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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARK SIPPRELLE; HELENE
AYRES; FELIPE RUIZ; ROBERT
CARMICHAEL; AND PAUL ISHAK,

Plaintiffs,

v.

CITY OF LAGUNA BEACH; THE
LAGUNA BEACH POLICE
DEPARTMENT; and THE CITY
COUNCIL OF THE CITY OF
LAGUNA BEACH,

Defendants.

Case No. SACV08-01447 CJC (AGRx)

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

Fourth, Eighth, and Fourteenth
Amendments to the United States
Constitution, and Title II of the
Americans with Disabilities Act

BY FAX

1 **JURISDICTION**

2 1. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C.
3 § 1331 (in that this case arises under the Constitution of the United States);
4 § 1343(a)(3) (in that it is brought to redress deprivations, under color of state
5 authority, of rights, privileges and immunities secured by the United States
6 Constitution); § 1343(a)(4) (in that it seeks to secure equitable relief under an Act of
7 Congress, specifically under Title II of the ADA, and under 42 U.S.C. § 1983); and
8 the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

9 2. This Court has jurisdiction over Defendant City of Laguna Beach
10 ("Laguna" or "the City") because it is a political subdivision of the State of
11 California located in Orange County, Defendant Laguna Beach Police Department
12 ("LBPD") because it operates in Orange County and enforces the City's laws, and
13 the City Council of Laguna Beach ("City Council") because it is comprised of
14 elected officials who institute and implement the City's unlawful and discriminatory
15 policies.

16 **VENUE**

17 3. Venue is proper in the Central District of California under 28 U.S.C.
18 § 1391(b). Defendants are located in the Central District and all of the acts and/or
19 omissions complained of herein have occurred or will occur in this District.

20 **SUMMARY OF THE COMPLAINT**

21 4. Laguna is one of most affluent communities in the United States. Yet,
22 for all intents and purposes, Defendants have made it illegal to be homeless in
23 Laguna. Despite acknowledging that most of its homeless residents, like Plaintiffs,
24 are mentally and/or physically disabled, Laguna has unlawfully discriminated
25 against them. Laguna intentionally violates its homeless residents' constitutional
26 rights by criminalizing sleeping; conducting unwarranted and unjustified stops of
27 these residents that result in interrogations, demanding identification, running
28 warrant checks, and instituting unauthorized searches and arrest; selectively

1 enforcing local ordinances and criminal laws against them; and thwarting their
2 access to available basic social services.

3 5. Because of this unlawful and unconstitutional conduct of the City, the
4 LBPd, and the City Council, Plaintiffs bring this action for preliminary and
5 permanent injunctive relief and declaratory relief. This action is based upon the
6 rights secured to Plaintiffs by the Fourth, Eighth, and Fourteenth Amendments to the
7 United States Constitution, and Title II of the Americans with Disabilities Act, 42
8 U.S.C. § 12132 (the "ADA").

9 **PARTIES**

10 **Plaintiffs**

11 6. Plaintiffs are chronically homeless residents of Laguna. Each is
12 "homeless" within the meaning of federal law (Stewart B. McKinney Homeless
13 Assistance Act, 42 U.S.C. § 11302), in that he or she is "without a fixed regular and
14 adequate night-time residence, or a person who resides in a . . . place not ordinarily
15 used for sleeping accommodations, such as the streets, automobiles, abandoned
16 buildings, etc." Each homeless resident is also mentally and/or physically disabled.

17 **Defendants**

18 7. Defendant Laguna is a municipal entity, organized as a charter city
19 under the laws of the State of California, with the capacity to sue and be sued.
20 Defendant Laguna is the legal and political governmental entity responsible for the
21 actions of the LBPd, its officials, its agents, and its employees. Defendant Laguna
22 is sued in its own right and on the basis of the acts of its officials, agents, and
23 employees, including the LBPd.

24 8. Defendant LBPd provides law enforcement services in Laguna and
25 enforces Laguna's municipal code.

26 9. Defendant City Council consists of elected officials who institute and
27 implement Laguna's policies. It is responsible for enacting and repealing Laguna's
28 ordinances. The City Council is sued in its official capacity.

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

11. Each Defendant was acting on behalf of Laguna or at the direction of another Defendant on Laguna's behalf.

12. The acts of each Defendant were authorized, ratified, and/or condoned by the relevant policy makers for Defendant Laguna.

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

STATEMENT OF FACTS

The Homeless Population In Laguna Beach Is Comprised Almost Exclusively Of Chronically Homeless Residents Who Experience Long Term Homelessness Due To Mental And/Or Physical Disabilities

14. The homeless population in Laguna is "[u]nique . . . as compared to other cities in Orange County [because it] almost exclusively meets the definition of chronically homeless." (City of Laguna Beach Homeless Task Force Final Recommendations ("Task Force Rpt.") at 4.) "Chronically homeless" is defined as "unaccompanied individuals with a mental or physical disability who experience long term or repeated homelessness." (*Id.* at 3.)

15. Most, if not all homeless individuals living in Laguna, suffer from some form of mental and/or physical disability, and may also struggle with drug and alcohol addiction, as disability and addiction are two of the three most common causes of homelessness in the Laguna population. (*Id.* at 3-5.)

16. The LBPD has similarly concluded that mental illness is pervasive among Laguna's homeless community. The Chief of the LBPD has been quoted as estimating that half of the City's homeless residents "battle mental illness, most

1 without acknowledging the problem." (Christa Woodall, *Addressing Laguna*
2 *Beach's Homeless*, O.C. Register, Sept. 5, 2007.)

3 17. In fact, the City's Homeless Task Force ("Task Force") — which was
4 established by the City Council more than a year and a half ago to "analyze the
5 situation of homeless people in Laguna Beach" and to "prepare recommendations to
6 address and mitigate adverse behavioral issues related to the City's homeless
7 residents that were considered unacceptable to the residents, merchants, and local
8 government," and which also "provide[d] the City Council with a better
9 understanding of homelessness in Orange County and more specifically, in Laguna
10 Beach" — concluded that most of Laguna's homeless community is chronically
11 homeless, suffering from mental and/or physical disabilities. (Task Force Rpt. at 3-
12 5.) The City Council completely adopted the Task Force's written Final
13 Recommendations, which were submitted by the Task Force before it was
14 disbanded.

15 18. This Task Force, whose members included the current Mayor of
16 Laguna and the former Mayor of Laguna, three Housing and Human Services
17 Committee Members and community representatives, along with the participation of
18 the Assistant City Manager and the City's Police Captain, reported that the
19 population of homeless individuals in Laguna ranges between 45 and 55 people.
20 (*Id.* at 4.) Thus, compared with the City's population of 23,727 residents as reported
21 on its website, Laguna's homeless residents comprise approximately 0.2% of the
22 City's total population.

23 19. Nonetheless, the Task Force concluded that chronically homeless
24 persons in Orange County "[o]ften do not receive the mental health and medical care
25 that they need, they are not able to advocate on their own for the mainstream
26 benefits to which they are entitled and they are often passed by for consideration for
27 long term interventions that can lead to sustained life changes." (*Id.* at 4.) Given
28 these conditions and that the City's homeless community is mostly chronically

1 homeless, the Task Force advised that these Laguna homeless individuals were
2 likely to remain homeless and in need of services.

3 20. "Unfortunately, there is an insufficient supply of emergency and
4 transitional shelter beds . . . throughout Orange County. . . . Furthermore, only a
5 negligible portion of those beds are identified for the chronically homeless leaving
6 many with no other option but to sleep out of doors in locations not meant for
7 human habitation." (Task Force Rpt. at 3 (emphasis added).)

8 21. In fact, in Laguna, there are *no* beds regularly available to the City's
9 homeless residents. Laguna offers no transitional or emergency shelter other than a
10 cold weather shelter that operates intermittently at certain religious organizations'
11 facilities from mid-December to mid-March: it provides only overnight relief on
12 those nights when the weather reaches what the City deems to be "extreme"
13 conditions; it operates a maximum of 40 nights given the current level of City
14 funding. On information and belief, the City has refused to accept private donations
15 that would increase the number of nights the cold weather shelter could operate.

16 22. A private non-profit organization runs Friendship Shelter, which is
17 located south of the central business district of Laguna, offers thirty-one temporary
18 rehabilitative beds to qualifying Orange County residents. Placement at Friendship
19 Shelter is by invitation only, and there are numerous prerequisites, including a pre-
20 admission interview, calling daily to maintain a place on the waitlist, and a negative
21 test result to drug or alcohol use. Some Plaintiffs, like many of the City's
22 chronically homeless residents, do not qualify for the limited sleeping space
23 available at Friendship Shelter because the program is rehabilitative in nature and
24 requires residents to obtain regular employment or to secure government assistance,
25 and to engage in personal development workshops. Mental or physical disabilities
26 impede their ability to comply with these requirements.

27 23. Moreover, with more than 35,000 homeless individuals in Orange
28 County, only 3,400 shelter beds available throughout the entire County, and with no

1 other year-round shelters in south Orange County, Friendship Shelter has a
2 substantial waitlist for beds. As a result, Friendship Shelter's limited number of beds
3 does not remotely afford meaningful alternative sleeping accommodations to
4 Plaintiffs and other homeless individuals in Laguna.

5 24. In contrast to the gross lack of resources the City allocates to assist its
6 homeless residents, and the City's refusal to provide any necessary and sufficient
7 transitional housing and related services, Laguna is one of the wealthiest cities in the
8 country, with median home prices exceeding \$1.5 million. As its website
9 demonstrates in text and by many photographs, Laguna defines itself as "unique in
10 Southern California" by reason of its "resort environment," "picturesque beaches,"
11 "art festivals," "village scale shopping district" and "blufftop walkways and tram
12 system." Laguna's "resident population enjoys the ambience provided by the sandy
13 beaches, canyons and coastal hills." Apparently, however, Plaintiffs and Laguna's
14 other homeless residents are prohibited from these areas, particularly to sleep, an
15 involuntary action and basic necessity of life.

16 **Laguna Targets Its Chronically Homeless Community For Law**
17 **Enforcement Activities**

18 25. Although the Task Force reported to the City Council that "[a]ctively
19 discourag[ing] homeless people from remaining in the City" was an ineffective
20 solution to problems relating to homelessness in Laguna; pointed out that "[r]esearch
21 in various cities (New York, San Diego and others) has shown that providing
22 housing-with-services to chronically homeless people actually costs less than what is
23 spent when they are on the streets"; and concluded that "[a] successful strategy
24 requires that homeless people receive multiple services at a single location (a Multi
25 Service Center) which is closely linked with countywide available resources . . .
26 [because it] integrates the many services required by the chronically homeless and
27 makes it possible for them to enlist in programs that deal with the underlying causes
28 of their homelessness," and although the City Council adopted the Task Force

1 recommendations nearly a year ago, Defendants have largely rejected those humane
2 and predictably efficacious recommendations in favor of policies and practices that
3 continue to criminalize homelessness and discourage homeless individuals from
4 remaining in the City. (Task Force Rpt. at 7-8.)

5 26. Defendants' illegal policies and practices are directed at and motivated
6 by Plaintiffs' involuntary status of chronic homelessness which, for many of the
7 Plaintiffs, directly results from their mental and/or physical disabilities. Defendants'
8 inhumane and unconstitutional conduct includes:

- 9 • the criminalization of sleeping, an involuntary and necessary human
10 process, in all public places at night;
- 11 • the canvassing of beaches, parks, and other public places at night and in
12 the early morning to wake sleeping homeless persons for the purpose of
13 harassment, threat, and intimidation;
- 14 • the selective enforcement of local ordinances and criminal laws directly
15 targeted against homeless persons;
- 16 • the conducting of unwarranted and unjustified stops of homeless
17 persons that result in interrogations, demands for identification, warrant
18 checks, unauthorized searches of their persons, possessions, and
19 property, and arrests; and
- 20 • the confiscation of property of homeless persons, including critical
21 identification and other government documents.

22 27. Ultimately, in Laguna, City officials and law enforcement treat the
23 chronically homeless, including Plaintiffs, as if they are essentially outlaws,
24 assuming that they are involved in criminal activity, selectively enforcing local
25 ordinances and criminal laws so as to harass and intimidate these mentally and/or
26 physically disabled chronically homeless residents. Upon information and belief,
27 the City has adopted these practices to actively discourage homeless people from
28 remaining or residing in Laguna. However, this effort of selective pursuit and

1 prosecution has not reduced the City's homeless population. To the contrary, the
2 number of homeless residents has grown.

3 28. Although LBPD officers use several different pretexts to carry out the
4 policies and practices described, one law principally relied upon is Laguna
5 Municipal Code § 18.04.020 (the "Anti-Sleeping Ordinance"), which makes
6 criminals of the chronically homeless. Laguna Municipal Code § 18.04.020 states:

7 No person shall pitch a tent or camp or sleep upon any beach,
8 park, public street, alley or passageway, or sleep in any automobile
9 parked at any place within the city; provided that between the hours of
10 seven a.m. and seven p.m. it shall not be unlawful to sleep upon any
beach within the city.

11 29. The time limits set by this ordinance deliberately target those who, as a
12 consequence of their disability and poverty, cannot otherwise obtain and maintain
13 housing. The LBPD conducts sweeps to locate sleeping chronically homeless
14 individuals. At times these enforcement sweeps result in the chronically homeless,
15 including some Plaintiffs, being startled from sleep multiple times on a given night
16 by groups of armed LBPD officers shining flashlights in their faces and demanding
17 identification. Earlier this year, the LBPD "Community Liaison Officer" was quoted
18 in the press as describing this practice as "hook and book." (Christa Woodall,
19 *Officer Reaches Out as a Community Resource*, O.C. Register, January 29, 2008.)

20 30. Penalties for violating Municipal Code § 18.04.020 are substantial,
21 especially for chronically homeless individuals such as Plaintiffs. Section 18.04.020
22 provides for issuance of a citation, which includes a fine. Accrued citations or the
23 failure to appear at citation hearings can lead and have led to the issuance of an
24 arrest warrant and incarceration. An arrest for a homeless individual is particularly
25 devastating because it results not only in loss of liberty, but may also result in the
26 loss of all possessions, including warm clothing and critically important documents
27 necessary for identification and government benefits.

28

1 **Overall, Defendants' Efforts To Aid The Homeless Community Are A**
2 **Subterfuge, Focusing On Minimizing Homeless Persons' Impact On The City's**
3 **Image And Businesses, Rather Than Assisting Them**

4 31. Since confronted with the defects of the City's constitutionally defective
5 ordinance, Defendants have not repealed it nor officially proposed a valid
6 replacement ordinance drafted to address any legitimate concern.

7 32. In early 2008, Defendants professed to stand down in their enforcement
8 of the City's unconstitutional ordinance. However, after a few months of generally
9 limiting the issuance of citations under the Anti-Sleeping Ordinance to Plaintiffs and
10 other homeless residents, Defendants resumed their practice of harassing,
11 intimidating, and searching for sleeping homeless residents, including under the
12 Anti-Sleeping Ordinance and also other purported *quality of life* citations.

13 33. In a stunning exercise that epitomized Defendants' apparent intentions
14 to perpetuate their discriminatory practices and violations of Plaintiffs' and
15 similarly-situated homeless residents' rights, just this spring, the City drafted and
16 calendared a grossly and patently offensive and unconstitutional revision to the
17 Anti-Sleeping Ordinance, but never brought that facially defective ordinance to
18 public hearing. Instead, immediately before the recent City Council elections, the
19 City presented yet another constitutionally defective revision of its illegal ordinance.
20 After receiving public comment, which only expressed opposition to the City's
21 proposed revisions that continued to criminalize homelessness, the City Council
22 decided not to take any action on the draft. Instead, the City Council alluded to
23 forming a follow up committee on the issue, something it had previously promised
24 to do nearly a year ago.

25 34. Notably, Defendants have not rescinded or dismissed citations that
26 previously were issued under the admittedly unconstitutional Anti-Sleeping
27 Ordinance, leaving many of Plaintiffs' and other homeless individuals' citations
28 unresolved. For example, upon information and belief, a homeless resident was

1 sentenced to a night in jail for failure to appear on an unresolved citation issued
2 under that ordinance during the so-called stand down.

3 35. Ironically, Defendants designated a police officer rather than an actual
4 trained community outreach worker purportedly to address Plaintiffs' and other
5 chronically homeless residents' serious issues. Like all LBPD officers, this officer
6 cannot offer Plaintiffs or other chronically homeless people living in Laguna any
7 meaningful assistance, as none is available in the City. Thus, during purported
8 welfare checks, which Defendants suggest are their effort to help Plaintiffs and other
9 chronically homeless residents, the LBPD routinely interrogates the City's homeless
10 residents — it does not offer assistance, shelter, or an area where sleeping is
11 permitted.

12 **Laguna Impedes And Obstructs The Limited Services And Support Systems**
13 **Volunteers Have Sponsored For And Offered To The City's**
14 **Chronically Homeless**

15 36. Although Defendants acknowledge that many of the City's homeless
16 residents suffer from mental and/or physical disabilities, are impoverished, and have
17 few alternatives, upon information and belief, Defendants prevent volunteer and
18 support services from reaching these members of the community.

19 37. Due to the disabilities afflicting most Plaintiffs and other Laguna
20 homeless individuals, as well as some of these people's veteran status, aid and
21 support services already exist.

22 38. Still, Defendants refuse to assist the City's homeless residents in
23 securing these readily available benefits. Moreover, Defendants have interfered
24 with volunteers' efforts to help the City's homeless community access these benefits.
25 Thus, of the homeless residents who qualify for government assistance, only some
26 homeless residents are able to obtain that assistance, much of which is insufficient to
27 support the cost of living. (Task Force Rpt at 5.)
28

1 39. Recently, Defendants threatened the viability of the only community
2 center that supports the City's homeless residents. Defendants withheld approval of
3 necessary permits for the center's relocation absent onerous and unilateral
4 conditions. The City had no legitimate reason to impede the effort of this small
5 outreach organization, which is run independently from the City.

6 40. Defendants also rejected the inclusion of a homeless outreach court in
7 the City, which would have allowed Laguna's homeless residents to address in a
8 meaningful way infractions issued against them by the City. Instead, the Assistant
9 City Manager testified and submitted to the City Council that "the staff feels that the
10 Tustin and Santa Ana locations are sufficient to meet our needs." This stance
11 reflects Defendants' apparent desire to ensure the intrinsic challenges of
12 homelessness are compounded for Plaintiffs and other chronically homeless people
13 living in Laguna.

14 **Harassment And Intimidation Of Plaintiffs**

15 Plaintiff Mark Sipprelle

16 41. Plaintiff Mark Sipprelle, a graduate of the Laguna public school system
17 and father of two children, is chronically homeless and lives in the City. Following
18 a separation from his wife and a severe and disabling foot injury that three surgeries
19 have not resolved and for which further surgery is too dangerous, Mr. Sipprelle
20 became homeless. He has been homeless for several years. Mr. Sipprelle struggles
21 to secure proper medical attention to treat the continuous painful nerve damage in
22 his foot, as medical services are unavailable to him in Laguna. Mr. Sipprelle
23 volunteers at the local, independently-run resource center and picks up tar on the
24 City's beaches in an effort to give back to the community. He has slept in park trees
25 and often sleeps in public places. Mr. Sipprelle tries to wake before daylight so the
26 LBPD will not cite or interrogate him.

27 42. Mr. Sipprelle has several outstanding citations for sleeping issued by
28 LBPD officers under Municipal Code § 18.04.020. He has become anxious about

1 being discovered when sleeping, preventing him from getting a restful night's sleep.
2 He worries about enforcement of criminal laws and ordinances and harassment by
3 LBPD officers due to his chronic homeless status and the necessity that he sleep in
4 public places.

5 Plaintiff Helene Ayres

6 43. Plaintiff Helene Ayres is a sixty-five year-old Laguna native who
7 suffered a debilitating head injury as a child. Previously, Ms. Ayres, was an
8 accomplished dancer and a certified nurse assistant, and she once owned property in
9 Laguna. Now, she is chronically homeless.

10 44. Ms. Ayres sleeps in public because she has nowhere else to go. She has
11 been harassed by LBPD officers as a result of her chronic homeless status and the
12 necessity that she sleep in public places. Ms. Ayres believes her trust has been
13 betrayed by people in the City, including community leaders. Consequently, she
14 often retreats from contact with many people. Laguna has insufficient services to
15 address the conditions of chronic homelessness suffered by Ms. Ayres.

16 Plaintiff Felipe Ruiz

17 45. Plaintiff Felipe Ruiz suffers from epilepsy and is a chronically
18 homeless resident of Laguna. About three months ago, Mr. Ruiz, a forty-seven
19 year-old father of four children and grandfather of six children, lost his job at a
20 Laguna autobody repair shop where he had worked for several years. Mr. Ruiz
21 struggles to secure critical medical care to treat his epilepsy and stave off seizures,
22 which in the past have incapacitated him and left him disoriented for some time and
23 unable to recognize even his closest friends. His only income is from occasional
24 work he can secure and recycling aluminum cans.

25 46. Mr. Ruiz has slept under a tree in a park and still sleeps in public
26 because he has nowhere else to go. LBPD officers have repeatedly woken Mr. Ruiz
27 by shining flashlights in his face. Frequently, during these police wake-ups, Mr.
28 Ruiz has been interrogated and checked for warrants, and once had his possessions

1 searched without his consent. These frequent interruptions of his sleep have
2 exacerbated Mr. Ruiz's epilepsy, interfering with sleep that is critical to preventing
3 further epileptic seizures or minimizing their severity. For now, Mr. Ruiz has
4 managed to secure his necessary epilepsy medication because of the generosity of a
5 local volunteer who paid for his medical examination and expensive prescription
6 medication and because local volunteers have helped him travel to other cities where
7 free medical services are available. There are insufficient services in Laguna Beach
8 to address the conditions of chronic homelessness suffered by Mr. Ruiz. He fears
9 additional harassment by LBPD officers based on his status as chronically homeless
10 and the necessity that he sleep in public places.

11 Plaintiff Robert Carmichael

12 47. Plaintiff Robert Carmichael is a fifty-two year-old chronically homeless
13 resident of Laguna. He suffers from mental illness and/or several physical
14 impairments. Mr. Carmichael last worked as a tow truck driver, but currently is
15 unemployed. He is emaciated and frail. Mr. Carmichael has been hospitalized and
16 has been prescribed medications to treat his anxiety and/or depression. As a result
17 of an inner ear condition, he frequently loses his balance and falls, causing cuts,
18 abrasions, and sores. He has obtained a wheelchair, but recently was the victim of a
19 hit-and-run accident that has left him further weakened. Still, Mr. Carmichael must
20 devote considerable time and effort to locating places to sleep where he will be least
21 likely to be cited or harassed by LBPD officers.

22 48. LBPD officers, acting pursuant to the policies and practices described,
23 have issued multiple citations to Mr. Carmichael for violation of Municipal Code
24 § 18.04.020. He fears additional citations will be issued against him and he will be
25 further harassed by LBPD officers based on his chronic homeless status and because
26 he has no alternative but to sleep in public places. There are not sufficient services
27 in Laguna to address the conditions of chronic homelessness suffered by
28 Mr. Carmichael.

1 Plaintiff Paul Ishak

2 49. Plaintiff Paul Ishak is a thirty-two year-old chronically homeless Navy
3 veteran who resides in Laguna. Mr. Ishak suffers from mental illness and/or
4 physical disability. He receives benefits due to his military service, but the benefits
5 are not enough to maintain permanent housing and pay for food, utilities, and other
6 living expenses.

7 50. As a result, he repeatedly suffers long periods of homelessness. During
8 those times, Mr. Ishak fears enforcement of criminal laws and ordinances by LBPD
9 officers, and harassment as a consequence of his chronic homelessness and the
10 resulting necessity that he sleep in public places. From time to time he has been
11 able to find shelter, often because of the kindness of friends. These instances are
12 usually of fairly short duration. Currently, he is able to sleep under a roof.
13 However, there are not sufficient services available in Laguna to address the
14 conditions of chronic homelessness suffered by Mr. Ishak.

15 Laguna Beach Homeless Residents

16 51. Plaintiffs share these experiences with other chronically homeless
17 Laguna residents who have been the target of Defendants' effort to eradicate them
18 from the pristine beach community. They struggle on a daily basis to cope with
19 disabilities, some living with conditions that used to be managed with large doses of
20 medication, still others dealing with conditions that while readily apparent have never
21 been treated; some seek comfort by keeping company with friends and
22 acquaintances, but others keep to themselves and avoid human contact. Regardless,
23 the members of Laguna's homeless community know from experience such as
24 having been woken from a sound sleep on a bench in a remote area of town with a
25 light shone and rifle pointed at one's face, or having been roused from harmless
26 sleep behind a tree in a park multiple times in one night, that it is not safe for them
27 to sleep in the City. For some, these intimidating wake-up calls can exacerbate the
28 symptoms and condition of their disabilities.

1 52. For most homeless residents, Defendants' disparate enforcement against
2 them makes them anxious before they lie down to rest, albeit outdoors and without
3 protection from the elements, because they worry about being startled from sleep by
4 the LBPD. They are intimidated by armed officers in uniform questioning them,
5 shining lights in their eyes, and relaying their names over police radios. Laguna's
6 homeless residents believe they are not free to leave and must endure regular middle
7 of the night police interrogations.

8 53. It is well understood that homeless individuals often suffer from sleep
9 deprivation due to disturbed or fragmented sleep as well as simply an inadequate
10 amount of sleep. Sleep fragmentation is often related to external stimuli, such as
11 bright lights, loud noises, and intentional efforts by others to awaken or disturb
12 sleeping. It is widely documented that inadequate sleep has numerous adverse
13 health effects, including cognitive deficits such as impaired alertness and
14 concentration, increased risk of diabetes, cardiovascular disease, obesity, and
15 depression. Indeed, small amounts of sleep loss, such as one hour per night over
16 many nights, have been shown to cause subtle cognitive effects, while more severe
17 sleep restriction for a week leads to profound cognitive deficits similar to those seen
18 in some stroke patients. Many mental and physical disabilities also are compounded
19 by inadequate sleep.

20 54. Recently, sleeping homeless have been woken with bright lights shone
21 in their faces by LBPD officers carrying weapons. Sometimes, the LBPD officers
22 point their weapons at the abruptly awoken residents. Questioning generally ensues,
23 including a demand for identification. In some instances, belongings are searched
24 without permission.

25 55. Frequently, the LBPD runs the names of the homeless residents they
26 wake up from sleeping. If an outstanding warrant is not found, the homeless
27 residents might be cited for an infraction based upon the LBPD's searches of their
28

1 persons or possessions; they might be told they cannot sleep there; or they might be
2 warned to move on.

3 56. Even if not explicitly told that they cannot sleep in a public area or to
4 move on, which many Laguna homeless residents have been and are told, Laguna's
5 homeless community hears Defendants' implicit message — The homeless are not
6 welcome in Laguna. For instance, if Plaintiffs or other similarly situated homeless
7 residents are not cited under § 18.04.020, upon information and belief, they know
8 LBPD officers still might issue citations against them under criminal or local law to
9 discourage them from sleeping in public and residing in Laguna.

10 57. Another result of being chronically homeless is that the LBPD
11 disparately tracks and pursues some Plaintiffs and other City homeless persons for
12 purported *quality of life* offenses. Thus, homeless residents accumulate tickets for
13 crossing at designated areas when the signal flashes red or for extinguishing and
14 disposing of cigarette butts at the request of LBPD.

15 58. For example, in one recent incident, an LBPD officer ordered a
16 homeless woman whom he was interrogating to extinguish her cigarette. When she
17 complied with the officer's order by smothering the cigarette, the officer promptly
18 cited her without warning. The citation carried with it a mandatory appearance
19 requirement. When she arrived to court, she was told that she could either plead
20 guilty and pay a \$366 fine, or she could plead not guilty and post a \$366 bond in
21 order to contest the citation at trial. She chose the latter, but does not have the
22 means to post the required bond. She fears a warrant will issue for her arrest as a
23 result.

24 59. In another example, a homeless man, who had been routinely targeted
25 for citation by the LBPD and who was told not to enter a local park, was arrested
26 and jailed for violating that directive while sitting on the sidewalk adjacent to the
27 park waiting for a volunteer who was brining him a brown bag lunch.

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1 60. Laguna's homeless residents also have been photographed by LBPD
2 officers in the middle of the night while sleeping and in the early morning while
3 attending a charity-sponsored breakfast. Like Plaintiffs, upon information and
4 belief, these homeless residents have not given the LBPD permission to photograph
5 them, and are startled and scared when woken by the LBPD's camera flash. Upon
6 information and belief, some Plaintiffs have been improperly photographed by the
7 LBPD.

8 61. Although Defendants appear to have, for the time being, curbed the
9 incessant written citations issued under the City's unconstitutional Anti-Sleeping
10 Ordinance, they disparately pursue Laguna's homeless residents with other citations
11 and continue to enforce the local Anti-Sleeping Ordinance without citation.

12 **CAUSES OF ACTION**

13 **First Claim For Relief**

14 **(Violation of the Fourteenth Amendment,**

15 **Equal Protection; all Plaintiffs against all Defendants)**

16 62. Plaintiffs reallege and incorporate by reference each and every
17 allegation set forth in paragraphs 1 through 61, herein, as if fully alleged.

18 63. The acts and omissions of Defendants, and each of them, as described
19 herein, violate the constitutional rights of Plaintiffs under the Equal Protection
20 Clause of the United States Constitution. The violations include deliberate and
21 selective enforcement of criminal laws, including Laguna Municipal Code §
22 18.04.020, to harass and intimidate impoverished and disabled persons with no
23 alternative but to sleep in public places. Defendants have no legitimate government
24 interests in the deliberate and selective enforcement of criminal laws against
25 impoverished and disabled homeless persons with no alternative but to sleep
26 somewhere in the City.

1 **Second Claim For Relief**

2 **(Violation of the Fourteenth Amendment,**
3 **Due Process; all Plaintiffs against all Defendants)**

4 64. Plaintiffs reallege and incorporate by reference each and every
5 allegation set forth in paragraphs 1 through 61, herein, as if fully alleged.

6 65. The acts and omissions of Defendants, and each of them, as described
7 herein, deny the constitutional rights of Plaintiffs under the Due Process Clause of
8 the United States Constitution. The violations deprive impoverished and disabled
9 persons the opportunity and ability to carry out the basic necessities of life and
10 liberty such as sleeping, as well as to enjoy the right of free movement. Defendants'
11 harassment, threats, and citations against these homeless persons for remaining and
12 sleeping in the only place available, outdoors, violate Plaintiffs' due process rights.

13 **Third Claim For Relief**

14 **(Violation of the Eighth and Fourteenth Amendments;**
15 **all Plaintiffs against all Defendants)**

16 66. Plaintiffs reallege and incorporate by reference each and every
17 allegation set forth in paragraphs 1 through 61, herein, as if fully alleged.

18 67. The acts and omissions of Defendants, and each of them, violate the
19 rights of all Plaintiffs to be free from actual or threatened cruel and unusual
20 punishment. By virtue of their involuntary status as homeless and disabled, and the
21 absence and insufficiency of shelter availability in Laguna, Plaintiffs have no way to
22 comply with the laws Defendants have sought and continue to seek to enforce
23 against them, in particular Laguna Municipal Code §18.04.020.

24 **Fourth Claim For Relief**

25 **(Violation of the Fourth and Fourteenth Amendments;**
26 **all Plaintiffs against all Defendants)**

27 68. Plaintiffs reallege and incorporate by reference each and every
28 allegation set forth in paragraphs 1 through 61, herein, as if fully alleged.

1 69. The acts and omissions of Defendants, and each of them, violate the
2 rights of Plaintiffs to be free from illegal searches and seizures as guaranteed by the
3 Fourth and Fourteenth Amendments to the United States Constitution.

4 **Fifth Claim For Relief**

5 **(Violation of the Americans with Disabilities Act, 42 U.S.C. § 12132;**
6 **all Plaintiffs against all Defendants)**

7 70. Plaintiffs reallege and incorporate by reference each and every
8 allegation set forth in paragraphs 1 through 61, herein, as if fully alleged.

9 71. In 1990, Congress enacted the Americans with Disabilities Act, 42
10 U.S.C. §§ 12101 – 12181 ("ADA"), in order to secure and advance the civil rights of
11 people with disabilities. The Congressional intent in enacting the ADA is "the
12 elimination of discrimination against individuals with disabilities." (42 U.S.C.
13 § 12101(b)(1).) Congress thus found that "historically, society has tended to isolate
14 and segregate individuals with disabilities," and that these forms of discrimination
15 "continue to be a serious and pervasive social problem." (42 U.S.C. § 12101(a)(2).)
16 It determined too that "the Nation's proper goals regarding individuals with
17 disabilities are to assure equality of opportunity, full participation, independent
18 living, and economic sufficiency for such individuals." (42 U.S.C. § 12101(a)(8).)

19 72. Title II of the ADA provides that "no qualified individual with a
20 disability shall, by reason of such disability, be excluded from participation in or be
21 denied the benefits of the services, programs, or activities of a public entity, *or be*
22 *subjected to discrimination* by any such entity." (42 U.S.C. § 12132 (emphasis
23 added).)

24 73. The acts and omissions of Defendants, and each of them, including
25 harassment and intimidation, the issuance of reprimands and citations, and making
26 and threatening arrests for conduct, including sleeping in public places, which is not
27 criminal, but the result of disability within the meaning of the ADA, violate the
28 rights of Plaintiffs under the ADA.

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- 1 7. For costs of suit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, as
2 well as the analogous provisions of California law;
3 8. For attorneys' fees pursuant to 42 U.S.C. § 1988; and
4 9. For such other relief as this Court deems just and proper.
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6 Dated: December 23, 2008

IRELL & MANELLA LLP

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9 By: Andrea B. Greene / sj
Andrea Barmash Greene
Attorneys for Plaintiffs
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11 Dated: December 23, 2008

ACLU FOUNDATION OF SOUTHERN
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