

1 Michael A. Amon, SB # 226221  
2 [Amon@fr.com](mailto:Amon@fr.com)  
3 Madelyn S. McCormick, SB # 320063  
4 [MMcCormick@fr.com](mailto:MMcCormick@fr.com)  
5 FISH & RICHARDSON P.C.  
6 12390 El Camino Real  
7 San Diego, CA 92130  
8 Telephone: (858) 678-5070  
9 Fax: (858) 678-5099

10 *[Additional Counsel Listed on following page]*

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

14 MICHAEL BLOOM, STEPHEN  
15 CHATZKY, TONY DIAZ, VALERIE  
16 GRISCHY, PENNY HELMS,  
17 BENJAMIN HERNANDEZ, DOUG  
18 HIGGINS, SUZONNE KEITH,  
19 GERALD STARK, ANNA STARK,  
20 and DAVID WILSON, individually and  
21 on behalf of themselves and all others  
22 similarly situated,,

23 Plaintiffs,

24 v.

25 CITY OF SAN DIEGO,

26 Defendant.

Case No. 3:17-cv-02324-AJB-MSB

**SECOND 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 U.S. AND  
CALIFORNIA CONSTITUTIONS, AND  
CALIFORNIA CIVIL CODE § 52.1**

**JURY TRIAL DEMANDED**

1 Maria Foscarinis, DC SB # 397792 (Admitted *Pro Hac Vice*)  
2 [mfoscarinis@nlchp.org](mailto:mfoscarinis@nlchp.org)  
3 NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY  
4 2000 M Street, NW, Suite 210  
5 Washington, DC 20036  
6 Telephone: (202) 638-2835 x 102/Fax: (202) 628-2737

7 Ann E. Menasche, SB # 74774  
8 [Ann.Menasche@disabilityrightsca.org](mailto:Ann.Menasche@disabilityrightsca.org)  
9 Nichole Marie Mendoza, SB # 276632  
10 [Nichole.Mendoza@disabilityrightsca.org](mailto:Nichole.Mendoza@disabilityrightsca.org)

11 Lili Graham, SB # 284264  
12 [Lili.Graham@disabilityrightsca.org](mailto:Lili.Graham@disabilityrightsca.org)  
13 DISABILITY RIGHTS CALIFORNIA  
14 530 B Street, Suite 400  
15 San Diego, CA 92101  
16 Telephone: (619) 814-8524/Fax: (619) 239-7906

17 Benjamin Conway, SB # 246410  
18 [ben.conway@disabilityrightsca.org](mailto:ben.conway@disabilityrightsca.org)  
19 DISABILITY RIGHTS CALIFORNIA  
20 350 S. Bixel St., Suite 290  
21 Los Angeles, CA 90017  
22 Telephone: (213) 213-8000/Fax: (213) 213-8001

23 Stuart Seaborn, SB # 198590  
24 [sseaborn@dralegal.org](mailto:sseaborn@dralegal.org)  
25 Shira J. Tevah, SB # 307106  
26 [stevah@dralegal.org](mailto:stevah@dralegal.org)  
27 DISABILITY RIGHTS ADVOCATES  
28 2001 Center Street, 4<sup>th</sup> Floor,  
Berkeley, CA 94704  
Telephone: (510) 665-8644/Fax: (510) 665-8511

Robert Scott Dreher, SB #120527  
[scott@dreherlawfirm.com](mailto:scott@dreherlawfirm.com)  
DREHER LAW FIRM  
350 West Ash St., Ste. 101  
San Diego, CA 92101  
Telephone: (619) 230-8828

1 Manfred P. Muecke, SB # 222893  
2 [mmuecke@bffb.com](mailto:mmuecke@bffb.com)  
3 Patricia Syverson, SB # 203111  
4 [psyverson@bffb.com](mailto:psyverson@bffb.com)  
5 BONNETT FAIRBOURN FRIEDMAN & BALINT PC  
6 600 West Broadway, #900  
7 San Diego, CA 92101  
8 Telephone: (619) 798-4292/Fax: (602) 274-1199

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**INTRODUCTION**

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2           1.     In the midst of a severe housing crisis characterized by dramatically  
3 rising rents, a shrinking affordable housing supply, long waits for housing subsidies,  
4 scarcity of shelter beds, and a homeless population that has grown 23% in five years,  
5 the City of San Diego (“the City”) is targeting its most vulnerable residents. There are  
6 over 800 unsheltered homeless residents in San Diego, many with disabilities, who  
7 seek shelter in their recreational vehicles (“RVs”), campers, or other vehicles  
8 (collectively, “Vehicles”). For these people, their Vehicles are their only reliable, safe  
9 shelter from the elements and only place to store their belongings. Yet, even though  
10 there are no adequate alternatives, the City has repeatedly ticketed and harassed these  
11 individuals for seeking shelter in their Vehicles or simply for owning Vehicles and  
12 having nowhere else to park. Specifically, the City has used its ordinance prohibiting  
13 vehicle habitation, San Diego Muni. Code § 86.0137(f) (“the Original VHO”), and its  
14 ordinance prohibiting RV parking from 2:00 a.m. to 6:00 a.m., San Diego Muni.  
15 Code § 86.0139(a) (“the nighttime RV parking ordinance”) to target homeless vehicle  
16 owners, ticketing them and impounding their Vehicles for unpaid tickets. In addition,  
17 the City has threatened homeless Vehicle owners with punishment under other laws  
18 for the same conduct, including arrest and misdemeanor charges for illegal lodging  
19 under California Penal Code § 647(e).

20           2.     Despite being alerted to these issues, the City refuses to modify its  
21 policies to provide a reasonable opportunity for homeless individuals to seek shelter  
22 in and/or park their Vehicles legally on City streets or other public property, at least  
23 until affordable, accessible, and medically appropriate housing is available to them.  
24 While failing to provide any appropriate accommodation for homeless individuals,  
25 including those with disabilities, the City has created an exemption to the nighttime  
26 RV parking ordinance, via a permit system, for persons who have a physical address.  
27 In other words, the City permits people who are not homeless to park their RVs  
28 overnight on public streets but penalizes homeless people for the same behavior.

1           3.       What’s more, a new plan, commissioned by the City and intended to  
2 guide San Diego’s renewed efforts to eliminate homelessness, recommends taking  
3 steps to reduce its criminalization of homelessness because it undermines housing  
4 solutions.<sup>1</sup> Indeed, the report advises that criminalizing homelessness often has  
5 “negative long- term impacts on people experiencing homelessness that make  
6 obtaining employment and housing even more difficult[,]”<sup>2</sup> among other harms. The  
7 plan, by the Corporation for Supportive Housing, urges the City to immediately  
8 prioritize a review of those policies practices, which would include the new version  
9 of the vehicle habitation ordinance (the “New VHO”). The plan also encourages the  
10 City to look at ways to dial- back the police department’s prominent role in homeless  
11 outreach.

12           4.       On August 21, 2018, this Court granted Plaintiffs’ motion for a  
13 preliminary injunction, enjoining enforcement of the Original VHO. (ECF 44 at 1.)  
14 The Court found Plaintiffs likely to prevail on their claim that the Original VHO  
15 “violates Plaintiffs’ constitutional rights since the [Original VHO] is both vague on  
16 its face and is being arbitrarily enforced.” (Id.) The Court stated that “Plaintiffs will  
17 suffer irreparable harm if their RVs are impounded, that the balance of hardships tilts  
18 in their favor, and that an injunction is in the public’s interest.” (*Id.* at 3.)

19           5.       In response to the preliminary injunction, on February 5, 2019, San  
20 Diego City Council voted to repeal the Original VHO. Then on May 14, 2019, San  
21 Diego City Council enacted a New VHO to replace the Original. The New VHO,  
22 titled “Prohibition of Use of Streets for Storage, Service, or Sale of Vehicles or for  
23 Habitation,” makes it “unlawful for any person, to use a vehicle for human habitation  
24 on any street or public property” between 9:00 p.m. and 6:00 a.m., and at any time  
25 within 500 feet of a residence or school. San Diego Muni. Code § 86.0137(f). The  
26 \_\_\_\_\_

27 <sup>1</sup> The Plan was approved by the San Diego City Council on October 14, 2019.  
28 [https://www.voiceofsandiego.org/wp-  
content/uploads/2019/10/San\\_Diego\\_Homelessness\\_Strategic\\_Plan.pdf](https://www.voiceofsandiego.org/wp-content/uploads/2019/10/San_Diego_Homelessness_Strategic_Plan.pdf).

<sup>2</sup> *Id.* At 48.

1 New VHO excludes otherwise law-abiding people from most areas of the City  
2 anytime—day or night—even when those areas are open to the rest of the public. The  
3 New VHO imposes criminal penalties upon people for seeking shelter, resting, or  
4 performing other life-sustaining activities in most areas of the City. The New VHO  
5 also prohibits people living in vehicles from using their vehicles to visit family,  
6 friends, doctors, lawyers, to attend church, to drop their children off at school, or to  
7 visit places open to the rest of the public such as retail stores or public parks due to  
8 their proximity to a residence. It also severely restricts where people who live in  
9 Vehicles may assemble to engage in expressive conduct in pursuit of political, social,  
10 economic, educational, religious, and cultural ends. The new VHO further imposes a  
11 9:00 p.m. curfew at which time homeless individuals in Vehicles are to be segregated  
12 into a small number of designated parking lots, whether or not those lots are  
13 accessible and reasonable options for them. Violators of the New VHO may be  
14 charged with either an infraction or a misdemeanor which may be subject them to  
15 arrest and incarceration.

16 6. Through its enforcement of the nighttime RV parking ordinance, the  
17 Original VHO, its enforcement and threatened enforcement of the New VHO, and its  
18 policy and practice of towing and impounding vehicle shelters, the City has carried  
19 out a discriminatory, cruel, punitive, and unconstitutional policy against Plaintiffs and  
20 Class members, many of whom have disabilities with nowhere else to go. People who  
21 seek shelter in their Vehicles do so because they do not have access to affordable,  
22 adequate, accessible, stable, permanent, and medically appropriate housing. Sky-high  
23 rents and extremely low incomes, among other factors, have excluded these City  
24 residents from the housing market.

25 7. People who lack housing due to their poverty, often a result of their  
26 disabilities, also have inadequate emergency shelter options and far outnumber the  
27 number of available temporary shelter beds in San Diego. Even if there were a total  
28 number of shelter beds to accommodate the thousands of people experiencing

1 homelessness in San Diego, which there are not, shelters provide only temporary  
2 accommodations, sometimes open only overnight. People entering shelters are often  
3 required to separate from their partners, pets, and personal possessions, and a large  
4 majority of people who exit emergency shelters are recycled immediately back onto  
5 the streets. Moreover, temporary shelter options are medically intolerable and thus  
6 unavailable to people with disabilities because their medical condition or disability  
7 cannot be adequately accommodated in those settings.

8       8. Shelters also lack parking options for homeless people who own  
9 Vehicles. Commercial RV parks exclude older RVs and are often as costly as renting  
10 an apartment, and so are not viable options. There is only one “safe lot” that provides  
11 overnight parking spaces for homeless individuals in RVs to park that recently  
12 opened in May of 2019 (“RV Safe Lot”). However, the RV Safe Lot is in a location  
13 that is difficult to access and lacks amenities necessary for people in RVs to maintain  
14 life and health. There is inadequate sanitation and no potable water. There is no shade  
15 and no electricity at the site, so there is no way to get out of the heat or to safely store  
16 medications. The RV Safe Lot is open only overnight and far from places where RVs  
17 may lawfully park when the RV Safe Lot is closed. Therefore, homeless people living  
18 in RVs are required to drive a distance from the RV Safe Lot on a daily basis, which  
19 is prohibitively expensive given that RVs are not fuel efficient.

20       9. “Safe lots” for cars are also generally unavailable as they have far fewer  
21 spaces than the hundreds of homeless persons in San Diego who seek shelter in their  
22 cars for lack of adequate alternatives. Yet, homeless vehicle owners are treated as  
23 criminals if they “habitate in their vehicles” in most areas of the City, day or night,  
24 despite having no other reasonable options for shelter or lawful parking options. This  
25 vague prohibition will allow San Diego to exclude poor, disabled, and homeless  
26 people from entering into or remaining in most areas of the City. In addition,  
27 homeless vehicle owners cannot afford to pay the excessive fines associated with  
28

1 enforcement of the nighttime RV parking and vehicle habitation ordinances, and they  
2 risk their ability to buy food, medicine, or other necessities if they attempt to do so.

3 10. They also risk the loss of their only shelter, method of transportation,  
4 and personal property as a result of the City's policy and practice of towing and  
5 impounding Vehicles—without any public safety or urgent traffic control purpose—  
6 without a warrant, notice and/or a meaningful opportunity to be heard, and without  
7 any public safety or urgent traffic control purpose. There are no standard operating  
8 procedures or policy to guide officer discretion regarding vehicle tow and  
9 impoundment, even when it is apparent that the vehicle is used as shelter. Plaintiffs  
10 first learned of the City's lack of policy or guidance *after* having filed the First  
11 Amended Complaint. On January 16, 2019, a San Diego police investigative service  
12 officer testified during deposition that the City has no policy, procedures, or training  
13 to guide officer discretion regarding towing. The officer also testified that his main  
14 interest in enforcing the nighttime RV parking ordinance is to ensure adequate  
15 parking availability. Once a Vehicle has been towed and impounded, homeless  
16 vehicle owners are charged excessive fines to reclaim their property, often resulting  
17 in the permanent loss of their property and only available shelter. Under the New  
18 VHO, arrests, incarceration, and larger fines associated with possible misdemeanor  
19 charges are likely to cause additional severe hardship.

20 11. The nighttime RV parking ordinance, Original VHO, New VHO, and the  
21 City's policy and practice of impounding homeless persons' Vehicles without a  
22 warrant or any exception to the warrant requirement and without notice and/or a  
23 meaningful opportunity to be heard, violate numerous U.S. Constitutional rights,  
24 including the Fourteenth Amendment Due Process protections, the Right to  
25 Procedural Due Process, the prohibition on State Created Danger, the Right to Equal  
26 Protection, and the Right to Travel; Eighth Amendment prohibitions on Cruel and  
27 Unusual Punishment and Excessive Fines; Fourth Amendment prohibition against  
28 Unreasonable Seizure of Property; and the Right to Association protected by the First

1 and Fourteenth Amendments. The City's unconstitutional policies and practices also  
2 violate California Constitutional rights, including the rights to Due Process, Equal  
3 Protection, the right to be free from unreasonable property seizures, and the right to  
4 be free from excessive fines. The City's enforcement and threatened enforcement of  
5 the ordinances, along with its unconstitutional Vehicle towing policy and practice,  
6 also disproportionately burden and discriminate against homeless people with  
7 disabilities who live in vehicles based on their disabilities in violation of the  
8 antidiscrimination protections of Title II of the Americans with Disabilities Act and  
9 Section 504 of the Rehabilitation Act.

10 12. Rather than adequately accommodating this homeless, largely disabled,  
11 group of individuals and complying with statutory and Constitutional requirements,  
12 the City has chosen to place the health, safety, liberty, property, and lives of homeless  
13 Vehicle owners in further jeopardy, in the hope that the continuing and escalating  
14 harassment will force these residents to leave town.

15 13. The Original VHO was so vague and ambiguously worded that neither  
16 homeless individuals nor anyone else could ascertain what was or was not prohibited  
17 or how to comply with the ordinance to avoid receiving a ticket or having their  
18 Vehicle impounded. The New VHO provides no added clarity or meaningful  
19 guidance, while now adding broad daytime prohibitions and subjecting violators to  
20 arrest and incarceration.

21 14. Plaintiffs seek a Court order requiring that the City put an end to these  
22 harmful, discriminatory, and unconstitutional practices against this marginalized and  
23 vulnerable group of individuals.

#### 24 **JURISDICTION AND VENUE**

25 15. The Court has jurisdiction over this action pursuant 28 U.S.C. § 1331  
26 and 1343, 42 U.S.C. § 12132 and 42 U.S.C. § 1983 because Plaintiffs' claims arise  
27 under the laws and Constitution of the United States. Pursuant to 28 U.S.C. § 1367,  
28 this Court has supplemental jurisdiction over the state law and state constitutional

1 claims because Plaintiffs’ state claims are related to Plaintiffs’ federal claims, arise  
2 out of a common nucleus of operative facts and form part of the same case or  
3 controversy under Article III of the U.S. Constitution.

4 16. Venue is proper in the Southern District of California because Defendant  
5 resides in the District and all events given rise to Plaintiffs’ claims occurred in this  
6 District. The relief Plaintiffs seek is within this Court’s power to grant.

7 **PARTIES**

8 **A. Plaintiffs**

9 17. Plaintiff MICHAEL BLOOM is 70 years-old and a life-long resident of  
10 the City of San Diego. Mr. Bloom previously worked as an electrician and carpenter  
11 but suffered several accidents that left him with a severely damaged arm and foot,  
12 and led to his suffering from hypoglycemia and severe depression. Because of these  
13 debilitating physical and mental health issues, Mr. Bloom has not been able to engage  
14 in gainful employment since his last accident in 1982. His sole source of income is  
15 Social Security benefits, and he cannot afford market rents in San Diego. Even if Mr.  
16 Bloom were able to locate an open bed at an emergency or temporary shelter, which  
17 are generally full and cannot accommodate the thousands of homeless people in the  
18 City, it would be functionally unavailable to him because his physical disabilities  
19 require him to lie down frequently during the day, which is not an option at many  
20 shelters, and the overcrowding and lack of privacy would worsen his mental health  
21 condition. As a result, for the last twelve years, his only available shelter has been his  
22 Vehicle. Before his RV became inoperable in 2019, Mr. Bloom was not able to park  
23 his RV in the existing City “safe lots” because the “safe lots” generally did not allow  
24 RVs at that time and a small pilot parking program for RVs had only a handful of  
25 spaces. Despite this, and even though he has a disability placard on his vehicle, Mr.  
26 Bloom has received at least a dozen tickets for parking his RV at night on city streets,  
27 about five tickets for vehicle habitation under the Original VHO, and has been  
28 threatened with arrest for vehicle habitation. As one example, he received a ticket on

1 or about December 12, 2017 for violation of the nighttime RV parking ordinance.  
2 When he paid these tickets, Mr. Bloom did not have enough money to pay for  
3 adequate food or gasoline. If Mr. Bloom did not pay the tickets, however, the City  
4 could have towed and impounded his RV, the only form of shelter available to him,  
5 which would have been devastating for his mental and physical health and put him at  
6 far greater risk of serious harm. It would also have left Mr. Bloom without his most  
7 valuable personal property. Mr. Bloom's only shelter currently is a van, which he  
8 intends to continue using for that purpose. He's threatened with citation and/or arrest  
9 under the New VHO because he has no other shelter or legal place to park that is  
10 reasonably accessible to him, and because he must travel into areas forbidden to him  
11 under the New VHO, including to retail stores and farmer's markets he frequents for  
12 groceries, medical doctors, and churches where he obtains meals. Mr. Bloom meets  
13 the definition of "chronically homeless" as defined by the regulations issued by the  
14 U.S. Department of Housing and Urban Development ("HUD"). 24 C.F.R. § 91.5(1).  
15 Mr. Bloom is also a qualified individual with disabilities within the meaning of the  
16 Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12102, and the Rehabilitation  
17 Act of 1973, 29 U.S.C. § 706(8).

18 18. Plaintiff STEPHEN CHATZKY is 72 years old and resides in the City of  
19 San Diego with his domestic partner, Suzonne Keith, and her disabled adult daughter.  
20 Mr. Chatzky is a lawyer, but his Attention Deficit Disorder and memory problems  
21 have made it impossible for him practice law. As a result, since 2002, his sole source  
22 of income has been Social Security benefits, and he cannot afford market rents in San  
23 Diego. Even if Mr. Chatzky were able to locate an open bed at a temporary or  
24 emergency shelter, which are generally filled and cannot accommodate the thousands  
25 of homeless people in the City, it would be functionally unavailable to him because  
26 shelter conditions would force the family to separate. A psychologist who evaluated  
27 Mr. Chatzky opined that if Mr. Chatzky were separated from his family, it would  
28 worsen his mental health condition. Additionally, Mr. Chatzky has asthma and sleep

1 apnea and is prone to lung infections. Shelter conditions expose people to tobacco  
2 smoke, which would make it difficult for Mr. Chatzky to breathe and put him at risk  
3 for lung infections. Because of these circumstances, the family has lived in an RV  
4 since 2008. In approximately June of 2015, the City of San Diego impounded Mr.  
5 Chatzky's first RV for unpaid tickets, including tickets for nighttime RV parking and  
6 vehicle habitation, even though the family had a disability placard on the vehicle at  
7 that time. Mr. Chatzky's vehicle was towed and impounded by the City without a  
8 warrant, notice, and/or a meaningful opportunity to be heard, and without any public  
9 safety or urgent traffic control purpose. The discretionary tow occurred even though  
10 it was known or obvious that Mr. Chatzky and his family resided in the vehicle and  
11 would be involuntarily exposed to the outdoor elements as a result of the City's  
12 action, and that such action created known or obvious risks of harm that Mr. Chatzky  
13 did not otherwise face. Moreover, the City failed to take any obvious steps to address  
14 that elevated risk of serious harm, such as by offering Mr. Chatzky and his family  
15 adequate alternative shelter. Unable to afford the high cost of retrieving his vehicle  
16 from impound, the City's discretionary tow and impound of Mr. Chatzky's first RV  
17 resulted in the permanent loss of his property and his family's only available shelter.  
18 After the impoundment, Mr. Chatzky and his family had to seek shelter in their car,  
19 where all three adults rested, ate, and performed other life-sustaining activities in  
20 cramped conditions for five months until they were able to obtain another RV  
21 through a family member's assistance. Until May of 2019, there was no "Safe Lot"  
22 that accepted more than a handful of RVs. Currently, the sole Safe Lot serving RVs  
23 and other oversized vehicles in the City is located at a site that is difficult to  
24 physically access as the only entrance, which is a narrow passage through a metal  
25 gate, is located on a sloped and busy street. The RV Safe Lot itself is on an incline  
26 making it difficult to operate an RV, has inadequate sanitation and no potable water,  
27 and there is no place to discard grey water waste at or near the site. There is also no  
28 shade or electricity hookups at the site, so there is no way to regulate temperature in a

1 way necessary for life and health. Moreover, the sole RV Safe Lot is open only  
2 overnight and is far from places where Mr. Chatzky may legally park when the RV  
3 Safe Lot is closed. Use of the RV Safe Lot would require Mr. Chatzky, Ms. Keith,  
4 and her disabled daughter to drive back and forth daily, which is prohibitively  
5 expensive on their limited income. As a result, despite making every effort to avoid  
6 ticketing by parking in a non-obstructive manner along non-residential streets, Mr.  
7 Chatzky and Ms. Keith continue to receive tickets for parking their RV in violation of  
8 the nighttime RV parking ordinance. Mr. Chatzky and his family are also threatened  
9 with citation and/or arrest under the New VHO as they have no other shelter or legal  
10 place to park that is reasonably accessible to them, and they must travel into areas  
11 forbidden to them under the New VHO to care for Mr. Chatzky's elderly mother. Mr.  
12 Chatzky meets the definition of "chronically homeless" as defined by HUD  
13 regulations and is a qualified individual with disabilities within the meaning of the  
14 ADA and the Rehabilitation Act.

15 19. Plaintiff SUZONNE KEITH is 70 years old and a resident of the City of  
16 San Diego. Ms. Keith has held a range of government jobs, including as an equal  
17 rights investigator, but her disabilities have made her unable to engage in gainful  
18 employment for the last 21 years. She has severe arthritis and edema that interfere  
19 with her ability to stand or walk, depression, and Post Traumatic Stress Disorder  
20 ("PTSD") from having survived domestic violence prior to meeting Mr. Chatzky, and  
21 debilitating migraines. Ms. Keith's sole source of income is a pension of \$400 per  
22 month, and she cannot afford market rents in San Diego. As a result, Ms. Keith's only  
23 option for shelter is to live in an RV with Mr. Chatzky and her disabled adult  
24 daughter. After the couple's first RV was impounded for unpaid parking tickets, the  
25 family slept cramped in a car for five months because Mr. Chatzky and Ms. Keith  
26 could not afford to pay the fines and fees needed to retrieve their RV from impound.  
27 Because the police continue to ticket the couple, Ms. Keith is terrified that the City  
28 will also impound their second RV, which is the only form of shelter available to her.

1 Even if Ms. Keith were able to locate an open bed at a temporary or emergency  
2 shelter, which are generally filled and cannot accommodate the thousands of  
3 homeless people in the City, it would be functionally unavailable to her because it  
4 would require that Ms. Keith be separated from Mr. Chatzky and her disabled  
5 daughter, triggering her trauma symptoms and worsening her depression.  
6 Additionally, the conditions of the City's crowded emergency shelters, including the  
7 high noise level, triggers migraines for Ms. Keith. When Ms. Keith is suffering from  
8 a debilitating migraine, she needs to rest in a private and dark space, which is  
9 generally not available at shelters. Ms. Keith is threatened with ticketing under the  
10 nighttime RV parking ordinance, and also with citation and/or arrest under the New  
11 VHO as she has no other shelter or legal place to park that is reasonably accessible to  
12 her, and she must travel into areas forbidden to her under the New VHO. Ms. Keith is  
13 a qualified individual with disabilities within the meaning of the ADA and the  
14 Rehabilitation Act and meets the definition of "chronically homeless" as defined by  
15 the HUD regulations.

16 20. Plaintiff TONY DIAZ is 60 years old and a resident of the City of San  
17 Diego. Mr. Diaz worked as a welder until 2011, when worsening pain and other  
18 symptoms of his anxiety disorder, diabetes, hypertension, severe respiratory  
19 problems, and bad knee and shoulder prevented him from working. He also recently  
20 had major heart surgery. Mr. Diaz has been homeless for approximately seven years  
21 and owns a pick-up truck with a shell that serves as his only shelter and place to keep  
22 his belongings. He has no regular income, and he cannot afford market rents in San  
23 Diego. Mr. Diaz has received four tickets under the Original VHO, even though he  
24 spends nights parked at a local 7-Eleven store with the permission of the manager and  
25 does not sleep in his vehicle when it is parked on City property. On August 25, 2016,  
26 at approximately 6:30 a.m., Mr. Diaz came out of a bathroom in a public park when a  
27 member of the San Diego Police Department issued him a vehicle habitation ticket.  
28 Mr. Diaz explained to the officer that he had just arrived to go fishing and told the

1 officer that he was disabled and just had heart surgery. The officer nonetheless issued  
2 the ticket and threatened to ticket him anytime he saw Mr. Diaz's vehicle. The officer  
3 also threatened to have Mr. Diaz arrested for vehicle habitation. Since that incident,  
4 police officers continued to harass and ticket Mr. Diaz under the Original VHO until  
5 its repeal. As one example, Mr. Diaz received a ticket for violation of the vehicle  
6 habitation ordinance on or about December 23, 2017. Mr. Diaz did his best to comply  
7 with the Original VHO by parking overnight on private property with the owner's  
8 permission but does not understand what he needs to do in order to stop the ticketing.  
9 Even if Mr. Diaz were able to locate an open bed at a temporary or emergency  
10 shelter, which are generally full and cannot accommodate the thousands of homeless  
11 people in the City, it would be functionally unavailable to him because the tobacco  
12 smoke, cleaning fluid odors, and lack of fresh air would aggravate his respiratory  
13 condition. Moreover, the crowded, noisy, and regimented environment of shelters  
14 would worsen his symptoms of anxiety. Mr. Diaz's vehicle was recently towed on  
15 without a warrant, proper notice, or an opportunity to be heard, leaving him on the  
16 streets without shelter. Should he be able to retrieve the vehicle or obtain another one,  
17 he will likely be threatened with citation and/or arrest under the New VHO as he has  
18 no other shelter or legal place to park that is reasonably accessible to him, and he  
19 must travel into areas forbidden to him under the New VHO. Mr. Diaz is a qualified  
20 individual with disabilities within the meaning of the ADA and the Rehabilitation  
21 Act. He also meets the definition of "chronically homeless" as defined by HUD  
22 regulations.

23         21. Plaintiff VALERIE GRISCHY is 60 years old and a resident of the City  
24 of San Diego. Ms. Grischy was a licensed chiropractor and had a successful career,  
25 until she became disabled by a serious car accident in 2009. Shortly after the  
26 accident, she was unable to work due to severe back pain, depression, anxiety, and  
27 panic attacks stemming from a traumatic brain injury and PTSD. Ms. Grischy's sole  
28 source of income is Supplementary Security Income (SSI), and she cannot afford

1 market rents in San Diego. Because she has not been able to afford housing, Ms.  
2 Grischy has been living primarily in her RV since 2012. She has received tickets  
3 from the City of San Diego for vehicle habitation under the Original VHO and  
4 nighttime RV parking even though she has a disability placard on the Vehicle. Ms.  
5 Grischy has tried to find places to park to avoid being ticketed. Despite her efforts,  
6 Ms. Grischy continued to receive written warnings and tickets from police. As one  
7 example, she received two tickets on or about December 30, 2017, one for violation  
8 of the Original VHO and one for violation of the nighttime RV parking ordinance.  
9 Paying these parking tickets is a severe financial hardship for her. The threat of  
10 ticketing has also forced her to temporarily leave San Diego, which she considers her  
11 home, to avoid further ticketing. Even if Ms. Grischy were able to locate an open bed  
12 at a temporary or emergency shelter, which are generally full and cannot  
13 accommodate the thousands of homeless people in the City, it would be functionally  
14 unavailable to her because her medical history and medical needs cannot be  
15 accommodated in a crowded communal shelter. Until May of 2019, there was no  
16 “Safe Lot” that accepted more than a handful of RVs. The sole RV Safe Lot currently  
17 operating in the City is located at a site that is difficult to physically access, as the  
18 only entrance, which is a narrow passage through a metal gate, is on a sloped and  
19 busy street. The parking lot itself is on an incline that interferes with operation of an  
20 RV, there is inadequate sanitation and no potable water at the site, and no place to  
21 discard grey water waste at or near the site. There is also no shade or electricity at the  
22 site, so there is no way regulate temperature in a way necessary for life and health.  
23 Moreover, the sole RV Safe Lot is open only overnight and is distant from places  
24 where Ms. Grischy may lawfully park during the hours when the RV Safe Lot is  
25 closed. Use of the RV Safe Lot would require Ms. Grischy to drive back and forth  
26 daily, which is prohibitively expensive on her limited income. Ms. Grischy currently  
27 has a friend who lets her park her RV on his property to avoid the ticketing. Should  
28 this arrangement end, Ms. Grischy would likely be threatened with unaffordable

1 tickets under the nighttime RV parking ordinance and also threatened with citation or  
2 arrest under the New VHO as she would have no other shelter or legal place to park  
3 that is reasonably accessible to her, and she must travel into areas forbidden to her  
4 under the New VHO. Ms. Grischy is a qualified individual with disabilities within the  
5 meaning of the ADA and the Rehabilitation Act. She also meets the definition of  
6 “chronically homeless” as defined by HUD regulations.

7         22. Plaintiff PENNY “GRACE” HELMS is 60 years old and a resident of  
8 the City of San Diego. Ms. Helms supported herself throughout her 20s working as a  
9 waiter and dancer. At the age of 29, the long-term effects of chronic illnesses, and the  
10 physical and emotional trauma that she experienced as a child, became so debilitating  
11 that she had to stop working. Ms. Helms suffers from fibromyalgia; chronic fatigue  
12 syndrome; arthritis; six bulging disks; hypersensitivity and allergy to environmental  
13 pollutants such as cigarette smoke and perfume; and various neurological disorders  
14 including PTSD, hypervigilance, emotional hypersensitivity, and dissociative identity  
15 disorder. She recently had back surgery. Over the past two decades, she has tried to  
16 earn a living by working as a house cleaner, dog groomer, among other jobs,  
17 whenever her disabilities permit. But none of that income has been steady or  
18 sufficient for her to support herself, and that income has only fallen over the years.  
19 Ms. Helms’ main, and often the only, source of income for the past few years has  
20 been Social Security disability benefits. She cannot afford market rents in San Diego.  
21 Because of this, Ms. Helms had been forced to seek shelter in her RV. She has been  
22 threatened multiple times by police with ticketing for vehicle habitation and vehicle  
23 impoundment for living in her RV. She has also been threatened with arrest for  
24 encroachment near her RV. The threat of receiving citations she cannot afford to pay,  
25 impoundment, and arrest terrifies her and exacerbates her disabilities, including her  
26 hypervigilance. She has left San Diego for weeks or months at a time for fear of  
27 being ticketed, arrested, and having her RV impounded, even though she considers  
28 San Diego her home. Even if Ms. Helms were able to locate an open bed at a

1 temporary or emergency shelter, which are generally full and cannot accommodate  
2 the hundreds of homeless people forced to seek shelter in their vehicles, it would be  
3 functionally unavailable to her because she cannot tolerate communal living given  
4 her myriad disabilities. Until May of 2019, there was no “Safe Lot” that accepted  
5 more than a handful of RVs. The sole RV Safe Lot currently in the City is located at a  
6 site that is difficult to physically access, as the only entrance, which is a narrow  
7 passage through a metal gate, is on a sloped and busy street. The parking lot itself is  
8 on an incline interfering with the ability to operate an RV. There is inadequate  
9 sanitation and no potable water at the site, and no place to discard grey water waste at  
10 or near the site. There is also no shade or electricity at the site, so there is no way to  
11 regulate temperature in a way necessary for life and health. Moreover, the sole RV  
12 Safe Lot is open only overnight and is distant from places where RVs may lawfully  
13 park during the hours when the RV Safe Lot is closed. Use of the RV Safe Lot would  
14 require Ms. Helms to drive back and forth daily, which is prohibitively expensive on  
15 her limited income. Having no adequate place to park, Ms. Helms is threatened with  
16 unaffordable tickets for violation of the nighttime RV parking ordinance. Ms. Helms  
17 is also threatened with citation or arrest under the New VHO as she has no other  
18 shelter or legal place to park that is reasonably accessible to her, and she must travel  
19 to areas forbidden to her under the New VHO, including to her medical provider, the  
20 local laundromat, and to visit a close friend. Ms. Helms is a qualified individual with  
21 disabilities within the meaning of the ADA, and the Rehabilitation Act. She also  
22 meets the definition of “chronically homeless” as defined by HUD regulations.

23       23. Plaintiff BENJAMIN HERNANDEZ is a 56-year-old man and a resident  
24 of the City of San Diego. Mr. Hernandez was a stonemason and primary breadwinner  
25 for his family until he was involved in a pedestrian accident in 2015. After the  
26 accident, the orthopedic impairments from his injuries, along with depression, left  
27 him unable to work. Mr. Hernandez was only given a small, one-time disability  
28 award and does not receive ongoing disability benefits. Though his wife works, her

1 wages are extremely modest and insufficient to afford the high cost of housing in San  
2 Diego. Their lack of funds has caused Mr. Hernandez and his wife to utilize their RV  
3 as their shelter for the past year. In addition to offering shelter from the elements,  
4 their RV provided them with a shower, toilet, refrigerator, stove and microwave and a  
5 queen-sized bed. On or about July 26, 2017, however, the City impounded their RV  
6 for unpaid nighttime RV parking citations. The City impounded the RV without a  
7 warrant, without notice and/or a meaningful opportunity to be heard, and without any  
8 public safety or urgent traffic control purpose. The discretionary tow occurred even  
9 though it was known or obvious that Mr. Hernandez and his wife resided in the  
10 vehicle and would be involuntarily exposed to the outdoor elements as a result of the  
11 City's action, and that such action created known or obvious risks of harm that Mr.  
12 Hernandez did not otherwise face. Moreover, the City failed to take any obvious steps  
13 to address that risk, such as offering Mr. Hernandez and his wife adequate alternative  
14 shelter. The tow and impound of Mr. Hernandez's vehicle resulted in the permanent  
15 loss of his property. Since Mr. Hernandez and his wife could not afford to pay the  
16 excessive citations and towing fees to retrieve their RV from impoundment, the  
17 couple spent several weeks sleeping, eating, and performing other life-sustaining  
18 activities cramped in their Toyota Camry, which aggravated Mr. Hernandez's back  
19 injury. The loss of his RV was also extremely traumatic, causing Mr. Hernandez's  
20 depression to worsen. Even if Mr. Hernandez were able to locate an open bed at a  
21 temporary or emergency shelter, which are generally full and cannot accommodate  
22 the thousands of homeless people in the City, it would be functionally unavailable to  
23 him because it would force him to separate from his wife, aggravating the symptoms  
24 of his depression. Currently, Mr. Hernandez uses an SUV as his only available  
25 shelter. The current "Safe Lots" for cars are inaccessible to Mr. Hernandez and his  
26 wife because they are distant from his wife's job. Also, his wife frequently works late  
27 night shifts and Safe Lots do not allow entry after 9:00 p.m. or 10:00 p.m. Mr.  
28 Hernandez is threatened with citation and/or arrest under the New VHO as he has no

1 other shelter or legal place to park that is reasonably accessible to him, and he must  
2 travel to areas forbidden to him under the New VHO, including to medical providers  
3 whose offices are within 500 feet of schools and/or residences. Mr. Hernandez is a  
4 qualified individual with disabilities within the meaning of the Rehabilitation Act, the  
5 ADA, and California law. He also meets the definition of “chronically homeless” as  
6 defined by the regulations issued by HUD.

7       24. Plaintiff DOUG HIGGINS is 70 years old, a resident of the City of San  
8 Diego, and a veteran who was honorably discharged from the U.S. Army. He had a  
9 successful career as a car dealer until his symptoms of anxiety and depression, along  
10 with a painful back condition, worsened in 2009. His bad back, which is aggravated  
11 by stress, keeps him from standing, sitting, or walking for any length of time. His sole  
12 source of income is Social Security benefits, and he cannot afford to pay market rent  
13 in San Diego. Even if Mr. Higgins were able to locate an open bed at a temporary or  
14 emergency shelter, which are generally full and cannot accommodate the thousands  
15 of homeless people in the City, it would be functionally unavailable to him because it  
16 would exacerbate his mental health symptoms. For the past five years, his RV has  
17 been the only shelter available to him. Mr. Higgins has received tickets both for  
18 vehicle habitation and for nighttime RV parking. He received a nighttime RV parking  
19 ticket on or about November 11, 2017 and a habitation ticket on or about November  
20 10, 2016. He cannot afford to pay the tickets, as paying them jeopardizes his ability to  
21 pay for food and other necessities. Until May of 2019, there was no “Safe Lot” that  
22 accepted more than a handful of RVs. The sole current RV Safe Lot in the City is  
23 located at a site that is difficult to physically access as the only entrance, which is a  
24 narrow passage through a metal gate, is on a sloped and busy street. The parking lot  
25 itself is on an incline interfering with the operation of an RV. There is inadequate  
26 sanitation and no potable water at the site, and no place to discard grey water waste at  
27 or near the site. There is also no shade or electricity at the site, so there is no way to  
28 regulate temperature in a way necessary for life and health. Moreover, the sole RV

1 Safe Lot is open only overnight and is distant from places where Mr. Higgins may  
2 legally park during the hours when the RV Safe Lot is closed. Use of the RV Safe Lot  
3 would require Mr. Higgins to drive back and forth daily, which is prohibitively  
4 expensive on his limited income. Having no accessible alternative, Mr. Higgins is  
5 threatened with unaffordable tickets under the nighttime RV parking ordinance. The  
6 threat of ticketing and fear of losing his RV to impoundment increases his stress and  
7 exacerbates the symptoms of his disabilities. Police have told him to leave the City if  
8 he does not like the ticketing, but he considers San Diego to be his home. Mr.  
9 Higgins is also threatened with citation and/or arrest under the New VHO as he has  
10 no other shelter or legal place to park that is reasonably accessible to him, and he  
11 must travel to areas forbidden to him under the ordinance, including to the local  
12 library and stores that he frequents. Mr. Higgins is a qualified individual with  
13 disabilities within the meaning of the ADA and the Rehabilitation Act. Mr. Higgins  
14 also meets the definition of “chronically homeless” as defined by the regulations  
15 issued by HUD.

16       25. Plaintiff DAVID WILSON is 49 years old and a resident of the City of  
17 San Diego. Mr. Wilson previously worked as an actor, taxi driver, and security guard.  
18 Mr. Wilson has a range of conditions arising from a car accident, including  
19 compression of the spine, peripheral neuropathy, edema in both feet and ankles  
20 (requiring him to elevate his feet), depression, PTSD, Social Anxiety Disorder, an  
21 eating disorder, and porphyria (a skin condition that makes him highly susceptible to  
22 infection). Mr. Wilson also suffers from asthma and hypersomnia (a condition in  
23 which a person has trouble staying awake during the day). Because of these  
24 conditions, Mr. Wilson had to stop working in 1999. His sole source of income is  
25 SSI, and he cannot afford to pay market rent in San Diego. In 2013, Mr. Wilson  
26 purchased an RV, giving him a place to lie down and take shelter from the elements.  
27 In addition, the RV provided him with running water, a stove, a refrigerator and the  
28 ability to control the temperature in his environment. Mr. Wilson has received

1 numerous tickets from the City of San Diego, including for vehicle habitation under  
2 the Original VHO and nighttime RV parking, and has been threatened with arrest for  
3 vehicle habitation. This happened despite his having a disabled placard on the  
4 Vehicle. In an attempt to save the little money he had to pay the tickets, Mr. Wilson  
5 resorted to eating out of the trash. Ultimately unable to pay all the tickets, Mr. Wilson  
6 sold his RV around October of 2015 to avoid imminent impoundment of his Vehicle  
7 and purchased a truck with the proceeds. Deprived of his RV, he began sleeping  
8 outside or cramped in the cab of his truck. Without a proper place to lie down and  
9 elevate his feet, which his peripheral neuropathy requires that he do and having no  
10 alternative but to sleep outside or in his truck, Mr. Wilson ended up hospitalized. The  
11 loss of his RV has continued to have negative effects on Mr. Wilson's health;  
12 however, he has been and continues to be deterred from exchanging his truck for  
13 another RV because of the ongoing enforcement of the nighttime RV parking  
14 ordinance. Even if Mr. Wilson were able to locate an open bed at a temporary or  
15 emergency shelter, which are generally full and cannot accommodate the thousands  
16 of homeless people in the City, it would be functionally unavailable to him because  
17 the crowded and noisy shelter environment would aggravate Mr. Wilson's mental  
18 health conditions and, due to his vulnerability to infection and asthma, put his  
19 physical condition at further risk. The "Safe Lots" for vehicles are also inaccessible to  
20 him because of his inability to regulate his own body temperature requiring he stay in  
21 a temperate micro-climate, which current "Safe Lot" locations do not offer. His  
22 disabilities also place him at elevated risk of infection if he uses portable toilets, and  
23 they require him to have regular access to running water, which is not available at  
24 safe lots. Mr. Wilson has been warned and threatened by police with citation or arrest  
25 under the New VHO as he has no other shelter or legal place to park that is  
26 reasonably accessible to him, and he must travel to areas forbidden to him under the  
27 New VHO. Mr. Wilson is a qualified individual with disabilities within the meaning  
28 of the ADA and the Rehabilitation Act. Mr. Wilson also meets the definition of

1 “chronically homeless” as defined by HUD regulations.

2       26. Plaintiff GERALD STARK is 78 years-old, and has lived his entire life  
3 in the City of San Diego. He was recently diagnosed with and is being treated for  
4 cancer. Mr. Stark worked installing pipes as a member of the Steamfitters Union until  
5 he retired in 2007. Since retirement, his income consists only of Social Security and a  
6 small pension totaling \$2,000 per month to support himself and his wife of fourteen  
7 years, Anna Stark. This income is not enough to afford market rents in San Diego for  
8 himself and his wife. As a result, Mr. Stark and his wife, Anna, moved into an RV in  
9 2008 – one year after his retirement. Emergency shelter is not an option for Mr. Stark.  
10 Even if he were able to locate an open bed at an emergency or temporary shelter,  
11 which are generally full and cannot accommodate the thousands of homeless people  
12 in the City, it would be functionally unavailable to him because it would require him  
13 to separate from his wife. Since 2008, Mr. Stark’s home and only available shelter  
14 has been inside an RV shared with Ms. Stark. Despite this, Mr. Stark has received  
15 tickets for parking his RV at night on City streets and for vehicle habitation under the  
16 Original VHO. Because he was unable to afford to pay those excessive fines, his RV  
17 was impounded by the City on or about March 28, 2017. Mr. Stark’s RV was towed  
18 by the City without a warrant, notice, and/or a meaningful opportunity to be heard,  
19 and without any public safety or urgent traffic control purpose. The tow occurred  
20 even though it was known or obvious that Mr. Stark and his wife resided in the  
21 vehicle and would be involuntarily exposed to the outdoor elements as a result of the  
22 City’s action, and that such action created known or obvious risks of harm that Mr.  
23 Stark did not otherwise face. Moreover, the City failed to take any obvious steps to  
24 address that risk of harm, such as offering Mr. Stark and his wife adequate alternative  
25 shelter. Because Mr. Stark was unable to pay the excessive fines imposed upon him  
26 by the City, the tow and impoundment of Mr. Stark’s RV resulted in the permanent  
27 loss of his property. Because the City impounded his home and only form of shelter,  
28 Mr. Stark lived for several months unsheltered on the streets of the City where he

1 suffered serious physical, mental, and emotional harm. With assistance from family  
2 members, Mr. Stark purchased another RV to use for shelter. Until May of 2019,  
3 there was no “Safe Lot” that accepted more than a handful of RVs. The sole RV Safe  
4 Lot in the City is located at a site that is difficult to physically access, as the only  
5 entrance, which is a narrow passage through a metal gate, is on a sloped and busy  
6 street. The parking lot itself is also on an incline, making it difficult to operate an RV.  
7 There is inadequate sanitation and no potable water at the site, and no place to discard  
8 grey water waste at or near the site. There is also no shade or electricity at the site, so  
9 there is no way regulate temperature in a way necessary for life and health. Moreover,  
10 the sole RV Safe Lot is open only overnight and is distant from places where Mr.  
11 Stark may legally park during the hours when the RV Safe Lot is closed. Use of the  
12 RV Safe Lot would require Mr. Stark to drive back and forth daily, which is  
13 prohibitively expensive on his limited income. He continues to be at risk for tickets  
14 for parking his RV on City streets at night and having his RV again impounded. Mr.  
15 Stark is also threatened with citation or arrest under the New VHO as he has no other  
16 shelter or legal place to park that is reasonably accessible to him, and he must travel  
17 to areas that are forbidden to him under the ordinance including to medical  
18 appointments and to visit Ms. Stark’s daughter. Mr. Stark is a qualified individual  
19 with disabilities within the meaning of the ADA and the Rehabilitation Act. Mr. Stark  
20 meets the definition of “chronically homeless” as defined by the regulations issued by  
21 HUD.

22         27. Plaintiff ANNA STARK is 50 years-old, and she has lived in the City of  
23 San Diego for her entire life. She has been married to Gerald Stark for fourteen years.  
24 Ms. Stark has severe anxiety stemming from multiple past traumas. She previously  
25 worked as a home health care worker, but has been unemployed for many years due  
26 to her mental health condition. She has no income, and she is entirely dependent on  
27 her husband’s small pension and Social Security, which is too low to afford market  
28 rents in San Diego. Even if Ms. Stark were able to locate an open bed at an

1 emergency or temporary shelter, which are generally full and cannot accommodate  
2 the thousands of homeless people who live in the City, it would be functionally  
3 unavailable to her because it would require her to separate from her husband and her  
4 support animal, and the crowded congregate living environment would aggravate her  
5 anxiety. Since 2008, her only available home and shelter has been inside an RV  
6 shared with Mr. Stark. Until May of 2019, there was no “Safe Lot” that accepted  
7 RVs. The sole RV Safe Lot in the City is located at a site that is difficult to physically  
8 access, as the only entrance, which is a narrow passage through a metal gate, is on a  
9 sloped and busy street. The parking lot itself is on an incline interfering with the  
10 proper functioning of an RV. There is inadequate sanitation and no potable water at  
11 the site, and no place to discard grey water waste at or near the site. There is also no  
12 shade or electricity at the site, so there is no way regulate temperature in a way  
13 necessary for life and health. Moreover, the sole RV Safe Lot is open only overnight  
14 and is distant from places where Ms. Stark may lawfully park during the hours when  
15 the RV Safe Lot is closed. Use of the RV Safe Lot would require Ms. Stark to drive  
16 back and forth daily, which is prohibitively expensive on her limited income. Despite  
17 the lack of availability of adequate options for RV parking, the RV Ms. Stark used as  
18 a home was ticketed multiple times, including for violation of the nighttime RV  
19 parking ordinance. On or about March 28, 2017, the Starks’ RV was impounded for  
20 unpaid tickets. Ms. Stark’s vehicle was towed by the City without a warrant, notice,  
21 and/or a meaningful opportunity to be heard, and without any public safety or urgent  
22 traffic control purpose. The discretionary tow occurred even though it was known or  
23 obvious that Ms. Stark and her husband resided in the vehicle and would be  
24 involuntarily exposed to the outdoor elements as a result of the City’s action, and that  
25 such action created known or obvious risks of harm that Ms. Stark did not otherwise  
26 face. Moreover, the City failed to take any obvious steps to address that risk, such as  
27 offering Ms. Stark and her husband adequate alternative shelter. Because the City  
28 impounded their home and only form of shelter, Ms. Stark lived for several months

1 unsheltered on the streets of the City where she suffered serious physical, mental, and  
2 emotional harm. Ms. Stark is now living in another RV with her husband and is at  
3 continuing risk for ticketing and impoundment. Ms. Stark is also threatened with  
4 citation or arrest under the New VHO as she has no other shelter or legal place to  
5 park that is reasonably accessible to her, and she must travel to areas forbidden to her  
6 under the ordinance including to medical appointments and to visit her daughter. Ms.  
7 Stark is a qualified individual with disabilities within the meaning of the ADA and  
8 the Rehabilitation Act. Ms. Stark also meets the definition of “chronically homeless”  
9 as defined by the regulations issued by HUD.

10 28. “Named Plaintiffs” or “Plaintiffs” refers to the individual Plaintiffs  
11 named in this section.

12 **B. Defendant**

13 29. Defendant CITY OF SAN DIEGO is now and, at all times mentioned in  
14 this Complaint, a local government agency and subdivision of the State of California.  
15 Defendant CITY OF SAN DIEGO, through its agents the Mayor, City Council, City  
16 Attorney, Parking Enforcement, Police Department, and the Police Chief undertakes  
17 to cite Plaintiffs and Class members for nighttime RV parking and for vehicle  
18 habitation.

19 30. Defendant CITY OF SAN DIEGO also demands exorbitant penalties  
20 that Plaintiffs and Class members cannot afford to pay, impounds and/or threatens to  
21 impound their RVs or other vehicles, and threatens them with arrest, all the while  
22 refusing to provide reasonable modifications of these policies based on Plaintiffs’ and  
23 Class members’ disabilities.

24 31. Defendant CITY OF SAN DIEGO implements the ticketing and  
25 impoundment of Plaintiffs’ and Class members’ Vehicles even though Plaintiffs’ and  
26 Class members’ vehicles are the only shelter from the elements available to them and  
27 the only secure place they have to keep their belongings. In addition, the Defendant  
28 CITY OF SAN DIEGO has threatened Plaintiffs and Class members with arrest and

1 misdemeanor charges for illegal lodging pursuant to state law, and under the New  
2 VHO.

3 **CLASS ALLEGATIONS**

4 32. Plaintiffs bring this action against Defendant on their own behalf and on  
5 behalf of all other persons similarly situated pursuant to Fed. R. Civ. P. 23(a) and  
6 23(b)(2).

7 33. The main class, referred to as the “Main Class” is defined as: All  
8 homeless persons who have been cited and/or subject to citation and/or arrest or are at  
9 risk of citation and/or arrest by the City of San Diego pursuant to Original and/or  
10 New VHO, San Diego Muni. Code §§ 86.0137(f); and the nighttime RV parking  
11 ordinance San Diego Muni. Code § 86.0139(a) and/or who have had or are at risk of  
12 having a vehicle used as shelter towed and impounded by the City.

13 34. Plaintiffs also bring this action on behalf of a subclass, referred to as the  
14 “Disability Subclass” or “Subclass,” which is defined as: All Class members who  
15 have a “disability” as defined under the ADA, 42 U.S.C. § 12102.

16 35. All members of the Subclass are also members of the Main Class. The  
17 terms “Class” and “Classes” refers to both the Main Class and the Subclass  
18 collectively.

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

21 **Numerosity**

22 **Main Class**

23 37. Plaintiffs do not know the exact size or identities of the Class. However,  
24 Plaintiffs believe that the Class encompasses a minimum of several hundred homeless  
25 individuals who are dispersed geographically throughout the City of San Diego as  
26  
27  
28

1 well as California and neighboring states.<sup>3</sup> Therefore, the members of the Class are so  
2 numerous that individual joinder of all members is impracticable.

3 38. All members of the Class are subject to Defendant’s policies and  
4 practice in enforcing the nighttime RV parking ordinance, the Original VHO and/or  
5 New VHO, and in towing and impounding Class members’ Vehicles without a  
6 warrant or any exception to the warrant requirement, and without notice and/or a  
7 meaningful opportunity to be heard. The Class is united in its interests with respect to  
8 proof of Defendant’s conduct, and the effects caused by Defendant’s actions.

9 **Subclass**

10 39. Plaintiffs do not know the exact size or identities of the Disability  
11 Subclass. Plaintiffs believe that the Subclass consists of hundreds of homeless  
12 individuals based on the high number of persons with disabilities found in surveys of  
13 the homeless population in San Diego. *See* ¶ 51, *infra*.

14 40. All members of the Subclass are subject to or have been subjected to  
15 Defendant’s discriminatory policies and practice in enforcing the nighttime RV  
16 parking ordinance, Original VHO and/or New VHO, and in towing and impounding  
17 Class members’ Vehicles without a warrant and/or any exception to the warrant  
18 requirement, and without notice and/or a meaningful opportunity to be heard. The  
19 Class is united in its interests with respect to proof of Defendant’s discriminatory  
20 conduct, and the effects caused by Defendant’s actions.

21  
22  
23  
24 <sup>3</sup> *See* REGIONAL TASK FORCE ON THE HOMELESS, 2017 WE ALL COUNT  
25 RESULTS (2017), [http://www.rtfhsd.org/wp-content/uploads/2017/07/2017-PITC-](http://www.rtfhsd.org/wp-content/uploads/2017/07/2017-PITC-Results-Powerpoint.pdf)  
26 Results- Powerpoint.pdf. The methodology for counting individuals experiencing  
27 homelessness in San Diego changed in 2019, which artificially reduced the number of  
28 individuals counted. Moreover, individuals living in certain vehicles were not  
counted at all in 2018. For these reasons, we believe that the 2017 data, which is still  
generally considered an undercount of the actual homeless population, is the most  
accurate data set available.

1 **Predominance of Common Issues**

2 **Main Class**

3 41. The questions of law and fact common to members of the Class  
4 predominate over questions that may affect individual Class members. Such common  
5 questions of law and fact include but are not limited to the following:

6 (i) whether Defendant’s enforcement of San Diego Muni. Code §§  
7 86.0137(f), the Original VHO and New VHO, and 86.0139(a) including ticketing for  
8 “violation of signs” prohibiting vehicle habitation under § 86.0112(E) has and  
9 continues to violate 42 U.S.C. § 1983 by infringing upon Named Plaintiffs’ and Class  
10 members’ constitutional rights, including by endangering Plaintiffs and Class  
11 members, and by violating their Right to Equal Protection; the Right to Travel; the  
12 Right to be free from Cruel and Unusual Punishment; the Right to Due process;  
13 and/or the Right to Association.

14 (ii) whether Named Plaintiffs and other Class members are at risk of arrest  
15 for illegal lodging or under the New VHO pursuant to Defendant’s existing policies  
16 because they are homeless and seek shelter in their vehicles;

17 (iii) whether Named Plaintiffs and other Class members are at risk that their  
18 RV, camper or other vehicle will be towed and impounded by the City without a  
19 warrant or any exception to the warrant requirement, and without notice and/or a  
20 meaningful opportunity to be heard for unpaid tickets or impounded as a result of an  
21 arrest for vehicle habitation under the New VHO along with their personal belongings  
22 seized because they are homeless and need to use their vehicles as shelter; and

23 (iv) whether Named Plaintiffs and the other Class members are entitled to  
24 equitable relief, including system-wide policy changes to address the constitutional  
25 and statutory violations detailed in this Complaint.

26 **Subclass**

27 (v) whether Defendant’s policies, including its policies regarding  
28 enforcement of San Diego Muni. Code §§ 86.0137(f), the Original VHO and the New

1 VHO, and 86.0139(a) including ticketing for “violation of signs” prohibiting  
2 habitation under § 86.0112(E), and towing and impounding vehicles discriminate on  
3 the basis of disability; and

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

7 **Typicality**

8 **Main Class**

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

15 **Subclass**

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

23 **Adequate Representation**

24 44. Named Plaintiffs will fairly and adequately represent the interests of the  
25 Main Class and the Subclass, and they have no interests antagonistic to those of the  
26 Classes. Indeed, Named Plaintiffs’ interests are aligned with those of the Class  
27 members. Named Plaintiffs have retained lawyers who are competent and  
28 experienced in class action litigation.

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**Superiority**

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

**COMMON FACTUAL ALLEGATIONS**

Plaintiffs allege the following common facts on information and belief.

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

46. San Diego now has the fourth largest homeless population in the country. Based on a January 2017 survey, the Regional Task Force on the Homeless found that there are 5,619 homeless people in the City of San Diego, an increase of 10% since 2016. 2017 WE ALL COUNT RESULTS, supra note 3, at 37. The Regional Task Force further found that 3,231 of these 5,619 homeless individuals are unsheltered and living in places not meant for human habitation, an 18% increase from the previous year. According to the same survey, San Diego County now has a homeless population of 9,116, more than double the approximately 4,000 shelter beds available in the County. The results of this crisis have been seen in the rapidly expanding encampments in downtown San Diego and other parts of the City and in the number of people who seek shelter in their Vehicles for lack of adequate alternatives.

47. The homelessness crisis in San Diego is directly linked to the lack of affordable housing. As of 2014, the median cost of an efficiency studio apartment in San Diego was 110% of the amount of an SSI check, which at that time was less than

1 \$900/month.<sup>4</sup> Since then, rents have continued to rise while SSI rates for a single  
 2 individual in California is only approximately \$931 per month. The San Diego  
 3 Housing Federation reports a shortfall of 135,749 homes affordable to low income  
 4 San Diegans, with rents up 32% in the last decade. Average rent and utilities for a  
 5 two-bedroom apartment has climbed to \$1618 a month.<sup>5</sup> In addition, the demand for  
 6 housing subsidies far exceeds supply. There is a 10- to 12-year waiting list for a  
 7 Section 8 housing voucher, with over 60,000 persons on that list alone. The small  
 8 amount of existing affordable or subsidized housing also has long waiting lists.

9 48. The Regional Task Force on Homelessness found that the homeless  
 10 population in the City of San Diego included 817 people living in Vehicles. *See* 2017  
 11 WE ALL COUNT RESULTS, *supra* note 3, at 37. These individuals have no  
 12 accessible shelter available to them other than in their Vehicles. They also lack lawful  
 13 places to park their Vehicles. RV owners without physical addresses have no legal  
 14 place to park their RVs at night that is reasonably available and accessible to them.  
 15 The few “Safe Lots” established in San Diego only serve a small portion of people  
 16 with Vehicles who are homeless, and they prioritize families with small children – a  
 17 subset of the putative class. The only RV Safe Lot in the City is in an inaccessible  
 18 location, lacks necessary amenities needed to maintain health and life, and requires  
 19 that people living in RVs drive a distance back and forth daily, which is prohibitively  
 20 expensive.

21 49. RV parks in San Diego charge high rents. Monthly rentals in RV parks  
 22 in the City of San Diego range from a low of \$699 per month to a high of \$1950 per  
 23 month depending on the park and the time of year, which is unaffordable to Plaintiffs  
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25 <sup>4</sup> *See* EMILY COOPER ET AL., PRICED OUT IN 2014: THE HOUSING CRISIS  
 26 FOR PEOPLE WITH DISABILITIES 24 (Technical Assistance Collaborative, Inc.  
 27 2015), [ttp://www.tacinc.org/media/52012/Priced%20Out%20in%202014.pdf](http://www.tacinc.org/media/52012/Priced%20Out%20in%202014.pdf).

28 <sup>5</sup> *See* STEPHEN RUSSELL, THE AFFORDABLE HOUSING CRISIS IN SAN  
 DIEGO: HOW DO WE MEET THE NEED? (San Diego Housing Federation 2017),  
[http://docs.sandiego.gov/councilcomm\\_agendas\\_attach/2017/sglu\\_170125\\_4c.pdf](http://docs.sandiego.gov/councilcomm_agendas_attach/2017/sglu_170125_4c.pdf).

1 and Class members. Moreover, many RV parks have maximum stay limits and limit  
2 or exclude older RVs.

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

5 50. There is also a strong link between homelessness and disability. The  
6 U.S. Department of Housing and Urban Development (“HUD”) defines “chronically  
7 homeless” as an individual with a disability who has been homeless continuously for  
8 at least 12 months or on at least four separate occasions in the last three years. 24  
9 C.F.R. § 91.5(1). A person is deemed homeless if he or she lacks a fixed, regular,  
10 and adequate nighttime residence. This includes persons who use RVs or other  
11 vehicles for other than temporary living quarters for recreational use. 42 U.S.C. §  
12 11302(a)(1); 24 C.F.R. § 3282.8(g). The Regional Task Force found that 31% of the  
13 City’s homeless population was “chronically homeless.” *See* 2017 WE ALL COUNT  
14 RESULTS, *supra* note 3, at 37.

15 51. In San Diego, a high number of homeless individuals have disabilities.  
16 The Regional Task Force found that 39% of homeless people in San Diego reported  
17 mental health disabilities and 40% reported a physical disability. Some surveys have  
18 found even higher rates of disability. For example, of the 1,145 persons attending a  
19 one-day resource fair for the homeless in the City, 60.2% reported a long lasting  
20 medical condition and 49.5% reported having a mental illness.<sup>6</sup>

21 52. The primary reason for the strong link between disability and  
22 homelessness is an economic one. Homeless individuals with disabilities are not  
23 homeless as a matter of choice. Rather, many people with disabilities, including  
24 Named Plaintiffs and Class members, are unable to work due to their disabilities and

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27 <sup>6</sup> *See* SAN DIEGO HOUSING COMMISSION, PROJECT HOMELESS CONNECT  
28 REPORT (2015),  
[http://www.sdhc.org/uploadedFiles/Housing\\_Innovations/Project\\_Homeless\\_Connect/2015Project%20Homeless%20Connect%20Report\\_04.15.15.pdf](http://www.sdhc.org/uploadedFiles/Housing_Innovations/Project_Homeless_Connect/2015Project%20Homeless%20Connect%20Report_04.15.15.pdf).

1 therefore must rely on a rapidly shrinking social safety net that has not kept up with  
2 rising San Diego rents.

3 53. Living on the streets is dangerous, especially for women, seniors, and  
4 people with disabilities. In the fiscal year ending September 30, 2017, 117 homeless  
5 people died on the streets of San Diego, double the figure from two years earlier.<sup>7</sup>  
6 Adults who are homeless and age 50 and older have rates of chronic illness and  
7 geriatric conditions similar to or more than adults who are age 65-70 and housed.<sup>8</sup>

8 54. The City's recent Hepatitis A epidemic highlights the health dangers,  
9 both to homeless individuals and to others, associated with living on the streets  
10 without access to shelter and sanitation. The Hepatitis A outbreak has resulted in at  
11 least twenty deaths.

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

14 55. Sheltering oneself is not voluntary conduct. It is a universal and basic  
15 human need that is necessary for health and life. It is harmless. Sheltering oneself in  
16 public space is an act integral to the status of homelessness. For Named Plaintiffs and  
17 Class members fortunate enough to have RVs or other vehicles, their only reasonable  
18 option is to utilize the rudimentary shelter provided by their Vehicles until  
19 permanent, accessible, and medically appropriate housing that they can afford is  
20 available.

21 56. Named Plaintiffs and Class members do not have reasonably accessible  
22 places in the City to seek shelter in their vehicles or to park their RVs or other  
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24 <sup>7</sup> See Daniel Wheaton, Homeless Deaths Have Doubles Over Two Years, San Diego  
25 Union Tribune, November 28, 2016,  
26 [http://www.sandiegouniontribune.com/news/data-watch/sd-me-homeless-deaths-  
20161128-story.html](http://www.sandiegouniontribune.com/news/data-watch/sd-me-homeless-deaths-20161128-story.html).

27 <sup>8</sup> See JENNIFER GOLDBERG, ET AL., HOW TO PREVENT AND END  
28 HOMELESSNESS AMONG OLDER ADULTS (Justice in Aging 2016),  
[http://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-Older-  
Adults.pdf](http://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-Older-Adults.pdf).

1 oversized vehicles legally at night. As explained above, RV parks in San Diego are  
2 generally unaffordable to Plaintiffs and Class members. Dreams for Change operates  
3 a “Safe Parking Program,” which provides some places to park vehicles at night as  
4 does Jewish Family Services. However, there are far fewer spaces than the number of  
5 people living in vehicles in San Diego. Until May of 2019, there were virtually no  
6 “Safe Lots” that allowed RVs. Now, the only RV Safe Lot in the City is in an  
7 inaccessible location, lacks necessary amenities needed to maintain health and life,  
8 and requires that RV owners drive distances back and forth daily, which is  
9 prohibitively expensive. Moreover, despite the absence of available permanent  
10 affordable housing options, all participants are required to participate in  
11 “programming” or case management and are often expected to sign up for programs  
12 that provide only temporary or short-term shelter, and are frequently inaccessible  
13 and/or medically unacceptable to Plaintiffs and to Disability Subclass members.

14       57. There is also an insufficient number of temporary shelter beds available  
15 in the City as compared to the homeless population, including those who seek shelter  
16 in their Vehicles, even when accounting for seasonal and overflow spaces.

17       58. Even if a homeless person is able to identify an available bed in a  
18 temporary or emergency shelter, the shelter bed may be inaccessible to that person.  
19 Emergency and temporary shelter beds and transitional housing programs are  
20 functionally unavailable to many people with disabilities including Named Plaintiffs  
21 and members of the Subclass, because emergency and temporary shelter conditions  
22 are likely to aggravate their mental health and/or physical conditions. Many shelters  
23 and transitional housing programs in San Diego have an overcrowded congregate  
24 living environment, are noisy, lack privacy, often lack opportunity to lie down during  
25 the day, present an increased risk of infection, expose shelter residents to strong odors  
26 from smoke and chemical cleaning products that can aggravate respiratory  
27 disabilities, along with other risks. In addition, many shelters only take adults and  
28 separate them by gender, thereby separating family members and causing additional

1 trauma.

2       59. Emergency and temporary shelters, including most transitional housing  
3 programs, do not provide a real solution for Named Plaintiffs or Class members.  
4 Even if they were to enter a temporary or emergency shelter or be admitted into a  
5 transitional housing program, Named Plaintiffs and Class members with RVs would  
6 not have anywhere to park their RVs legally at night and would continue to be at risk  
7 of ticketing under the nighttime RV parking ordinance. Moreover, these programs  
8 provide only temporary accommodations with strict time limits. The Regional  
9 Taskforce on Homelessness has found that a majority of persons exited from shelter  
10 programs have not been placed in permanent housing. In the continued absence of  
11 permanent affordable housing alternatives, individuals who are able to use the shelter  
12 system are released back onto the streets, with all of the associated health and safety  
13 risks attendant to unsheltered homelessness. Thus, under current conditions, there are  
14 no reasonable alternatives for Named Plaintiffs and Class members other than  
15 utilizing their RVs or other vehicles for shelter.

16       **The City Uses Multiple Laws to Punish Homeless Individuals with Vehicles**

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

24       61. The City's newly enacted "Prohibition of Use of Streets for Storage,  
25 Service or Sale of Vehicles or For Habitation" ordinance, San Diego Muni. Code §  
26 86.0137(f), provides: "It is unlawful for any person to use a vehicle for human  
27 habitation on any street or public property, unless the street or public property is  
28 specifically authorized for such use by the City Manager, as follows: (1) between the

1 hours of 9:00 p.m. and 6:00 a.m.; and (2) at any time within 500 feet of a residence,  
2 meaning a building used for living, including a house, condominium, apartment  
3 unity, or other similar dwelling unit affixed to real property; and (3) at any time,  
4 within 500 feet of a school that offers instruction on those courses of study required  
5 by the California Education Code or that is maintained pursuant to standards set by  
6 the State Board of Education. School for purposes of this section 86.0137(f) does not  
7 include a vocational or professional institution of higher education, including a  
8 community or junior college, college, or university. (4) For purposes of this section  
9 86.0137(f), evidence of human habitation may include observations, considering all  
10 the circumstances, that a person is using a vehicle for: sleeping; bathing; preparing or  
11 cooking meals; possessing or storing items that are not associated with ordinary  
12 vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, used bedding,  
13 kitchen utensils, cookware, cooking equipment, camping gear, food, water, personal  
14 grooming items, or containers of feces or urine. Evidence of human habitation also  
15 may include observations, considering all the circumstances, that: a person has  
16 obscured some or all of the vehicle's windows; there is litter, rubbish, or waste in or  
17 around the vehicle; there is furniture set up in or around the vehicle, such as chairs,  
18 tables, umbrellas, or portable cooking equipment; or there is evidence of human  
19 urination or defecation around the vehicle." The term "human habitation" is not  
20 defined; instead, the New VHO provides a list of "evidence" purportedly related to  
21 "human habitation." Violations of the New VHO may be charged as an infraction  
22 which normally carries a fine of \$40 plus a \$12.50 surcharges, doubling if not paid in  
23 21 days. Unlike under the Original VHO, violators of the New VHO may also be  
24 arrested and charged with a misdemeanor which may carry up to a \$1,000 fine and  
25 six months in jail.

26         62. The City has posted signs in various locations stating "No Habitation."  
27 Named Plaintiffs and Class members have been ticketed and continue to be at risk of  
28 ticketing for "Violation of Signs" under S.D. Mun. Cod § 86.0112(E) for allegedly

1 “habitating” in their vehicles. A ticket for “Violation of Signs” is punishable as an  
2 infraction by a fine of \$40 plus a \$12.50 surcharge and doubles if not paid in 21 days.

3 63. The City’s “Prohibition of Parking of Oversized, Non-Motorized and  
4 Recreational Vehicles” ordinance, S.D. Mun. Code § 86.0139(a), provides in relevant  
5 part: “Except as provided in section 86.0140 or otherwise expressly provided to the  
6 contrary herein, or unless such parking or standing is authorized by the City Manager  
7 and appropriate sign permitting such parking or standing are posted: (a) it is unlawful  
8 for any person to park or leave standing upon any public street, park road or park  
9 parking lot, any oversized, non-motorized or recreational vehicle between the hours  
10 of 2:00 a.m. and 6:00 a.m.” A ticket for nighttime RV parking is punishable as an  
11 infraction by a fine of \$100 plus a \$12.50 surcharge and doubles if not paid in 21  
12 days.

13 64. In addition to fines, there is potential for other serious consequences for  
14 violating these ordinances. A vehicle can be removed or impounded by the City when  
15 it has five or more unpaid parking violations. *See* Cal. Veh. Code § 22651. In  
16 addition, the City may notify the Department of Motor Vehicles (“DMV”) and the  
17 DMV will not renew a Vehicle’s registration until the penalties are paid. Cal. Veh.  
18 Code §§ 4760 and 40229(a).

19 65. Ironically, and intentionally, though it has made no exceptions to any of  
20 these ordinances for people without housing, the City has created a specific exception  
21 to its nighttime RV parking ban for people with housing. The City has established a  
22 permit process that allows for temporary overnight parking of RVs on public streets  
23 for a cumulative total of up to 72 days in a given year. S.D. Mun. Code § 86.0143.  
24 Such permits are only available for people with physical addresses, thereby excluding  
25 persons whose only stable form of shelter is their RV or other oversized vehicle,  
26 including Named Plaintiffs and Class members. Named Plaintiffs and Class members  
27 are therefore left with no reasonably accessible places anywhere in the City to park  
28 their RVs at night, whether or not they are able to access a temporary shelter bed.

1           66. On information and belief, the City enacted the nighttime RV parking  
2 ordinance in 2013 for the primary purpose of removing homeless RV owners from  
3 the community, reflecting the City’s animus toward homeless people. The City  
4 enacted the ordinance in significant part due to the difficulty the City was having  
5 proving that such homeless persons were in violation of the Original VHO and  
6 ordinance prohibiting parking a vehicle in excess of 72 consecutive hours. San Diego  
7 Muni. Code § 86.0118.

8           67. A report from the City Council’s Land Use & Housing Committee in  
9 support of the nighttime RV parking ordinance declared that “in many cases an  
10 occupant is living illegally in vehicle” and “current enforcement tools are time  
11 consuming and unproductive (*e.g.* marking tires, knocking on vehicle doors).”<sup>9</sup>

12           68. At a subsequent Mission Beach Town Council meeting, Julio  
13 DeGuzman of the San Diego City Attorney’s office responded to complaints  
14 regarding an increasing number of “transients” with RVs, by reassuring attendees that  
15 his office “works on removing the homeless from our community.”<sup>10</sup>

16           69. On information and belief, the City enacted the New VHO in response to  
17 private animus against Class members, who are disproportionately people with  
18 disabilities. Private bias and unsubstantiated, prejudiced assumptions about Class  
19 members, as reflected in statements made about Class members at the City Council  
20 hearing on May 14, 2019 and at other times prior to the enactment of the New VHO,  
21 unduly influenced the City to enact the New VHO which excludes Named Plaintiffs  
22 \_\_\_\_\_

23 <sup>9</sup> See THE COMMITTEE ON LAND USE AND HOUSING OF THE CITY  
24 COUNCIL OF THE CITY OF SAN DIEGO, REPORT FROM COUNCILMEMBER  
25 KEVIN FAULCONER’S OFFICE REGARDING THE ADOPTION OF THE  
26 NEIGHBORHOOD PARKING AND SAFETY ORDINANCE, Agenda item-4, doc.  
27 8 at 3 (March 27, 2013),  
28 [http://docs.sandiego.gov/councilcomm\\_agendas\\_attach/2013/LUH\\_130327\\_4ppt.pdf](http://docs.sandiego.gov/councilcomm_agendas_attach/2013/LUH_130327_4ppt.pdf).

<sup>10</sup> See MISSION BEACH TOWN COUNCIL, MINUTES OF GENERAL  
MEMBERSHIP MEETING (Nov. 13, 2013),  
[http://www.missionbeachtc.com/uploads/5/0/0/3/50033147/mbtc\\_minutes\\_general\\_m\\_t\\_g\\_nov.13.2013.pdf](http://www.missionbeachtc.com/uploads/5/0/0/3/50033147/mbtc_minutes_general_m_t_g_nov.13.2013.pdf).

1 and Class members from the majority of public space and segregates them from other  
2 citizens based on their status as homeless people sheltering in their vehicles.

3         70. Defendant has had and continues to have a policy and practice of  
4 utilizing these ordinances to issue and/or threaten to issue parking tickets to homeless  
5 people who live in vehicles, including to individuals with disability placards or  
6 special disabled license plates issued by the State of California prominently displayed  
7 on their vehicles, to impose exorbitant penalties, and to tow and impound their  
8 vehicles for failure to pay the penalties. Defendant has carried out this policy even  
9 though it knew or reasonably should have known that the majority of the “transients”  
10 being targeted for ticketing have a disability and/or have no other reasonable option  
11 for shelter besides their vehicles. San Diego police officers and other agents and  
12 employees of the City knew or reasonably should have known that many of the  
13 individuals receiving these tickets have disabilities due to the fact that disability  
14 placards are commonly displayed on the vehicles; and even in the absence of a  
15 disability placard, the officers may have had an opportunity to observe or interact  
16 with the persons being ticketed, who either had an obvious disability or voluntarily  
17 disclosed the disability to the officer.

18         71. State law considers a person guilty of disorderly conduct, a  
19 misdemeanor, if the person “lodges in any building, structure, vehicle, or place,  
20 whether public or private, without the permission of the owner or person entitled to  
21 the possession or in control of it.” Cal. Penal Code § 647(e). The City has enforced  
22 and/or threatened enforcement of this state statute against Class members for  
23 sheltering in their vehicles. Violation of the statute carries a maximum penalty of six  
24 months in jail and a \$500 fine. The language of the statute makes clear that the City  
25 has the authority to grant permission to persons lodging in vehicles to stay on public  
26 property and therefore such arrests or threats of arrest are purely discretionary. The  
27 City has similarly indicated a willingness to enforce other discretionary statutes  
28 disproportionately against the homeless population, including the “encroachment”

1 statute, S.D. Mun. Code §54.0110.<sup>11</sup>

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

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

12 73. Plaintiffs are aware of multiple parking lots under City control that are  
13 empty at night, and could be used by Named Plaintiffs and Class members for  
14 nighttime parking of their RVs and other vehicles used as shelter. Plaintiffs are also  
15 aware of streets in industrial areas that are empty at night and have ample places to  
16 park RVs and other vehicles used as shelter. The use of these lots and industrial areas  
17 by Plaintiffs and Class members would not infringe on residential parking or  
18 otherwise inconvenience other City residents.

19 74. In response to Plaintiffs’ reasonable modification request, the City  
20 Attorney’s office held one meeting with Plaintiffs’ counsel on May 9, 2017. Over the  
21 next two months, and despite the urgency of this matter to Plaintiffs’ health and  
22 safety, the City did not take or propose any actions to address Plaintiffs’ concerns.  
23 The City continued to ticket, tow, and impound homeless persons’ Vehicles,  
24 including those of persons with disabilities. The City’s actions showed an

25 \_\_\_\_\_  
26 <sup>11</sup> “It is unlawful for any person to erect, place, allow to remain, construct, establish,  
27 plant, or maintain any vegetation or object on any public street, alley, sidewalk,  
28 highway, or other public property or public right-of-way, except as otherwise provide  
by this Code.” San Diego Municipal Code §54.0110 (“Unauthorized Encroachments  
Prohibited”).

1 unwillingness to make reasonable modifications to its nighttime RV parking  
2 ordinance, the Original VHO, and its policy and practice of towing and impounding  
3 homeless persons' vehicles for unpaid tickets.

4 75. On July 8, 2017, Plaintiffs requested that the City temporarily halt  
5 enforcement of the nighttime RV parking ordinance and the Original VHO to stop  
6 ticketing homeless people living in RVs and other vehicles and to stop impounding  
7 their RVs and other vehicles pending a final resolution of the matter. The City again  
8 stalled, waiting until August 23, 2017, before telling Plaintiffs that it would not agree  
9 to temporarily halt enforcement of these ordinances, nor to temporarily halt its policy  
10 of towing and impounding homeless persons' Vehicles for unpaid tickets. Because of  
11 the continued harm caused to Named Plaintiffs and Class members by the City's  
12 actions, Plaintiffs had no choice but to file their Complaint.

### 13 CAUSES OF ACTION

#### 14 FIRST CAUSE OF ACTION

##### 15 **Violation of Substantive Due Process—Void for Vagueness** 16 **(Fourteenth Amendment; 42 U.S.C. § 1983)**

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

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

22 78. To satisfy the Due Process Clause, an ordinance must be sufficiently  
23 definite to provide adequate notice of the conduct proscribed and provide sufficient  
24 guidelines for the police so that arbitrary and discriminatory enforcement does not  
25 occur. *See Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1106-1107 (1995).

26 79. The Original VHO did not satisfy the requirements of the Due Process  
27 Clause. As written, the Original VHO made unlawful the use of a vehicle parked or  
28 standing on the street as “either temporary or permanent living quarters, abode, or

1 place of habitation.” None of the terms used—“temporary living quarters,”  
2 “permanent living quarters,” “abode” or “place of habitation”—were defined  
3 anywhere in the ordinance.

4 80. The Original VHO (whether enforced directly or indirectly through  
5 citations issued under “Violation of Signs” prohibiting habitation) failed to provide  
6 adequate notice and sufficient guidance, which would allow an individual to ascertain  
7 beyond mere speculation as to how one uses a parked or standing vehicle as “either  
8 temporary or permanent living quarters, abode, or place of habitation.” he ordinance  
9 therefore failed “to draw a clear line between innocent and criminal conduct,”  
10 *Desertrain v. City of Los Angeles*, 754 F. 3d 1147, 1156 (9th Cir. 2014), and invited  
11 selective enforcement against people who are homeless, many of whom have  
12 disabilities. As detailed above, Named Plaintiffs and Class members attempted to  
13 comply with the vehicle habitation ordinance but were nonetheless ticketed under its  
14 vague and overbroad reach.

15 81. The New VHO also does not satisfy the requirements of the Due Process  
16 Clause. As written, the New VHO makes unlawful the use of a vehicle for “human  
17 habitation.” The New VHO does not define the term. Although the New VHO  
18 includes a list of “evidence of human habitation,” the ordinance provides no standard  
19 to gauge when this evidence amounts to unlawful human habitation of a vehicle,  
20 other than “considering all of the circumstances.”

21 82. Like the Original VHO, the New VHO fails to provide adequate notice  
22 and sufficient guidance, which would allow an individual to ascertain beyond mere  
23 speculation as to how one uses a vehicle for “human habitation.” The evidence of  
24 human habitation listed in the ordinance consists largely of ordinary activities that  
25 occur in or around the vehicle including: “sleeping,” storing “sleeping bags, bedrolls,  
26 [and] blankets,” and leaving “litter, rubbish, or waste.” Even with these potential  
27 observations, it is still not clear when such evidence or activities demonstrate that a  
28 vehicle is being used for unlawful human habitation, and it does not change or

1 meaningfully limit how police enforcement operated under the Original VHO—  
2 which this Court found violated Plaintiffs’ constitutional rights because it was both  
3 vague on its face and was being arbitrarily enforced. *Bloom v. City of San Diego*,  
4 2018 WL 9539239 (S.D. Cal. Aug. 21, 2018). Therefore, the New VHO fails “to  
5 draw a clear line between innocent and criminal conduct,” *Desertrain v. City of Los*  
6 *Angeles*, 754 F. 3d 1147, 1156 (9th Cir. 2014), and continues to invite selective  
7 enforcement against people who are homeless, many of whom have disabilities.

8       83. The City’s attempt to add time, place, and manner provisions to the New  
9 VHO fail to bolster the ordinance’s constitutionality. The New VHO excludes those  
10 who are purporting to use a vehicle for “human habitation” from the vast majority of  
11 the City anytime of the day or night, and excludes them from all public streets and  
12 parking lots (except for designated “Safe Lots”) from 9:00 p.m. until 6:00 a.m. The  
13 New VHO’s provisions do not clarify or meaningfully limit how police are expected  
14 to enforce the ordinance. The New VHO’s time and place provisions function in the  
15 same way as under the Original VHO—effectively constituting a blanket ban on the  
16 use of a vehicle for “human habitation.” Thus, despite the time and place provisions,  
17 the New VHO fails “to draw a clear line between innocent and criminal conduct,”  
18 *Desertrain*, 754 F. 3d at 1156, and continues to invite selective enforcement against  
19 people who are homeless, many of whom have disabilities. In addition, while the  
20 Original VHO arguably allowed for daytime enforcement, the New VHO makes this  
21 explicit, opening the door for even more police harassment and selective enforcement  
22 against people deemed to be homeless.

23       84. Named Plaintiffs and Class members have no choice but to continue to  
24 live in their RVs or other Vehicles. Despite repealing the Original VHO, the City  
25 enacted the New VHO and, through its actions and officers, has communicated  
26 specific warnings and threats of enforcement against Named Plaintiffs and enforced  
27 the New VHO against Class members. Based on the City’s enforcement of the  
28 Original VHO, Named Plaintiffs and Class members face the realistic dangers

1 associated with the City's enforcement of the New VHO.

2 85. The Original VHO and New VHO should therefore be declared  
3 unconstitutionally vague both facially and as applied or likely to be enforced against  
4 Named Plaintiffs and Class members in violation of Substantive Due Process  
5 protections under the Fourteenth Amendment to the U.S. Constitution.

6 86. As a result of the Defendant's actions with respect to the Original VHO  
7 under color of law in violation of the Due Process Clause of the Fourteenth  
8 Amendment, Named Plaintiffs and Class members were forced to pay fines and  
9 assessments they could not afford and were deprived of or threatened with the  
10 deprivation of their only available shelter—their RVs or other vehicles. In addition to  
11 that cost, Named Plaintiffs suffered emotional and mental distress as well as  
12 humiliation because of this violation of their rights. Defendant's unlawful actions and  
13 the resulting injuries entitle Named Plaintiffs to compensatory damages, including  
14 damages for emotional distress. Named Plaintiffs and Class members are also entitled  
15 to injunctive and declaratory relief, restitution, and attorneys' fees and costs.

16 87. As a result of the Defendant's actual and threatened actions with respect  
17 to the New VHO under color of law in violation of the Due Process Clause of the  
18 Fourteenth Amendment, Named Plaintiffs and Class members have been and will  
19 continue to be forced to pay fines and assessments they cannot afford. Moreover, the  
20 New VHO threatens even greater penalties with the issuance of misdemeanor  
21 citations, arrests, incarceration, and continued threat that they will be deprived of  
22 their only available shelter—their RVs or other vehicles. In addition to those costs,  
23 Named Plaintiffs will suffer emotional and mental distress as well as humiliation  
24 because of this violation of their rights. Defendant's unlawful actions and the  
25 resulting injuries entitle Named Plaintiffs to compensatory damages, including  
26 damages for emotional distress. Named Plaintiffs and Class members are also entitled  
27 to injunctive and declaratory relief, restitution, and attorneys' fees and costs.

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**SECOND CAUSE OF ACTION**

**Right to Be Secure from Unreasonable Seizures  
(Fourth Amendment; 42 U.S.C. § 1983)**

88. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth herein.

89. Defendant has violated Plaintiffs’ right to be secure from unreasonable seizure of their property without a warrant.

90. Removing a Vehicle constitutes a seizure under the Fourth Amendment of the United States Constitution.

91. Under the guise of the New VHO and the nighttime RV parking ordinance,<sup>12</sup> Defendant has a policy and practice of ordering Vehicles, including Vehicles Plaintiffs use as shelter, to be towed and impounded without a warrant and without any public safety or urgent traffic control purpose.

92. As a direct and proximate consequence of Defendant’s intentional acts and unconstitutional policies and practices with respect to the New VHO and the nighttime RV parking ordinance, Named Plaintiffs and Class members have suffered and continue to suffer from the seizure and impoundment of their Vehicles, which they use as shelter. Plaintiffs request injunctive relief to stop the towing and impoundment of Plaintiffs’ vehicles under the New VHO and the nighttime RV parking ordinance and to require Defendant to adopt constitutionally sound policies.

**THIRD CAUSE OF ACTION**

**Right To Procedural Due Process Of Law  
(Fourteenth Amendment; 42 U.S.C. § 1983)**

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

94. A state cannot deprive a person of life, liberty, or property, without due process of law. U.S. CONST. amend. XIV, § 1. The Due Process Clause of the

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<sup>12</sup> See ¶ 10, above.

1 United States Constitution requires the government to provide adequate notice and a  
2 meaningful opportunity to be heard prior to depriving individuals of their property.

3 95. Towing and impounding a Vehicle constitutes a seizure under the Fourth  
4 Amendment of the United States Constitution.

5 96. Under the guise of the New VHO and the nighttime RV parking  
6 ordinance, Defendant has a policy and practice of towing and impounding Plaintiffs'  
7 vehicles without a warrant and without any public safety or urgent traffic control  
8 purpose.

9 97. As a matter of policy and practice, Defendant does not provide notice or  
10 an opportunity to be heard prior to towing and impounding Plaintiffs' vehicles with  
11 respect to the New VHO and the nighttime RV parking ordinance. This is  
12 Defendant's policy and practice even when it is evident that the subject vehicles are  
13 used as shelter. This is Defendant's policy and practice even though tow and impound  
14 of Plaintiffs' vehicles often result in the permanent deprivation of Plaintiffs' property.

15 98. Plaintiffs' interest in their vehicles, which they use for transportation,  
16 property storage, and as their only form of available shelter, significantly outweighs  
17 Defendant's interest in enforcement of the challenged ordinances.

18 99. As a direct and proximate consequence of the acts of the Defendant, and  
19 its unconstitutional policies and practices, Named Plaintiffs and Class members have  
20 suffered and continue to suffer from the seizure and impoundment of their vehicles.  
21 Plaintiffs request injunctive relief to stop the towing and impoundment of Plaintiffs'  
22 vehicles under the New VHO and the nighttime RV parking ordinance and to require  
23 Defendant to adopt constitutionally sound policies. Named Plaintiffs and Class  
24 members are also entitled to restitution, attorneys' fees and costs.

**FOURTH CAUSE OF ACTION**

**Violation of Cruel and Unusual Punishment  
(Eighth and Fourteenth Amendments; 42 U.S.C. § 1983)**

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

101. The Eighth Amendment to the U.S. Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

102. Defendant’s policy and practice of issuing citations and/or making arrests or threats of same for violations of the vehicle habitation ordinances violates the Eighth Amendment’s prohibition on cruel and unusual punishment because it constitutes a punishment that is disproportionate to the severity of the “crime” of violating the nighttime RV parking and vehicle habitation ordinances or of lodging in one’s vehicle on City streets. *See Solem v. Helm*, 463 U.S. 277 (1983).

103. The punishments inflicted by Defendant for violation of the ordinances in question force Named Plaintiffs and Class members to attempt to pay exorbitant fines that they cannot afford. Plaintiffs and Class members who attempt to pay these fines must sacrifice paying for life-sustaining food, medication, or other necessities. And when they no longer pay the fines, they lose the only form of shelter available to them—their RV or vehicle—through impoundment. With their RVs or vehicles taken from them, Plaintiffs and Class members face the dangers described herein of living on the streets without shelter and the other necessities of life provided by their RVs.

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

105. For Named Plaintiffs and Disability Subclass members, Defendant’s practice and policy also violates the Eighth Amendment’s prohibition on cruel and unusual punishment because it punishes Named Plaintiffs and Disability Subclass

1 members for being disabled and homeless. By punishing the act of sheltering oneself  
2 in a vehicle when there are no adequate alternatives, the City effectively punishes a  
3 person for her homeless status. *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).  
4 Defendant infringes Plaintiffs' and Subclass members' rights by threatening and/or  
5 imposing criminal punishment for sitting, lying, sleeping, and/or sheltering oneself in  
6 a vehicle in most areas of the City at any time of the day or night, and in all places  
7 between the hours of 9:00 p.m. and 6:00 a.m.

8 106. Named Plaintiffs and Class members are involuntarily homeless because  
9 the City lacks affordable permanent housing. The City also lacks accessible,  
10 adequate, and available temporary shelters for the hundreds of people who seek  
11 shelter in their Vehicles, much less the thousands of people who are homeless in the  
12 City. Many Named Plaintiffs and Disability Subclass members are homeless because  
13 their disabilities led to their unemployment and poverty. Plaintiffs and Class members  
14 cannot reasonably forego sheltering themselves, as sheltering oneself is a basic  
15 human need. Until permanent, affordable, and accessible housing is available to  
16 them, their RVs or other vehicles are their only option for meeting their basic human  
17 need for shelter and for other necessities of life that housing normally provides.

18 107. Defendant's actions that penalize Plaintiffs for their homeless status  
19 constitute cruel and unusual punishment in violation of Plaintiffs' rights under the  
20 Eighth Amendment to the United States Constitution as incorporated in, and applied  
21 to the states through, the Fourteenth Amendment.

22 108. Because the New VHO violates the freedom from cruel and unusual  
23 punishment guaranteed by the Eighth Amendment, Named Plaintiffs and Class  
24 members are entitled to a declaratory judgment that the New VHO is unconstitutional  
25 as applied to them as well as to injunctive relief, restitution and attorney's fees.  
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**FIFTH CAUSE OF ACTION**

**Violation of Right to Be Free From Excessive Fines  
(Eighth and Fourteenth Amendments; 42 U.S.C. § 1983)**

109. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth herein.

110. The Excessive Fines Clause limits the government’s power to extract payments, whether in cash or in kind, “as punishment for some offense.” *Austin v. United States*, 509 U.S. 602, 609–10 (1993). A fine is excessive if it is grossly disproportionate to the gravity of the offense, will deprive the offender of their livelihood or is more than their circumstances and estate will bear. *See Timbs v. Indiana*, 139 S. Ct. 682 (2019).

111. In addition, imposing unpayable fines on indigent defendants violates due process and equal protections of the laws under the due process and equal protections provisions of Fourteenth Amendment, and the California Constitution. *Bearden v. Georgia*, 461 US 660, 667-668 (1983). *People vs. Duenas*, 30 Cal. App. 5th 1157 (2019). Defendant’s policy and practice of issuing tickets and threats of tickets for nighttime RV parking and vehicle habitation to Plaintiffs and Class members is an excessive fine in violation of the Eighth Amendment to the U.S. Constitution.

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

1 113. These punishments grossly outweigh any interest on the part of  
2 Defendant in enforcing the nighttime RV parking restriction, the Original VHO, the  
3 New VHO, and the City’s policy and practice of towing and impounding homeless  
4 persons’ vehicles.

5 114. As a result of enforcement, Named Plaintiffs suffered emotional and  
6 mental distress as well as humiliation because of this violation of their rights.  
7 Defendant’s unlawful actions and the resulting injuries entitle Named Plaintiffs to  
8 compensatory damages, including damages for emotional distress. Plaintiffs and  
9 Class members are also entitled to injunctive and declaratory relief, restitution, and  
10 attorneys’ fees and costs.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of Substantive Due Process—State Created Danger**  
13 **(Fourteenth Amendment; 42 U.S.C. § 1983)**

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

16 116. Under the Substantive Due Process Clause of the Fourteenth  
17 Amendment, the state deprives a person of a substantive due process right if it  
18 affirmatively places the person in a position of danger. *Wood v. Ostrander*, 879 F. 2d  
19 583 (9th Cir. 1989).

20 117. Defendant City of San Diego has a policy, pattern, custom, and practice  
21 of issuing tickets and/or citations to Named Plaintiffs and Class members under the  
22 above described ordinances, even though they have insufficient options for  
23 alternative shelter and lawful parking.

24 118. When said Class members are unable to pay tickets and/or citations for  
25 sheltering in or parking their vehicles, the City’s policy and practice is to tow and  
26 impound the RVs or other vehicles that Plaintiffs and Class members rely on for  
27 shelter from the elements and for other necessities without a warrant or any exception  
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1 to the warrant requirement, and without notice and/or a meaningful opportunity to be  
2 heard. In addition, vehicles may be towed incidental to an arrest under the New VHO.

3 119. As a direct result of that policy and practice, Defendant, through its  
4 agents, employees, officials and departments, has acted and continues to act  
5 affirmatively as described herein to place Plaintiffs and Class members in a highly  
6 dangerous situation that they would not otherwise face, thereby threatening Plaintiffs'  
7 and Class members' health and safety, risking serious exacerbations of their  
8 disabilities, and putting their lives at risk.

9 120. As a direct result of its policy and practice, Defendant has acted  
10 affirmatively by citing Plaintiffs and Class members for parking and vehicle  
11 habitation violations that they cannot reasonably avoid, thereby forcing Plaintiffs and  
12 Class members to attempt to pay exorbitant fines that they cannot afford. Plaintiffs  
13 and Class members who attempt to pay these fines must sacrifice paying for life-  
14 sustaining food, medication, or other necessities. And when they can no longer pay  
15 the fines, they lose the only form of shelter available to them—their RV or vehicle—  
16 through tow and impoundment without notice and/or meaningful opportunity to be  
17 heard.

18 121. As a direct result of its policy and practice, Defendant has acted  
19 affirmatively to require Plaintiffs and Class members to move in and out of “Safe  
20 Lots” on a daily basis that are devoid of basic services, protection from the elements,  
21 and/or disability access, and where they face an elevated risk of harm.

22 122. The City has acted affirmatively to tow and impound Named Plaintiffs  
23 and Class members' vehicles without notice and/or a meaningful opportunity to be  
24 heard, often resulting in the permanent loss of that property.

25 123. Without the Vehicles that they rely upon for shelter, Plaintiffs and Class  
26 members are involuntarily exposed to the outdoor elements and face the dangers  
27 described herein of living unsheltered on the streets. In addition, Class members who  
28 have their RVs taken are deprived of other necessities of life previously provided by

1 their RVs including access to running water, toilet, shower, cooking and food storage  
2 facilities; and temperature control. Both RVs and other vehicles provide a place to  
3 store critical personal property, and they provide secure, private sleeping  
4 accommodations. Thus, loss of Plaintiffs and Class members' Vehicles through  
5 impoundment, has a significant negative impact on their physical and/or mental  
6 health.

7 124. It is known or obvious to Defendant that its affirmative conduct as  
8 described above places homeless people who live in Vehicles at elevated risk of  
9 serious harm to their health and safety. In the absence of Defendant's affirmative  
10 actions, Plaintiffs and Class members would not face that elevated risk.

11 125. Defendant acted with reckless disregard or deliberate indifference to the  
12 known or obvious risks of harm—including malnourishment, illness, exposure to the  
13 outdoor elements, and/or aggravation of disabilities—that they created for Plaintiffs  
14 and Class members by enforcing and/or threatening to enforce Defendant's nighttime  
15 RV parking ordinance, Original VHO, New VHO, and/or by towing and impounding  
16 their RVs and other vehicles. Defendant and its agents and employees also knew or  
17 reasonably should have known that the Named Plaintiffs and many Class members  
18 have disabilities, are chronically homeless, and have no other viable options for  
19 shelter. Despite Defendant's actual knowledge or willful blindness to the elevated  
20 risk of serious harm to Plaintiffs and Class members flowing from its above described  
21 affirmative actions, Defendant failed to take obvious steps to address the elevated  
22 risk. *See, e.g., L.W. v. Grubbs*, 92 F.3d 894 (9th Cir. 1996). Defendant's actions show  
23 a reckless disregard or deliberate indifference to the health, safety and well-being of  
24 Plaintiffs and Class members, in violation of Plaintiffs' and Class members'  
25 Substantive Due Process rights under the Fourteenth Amendment to the U.S.  
26 Constitution.

27 126. As a result of Defendant's policies and practices described herein,  
28 Named Plaintiffs' health and safety were and are placed in grave danger in violation

1 of the Fourteenth Amendment. Named Plaintiffs were injured and damaged in that  
2 they suffered serious harm and were forced to bear the medical costs of those harms.  
3 In addition to that cost, the Named Plaintiffs suffered emotional and mental distress  
4 as well as humiliation because of the danger created by Defendant’s unlawful actions.  
5 Defendant’s unlawful actions and the resulting injuries entitle Named Plaintiffs to  
6 compensatory damages, including damages for emotional distress.

7 127. Plaintiffs and Class members have no adequate remedy at law for the  
8 violations stated herein and are therefore entitled to injunctive, declaratory, and other  
9 equitable relief, including restitution for fines and assessments collected and vehicles  
10 impounded by Defendant. Plaintiffs are also entitled to attorneys’ fees and costs.

11 **SEVENTH CAUSE OF ACTION**

12 **Infringement on the Fundamental Right to Travel – Equal Protection**  
13 **(Fourteenth Amendment; 42 U.S.C. § 1983)**

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

16 129. 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  
18 inclination may direct and stay as long as one wishes. Enforcement practices that  
19 deprive individuals of a basic necessity of life may be found to burden the right to  
20 travel unconstitutionally. *Memorial Hospital v. Maricopa County*, 415 U.S. 250  
21 (1974); *Pottinger v. Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992). “The right to travel  
22 has found its strongest expression in the context of attempts by states to discourage  
23 the immigration of indigents.” *Joyce v. City & Cty. of S.F.*, 846 F. Supp. 843, 860  
24 (N.D. Cal. 1994).

25 130. The Equal Protection Clause of the Fourteenth Amendment dictates that  
26 no State shall deny to any person within its jurisdiction the equal protection of the  
27 laws. Conduct violates the Equal Protection Clause when it disproportionately affects  
28

1 a suspect class or impinges on the exercise of a fundamental right. *Plyler v. Doe*, 457  
2 U.S. 202, 216-17 (1982).

3 131. Defendant's pattern and practice of ticketing Named Plaintiffs and Class  
4 members under its nighttime RV parking ordinance directly infringes Named  
5 Plaintiffs' and Class members' Right to Travel. Defendant has created an RV parking  
6 permit process available to City residents with physical addresses to allow nighttime  
7 RV parking, but have denied access to that permitting process to Named Plaintiffs  
8 and Class members. Defendant has conducted these activities by collecting exorbitant  
9 fines that Named Plaintiffs cannot afford to pay, impounding their vehicles, and  
10 threatening criminal prosecution for a misdemeanor, even though Named Plaintiffs  
11 and Class members have no reasonable alternative but to utilize the rudimentary  
12 shelter provided by their Vehicles. This conduct has the purpose and effect of  
13 depriving or threatening to deprive Named Plaintiffs and Class members of the  
14 necessities of life, including food, shelter, and medicine, thereby preventing Named  
15 Plaintiffs and Class members from traveling to and residing in San Diego.  
16 Defendant's enforcement of the nighttime RV parking ordinance specifically leaves  
17 Named Plaintiffs and Class members with no reasonable options for parking their  
18 RVs between 2:00 a.m. and 6:00 a.m. Since Named Plaintiffs and Class members  
19 lack the means to pay for housing or private parking and temporary shelters are not  
20 available to them, and the RV Safe Lot is in an inaccessible location and lacking  
21 necessary amenities, Named Plaintiffs and Class members cannot reasonably be in  
22 the City within those times, effectively depriving them of all shelter while traveling  
23 within the City.

24 132. Defendant's actions have violated Named Plaintiffs' and Class  
25 members' Right to Travel under the Fourteenth Amendment by refusing to provide an  
26 exemption to the nighttime RV parking ordinance based on homelessness or  
27 disability. The City has provided an exemption to its nighttime RV parking ordinance  
28 via a permit process that allows people with physical addresses to park RVs and

1 oversized vehicles from 2:00 a.m. to 6:00 a.m., but has denied the same rights to  
2 those without physical addresses, including Named Plaintiffs and Class members.  
3 Defendant's enforcement of the nighttime RV parking ordinance against Named  
4 Plaintiffs and Class members denies them the basic necessity of shelter and violates  
5 their fundamental Right to Travel.

6 133. Defendant's implementation and enforcement of the New VHO also  
7 impinges on the Named Plaintiffs and Class members' fundamental Right to Travel.  
8 In particular, the ordinance makes areas within 500 feet of residences and schools off  
9 limits to persons suspected of living in their Vehicles any time of the day or night and  
10 providing such residents with very few places in the City they can be during day –  
11 without facing criminal penalties and the prospect of arrest. This conduct thus  
12 requires Named Plaintiffs and Class members, who have no other option in the City  
13 for housing other than living in their Vehicles, to keep moving or otherwise leave the  
14 City altogether, severely inhibiting their freedom of movement. It also prevents them  
15 from engaging in life sustaining activities in the City, such as sleeping, going to  
16 medical appointments, picking up groceries, dropping their kids off at school, among  
17 a wide range of other necessary activities that would require them to be present in  
18 banned or restricted areas under the ordinance, further impinging their freedom of  
19 movement.

20 134. Defendant's actions therefore unconstitutionally infringe on the Right to  
21 Travel protected under the Fourteenth Amendment to the U.S. Constitution.

22 135. As a result of Defendant's actions under color of law in violation of the  
23 Right to Travel under the Equal Protection Clause of the Fourteenth Amendment,  
24 Plaintiffs and Class members face the prospect of arrest unless they keep moving or  
25 avoid engaging in necessary and life sustaining activities. They have also been forced  
26 to pay citations that they could not afford, and/or lost their Vehicles through  
27 impoundment, thereby depriving them of the use of their only available shelter—their  
28 RVs or other vehicles. In addition to that cost, Named Plaintiffs suffered emotional

1 and mental distress as well as humiliation because of this violation of their rights.  
2 Defendant’s unlawful actions and the resulting injuries entitle Named Plaintiffs to  
3 compensatory damages including damages for emotional distress. Named Plaintiffs  
4 and Class members are also entitled to injunctive and declaratory relief, restitution,  
5 and attorneys’ fees and costs.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of Right to Association**

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

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

11 137. The New VHO violates Plaintiffs’ and putative Class members’  
12 constitutional right to association in two related yet distinct contexts: the right to  
13 familial association; and the right to expressive association.

14 138. The Ninth Circuit has routinely found that the right to familial  
15 association is protected under both the First and Fourteenth Amendments. *See Keates*  
16 *v. Koile*, 883 F.3d 1228, 1235–36 (9th Cir. 2018) (“Accordingly, we have held that  
17 claims under both the First and Fourteenth Amendment for unwarranted interference  
18 with the right to familial association could survive a motion to dismiss.”) (citing *Lee*  
19 *v. City of Los Angeles*, 250 F.3d 668, 685 (9th Cir. 2001)).

20 139. Under the language of the New VHO, which prohibits Plaintiffs and  
21 Class members from being present with their vehicles in most areas of the City day or  
22 night and imposes a 9:00 p.m. curfew, Plaintiffs are restricted from exercising their  
23 constitutional right under the Fourteenth Amendment to associate with family  
24 members. This includes the exercise of child visitation rights and the ability to care  
25 for siblings or parents who are elderly, ill, or disabled. Plaintiffs are unable to park  
26 within any reasonable walking distance of a residence where close relatives and  
27 family members may live. The time and place distance requirements set forth in the  
28 New VHO pose exacerbated difficulties for Plaintiffs and Class members who have

1 disabilities and who may be unable to comply with these restrictions due to their own  
2 disabilities.

3 140. Even more, the “anytime within 500 feet” New VHO language  
4 unconstitutionally violates the right to associate under the Fourteenth Amendment by  
5 restricting Plaintiffs and Class members from engaging in routine activities at or  
6 around school properties, such as picking up and/or dropping off children at school.  
7 Thus, the New VHO creates unnecessary obstacles for homeless children who reside  
8 in vehicles to attend school and related school functions.

9 141. Defendant’s onerous New VHO also violates Plaintiffs’ and Class  
10 members’ right to expressive association protected under the First Amendment. This  
11 right enables citizens to assemble or otherwise gather for church, monthly social  
12 meetings, educational workshops, community gatherings, and virtually anything that  
13 could reasonably be construed as protected permissible expressive associational  
14 activities presumably protected under the First Amendment. *See Santropietro v.*  
15 *Howell*, 857 F.3d 980, 989 (9th Cir. 2017) (“Association for the purpose of engaging  
16 in protected activity is itself protected by the First Amendment. ‘[I]mplicit in the right  
17 to engage in activities protected by the First Amendment’ is ‘a corresponding right to  
18 associate with others in pursuit of a wide variety of political, social, economic,  
19 educational, religious, and cultural ends.’”) (citing *Roberts v. U.S. Jaycees*, 468 U.S.  
20 609, 622, 104 S. Ct. 3244, 3252(1984)).

21 142. As a result of Defendant’s unconstitutional policies and practices in  
22 enforcing and threatening to enforce the New VHO, Plaintiffs and putative Class  
23 members are substantially prohibited from exercising their right to expressive  
24 association protected by the First Amendment, or to associate with others in the  
25 pursuit of political, social, economic, educational, religious, and cultural ends.

26 143. As a result of Defendant’s actions under color of law in violation of the  
27 Right to Association under the First Amendment and Fourteenth Amendment,  
28 Plaintiffs and Class members are unduly restricted from exercising their right to

1 familial and expressive association solely as a result of residing in their RVs or other  
2 vehicles. Plaintiffs have suffered and continue to endure emotional and mental  
3 distress as well as humiliation because of this violation of their rights. Defendant's  
4 unlawful actions and the resulting injuries entitle Named Plaintiffs to compensatory  
5 damages including damages for emotional distress. Named Plaintiffs and putative  
6 Class members are also entitled to injunctive and declaratory relief, restitution, and  
7 attorneys' fees and costs.

8 **NINTH CAUSE OF ACTION**

9 **Violation of California Constitution - Rights to Due Process, Equal**  
10 **Protection, Freedom from Unreasonable Seizure of Property,**  
11 **and Freedom from Excessive Fines**  
**(California Constitution Article I, § 7; Article I, § 13; Article I, § 17)**

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

14 145. Defendant's policies and practices as herein stated violate the due  
15 process liberty interests and equal protection provisions of Article I, § 7 of the  
16 California Constitution.

17 146. Defendant's policies and practices with respect to the New VHO and the  
18 nighttime RV parking ordinance as herein stated violate due process guarantees and  
19 protection against unreasonable seizures of property under Article I, § 13 of the  
20 California Constitution.

21 147. Defendant's policies and practices with respect to the New VHO and the  
22 nighttime RV parking ordinance as herein stated violate the prohibition against  
23 imposition of excessive fines under Article I, § 17 of the California Constitution.

24 148. Defendant's unlawful actions and the resulting injuries entitle Named  
25 Plaintiffs to compensatory damages, including damages for emotional distress.  
26 Named Plaintiffs and Class members are also entitled to injunctive and declaratory  
27 relief, destitution, and attorneys' fees and costs.  
28

1 **TENTH CAUSE OF ACTION**

2 **Violation of Bane Act**  
3 **(California Civil Code § 52.1)**

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

6 150. California Civil Code § 52.1, also known as the “Bane Act,” provides a  
7 cause of action to individuals whose exercise or enjoyment of rights secured by the  
8 United States and/or California Constitutions and other laws has been interfered with,  
9 or attempted to be interfered with, by another’s threat, intimidation, or coercion.

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

22 152. There was and is no lawful justification for Defendant to threaten,  
23 intimidate, or coerce any of the Named Plaintiffs and Class members, or to attempt to  
24 use threats, intimidation, or coercion as described herein to interfere with Plaintiffs’  
25 exercise of their rights. Defendant’s actions were and are taken willfully and with  
26 malice and oppression in order to deter and/or prevent Named Plaintiffs and Class  
27 members from exercising their protected constitutional and statutory rights.

28 153. Plaintiffs and Class members are entitled to injunctive relief and other

1 appropriate equitable relief to protect the peaceful exercise and enjoyment of  
2 Plaintiffs’ and Class members’ rights.

3 **ELEVENTH CAUSE OF ACTION**

4 **Violation of Americans with Disabilities Act**  
5 **(42 U.S.C. § 12132)**  
6 **(On Behalf of Disability Subclass Members)**

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

9 155. Title II of the ADA, 42 U.S.C. § 12132, provides:

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

13 156. The Named Plaintiffs and Disability Subclass members are “qualified  
14 persons with disabilities” as defined under the ADA. 42 U.S.C. § 12102; 42 U.S.C. §  
15 12131; 28 C.F.R. § 35.104.

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

20 158. The City’s parking program including the enforcement by the Police  
21 Department of its parking ordinances and its restrictions on vehicle habitation is a  
22 service, program, or activity of the City.

23 159. In addition, the various amenities of City life offered to its residents,  
24 including San Diego’s parks, beaches and public events are “services, programs, or  
25 activities” of the City.

26 160. Title II protects people with disabilities against facially neutral policies  
27 that burden people with disabilities more than others, by requiring that the public  
28 entity provide reasonable modifications to avoid the discrimination unless the public  
entity can demonstrate that such modifications would result in a fundamental

1 alteration of the program. 28 C.F.R. § 35.130(b)(7); *Crowder v. Kitagaw*, 81 F. 3d  
2 1480 (9th Cir. 1996).

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

7 162. By refusing to reasonably modify its policies and practices as described  
8 herein to allow Named Plaintiffs and Disability Subclass members to legally park  
9 their vehicles on City streets or other public property and to utilize their vehicles for  
10 shelter, at least until affordable, accessible and medically appropriate housing is  
11 available for them, Defendant has violated and continues to violate the  
12 antidiscrimination requirements of Title II of the ADA.

13 163. Title II regulations interpreting the ADA prohibit a public entity from  
14 utilizing criteria or methods of administration that have the effect of subjecting  
15 qualified individuals with disabilities to discrimination based on disability. 29 C.F.R.  
16 § 35.130(b)(3).

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

20 165. Defendant's policies and practices in administrating their parking  
21 program through ticketing Disability Subclass members, impounding their RVs and  
22 other vehicles and excluding homeless RV owners from the ability to obtain parking  
23 permits available to people with physical addresses, and threatening them with arrest  
24 and criminal prosecution for vehicle habitation, imposing a 9:00 p.m. curfew on  
25 them, and excluding them from most areas of the City day or night, has the effect of  
26 discriminating against and imposing disproportionate burdens on people with  
27 disabilities based on disability, screening out such persons from the benefits of the  
28

1 City's parking program, and denying them meaningful access to such benefits and to  
2 the City's amenities enjoyed by and available to people without disabilities.

3 166. In carrying out Defendant's policies and practices as described herein,  
4 Defendant has utilized criteria or methods of administration that have the effect of  
5 subjecting qualified individuals with disabilities to discrimination based on disability.  
6 29 C.F.R. § 35.130(b)(3).

7 167. In carrying out Defendant's policies and practices as herein described  
8 and denying Plaintiffs' request for reasonable modification in violation of Plaintiffs'  
9 rights under the ADA, Defendant has acted knowingly and with deliberate  
10 indifference to the harm substantially likely to occur.

11 168. As a result of Defendant's unlawful acts, Named Plaintiffs have suffered  
12 and continue to suffer injuries, including emotional injuries, and are entitled to  
13 compensatory damages, including damages for emotional distress. In addition,  
14 Named Plaintiffs and Disability Subclass members are entitled to injunctive and  
15 declaratory relief, restitution, and attorneys' fees and costs.

16 **TWELFTH CAUSE OF ACTION**

17 **Violation of § 504 of the Rehabilitation Act of 1973**  
18 **(29 U.S.C. § 794)**  
19 **(On Behalf of Disability Subclass Members)**

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

22 170. Defendant City of San Diego and the City's Police Department, are  
23 recipients of financial assistance from the federal government.

24 171. Section 504 of the Rehabilitation Act of 1973 requires that qualified  
25 persons with disabilities be provided with meaningful access to federally funded  
26 programs. In order to assure meaningful access, reasonable modifications may be  
27 required unless the recipient of federal funding can demonstrate that such  
28 modifications would result in a fundamental alteration in the nature of the program.

1 29 U.S.C. § 749; 24 C.F.R. §§ 8.3 and 8.4; Alexander v. Choate, 469 U.S. 287, 301  
2 (1985).

3 172. Defendant’s actions and omissions as herein stated have denied  
4 Plaintiffs’ and Disability Subclass members’ right to reasonable modifications  
5 thereby denying them meaningful access to Defendant’s parking program and to the  
6 amenities that the City offers its residents without disabilities, and subjecting them to  
7 discrimination on the basis of disability, in violation of section 504 of the  
8 Rehabilitation Act.

9 173. As a result of Defendant’s unlawful acts in violation of the  
10 Rehabilitation Act, Named Plaintiffs have suffered and continue to suffer injuries,  
11 including emotional injuries, and are entitled to compensatory damages, including  
12 damages for emotional distress. In addition, Named Plaintiffs and Disability Subclass  
13 members are entitled to injunctive and declaratory relief, restitution, and attorneys’  
14 fees and costs.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray that this Court:

17 A. Declare that Defendant’s past, present, and threatened future  
18 enforcement of the Original and New vehicle habitation ordinances and the nighttime  
19 RV parking ordinances, San Diego Muni. Code §§ 86.0137(f) and 86.0139(a),  
20 including its enforcement of San Diego Muni. Code § 86.0112(E) “Violation of  
21 Signs” for vehicle habitation and enforcement of California Penal Code § 647(e)  
22 against Named Plaintiffs and Class members, and Defendants’ policy and practice of  
23 towing and impounding Plaintiffs’ vehicles violates the right to be free from cruel  
24 and unusual punishment, the right to be free from excessive fines, the right to travel,  
25 the right of familial and expressive association, the right to freedom from  
26 unreasonable seizures of property, the right to procedural and substantive due process  
27 and equal protection of the laws;

28

1           B.     Declare that Defendant’s past, present and threatened future enforcement  
2 of San Diego ordinances, San Diego Muni. Code §§ 86.0137(f), 86.0139(a),  
3 86.0112(E), and California Penal Code § 647(e) against Named Plaintiffs and  
4 Disability Subclass members discriminates on the basis of disability in violation of  
5 the ADA, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794;

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

11           D.     Issue a preliminary and permanent injunction, enjoining Defendant, their  
12 departments, officers, employees, assignees, successors, and agents from enforcing  
13 the above San Diego ordinances, San Diego Muni. Code §§ 86.0137(f), 86.0139(a),  
14 86.0112(E), and California Penal Code § 647(e) against Named Plaintiffs and Class  
15 members through issuing of tickets, collecting unpaid fines associated with previous  
16 tickets issued under these ordinances, arresting Class members, or through  
17 impoundment of RVs or other vehicles for unpaid tickets, incident to an arrest for  
18 vehicle habitation or for other reasons without a warrant or providing proper notice  
19 and a meaningful opportunity to be heard, and further enjoining Defendant against  
20 ticketing, arrests, prosecutions or any threats of arrest or prosecution against Named  
21 Plaintiffs and Class members for vehicle habitation or for lodging in vehicles on  
22 public property, until such time that permanent, accessible, affordable housing is  
23 available to these individuals;

24           E.     Award restitution for fines and penalties that Defendant collected from  
25 Named Plaintiffs and Class members and for vehicles that were impounded pursuant  
26 to Defendant’s policy and practice of towing and impounding vehicles without a  
27 warrant or an exception to the warrant requirement and without notice and/or a  
28 meaningful opportunity to be heard;

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

6 G. Award to Plaintiffs reasonable attorneys’ fees pursuant to 42 U.S.C.  
7 § 1988, 42 U.S.C. § 12205, 29 U.S.C. § 794a(a)(2)(b), Cal. Civ. Code § 52,  
8 and Cal. Civ. Proc. Code § 1021.5;

9 H. Award to Plaintiffs costs of suit; and

10 I. Order such other and further relief that the Court deems just and proper.

11 Dated: May 1, 2020

**DISABILITY RIGHTS CALIFORNIA**

12  
13 By: /s/ Ann E. Menasche  
14 Ann E. Menasche, SB # 74774  
[Ann.menasche@disabilityrightsca.org](mailto:Ann.menasche@disabilityrightsca.org)  
15 Nichole Marie Mendoza, SB # 276632  
[Nichole.Mendoza@disabilityrightsca.org](mailto:Nichole.Mendoza@disabilityrightsca.org)  
16 Lili Graham, SB# 284264  
[Lili.Graham@disabilityrightsca.org](mailto:Lili.Graham@disabilityrightsca.org)  
17 530 B Street, Suite 400  
18 San Diego, CA 92101  
19 Telephone: (619) 814-8524  
20 Fax: (619) 239-7906  
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Michael A. Amon, SB # 226221  
[Amon@fr.com](mailto:Amon@fr.com)  
Madelyn S. McCormick, SB # 320063  
[MMcCormick@fr.com](mailto:MMcCormick@fr.com)  
FISH & RICHARDSON P.C.  
12390 El Camino Real  
San Diego, CA 92130  
Telephone: (858) 678-5070  
Fax: (858) 678-5099

Maria Foscarinis, DC SB # 397792  
(Admitted Pro Hac Vice)  
[mfoscarinis@nlchp.org](mailto:mfoscarinis@nlchp.org)  
NATIONAL LAW CENTER ON  
HOMELESSNESS AND POVERTY  
2000 M Street, NW, Suite 210  
Washington, DC 20036  
Telephone: (202) 638-2835 x 102  
Fax: (202) 628-2737

Benjamin Conway, SB # 246410  
[ben.conway@disabilityrightsca.org](mailto:ben.conway@disabilityrightsca.org)  
DISABILITY RIGHTS CALIFORNIA  
350 S. Bixel St., Suite 290  
Los Angeles, CA 90017  
Telephone: (213) 213-8000  
Fax: (213) 213-8001

Stuart Seaborn, SB # 198590  
[sseaborn@dralegal.org](mailto:sseaborn@dralegal.org)  
Shira J. Tevah, SB # 307106  
[stevah@dralegal.org](mailto:stevah@dralegal.org)  
DISABILITY RIGHTS ADVOCATES  
2001 Center Street, 4<sup>th</sup> Floor,  
Berkeley, CA 94704  
Telephone: (510) 665-8644/  
Fax: (510) 665-8511

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Robert Scott Dreher, SB #120527  
[scott@dreherlawfirm.com](mailto:scott@dreherlawfirm.com)  
DREHER LAW FIRM  
350 W. Ash, Ste. 101  
San Diego, CA 92101  
Telephone: (619) 230-8828

Manfred P. Muecke, SB # 222893  
[mmuecke@bffb.com](mailto:mmuecke@bffb.com)  
Patricia Syverson, SB # 203111  
[psyverson@bffb.com](mailto:psyverson@bffb.com)  
BONNETT FAIRBOURN FRIEDMAN &  
BALINT PC  
600 West Broadway, #900  
San Diego, CA 92101  
Telephone: (619) 798-4292  
Fax: (602) 274-1199

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 1, 2020 to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Executed on May 1, 2020 at San Diego, California.

*/s/ Ann E. Menasche*

Ann E. Menasche

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