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21 UNITED STATES DISTRICT COURT
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

23 TAMMY SHULER, GLORIA
24 SHOEMAKE, MELANIE PAYNE,
25 SARA LEANNE WEAVER, NICK
26 MASTRISCIANO, as individuals, FOR
27 HIM MINISTRIES, an unincorporated
28 association;
Plaintiffs,
v.
ORANGE COUNTY,
Defendant.

Case No.: cv-17-00259
Civil Rights Complaint
42 U.S.C. § 1983: Fourth, Fifth, and
Fourteenth Amendments;
Cal. Const. Article I, Sections 7 and 13;
Title II of the Americans with
Disabilities Act;
Section 504 of the Rehabilitation Act of
1973;
Cal. Gov. Code § 11135;
Cal. Civ. Code § 51 *et seq.*
Cal. Civ. Code § 2080 *et seq.*

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1 **JURISDICTION AND VENUE**

2 1. This is an action for injunctive and declaratory relief and damages
3 pursuant to 42 U.S.C. § 1983 based upon the continuing violations of Plaintiffs’
4 rights under the Fourth, Fifth and Fourteenth Amendments to the United States
5 Constitution. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343 based on
6 42 U.S.C. §1983 and questions of federal constitutional law. Jurisdiction also
7 exists under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

8 2. Venue is proper in the Southern Division of the Central District in that
9 the events and conduct complained of herein all occurred in Orange County.

10 **PRELIMINARY STATEMENT**

11 3. Deaths of homeless people in Orange County reached an all time
12 annual high of 200 in 2016.¹ In 2008, Orange County recognized the desperate
13 need and formed the Orange County Ten-Year Plan to End Homelessness Working
14 Group “to serve and protect the homeless . . .”² Despite those efforts, the homeless
15 population in the County continued to grow reaching nearly 4,500 at the 2016
16 point in time count. With only 606 year round shelter beds and 493 seasonal shelter
17 beds, most of the homeless people in Orange County are forced to live outside.³

18 According to the homeless assessment completed in October 2016 by Susan
19 Price, the Orange County Care Coordinator, in 2016 64% of jobs available in
20 Orange County did not pay enough to afford a one-bedroom apartment, rents
21 increased dramatically and the affordable housing stock declined in the face of
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24 ¹ <http://www.ocregister.com/articles/homeless-743047-county-people.html>

25
26 ² <http://ochmis.org/documents/10YrPlan.pdf>

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28 ³ [http://cams.ocgov.com/Web_Publisher_Special/Agenda10_18_2016_files/
images/HOMELESS%20ASSESSMENT%20DCC%20FINAL%20REPORT%20-
%2010.18.2016_9848755.PDF](http://cams.ocgov.com/Web_Publisher_Special/Agenda10_18_2016_files/images/HOMELESS%20ASSESSMENT%20DCC%20FINAL%20REPORT%20-%2010.18.2016_9848755.PDF)

1 gentrification in formerly low-income neighborhoods across Orange County. This
2 translates to over 2,000 unsheltered individuals, nearly all of whom are living in
3 tents, various makeshift shelters and in their vehicles throughout the city.

4 4. While the County has made some progress in helping families and
5 veterans to get housed, the homeless population continues to grow. With almost
6 90,000 people on the housing authority waiting lists hoping for access to affordable
7 housing⁴, the housing resources are woefully insufficient.

8 5. According to the ACLU report “Nowhere to Live,” 33 of the 34 cities
9 in the County criminalize homelessness. To avoid the harassment, many people
10 move to remote locations such as the Santa Ana riverbed. One side of the river
11 bed backs up to a housing complex. The other side of the river bed is where people
12 have lived under street and highways, without restrooms or clean water, and with
13 limited access to service resources, hoping that law enforcement would not
14 interfere while they try to survive.

15 6. Nearly 500 people lived in the Civic Center until late 2016 when the
16 city incrementally evicted each encampment, replacing public space with fences.
17 While the County did open an emergency shelter in Santa Ana, it was quickly
18 filled to capacity with people dropped there by hospitals, city police, social
19 workers, and others with nowhere else to bring homeless people. As a result, many
20 of the people who occupied the Civic Center were forced to the Santa Ana river
21 bed, a place officers led them to believe they could stay, the last place they thought
22 they could keep the limited belongings they own.

23 7. Despite agreeing that housing is the solution to homelessness, there is
24 no immediate source of funding for the County that will alter the homelessness
25 crisis soon. In the meantime, the County has begun a renewed vigorous and cruel

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28 ⁴ Price report, pg. 21

1 enforcement of so-called “quality of life” offenses against the homeless, seizing
2 and destroying their property if they do not relocate. To hasten this eviction,
3 Orange County Public Works began installing rocks and dirt in the former
4 encampment, calling it a flood control maintenance project.

5 8. The need to respond to the increasing numbers of unsheltered
6 individuals in Orange County is hardly new and neither is the approach of
7 criminalizing - rather than housing - people who are homeless. Over the past 25
8 years, the County’s primary response has been to invest in approaches that address
9 the visible presence of homeless people, without actually reducing the number of
10 residents on the street each night. These approaches include criminalizing
11 homelessness by making it illegal to sleep in public places at night and by the
12 seizure and destruction of homeless people’s property. The identical practices
13 have been repeatedly challenged and enjoined by judges of the Central District in
14 Los Angeles and the Ninth Circuit, uniformly rejecting the criminalization of
15 homelessness. There is no credible reason why Orange County officials would not
16 be aware of the judicial rulings on these issues because they have been highly
17 publicized throughout the region, if not the nation.

18 9. In 2006, the Circuit enjoined nighttime enforcement of Los Angeles
19 Municipal Code (“LAMC”) § 41.18(d), that made it a crime to lie, sit or sleep on a
20 public sidewalk any time of day or night anywhere in the City. The Court held that
21 the law, as enforced, violated the Eighth Amendment. *Jones*, 444 F.3d 1118, 1138
22 (9th Cir. 2006), vacatur per settlement, 505 F.3d 1004 (2007). In 2012, the Circuit
23 upheld a preliminary injunction entered by the district court in *Lavan v. City of Los*
24 *Angeles*, 693 F.3d 1022 (9th Cir. 2012), 133 S.Ct. 2855 (2013) *cert denied*. *Lavan*
25 challenged the enforcement of LAMC § 56.11, proscribing the placement of any
26 personal property on public property. *Lavan v. City of Los Angeles*, 797 F.Supp.2d
27 1005 (C.D. Cal. 2011). In *Lavan*, the district court enjoined the City from seizing
28 property of unhoused individuals that is not abandoned, evidence of a crime or

1 creates an immediate public hazard without complying with due process notice
2 requirements. The injunction also barred the City from summarily destroying
3 seized property and ordered the City to store the property for 90 days, consistent
4 with state law. In affirming the rights of the plaintiffs in *Lavan*, the Ninth Circuit
5 underscored that the “simple rule [i.e. notice and an opportunity to be heard by an
6 impartial tribunal] holds whether the property in question is an Escalade or a [tent],
7 a Cadillac or a cart.” 693 F.3d at 1032.

8 10. In all, the City of Los Angeles has been successfully sued six times to
9 stop the unlawful seizure and summary destruction of the personal property of
10 homeless individuals. *See Bennion v. City of Los Angeles*, LASC Case C637718
11 (1987); *Justin v. City of Los Angeles*, 2000 U.S. Dist. LEXIS 17881; CV-00-12352
12 LGB (CD Cal. 2000); *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005 (CD
13 Cal. 2011); *aff’d*, 693 F.3d 1022 (9th Cir. 2013). The most recent injunction issued
14 in *Mitchell v. City of Los Angeles*, No. 16-cv-01750 SJO (GJSx) (C.D. Cal. 2016)
15 [Dkt. 51 (Apr. 13, 3016)]. These cases established that the government may not
16 take the property of unhoused persons simply because it is in a public place. Any
17 property that is taken must be in an accessible site and must provide meaningful
18 opportunity to reclaim the property promptly, especially when the loss of essential
19 items increases the risk of exposure to the elements. Finally, as *Lavan* established,
20 the personal property of homeless individuals may not be destroyed as abandoned
21 simply because no one is present when it is seized. Here, as in *Lavan*, the
22 government knows that the property is not abandoned, so it may not be destroyed.

23 11. Laws that criminalize otherwise innocent conduct solely because the
24 individual is unhoused without any alternative to living in public spaces have been
25 repeatedly rejected by the courts of this Circuit. For example, in 2014 the Circuit
26 invalidated as unconstitutionally vague LAMC § 85.02, which made it a crime for
27 a person to park or stand a vehicle on any public property in the City if the person
28

1 “lived” in the vehicle “day to day, overnight or otherwise.” *Desertrain v. City of*
2 *Los Angeles*, 754 F.3d 1147 (9th Cir. 2014).

3 12. Despite all of these directives from the Ninth Circuit that
4 homelessness is not a crime, and the affirmation of the constitutional rights of this
5 vulnerable community, the County has seized personal property and largely
6 destroyed it without an opportunity for the rightful owner to reclaim it. Moreover,
7 the County’s procedures for storage of what little property it does not destroy fails
8 to provide an adequate opportunity to recover the property. The storage facility is
9 located in Lake Forest, 22 miles from the river bed where the property is taken, and
10 held in a facility that has exceedingly limited access. In addition, it is only open
11 one hour on one day a week, and then only by prior arrangement.

12 13. With rare exception, the plaintiffs do not have vehicles to transport
13 them to the storage facility. Even if they take public transportation to the storage
14 location, they have no way to get back to the river bed with their property because
15 they cannot take it on the bus. For individuals with cognitive, physical, medical or
16 psychological challenges, this task is even more daunting. The immediate
17 consequence is people whose property is taken are forced to survive fully exposed
18 to the elements of cold and wet weather with inadequate protection because their
19 blankets, tents and other critical property was seized and destroyed by the County.

20 14. The County knows that the consequences of their actions are to create
21 an immediate danger to the health and safety of homeless persons living near the
22 river bed. The County’s approach is even more indefensible when viewed against
23 the directives issued by the United States Interagency Council on Homelessness
24 (“USICH”), composed of nineteen federal cabinet and agency heads to organize
25 federal efforts to end homelessness. The most recent USICH report, “Ending
26 Homelessness for People Living in Encampments,” is directly on point and counter
27 to the approach taken by the County to homeless individuals forced to live along
28 the river in large part because of the government’s failures over decades.

1 15. Specifically, the USICH underscored that “forced dispersal” of
2 homeless encampments is inappropriate and undermines the goal of providing
3 services to homeless individuals. While the USICH underscored the importance of
4 “intensive and persistent outreach and engagement,” the County implemented
5 “intensive and persistent” seizure and destruction of personal property, putting an
6 already vulnerable community at extreme peril.

7 **FACTS**

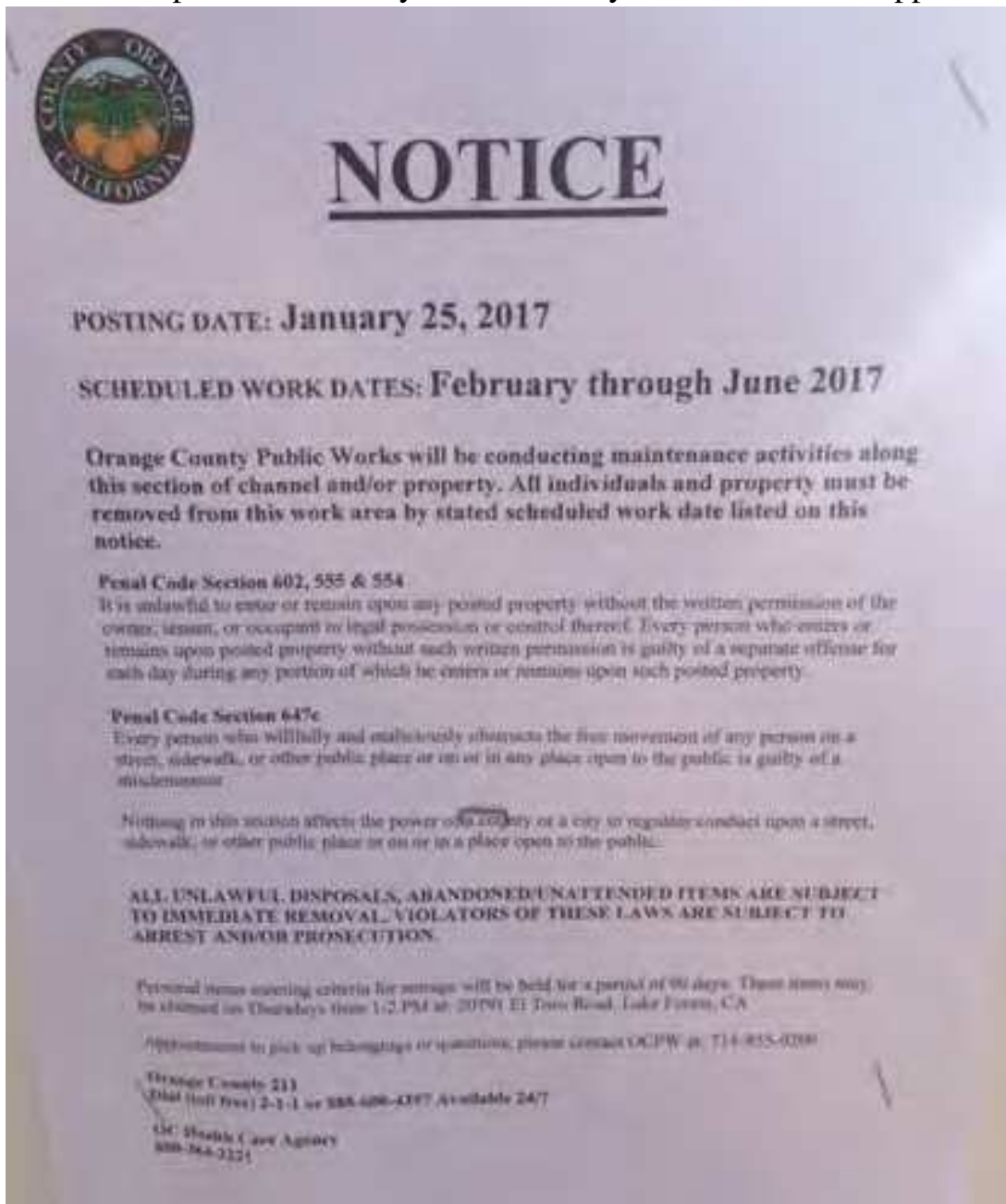
8 16. On or about late January, the County put up signs along the Santa Ana
9 river bed. The signs directed that it is a misdemeanor to obstruct free movement in
10 a public place. The County also posted notices listing purported resources for the
11 people living in the river bed area. In fact, none of those resources were realistic
12 because all of the services were unavailable. There are presently approximately
13 1,000 people living along the river bed, including about 320 people who live in the
14 area targeted in early February, where the Plaintiffs stayed.

15 17. Shortly after, on or about February 1, 2017, County employees from
16 Public Works brought in bulldozers and began to destroy the property of homeless
17 individuals in the area, with Orange County Sheriff’s deputies also present.

18 18. County employees posted a leaflet advising where the property was
19 taken, also listing a phone number. The address on the leaflet was incorrect.
20 When Morgan Denges, a local community organizer who also assists people in the
21 river bed, drove to the location listed on the flyer and found that there was no such
22 address, he called the number on the flyer and, after some time, was transferred to
23 a Public Works maintenance supervisor, Bob Barilla. Mr. Barilla stated that the
24 County discarded the property if there was no one there at the time to claim it or
25 vouch that it belonged to someone. He confirmed that on February 8, 2017, Public
26 Works was present and directed Plaintiff Schuler to remove her property and that
27 part of the property was thrown away by the County.

28

1 19. In response to an inquiry about how the stored property, if any, could
2 be retrieved, Mr. Barilla informed Mr. Denges that it was necessary to make an
3 appointment to have a County employee come to the storage facility. The facility
4 is not staffed otherwise. These statements to Mr. Denges were consistent with the
5 information on the posted notice. The notice advised individuals whose property
6 was taken that it could be reclaimed from the storage facility only on one day a
7 week from 1 to 2 p.m. on Thursdays and then only with a confirmed appointment.



1 24. Ms. SCHULER felt pressured by the close presence of the deputies
2 and Public Works employees. Knowing that she had no means to access the
3 storage facility in Lake Forest, and feeling pressured by the law enforcement
4 presence to quickly get what she needed and give up the rest, Ms. SCHULER felt
5 she had no option but to see the County dispose of the belongings she was unable
6 to get outside the fence in the allotted time. Ms. SCHULER borrowed a cart from a
7 friend to transport as much as possible across the river bed. Some of her property
8 was left outside the fenced area by the County for her to transfer later, but without
9 any means of transportation and accessible storage she was compelled to leave
10 much of her property inside the fenced off area. This included her tent, which is
11 seen being dismantled by County workers in Exhibit B.

12 25. She was never told that any of her property that remained would be
13 stored by the County and believes that what she physically could not remove was
14 destroyed including clothes, bedding, food, paperwork, and hygiene products. It
15 was particularly difficult for her to sort through the wet items. Immediately after
16 she was forced out of the fenced in area, her property was removed and the County
17 dumped large boulders on the site, which, on information and belief, was done to
18 prevent her return.

19 26. Ms. SCHULER had a bicycle that she used for transportation, but the
20 bicycle was destroyed when County Public Works employees ran over it with a
21 truck while removing the property of Ms. SCHULER and other homeless
22 individuals at the river bed.

23 **Gloria Shoemake:**

24 27. Plaintiff GLORIA SHOEMAKE has been homeless in Orange County
25 since October 2014. She has lived in different parts of the river bed during that
26 time. She has multiple disabilities that affect her ability to focus and complete
27 tasks. To help with this disability, she has emotional support animals. During an
28 earlier County maintenance project, Ms. SHOEMAKE was forced to relocate. As

1 she was gathering her belongings, she asked an officer if she could bring them to
2 another location and return for the rest of her items. They were already packed.
3 When she returned to get the rest of her possessions, she was informed that the
4 county had destroyed her remaining property.

5 28. In December 2016, Ms. SHOEMAKE returned to her camp to learn
6 that, without notice, a County employee had taken everything outside the tent.
7 Because of a recent rain, many items were set out to dry. Despite the objection of a
8 friend who was present when the County started to seize Ms. SHOEMAKE's
9 property, the County took tents, clothes, blankets, tarps, tools, and a briefcase with
10 medical documents, among other items. Ms. SHOEMAKE was informed that
11 items could be recovered by appointment during a one hour window each week in
12 Lake Forest. The following week Ms. SHOEMAKE received her General Relief
13 and hoped to pay someone for a ride to reclaim her belongings. However, despite
14 multiple calls to the Lake Forest facility, there was no answer and no answering
15 machine. A few weeks later, she had her phone stolen and has been unable to call
16 since. Because she would have to pay someone for a ride to the location, she is
17 afraid to go without an appointment and unable to make an appointment.

18 **Melanie Payne:**

19 29. Plaintiff MELANIE PAYNE has been homeless in Orange County for
20 approximately one year. During that time, her belongings have been taken by the
21 County on at least three occasions.

22 30. Most recently, in November 2016 Ms. PAYNE placed a tent, blankets,
23 and a bin of personal items, including small electronics, in the area where she
24 sleeps. When she returned, she saw all unattended items outside of tents had been
25 taken from the area and was informed by other homeless individuals present at the
26 time that it was the County workers in the truck. Ms. PAYNE observed that the
27 County truck was still in the areas, farther down the river bed and chased it. When
28 she reached the truck and asked to recover her property, County workers denied

1 taking it and informed Ms. Payne that she could not check the seized property in
2 the truck at that time. Ms. PAYNE does not have a vehicle and would be unable to
3 get to Lake Forest to reclaim belongings if they were brought there. If she took the
4 bus, she would not have been able to bring most of her belongings back on the bus.

5 **Sara Leanne Weaver:**

6 31. Plaintiff SARA LEANNE WEAVER has been homeless in Orange
7 County for approximately seven years. Until 11 months ago, she stayed near the
8 Civic Center, but left that area for the river bed after she was physically attacked in
9 the Civil Center location. Ms. WEAVER suffers from seizures as a result of her
10 epilepsy. On or about February 6, 2017, WEAVER had a seizure and was taken to
11 the hospital, where she remained overnight. When she returned to the river bed the
12 next day, she found her property had been removed. She was informed by other
13 persons who stayed in the vicinity that it was done by County workers. Without
14 warm clothes and blankets, WEAVER experienced increasing stress. She began
15 having seizures multiple times per day. The increasing seizures have left her
16 unable to cope with the challenges of being homeless on a daily basis.

17 32. NICK MASTRISCIANO suffers from a traumatic brain injury. On or
18 about February 8, 2017, he was approached by County workers and deputies while
19 in the river bed and told that he had one hour to remove his property. He was
20 surrounded by Sheriff's deputies who pressured him to hurry. He was repeatedly
21 asked if he really needed to keep some of his property. As he was collecting his
22 property, he observed the County employees take some of it and toss it into a trash
23 truck. He retrieved the property. Because of his disability and the time allotted, he
24 was unable to remove all of his property. He lost his driver's license, critical paper
25 work about his public benefits, his telephone, blankets, a sleeping bag, clothes and
26 the canopy and tarps he used to protect himself and his property from the elements.

27 33. Mr. MASTRISCIANO had to leave some of his property behind in the
28 fenced off area at the end of the hour. He was never given a receipt for any of the

1 property that remained. Based on what he observed earlier of his property being
2 tossed in the trash truck, on information and belief he understands that his property
3 was not marked in any way that would identify it as his and allow him to reclaim
4 it. He was never told that the excess property would be stored by the County.
5 Even if was made aware of this, he has no way of getting to the facility because he
6 does not have a car. He has no way of calling for an appointment, even if he could
7 get there with a ride, because his telephone was thrown away by County workers.

8 34. Without his tarps, canopy and other protective items, his remaining
9 property has been exposed to the rain. As a result, the medications that he takes
10 became wet and were destroyed. Moreover, without a telephone, he cannot receive
11 critical reminders about essential medical appointments. Because of his traumatic
12 brain injury, it is difficult for him to recall such appointments just by memory.

13 **For Him Ministries:**

14 35. Plaintiff FOR HIM MINISTRIES, founded in 2012 by Danny
15 Sommerville, is a local unincorporated community of women and men who assist
16 homeless individuals in Orange County. The group was formed by Danny
17 Sommerville, who serves as the group's outreach coordinator. Mr. Sommerville
18 has gone to the Santa Ana river bed frequently over the past five years and almost
19 daily for the last two years. The group serves meals to individuals living in the
20 river bed, connects people to services, provides basic necessities, and drives people
21 to access services, including showers, shelters, and medical care.

22 36. Over the past few weeks, Mr. Sommerville has had to refocus a
23 substantial amount of time by FOR HIM MINISTRIES on helping unhoused
24 people who are forced to move further into the river bed, or forced to move from
25 the river bed by the County. The group is now compelled to spend time assisting
26 homeless individuals to protect and remove their property before it is confiscated
27 or thrown away by the County workers. This is time that the group would have
28 spent on providing other assistance and connecting people to services.

1 **DEFENDANT:**

2 37. Defendant ORANGE COUNTY is a government entity with the
3 capacity to sue and be sued. The departments of the COUNTY include the
4 Department of Public Works, the entity that seized and destroyed Plaintiffs'
5 property, and that operates the storage facility on El Toro Parkway. Employees of
6 the COUNTY have engaged in the acts complained of herein pursuant to the
7 policies, practices and customs of the COUNTY.

8 38. The Defendant, its employees and agents, participated personally in
9 the unlawful conduct challenged herein and, to the extent that they did not
10 personally participate, authorized, acquiesced, set in motion, or otherwise failed to
11 take necessary steps to prevent the acts that resulted in the unlawful conduct and
12 the harm suffered by Plaintiffs. Each acted in concert with each other. The
13 challenged acts caused the violation of Plaintiffs' rights.

14 39. The identities and capacities of defendants DOES 1 through 10 are
15 presently unknown to plaintiffs, and on this basis, Plaintiffs sue these defendants
16 by fictitious names. Plaintiffs will amend the Complaint to substitute the true
17 names and capacities of the DOE defendants when ascertained. Plaintiffs are
18 informed, believe, and thereon allege that DOES 1 through 10 are, and were at all
19 times relevant herein, employees and/or agents of the Defendant COUNTY and are
20 responsible for the acts and omissions complained of herein. Defendants DOES 1
21 through 10 are sued in both their official and individual capacities.

22 **THE SEIZURE AND DESTRUCTION OF PROPERTY**

23 40. On information and belief, since at least the beginning of February,
24 the COUNTY, acting through the Public Works Department, has carried out a
25 policy, custom or practice of seizing and summarily destroying the property of
26 homeless individuals living near the Santa Ana river bed. Some of the property
27 has been stored at a location that is largely inaccessible for the property owners
28

1 because of the difficulty of getting to public transportation to get to the facility, and
2 the extraordinarily limited time access to the facility.

3 41. COUNTY workers have come to the river bed location, seized the
4 property and primarily thrown it in garbage trucks, without any display of concern
5 about the care in handling the property. It is treated as if it is presumptively trash,
6 immediately disposing of nearly all of the property, including tents, blankets,
7 shoes, clothing. On information and belief, the COUNTY's policy, custom and
8 practice is to seize the property as abandoned and destroy it if the property owner
9 is not present at the time that the COUNTY workers are there.

10 42. The County has inadequate provisions for storage of personal property
11 by homeless individuals. Moreover, items such as blankets, sleeping bags, warm
12 clothing and tents are necessary throughout the day during the winter months, in
13 particular. The majority of the property is simply thrown away.

14 43. Any property that is not destroyed is, purportedly, transferred to a
15 storage facility located near the intersection of El Toro and Portolla parkways.
16 This site is approximately 22 miles from the river bed, a 45-minute trip by car.
17 The closest public transportation stop is approximately a half mile away from the
18 storage facility. El Toro Road is a major thoroughfare with high traffic and limited
19 sidewalks along this route between the bus stop and the storage place. There is no
20 sidewalk in front of the storage location.

21 44. The storage facility is only open once a week for one hour and then
22 only by prior appointment. To access the facility, an individual must have a
23 working and charged telephone to call the number on the posted sign. Many of the
24 individuals living at the river bed do not have cell phones, or have phones with
25 limited monthly minutes that usually run out before the end of the month. At
26 times, the County number posted at the location is not answered, either by an
27 individual or even a voicemail system.

28

1 45. Because of the limited hours that the individual can obtain their
2 property, someone who travels the 22 miles from the river bed will not be able to
3 obtain their property the day they get to the facility, if at all. There is not an
4 employee at the property so appointments cannot be made in person.

5 46. For individuals with cognitive, medical, physical, mobility, or
6 developmental disabilities, or compound disabilities, their ability to navigate this
7 distance and process is difficult, if not impossible. As a result, even if any items
8 are stored, the individual never sees them again.

9
10 **THE HEALTH AND SAFETY RISK TO UNHOUSED PERSONS**

11 47. A large percentage of the persons living at the river bed have or are at
12 serious risk for health problems. The risk is greatly increased by several factors,
13 including a lack of shelter, especially in the winter months when it is cold and
14 rains; preexisting health conditions; and the advanced age of many chronically
15 homeless residents.

16 48. The danger created for unhoused individuals by the systematic seizure
17 and destruction of their property, including the most basic necessities like blankets,
18 tents and tarps, is obvious and particularly so in the winter. Although Orange
19 County often enjoys warm weather during daytime in the winter, at night the
20 temperature regularly drops to 50 and below. This crosses the threshold for the
21 risk of hypothermia, and increases the risk of other illnesses that can result from
22 sleeping unsheltered outside, particularly in the rain. Moreover, when the wind-
23 chill factor⁵ is included, the threat increases.

24 49. The National Oceanic and Atmospheric Administration (“NOAA”)
25 utilizes an index that takes into account advances in meteorology, biometeorology,
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28 ⁵ Wind-chill is the cooling effect of wind on exposed skin. *See*,
www.nws.noaa.gov/forecasts/wfo/definitions/defineWindChill.html

1 and computer modeling to create a formula that accurately calculates this perceived
2 temperature, and warns the public about the dangers from exposure to winter winds
3 and low temperatures. Essentially, this index shows how wind speeds dramatically
4 impact how quickly the human body loses heat.

5 50. According to NOAA records, the average night time temperature in
6 Orange County was 48 degrees, and to date in February it has been 51 degrees,
7 both well below the threshold for hypothermia. During the same time period, there
8 has been over 10 inches of rain. These numbers do not factor in the effect of a
9 wind-chill. Winds of only 5 miles per hour reduce applied temperatures by 2
10 degrees; winds of 15 miles per hour create a wind-chill factor that reduces the
11 temperature felt by the body by 6 degrees; and winds of 25 miles per hour produce
12 a wind-chill factor of -8.1 degrees. Combining the rain impact and wind-chill
13 factor, the night time temperatures are at the mid to low 40 degrees. Thus, even in
14 the County's moderate climate, the temperatures experienced by homeless
15 individuals exposed to the elements consistently fall well-below 50 degrees, the
16 threshold where individuals are exposed to hypothermia.

17 51. Defendants are well aware of the danger the homeless community
18 faces and recognized it in their plans to open transit terminal shelter. But even
19 without this public recognition, it is plain common sense that protection from the
20 cold and rain is an identifiable human need. Unprotected exposure to cold and rain
21 presents a serious risk of illness and death to someone living outdoors with only
22 minimal or no protection once their property is seized and destroyed. A policy that
23 ignores the "mutually enforcing effect" of destroying property and leaves people to
24 live on the streets manifests actionable deliberate indifference.

25 52. Defendants' present justification for destroying Plaintiffs' property is
26 because they need the location to store boulders. Although the County has offered
27 to transfer people to shelters, that is an empty promise, as the County well knows.
28 There are few shelters in all of Orange County and those that exist are either over

1 capacity, or do not permit individuals to bring their service animals or personal
2 property with them. This approach strips Plaintiffs of their constitutional rights
3 precisely because of Defendants' failure to take adequate, let alone any, steps to
4 address the most fundamental needs of homeless persons for a safe environment.
5 Moreover, the consequence of Defendants' policies and practices is to leave
6 Plaintiffs in the cold, literally.

7
8 **FIRST CAUSE OF ACTION**
9 **Right to Be Secure From Unreasonable Seizures**
10 **42 U.S.C. §1983 - Fourth Amendment;**
11 **Art. 1, §13, California Constitution**

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

14 54. Defendant and its employees and agents violated Plaintiffs' Fourth
15 Amendment rights to be free from unreasonable seizure of their property by
16 confiscating and then destroying Plaintiffs' property without a warrant.

17 55. These unlawful actions were done with the specific intent to deprive
18 Plaintiffs of their constitutional rights to be secure in their property.

19 56. Plaintiffs are informed and believe that the acts of the Defendant and
20 its employees and agents were intentional in failing to protect and preserve
21 Plaintiffs' property and that, at minimum, were deliberately indifferent to the likely
22 consequence that the property would be seized and destroyed unlawfully in view of
23 the fact that the right at issue was well-established at the time.

24 57. As a direct and proximate consequence of these unlawful acts,
25 Plaintiffs have suffered and continue to suffer loss of their personal property and
26 are entitled to compensatory damages for their property and personal injury.
27
28

SECOND CAUSE OF ACTION
Right To Due Process Of Law; 42 U.S.C. § 1983
Fifth And Fourteenth Amendments; Art. I, § 7

1
2
3 58. Plaintiffs reallege and incorporate the allegations set forth in the
4 preceding paragraphs as though fully set forth hereat.

5 59. Defendant, its employees and agents, owed Plaintiffs a duty under the
6 due process clauses of the Fifth and Fourteenth Amendments to the U.S.
7 Constitution and Article I, § 7 of the California Constitution to protect the personal
8 property of the Plaintiffs. This duty applied to preserving the personal property of
9 individuals arrested and taken into custody.

10 60. Despite this well-defined duty, Defendant provided Plaintiffs with
11 inadequate notice that their property was at risk of being seized and/or destroyed
12 and did not act to preserve the property or provide adequate means of reclaiming it
13 in a timely manner even though the right to such notice and preservation of
14 property was well-established at the time.

15 61. Plaintiffs are informed and believe that the acts of the Defendant, its
16 employees and agents, were intentional in failing to protect and preserve Plaintiffs'
17 property and that, at minimum, were deliberately indifferent to the likelihood that
18 the property would be seized and destroyed without due process based on the past
19 occurrences of these same constitutional and statutory violations of the law.

20 62. Defendant has seized and destroyed the personal property of the
21 Plaintiffs without due process, lawful justification, or just compensation.

22 63. As a direct and proximate consequence of the acts of Defendant's
23 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
24 personal property and are entitled to compensatory damages for their property and
25 other injury to their person.
26
27
28

1 **THIRD CAUSE OF ACTION**
2 **Violation of Civil Rights: 42 U.S.C. § 1983, Fourteenth Amendment**
3 **State Created Danger**

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

6 65. By taking and destroying the tents, tarps, blankets and clothing of the
7 Plaintiffs, Defendant, its employees and agents, have created a danger for Plaintiffs
8 by exposing them to the elements in the winter without adequate shelter.

9 66. As a direct and proximate consequence of the acts of Defendant’s
10 agents and employees, Plaintiffs have suffered and continue to suffer actual and
11 potential injury to their health and safety and are entitled to compensatory damages
12 for their property and other injury to their person.

13 **FOURTH CAUSE OF ACTION**
14 **Violation of 42 U.S.C. § 12101 et seq.: Title II of the**
15 **Americans with Disabilities Act**

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

18 68. Title II of the ADA provides in pertinent part: “[N]o qualified
19 individual with a disability shall, by reason of such disability, be ... denied the
20 benefits of the services, programs, or activities of a public entity, or be subjected to
21 discrimination by any such entity.” 42 U.S.C. § 12132.

22 69. At all times relevant to this action, Defendant, its employees and
23 agents, were public entities within the meaning of Title II of the ADA and
24 provided programs, services, or activity to the general public.

25 70. At all times relevant to this action, the individual Plaintiffs were
26 qualified individuals with one or more disabilities within the meaning of Title II of
27 the ADA and met the essential eligibility requirements under Title II.
28

1 71. Defendant's policies and practices in seizing and destroying Plaintiffs'
2 blankets, tents, and other protective gear utilized methods of administration that
3 violate Plaintiffs' rights on the basis of their disabilities. 28 C.F.R. § 35.130(b)(3).

4 72. The acts and omissions of the Defendant, its agents and employees,
5 subjected Plaintiffs to discrimination on the basis of their disabilities in violation of
6 Title II of the ADA by destroying their property, and for storing any remaining
7 items following the seizures in a way that was inaccessible and unreasonable.

8 73. Plaintiffs knew, or should have known, that the incidence of
9 disabilities for people who are homeless is extremely high, with estimates as high
10 as more than one in two homeless individuals suffering from some significant
11 cognitive, psychological, medical or physical disability, and many suffering from
12 compound disabilities. As a public entity, Defendants are required to "make
13 reasonable modifications in policies practices, or procedures when such are
14 necessary to avoid discrimination on the basis of disability" where, as here,
15 modifications to would not "fundamentally alter the nature of the service, program
16 or activity." 28 C.F.R. § 35.130(b)(7). This includes the need to make reasonable
17 accommodations to protect the essential life-protecting property of persons who
18 are homeless, as well as provide prompt and reasonable access to ensure that
19 individuals are able to recover seized property and accessible transportation to and
20 from any storage facility. The policies, practices and procedures challenged in this
21 action, even if otherwise facially neutral, unduly burden disabled persons who are
22 without shelter and within the federal definition of homeless.

23 74. Defendant committed the acts and omissions alleged herein with
24 intent and/or reckless disregard for the rights of each of these Plaintiffs.

25 75. Plaintiffs are informed and believe that Defendant and its agents and
26 employees have failed and continue to fail to adopt and enforce adequate policies
27 and procedures for interacting with homeless individuals with disabilities.

28

1 76. As a result of Defendant’s action and those of its agents and
2 employees, Plaintiffs have suffered injury to their persons and property and are
3 entitled to damages.

4
5 **FIFTH CAUSE OF ACTION**
6 **Violation of 29 U.S.C. § 794: Section 504 of the**
7 **Rehabilitation Act of 1973**

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

10 78. Section 504 of the Rehabilitation Act of 1973 provides in pertinent
11 part: “[N]o otherwise qualified individual with a disability ... shall, solely by
12 reason of his or her disability, ... be subjected to discrimination under any program
13 or activity receiving federal financial assistance” 29 U.S.C. § 794.

14 79. The individual Plaintiffs were, at all relevant times, qualified
15 individuals within the meaning of the Rehabilitation Act because they have a
16 mental and/or medical impairment that substantially limits one or more of their
17 major life activities.” 29 U.S.C. § 705(2)(B).

18 80. At all relevant times and continuing to the present, Defendant CITY
19 was the recipient of federal funding within the meaning of the Rehabilitation Act.

20 81. The acts and omissions by Defendant and its agents and employees
21 complained of herein were committed with intent and/or reckless disregard for the
22 rights of the above-named individual Plaintiffs and discriminated against them on
23 the basis of their respective disabilities.

24 82. As a direct and proximate result of the aforementioned acts and
25 omissions by Defendants, Plaintiffs have suffered and continue to suffer injury to
26 their persons, including pain and suffering and are entitled to compensatory
27 damages according to proof.

28

1 91. Defendant, through its agents and employees in the LAPD and other
2 City Departments, is a “business establishment” within the meaning of § 51.

3 92. The acts and omissions complained of herein denied Plaintiffs their
4 rights on the basis of their disabilities and were done with intent or reckless
5 disregard for the rights of the individual Plaintiffs’ as disabled individuals.

6 93. As a direct and proximate result of the aforementioned acts, the
7 individual Plaintiffs have suffered and continue to suffer injury, including but not
8 limited to pain and suffering. Plaintiffs are entitled to all of the relief available
9 pursuant to California Civil Code § 52.

10
11 **EIGHTH CAUSE OF ACTION**
12 **California Civil Code § 2080, *et seq.***

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

15 95. Defendant’s policies, practices and conduct challenged herein violated
16 California Civil Code § 2080 *et seq.*, in that Defendant’s agents and employees
17 failed to protect and preserve the personal property of Plaintiffs when the property
18 was seized; failed to provide adequate written notice pre-seizure and post-
19 deprivation notice so that Plaintiffs would have the opportunity to reclaim their
20 property within a reasonable time. California Code of Civil Procedure § 2080 *et*
21 *seq.* imposes a mandatory duty to maintain property that is not abandoned.

22 96. Defendant, its agents and employees, had a duty owed to Plaintiffs to
23 protect their personal property under California Civil Code §§ 2080.2, 2080.4 and
24 2080.6. Plaintiffs’ property was not abandoned at the time that Defendant seized it
25 and immediately destroyed it. Defendant breached the duty to protect Plaintiffs’
26 personal property when their agents and employees wrongly exerted dominion
27 over the property and denied Plaintiffs’ their constitutional and statutory rights.

28 97. Defendant had no legitimate governmental interest that gave their
agents and employees the legal right or justification to confiscate Plaintiffs’

1 property and then immediately demolish it without prior notice to Plaintiffs and
2 without a constitutionally sufficient procedure to permit Plaintiffs to recover their
3 property, and without fair compensation to Plaintiffs.

4
5 **INJUNCTIVE RELIEF**

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

8 99. A real and immediate difference exists between Plaintiffs and
9 Defendant regarding Plaintiffs' rights and Defendant's duty owed to Plaintiffs to
10 protect Plaintiffs' personal property present in the Santa Ana Riverbed, and in all
11 public space. Defendant's policies and actions have resulted and will result in
12 irreparable injury to Plaintiffs. There is no plain, adequate or complete remedy at
13 law to address the wrongs described herein. Defendant has made clear by its
14 unlawful seizures and immediate destruction of the property of unhoused
15 individuals that it intends to continue these practices of confiscating and
16 immediately destroying the property of homeless individuals from public spaces
17 without a warrant and notice. Defendant has also made clear that they intend to
18 continue the practices described above that make it exceedingly difficult, if not
19 impossible, for homeless individuals to reclaim their property, even when some of
20 it is not immediately destroyed. The only storage facility is 22 miles from the river
21 bed location and only open one hour on one day a week, and then only if an
22 appointment is made in advance to meet a County worker at the storage facility
23 and see if an individual's property is there to be reclaimed. Unless restrained by
24 this Court, Defendant will continue these unlawful policies and practices.

25 100. Defendant's acts alleged above violate established constitutional
26 rights of Plaintiffs and Defendant could not reasonably believe that the conduct of
27 its agents and employees in seizing and destroying Plaintiffs' property was lawful.

1 101. An actual controversy exists between Plaintiffs and Defendant in that
2 Defendant, its agents and employees, have engaged in the unlawful and
3 unconstitutional acts alleged herein and intend to continue to do so. Plaintiffs
4 claim that these acts are contrary to law and seek a declaration of their rights with
5 regard to this controversy.

6 102. As a direct and proximate consequence of the acts of Defendant's
7 agents and employees, Plaintiffs have suffered and will continue to suffer injury to
8 their person and the loss of their personal property, including all their clothing,
9 bedding, tents and other personal possessions, stripping them of the essentials
10 needed for their well-being and personal dignity and placing them at serious and
11 immediate risk of grave illness from living in the elements with no protection.

12
13 **WHEREFORE**, Plaintiffs pray as follows:

14 1. For a temporary restraining order, preliminary and permanent
15 injunction, enjoining and restraining Defendant from seizing and immediately
16 destroying property of homeless individuals without adequate procedures for
17 accessible storage and recover of the property;

18 2. For a declaratory judgment that Defendant's policies, practices and
19 conduct as alleged herein violate Plaintiffs' rights under the United States and
20 California constitutions and the laws of California;

21 3. For an order directing Defendant to provide replacement of blankets,
22 tents, tarps, clothing and other essential items to anyone whose property is seized
23 for whatever reason, including purported public health and safety grounds;

24 4. For an order directing Defendant to maintain the property at a location
25 closer to the river bed and open during regular business hours;

26 5. For an order directing that any property taken be segregated by
27 owners and not combined with the property of any other person;

28

EXHIBIT A
Photo by Mindy
Schauer of OC Register



EXHIBIT B
Photo by Mindy Schauer of the
OC Register

