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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL BLOOM, STEPHEN CHATZKY, TONY DIAZ, VALERIE GRISCHY, PENNY HELMS, BENJAMIN HERNANDEZ, DOUG HIGGINS, SUZONNE KEITH, GERALD STARK, ANNA STARK, and DAVID WILSON, individually and on behalf of themselves and all others similarly situated, Plaintiffs vs. CITY OF SAN DIEGO, Defendant. -----) Case No.: 3:17-cv-02324-AJB-NLS)) FIRST AMENDED CLASS ACTION) COMPLAINT FOR DECLARATORY) RELIEF, INJUNCTIVE RELIEF,) RESTITUTION AND DAMAGES) UNDER THE UNITED STATES CIVIL) RIGHTS ACT (42 U.S.C. § 1983),) AMERICANS WITH DISABILITIES) ACT (42 U.S.C. § 12132), SECTION) 504 OF THE REHABILITATION ACT) (29 U.S.C. § 794), THE UNITED) STATES CIVIL RIGHTS ACT (42) U.S.C. § 1983), THE U.S. AND) CALIFORNIA CONSTITUTIONS,) AND CALIFORNIA CIVIL CODE) §52.1
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JURY TRIAL DEMANDED

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INTRODUCTION

1
2 1. In the midst of a severe housing crisis characterized by dramatically rising
3 rents, a shrinking affordable housing supply, long waits for housing subsidies, scarcity
4 of shelter beds, and a homeless population that has grown 23% in five years, the City
5 of San Diego (“the City”) is targeting its most vulnerable residents. There are at least
6 817 unsheltered homeless residents in San Diego, many with disabilities, who seek
7 shelter in their recreational vehicles (“RVs”), campers, or other vehicles. For these
8 people, their vehicles are their only reliable, safe shelter from the elements and only
9 place to store their belongings. Yet, even though there are no adequate alternatives, the
10 City has repeatedly ticketed and harassed these individuals for seeking shelter in their
11 vehicles or simply for owning vehicles and having nowhere else to park. Specifically,
12 the City has used its ordinance prohibiting RV parking from 2:00 AM to 6:00 AM, San
13 Diego Muni. Code § 86.0139(a) (“the nighttime RV parking ordinance”), and its
14 ordinance prohibiting vehicle habitation, San Diego Muni. Code § 86.0137(f) (“the
15 vehicle habitation ordinance”), to target homeless vehicle owners, ticketing them and
16 impounding their vehicles for unpaid tickets. In addition, the City has threatened
17 homeless vehicle owners with arrest and misdemeanor charges for illegal lodging.

18 2. Even after being alerted to these issues, the City has refused to modify its
19 policies to provide an opportunity for homeless individuals to park their vehicles
20 legally on City streets or other public property, at least until affordable, accessible, and
21 medically appropriate housing is made available to them. While failing to provide any
22 accommodation for homeless individuals, including those with disabilities, the City
23 has created an exemption to the nighttime RV parking ordinance, via a permit system,
24 for persons who have a physical address. In other words, under certain circumstances,
25 the City allows people who are not homeless to park their RVs overnight but imposes
26 penalties against those who are homeless for the same behavior.

27 3. The City has carried out this discriminatory, cruel, punitive, and
28 unconstitutional policy against homeless vehicle owners, many of whom have

1 disabilities, despite the fact that these individuals have nowhere else to go. Sky-high
2 rents and extremely low incomes, among other factors, have excluded these City
3 residents from the housing market. RV parks are often as costly as renting an
4 apartment, and so are not viable options. “Safe lots” that allow overnight parking for
5 homeless individuals do not accept RVs and have far fewer spaces than the number of
6 homeless persons with vehicles in San Diego. The number of unsheltered homeless
7 people far outnumbers available emergency shelter beds, which are generally filled and
8 cannot accommodate the hundreds of people who are forced to seek shelter in their
9 vehicles. At best, emergency and temporary shelters provide only transitory
10 accommodations, with a large majority who are exited from shelters still lacking the
11 permanent housing that they need. Moreover, emergency and temporary shelter beds
12 are functionally unavailable to many homeless people with disabilities because the
13 conditions in the shelter environment are not medically acceptable given those
14 disabilities. Homeless vehicle owners therefore do not have either a place to seek
15 shelter in their vehicles legally in the City or the availability of adequate, accessible,
16 stable and medically appropriate housing that they can afford. In addition, homeless
17 vehicle owners have no funds with which to pay the excessive fines associated with
18 the nighttime RV parking and vehicle habitation citations without jeopardizing their
19 ability to buy food, medicine, or other necessities. As a result, homeless vehicle
20 owners have had and are at risk of having their only shelter taken away by the City for
21 unpaid tickets.

22 4. The nighttime RV parking ordinance and vehicle habitation ordinance
23 both violate numerous U.S. and State Constitutional rights, including the Eighth
24 Amendment prohibition on Cruel and Unusual Punishment and Fourteenth
25 Amendment Due Process protections, including the prohibition on state-created
26 danger; the Right to Equal Protection; and the Right to Travel. The vehicle habitation
27 ordinance is also so vague and ambiguously worded that neither homeless individuals
28 nor anyone else can ascertain what is or is not prohibited or how to comply with the

1 ordinance to avoid receiving a ticket or having their vehicle impounded. In addition,
2 enforcement of the ordinances discriminates against homeless vehicle owners based on
3 disability in violation of the antidiscrimination protections of Title II of the Americans
4 with Disabilities Act and Section 504 of the Rehabilitation Act.

5 5. Rather than adequately accommodating this homeless, largely disabled
6 group of individuals and complying with statutory and constitutional requirements, the
7 City has instead chosen to place the health, safety, and lives of homeless vehicle owners
8 in further jeopardy, in the hope that the continuing and escalating harassment will force
9 these residents simply to leave town.

10 6. Plaintiffs seek a Court order requiring that the City put an end to these
11 harmful, discriminatory, and unconstitutional practices against this defenseless group
12 of individuals.

13 **JURISDICTION AND VENUE**

14 7. The Court has jurisdiction over this action pursuant 28 U.S.C. § 1331 and
15 1343, 42 U.S.C. § 12132 and 42 U.S.C. § 1983 because Plaintiffs' claims arise under
16 the laws and Constitution of the United States. Pursuant to 28 U.S.C. § 1367, this
17 Court has supplemental jurisdiction over the state law and state constitutional claims
18 because Plaintiffs' state claims are related to Plaintiffs' federal claims, arise out of a
19 common nucleus of operative facts and form part of the same case or controversy under
20 Article III of the U.S. Constitution.

21 8. Venue is proper in the Southern District of California because Defendant
22 resides in the District and all events given rise to Plaintiffs' claims occurred in the
23 District. The relief Plaintiffs seek is within this Court's power to grant.

24 **PARTIES**

25 **A. Plaintiffs**

26 9. Plaintiff MICHAEL BLOOM is 68 years-old and a life-long resident of
27 the City of San Diego. Mr. Bloom previously worked as an electrician and carpenter
28 but suffered several accidents that left him with a severely damaged arm and foot, and

1 led to his suffering from hypoglycemia and severe depression. Because of these
2 debilitating physical and mental health issues, Mr. Bloom has not been able to engage
3 in gainful employment since his last accident in 1982. His sole source of income is
4 Social Security benefits, and he cannot afford market rents in San Diego. Even if Mr.
5 Bloom were able to locate an open bed at an emergency or temporary shelter, which
6 are generally full and cannot accommodate the hundreds of homeless people who
7 currently seek shelter in their vehicles, it would be functionally unavailable to him
8 because his physical disabilities require him to lie down frequently during the day and
9 the overcrowding and lack of privacy would worsen his mental health condition. As a
10 result, for the last ten years, his only available shelter has been his RV. Mr. Bloom is
11 not able to park his RV in the existing City “safe lots” because the “safe lots” do not
12 allow RVs. Despite this, and even though he has a disability placard on his vehicle,
13 Mr. Bloom has received at least a dozen tickets for parking his RV at night on city
14 streets, about five tickets for vehicle habitation, and has been threatened with arrest for
15 vehicle habitation. As one example, he received a ticket on or about December 12,
16 2017 for violation of the nighttime RV parking ordinance. When he has paid these
17 tickets, Mr. Bloom has not had enough money to pay for food or gasoline. If Mr. Bloom
18 does not pay the tickets, however, the City may impound his RV, which would be
19 devastating for his mental and physical health and put him at far greater physical risk.
20 It would also leave Mr. Bloom without the only form of shelter available to him. Mr.
21 Bloom meets the definition of “chronically homeless” as defined by the regulations
22 issued by the U.S. Department of Housing and Urban Development (HUD). 24 C.F.R.
23 § 91.5(1). Mr. Bloom is also a qualified individual with disabilities within the meaning
24 of the Americans With Disabilities Act (“ADA”), 42 U.S.C. § 12102, and the
25 Rehabilitation Act of 1973, 29 U.S.C. § 706(8).

26 10. Plaintiff STEPHEN CHATZKY is 70 years old and resides in the City of
27 San Diego with his domestic partner, Suzonne Keith, and her disabled adult daughter.
28 Mr. Chatzky is a lawyer, but his Attention Deficit Disorder and memory problems have

1 made it difficult for him practice law. As a result, since 2002, his sole source of income
2 has been Social Security benefits, and he cannot afford market rents in San Diego.
3 Even if Mr. Chatzky were able to locate an open bed at a temporary or emergency
4 shelter, which are generally filled and cannot accommodate the hundreds of homeless
5 people forced to seek shelter in their vehicles, it would be functionally unavailable to
6 him because shelter conditions would force the family to separate. A psychologist who
7 evaluated Mr. Chatzky opined that if Mr. Chatzky were separated from his family, it
8 would worsen his mental health condition. Additionally, Mr. Chatzky has asthma and
9 sleep apnea and is prone to lung infections. Shelters typically reek of tobacco smoke,
10 which make it difficult for him to breathe and put him at risk for lung infections.
11 Because of these circumstances, the family has lived in an RV since 2008. In
12 approximately June of 2015, the City of San Diego impounded the family's first RV
13 for failure to pay tickets, including tickets for nighttime RV parking and vehicle
14 habitation, even though the family had a disability placard on the vehicle at that time.
15 After the impoundment, the family had no regular shelter, and they were forced to sleep
16 cramped in a car for five months until they were able to obtain another RV through a
17 family member's assistance. Because Mr. Chatzky and Ms. Keith live in an RV, they
18 are unable to utilize existing City "safe lots" because "safe lots" do not accept RVs. As
19 a result, despite making every effort to avoid the ticketing, Mr. Chatzky and Ms. Keith
20 continue to receive tickets for parking their RV at night, as recently as February 13,
21 2018. Mr. Chatzky meets the definition of "chronically homeless" as defined by HUD
22 regulations and is a qualified individual with disabilities within the meaning of the
23 ADA and the Rehabilitation Act.

24 11. Plaintiff SUZONNE KEITH is 68 years old and a resident of the City of
25 San Diego. Ms. Keith has held a range of government jobs, including as an equal rights
26 investigator, but her disabilities have made her unable to engage in gainful employment
27 for the last 19 years. She has severe arthritis and edema that interfere with her ability
28 to stand or walk, depression, and Post Traumatic Stress Disorder ("PTSD") from

1 having survived domestic violence prior to meeting Mr. Chatzky, and debilitating
2 migraines. Ms. Keith's sole source of income is a pension of \$400 per month, and she
3 cannot afford market rents in San Diego. As a result, Ms. Keith's only option for shelter
4 has been to live in an RV with Mr. Chatzky and her daughter. After the couple's first
5 RV was impounded for not paying parking tickets, the couple slept cramped in a car
6 for five months. Because the police continue to ticket the couple, Ms. Keith is terrified
7 that the City will also impound their second RV, which is the only form of shelter
8 available to her. Even if Ms. Keith were able to locate an open bed at a temporary or
9 emergency shelter, which are generally filled and cannot accommodate the hundreds
10 of homeless people forced to seek shelter in their vehicles, it would be functionally
11 unavailable to her because it would require that Ms. Keith be separated from Mr.
12 Chatzky and her adult daughter, triggering her trauma symptoms and worsening her
13 depression. Additionally, the conditions of shelters, including the high noise level,
14 triggers migraines for Ms. Keith. When Ms. Keith is suffering from a debilitating
15 migraine, she needs to rest in a private and dark space, which is usually not available
16 at shelters. Ms. Keith is a qualified individual with disabilities within the meaning of
17 the ADA and the Rehabilitation Act and meets the definition of "chronically homeless"
18 as defined by the HUD regulations.

19 12. Plaintiff TONY DIAZ is 58 years old and a resident of the City of San
20 Diego. Mr. Diaz worked as a welder until 2011, when worsening pain and other
21 symptoms of his anxiety disorder, diabetes, hypertension, severe respiratory problems,
22 and bad knee and shoulder prevented him from working. He also recently had major
23 heart surgery. Mr. Diaz has been homeless for approximately five years and owns a
24 pick-up truck with a shell that serves as his only shelter and place to keep his
25 belongings. He has no regular income, and he cannot afford market rents in San Diego.
26 Mr. Diaz has received four vehicle habitation tickets, even though he spends nights
27 parked at a local 7-Eleven store with the permission of the manager and does not sleep
28 in his vehicle when it is parked on City property. On August 25, 2016 at approximately

1 6:30 a.m., Mr. Diaz came out of a bathroom in a public park when a member of the San
2 Diego Police Department issued him a vehicle habitation ticket. Mr. Diaz explained to
3 the officer that he had just arrived to go fishing and told the officer that he was disabled
4 and had just had heart surgery. The officer nonetheless issued the ticket and threatened
5 to ticket him anytime he saw Mr. Diaz's vehicle. The officer also threatened to have
6 Mr. Diaz arrested for vehicle habitation. Since that incident, police officers have
7 continued to harass and ticket Mr. Diaz under the vehicle habitation ordinance. As one
8 example, Mr. Diaz received a ticket for violation of the vehicle habitation ordinance
9 on or about December 23, 2017. Mr. Diaz has done his best to comply with the vehicle
10 habitation ordinance by parking overnight on private property with the owner's
11 permission but does not understand what he needs to do in order to stop the ticketing.
12 Even if Mr. Diaz were able to locate an open bed at a temporary or emergency shelter,
13 which are generally full and cannot accommodate the hundreds of homeless people
14 forced to seek shelter in their vehicles, it would be functionally unavailable to him
15 because the tobacco smoke, cleaning fluid odors, and lack of fresh air would aggravate
16 his respiratory condition. Moreover, the crowded, noisy, and regimented environment
17 of shelters would worsen his symptoms of anxiety. Mr. Diaz is a qualified individual
18 with disabilities within the meaning of the ADA and the Rehabilitation Act. He also
19 meets the definition of "chronically homeless" as defined by HUD regulations.

20 13. Plaintiff VALERIE GRISCHY is 59 years old and a resident of the City
21 of San Diego. Ms. Grischy was a licensed chiropractor and had a successful career,
22 until she became disabled by a serious car accident in 2009. Since shortly after the
23 accident, she has been unable to work due to severe back pain, depression, anxiety, and
24 panic attacks stemming from a traumatic brain injury and PTSD. Ms. Grischy's sole
25 source of income is Supplementary Security Income (SSI), and she cannot afford
26 market rents in San Diego. Because she has not been able to afford housing, Ms.
27 Grischy has been living in her RV since 2012. She has received tickets from the City
28 of San Diego for vehicle habitation and nighttime RV parking even though she has a

1 disability placard on the vehicle. Ms. Grischy has tried to find places to park, driving
2 up to 30 miles a day, in an attempt to avoid being ticketed. Despite her efforts, Ms.
3 Grischy has continued to receive written warnings and tickets from police. As one
4 example, she received two tickets on or about December 30, 2017, one for violation of
5 the vehicle habitation ordinance and one for violation of the nighttime RV parking
6 ordinance. Paying these parking tickets would be a severe financial hardship for her.
7 The threat of ticketing also forced her to leave San Diego temporarily, which she
8 considers her home, to avoid further ticketing. Even if Ms. Grischy were able to locate
9 an open bed at a temporary or emergency shelter, which are generally full and cannot
10 accommodate the hundreds of homeless people forced to seek shelter in their vehicles,
11 it would be functionally unavailable to her because her medical history and medical
12 needs require that she live alone. Communal shelter life is simply untenable. The
13 current City “safe lots” are not an option for Ms. Grischy because RVs are not allowed
14 in those lots. Ms. Grischy is a qualified individual with disabilities within the meaning
15 of the ADA and the Rehabilitation Act. She also meets the definition of “chronically
16 homeless” as defined by HUD regulations.

17 14. Plaintiff PENNY “GRACE” HELMS is 58 years old and a resident of the
18 City of San Diego. Ms. Helms supported herself throughout her 20s working as a
19 waiter and dancer. At the age of 29, the long-term effects of chronic illnesses, and the
20 physical and emotional trauma that she experienced as a child, became so debilitating
21 that she had to stop working. Ms. Helms suffers from fibromyalgia; chronic fatigue
22 syndrome; arthritis; six bulging disks; hypersensitivity and allergy to environmental
23 pollutants such as cigarette smoke and perfume; and various neurological disorders
24 including PTSD, hypervigilance, emotional hypersensitivity, and dissociative identity
25 disorder. Over the past two decades, she has tried to earn a living by working as a
26 house cleaner, dog groomer, among other jobs, whenever her disabilities permit. But
27 none of that income has been steady or sufficient for her to support herself, and that
28 income has only fallen over the years. Ms. Helms’ main, and often the only, source of

1 income for the past few years has been Social Security disability benefits. She cannot
2 afford market rents in San Diego. Because of this, Ms. Helms had been forced to seek
3 shelter in her RV. She has been threatened multiple times by police with ticketing for
4 vehicle habitation and impoundment for living in her RV, as least as recently as April
5 2017. She has also been threatened with arrest for encroachment near her RV. The
6 threat of receiving citations she cannot afford to pay, impoundment, and arrest terrifies
7 her and exacerbates her disabilities, including her hypervigilance. She has left San
8 Diego for periods of weeks or months at a time due to her fear of being ticketed,
9 arrested, and having her RV impounded, even though she considers San Diego her
10 home. Ms. Helms currently does not have a place in San Diego where she can safely
11 park or seek shelter in her RV. Even if Ms. Helms were able to locate an open bed at a
12 temporary or emergency shelter, which are generally full and cannot accommodate the
13 hundreds of homeless people forced to seek shelter in their vehicles, it would be
14 functionally unavailable to her because she cannot tolerate communal living given her
15 myriad disabilities. The current City “safe lots” are not an option for Ms. Helms
16 because RVs are not allowed. Ms. Helms is a qualified individual with disabilities
17 within the meaning of the ADA, and the Rehabilitation Act. She also meets the
18 definition of “chronically homeless” as defined by HUD regulations.

19 15. Plaintiff BENJAMIN HERNANDEZ is a 54-year-old man and a resident
20 of the City of San Diego. Mr. Hernandez was a stonemason and primary breadwinner
21 for his family until he was involved in a pedestrian accident in 2015. After the accident,
22 the orthopedic impairments from his injuries, along with depression, left him unable to
23 work. Mr. Hernandez was only given a small, one-time disability award and does not
24 receive ongoing disability benefits. Though his wife works, her wages are extremely
25 modest and insufficient to afford the high cost of housing in San Diego. Their lack of
26 funds has caused Mr. Hernandez and his wife to utilize their RV as their shelter for the
27 past year. In addition to offering shelter from the elements, their RV provided them
28 with a shower, toilet, refrigerator, stove and microwave and a queen-sized bed. On or

1 about July 26, 2017, however, the City impounded their RV for unpaid nighttime RV
2 parking citations. Since they could not afford to pay the citations and towing fees in
3 order to retrieve their RV from impoundment, the couple spent several weeks cramped
4 in their Toyota Camry which aggravated Mr. Hernandez's back injury. The loss of his
5 RV was also extremely traumatic, causing Mr. Hernandez's depression to worsen.
6 Currently, Mr. Hernandez uses an SUV as his only available shelter, and he remains at
7 risk for vehicle habitation tickets. Even if Mr. Hernandez were able to locate an open
8 bed at a temporary or emergency shelter, which are generally full and cannot
9 accommodate the hundreds of homeless people forced to seek shelter in their vehicles,
10 it would be functionally unavailable to him because it would force him to separate from
11 his wife, aggravating the symptoms of his depression. Mr. Hernandez is a qualified
12 individual with disabilities within the meaning of the Rehabilitation Act, the ADA, and
13 California law. He also meets the definition of "chronically homeless" as defined by
14 the regulations issued by HUD.

15 16. Plaintiff DOUG HIGGINS is 68 years old, a resident of the City of San
16 Diego, and a veteran who was honorably discharged from the U.S. Army. He had a
17 successful career as a car dealer until his symptoms of anxiety and depression, along
18 with a painful back condition, worsened in 2009. His bad back, which is aggravated
19 by stress, keeps him from standing, sitting, or walking for any length of time. His sole
20 source of income is Social Security benefits, and he cannot afford to pay market rent
21 in San Diego. Even if Mr. Higgins were able to locate an open bed at a temporary or
22 emergency shelter, which are generally full and cannot accommodate the hundreds of
23 homeless people forced to seek shelter in their vehicles, it would be functionally
24 unavailable to him because it would exacerbate his mental health symptoms. For the
25 past three years, his RV has been the only shelter available to him. Mr. Higgins has
26 received tickets both for vehicle habitation and for nighttime RV parking. He received
27 a nighttime RV parking ticket on or about November 11, 2017 and a habitation ticket
28 on or about November 10, 2016. He cannot afford to pay the tickets; paying them

1 jeopardizes his ability to pay for food and other necessities. The threat of ticketing and
2 fear of losing his RV to impoundment increases his stress and exacerbates the
3 symptoms of his disabilities. Police have told him to leave the City if he does not like
4 the ticketing, but he considers San Diego to be his home. Mr. Higgins is a qualified
5 individual with disabilities within the meaning of the ADA and the Rehabilitation Act.
6 Mr. Higgins also meets the definition of “chronically homeless” as defined by the
7 regulations issued by HUD.

8 17. Plaintiff DAVID WILSON is 47 years old and a resident of the City of
9 San Diego. Mr. Wilson previously worked as an actor, taxi driver, and security guard.
10 Mr. Wilson has a range of conditions arising from a car accident, including
11 compression of the spine, peripheral neuropathy, edema in both feet and ankles
12 (requiring him to elevate his feet), depression, PTSD, Social Anxiety Disorder, an
13 eating disorder, and porphyria (a skin condition that makes him highly susceptible to
14 infection). Mr. Wilson also suffers from asthma, hypersomnia (a condition in which a
15 person has trouble staying awake during the day), and social anxiety. Because of these
16 conditions, Mr. Wilson had to stop working in 1999. His sole source of income is SSI,
17 and he cannot afford to pay market rent in San Diego. In 2013, Mr. Wilson purchased
18 an RV, giving him a place to lie down and take shelter from the elements. In addition,
19 the RV provided him with running water, a stove, a refrigerator and the ability to control
20 the temperature in his environment. Mr. Wilson has received numerous tickets from
21 the City of San Diego, including for vehicle habitation and nighttime RV parking, and
22 has been threatened with arrest for vehicle habitation. This happened despite his
23 having a disabled placard on the vehicle. In an attempt to save the little money he had
24 to pay the tickets, Mr. Wilson has resorted to eating out of the trash. Ultimately unable
25 to pay all the tickets, Mr. Wilson sold his RV around October of 2015 to avoid imminent
26 impoundment and purchased a truck with the proceeds. Deprived of his RV, he began
27 sleeping outside or cramped in the cab of the truck. Without a proper place to lie down
28 and elevate his feet, and forced to sleep outside or in his truck, Mr. Wilson ended up

1 hospitalized soon after he was forced to sell his RV due to imminent threat of
2 impoundment. The loss of his RV has continued to have negative effects on Mr.
3 Wilson's health; however, he has been and continues to be deterred from exchanging
4 his truck for another RV because of the ongoing enforcement of the nighttime RV
5 parking ordinance. Even if Mr. Wilson were able to locate an open bed at a temporary
6 or emergency shelter, which are generally full and cannot accommodate the hundreds
7 of homeless people forced to seek shelter in their vehicles, it would be functionally
8 unavailable to him because the crowded and noisy shelter environment would
9 aggravate Mr. Wilson's mental health conditions and, due to his vulnerability to
10 infection and asthma, put his physical condition at further risk. Police have also
11 continued to issue Mr. Wilson warnings and threatened him with further ticketing for
12 vehicle habitation in his truck, which is the only reasonable form of shelter available
13 to him. He received such threats at least as recently as June 2017. Mr. Wilson is a
14 qualified individual with disabilities within the meaning of the ADA and the
15 Rehabilitation Act. Mr. Wilson also meets the definition of "chronically homeless" as
16 defined by HUD regulations.

17 18. Plaintiff GERALD STARK is 76 years-old, and has lived his entire life in
18 the City of San Diego. Mr. Stark worked installing pipes as a member of the
19 Steamfitters Union until he retired in 2007. Since retirement, his income consists only
20 of Social Security and a small pension totaling \$2,000 per month to support himself
21 and his wife of twelve years, Anna Stark. This income is not enough to afford market
22 rents in San Diego for himself and his wife. As a result, Mr. Stark and his wife, Anna,
23 moved into an RV in 2008 – one year after his retirement. Emergency shelter is not an
24 option for Mr. Stark. Even if he were able to locate an open bed at an emergency or
25 temporary shelter, which are generally full and cannot accommodate the hundreds of
26 homeless people who currently seek shelter in their vehicles, it would be functionally
27 unavailable to him because it would require him to separate from his wife. Since 2008,
28 Mr. Stark's home and only available shelter has been inside an RV shared with Ms.

1 Stark. Mr. Stark is not able to park an RV in the existing City “safe lots” because the
2 “safe lots” do not allow RVs. Despite this, Mr. Stark has received tickets for parking
3 his RV at night on city streets and for vehicle habitation during the last two years.
4 Because he was unable to afford to pay those tickets, his RV was impounded by the
5 City on or about March 28, 2017. Because the City impounded his home and only
6 form of shelter, Mr. Stark now lives unsheltered on the streets of the City where he has
7 suffered and will continue to suffer serious physical, mental, and emotional harm. Mr.
8 Stark meets the definition of “chronically homeless” as defined by the regulations
9 issued by the U.S. Department of Housing and Urban Development (HUD). 24 C.F.R.
10 § 91.5(1).

11 19. Plaintiff ANNA STARK is 48 years-old, and she has lived in the City of
12 San Diego for her entire life. She has been married to Gerald Stark for twelve years.
13 Ms. Stark has severe anxiety stemming from multiple past traumas. She previously
14 worked as a home health care worker, but has been unemployed for many years due to
15 her mental health condition. She has no income, and she is entirely dependent on her
16 husband’s small pension and Social Security, which is too low to afford market rents
17 in San Diego. Even if Ms. Stark were able to locate an open bed at an emergency or
18 temporary shelter, which are generally full and cannot accommodate the hundreds of
19 homeless people who currently seek shelter in their vehicles, it would be functionally
20 unavailable to her because it would require her to separate from her husband and her
21 support animal and the crowded congregate living environment would aggravate her
22 anxiety. Since 2008, her only available home and shelter has been inside an RV shared
23 with Mr. Stark. Ms. Stark is not able to park an RV in the existing City “safe lots”
24 because the “safe lots” do not allow RVs. Despite this, the RV Ms. Stark uses as a
25 home has been ticketed multiple times, including for parking at night on city streets.
26 On or about March 28, 2017, the Starks’ RV was impounded for unpaid tickets.
27 Because the City impounded their home and only form of shelter, Ms. Stark now lives
28 unsheltered on the streets of the City where she has suffered and will continue to suffer

1 serious physical, mental, and emotional harm. Ms. Stark is a qualified individual with
2 disabilities within the meaning of the ADA and the Rehabilitation Act. Ms. Stark also
3 meets the definition of “chronically homeless” as defined by the regulations issued by
4 the U.S. Department of Housing and Urban Development (HUD). 24 C.F.R. § 91.5(1).

5 20. The term “Named Plaintiffs” or “Plaintiffs” refers to all the individual
6 Plaintiffs named in this section.

7 **B. Defendant**

8 21. Defendant CITY OF SAN DIEGO is now and, at all times mentioned in
9 this Complaint, was a local government agency and subdivision of the State of
10 California. Defendant CITY OF SAN DIEGO, through its agents the Mayor, City
11 Council, City Attorney, Parking Enforcement, Police Department, and the Police Chief
12 undertakes to cite Plaintiffs and Class members for nighttime RV parking and for
13 vehicle habitation. Defendant CITY OF SAN DIEGO also demands exorbitant
14 penalties that Plaintiffs and Class members cannot afford to pay, impounds and/or
15 threatens to impound their RVs or other vehicles, and threatens them with arrest, all
16 the while refusing to provide reasonable modifications of these policies based on
17 Plaintiffs’ and Class members’ disabilities. Defendant CITY OF SAN DIEGO
18 implements the ticketing and impoundment of Plaintiffs’ and Class members’ vehicles
19 under the nighttime RV parking ordinance and the vehicle habitation ordinance even
20 though Plaintiffs’ and Class members’ vehicles are the only shelter from the elements
21 available to them and the only secure place they have to keep their belongings. In
22 addition, the Defendant CITY OF SAN DIEGO has threatened Plaintiffs and Class
23 members with arrest and misdemeanor charges for illegal lodging.

24 **CLASS ALLEGATIONS**

25 22. Plaintiffs bring this action against Defendant on their own behalf and on
26 behalf of all other persons similarly situated pursuant to Fed. R. Civ. P. 23(a) and
27 23(b)(2).

28 23. The main class, referred to as the “Homeless Ticketing Class” or “Main

1 Class” is defined as:

2 All homeless persons who have been cited and/or subject to citation by
3 the City of San Diego pursuant to San Diego Muni. Code §§ 86.0137(f);
4 San Diego Muni. Code § 86.0139(a); and/or are at risk of arrest for illegal
5 lodging.

6 24. Plaintiffs also bring this action on behalf of a subclass, referred to as the
7 “Disability Subclass” or “Subclass,” which is defined as:

8 All Class members who have a “disability” as defined under the ADA, 42
9 U.S.C. § 12102.

10 25. All members of the Subclass are also members of the Main Class. The
11 terms “Class” and “Classes” refers to both the Main Class and the Subclass collectively.

12 26. Plaintiffs reserve the right to amend or modify the Class definitions in
13 connection with a motion for class certification and/or with the result of discovery.

14 **Numerosity**

15 **Main Class**

16 27. Plaintiffs do not know the exact size or identities of the Class. However,
17 Plaintiffs believe that the Class encompasses a minimum of several hundred homeless
18 individuals who are dispersed geographically throughout the City of San Diego as well
19 as California and neighboring states. (2017 *We All Count Results*, REGIONAL TASK
20 FORCE ON THE HOMELESS (2017), [http://www.rtfhsd.org/wp-content/uploads/2017/07/](http://www.rtfhsd.org/wp-content/uploads/2017/07/2017-PITC-Results-Powerpoint.pdf)
21 [2017-PITC-Results-Powerpoint.pdf](http://www.rtfhsd.org/wp-content/uploads/2017/07/2017-PITC-Results-Powerpoint.pdf).) Therefore, the members of the Class are so
22 numerous that individual joinder of all members is impracticable.

23 28. All members of the Class are subject to Defendant’s policies and practice
24 in enforcing the nighttime RV parking ordinance and/or the vehicle habitation
25 ordinance. The Class is united in its interests with respect to proof of Defendant’s
26 conduct, and the effects caused by Defendant’s actions.

27 **Subclass**

28 29. Plaintiffs do not know the exact size or identities of the Disability

1 Subclass. Plaintiffs believe that the Subclass consists of hundreds of homeless
2 individuals based on the high number of persons with disabilities found in surveys of
3 the homeless population in San Diego. See ¶ 43, *infra*.

4 30. All members of the Sub-Class are subject to Defendant's discriminatory
5 policies and practice in enforcing the nighttime RV parking ordinance and/or the
6 vehicle habitation ordinance. The Class is united in its interests with respect to proof
7 of Defendant's discriminatory conduct, and the effects caused by Defendant's actions.

8 **Predominance of Common Issues**

9 **Main Class**

10 31. The questions of law and fact common to members of the Class
11 predominate over questions that may affect individual Class members. Such common
12 questions of law and fact include but are not limited to the following:

- 13 (i) whether Defendant's enforcement of San Diego Muni. Code
14 §§ 86.0137(f) and 86.0139(a) including ticketing for "violation of signs"
15 prohibiting vehicle habitation under § 86.0112(E) has and continues to
16 violate 42 U.S.C. § 1983 by infringing upon Named Plaintiffs' and Class
17 members' constitutional rights, including by endangering Plaintiffs and
18 Class members, and by violating their right to travel, right to equal
19 protection, and right to be free from cruel and unusual punishment.
- 20 (ii) whether Named Plaintiffs and other Class members are at risk of arrest for
21 illegal lodging under Defendant's existing policies because they are
22 homeless and need to live in their vehicles;
- 23 (iii) whether Named Plaintiffs and other Class members are at risk that their
24 RV, camper or other vehicle will be impounded by the City for unpaid
25 tickets along with their personal belongings seized because they are
26 homeless and need to use their vehicles as shelter;
- 27 (iv) whether Named Plaintiffs and the other Class members are entitled to
28 equitable relief, including system-wide policy changes to address the

1 constitutional and statutory violations detailed in this Complaint.

2 Subclass

3 (i) whether Defendant's policies, including its policies regarding
4 enforcement of San Diego Muni. Code §§ 86.0137(f) and 86.0139(a) including
5 ticketing for "violation of signs" prohibiting habitation under § 86.0112(E)
6 discriminate on the basis of disability; and

7 (ii) whether Defendant has failed or refused to provide reasonable
8 modifications of their policies as required under the ADA, 42 U.S.C. § 12132,
9 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 749.

10 Typicality

11 Main Class

12 32. Named Plaintiffs are asserting claims typical of the claims of the entire
13 class of affected persons described above and do not conflict with the interests of any
14 other members of the Classes. Named Plaintiffs and Class members have been injured
15 by the same wrongful policies, practices, and conduct of Defendant. Named Plaintiffs'
16 claims arise from the same practices and conduct that give rise to the claims of all Class
17 members and are based on the same legal theories.

18 Subclass

19 33. Named Plaintiffs are all qualified individuals with disabilities and assert
20 claims typical of the claims of the entire Disability Subclass. The interests of the
21 Named Plaintiffs do not conflict with those of the Disability Subclass. All have been
22 injured by the same wrongful policies, practices, and conduct of Defendant, which
23 discriminate on the basis of disability. Named Plaintiffs' claims arise from the same
24 practices and conduct that give rise of all Subclass members and are based on the same
25 legal theories.

26 Adequate Representation

27 34. Named Plaintiffs will fairly and adequately represent the interests of the
28 Main Class and the Subclass, and they have no interests antagonistic to those of the

1 Classes. Indeed, Named Plaintiffs' interests are aligned with those of the Class
2 members. Named Plaintiffs have retained lawyers who are competent and experienced
3 in class action litigation.

4 **Superiority**

5 35. A class action is preferable and superior to other available methods for the
6 fair and efficient adjudication of this controversy. Class treatment will permit the
7 adjudication of claims by many Class members who could not afford to individually
8 litigate their claims or vindicate their rights against the government. There are no
9 difficulties likely to be encountered in the management of this case that might preclude
10 its maintenance as a class action, and no superior alternative exists for the fair and
11 efficient adjudication of this matter.

12 **COMMON FACTUAL ALLEGATIONS**

13 Plaintiffs allege the following common facts on information and belief.

14 **San Diego's Lack of Affordable Housing Has Created a Homelessness Crisis**

15 36. San Diego now has the fourth largest homeless population in the country.
16 (*The 2016 Annual Homeless Assessment Report to Congress*, DEPT. OF HOUSING AND
17 URBAN DEV. 29 (Nov. 2016), [https://www.hudexchange.info/resources/documents/](https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf)
18 [2016-AHAR-Part-1.pdf](https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf).) Based on a January 2017 survey, the Regional Task Force
19 on the Homeless found that there are 5,619 homeless people in the City of San Diego,
20 an increase of 10% since 2016. (*2017 We All Count Results*, *supra* at 16.) The
21 Regional Task Force further found that 3,231 of these 5,619 homeless individuals are
22 unsheltered and living in places not meant for human habitation, an 18% increase from
23 the previous year. According to the same survey, San Diego County now has a
24 homeless population of 9,116, more than double the approximately 4,000 shelter beds
25 available in the County. The results of this crisis have been seen in the rapidly
26 expanding tent encampments in downtown San Diego that have more than doubled in
27 size in the past year.

28 37. The homelessness crisis in San Diego is directly linked to the lack of

1 affordable housing. As of 2014, the median cost of an efficiency studio apartment in
2 San Diego was 110% of the amount of an SSI check, which is less than \$900/month.
3 (Emily Cooper et al., *Priced Out in 2014: The Housing Crisis for People with*
4 *Disabilities*, TECHNICAL ASSISTANCE COLLABORATIVE (June 2015), [http://www.tacinc.](http://www.tacinc.org/media/52012/Priced%20Out%20in%202014.pdf)
5 [org/media/52012/Priced%20Out%20in%202014.pdf](http://www.tacinc.org/media/52012/Priced%20Out%20in%202014.pdf).) Since then, rents have
6 continued to rise. The San Diego Housing Federation found that there is a shortfall of
7 135,749 homes affordable to low income San Diegans, with rents up 32% in the last
8 decade. Average rent and utilities for a two-bedroom apartment has climbed to \$1618
9 a month. (Stephen Russell, *The Affordable Housing Crisis in San Diego: How Do We*
10 *Meet the Need?*, SAN DIEGO HOUSING FEDERATION (January 25, 2017), [http://docs.](http://docs.sandiego.gov/councilcomm_agendas_attach/2017/sglu_170125_4c.pdf)
11 [sandiego.gov/councilcomm_agendas_attach/2017/sglu_170125_4c.pdf](http://docs.sandiego.gov/councilcomm_agendas_attach/2017/sglu_170125_4c.pdf).) In addition,
12 the demand for housing subsidies far exceeds the supply. There is a 10 to 12 year
13 waiting list for a Section 8 housing voucher, with over 60,000 persons on the waiting
14 list. The small amount of existing affordable or subsidized housing also has long
15 waiting lists.

16 38. The Regional Task Force on Homelessness found that the homeless
17 population in the City of San Diego included 817 people living in vehicles. (*2017 We*
18 *All Count Results*, *supra* at 16.) These individuals have no shelter available to them
19 other than in their vehicles. RV owners without physical addresses have no legal place
20 to park their RVs at night. The few “safe lots” established in San Diego only serve a
21 small portion of people with vehicles who are homeless, prioritize families with small
22 children, and exclude RVs.

23 39. RV parks in San Diego charge high rents. Monthly rentals in RV parks in
24 the City of San Diego range from a low of \$699 per month to a high of \$1950 per
25 month depending on the park and the time of year, which is unaffordable to Plaintiffs
26 and Class members. Moreover, many RV parks have maximum stay limits and limit
27 or exclude older RVs.

**People with Disabilities Have Been Severely and Disproportionately
Harmed by the Crisis**

40. There is also a strong link between homelessness and disability. The U.S. Department of Housing and Urban Development (HUD) defines “chronically homeless” as an individual with a disability who has been homeless continuously for at least 12 months or on at least four separate occasions in the last three years. 24 C.F.R. § 91.5(1). A person is deemed homeless if he or she lacks a fixed, regular, and adequate nighttime residence. This includes persons who use RVs or other vehicles for other than temporary living quarters for recreational use. 42 U.S.C. § 11302(a)(1); 24 C.F.R. § 3282.8(g). The Regional Task Force found that 31% of the City’s homeless population was “chronically homeless.” (*2017 We All Count Results, supra at 16.*)

41. In San Diego, a high number of homeless individuals have disabilities. The Regional Task Force found that 39% of homeless people in San Diego reported mental health disabilities and 40% reported a physical disability. Some surveys have found even higher rates of disability. For example, of the 1,145 persons attending a one-day resource fair for the homeless in the City, 60.2% reported a long lasting medical condition and 49.5% reported having a mental illness. San Diego Housing Commission, Project Homeless Connection Report, April 15, 2015. (*Project Homeless Connect Report*, SAN DIEGO HOUSING COMMISSION (April 15, 2015), http://www.sdhc.org/uploadedFiles/Housing_Innovations/Project_Homeless_Connect/2015Project%20Homeless%20Connect%20Report_04.15.15.pdf.)

42. The primary reason for the strong link between disability and homelessness is an economic one. Homeless individuals with disabilities are not normally homeless as a matter of choice. Rather, many people with disabilities including Named Plaintiffs and Class members are unable to work due to their disabilities and therefore must rely on a rapidly shrinking social safety net that has not kept up with rising San Diego rents.

43. Living on the streets is dangerous, especially for women, seniors, and

1 people with disabilities. In the fiscal year ending September 30, 2017, 117 homeless
2 people died on the streets of San Diego, double the figure from two years ago. Daniel
3 Wheaton, *Homeless Deaths Have Doubled Over Two Years*, SAN DIEGO UNION TRIB.
4 (Nov. 28, 2016 2:00 PM), [http://www.sandiegouniontribune.com/news/data-watch/sd-](http://www.sandiegouniontribune.com/news/data-watch/sd-me-homeless-deaths-20161128-story.html)
5 [me-homeless-deaths-20161128-story.html](http://www.sandiegouniontribune.com/news/data-watch/sd-me-homeless-deaths-20161128-story.html).) Homeless adults age 50 and older also
6 have rates of chronic illness and geriatric conditions similar to or higher than those of
7 adults living in housing that are 15 to 20 years older. Jennifer Goldberg, et al., “How
8 to Prevent and End Homelessness Among Older Adults.” (Jennifer Goldberg et al.,
9 *How to Prevent and End Homelessness Among Older Adults*, JUSTICE IN AGING (April
10 2016), [http://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-](http://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-Older-Adults.pdf)
11 [Older-Adults.pdf](http://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-Older-Adults.pdf).)

12 44. The City’s recent Hepatitis A epidemic highlights the health dangers, both
13 to homeless individuals and to others, associated with living on the streets without
14 access to shelter and sanitation. The Hepatitis A outbreak has resulted in at least twenty
15 deaths.

16 **Plaintiffs and Class Members Have No Reasonable Option for Shelter Other**
17 **Than Their RVs or Other Vehicles**

18 45. Sheltering oneself is not voluntary conduct. It is a basic human need. It
19 is harmless. And it is an act integral to the status of homelessness. For Named Plaintiffs
20 and Class members fortunate enough to have RVs or other vehicles, their only
21 reasonable option is to utilize the rudimentary shelter provided by their vehicles until
22 permanent, accessible, and medically appropriate housing that they can afford,
23 becomes available.

24 46. Named Plaintiffs and Class members do not have any reasonably
25 accessible places in the City to seek shelter in their vehicles or to park their RVs legally
26 at night. As explained above, RV parks in San Diego are generally unaffordable to
27 Plaintiffs and Class members. Dreams of Change operates a “Safe Parking Program,”
28 which provides a few places to park vehicles at night. As of mid-October 2017,

1 Dreams of Changes operates three such lots in the City. However, there are currently
2 only 150 parking spaces available, a fraction of the number of unsheltered homeless
3 people with vehicles. The Program has frequently had long waiting lists for admission.
4 RVs are not accepted. In the absence of permanent housing options, all participants
5 are required to sign up for so-called transitional housing programs that provide only
6 temporary or short-term shelter, and are often inaccessible and/or medically
7 unacceptable to Plaintiffs and to Disability Subclass members.

8 47. There is also an insufficient number of temporary shelter beds available
9 in the City as compared to the unsheltered homeless population forced to seek shelter
10 in their vehicles. There are hundreds more unsheltered homeless people forced to seek
11 shelter in their vehicles than available emergency shelter beds, even when accounting
12 for seasonal and overflow spaces.

13 48. Even if a homeless person is able to identify an available bed in a
14 temporary or emergency shelter, the shelter bed may be functionally unavailable to that
15 person. Emergency and temporary shelter beds and transitional housing programs are
16 functionally unavailable to many people with disabilities including the Named
17 Plaintiffs, because those types of living arrangements are likely to aggravate their
18 mental health and/or physical conditions. Many shelters and transitional housing
19 programs in San Diego have an overcrowded congregate living environment, are noisy,
20 have a complete lack of privacy, often lack opportunity to lie down during the day,
21 present an increased risk of infection, may have strong odors from smoke and chemical
22 cleaning products that can aggravate respiratory disabilities, and present the risk of
23 criminal activity. In addition, many shelters only take single people, thereby separating
24 family members and causing additional trauma.

25 49. Emergency and temporary shelters including most transitional housing
26 programs do not provide a real solution for Named Plaintiffs or Class members. Even
27 if they were to enter a temporary or emergency shelter or be admitted into a transitional
28 housing program, Named Plaintiffs and Class members with RVs would still not have

1 anywhere to park their RVs legally at night and would continue to be at risk of ticketing
2 under the nighttime RV parking ordinance. Moreover, these programs provide only
3 temporary accommodations with strict time limits. The Regional Taskforce on
4 Homelessness has found that a majority of persons exited from shelter programs have
5 not been placed in permanent housing. Therefore, in the continued absence of
6 sufficient permanent affordable housing alternatives, even individuals who are able to
7 use the shelter system are often condemned to spending at least some time on the
8 streets, with all the associated health and safety risks. Thus, under current conditions,
9 there are no reasonable alternatives for Named Plaintiffs and Class members other than
10 utilizing their RVs or other vehicles.

11 **City Ordinances Punish Homeless Individuals with Vehicles**

12 50. The City's "Prohibition of Use of Streets for Storage, Service or Sale of
13 Vehicles or For Habitation" ordinance, San Diego Muni. Code § 86.0137(f), provides:
14 "It is unlawful for any person to use a vehicle while it is parked or standing on any
15 streets as either temporary or permanent living quarters, abode, or place of habitation."
16 The terms "temporary or permanent living quarters, abode, or place of habitation" are
17 not defined. A ticket for vehicle habitation is punishable as an infraction by a fine of
18 \$40 plus a \$12.50 surcharge and doubles if not paid in 21 days.

19 51. The City has posted signs in various locations within the City stating "No
20 Habitation." Named Plaintiffs and Class members have been ticketed and/or are at risk
21 of being ticketed for "Violation of Signs" under San Diego Muni. Cod § 86.0112(E)
22 for allegedly "habitating" in their vehicles. A ticket for "Violation of Signs" is
23 punishable as an infraction by a fine of \$40 plus a \$12.50 surcharge and doubles if not
24 paid in 21 days.

25 52. The City's "Prohibition of Parking of Oversized, Non-Motorized and
26 Recreational Vehicles" ordinance, San Diego Muni. Code § 86.0139(a), provides in
27 relevant part: "Except as provided in section 86.0140 or otherwise expressly provided
28 to the contrary herein, or unless such parking or standing is authorized by the City

1 Manager and appropriate sign permitting such parking or standing are posted: (a) it is
2 unlawful for any person to park or leave standing upon any public street, park road or
3 park parking lot, any oversized, non-motorized or recreational vehicle between the
4 hours of 2:00 a.m. and 6:00 a.m.” A ticket for nighttime RV parking is punishable as
5 an infraction by a fine of \$100 plus a \$12.50 surcharge and doubles if not paid in 21
6 days.

7 53. In addition to fines, there is the potential for other serious consequences
8 for violating these ordinances. A vehicle can be removed or impounded by the City
9 when it has five or more unpaid parking violations. Cal. Veh. Code § 22651. In
10 addition, the City may notify the Department of Motor Vehicles (DMV) and the DMV
11 will not renew the registration until the penalties are paid. Cal. Veh. Code §§ 4760 and
12 40229(a).

13 54. Though it has made no exceptions to any of these ordinances on the basis
14 of homelessness or disability, the City has created an exception to its nighttime RV
15 parking ordinance via a permit process that allows for temporary overnight parking of
16 RVs on public streets for a cumulative total of up to 72 days in a given year. San Diego
17 Muni. Code § 86.0143. Such permits are only available for people with physical
18 addresses, thereby excluding persons whose only stable form of shelter is their RVs,
19 including Named Plaintiffs and Class members. *Id.* Named Plaintiffs and Class
20 members are therefore left with no options anywhere in the City to park their RVs at
21 night whether or not they are able to access a temporary shelter bed.

22 55. On information and belief, the City enacted the nighttime RV parking
23 ordinance in 2013 for the primary purpose of removing homeless RV owners from the
24 community. The City enacted the ordinance in large part due to the difficulty the City
25 was having proving that such homeless persons are in violation of the existing vehicle
26 habitation ordinance, and due to problems the City had experienced enforcing the
27 ordinance prohibiting parking a vehicle in excess of 72 consecutive hours. San Diego
28 Muni. Code § 86.0118.

1 56. The Report from the City Council's Land Use & Housing Committee in
2 support of the nighttime RV parking ordinance declared that "in many cases an
3 occupant is living illegally in vehicle" and "current enforcement tools are time
4 consuming and unproductive (e.g. marking tires, knocking on vehicle doors)."
5 (*Neighborhood Parking Protection and Public Safety Ordinance*, LAND USE &
6 HOUSING COMMITTEE (March 27, 2013), [http://docs.sandiego.gov/
7 councilcomm_agendas_attach/2013/LUH_130327_4ppt.pdf](http://docs.sandiego.gov/councilcomm_agendas_attach/2013/LUH_130327_4ppt.pdf).) At a subsequent
8 Mission Beach Town Council meeting, Julio DeGuzman from the San Diego City
9 Attorney's office responded to complaints regarding an increasing number of
10 "transients" with RVs, by reassuring the attendees that his office "works on removing
11 the homeless from our community." (*Minutes of General Membership Meeting*,
12 MISSION BEACH TOWN COUNCIL (Nov. 13, 2013), [http://www.missionbeachtc.com/
13 uploads/5/0/0/3/50033147/mbtc_minutes_general_mtg_nov.13.2013.pdf](http://www.missionbeachtc.com/uploads/5/0/0/3/50033147/mbtc_minutes_general_mtg_nov.13.2013.pdf).)

14 57. Defendant has had and continues to have a policy and practice of utilizing
15 these ordinances to issue and/or threaten to issue parking tickets to homeless vehicle
16 owners, including to individuals with disability placards or special disabled license
17 plates issued by the State of California prominently displayed on their vehicles, to
18 impose exorbitant penalties, and to impound their vehicles for failure to pay the
19 penalties. Defendant has carried out this policy even though it knew or reasonably
20 should have known that the majority of the "transients" being targeted for ticketing
21 have a disability and/or have no other reasonable option for shelter besides their
22 vehicles. San Diego police officers and other agents and employees of the City knew
23 or reasonably should have known that many of the individuals receiving these tickets
24 have disabilities due to the fact that disability placards are commonly displayed on the
25 vehicles; and even in the absence of a disability placard, the officers may have had an
26 opportunity to observe or interact with the persons being ticketed, who either had an
27 obvious disability or voluntarily disclosed the disability to the officer.

28 58. State law considers a person guilty of Disorderly Conduct, a

1 misdemeanor, if the person “lodges in any building, structure, vehicle, or place,
2 whether public or private, without the permission of the owner or person entitled to the
3 possession or in control of it.” Cal. Penal Code § 647(e). Violation of the statute
4 carries a maximum penalty of six months in jail and a \$500 fine. The language of the
5 statute makes clear that the City has the authority to grant permission to persons
6 lodging in vehicles to stay on public property and therefore such arrests or threats of
7 arrest are purely discretionary.

8 **The City Has Refused to Modify Its Discriminatory Policies**

9 59. On March 30, 2017, seven of the Plaintiffs—Michael Bloom, Stephen
10 Chatzky, Valerie Grischy, Penny Helms, Doug Higgins, Suzonne Keith, and David
11 Wilson—acting through their attorneys, delivered to the office of the City Attorney a
12 written request for a reasonable modification of the City’s ticketing policies pursuant
13 to the provisions of Title II of the ADA. The reasonable modification would allow
14 them and other homeless RV owners with disabilities to continue to live in San Diego
15 and fully utilize their RVs as shelter, including at night without ticketing and
16 harassment. The request included supporting evidence documenting each of the
17 individual’s disability-related need to utilize their RVs.

18 60. Plaintiffs are aware of multiple parking lots under City control that are
19 empty at night, and that could be used by Named Plaintiffs and Class members for
20 nighttime parking of their RVs. Plaintiffs are also aware of streets in industrial areas
21 that are empty at night and have ample places to park RVs. The use of these lots and
22 industrial areas for nighttime parking of Class members’ RVs would not infringe on
23 residential parking or otherwise inconvenience other City residents.

24 61. In response to Plaintiffs’ reasonable modification request, the City
25 Attorney’s office held one meeting with Plaintiffs’ counsel on May 9, 2017. Over the
26 next two months, and despite the urgency of this matter to Plaintiffs’ health and safety,
27 the City did not take or propose any actions to address Plaintiffs’ concerns. The City,
28 while claiming an interest in seeking a resolution, continued to ticket homeless RV

1 owners and to impound their vehicles including those with disabilities. The City's
2 actions showed an unwillingness to make reasonable modifications to its nighttime RV
3 parking and vehicle habitation ordinances.

4 62. On July 8, 2017, Plaintiffs requested that the City temporarily halt
5 enforcement of San Diego Muni. Code §§ 86.0139(a) and 86.0137(f) to stop ticketing
6 homeless RV owners and impounding their RV's pending a final resolution of the
7 matter. The City again stalled, waiting until August 23, 2017, before telling Plaintiffs
8 that it would not agree to halt enforcement of these ordinances temporarily. Because
9 of the continued harm being caused to Named Plaintiffs and Class members, Plaintiffs
10 have no choice now but to file this Complaint.

11 **CLAIMS**

12 **FIRST CAUSE OF ACTION**

13 **Violation of Substantive Due Process—State Created Danger**

14 **(Fourteenth Amendment; 42 U.S.C. § 1983)**

15 63. Plaintiffs hereby incorporate each and every allegation contained in the
16 foregoing paragraphs as if fully set forth herein.

17 64. Under the Substantive Due Process Clause of the Fourteenth Amendment,
18 the state deprives a person of a substantive due process right if it affirmatively places
19 the person in a position of danger. *Wood v. Ostrander*, 875 F. 2d 578, 583 (9th Cir.
20 1989).

21 65. Defendant City of San Diego has a policy, pattern, custom, and practice
22 of issuing citations to Named Plaintiffs and Class members under the above-described
23 ordinances, and when said Class members are unable to pay the citation, impounding
24 RVs or other vehicles that Plaintiffs and Class members rely on for shelter from the
25 elements and for other necessities.

26 66. As a direct result of that policy and practice, Defendant, through its
27 agents, employees, officials and departments, has acted and continues to act
28 affirmatively as described herein to place Plaintiffs and Class members in a highly

1 dangerous situation that they would not otherwise face, thereby threatening Plaintiffs'
2 and Class members' health and safety, risking serious exacerbations of their
3 disabilities, and putting their lives at risk.

4 67. As a direct result of its policy and practice, Defendant has acted
5 affirmatively by citing Plaintiffs and Class members for parking and vehicle habitation
6 violations that they cannot reasonably avoid, thereby forcing Plaintiffs and Class
7 members to attempt to pay more than they can afford on exorbitant fines. Plaintiffs
8 and Class members who attempt to pay these fines must sacrifice paying for life-
9 sustaining food, medication, or other necessities. And when they can no longer afford
10 the fines, they lose the only form of shelter available to them—their RV or vehicle—
11 through impoundment. Without their vehicle, Plaintiffs and Class members are highly
12 likely to be forced into the ranks of the unsheltered homeless and face the dangers
13 described herein of living on the streets. In addition, Class members who have their
14 RVs taken are deprived of other necessities of life previously provided by their RV
15 including ready access to running water, toilet, shower, cooking and food storage
16 facilities; temperature control; and secure sleeping accommodations, causing a
17 significant negative impact on their physical and/or mental health.

18 68. In the absence of Defendant's affirmative actions, Plaintiffs and Class
19 members would not face these highly dangerous situations. Defendant knew or
20 reasonably should have known that its actions—up to and including taking away
21 Plaintiffs' and Class members' only form of shelter—would create these threats to
22 Plaintiffs' and Class members' health and safety.

23 69. Defendant acted with reckless disregard or deliberate indifference to the
24 dangers—malnourishment, illness, and/or aggravation of disabilities due to loss of
25 shelter—they were creating for Plaintiffs and Class members by issuing and/or
26 threatening to issue nighttime RV parking and vehicle habitation citations and
27 impounding RVs and other vehicles. Defendant and their agents and employees also
28 knew or reasonably should have known that the Named Plaintiffs and many Class

1 members have disabilities, are chronically homeless, and have no other viable options
2 for shelter. Defendant's actions show a reckless disregard or deliberate indifference to
3 the health, safety and well-being of Plaintiffs and Class members, in violation of
4 Plaintiffs' and Class members' substantive due process rights under the Fourteenth
5 Amendment to the U.S. Constitution. *Wood*, 875 F. 2d at 583.

6 70. As a result of Defendant's policies and practices described herein, Named
7 Plaintiffs' health and safety were placed in grave danger in violation of the Fourteenth
8 Amendment. Named Plaintiffs were injured and damaged in that they were forced to
9 bear the risks and medical costs created by these acts. In addition to that cost, the
10 Named Plaintiffs suffered emotional and mental distress as well as humiliation because
11 of the danger created by Defendant's unlawful actions. Defendant's unlawful actions
12 and the resulting injuries entitle Named Plaintiffs to compensatory damages, including
13 damages for emotional distress.

14 71. An actual controversy exists between Plaintiffs and Class members on the
15 one hand, and Defendant on the other, as to whether Defendant has violated and/or are
16 imminently threatening to violate 42 U.S.C. § 1983.

17 72. Plaintiffs and Class members have no adequate remedy at law for the
18 violations stated herein and are therefore entitled to injunctive, declaratory, and other
19 equitable relief, including restitution for fines and assessments collected and vehicles
20 impounded by Defendant. Plaintiffs are also entitled to attorneys' fees and costs.

21 **SECOND CAUSE OF ACTION**

22 **Violation of Cruel and Unusual Punishment**

23 **(Eighth and Fourteenth Amendments; 42 U.S.C. § 1983)**

24 73. Plaintiffs hereby incorporate each and every allegation contained in the
25 foregoing paragraphs as if fully set forth herein.

26 74. The Eighth Amendment to the U.S. Constitution provides that
27 "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and
28 unusual punishments inflicted."

1 75. Defendant's practice and policy of issuing tickets and threats of tickets for
2 nighttime RV parking and vehicle habitation to Plaintiffs and Class members,
3 impounding their RVs and vehicles as a result of those offenses, and threats of arrest
4 for vehicle habitation violates the Eighth Amendment's prohibition on cruel and
5 unusual punishment because it constitutes a punishment that is disproportionate to the
6 severity of the "crime" of violating the nighttime RV parking and vehicle habitation
7 ordinances or of lodging in one's vehicle on City streets. *See Solem v. Helm*, 463 U.S.
8 277 (1983).

9 76. The punishments inflicted by Defendant for violation of the ordinances in
10 question force Named Plaintiffs and Class members to attempt to pay more than they
11 can afford on exorbitant fines. Plaintiffs and Class members who attempt to pay these
12 fines must sacrifice paying for life-sustaining food, medication or other necessities.
13 And when they can no longer afford the fines, they lose the only form of shelter
14 available to them—their RV or vehicle—through impoundment. With their RVs or
15 vehicles taken from them, Plaintiffs and Class members face the dangers described
16 herein of living on the streets without shelter and/or without the other necessities of
17 life provided by their RVs.

18 77. These punishments grossly outweigh any interest on the part of
19 Defendant in preventing Plaintiffs and Class members from parking on city streets at
20 certain times of the day and/or seeking shelter in their vehicles.

21 78. For Named Plaintiffs and Disability Subclass members, Defendant's
22 practice and policy also violates the Eighth Amendment's prohibition on cruel and
23 unusual punishment because it punishes Named Plaintiffs and Disability Subclass
24 members for being homeless. By punishing the act of sheltering oneself in a vehicle
25 when there are no other reasonable alternatives, the City effectively punishes the status
26 of homelessness. Defendant infringes Plaintiffs' and Subclass members' rights by
27 issuing tickets and threats of tickets for nighttime RV parking and vehicle habitation,
28 as well as by impounding RVs and vehicles, and threatening arrest for vehicle

1 habitation. *See Robinson v. California*, 370 U.S. 660 (1962); *Jones v. City of Los*
2 *Angeles*, 444 F.3d 1118 (9th Cir. 2006), *vacated after settlement*, 505 F.3d 1006 (9th

3 Cir. 2007).
4 79. Named Plaintiffs and Disability Subclass members are involuntarily
5 homeless. They are homeless because their disabilities led to their unemployment and
6 poverty, and because the City lacks affordable permanent housing and accessible,
7 adequate, and available shelters. They cannot reasonably forego sheltering themselves,
8 as sheltering oneself is a basic human need. It is harmless. And it is an act integral to
9 the status of homelessness. Until permanent, affordable, and accessible housing is
10 available to them, their RVs or other vehicles are their only option for meeting their
11 basic human need for shelter and for other necessities of life that housing normally
12 provides.

13 80. As a result of Defendant inflicting cruel and unusual punishment under
14 color of law in violation of the Eighth and Fourteenth Amendments, the Named
15 Plaintiffs were injured and damaged in that they were forced to pay exorbitant fines
16 they could not afford to pay, and/or were deprived of the use of their only available
17 shelter—their RVs or other vehicles—and were forced to bear the cost of finding and
18 securing whatever other accommodations they could obtain. In addition to that cost,
19 the Named Plaintiffs suffered emotional and mental distress as well as humiliation
20 because of this violation of their rights. Defendant's unlawful actions and the resulting
21 injuries entitle Named Plaintiffs to compensatory damages, including damages for
22 emotional distress. Plaintiffs and Class members are also entitled to injunctive and
23 declaratory relief, restitution, and attorneys' fees and costs.

24 **THIRD CAUSE OF ACTION**

25 **Violation of Substantive Due Process—Void for Vagueness**

26 **(Fourteenth Amendment; 42 U.S.C. § 1983)**

27 81. Plaintiffs hereby incorporate each and every allegation contained in the
28 foregoing paragraphs as if fully set forth herein.

1 82. The Substantive Due Process Clause of the Fourteenth Amendment to the
2 U.S. Constitution provides that no state shall “deprive any person of life, liberty, or
3 property, without due process of law.”

4 83. In order to satisfy the Due Process Clause, an ordinance must be
5 sufficiently definite to provide adequate notice of the conduct proscribed and provide
6 sufficient guidelines for the police so that arbitrary and discriminatory enforcement
7 does not occur. *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1106-1107 (1995).

8 84. San Diego’s vehicle habitation ordinance does not satisfy the
9 requirements of the Due Process Clause. As written, the vehicle habitation ordinance
10 makes unlawful the use of a vehicle parked or standing on the street as “either
11 temporary or permanent living quarters, abode, or place of habitation.” None of the
12 terms used—“temporary living quarters,” “permanent living quarters,” “abode” or
13 “place of habitation”—are defined anywhere in the ordinance.

14 85. The City’s vehicle habitation ordinance (whether enforced directly or
15 indirectly through citations issued under “Violation of Signs” prohibiting habitation)
16 fails to provide adequate notice and sufficient guidance, which would allow an
17 individual to ascertain beyond mere speculation as to how one uses a parked or
18 standing vehicle as “either temporary or permanent living quarters, abode, or place of
19 habitation.” The ordinance therefore fails “to draw a clear line between innocent and
20 criminal conduct,” *Desertrain v. City of Los Angeles*, 754 F. 3d 1147, 1156 (9th Cir.
21 2014), and invites selective enforcement against people who are homeless, many of
22 whom have disabilities. As detailed above, Named Plaintiffs and Class members have
23 attempted to comply with the vehicle habitation ordinance but have nonetheless been
24 ticketed under its vague and overbroad reach.

25 86. The vehicle habitation ordinance should therefore be declared
26 unconstitutionally vague both on its face and as applied against Named Plaintiffs and
27 Class members in violation of substantive due process protections under the Fourteenth
28 Amendment to the U.S. Constitution.

1 87. As a result of the Defendant's actions under color of law in violation of
2 the Due Process Clause of the Fourteenth Amendment, Named Plaintiffs and Class
3 members have been and continue to be forced to pay fines and assessments they cannot
4 afford to pay and have been and continue to be deprived of or threatened with the
5 deprivation of their only available shelter—their RVs or other vehicles. In addition to
6 that cost, Named Plaintiffs suffered emotional and mental distress as well as
7 humiliation because of this violation of their rights. Defendant's unlawful actions and
8 the resulting injuries entitle Named Plaintiffs to compensatory damages, including
9 damages for emotional distress. Named Plaintiffs and Class members are also entitled
10 to injunctive and declaratory relief, restitution, and attorneys' fees and costs.

11 **FOURTH CAUSE OF ACTION**

12 **Violation of Substantive Due Process—Right to Travel**

13 **(Fourteenth Amendment; Cal. Const. Art. 1, §§ 7 and 24; 42 U.S.C. § 1983)**

14 88. Plaintiffs hereby incorporate each and every allegation contained in the
15 foregoing paragraphs as if fully set forth herein.

16 89. The Fourteenth Amendment to the U.S. Constitution protects as a
17 hallmark of personal liberty the right to travel to whatever place one's own inclination
18 may direct and stay as long as one wishes. Enforcement practices that deprive
19 individuals of a basic necessity of life may be found to burden the right to travel
20 unconstitutionally. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974);
21 *Pottinger v. Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992). "The right to travel has found
22 its strongest expression in the context of attempts by states to discourage the in-
23 migration of indigents." *Joyce v. City & Cty. of S.F.*, 846 F. Supp. 843, 860 (N.D. Cal.
24 1994). The California Constitution also specifically protects the right to intrastate
25 travel. Cal. Const. Art. 1, §§ 7 and 24; *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069 (Cal.
26 1995).

27 90. Defendant's pattern and practice of ticketing Named Plaintiffs and Class
28 members under its nighttime RV parking and vehicle habitation ordinances directly

1 infringes Named Plaintiffs' and Class members' Right to Travel. Defendant has created
2 an RV parking permit process available to most city residents to allow nighttime RV
3 parking, but have denied access to that permitting process to Named Plaintiffs and
4 Class members. Defendant has conducted these activities by collecting exorbitant fines
5 that Named Plaintiffs cannot afford to pay, impounding their vehicles, and threatening
6 criminal prosecution for a misdemeanor, even though Named Plaintiffs and Class
7 members have no reasonable alternative but to utilize the rudimentary shelter provided
8 by their vehicles. This conduct has the purpose and effect of depriving or threatening
9 to deprive Named Plaintiffs and Class members of the necessities of life, including
10 food, shelter, and medicine, thereby preventing Named Plaintiffs and Class members
11 from traveling to and residing in San Diego.

12 91. Defendant's enforcement of the nighttime RV parking ordinance
13 specifically leaves Named Plaintiffs and Class members with no options for parking
14 their RVs between 2:00 AM and 6:00 AM. Since Named Plaintiffs and Class members
15 lack the means to pay for housing or private parking and temporary shelters are not
16 available to them, Named Plaintiffs and Class members cannot reasonably be in the
17 City within those times, effectively depriving them of all shelter while traveling within
18 the City.

19 92. Defendant's enforcement of the vehicle habitation ordinance also
20 infringes Named Plaintiffs' and Class members' Right to Travel by preventing them
21 from obtaining shelter in the City of San Diego in the only way available to them (in
22 their vehicles), thereby depriving them of that basic necessity in the City. As described
23 herein, Named Plaintiffs and Class members lack the means to obtain housing or to
24 pay for private parking for their vehicles in the City, and emergency and temporary
25 shelters, including transitional housing programs lack capacity and in the large
26 majority of cases, provide at best only transitory accommodations. In the case of
27 Disability Sub-Class members, such shelter programs are usually inaccessible and
28 therefore not available to them, due to their disabilities and medical conditions.

93. Defendant's actions have violated Named Plaintiffs' and Class members' Right to Travel under both the Fourteenth Amendment and the California Constitution by refusing to provide an exemption to the nighttime RV parking ordinance based on homelessness or disability. The City has provided an exemption to its nighttime RV parking ordinance via a permit process that allows people with physical addresses to park RVs and oversized vehicles from 2:00 AM to 6:00 AM, but has denied the same rights to those without physical addresses, including Named Plaintiffs and Class members. Defendant's enforcement of the nighttime RV parking ordinance against Named Plaintiffs and Class members denies them the basic necessity of shelter and violates their Constitutional Right to Travel.

94. Defendant's actions therefore unconstitutionally infringe on the Right to Travel protected under the Fourteenth Amendment to the U.S. Constitution and the California Constitution.

95. As a result of Defendant's actions under color of law in violation of the Right to Travel under the Due Process Clause of the Fourteenth Amendment, Plaintiffs and Class members were forced to pay citations that they could not afford, and/or lost their vehicles through impoundment, thereby depriving them of the use of their only available shelter—their RVs or other vehicles. In addition to that cost, Named Plaintiffs suffered emotional and mental distress as well as humiliation because of this violation of their rights. Defendant's unlawful actions and the resulting injuries entitle Named Plaintiffs to compensatory damages including damages for emotional distress. Named Plaintiffs and Class members are also entitled to injunctive and declaratory relief, restitution, and attorneys' fees and costs.

FIFTH CAUSE OF ACTION

Violation of Substantive Due Process—Equal Protection

(Fourteenth Amendment; 42 U.S.C. § 1983)

96. Plaintiffs hereby incorporate each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

1 97. The Equal Protection Clause of the Fourteenth Amendment dictates that
2 no State shall deny to any person within its jurisdiction the equal protection of the laws.
3 Conduct violates the Equal Protection Clause when it disproportionately affects a
4 suspect class or impinges on the exercise of a fundamental right. *Plyler v. Doe*, 457
5 U.S. 202, 216-17 (1982).

6 98. Defendant discriminates against homeless individuals through the
7 enforcement of the nighttime RV parking ordinance by providing an exemption to the
8 prohibition contained in its nighttime RV parking ordinance via a permit process that
9 allows people with physical addresses to park RVs and oversized vehicles from 2:00
10 AM to 6:00 AM, but denies the same rights to those without physical addresses,
11 including Named Plaintiffs and Class members.

12 99. Defendant's policies and practices further prevent Named Plaintiffs and
13 Class members from obtaining benefits provided by the City by blocking them from
14 obtaining a permit exempting them from the nighttime RV parking ordinance. These
15 actions by Defendant have no rational connection to a legitimate government interest.
16 In adopting and implementing these policies and practices as above stated, Defendant
17 has thus violated and continue to violate the Equal Protection Clause of the United
18 States Constitution.

19 100. Defendant's above-described policies and practices of ticketing homeless
20 vehicle owners under its nighttime RV parking and vehicle habitation ordinances and
21 impounding their RVs or other vehicles serve to single out and discriminate against
22 homeless people and/or people with disabilities, including Named Plaintiffs and Class
23 members. Named Plaintiffs and Class members are being singled out for enforcement
24 of these ordinances that are not enforced against people with RVs or other vehicles who
25 do not appear to be homeless or disabled. Defendant's selective enforcement of these
26 ordinances violates Named Plaintiffs' and Class members' right to Equal Protection
27 under the Fourteenth Amendment.

28 101. Defendant's conduct prevents Named Plaintiffs and Class members from

1 traveling to the City of San Diego without fear of ticketing and arrest, as detailed in
2 the Fourth Cause of Action. This restriction of the right to travel infringes a
3 fundamental right, is not substantially related to any important government interest,
4 and therefore violates the Equal Protection Clause of the U.S. Constitution.

5 102. As a result of Defendant's actions under color of law in violation of the
6 Equal Protection Clause of the Fourteenth Amendment, Named Plaintiffs and Class
7 members were forced to pay citations that they could not afford, and/or lost their
8 vehicles through impoundment, thereby depriving them of the use of their only
9 available shelter—their RVs or other vehicles. In addition to that cost, Named
10 Plaintiffs suffered emotional and mental distress as well as humiliation because of this
11 violation of their rights. Defendant's unlawful actions and the resulting injuries entitle
12 Named Plaintiffs to compensatory damages, including damages for emotional distress.
13 Named Plaintiffs and Class members are also entitled to injunctive and declaratory
14 relief, restitution, and attorneys' fees and costs.

15 **SIXTH CAUSE OF ACTION**

16 **Violation of California Constitution - Due Process and Equal Protection**

17 **(Cal. Const. art I, § 7)**

18 103. Plaintiffs hereby incorporate each and every allegation contained in the
19 foregoing paragraphs as if fully set forth herein.

20 104. Defendant's policies and practices as herein stated violate the due process
21 liberty interests and equal protection provisions of Article I, § 7 of the California
22 Constitution.

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of Bane Act**

25 **(California Civil Code § 52.1 "Bane Act")**

26 105. Plaintiffs hereby incorporate each and every allegation contained in the
27 foregoing paragraphs as if fully set forth herein.

28 106. California Civil Code § 52.1, also known as the "Bane Act," provides a

1 cause of action to individuals whose exercise or enjoyment of rights secured by the
2 United States and/or California Constitutions and other laws has been interfered with,
3 or attempted to be interfered with, by another's threat, intimidation, or coercion.

4 107. By their conduct and actions as set forth herein, Defendant through its
5 agents and employees, has interfered with, has attempted to interfere with, and
6 continues to attempt to interfere with, by threat, intimidation, and/or coercion,
7 Plaintiffs' and Class members' exercise of their rights to be present on the public streets
8 and parking locations in the areas of San Diego, as those rights are secured by the
9 Eighth and Fourteenth Amendments to the United States Constitution and by the
10 Constitution and laws of the State of California, including California Constitution Art.
11 I, § 7, and the federal and state statutory protections guaranteed to individuals with
12 disabilities. Defendant's actions, including citations, arrests, and punishments and the
13 threat thereof, have criminalized conduct that is the involuntary result of Named
14 Plaintiffs' and Class members' status, in violation of Plaintiffs' Constitutional rights.

15 108. There was and is no lawful justification for Defendant to threaten,
16 intimidate, or coerce any of the Named Plaintiffs and Class members, or to attempt to
17 use threats, intimidation, or coercion as described herein to interfere with Plaintiffs'
18 exercise of their rights. Defendant's actions were and are taken willfully and with
19 malice and oppression in order to deter and/or prevent Named Plaintiffs and Class
20 members from exercising their protected constitutional and statutory rights.

21 109. Plaintiffs and Class members are entitled to injunctive relief and other
22 appropriate equitable relief to protect the peaceful exercise and enjoyment of Plaintiffs'
23 and Class members' rights.

24 **EIGHTH CAUSE OF ACTION**

25 **Violation of Americans with Disabilities Act**

26 **(42 U.S.C. § 12132)**

27 **(On Behalf of Disability Subclass Members)**

28 110. Plaintiffs hereby incorporate each and every allegation contained in the

1 foregoing paragraphs as if fully set forth herein.

2 111. Title II of the ADA, 42 U.S.C. § 12132, provides that:

3 [N]o qualified individual with a disability shall, by reason of such disability, be
4 excluded from participation in or be denied the benefits of the services,
5 programs, or activities of a public entity, or be subjected to discrimination by
6 any such entity.

7 112. The Named Plaintiffs and Disability Subclass members are “qualified
8 persons with disabilities” as defined under the ADA. 42 U.S.C. § 12102; 42 U.S.C.
9 § 12131; 28 C.F.R. § 35.104.

10 113. Under the ADA’s broad language, a “program, service, or activity”
11 includes within its scope “anything a public entity does.” *Yeskey v. Pennsylvania Dep’t*
12 *of Corr.*, 118 F. 3d 168, 171 & n. 5 (3d Cir. 1997), *aff’d* 524 U.S. 206 (1998) (quoting
13 28 C.F.R. Pt. 35, App. A, preamble to ADA regulations).

14 114. The City’s parking program including the enforcement by the Police
15 Department of its parking ordinances is a service, program, or activity of the City.

16 115. In addition, the various amenities of City life offered to its residents,
17 including San Diego’s parks, beaches and public events are “services, programs, or
18 activities” of the City.

19 116. Title II protects people with disabilities against facially neutral policies
20 that burden people with disabilities more than others, by requiring that the public entity
21 provide reasonable modifications to avoid the discrimination unless the public entity
22 can demonstrate that such modifications would result in a fundamental alteration of the
23 program. 28 C.F.R. § 35.130(b)(7); *Crowder v. Kitagaw*, 81 F. 3d 1480 (9th Cir. 1996).

24 117. Reasonable modifications can adjust for the financial limitations that arise
25 from a disability, not just the immediate manifestations of the impairment giving rise
26 to the disability. *Giebler v. M & B Associates*, 343 F. 3d 1143, 1152 (9th Cir. 2003).

27 118. By refusing to reasonably modify its policies and practices as described
28 herein to allow Named Plaintiffs and Disability Subclass members to legally park their

1 vehicles on City streets or other public property and to utilize their vehicles for shelter,
2 at least until affordable, accessible and medically appropriate housing is available for
3 them, Defendant has violated and continues to violate the antidiscrimination
4 requirements of Title II of the ADA.

5 119. Title II regulations interpreting the ADA prohibit a public entity from
6 utilizing criteria or methods of administration that have the effect of subjecting
7 qualified individuals with disabilities to discrimination based on disability. 29 C.F.R.
8 § 35.130(b)(3).

9 120. A public entity is also prohibited from imposing eligibility criteria that
10 screen out or tend to screen out individuals with disabilities from fully and equally
11 enjoying any service, program, or activity. 28 C.F.R. § 35.130(b)(8).

12 121. Defendant's policies and practices in administering their parking
13 program through ticketing Disability Subclass members, impounding their RVs and
14 other vehicles and excluding homeless RV owners from the ability to obtain parking
15 permits available to people with physical addresses, has the effect of discriminating
16 against and imposing disproportionate burdens on people with disabilities based on
17 disability, screening out such persons from the benefits of the City's parking program,
18 and denying them meaningful access to such benefits and to the City's amenities
19 enjoyed by and available to people without disabilities.

20 122. In carrying out Defendant's policies and practices as described herein,
21 Defendant has utilized criteria or methods of administration that have the effect of
22 subjecting qualified individuals with disabilities to discrimination based on disability.
23 29 C.F.R. § 35.130(b)(3).

24 123. In carrying out Defendant's policies and practices as herein described and
25 denying Plaintiffs' request for reasonable modification in violation of Plaintiffs' rights
26 under the ADA, Defendant has acted knowingly and with deliberate indifference to the
27 harm substantially likely to occur.

28 124. As a result of Defendant's unlawful acts, Named Plaintiffs have suffered

1 and continue to suffer injuries, including emotional injuries, and are entitled to
2 compensatory damages, including damages for emotional distress. In addition, Named
3 Plaintiffs and Disability Subclass members are entitled to injunctive and declaratory
4 relief, restitution, and attorneys' fees and costs.

5 **NINTH CAUSE OF ACTION**

6 **Violation of § 504 of the Rehabilitation Act of 1973**

7 **(29 U.S.C. § 794)**

8 **(On Behalf of Disability Subclass Members)**

9 125. Plaintiffs hereby incorporate each and every allegation contained in the
10 foregoing paragraphs as if fully set forth herein.

11 126. Defendant City of San Diego and the City's Police Department, are
12 recipients of financial assistance from the federal government.

13 127. Section 504 of the Rehabilitation Act of 1973 requires that qualified
14 persons with disabilities be provided with meaningful access to federally funded
15 programs. In order to assure meaningful access, reasonable modifications may be
16 required unless the recipient of federal funding can demonstrate that such
17 modifications would result in a fundamental alteration in the nature of the program. 29
18 U.S.C. § 749; 24 C.F.R. §§ 8.3 and 8.4; *Alexander v. Choate*, 469 U.S. 287, 301 (1985).

19 128. Defendant's actions and omissions as herein stated have denied Plaintiffs'
20 and Disability Subclass members' right to reasonable modifications thereby denying
21 them meaningful access to Defendant's parking program and to the amenities that the
22 City offers its residents without disabilities, and subjecting them to discrimination on
23 the basis of disability, in violation of section 504 of the Rehabilitation Act.

24 129. As a result of Defendant's unlawful acts in violation of the Rehabilitation
25 Act, Named Plaintiffs have suffered and continue to suffer injuries, including
26 emotional injuries, and are entitled to compensatory damages, including damages for
27 emotional distress. In addition, Named Plaintiffs and Disability Subclass members are
28 entitled to injunctive and declaratory relief, restitution, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

A. Declare that Defendant's past, present, and threatened future enforcement of the vehicle habitation and nighttime RV parking ordinances, San Diego Muni. Code §§ 86.0137(f) and 86.0139(a), including its enforcement of San Diego Muni. Code § 86.0112(E) "Violation of Signs" for vehicle habitation against Named Plaintiffs and Class members or any citing, arrest or prosecution or threatened citation or arrest for lodging in vehicles on public property violates the right to be free from cruel and unusual punishment, the right to travel, the right to due process and equal protection of the laws;

B. Declare that Defendant's past, present and threatened future enforcement of the above San Diego ordinances and threats of arrest for lodging in vehicles on public property against Named Plaintiffs and Disability Subclass members discriminates on the basis of disability in violation of the ADA, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794;

C. Declare that San Diego's vehicle habitation ordinance, San Diego Muni. Code § 86.0137(a), is void for vagueness and unenforceable facially and/or as applied to Named Plaintiffs and Class members pursuant to the due process protections of the U.S. and California Constitutions and enforcement of § 86.0112(E) for vehicle habitation is similarly void;

D. Issue a preliminary and permanent injunction, enjoining Defendant, their departments, officers, employees, assignees, successors, and agents from enforcing the vehicle habitation and nighttime RV parking ordinances and from enforcing violation of signs prohibiting vehicle habitation against Named Plaintiffs and Class members through issuing of additional tickets, collecting unpaid fines associated with previous tickets issued under these ordinances, arresting Class members, or through impoundment of RVs or other vehicles for such unpaid tickets and further enjoining Defendant against ticketing, arrests, prosecutions or any threats of arrest or prosecution

1 against Named Plaintiffs and Class members for lodging in vehicles on public property,
2 until such time that permanent accessible housing that is affordable is made available
3 to these individuals;

4 E. Award restitution for fines and penalties that Defendant collected from
5 Named Plaintiffs and Class members and for vehicles that were impounded pursuant
6 to Defendant's enforcement of the nighttime RV parking and vehicle habitation
7 ordinances and for violation of signs for vehicle habitation;

8 F. Order Defendant to pay compensatory damages to Named Plaintiffs only
9 pursuant to 42 U.S.C. § 1983 for the deprivation of Plaintiffs' constitutionally
10 guaranteed rights, and for violation of the ADA, 42 U.S.C. § 12132, and Section 504
11 of the Rehabilitation Act, 19 U.S.C. § 794, including damages for emotional distress,
12 and pain and suffering in an amount to be proven at trial;

13 G. Award to Plaintiffs reasonable attorneys' fees pursuant to 42 U.S.C.
14 § 1988, 42 U.S.C. § 12205, 29 U.S.C. § 794a(a)(2)(b), Cal. Civ. Code § 52, and Cal.
15 Civ. Proc. Code § 1021.5;

16 H. Award to Plaintiffs costs of suit; and

17 I. Order such other and further relief that the Court deems just and proper.
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1 Dated: February 14, 2018

FISH & RICHARDSON P.C.

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3 By: /s/ Geoff D. Biegler

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 14, 2018 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ LR 5.4(d). Any other counsel of record will be served by U.S. mail or hand delivery.

By: /s/ Geoff D. Biegler
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