City's enforcement of
7 anti-sleeping and anti-camping laws unconstitutional would remedy these problems
8 class-wide, and is therefore appropriate to the class as a whole.

9 76. The common questions of law to be determined are whether: (a) the
10 City's homelessness policy and practice denies benefits to, or otherwise
11 discriminates against chronically homeless persons who cannot access the ASL
12 based on disability and who are subject to increased law enforcement, harassment,
13 and scrutiny; (b) the issuance, or threat of issuance, of criminal citations to
14 disabled, homeless persons forced to sleep outdoors because they cannot access
15 shelter or housing constitutes cruel and unusual punishment; and (c) the City's
16 homelessness policy and practice violates the due process rights of disabled,
17 homeless persons by exposing them to an increased risk of danger. These questions
18 of law are common to all members of the class and predominate over any question
19 affecting individual class members.

20 77. The common questions of fact to be determined include whether: (a)
21 Defendants' homelessness program is inaccessible to many class members; (b)
22 alternative housing and a cessation of enforcement would alleviate these access
23 barriers; (c) alternative housing and a cessation of enforcement would cause a
24 fundamental alteration to Defendants' homelessness program under the ADA and
25 Rehabilitation Act.

26 78. No notice is required under for a class certified under Federal Rule of
27 Civil Procedure 23(b)(2) unless the Court directs that such notice be given.
28

1 with disabilities are to assure equality of opportunity, full participation, independent
2 living, and economic sufficiency for such individuals.” 42 U.S.C. § 12101(a)(8).

3 83. Title II of the ADA provides that “no qualified individual with a
4 disability shall, by reason of such disability, be excluded from participation in or be
5 denied the benefits of the services, programs, or activities of a public entity, or be
6 subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

7 84. The regulations implementing Title II of the ADA provide that:

8 a. “A public entity may not, directly or through contractual or
9 other arrangements, utilize criteria or methods of administration – (i) That have the
10 effect of subjecting qualified individuals with disabilities to discrimination on the
11 basis of disability; (ii) That have the purpose or effect of defeating or substantially
12 impairing accomplishment of the objectives of the public entity's program with
13 respect to individuals with disabilities; or (iii) That perpetuate the discrimination of
14 another public entity if both public entities are subject to common administrative
15 control or are agencies of the same State.” 28 C.F.R. § 35.130(b)(3).

16 b. “A public entity may not, in determining the site or location of a
17 facility, make selections – (i) That have the effect of excluding individuals with
18 disabilities from, denying them the benefits of, or otherwise subjecting them to
19 discrimination; or (ii) That have the purpose or effect of defeating or substantially
20 impairing the accomplishment of the objectives of the service, program, or activity
21 with respect to individuals with disabilities.” 28 C.F.R. § 35.130(b)(4).

22 c. “A public entity shall not impose or apply eligibility criteria that
23 screen out or tend to screen out an individual with a disability or any class of
24 individuals with disabilities from fully and equally enjoying any service, program,
25 or activity, unless such criteria can be shown to be necessary for the provision of
26 the service, program, or activity being offered.” 28 C.F.R. § 35.130(b)(8).

1 d. “A public entity shall administer services, programs, and
2 activities in the most integrated setting appropriate to the needs of qualified
3 individuals with disabilities.” 28 C.F.R. § 35.130(d).

4 e. “A public entity shall operate each service, program, or activity
5 so that the service, program, or activity, when viewed in its entirety, is readily
6 accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a).

7 85. Each of the Plaintiffs is an individual with a mental or physical
8 disability within the meaning of 42 U.S.C. § 12132 and is subject to Defendants’
9 homelessness program by virtue of living in the City. Defendants’ homelessness
10 program – which comprises the City’s policy and practice of maintaining limited
11 shelter and services, often inaccessible to those with disabilities, combined with
12 heavy law enforcement (particularly under Penal Code section 647(e) and L.B.M.C.
13 sections 8.30.030, 18.05.020), harassment, and scrutiny of those who are forced to
14 sleep outside because they cannot access this shelter – burdens disabled, homeless
15 persons and denies them their rights under Title II of the ADA.

16 86. Defendants utilize criteria or methods of administration in the creation
17 and implementation of their homelessness program that have the effect of
18 subjecting Plaintiffs to discrimination on the basis of disability. 28 C.F.R. §
19 35.130(b)(3).

20 87. Defendants’ choices in the site and location of the shelter services and
21 their homelessness program function to exclude individuals with disabilities and to
22 substantially impair the benefits and objectives of Defendants’ homelessness
23 program and services with respect to individuals with disabilities. 28 C.F.R. §
24 35.130(b)(4).

25 88. Defendants have imposed or applied eligibility criteria that screen out
26 or tend to screen out Plaintiffs from fully and equally enjoying its homelessness
27 program. 28 C.F.R. § 35.130(b)(8).

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1 89. Defendants, in the creation and implementation of its homelessness
2 program, have failed to provide the services of its homelessness program in the
3 most integrated setting appropriate, and have instead isolated and segregated
4 Plaintiffs. 28 C.F.R. § 35.130(d).

5 90. Defendants' homelessness program, when viewed in its entirety, is not
6 readily accessible to and usable by individuals with disabilities. 28 C.F.R. §
7 35.150(a).

8 91. Despite knowledge that the majority of homeless persons living in
9 Laguna Beach are chronically homeless and have mental and/or physical
10 disabilities and that these individuals are frequently subject to citation or
11 harassment because they cannot access the ASL, Defendants have failed to ensure
12 that its homelessness program is accessible to individuals with disabilities. The
13 provision of alternative accessible legal places to sleep, and the cessation of heavy
14 law enforcement, harassment, and scrutiny, is necessary for Plaintiffs to access the
15 homelessness program.

16 92. Despite knowing that the majority of homeless persons living in
17 Laguna Beach are chronically homeless and have mental and/or physical
18 disabilities, Defendants often target such individuals with heightened law
19 enforcement, harassment, and scrutiny to discourage them from remaining in the
20 City.

21 93. The acts and omissions of Defendants, and each of them, including
22 devising and implementing a homelessness program comprised of minimal shelter
23 and services that are inaccessible to disabled, homeless persons coupled with heavy
24 law enforcement, harassment, and scrutiny of those who cannot access this shelter,
25 constitute discriminatory animus or deliberate indifference and violate the rights of
26 Plaintiffs under the ADA.

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28

SECOND CLAIM FOR RELIEF

Violation of Section 504 of the Rehabilitation Act (29 U.S.C. §§ 706, 794)

94. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 94 as though fully alleged herein.

95. Congress enacted the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (the “Rehabilitation Act”) in order to “provid[e] individuals with disabilities with the tools necessary to... achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals...”

96. Section 504 of the Rehabilitation Act (29 U.S.C. §§ 706, 794) and its implementing regulations prohibit the exclusion of or discrimination against an otherwise qualified disabled individual under any program or activity receiving federal financial assistance.

97. The regulations implementing the Rehabilitation Act provide that:

a. “A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.” 28 C.F.R. § 41.51(b)(3).

b. “A recipient may not, in determining the site or location of a facility, make selections: (i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or (ii) That have the purpose or effect of defeating or substantially

1 impairing the accomplishment of the objectives of the program or activity with
2 respect to handicapped persons.” 28 C.F.R. § 41.51(b)(4).

3 c. “Recipients shall administer programs and activities in the most
4 integrated setting appropriate to the needs of qualified handicapped persons.” 28
5 C.F.R. § 41.51(d).

6 d. “A recipient shall operate each program or activity so that the
7 program or activity, when viewed in its entirety, is readily accessible to and usable
8 by handicapped persons.” 28 C.F.R. § 41.57(a).

9 98. Defendants receive federal financial assistance within the meaning of
10 Section 504 of the Rehabilitation Act, including community development block
11 grant funds received from the federal government through the County of Orange.

12 99. Each of the Plaintiffs is an individual with a mental and/or physical
13 disability within the meaning of Section 504 of the Rehabilitation Act and is subject
14 to Defendants’ homelessness program by virtue of living in the City. Defendants’
15 homelessness program – which comprises the City’s policy and practice of
16 maintaining limited shelter, often inaccessible to those with disabilities, combined
17 with heavy law enforcement (particularly under Penal Code section 647(e) and
18 L.B.M.C. sections 8.30.030, 18.05.020), harassment, and scrutiny of those who are
19 forced to sleep outside because they cannot access this shelter – burdens disabled,
20 homeless persons and denies them their rights under the Rehabilitation Act.

21 100. Defendants, a public entity, directly and through their contract with
22 Friendship Shelter and other non-profit organizations, utilize criteria or methods of
23 administration in the creation and implementation of its homelessness program and
24 services that have the effect of subjecting Plaintiffs to discrimination on the basis of
25 disability. 28 C.F.R. § 41.51(b)(3).

26 101. Defendants’ choices in the site and location of the shelter services of
27 their homelessness program function to exclude individuals with disabilities and to
28 substantially impair the benefits and objectives of Defendants’ homelessness

1 program and services with respect to individuals with disabilities. 28 C.F.R. §
2 41.51(b)(4).

3 102. Defendants, in the creation and implementation of its homelessness
4 program, have failed to provide the services of its homelessness program in the
5 most integrated setting appropriate, and have instead have isolated and segregated
6 Plaintiffs. 28 C.F.R. § 41.51(d).

7 103. Defendants' homelessness program, when viewed in its entirety, is not
8 readily accessible to and usable by individuals with disabilities.

9 104. Despite knowledge that the majority of homeless persons living in
10 Laguna Beach are chronically homeless and have mental and/or physical
11 disabilities and that these individuals are frequently subject to citation or
12 harassment because they cannot access the ASL, Defendants have failed to ensure
13 that its homelessness program is accessible to individuals with disabilities. The
14 provision of alternative accessible legal places to sleep, and the cessation of heavy
15 law enforcement, harassment, and scrutiny, is necessary for Plaintiffs to access the
16 homelessness program.

17 105. Despite knowing that the majority of homeless persons living in
18 Laguna Beach are chronically homeless and have mental and/or physical
19 disabilities, Defendants often target such individuals with heightened law
20 enforcement, harassment, and scrutiny to discourage them from remaining in the
21 City.

22 106. The acts and omissions of Defendants, and each of them, including
23 devising and implementing a homelessness policy and practice combining minimal
24 shelter and services often inaccessible to disabled, homeless persons with heavy
25 law enforcement, harassment, and scrutiny of those who cannot access this shelter,
26 constitute discriminatory animus or deliberate indifference and violate the rights of
27 Plaintiffs under Section 504 of the Rehabilitation Act.

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THIRD CLAIM FOR RELIEF

**Violation of Eighth and Fourteenth Amendments (42 U.S.C. § 1983)
and California Constitution §§ 7, 17 (Cruel and Unusual Punishment)**

107. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 107 as though fully alleged herein.

108. The acts and omissions of Defendants, and each of them, as described herein, violate the rights of all plaintiffs to be free from actual or threatened cruel and unusual punishment. By virtue of their involuntary status as homeless and disabled, and the absence and insufficiency of shelter or housing in Laguna Beach, Plaintiffs have no way to comply with the laws Defendants have sought and continue to seek to enforce against them, in particular Penal Code section 647(e), and L.B.M.C. sections 8.30.030, 18.05.020.

FOURTH CLAIM FOR RELIEF

**Violation of the Fourteenth Amendment (42 U.S.C. § 1983)
and California Constitution § 7 (Substantive Due Process)**

109. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 109 as though fully alleged herein.

110. The acts and omissions of Defendants, and each of them, as described herein, violate the constitutional rights of Plaintiffs under the Due Process Clause of the United States Constitution. Defendants' policy and practice of combining minimal shelter, often inaccessible to those with disabilities, with heavy law enforcement (particularly under Penal Code section 647(e) and L.B.M.C. sections 8.30.030, 18.05.020), harassment, and threats against those who are forced to sleep outside because they cannot access this shelter places Plaintiffs in a position of increased physical danger. Defendants are aware of the danger because of several high-profile incidents in which homeless individuals were killed or seriously injured and have acted with deliberate indifference to this danger. In addition, the exacerbation of Plaintiffs' existing physical and mental disabilities that results from

1 Defendants' policy and practice places Plaintiffs in a position of increased risk of
2 danger.

3 **ACTUAL CONTROVERSY**

4 111. There exists an actual controversy between Plaintiffs and Defendants
5 as to each and every Claim for Relief alleged herein. Plaintiffs have suffered and
6 will continue to suffer ongoing and continuous injuries so long as the City
7 continues its policy and practice of discrimination and violation of Plaintiffs'
8 constitutional rights, including supporting only minimal shelter and services
9 inaccessible to and/or inappropriate for disabled, homeless persons while citing,
10 harassing, and threatening disabled, homeless persons who cannot access this
11 shelter. These controversies warrant judicial determinations. Absent relief from
12 this Court, Plaintiffs will suffer irreparable injury as a consequence of Defendants'
13 unconstitutional, discriminatory, and illegal acts and omissions.

14 **REQUEST FOR RELIEF**

15 Plaintiffs request relief as follows:

16 1. A preliminary injunction and a permanent injunction, enjoining
17 Defendants, their officers, agents, and employees, from enforcing California Penal
18 Code section 647(e) and Laguna Beach Municipal Code sections 8.30.030,
19 18.05.020 against disabled, homeless individuals who have no practical way to
20 comply by virtue of their homelessness and disability;

21 2. A permanent injunction requiring Defendants to provide, create, and/or
22 fund alternative accessible legal places to sleep, such as permanent supportive
23 housing within the Laguna Beach city limits sufficient to house the City's disabled,
24 homeless population;

25 3. For a declaration that Defendants' past, present, and threatened future
26 actions deny Plaintiffs the benefits of the City's Homelessness Program or subjects
27 them to discrimination on the basis of their disabilities in violation of Title II of the
28 ADA and Section 504 of the Rehabilitation Act;

1 4. For a declaration that Defendants’ past, present and threatened future
2 actions violate Plaintiffs’ rights to be free from cruel and unusual punishment under
3 the Constitution of the United States and the California Constitution;

4 5. For a declaration that Defendants’ past, present, and threatened future
5 actions violate Plaintiffs’ rights to be free from due process violations under the
6 Constitution of the United States and the California Constitution;

7 6. For nominal damages;

8 7. For costs of suit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988,
9 as well as the analogous provisions of California law;

10 8. For attorneys’ fees pursuant to 42 U.S.C. § 1988; and

11 9. For such other relief as this Court deems just and proper.

12 DATED: May 4, 2016

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA and PAUL HASTINGS LLP

14
15 By: /s/ Belinda Escobosa Helzer

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