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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

16 CYNDI UTZMAN, DEBORAH KRAFT,
17 WENDY POWITZKY, JOSHUA OGLE,
18 JORDYNNE LANCASTER,
19 CATHERINE MOORE, CALLIE
20 RUTTER, THIEN CHI BUI & OMA'S
21 ANGEL FOUNDATION,

Plaintiffs,

v.

22 COUNTY OF ORANGE, CITY OF
23 ANAHEIM, ILLUMINATION
24 FOUNDATION, MIDNIGHT MISSION,
25 MERCY HOUSE LIVING CENTERS &
26 PROTECTION AMERICA, INC.

Defendants.

Case No. 30-2020-01174005-CU-CR-CXC

Assigned for all purposes to:
The Hon. Randall J. Sherman, Dept. CX105

**SECOND AMENDED VERIFIED
COMPLAINT AND PETITION FOR
WRIT OF MANDATE**

JURY TRIAL DEMAND

RELATED TO ROA# 395 AND 405

Complaint filed: December 10, 2020
Trial Date: None set

1 INTRODUCTION

2 1. Orange County residents who cannot afford permanent housing face arrest
3 and physical danger if they live outside. In response to a lawsuit challenging the arrest of
4 unhoused persons who lacked alternative living accommodations, Defendants Orange
5 County and Anaheim established additional homeless shelter capacities. These shelters
6 allow Defendants Orange County and Anaheim to arrest unhoused persons living on their
7 streets, on the grounds that those individuals are not availing themselves of the shelters.
8 As a result, people who cannot afford housing are forced to either reside at these shelters
9 or face arrest.

10 2. But three shelters owned, funded, and operated by Orange County and
11 Anaheim – La Mesa, the Courtyard, and Bridges at Kraemer Place – have or had policies,
12 practices, and conditions that violate the fundamental constitutional and statutory rights
13 of their residents.

14 3. Staff and contractors working at two of these shelters subject or subjected
15 residents to relentless sexual harassment, such as verbal harassment and propositioning,
16 improper touching, and invasive strip searches in full view of other staff and residents.

17 4. In addition, two of the shelters impose or imposed an unreasonable and
18 harmful “lock-in/shut-out” policy, where shelter residents are required to approach or
19 leave the shelters only in a vehicle. The effect of this policy is that the shelter residents are
20 prevented from leaving or returning to the shelters unless they have the money for, or
21 access to, a vehicle. Otherwise, shelter residents have to wait for one of the infrequent
22 shelter shuttles that can accommodate only a fraction of the resident population. The
23 practical impact of this policy, which has no legitimate purpose, is to make it difficult or
24 impossible for shelter residents to move freely to or from the shelter, such as for attending
25 work in order to earn the income necessary to get back on their feet.

26 5. Compounding these civil rights abuses, all of the shelters maintain or
27 maintained such filthy and unhealthy living conditions that they endangered the health
28 and safety of residents. Examples include rodent, bedbug, and roach infestations; filthy or

1 broken toilets, sinks, and showers; overcrowding, and extreme temperatures. Residents
2 who complain about these unlawful practices or dangerous conditions face retaliation,
3 including loss of shelter access.

4 6. Shelter residents, some of the most vulnerable people in our society, are
5 forced to choose between living in these inhumane conditions or living on the street,
6 where they risk arrest, theft, violence, and prosecution for sleeping outdoors, or worse.

7 7. A 2019 report by the ACLU Foundation of Southern California, entitled "*This*
8 *Place is Slowly Killing Me: Abuse and Neglect in Orange County Emergency Shelters*" (the
9 "Report") documents many of Defendants' violations, and was compiled from attorney
10 visits to the shelters and more than 70 interviews with residents, staff members, and
11 shelter volunteers at three facilities, including Defendants' shelters, the Courtyard
12 Transitional Center (the "Courtyard") in Santa Ana, and Bridges at Kraemer Place
13 ("Bridges") in Anaheim.¹ Since the Report's publication four years ago, Defendants have
14 ignored the serious problems documented therein.

15 8. Because Defendants' policies and practices violate the constitutional and
16 statutory rights of shelter residents, Plaintiffs bring this suit for equitable relief and
17 damages.

18 **THE PARTIES**²

19 9. Plaintiff Cyndi Utzman has lived in Orange County for thirty years. Ms.
20 Utzman resided at Bridges at Kraemer Place from August to October 2018. She lived at
21 the Courtyard from November 2018 to February 2019, and lived at La Mesa from
22 September 2019 to May 2020.

23 10. Plaintiff Deborah Kraft grew up in Marin County. She has a master's degree
24 in psychology and worked in marketing for over thirty years. Ms. Kraft lived at the

25 _____
26 ¹ See ACLU Foundation of Southern California, "*This Place is Slowly Killing Me.*" *Abuse and*
27 *Neglect in Orange County Emergency Shelters* (2019),
https://www.aclusocal.org/sites/default/files/aclu_socal_oc_shelters_report.pdf.

28 ² This combined Petition and Complaint refers to the parties as Plaintiffs and Defendants
under Cal. Civ. Proc. Code § 1063.

1 Courtyard from October 2016 to October 2018.

2 11. Plaintiff Wendy Powitzky has lived in Orange County for over twenty years
3 and worked as a hairdresser. Ms. Powitzky lived at La Mesa from July 2019 to March
4 2020.

5 12. Plaintiff Joshua Ogle lived in Orange County for his entire life. Mr. Ogle
6 lived at Bridges at Kraemer Place from August 2018 to November 2019. Mr. Ogle passed
7 away in 2021.

8 13. Plaintiff Jordynne Lancaster is a former model and actress. Ms. Lancaster
9 lived at the Courtyard from approximately January 2018 to July 2019.

10 14. Plaintiff Catherine Moore has lived in Orange County for over nineteen years.
11 Ms. Moore lived at La Mesa from March 2019 to November 2019.

12 15. Plaintiff Callie Rutter grew up in Newport Beach and has lived in Orange
13 County for most of her life. Ms. Rutter lived at Bridges at Kraemer Place from March 14,
14 2018 to February 9, 2020.

15 16. Plaintiff Thien Chi ("Patrick") Bui has lived in Orange County since he
16 moved there during high school. Mr. Bui lived at the Courtyard from June 2019 to
17 January 2020, and he lived at Bridges from April 2021 to December 2022.

18 17. Plaintiff Oma's Angel Foundation is a nonprofit corporation located in
19 Anaheim that seeks to foster the survival, health, and well-being of unhoused persons in
20 Orange County. Oma's Angel Foundation has been operating in Orange County since
21 2013. It was established before there were any permanent shelters in Orange County.
22 Oma's Angel Foundation distributes food, clothing, tents, and other basic necessities to
23 unhoused persons in Orange County.

24 18. Ms. Utzman, Ms. Kraft, Ms. Powitzky, Mr. Ogle, Ms. Lancaster, Ms. Moore,
25 Ms. Rutter, and Mr. Bui all resided in Orange County and paid taxes, including sales
26 taxes, to Orange County in 2020, within one year of commencing this action.

27 19. Plaintiffs Moore, Ogle, Lancaster, Powitzky, and Oma's Angel Foundation
28 reside or resided in Anaheim and have paid taxes, including sales taxes and the City's

1 transient occupancy tax, to the City in 2020, within one year of commencing this action.

2 20. Plaintiffs Utzman and Kraft resided in the City of Anaheim and have paid
3 taxes, including Anaheim’s transient occupancy tax, to Anaheim within one year of
4 commencing this action.

5 21. Defendant County of Orange (the “County”) is a political subdivision of the
6 State of California (the “State”). It pays or paid Defendants Midnight Mission and Mercy
7 House Living Centers to operate the Courtyard and Bridges at Kraemer Place shelters. It
8 receives funding from the State, including funding that it uses to pay the shelters to
9 operate.

10 22. Defendant City of Anaheim (the “City”) is a California municipal corporation
11 located within Orange County. It paid Defendant Illumination Foundation to operate the
12 La Mesa shelter. It now pays The Salvation Army Orange County to operate the Anaheim
13 Emergency Shelter. It receives funding from the State, including funding that it used to
14 pay the shelter to operate.

15 23. Defendant Illumination Foundation is a non-profit corporation that operated
16 La Mesa under a contract with the City of Anaheim. It received funding from the State,
17 including funding it used to operate La Mesa.

18 24. Defendant Midnight Mission is a non-profit corporation that operated the
19 Courtyard under a contract with the County. It received funding from the State, including
20 from the California Department of Resources Recycling and Recovery, which it used to
21 operate this shelter.

22 25. Defendant Mercy House Living Centers is a non-profit corporation that
23 operates the Bridges at Kraemer Place under a contract with the County. It receives
24 funding from the State, including funding that it uses to operate this shelter.

25 26. Defendant Protection America, Inc. is a for-profit corporation based in Los
26 Angeles, California, which specializes in providing security guard and patrol security
27 services, including at homeless shelters. Protection America, Inc. provided security
28 services at La Mesa Shelter when at least one of the Plaintiffs resided there.

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JURISDICTION AND VENUE

27. This Court has jurisdiction under Article VI Section 10 of the California Constitution.

28. Venue is proper in this Court: the Defendants reside in, and the acts and omissions complained of herein occurred in, Orange County. See Cal Civ. Proc. Code §§ 393(b), 394, 395(a).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

29. Plaintiffs have exhausted all required administrative remedies, including the following claims filed under the Government Claims Act, Cal. Gov't Code § 900 *et seq.*

30. Catherine Moore filed a claim with the City on November 8, 2019, requesting damages for the invasive body searches conducted by the staff at La Mesa from April of that year until the date of her claim, as well as for the staff's retaliation against her as a result of complaining about these searches.

31. On March 2, 2020, Wendy Powitzky filed a claim with the City. This claim requested damages for the invasive body searches conducted by the staff at La Mesa from August 2019 until the date of her claim, as well as for the staff's retaliation against her as a result of refusing to comply with one search request.

32. On October 14, 2020, Cyndi Utzman filed a claim against the City, on behalf of herself and other similarly situated persons. This claim requested damages for the invasive body searches conducted by the staff at La Mesa, for sexual harassment by staff and residents, and for the staff's retaliation against her as a result of complaining about this mistreatment, all of which occurred on a continuing basis from September 2019 to May 2020. This claim also requested damages, during the same time period, for losses caused by the lock-in/shut-out policy.

33. The City never responded to any of these claims.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

34. In early 2018, a number of organizations and individuals sued the County, the City, and other defendants, alleging that those defendants violated state and federal

1 law by enforcing trespass, loitering, and anti-camping laws against homeless people
2 where there were no accessible and appropriate beds or housing available to them in the
3 County. *See Catholic Worker v. County of Orange*, No. 8:18-cv-00155-DOC-JDE (C.D. Cal.,
4 Filed Jan. 29, 2018); *Ramirez v. County of Orange*, No. 8:18-cv-00220-DOC-KES (C.D. Cal.,
5 Filed Feb. 7, 2018).

6 35. To resolve these cases, the County agreed that, absent exigent circumstances,
7 it would stop arresting homeless individuals under its anti-camping and anti-loitering
8 laws without first offering them an appropriate shelter placement. Settlement Agreement
9 ¶¶ 4.1-4.2, *Catholic Worker v. County of Orange*, No. 8:18-cv-00155-DOC-JDE (C.D. Cal. Jul.
10 23, 2019), ECF No. 318-1. Individuals who accepted the placement offered would not be
11 cited or arrested. *Id.* People who declined the offered placement could be arrested for
12 offenses such as illegal camping. *Id.* ¶ 4.3; Orange County, Cal., Ordinance 2-5-95 (Aug.
13 31, 1999).

14 36. The City similarly settled the litigation by agreeing to fund or coordinate
15 funding for the construction and operation of temporary homeless shelters with a capacity
16 of at least 325 beds. Settlement Agreement ¶ 2.1, *Catholic Worker v. County of Orange*, No.
17 8:18-cv-00155-DOC-JDE (C.D. Cal. Nov. 2, 2018), ECF No. 276-1. It too agreed in most
18 circumstances not to enforce its anti-camping laws against homeless people without
19 offering an appropriate shelter placement. *Id.* ¶ 3.2. If an individual declines the
20 placement, the City may employ any criminal law against them. *Id.* The City has anti-
21 camping ordinances that criminalize being homeless. *See Anaheim, Cal., Municipal Code*
22 § 11.10 *et seq.* (2013).

23 37. In fact, 33 of the 34 cities located in the County have similar laws that
24 essentially criminalize homelessness. *See* 2016 Report at 24-25;³ Theresa Walker and
25 Jordan Graham, *What's next for the Santa Ana River Trail homeless encampments*, Orange

26 _____
27 ³ *See* ACLU Foundation of Southern California, *Nowhere to Live: The Homeless Crisis in*
28 *Orange County & How to End It* 24-25 (2016),
https://www.aclusocal.org/sites/default/files/field_documents/nowhere-to-live-aclu-socal-report.pdf.

1 County Register, Feb. 12, 2018. The net effect of these ordinances and settlements is that
2 County residents who cannot afford or otherwise obtain private housing must accept a
3 shelter placement, agree to leave the jurisdiction, or face arrest and prosecution for being
4 homeless.

5 38. The County and City contract with private organizations to run shelters in
6 order to provide available shelter placements and enforce their anti-camping laws. These
7 shelters thus provide an essential state function.

8 **I. THE SHELTER FACILITIES**

9 **A. THE COURTYARD**

10 39. The County paid, and had contracts with, Defendant Midnight Mission to run
11 a homeless shelter called The Courtyard. The County relied on the existence of The
12 Courtyard in order to enforce its anti-camping and anti-loitering ordinances against
13 unhoused persons living outside in Orange County. *See* Settlement Agreement ¶¶ 4.1-4.2,
14 *Catholic Worker v. County of Orange*, No. 8:18-cv-00155-DOC-JDE (C.D. Cal. Jul. 23, 2019),
15 ECF No. 318-1. The Courtyard fulfilled a necessary state function for the County, as set
16 forth in the contract between the County and the Midnight Mission: “The PROGRAM will
17 meet the COUNTY’s need to provide emergency shelter with showers, food and
18 supportive services for the homeless population.” Fourth Amendment, Contract #17-23-
19 0036-PS between County of Orange and The Midnight Mission for Courtyard Transitional
20 Services (“Contract”) at 8. The contract required Midnight Mission to provide up to 425
21 beds as well as drop-in services for 400 to 750 persons. *Id.* at 8.

22 40. The Courtyard operated at a County-owned building, the former Santa Ana
23 Transit Terminal, at 400 West Santa Ana Boulevard in Santa Ana. The shelter was located
24 in downtown Santa Ana, near City Hall and across from the County Hall of
25 Administration. The County’s licensing agreement with the Midnight Mission provided
26 that the County is responsible for “all maintenance and repairs” and for “provision of and
27 maintenance and cleaning of portable restrooms and shower facilities.” 2016 License
28 Summary between County of Orange and The Midnight Mission for the Courtyard

1 Transitional Center, at 2.

2 41. The Courtyard was an old, open-sided former bus terminal with plastic
3 tarpaulins erected around its perimeter as a windbreak. It had no heating or air
4 conditioning except in a single, closed-off room (i.e., the only indoor space) reserved for
5 staff members. It could be blistering in the summer and frigid in the winter. Water
6 seeped – and sometimes poured – into the shelter during downpours, soaking residents
7 and their belongings.

8 42. The contract required Midnight Mission to “[w]ork in partnership with the
9 County of Orange/OCCR to be a ‘Good Neighbor’ ... and to work closely with city/local
10 government to minimize the impact of the program on the surrounding neighborhood.”
11 Contract at 8.

12 43. The contract additionally required Midnight Mission to “[s]ubmit policies
13 and procedures for PROGRAM including but not limited to all aspects of services,
14 management plan, staff responsibilities and staff coordination” to the County and to
15 “[c]oordinate” with a number of County agencies and services. *Id.*

16 44. The contract required that “[s]ecurity is in place 24 hours a day, 7 days a
17 week.” *Id.* at 11.

18 45. The contract’s staffing plan provided for three full-time security guards, five
19 part-time security guards, eight part-time in-reach security back-up guards, three part-
20 time security guard supervisors, three full-time security guard supervisors, and one part-
21 time security exec supervisor.

22 46. Courtyard security and shelter staff were authorized to inspect residents
23 and/or their belongings at any time for prohibited items. Courtyard security was also
24 authorized to check all resident bags at the Front Entrance Security Station.

25 47. Residents at the Courtyard were required to agree to and sign Courtyard
26 Resident Expectation and Rules, as a condition of living at the shelter.

27 48. Midnight Mission knew or should have known about any habitability issues
28 at the Courtyard because it had staff onsite at the shelter who would have observed these

1 conditions first-hand. Midnight Mission knew or should have known about the sexual
2 harassment at the shelter because their own staff perpetrated the harassment, and other
3 staff observed the harassment. Midnight Mission also knew about the harassment and
4 substandard conditions because its site manager retaliated against Plaintiff Cyndi Utzman
5 after the ACLU Report, which described these issues, came out, and accused her of being a
6 “spy.”

7 49. The County knew or should have known about the conditions in the showers
8 and toilets at the Courtyard, as it was responsible for maintaining those facilities. The
9 County knew or should have known about the other problematic conditions at the
10 Courtyard because the Report, published on March 14, 2019, detailed these conditions.
11 The ACLU of Southern California also sent a copy of the Report to the County. On
12 June 18, 2019, several staff of the ACLU of Southern California met with officials from the
13 County, including County CEO Frank Kim, to discuss the problems highlighted in the
14 Report, including the conditions at the Courtyard.

15 50. Despite numerous resident complaints, the ACLU’s Report, and the meeting
16 with County staff, Defendants County and Midnight Mission failed to address the
17 unlawful conditions at the Courtyard.

18 **B. BRIDGES AT KRAEMER PLACE**

19 51. The County pays Defendant Mercy House Living Centers to run a shelter
20 called Bridges at Kraemer Place (“Bridges”), located at 1000 N. Kraemer Place, in
21 Anaheim. Bridges is to provide housing for 200 men and women. Bridges is located on
22 county-owned land, which the County leases to Mercy House Living Centers.

23 52. The County relies on the existence of Bridges in order to enforce its anti-
24 camping and anti-loitering ordinances against unhoused persons living outside in Orange
25 County. See Settlement Agreement ¶¶ 4.1-4.2, *Catholic Worker v. County of Orange*, No.
26 8:18-cv-00155-DOC-JDE (C.D. Cal. Jul. 23, 2019), ECF No. 318-1. The County requires
27 Mercy House Living Centers to “be part of the COUNTY team to facilitate the successful
28 operations and administration of the PROGRAM located at 1000 N. Kraemer Place,

1 Anaheim for a year-round emergency shelter and multi-service center.” Attachment A to
2 County of Orange contract with Mercy House Living Centers, # 18-22-0037-PS, at 3.
3 Bridges fulfills a necessary state function for the County.

4 53. The County has the right to access Bridges for the purpose of monitoring its
5 contract with Mercy House Living Centers. County of Orange contract with Mercy House
6 Living Centers, # 18-22-0037-PS, at 18. The County must approve Bridges’ “Shelter Policy
7 and Procedures Manual,” which must include procedures to “maintain hygienic, sanitary
8 environments for the well-being of clients, volunteers, and staff.” Attachment A to
9 County of Orange contract with Mercy House Living Centers, # 18-22-0037-PS, at 21.

10 54. The contract requires that Bridges have a security plan that “will include a
11 multi-faceted approach involving screening for sex offenders and felons with open
12 warrants, secured entrances, security searches upon entrance, confiscation of harmful
13 contraband, trained security personnel providing around-the-clock indoor and outdoor
14 coverage, security alarms, cameras and lighting.” *Id.* at 9.

15 55. As part of the secured entrances requirement, the contract requires that “[a]ll
16 clients and their belongings will be checked by security personnel, utilizing security
17 wands each time they enter and exit from the shelter and all contraband will be seized.”
18 Orange County Year Round Emergency Shelter and Multi-Service Center Management,
19 Operations and Public Safety Plan at 36. The contract requires that “[s]ecurity will be on
20 site at all times, and will conduct security rounds of the facility as necessary.” *Id.*

21 56. Bridges implements a lock-in/shut-out policy, as required by the County.

22 57. Residents at Bridges must agree to and sign Bridges’ Shelter Expectations as a
23 condition of living at the shelter.

24 58. Mercy House knew or should have known about the unlawful conditions at
25 Bridges because it had staff on-site at the shelter who would have seen these conditions
26 first-hand. Mercy House was also aware of the unlawful conditions because in or around
27 April 2019, several residents of Bridges spoke at an Orange County Board of Supervisors
28 meeting about the unsanitary conditions at Bridges. Mercy House was aware of the

1 residents' public comments because shortly after that meeting, Bridges staff demanded
2 that each of the residents who had spoken before the Board have individual meetings with
3 staff. More recently, in May 2022, Mr. Bui filed a grievance with Mercy House regarding
4 habitability conditions at the shelter.

5 59. The County knew or should have known about the unlawful conditions at
6 Bridges because the Report, published on March 14, 2019, detailed these conditions. The
7 ACLU of Southern California also sent a copy of the Report to the County.

8 60. On May 21, 2019, several residents of Bridges, including Plaintiff Rutter,
9 participated in a public action where they spoke about the horrible conditions at Bridges
10 to the Orange County Board of Supervisors. On June 18, 2019, several staff of the ACLU of
11 Southern California met with officials from the County, including County CEO Frank
12 Kim, to discuss the problems highlighted in the Report, including the conditions at
13 Bridges.

14 61. Despite numerous resident complaints, the ACLU's Report, and the meeting
15 with County staff, Defendants County and Mercy Housing Living Center have failed to
16 address the unlawful conditions at Bridges.

17 **C. LA MESA**

18 62. Anaheim paid Defendant Illumination Foundation to run a shelter called La
19 Mesa. The City began funding La Mesa directly as a result of the *Catholic Worker* lawsuit,
20 so that it could continue to arrest unhoused persons for violating anti-camping laws.⁴ The
21 City purchased the property where La Mesa operated, specifically to have a location for
22 the shelter, and agreed to make the capital improvements to its property needed to allow
23 Illumination Foundation to operate as a shelter.

24 63. La Mesa fulfilled a necessary state function for the City, as set forth in the

25
26 ⁴ See Settlement Agreement ¶ 2.1, 3.2, *Catholic Worker v. County of Orange*, No. 8:18-cv-
27 00155-DOC-JDE (C.D. Cal. Nov. 2, 2018), ECF No. 276-1; City of Anaheim, *Anaheim Shelter*
28 *Plan Fact Sheet* (2020),
<https://www.anaheim.net/DocumentCenter/View/24444/Anaheim-Shelter-Plan-fact-sheet-fall-2020?bidId=>.

1 contract between Illumination Foundation and Anaheim: “Anaheim has determined that
2 an urgent need exists to provide a temporary, low barrier emergency homeless shelter in
3 the City of Anaheim for up to one hundred and two (102) individuals....” *Agreement*
4 *Between the City of Anaheim and Illumination Foundation for the Operation of an Emergency*
5 *Homeless Shelter at 3035 E. La Mesa Street, Jun. 20, 2019, at 1.*

6 64. The contract allocated up to \$6.5 million from the City to Illumination
7 Foundation. *Id.* at 2. The City had the authority under the contract to access all of the
8 shelter’s services and activities and facilities, including all of the files and other records
9 relating to the performance of the agreement. *Id.* at 4. The contract prohibited the shelter
10 from discriminating based on sex and other enumerated factors or permitting sex
11 discrimination to occur at the shelter. *Id.* at 9-10.

12 65. The Scope of Work attachment to the contract required Illumination
13 Foundation to “recognize[] that transportation is necessary to ensure that the area
14 surrounding the Shelter is not adversely impacted.” *Id.*, Scope of Work Attachment at 3.
15 The Scope of Work mandated that “[n]o walk-ins for the Program or Program services will
16 be permitted.” *Id.* at 2. These requirements resulted in implementation of the lock-
17 in/shut-out policy at La Mesa.

18 66. The management-and-operations plan states that returning residents must be
19 in the “facility by 10 pm unless [they] have permission from staff.” The plan also required
20 staff to search residents and their bags when they enter the facility, and allowed staff to
21 search storage areas for contraband.

22 67. The plan required Illumination Foundation to “contract with a state licensed
23 security vendor that will have 2 guards 24 hours 7 days a week.” *Id.*, Scope of Work
24 Attachment at 4. The security plan required “secured entrances, security searches upon
25 entrance, confiscation of harmful contraband, trained security personnel providing
26 around-the-clock indoor and outdoor coverage, security cameras, and lighting.” *Id.* at 4.
27 During relevant time periods, Illumination Foundation contracted with Protection
28 America, Inc. to provide security services at La Mesa.

1 68. As part of the management-and-operations plan, Illumination Foundation
2 implemented the La Mesa Shelter Security Post Orders (the “Security Orders”).

3 69. The Security Orders required that “[a]ll adult program participants will be
4 searched upon entry.” *Id.* at 1. The Security Orders required that searches and pat downs
5 are to be conducted by using “the back of your hand to pat down the legs and arms of the
6 client. Never place hands on a client’s private areas.” *Id.* The Security Orders required
7 security personnel to “[r]espectfully ask client to lift pant legs up and expose their
8 socks/ankles” in addition to other areas such as waistbands and headwear. *Id.* The
9 Security Orders required that “[a]ny bags, including duffle bags and backpacks must be
10 searched thoroughly before being allowed into the facility.” *Id.* The Security Orders also
11 provided that “[a]ny client refusing to submit to security protocol will not be allow to
12 enter the facility. . . **NO SEARCH NO ENTRY.**” *Id.* (emphasis in original). Security
13 personnel had no discretion whether to conduct such searches on entry.

14 70. In addition to requiring searches on entry, the Security Orders required that
15 “[d]uring each shift, security will be required to perform Q30 minute rounds throughout
16 the facility.” *Id.* Security personnel had no discretion whether to conduct their rounds
17 throughout the facility.

18 71. The Security Orders also set forth that “[a]ll Guards are expected to set
19 professional boundaries with clients. No excessive talking or exchanges of personal
20 information with clients, especially phone numbers.” *Id.*

21 72. The Security Order required “Random Dorm Searches” noting that “it is
22 imperative to perform random and targeted dorm searches.” *Id.* at 2.

23 73. Residents at La Mesa were required to agree to Guidelines and
24 Responsibilities as a condition of living at the shelter.

25 74. Defendant City of Anaheim knew or should have known about the unlawful
26 habitability conditions at La Mesa because it was covered in a March 19, 2020 article in *The*
27
28

1 *Guardian* that quoted a spokesperson for the City.⁵ Despite numerous resident complaints
2 and publicity over the conditions, Defendants City and Illumination Foundation failed to
3 correct the unsanitary conditions at La Mesa. Anaheim knew or should have known
4 about the unlawful searches at La Mesa because three of the plaintiffs filed claims with the
5 City regarding these searches.

6 75. Illumination Foundation knew or should have known about the unlawful
7 searches because plaintiffs Cyndi Utzman, Catherine Moore, and Wendy Powitzky
8 complained to La Mesa staff about the searches. Illumination Foundation knew or should
9 have known about the other sexual harassment committed by its staff because Cyndi
10 Utzman complained to a shelter counselor about the harassment. Illumination
11 Foundation knew or should have known about the sexual harassment Ms. Utzman
12 endured from another resident because La Mesa staff witnesses the harassment.
13 Illumination Foundation knew or should have known about the habitability issues at La
14 Mesa because shelter residents, including plaintiff Catherine Moore, complained about the
15 conditions to shelter staff, and because shelter staff were on-site to observe the conditions
16 first-hand.

17 76. The La Mesa shelter closed in 2022.

18 **II. SUMMARY OF LEGAL VIOLATIONS**

19 **A. SEX DISCRIMINATION AND HARASSMENT AT THE** 20 **FACILITIES**

21 77. The staff at La Mesa and the Courtyard routinely subjected women residents
22 to unlawful sexual discrimination and harassment, including groping, other unwanted
23 touching, leering, lewd comments, and propositioning. Security personnel at La Mesa also
24 subjected women residents to physically invasive searches. These acts created a hostile
25 living environment, and forced women residents to endure this harassment as a condition

26 ⁵ Sam Levin, *"If I get it, I die": homeless residents say inhumane shelter conditions will*
27 *spread coronavirus.*, *The Guardian*, March 19, 2020,
28 [https://www.theguardian.com/world/2020/mar/19/if-i-get-it-i-die-homeless-residents-
say-inhumane-shelter-conditions-will-spread-coronavirus](https://www.theguardian.com/world/2020/mar/19/if-i-get-it-i-die-homeless-residents-say-inhumane-shelter-conditions-will-spread-coronavirus) (last accessed 12/10/2020).

1 of their shelter stay.

2 78. Illumination Foundation’s unlawful searches required female residents to
3 publicly expose themselves to shelter staff and residents during searches, endure
4 improper touching of their breasts, be subjected to “pat downs” on exposed portions of
5 their bodies not covered with clothing, be searched multiple times per day even when
6 they had not left the shelter premises, and risk eviction from the shelter if they protested.

7 79. Although Illumination Foundation also required male residents at La Mesa to
8 be searched when they return to the facilities, these searches were significantly less
9 intrusive. Staff only patted down the outside of the men’s clothing, had them remove
10 their shoes, and sometimes made the men roll-up their pants legs to show their socks.
11 Men did not have to lift up their shirts or pull out their pant waistbands in order for staff
12 to check if they have any contraband near their private areas.

13 80. Shelter security had no discretion as to whether to conduct such searches of
14 shelter residents. Shelter staff demanded that security perform complete body searches on
15 shelter residents upon entry. Some security personnel complained to shelter staff about
16 their requirement to conduct invasive body searches but were told by shelter staff that
17 they were required to do so. Staff members directed security personnel that if they did not
18 follow staff orders regarding searches and security, they would be fired or transferred.

19 **B. LOCK-IN/SHUT-OUT POLICY**

20 81. Bridges and La Mesa both enforce or enforced a lock-in/shut-out policy that
21 prohibits residents from entering or leaving the shelters unless they do so by car, taxi,
22 ride-share, or other individual vehicle, or one of the shelters’ shuttles, which only run four
23 times a day. The shuttles can accommodate only a small fraction of the number of
24 residents living at the shelter, which results in many residents being trapped at the shelter
25 all day.

26 82. Anaheim currently funds the Salvation Army Orange County to operate the
27 Anaheim Emergency Shelter in the City. Anaheim requires Salvation Army to enforce a
28 lock-in/shut-out policy at the shelter.

1 83. Residents who violate the lock-in/shut-out policy by walking into or out of
2 the shelter may be evicted.

3 84. The County mandates that Bridges have this policy. *See Orange County Year*
4 *Round Emergency Shelter and Multi-Service Center Management, Operations and Public Safety*
5 *Plan*, Apr. 24, 2017, at 2. New and returning residents are to “receive direct transportation
6 to and from the shelter daily” from designated locations within the County that will be
7 selected by the police. *Id.* at 3. The County prohibits Bridges from picking-up or
8 dropping-off residents at any other places.

9 85. The County further segregates residents at Bridges from the community by
10 requiring the shelter to enforce an anti-loitering zone *within an entire mile of the shelter.*
11 *Orange County Year Round Emergency Shelter and Multi-Service Center Management,*
12 *Operations and Public Safety Plan*, Apr. 24, 2017, at 8. In fact, the County requires Mercy
13 House to “conduct random daily checks of 1 mile diameter to shelter and drop-off/pick
14 up locations to enforce shelter rules and avoid loitering and homeless congregations.” *Id.*
15 Residents found “loitering” within one mile of Bridges can be evicted from the shelter. *Id.*

16 86. Nothing in the County’s plan defines loitering. The County instead seems to
17 use the term to refer to remaining in a public place. For example, to prevent “long term
18 loitering,” residents are prohibited from arriving at a shuttle stop more than 15 minutes
19 before the scheduled departure time. *Id.* at 29.

20 87. An initial version of the County’s lock-in/shut-out policy, which it calls the
21 “Good Neighbor Policy,” was first presented during the November 17, 2015 Orange
22 County Board of Supervisors meeting, before the Supervisors voted to approve the
23 purchase of the Bridges property. The policy is part of the Orange County Year Round
24 Emergency Shelter and Multi-Service Center Management, Operations and Public Safety
25 Plan. As described during the meeting, the so-called “Good Neighbor Policy” was
26 developed by Orange County in collaboration with local law enforcement.

27 88. The so-called “Good Neighbor Policy” is based on unfounded, negative
28 stereotypes about homeless people, including the assumption that their presence around

1 the shelter would have a negative impact on the surrounding community – and that being
2 a “good neighbor” therefore means preventing “undesirable” people from being in the
3 community. For example, a study commissioned by the County admits that the Anaheim
4 Police Department “does not have any statistical information related to the types of crimes
5 associated with emergency shelters such as that proposed by the County.” County of
6 Orange, *Initial Study Proposed Mitigated Negative Declaration, Emergency Temporary Shelter
7 and Multi-Service Center*, Sept. 2015, at 52. The study contains no support for the
8 assumption that unhoused persons in the vicinity of the shelter would pose any different
9 kind of criminal behavior than housed persons residing or transacting business in the
10 vicinity of the shelter. Despite the lack of evidence, the report states that a so-called
11 “Good Neighbor Policy” is justified to mitigate the anticipated negative impacts of the
12 presence of unhoused people in the surrounding area.

13 89. La Mesa similarly prohibited residents from traveling to or from the shelter
14 except by privately owned vehicles or the shelter’s shuttles. As with Bridges, the lock-
15 in/shut-out policy was required by the government. Illumination Foundation’s contract
16 with the City specifically provided that residents “may not walk off or on [the] property.”
17 *La Mesa Shelter Management and Operation Plan 2019*, Illumination Foundation, (2019), at 24.

18 90. Although the justification for the lock-in/shut-out policy is to purportedly
19 ensure surrounding businesses and neighborhoods are not adversely impacted by people
20 staying at the shelters, both shelters are located across the street from each other on a
21 dead-end street that butts up against a major freeway. *E.g.* Anaheim City Council Agenda
22 Report from the Office of the City Manager, Dec. 6, 2018, at 2; *see* Map at Appendix A. The
23 shelters are located next to the Taboo Gentleman’s strip club, an industrial contracting/
24 metal-fabrication company, and a self-storage facility. There are no houses or other
25 residences in the area aside from the shelters themselves. There are no restrictions on
26 other establishments’ foot traffic. Only shelter residents face these prohibitions.

27 91. The lock-in/shut-out policy segregates shelter residents from the community
28 without legitimate justification, making it unreasonably difficult for shelter residents to

1 travel locally to work and keep medical and other appointments. At bottom, the policy is
2 based on stereotypes of homeless people.

3 **C. SUBSTANDARD LIVING CONDITIONS**

4 92. Conditions at the three shelters were so unsanitary that they posed a risk to
5 the health and well-being of shelter residents. The shelters failed to meet minimum
6 habitability standards for residential facilities. The Courtyard lacked any heating or
7 cooling, resulting in extreme heat in the summer and frigid temperatures in the winter.
8 Residents were forced to sleep in areas with no roof, and were exposed to the elements.
9 Residents regularly became sick in the winter due to the frigid temperatures and
10 unsanitary conditions, and during the summer, shelter temperatures sometimes soared to
11 100 degrees Fahrenheit.

12 93. All three shelters were infested with pests, including rodents, bedbugs,
13 pigeons, and roaches. Residents were forced to endure pests infesting and defecating on
14 their belongings, including in their sleeping areas. Residents were repeatedly bit by
15 bedbugs, and sometimes the bites became infected. The number of working toilets and
16 showers was and is woefully inadequate for the number of residents and also poorly
17 maintained. At the Courtyard, there were only three permanent bathrooms for over 200
18 women. The bathrooms were filthy, covered in blood and feces, and toilet paper was
19 rationed by shelter staff. The portable toilets were overflowing with waste, causing illness
20 and infections in the residents. The number of working showers at the shelters was and is
21 inadequate for the number of residents and were poorly maintained.

22 **D. RETALIATION**

23 94. Residents who alert shelter staff or governmental authorities about the
24 problems at the shelters faced retaliation from shelter staff, including eviction.

25 **III. HARM TO PLAINTIFFS**

26 **A. PLAINTIFF CYNDI UTZMAN**

27 95. Ms. Utzman became homeless in 2017 when her husband gained full
28 ownership of their San Juan Capistrano home by coercing her into signing a quitclaim

1 deed. Her boyfriend at the time – who was sexually and physically abusive – was on her
2 estranged husband’s side and helped coerce her to give up ownership of her home, used
3 up all the money in her savings account, and sold her personal vehicle. He later
4 purchased an RV where they both stayed, until the RV was later impounded, and Ms.
5 Utzman had nowhere to go. Lacking alternatives, she moved into a tent in the
6 surrounding hills. Ms. Utzman then spent time in many Orange County shelters,
7 including Defendants’ shelters.

8 96. Ms. Utzman resided at Bridges at Kraemer Place from August to October
9 2018, where she experienced unsanitary living conditions and lost several job interviews
10 due to the lock-in/shut-out policy. Ms. Utzman lived at the Courtyard from November
11 2018 to February 2019, where she similarly endured harmful living conditions and where
12 the staff sexually harassed her. She lived at La Mesa from September 2019 to May 2020,
13 where the staff also subjected her to sexual harassment, including invasive body searches,
14 substandard living conditions, and violated her freedom of movement.

15 97. During the winter at Bridges, it was so cold at night that Ms. Utzman would
16 often wake up at night shivering. When Ms. Utzman lived at Bridges, the bathrooms were
17 left in filthy and unsanitary conditions. In addition, there were not enough toilet stalls
18 and showers for the residents. The shelter had only approximately five toilet stalls and six
19 showers in the woman’s bathroom for approximately 100 women residents. The
20 conditions worsened when one or two of the showers were not working, which happened
21 frequently.

22 98. Some of the residents were unable to control their bladders or bowels and
23 defecated on the furniture, which is cloth-covered, or on the floor. Ms. Utzman sometimes
24 helped residents with their adult diapers because staff refused to help. When residents
25 would soil their beds, the staff would refuse to help clean them up, and other residents
26 would try to help. At night, the smell of excrement sometimes became so extreme that
27 residents could not sleep.

28 99. When Ms. Utzman lived at the Courtyard, she had to sleep in an area with no

1 roof, and she got wet when it rained. Ms. Utzman saw pigeons constantly in the shelter,
2 which would defecate everywhere, including where the residents ate.

3 100. In or around February 2019, a male staff member kicked Ms. Utzman out of
4 the shelter for objecting to sexual harassment. Specifically, when the staff member tried to
5 give Ms. Utzman a hug, she rebuffed him, and he responded by insulting her – calling her
6 “a snotty bitch.” When she responded that she had rights and could control who hugged
7 her, the staff member falsely accused her of being intoxicated and threw her out of the
8 shelter into the rain. Other staff members witnessed the incident and did not do anything
9 to stop her from getting kicked out. Moreover, she was not intoxicated at the time and did
10 not have a reputation of being intoxicated. She was never previously suspected or
11 accused of being intoxicated prior to that incident.

12 101. Other former residents report that Courtyard staff would routinely make
13 sexual comments to female residents, such as: “you’re looking fine,” “you have a good
14 body,” “how are those melons doing?” “you’ve got nice titties” and “I want to lick your
15 pussy.”⁶ Some even reported that female residents were being pimped out by the staff.⁷
16 On information and belief, Courtyard staff did not sexually proposition, hug, or grope
17 male residents of the shelter.

18 102. In March 2019, after the ACLU of Southern California published its report on
19 the Courtyard’s unhealthy conditions, Ms. Utzman went back to collect some of her
20 belongings. While there, the Director and Site Manager, Doris Starling, called Ms. Utzman
21 a “little bitch,” falsely accused her of pretending to be homeless so she could spy on the
22 shelter, did not allow her to collect her property, and told Ms. Utzman never to come back.

23 103. When Ms. Utzman stayed at La Mesa shelter, she complained to numerous
24 staff members about the invasive body searches. Ms. Utzman had to consent to searches
25 as a condition of living in the shelter – albeit coerced consent – since the alternative was
26 eviction from the shelter onto the streets, where she risked arrest.

27 _____
28 ⁶ Report at 32-33.
⁷ Report at 32-33.

1 104. From March to May 2020, Ms. Utzman was invasively searched by staff at La
2 Mesa, including when she entered the shelter, after brief smoke breaks outside with staff
3 supervision, and even after using the restroom. Sometimes these searches would occur
4 multiple times in a single day or even when Ms. Utzman had not left the shelter. At least
5 half a dozen times, staff members obligated Ms. Utzman to submit to the same search:
6 demanding that she stand up straight, spread her feet apart, pull out her bra, shake her
7 breasts, and pull out her waistband away from her hip so that staff could look down her
8 pants. Many times, these intrusive searches occurred in front of staff members and
9 residents – often male – and in full view of the shelter security camera.

10 105. Defendants’ repeated searches were unreasonably invasive. On one occasion,
11 Ms. Utzman was wearing a tank top, and a security guard searched Ms. Utzman by
12 patting her bare shoulders and arms. There was no justifiable basis for patting down
13 exposed skin.

14 106. Residents endured searches after they came back from a smoke break from
15 the on-premises patio area, despite the fact that the area was secured and there was no
16 actual risk that residents could bring contraband into the facility from the patio. However,
17 not everyone was searched and not everyone was searched in the same manner. The
18 guard that was on duty when Ms. Utzman went out for a smoke, determined the level of
19 intrusiveness the search was going to be. Unfortunately for Ms. Utzman, almost all the
20 guards searched her intrusively. Specifically, when staff members Elliot Recendiz or Asia
21 Chaney were on duty, she would always get searched intrusively. When Ms. Utzman
22 complained about these searches, La Mesa staff told her that the City of Anaheim required
23 them.

24 107. Although male residents were also subject to searches when they returned to
25 La Mesa, these searches were significantly less intrusive. Staff only patted down the
26 outside of the men’s clothing, had them remove their shoes, and sometimes made the men
27 roll-up their pants legs to show their socks. Men did not have to lift up their shirts or pull
28 out their pant waistbands in order for staff to check if they had any contraband near their

1 private areas. They were not ordered to expose their private body parts during searches,
2 while female residents were required to expose their breasts and sometimes suffered
3 security staff touching their breasts, often in front of male security and other residents.

4 108. Ms. Utzman complained, and asked for the invasive searches to stop, to at
5 least six different La Mesa staff members: case workers Brian Southen and Nikki Rivera;
6 lead staff Ukiah Anderson; and staff members Maria Alzcanar, Elliott Recendiz, and
7 Elmer. In response to these complaints, La Mesa staff affirmed that the searches were a
8 result of Anaheim's instructions and staff members were simply following orders. In fact,
9 a security guard explained that shelter staff specifically required that security make
10 residents shake out their bras. Ms. Utzman observed that she was searched more often
11 than some other residents.

12 109. Ms. Utzman is a survivor of childhood sexual assault and intimate partner
13 violence, and when shelter staff invasively searched her, she became so distressed that she
14 sought emotional support from a crisis center.

15 110. A male staff member at La Mesa, Elliott Recendiz, repeatedly entered the
16 women's dorm unannounced to watch the female residents while they were changing. On
17 some days, he entered the women's dorm at least eight times without valid justification.
18 He saw Ms. Utzman naked at least once, and saw several other women naked. When Ms.
19 Utzman complained to Recendiz about his constant entries into the women's dorm, and
20 despite the fact that she was sober, he shouted at her in front of the other residents that she
21 was "on contract" (i.e., had agreed to stay sober as a condition of staying the shelter), that
22 she had no right to privacy, and that if she didn't like it, she could leave. Recendiz
23 claimed he needed to enter the dorm to empty the trashcan. When Ms. Utzman moved
24 the trashcan to just outside the dorm's door so that he would not have to enter to empty it,
25 he wrote her up for doing so.

26 111. In or around October 30, 2019, Ms. Utzman told Recendiz that she was going
27 to video-record him coming into the women's dorm because La Mesa was not doing
28 anything to stop him. Recendiz wrote her up for violating La Mesa policy by videotaping

1 him. On information and belief, Recendiz wrongly wrote up Ms. Utzman after she had
2 started complaining about his entries into the women’s dorm, as retaliation against her for
3 complaining. In February 2020, Ms. Utzman complained to a counselor at La Mesa about
4 Recendiz’s behavior, but that counselor never followed-up.

5 112. In March 2020, La Mesa dispatched a staff member named Paul, Ms. Utzman,
6 and two other La Mesa residents (Amber and Scott) to shop, pick-up prescription
7 medications, and perform other tasks during the COVID lockdown. Paul was driving the
8 van they were using. When Ms. Utzman got into the passenger seat of the van, Scott told
9 her she had to sit in the back with Amber because she was a “stupid woman.” During the
10 drive, Scott called Ms. Utzman a “whore” and a “cunt.” When Ms. Utzman asked staff
11 member Paul to intercede, he laughed at her.

12 113. The following day, in the shelter dining area and in front of other shelter
13 residents, Scott shouted at Ms. Utzman: “when are you going to sit on my lap, little slut?”
14 At least three staff members heard this verbal abuse but failed to intercede, even after Ms.
15 Utzman asked them to stop Scott from harassing her. Ms. Utzman retreated to the
16 women’s dorm to escape the abuse.

17 114. Later that day, when Ms. Utzman attempted to talk to Paul about the
18 incident, she communicated the need for La Mesa staff to stop this abuse and even
19 suggested that the shelter consider implementing a code of conduct. Paul responded by
20 telling Ms. Utzman that she needed to have thicker skin. That same evening, another staff
21 member, Asia Chaney, announced that Scott would be leading the next shopping trip.
22 When Ms. Utzman and several other female residents protested and tried to explain that
23 his sexual harassment made it a hostile experience for female residents, Chaney told her to
24 shut up. Male residents at La Mesa were not subjected to sexual slurs or verbal sexual
25 harassment. On information and belief, Chaney was very friendly with Scott; they
26 appeared to be very intimate in public and many residents made the same observation.
27 Ms. Utzman never had any trouble with Chaney until Chaney and Scott started getting
28 closer and were seen spending time together at the shelter. On information and belief,

1 Chaney subjected Ms. Utzman to invasive searches to punish her for complaining about
2 sexual harassment from Scott.

3 115. In early April 2020, when Ms. Utzman complained about the staff's failure to
4 respond to Scott's harassment, La Mesa staff asked her if Chaney was safe with her at the
5 shelter. They were accusing Ms. Utzman of threatening harm to Chaney and gave Ms.
6 Utzman a warning. About a month later, staff singled out Ms. Utzman by writing her up
7 for a purported issue where other similarly situated residents were not written up. She
8 complained and two days later, Defendant Illumination Foundation kicked her out of La
9 Mesa.

10 116. In November 2019, Plaintiff Utzman got a four-day job just a few blocks from
11 the shelter, but she was not allowed to walk there or back due to the lock-in/shut-out
12 policy, which prevents shelter residents from going or coming to the shelter other than in
13 a vehicle. Staff member Recendiz was scheduled to pick Ms. Utzman up at the end of her
14 shift, but she ended up having to wait for four hours past her shift despite the shelter only
15 being a two minute drive or a ten minute walk away. Ms. Utzman was eventually picked
16 up by Recendiz at 9:00 pm – well past daylight hours which caused her to fear for her
17 safety. Ms. Utzman complained about the policy to shelter staff.

18 **B. PLAINTIFF DEBORAH KRAFT**

19 117. Ms. Kraft lived with a violent partner in early 2016. Fearful that her partner
20 would kill her, she fled her home with her two dogs. She stayed at a domestic violence
21 shelter in San Clemente for six weeks, and then lived in a transitional program for two
22 months.

23 118. After leaving the transitional program, Ms. Kraft lived at the Courtyard from
24 October 2016 to October 2018. While living at the Courtyard, Ms. Kraft was subjected to
25 dangerously filthy living conditions that contributed to several bouts of pneumonia. Male
26 staff members sexually harassed her, causing harmful mental health effects, including
27 depression and suicidal thoughts.

28 119. One male staff member at the Courtyard named "Big E" regularly appeared

1 beside Ms. Kraft's cot and would wake her by taking her hand, massaging her palm,
2 asking her whether she still had a boyfriend, and leering at her. Big E also frequently
3 hugged her while groaning in a sexual way.

4 120. Staff members at the Courtyard would frequently proposition Ms. Kraft. For
5 example, a staff member named Tommy approached Ms. Kraft daily, put his arm around
6 her without her consent, and bragged to her about his sexual conquests. Tommy and Big
7 E would compete for her attention. When Big E saw Tommy with his arm around Ms.
8 Kraft, he would ask her, "Are you going to him instead of me? Don't listen to him."

9 121. Ms. Kraft made it clear that the conduct was unwelcomed, but staff ignored
10 her and continued to harass her. On at least one occasion, she observed Big E staring at
11 her buttocks. She objected, to which he replied: "Well, I'm a man still."

12 122. Ms. Kraft was afraid to complain about the harassment because she feared the
13 staff would retaliate against her by kicking her out of the shelter or withdrawing
14 privileges. Ms. Kraft witnessed staff deny shelter access to a female resident, Trisha, who
15 stood up for herself several times in connection with the staff's sexual harassment. Trisha
16 had complained that there were no female staff members on-site at night, and the women
17 residents did not feel comfortable with male staff doing checks on the women's area and
18 leering at the women while they were sleeping. Soon after one of the times that Trisha
19 spoke up, she came back from the hospital after curfew and the staff refused to let her
20 back in, even though residents were allowed to come back after curfew after they had
21 been at the hospital. Trisha ended up sleeping outside that night.

22 123. Unlike Trisha, even though Ms. Kraft was also uncomfortable with the male
23 staff member who leered at women while they slept, she did not complain out of fear of
24 retaliation. She simply asked one of the staff members if he could get a female staff
25 member for the night shift, but he responded by repeatedly yelling at her to "shut up,"
26 while moving towards her in an aggressive manner. He was significantly larger
27 physically than Ms. Kraft and intimidated her. He paced towards her as she took large
28 steps walking backwards and away from him, until she ended up sitting on her bed.

1 124. Ms. Kraft was also aware of another woman who complained about problems
2 at the shelter, and then had belongings stolen out of her bin that was accessible only to
3 staff. Ms. Kraft was afraid that she would face similar retaliation if she complained.

4 125. Ms. Kraft became involved with a boyfriend in the hopes that being in a
5 relationship would stop staff from harassing her. Once staff learned she had a boyfriend,
6 they then started to retaliate against both her and her boyfriend. One staff member who
7 had previously helped her by moving her cot when the sleeping spots were rearranged
8 and doing other tasks she could not do on her own, stopped doing so. Instead, he started
9 waking Ms. Kraft and her boyfriend, who were sleeping next to each other, up at 6 am by
10 blowing a leaf blower by their heads. He told Ms. Kraft that she was giving him mixed
11 messages, and he started giving her boyfriend a hard time as well. The staff member
12 would also tell Ms. Kraft and her boyfriend to stop sitting together. Other staff refused to
13 give her boyfriend a bed several times, even though there were available beds, which had
14 not happened before he started dating Ms. Kraft. When The Courtyard set up a couple's
15 area, the staff would not permit him and Ms. Kraft to be together in that area.

16 126. Almost every day, Ms. Kraft would get propositioned by male residents,
17 telling her, "Let's go to a motel together. We can have sex and do meth." Ms. Kraft knew
18 she could not report this harassment to staff because staff engaged in the same sexually
19 harassing conduct with her. Ms. Kraft also knew that she could not report the conduct to
20 the director of the program because the director was already aware that the staff was
21 harassing her and yet did nothing to stop the conduct.

22 127. The director of the Courtyard, Doris Starling, condoned sexual relationships
23 between staff and residents and once asked Ms. Kraft why she was with her boyfriend
24 when she could have been with one of the Courtyard staff members. It was common
25 knowledge that the Courtyard's culture favored residents who went along with staff and
26 as a result would receive privileges. Ms. Kraft knew one resident who was having sexual
27 relations with staff members, and in return, got a job at the shelter. This resident was also
28 later allowed to stay at a sober living home, which had much better living conditions

1 compared to the shelter. Residents who chose not to go along with the staff's behavior
2 faced retaliation. This made Ms. Kraft feel like she could not complain to management
3 about the sexual harassment. Ms. Kraft had nowhere else to go, and was terrified of
4 having to sleep outside.

5 128. The sexual harassment and abuse by staff and residents caused Ms. Kraft
6 severe emotional distress, even causing her to consider suicide on at least two occasions.
7 The sexual harassment was particularly triggering for Ms. Kraft due to her history of
8 intimate partner violence.

9 129. Ms. Kraft came down with pneumonia two winters in a row after enduring
10 the unsanitary and crowded conditions of the shelter. During the summer, the
11 temperature inside the shelter would often reach (and in some cases exceed) 100 degrees
12 Fahrenheit. During the winter, the temperature would sink to close to 50 degrees
13 Fahrenheit. (See photos of temperature readings from inside the Courtyard at Appendix
14 B.) The toll of extreme temperatures was exacerbated by overcrowding and poor
15 ventilation, as the Courtyard was crammed with hundreds of people.

16 130. The shelter was also infested. Ms. Kraft saw rats running around the facility
17 every night. Every week she found rat droppings in her belongings stored under her cot
18 and had to sweep them out. Sometimes she cleaned rat droppings in her area without
19 access to cleaning supplies or soap to wash her hands. Ms. Kraft was also bitten by
20 bedbugs while living at the Courtyard.

21 131. The shelter did not provide adequate laundry facilities for residents. On one
22 occasion, all of the washing machines were not working, and the shelter did not fix them
23 for several weeks.

24 132. There are only about three permanent bathrooms at the Courtyard for over
25 200 women. The restrooms usually had blood and feces on the toilet seats and floors.
26 The faucets were often broken, and the sinks often lacked soap. The person responsible
27 for cleaning the bathrooms did not use any cleaning products when he cleaned, but
28 simply hosed down the bathroom with water only.

1 133. The portable toilets were no better and did not function properly. Moreover,
2 the shelter did not clean them out often enough. As a result, they were always
3 overflowing with urine and excrement. After using the shelter’s toilets, Ms. Kraft
4 contracted multiple urinary-tract infections. She sometimes resorted to standing on the
5 toilet seat or urinating in the bushes to avoid contact with the urine, excrement, and other
6 waste covering the toilets. During the summer, the odor of waste would often become so
7 overwhelming that Ms. Kraft would hold her breath while using the toilets in order to
8 avoid fainting. The outhouses were so close to the living area that residents in the shelter
9 could smell urine and feces. The staff doled out squares of toilet paper for residents and
10 sometimes did not give residents enough toilet paper for them to clean themselves
11 properly.

12 134. Attached as Appendix C are two photographs of one of the Courtyard’s
13 toilets taken on the morning of July 30, 2018, when Ms. Kraft was living there, and
14 included in the Report.

15 **C. PLAINTIFF WENDY POWITZKY**

16 135. About ten years ago, Ms. Powitzky lost her job when she had to spend time at
17 home with a child who was having challenges at school. As a result, she lost her housing
18 and became homeless.

19 136. The staff at La Mesa subjected Ms. Powitzky to invasive searches. Ms.
20 Powitzky had to consent to searches as a condition of living in the shelter – albeit coerced
21 consent – since the alternative was eviction from the shelter onto the street where she
22 would almost certainly be arrested.

23 137. In August 2019, when Ms. Powitzky returned to La Mesa one night with her
24 adult son, Andrew Powitzky, she passed through the shelter’s metal detector without
25 activating it. Nevertheless, a security guard named Tawny had her put her arms above
26 her head and spread her legs. The guard then proceeded to put her hands on each side of
27 Ms. Powitzky’s chest, run her hands down the sides of Ms. Powitzky’s breasts, then run
28 her hands completely underneath each breast until the guard had the bottom of each

1 breast in the palm of her hand, and then raised Ms. Powitzky's breasts off her chest.
2 Tawney also searched Andrew, but the search was not as invasive. Tawney patted
3 Andrew, while Andrew observed Tawney rub her hands all over Ms. Powitzky. Andrew
4 felt uncomfortable watching his mother get touched in this manner. Ms. Powitzky did not
5 complain because she did not want to be thrown out of the shelter.

6 138. That same month, a shelter employee named Maria summoned Ms.
7 Powitzky, who was inside the shelter, to the guard at the front of the facility to search her
8 for no reason. The guard inappropriately rubbed Ms. Powitzky's body and cupped her
9 breasts while conducting the search. Although the guard found nothing, Ms. Powitzky
10 was then ordered to lift her shirt above her breasts, pull her bra away from her body, and
11 shake her bra. This search exposed Ms. Powitzky's breasts to a male security guard
12 standing about six feet away, as well as to male and female residents who were present on
13 the nearby patio. Ms. Powitzky complained about this incident to management and asked
14 for the searches to stop but no action was taken.

15 139. In November 2019, a shelter employee, Maria Alzcanar summoned Ms.
16 Powitzky to the same security area and falsely accused her of having contraband. The
17 guard ordered Ms. Powitzky to lean over, pull her bra away from her body, and shake it
18 in front of male security guards and numerous residents. Ms. Powitzky complied, and
19 just like the previous search, no contraband was found. The guard then ordered Ms.
20 Powitzky to expose herself again, which she refused to do. Ms. Powitzky filed a written
21 grievance about this incident with La Mesa Director of Operations, Jason Wofford. Ms.
22 Powitzky specifically complained about the invasive nature of the searches, and requested
23 that La Mesa stop conducting searches in this manner. No La Mesa staff responded to Ms.
24 Powitzky's grievance.

25 140. In October and November 2019, Alzcanar—one of the staff Ms. Powitzky
26 complained about—gave her write-ups for having drugs, even though Ms. Powitzky had
27 prescriptions for all the drugs in her possession. On information and belief, these write
28 ups were retaliation for her complaints about the invasive searches. These write ups could

1 result in eviction from the shelter.

2 141. Ms. Powitzky filed a discrimination complaint with the California
3 Department of Fair Employment and Housing regarding these invasive searches. *See*
4 *Amended Complaint of Discrimination, Powitzky v. City of Anaheim*, No. 201910-08009522,
5 Cal. Dep't of Fair Emp't and Hous. (Mar. 19, 2020).

6 142. Ms. Powitzky lost two jobs due to the lock-in/shut-out policy. When she first
7 started living at La Mesa, she had a warehouse job with a night shift that started around
8 5:00-6:00 p.m. and ended around 3:00 a.m. The job was only a 12 minute drive away and
9 also had public bus accessibility that ran from the shelter to the warehouse. However, she
10 was not allowed to use public transportation because the policy required residents,
11 without their own car or a ride-share, to use the shelter shuttle to reach the shelter. The
12 shelter shuttle did not run at convenient times or stop at locations that were convenient for
13 Ms. Powitzky to get to her workplace. It took her three to four hours to get to the
14 warehouse, and she eventually quit the job because the commute was so difficult.

15 143. Around October 2019, Ms. Powitzky secured a job at a nearby Waste
16 Management Plant where she would start work at 3:00 p.m. and finish at around 8:00 p.m.
17 The plant was located less than two miles from the shelter and a public bus went directly
18 from the shelter to the plant. The shelter shuttle did not run at times that coincided with
19 her shift. The lock-in/shut-out policy restricted Ms. Powitzky's ability to walk up to the
20 shelter, forcing her to take a public bus back from work and then wait for a friend to drive
21 her from the bus stop to the shelter by car. When she complained about the impact of the
22 policy to the shelter's staff, she was told to take a Lyft or Uber from the bus stop to the
23 shelter, one block away. Ms. Powitzky could not satisfy these restrictions because she did
24 not have a credit card or bank account which is required to set up a rideshare service
25 account, and she could not afford these services. In or around November 2019, she
26 walked into the shelter on the way back from work and was penalized with a write up. In
27 January 2020, Ms. Powitzky left the job because it was too difficult to go back and forth
28 using only the shelter shuttle.

1 144. Ms. Powitzky has also worked as a hairdresser in the past, but the shelter
2 policies make it impractical for her to schedule appointments around her clients'
3 schedules.

4 145. Ms. Powitzky complained to several staff members about the lock-in/shut-
5 out policy, including to her counselors, Nikki and Jamie, to Elliott Recendiz, a staff
6 member, to Director of Operations Jason Wofford, to Associate Director of Operations
7 Summer Thomason, and to Site Supervisor Ukia Anderson.

8 146. Ms. Powitzky also experienced unsanitary and unsafe conditions at La Mesa.
9 On Ms. Powitzky's first night in the La Mesa shelter, she slipped in the bathroom due to
10 the standing water on the floor. She immediately reported this to Asia Chaney, a staff
11 member, and requested that La Mesa install floor mats to absorb the water. It was not
12 until about six months later that La Mesa installed mats in the women's bathroom.

13 147. Ms. Powitzky does not have permanent housing and will likely need to use
14 homeless shelters in Anaheim or Orange County again.

15 **D. PLAINTIFF JOSHUA OGLE**

16 148. Mr. Ogle was a divorced father of four minor children and one adult son. He
17 was an artist with a focus on ceramic arts. Following his divorce, he ended up living on
18 the streets of Anaheim and Fullerton in 2017. During his time at Bridges, he endured
19 horrible living conditions. Upon information and belief, the shelter staff retaliated against
20 Mr. Ogle after he spoke out about the shelter's conditions at an Orange County Board of
21 Supervisors meeting.

22 149. While Mr. Ogle stayed there, Bridges was infested with bed bugs and
23 rodents. Bedbugs bit Mr. Ogle on several occasions, and when infected, the bites filled
24 with pus. Mr. Ogle contracted cellulitis, a dangerous bacterial skin infection, from the
25 unsanitary conditions in the shelter. He also observed other residents contract cellulitis at
26 the shelter.

27 150. When Mr. Ogle lived at Bridges, the bathrooms were unmaintained and
28 unsanitary. There were not enough toilet stalls and showers for the residents. Mr. Ogle

1 saw feces in the showers and people with open wounds that leaked onto the floor.

2 151. In or around April 2019, several residents of Bridges, including Mr. Ogle,
3 spoke at an Orange County Board of Supervisors meeting about the unsanitary conditions
4 at the shelter. Shortly after that meeting, Bridges staff demanded that each of the residents
5 who had spoken before the Board have individual meetings with staff. The chief of
6 operations asked Mr. Ogle whether they could get him to leave the shelter. Mr. Ogle
7 agreed to live in his car if he could get the starter motor fixed and staff initially offered to
8 pay for that repair but later refused. Shortly after, staff demanded that Mr. Ogle remove
9 his car from the shelter parking lot and park along the street. Staff then called the police
10 and had Mr. Ogle's car towed. The police report confirms that the shelter security
11 company made the call to tow the car. Mr. Ogle could not afford to pay the fine and
12 towing fees to get his car back, and it was sold at auction. When Mr. Ogle had first moved
13 into Bridges, staff members told him not to worry about parking on the street because cars
14 were never towed.

15 152. After Mr. Ogle spoke at the Board meeting, staff also started enforcing rules
16 against him that they had not previously enforced. For example, although he had
17 previously been able to return after the 10:00 p.m. curfew when he was caring for his
18 children, after he spoke at the meeting, staff tried to evict him for this same conduct. This
19 strict enforcement of curfew negatively affected Mr. Ogle's ability to care for his children.
20 Staff also allowed a resident who had stolen his car (before it was towed) and threatened
21 his family, to stay in the shelter. The staff knew that Mr. Ogle was not comfortable living
22 in the same shelter with this individual, and on information and belief, they let the
23 resident back into the shelter in an attempt to intimidate Mr. Ogle into leaving. Living at
24 Bridges worsened Mr. Ogle's mental health and caused him to have nightmares. Mr. Ogle
25 already suffered from Post-Traumatic Stress Disorder and these events made his condition
26 much worse.

27 153. Mr. Ogle passed away in 2021. He is survived by four minor children and
28 one adult son.

1 **E. PLAINTIFF JORDYNNE LANCASTER**

2 154. Ms. Lancaster is a survivor of domestic violence and of childhood sexual
3 assault. About nine years ago, she was evicted from her condominium in Woodland Hills
4 because her roommate moved out and she could no longer afford the rent. She moved to
5 a residential program in Orange County, and then spent several months in the hospital. In
6 the fall of 2017, she moved into Orange County’s Armory winter shelter. After leaving the
7 Armory shelter, she moved into the Courtyard.

8 155. While Ms. Lancaster was at the Courtyard, male staff members constantly
9 sexually harassed her, and she was subjected to unsafe and unsanitary living conditions.
10 Due to the filthy conditions and constant sexual harassment, her mental health
11 deteriorated.

12 156. Multiple male staff members incessantly sexually harassed Ms. Lancaster at
13 the Courtyard. Male staff would start by hugging her, and then progress to vulgar
14 comments and groping. Some staff members would slide their hands down her buttocks
15 while they were hugging her. Some would intentionally get too close and rub up against
16 her breasts when they passed by her in the shelter. Some staff members would, on a daily
17 basis, say things like: “Fine ass, yeah. You know if you didn’t have your man...,” “You
18 tasty meal, you. You’re too fine to be here, come live with me,” or tell her what they
19 wanted to do to her in bed.

20 157. When staff looked at or touched Ms. Lancaster in a sexual way, she would tell
21 them to stop. Ms. Lancaster even stopped showering in an attempt to deter this abuse, but
22 it did not help.

23 158. Ms. Lancaster observed the shelter management turn a blind eye to staff
24 committing criminal acts, like paying residents for their food stamps at a discounted rate
25 or taking recycling away from residents and not paying for it. Ms. Lancaster observed
26 staff stealing donations and residents’ property from the storage bins. Upon seeing that
27 management allowed staff to act in this manner, Ms. Lancaster did not report the sexual
28 harassment.

1 159. Ms. Lancaster initially did not complain because she did not want to be
2 thrown out of the shelter with her husband – who suffers from epilepsy. With her
3 disabled husband, it was particularly dangerous for Ms. Lancaster to be living on the
4 streets. Ms. Lancaster had observed another woman living at the Courtyard get evicted
5 for complaining about sexual harassment.

6 160. The staff at the Courtyard sexually harassed Ms. Lancaster daily. The sexual
7 harassment triggered memories of previous experiences of domestic violence and sexual
8 assault, worsening her mental and emotional health. She became suicidal and was
9 admitted to mental hospitals and a crisis center several times for extended stays.

10 161. Ms. Lancaster developed pneumonia and bronchitis during her stay at the
11 Courtyard because of the unsanitary conditions. During the winter, she suffered from
12 very harsh weather conditions because the Courtyard was an open structure facility
13 allowing wind to enter from all sides. Because there were no space heaters or air
14 conditioning at the shelter, Ms. Lancaster had to rely on her blankets to stay warm. (*See*
15 *Courtyard Temperature Reading of 54 degrees at Appendix C*). Ms. Lancaster was
16 hospitalized four times due to illnesses contracted while staying at the Courtyard.

17 162. Ms. Lancaster found rodents infesting her belongings and saw cockroaches
18 and water bugs all around the shelter. Ms. Lancaster was also bitten by bed bugs all over
19 her body and contracted lice at the Courtyard.

20 163. When Ms. Lancaster lived at the Courtyard, the showers were sometimes
21 closed for two weeks, forcing her to shower elsewhere. When she complained to shelter
22 staff about the conditions, she was told that if she did not like the shelter, she could leave.

23 164. Ms. Lancaster contracted *Clostridium difficile* (*C. diff.*) on two separate
24 occasions from the unsanitary conditions in the toilets at the Courtyard. *C. diff* is a
25 bacterial infection that can cause diarrhea and can be life threatening. On one of these
26 occasions, Ms. Lancaster became extremely dehydrated from the diarrhea, in part because
27 the Courtyard lacked water fountains or sufficient drinkable water. Ms. Lancaster lost so
28 much fluid that she ended up fainting and was taken to the hospital by ambulance. At the

1 hospital, she learned that she had lost over 70% of the fluids in her body. Ms. Lancaster
2 observed another Courtyard resident who also contracted C. diff.

3 165. Ms. Lancaster also suffered from food poisoning from food served at the
4 Courtyard. On one occasion, she ate sausage served by the Courtyard that tasted rotten,
5 and an hour later she started vomiting profusely. When she told the shelter director,
6 Doris Starling, that she got food poisoning, Ms. Starling denied that it was from food
7 served at the Courtyard.

8 166. In July 2019, after Ms. Lancaster complained to staff about the conditions, she
9 left the Courtyard. When she tried to come back, Ms. Starling refused to let her back in,
10 and claimed the County had said Ms. Lancaster was not allowed back in the Courtyard.
11 However, when Ms. Lancaster checked with Juanita Presidio, a staff member from the
12 County, Ms. Presidio told her that it was up to Ms. Starling whether to let Ms. Lancaster
13 back in and it was not a decision the County made.

14 **F. PLAINTIFF CATHERINE MOORE**

15 167. In 2008, after the economic collapse, Ms. Moore and her husband lost their
16 jobs and their housing. They moved into an RV, and Ms. Moore started a ministry. In
17 2012, Ms. Moore and her husband divorced, he took the RV, and left her and her three
18 minor children homeless. She lived in encampments along the Santa Ana riverbed in
19 Orange County from 2012 until December 27, 2018, when she secured a spot in a new
20 temporary shelter called Anaheim Way. She moved from Anaheim Way to La Mesa in
21 March 2019.

22 168. While she was at La Mesa, the staff sexually harassed her in many ways,
23 including subjecting her to invasive body searches. Ms. Moore was also exposed to
24 dangerously unsafe and unsanitary living conditions at La Mesa. She was also harmed by
25 La Mesa's lock-in/shut-out policy.

26 169. The guards at La Mesa conducted extremely invasive searches of Ms. Moore.
27 Although staff did not search all residents, they would routinely demand to search Ms.
28 Moore from March to August 2019, even after she passed through a metal detector

1 without setting it off. These searches triggered trauma from her history of childhood
2 sexual abuse. Ms. Moore had to consent to searches as a condition of living in the
3 shelter – albeit coerced consent – since the alternative was eviction from the shelter onto
4 the street, where she risked arrest.

5 170. On two occasions in March and April of 2019, security guard Maria Alzcanar
6 asked to search Ms. Moore even though she had walked through the metal detector
7 without activating it. Both times, Alzcanar placed her open palms on Ms. Moore’s hips
8 and waist and rubbed her hands all around Ms. Moore’s waist by the belt line, and then
9 toward the front of her thighs near her private areas. On the third occasion, a different
10 security guard also engaged in a similar pat down.

11 171. On June 30, 2019, Ms. Moore was wearing close fitted spandex shorts and a
12 tank top. Nevertheless, staff conducted an intrusive search. There was no justifiable basis
13 for patting down body hugging clothes and bare skin.

14 172. When Ms. Moore objected and asked for the searches to stop, the La Mesa
15 staff told her “you don’t have to live here.” Alzcanar was employed by defendant
16 Protection America, Inc. at the time she searched Moore in the spring of 2019. La Mesa
17 later hired Alzcanar to be staff at the shelter.

18 173. Between March and August 2019, Ms. Moore repeatedly complained to La
19 Mesa management about the invasive searches and asked for them to stop.

20 174. In late June 30, 2019, after La Mesa staff wrote up Ms. Moore for refusing a
21 search, she complained to staff member Recendiz about the invasive searches and the
22 unfair write up. Ms. Moore also filed a written grievance about the write up she received
23 for refusing to undergo a search. Recendiz threatened to evict her, stating “if you don’t
24 like the procedures, you can leave.” In or around September 23, 2019, Ms. Moore
25 complained to Paul Leon, the CEO of Illumination Foundation, about how La Mesa was
26 treating female residents. In or around October 7, 2019, La Mesa Director of Operations
27 Jason Wofford met with Ms. Moore about her complaints, and during the meeting he told
28 her that if she didn’t like the searches, she could leave. On information and belief, La

1 Mesa refused to take any action to stop these invasive searches and Ms. Moore was being
2 threatened with eviction for filing a complaint about sexual harassment.

3 175. Ms. Moore filed a discrimination complaint with the California Department
4 of Fair Employment and Housing regarding these invasive searches. *See Amended*
5 *Complaint of Discrimination, Moore v. City of Anaheim*, No. 201910-07756401, Cal. Dep't of
6 Fair Emp't and Hous. (Jun. 24, 2020).

7 176. Staff member Recendiz repeatedly entered the women's dorm to look at the
8 female residents while they were changing. On some days, he entered the women's dorm
9 at least eight times without valid justification. He saw Ms. Moore naked at least four
10 times, and saw several other women naked.

11 177. Ms. Moore also suffered from the lock-in/shut-out policy. Due to La Mesa
12 not running enough shuttles for shelter residents who needed to leave the shelter, Ms.
13 Moore had to sit on another resident's lap at least two times in order to fit in the shelter
14 shuttle. She also witnessed a resident sit in the cargo area of the shuttle—a space not
15 meant for seating. Due to the lock-in/shut-out policy, when Ms. Moore missed the last
16 shuttle back one evening, she had no choice but to sleep on the street. Ms. Moore had her
17 bike with her and could have biked back if that had been permitted.

18 178. The shelter conditions at La Mesa were unsanitary. Ms. Moore observed that
19 staff with long hair handled the food improperly, without hairnets or gloves. While at the
20 shelter, Ms. Moore was stricken with food poisoning and filed a complaint with the
21 county health department. She often found blood on the toilets and had to wipe them
22 down herself. The cleaning supply cabinet was often locked, and staff refused to unlock it
23 for her, so she was unable to clean her surroundings. There were also cockroaches and
24 rodents in the women's dorm. Ms. Moore brought up the substandard conditions to La
25 Mesa staff, including at "town hall" meetings held to elicit resident feedback on or around
26 April 5, 2019, August 1, 2019, and October 10, 2019. On information and belief, La Mesa
27 lacked a cleaning crew, and staff members cleaned only sporadically.

28 **G. PLAINTIFF CALLIE RUTTER**

1 179. Growing up, Ms. Rutter trained to be an Olympic equestrian. She worked at
2 a temp agency but struggled to pay her rent as she managed her epilepsy. In 2017, she lost
3 her housing. When she ran out of money, she moved into her car and parked in front of a
4 police station because it was the safest place to sleep. After living in her car for several
5 months, Ms. Rutter lived in a transitional program for several months.

6 180. Following the transitional program, Ms. Rutter lived at Bridges where she
7 was subjected to unsanitary and unhealthy living conditions. Since entering the shelter
8 system, she has been diagnosed with lung cancer and has undergone surgery, radiation,
9 and chemotherapy. The poor sanitary conditions at Bridges exacerbated her medical
10 condition and compromised her immune system.

11 181. When Ms. Rutter was living at Bridges, she suffered from the lock-in/shut-
12 out policy. In addition to preventing walk ups, the Bridges shelter did not allow people
13 who had cars to stay in their cars for more than twenty minutes while parked in the
14 shelter lot. Ms. Rutter would try to make private phone calls from her car, but guards
15 would tell her to make them from inside the shelter if she was taking more than twenty
16 minutes. The shelter limited her to one twenty-minute call per day from her car. This
17 policy isolated Ms. Rutter from family who could offer comfort and a break from her
18 isolation. Ms. Rutter complained to the shelter director about this limitation and never
19 received a response.

20 182. Ms. Rutter was receiving chemotherapy and radiation treatment for lung
21 cancer when she stayed at Bridges. She was often unable to get a warm shower to help
22 with the chills she got from the treatments – there was no hot water, and warm water was
23 limited at the shelter. There was often one-half inch of water covering the women’s
24 bathroom floor and the showers always had standing dirty water. The floors and walls of
25 the showers were covered in mildew and mold. As a result, Ms. Rutter sometimes
26 avoided showering altogether because the cold showers would make her feel sicker. On
27 information and belief, the shelter lacked a cleaning crew, and staff members cleaned only
28 sporadically.

1 183. When Ms. Rutter experienced nausea from her treatments, she sometimes
2 could not make it to the bathroom in time before she vomited. Staff refused to allow her
3 to have her own waste basket, which caused her to vomit on her own bed. Initially staff
4 would not even allow her to have cleaning products to help her clean up after herself
5 when she threw up unexpectedly. Even when she was able to make it to the bathroom,
6 she often had to wait because all the stalls were occupied as there were not enough toilets
7 for all the residents. One time when she was sick to her stomach from the cancer
8 treatment and the women’s bathroom stalls were all occupied, she tried to use a staff
9 bathroom in desperation. A male staff member tried to stop her. She explained that it was
10 an emergency, and she was sick from the cancer treatment, but he told her she would have
11 to wait. She pushed past him to use the bathroom and he continued to berate her when
12 she came out.

13 184. When Ms. Rutter lived at Bridges, she was constantly cold during the winter
14 because the shelter keeps the temperature at 63 degrees. People got sick so often that
15 residents gave a nickname to the cough that developed while living at Bridges: the
16 Kraemer cough. Bed bugs also infested Ms. Rutter’s bed while she lived at the shelter.

17 185. When Ms. Rutter lived at Bridges, the shelter maintained unsanitary
18 bathrooms. There were not enough toilet stalls and showers for the residents. The shelter
19 had about five toilet stalls and six showers in the woman’s bathroom, and there were
20 around 100 women in the shelter. The conditions got worse at times because one or two of
21 the showers were often not working.

22 **H. PLAINTIFF THIEN CHI (PATRICK) BUI**

23 186. Mr. Bui has a bachelor’s degree in computer science from the University of
24 California, Irvine and worked in computer development for 17 years. Mr. Bui lost his job
25 and ended up homeless.

26 187. Mr. Bui lived at the Courtyard shelter in 2019 and 2020, where he experienced
27 dangerous living conditions.

28 188. During the winter months, the residents were exposed to very harsh weather

1 conditions. Given the structure of the Courtyard, the lack of walls meant that the
2 residents were exposed to strong cold winds blowing through the shelter all night. Mr.
3 Bui would shiver the moment he came out from under his blanket due to the extreme cold.

4 189. Due to the unsanitary conditions, Mr. Bui developed red sores on his arms
5 from bed bug bites.

6 190. There were often not enough working showers or sinks for the residents.
7 Usually, only three out of the five sinks near the portable toilets worked. Although the
8 sinks had soap dispensers, they were often empty and staff filled them with the wrong
9 kind of soap (powdered rather than liquid), which made them unusable. The Courtyard's
10 nine portable showers were often in a state of disrepair; at times, all the showers were
11 non-operational for up to two weeks. Water sometimes came out of the showerheads in a
12 trickle. Residents reported black mold in the shower area and black water regularly
13 seeped from the bottom of the units. The staff used sandbags to manage the leaking
14 water. The floors were always wet. Hot water worked only intermittently, forcing people
15 to take cold showers for days or weeks at a time.

16 191. Mr. Bui was often unable to take a hot shower or properly clean himself. The
17 shelter limited times when residents could use the showers, and Mr. Bui often was unable
18 to shower, or had to choose between taking a shower and eating dinner. On one occasion,
19 Mr. Bui was taking a shower when a staff member suddenly rushed into the shower and
20 yelled that he was not allowed to be in the shower at the time. Since there were not
21 enough sinks, toilets, and showers for the residents, they often had to wait in line to use
22 them. The lines were so long that Bui often had to go somewhere else to find a public
23 bathroom to use.

24 192. Mr. Bui lived in Bridges shelter from April 2021 to December of 2022, where
25 he was again subjected to unsanitary living conditions and suffered from the lock-in
26 policy.

27 193. At Bridges, the shelter conditions were usually very cold, and residents were
28 not provided with adequate blankets to keep warm.

1 194. There were also bedbugs in the beds at Bridges and Mr. Bui found bedbugs
2 and blood smears in his bed. Mr. Bui repeatedly asked Bridges staff to address these
3 concerns. But the staff refused and never inspected his bed.

4 195. While Mr. Bui was living at Bridges, the ADA-accessible showers for men
5 were often unavailable; some of the sinks and urinals in the men’s bathroom were
6 sometimes non-functional; and the showers were often dirty.

7 **I. PLAINTIFF OMA’S ANGEL FOUNDATION**

8 196. Oma’s Angel Foundation was founded to help unhoused persons with their
9 basic needs, build small homes, and provide social support to unhoused persons when
10 they are living on the street, or in hospitals and nursing homes. Heidemarie
11 Zimmermann, the founder of and primary volunteer at Oma’s Angel Foundation, has
12 spent between five to twenty hours a week donating her time to the work of Oma’s Angel
13 Foundation in the past five years. After Defendants opened their shelters, Oma’s Angel
14 Foundation had to expend about 75 percent of its time and resources advocating for, and
15 providing case management to, homeless individuals who have been harmed by the
16 practices, policies, and conditions that gave rise to this case. For example, Oma’s Angel
17 Foundation often received calls from shelter residents seeking help, referred them to civil
18 rights attorneys or other services they need as a result of the abuse they endure in the
19 shelters, and followed up with them to ensure that they receive assistance. Oma’s Angel
20 Foundation also has to spend time providing support to persons who refuse to live in
21 Defendants’ shelters because of the harmful conditions and policies, including the lock-in
22 policy.

23 197. Addressing these individuals’ problems requires the organization to divert
24 resources away from its mission of providing for the basic needs of unhoused persons
25 living on the streets or from being able to help persons in hospitals and nursing homes.
26 From the time Defendants’ shelters opened, Oma’s Angel Foundation’s ability to
27 distribute food and other necessities, build small homes, and to spend time with unhoused
28 persons living outside or in hospitals and nursing homes, was drastically reduced because

1 so much of its time was spent helping homeless people who had been unjustly evicted
2 from shelters or who were dealing with abusive shelter conditions, or who refused to live
3 in the shelters because of the intolerable conditions.⁸ Shelters that were set up to
4 supposedly help people have created so many problems for their residents that Oma’s
5 Angel Foundation cannot perform the work it was created to do. Oma’s Angel
6 Foundation has supported an unhoused person who died living outside because they
7 were unwilling to live in Orange County shelters because of the harmful conditions and
8 policies.

9
10 **FIRST CAUSE OF ACTION**

11 Disparate Treatment Discrimination Based on Sex: Hostile Environment Harassment
12 (California Employment and Fair Housing Act, Cal. Gov’t Code § 12955 *et seq.*;
13 Cal. Gov’t Code §§ 810, 815 *et seq.*)
**(Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman Against Defendants County,
City, Midnight Mission, Illumination Foundation, and Protection America, Inc.)**

14 198. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

15 199. California’s Fair Employment and Housing Act prohibits all providers of
16 housing accommodation—including homeless shelters—from harassing or discriminating
17 against any person because of the person’s sex, gender, gender identity, gender
18 expression, sexual orientation, or marital status.

19 200. Providers of housing accommodations have a duty not just to refrain from
20 engaging in these unlawful practices, but also to ensure that their staff and other residents
21 do not engage in them or create a hostile environment.

22 201. This statute additionally prohibits otherwise making unavailable or denying
23

24 ⁸ While Project Roomkey was in effect, Oma’s Angel Foundation spent much of its time
25 responding to unhoused persons who experienced problems with the Project Roomkey
26 program. Project Roomkey was a program established by the California Department of
27 Social Services as part of California’s response to COVID-19. Project Roomkey provided
28 non-congregate shelter in hotel and motel rooms to unhoused persons who were sick or
medically vulnerable. *See Project Roomkey*, California Department of Social Services,
Angeles, [https://www.cdss.ca.gov/inforesources/cdss-programs/housing-
programs/project-roomkey](https://www.cdss.ca.gov/inforesources/cdss-programs/housing-programs/project-roomkey) (last visited Dec. 4, 2020).

1 a dwelling based on discrimination because of sex, gender, gender identity, gender
2 expression, sexual orientation, or familial status.

3 202. The invasive searches at La Mesa, as well as the sexually harassing conduct
4 by shelter staff at La Mesa and the Courtyard, all violated the Fair Employment and
5 Housing Act.

6 203. California Government Code § 815.2 provides for liability against a public
7 entity for injuries caused by a public employee within the scope of their employment.

8 204. California Government Code § 815.6 provides for liability against a public
9 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of
10 persons protected by the enactment; (3) the enactment is intended to protect against the
11 type of injury complained of by the plaintiffs; (4) the violation of the enactment is the
12 proximate cause of the injury; and (5) the public entity did not exercise reasonable
13 diligence in discharging its duty established by the enactment.

14 205. An enactment includes a federal or state constitutional provision, a statute,
15 charter provision, ordinance, or properly adopted regulation.

16 206. The California Fair Employment and Housing Act (FEHA), California
17 Government Code §§ 12955 *et seq.*, is an enactment within the meaning of California
18 Government Code § 815.6. Plaintiffs are in the class of persons protected by this
19 enactment, and FEHA is intended to protect against the type of injury complained of by
20 Plaintiffs. If Defendants provide housing, FEHA creates a mandatory duty to provide
21 housing free of discrimination, and to take prompt action to correct a discriminatory
22 practice.

23 207. Defendants County, City, Midnight Mission, and Illumination Foundation are
24 all public entities within the meaning of California Government Code § 815.6.

25 208. Defendant City developed shelter security and search-on-entry policies and
26 required Defendant Illumination Foundation to implement and follow such policies
27 through contractual obligations. The decision to implement and the development of such
28 policies required discretionary policy-level decision-making from City. The

1 administration of these search policies was purely ministerial.

2 209. Illumination Foundation and Protection America staff were required to
3 follow the shelter security and search-on-entry policies. Illumination Foundation and
4 Protection America staff were afforded no authority to choose who and what to search at
5 the shelters. Rather, shelter staff and security personnel merely followed the policies that
6 City required Illumination Foundation to implement.

7 210. Because the required searches performed by shelter staff were not a policy
8 decision or the product of any exercise of discretion, in that they required no conscious
9 balancing of risks and advantages, any tortious act underlying a body search performed
10 by shelter staff would not be immunized under California Government Code § 820.2.

11 211. Because the shelter staff's acts are not entitled to immunity, Defendants
12 County, City, Midnight Mission, and Illumination Foundation are not entitled to
13 immunity and are vicariously liable for injury proximately caused by acts or omissions of
14 employees within the scope of their employment under California Government Code §
15 815.2. Shelter staff and security personnel at La Mesa and Protection America were acting
16 within the scope of their employment when they conducted the invasive searches. The
17 very nature of the searches required by the City included physical contact with residents.

18 212. A body search of a shelter resident by shelter staff inherently requires the
19 physical touching of that shelter resident. Shelter staff do not touch shelter residents
20 during such searches for personal reasons but rather are required to do so under the
21 required search and security policies.

22 213. The staff and security personnel maintained extraordinary power and
23 authority over the shelter residents, as they determined whether residents had a place to
24 live. Inappropriate groping occurring during the execution of such searches is a
25 foreseeable consequence of these policies and the resulting injuries were proximately
26 caused by acts of shelter staff and security personnel.

27 214. Under the vicarious liability provisions of the Fair Employment and Housing
28 Act, an agent or employee who engages in sexual harassment may be considered to be

1 acting within the scope of their agency or employment even if their actions are
2 “incidental” to their job-related tasks. Cal. Code Regs. tit. 2, § 12010(b)(2). Illumination
3 Foundation and Protection America staff were thus acting within the scope of their
4 employment when they improperly searched Plaintiffs Moore, Utzman, and Powitzky.
5 City is vicariously liable for the actions of its contractor, whom it required to perform
6 searches.

7 215. Defendants County, City, Midnight Mission, and Illumination Foundation
8 also violated the Fair Employment and Housing Act when staff at La Mesa and the
9 Courtyard sexually touched, propositioned, leered, groped, or made vulgar comments to
10 Plaintiffs Kraft, Lancaster, Moore, Powitzky, and Utzman. Shelter staff committed these
11 acts of harassment during the scope of their work.

12 216. Plaintiffs complained about or otherwise made clear that they objected to the
13 conduct described above, and staff continued to engage in or condone the unwelcomed
14 conduct. Once Defendants knew or should have known that shelter staff and security
15 personnel were engaged in inappropriate conduct in the course of their official duties, and
16 failed to take prompt action to prevent further sexual harassment, Defendants were liable
17 for violating the Fair Employment and Housing Act. Cal. Code Regs. tit. 2, §
18 12010(a)(1)(B). The Fair Employment and Housing Act also imposes vicarious liability on
19 housing providers for sexual harassment committed by their agents or employees
20 regardless of whether the provider knew of the conduct. Cal. Code. Regs. tit. 2, § 12010(b).
21 Defendants did not exercise reasonable diligence in discharging their duties established by
22 FEHA.

23 217. Defendants’ harassing conduct described above created a housing
24 environment that was hostile, intimidating, offensive, oppressive, or abusive. This
25 conduct constitutes severe or pervasive sexual harassment and discrimination based on
26 sex, in violation of the Fair Employment and Housing Act.

27 218. Plaintiffs were harmed, and the searches and harassment were substantial
28 factors in causing this harm.

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SECOND CAUSE OF ACTION

Disparate Treatment Discrimination Based on Sex: Quid Pro Quo Harassment
(California Employment and Fair Housing Act, Cal. Gov't Code § 12955 *et seq.*;
Cal. Gov't Code §§ 810, 815 *et seq.*)
**(Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman Against Defendants County,
City, Midnight Mission, Illumination Foundation, and Protection America, Inc.)**

219. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

220. California's Fair Employment and Housing Act prohibits providers of housing accommodations from conditioning the availability of those accommodations, services, or facilities in connection with those accommodations, or avoidance of an adverse action, on submission to an unwelcome request or demand to engage in conduct.

221. The invasive searches, propositioning, leering, vulgar comments, groping, unwanted sexual touching, and other conduct described above, engaged in by Defendants' staff and contractors, constitute quid quo pro sexual harassment and discrimination based on sex. Plaintiffs were forced to endure this unwanted conduct as a condition of living at La Mesa and the Courtyard. Ms. Moore and Ms. Utzman received write-ups when they complained of the harassment at La Mesa. Ms. Utzman was forced to leave The Courtyard when she refused to allow a staff member to hug her.

222. California Government Code § 815.2 provides for liability against a public entity for injuries caused by a public employee within the scope of their employment.

223. California Government Code § 815.6 provides for liability against a public entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of persons protected by the enactment; (3) the enactment is intended to protect against the type of injury complained of by the plaintiffs; (4) the violation of the enactment is the proximate cause of the injury; and (5) the public entity did not exercise reasonable diligence in discharging its duty established by the enactment.

224. An enactment includes a federal or state constitutional provision, a statute, charter provision, ordinance, or properly adopted regulation.

225. The California Fair Employment and Housing Act, California Government

1 Code §§ 12955 *et seq.*, is an enactment within the meaning of California Government Code
2 § 815.6. Plaintiffs are in the class of persons protected by this enactment, and FEHA is
3 intended to protect against the type of injury complained of by Plaintiffs. If Defendants
4 provide housing, FEHA creates a mandatory duty to provide housing free of
5 discrimination, and to take prompt action to correct a discriminatory practice.

6 226. Defendants County, City, Midnight Mission, and Illumination Foundation are
7 all public entities within the meaning of California Government Code § 815.6.

8 227. Defendant City developed shelter security and search-on-entry policies and
9 required Defendant Illumination Foundation to implement and follow such policies
10 through contractual obligations. The decision to implement and the development of such
11 policies required discretionary policy-level decision-making from City. The
12 administration of these search policies was purely ministerial.

13 228. Illumination Foundation and Protection America staff were required to
14 follow the shelter security and search-on-entry policies. Illumination Foundation and
15 Protection America were afforded no authority to choose who and what to search at the
16 shelters. Rather, shelter staff and security personnel merely followed the policies that City
17 required Illumination Foundation to implement.

18 229. Because the required searches performed by shelter staff were not a policy
19 decision or the product of any exercise of discretion, in that they required no conscious
20 balancing of risks and advantages, any tortious act underlying a body search performed
21 by shelter staff would not be immunized under California Government Code § 820.2.

22 230. Because the shelter staff's acts are not entitled to immunity, Defendants City
23 and Illumination Foundation are not entitled to immunity under California Government
24 Code § 815.2. Shelter staff and security personnel at La Mesa and Protection America
25 were acting within the scope of their employment when they conducted the invasive
26 searches. The very nature of the searches required by the City included physical contact
27 with residents. A body search of a shelter resident by shelter staff inherently requires the
28 physical touching of that shelter resident. Shelter staff do not touch shelter residents

1 during such searches for personal reasons but rather are required to do so under the
2 required search and security policies. Inappropriate and unwanted touching and groping
3 occurring during the execution of such searches is a foreseeable consequence of these
4 policies and is not a substantial departure from the duties of shelter staff and security
5 personnel.

6 231. The staff and security personnel maintained extraordinary power and
7 authority over the shelter residents, as they determined whether residents had a place to
8 live. Inappropriate groping occurring during the execution of such searches is a
9 foreseeable consequence of these policies and the resulting injuries were proximately
10 caused by acts of shelter staff and security personnel.

11 232. Under the vicarious liability provisions of the Fair Employment and Housing
12 Act, an agent or employee who engages in sexual harassment may be considered to be
13 acting within the scope of their agency or employment even if their actions are
14 “incidental” to their job-related tasks. Cal. Code Regs. tit. 2, § 12010(b)(2). Illumination
15 Foundation and Protection America staff were thus acting within the scope of their
16 employment when they conditioned the availability of shelter on the submission to
17 improper searches by Plaintiffs Moore, Utzman, and Powitzky. City is vicariously liable
18 for the actions of its contractor, whom it required to perform searches. These searches
19 constitute quid pro quo sexual harassment, in violation of the Fair Employment and
20 Housing Act.

21 233. Defendants County, City, Midnight Mission, and Illumination Foundation
22 also violated the Fair Employment and Housing Act when staff at La Mesa and the
23 Courtyard conditioned the provision of shelter on Plaintiffs Kraft, Lancaster, Moore,
24 Powitzky, and Utzman’s submission to sexual touches, propositions, leers, gropes, and
25 vulgar comments. Shelter staff committed these acts of harassment during the scope of
26 their work. This conduct also constitutes quid pro quo sexual harassment, in violation of
27 the Fair Employment and Housing Act.

28 234. Because the shelter staff’s acts are not entitled to immunity, Defendants

1 County, City, Midnight Mission, and Illumination Foundation are not entitled to
2 immunity and are vicariously liable for injury proximately caused by acts or omissions of
3 employees within the scope of their employment under California Government Code §
4 815.2.

5 235. Plaintiffs complained about or otherwise made clear that they objected to the
6 conduct described above, and staff continued to engage in or condone the unwelcomed
7 conduct. Once Defendants knew or should have known that shelter staff and security
8 personnel were engaged in inappropriate conduct in the course of their official duties, and
9 failed to take prompt action to prevent further sexual harassment, Defendants were liable
10 for violating the Fair Employment and Housing Act. Cal. Code Regs. tit. 2, §
11 12010(a)(1)(B). The Fair Employment and Housing Act also imposes vicarious liability on
12 housing providers for sexual harassment committed by their agents or employees
13 regardless of whether the provider knew of the conduct. Cal. Code Regs. Tit. 2, § 12010(b).
14 Defendants did not exercise reasonable diligence in discharging their duties established by
15 FEHA.

16 236. Shelter staff also had the authority under their employment with the shelters
17 to write-up shelter residents and remove shelter residents from the shelter. Write-ups and
18 evictions from shelter staff stemming from inappropriate reasons are a foreseeable result
19 of such authority and are not a substantial departure from shelter staff's authority.

20 237. Plaintiffs were harmed, and the searches and harassment were a substantial
21 factor in causing this harm.

22 THIRD CAUSE OF ACTION

23
24 Disparate Impact Discrimination Based on Sex
25 (California Employment and Fair Housing Act,
26 Cal. Gov't Code § 12955 *et seq.*; Cal. Gov't Code §§ 810, 815 *et seq.*)
**(Plaintiffs Moore, Powitzky and Utzman Against Defendants City, Illumination
Foundation, and Protection America, Inc.)**

27 238. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

28 239. The searches conducted at La Mesa disproportionately impacted women, in

1 violation of Cal. Gov't Code §§ 12955.1, 12955.8. La Mesa's use of pat down searches that
2 involve touching and exposing residents' breasts disproportionately impacts women,
3 whose private parts – their breasts – were touched, patted, and exposed while searches of
4 men under similar circumstances did not result in such violations.

5 240. Defendant City developed shelter security and search-on-entry policies and
6 required Defendants Illumination Foundation to implement and follow such policies
7 through contractual obligations. The decision to implement and the development of such
8 policies required discretionary policy-level decision-making from City. The
9 administration of these policies was purely administrative.

10 241. Shelter staff and security personnel were required to follow the shelter
11 security and search-on-entry policies. Shelter staff and security personnel were afforded
12 no authority to choose who and what to search at the shelters. Rather, Illumination
13 Foundation and Protection America staff merely followed the policies that City required
14 Illumination Foundation to implement.

15 242. California Government Code § 815.2 provides for liability against a public
16 entity for injuries caused by a public employee within the scope of their employment.

17 243. California Government Code § 815.6 provides for liability against a public
18 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of
19 persons protected by the enactment; (3) the enactment is intended to protect against the
20 type of injury complained of by the plaintiffs; (4) the violation of the enactment is the
21 proximate cause of the injury; and (5) the public entity did not exercise reasonable
22 diligence in discharging its duty established by the enactment.

23 244. An enactment includes a federal or state constitutional provision, a statute,
24 charter provision, ordinance, or properly adopted regulation.

25 245. The California Fair Employment and Housing Act, California Government
26 Code §§ 12955 *et seq.*, is an enactment within the meaning of California Government Code
27 § 815.6. Plaintiffs are in the class of persons protected by this enactment, and FEHA is
28 intended to protect against the type of injury complained of by Plaintiffs. If Defendants

1 provide housing, FEHA creates a mandatory duty to provide housing free of
2 discrimination, and to take prompt action to correct a discriminatory practice.

3 246. Defendants City and Illumination Foundation are public entities within the
4 meaning of California Government Code § 815.6.

5 247. Because the required searches performed by Illumination Foundation and
6 Protection America staff were not a policy decision or the product of any exercise of
7 discretion, in that they required no conscious balancing of risks and advantages, any
8 tortious act underlying a body search performed by their staff would not be immunized
9 under California Government Code § 820.2.

10 248. Because the shelter staff's acts are not entitled to immunity, Defendants City
11 and Illumination Foundation are not entitled to immunity and are vicariously liable for
12 injury proximately caused by acts or omissions of employees within the scope of their
13 employment under California Government Code § 815.2. Shelter staff and security
14 personnel at La Mesa and Protection America were acting within the scope of their
15 employment when they conducted the invasive searches. The very nature of the searches
16 required by City included physical contact with residents.

17 249. A body search of a shelter resident by shelter staff inherently requires the
18 physical touching of that shelter resident. Shelter staff do not touch shelter residents
19 during such searches for personal reasons but rather are required to do so under the
20 required search and security policies.

21 250. The staff and security personnel maintained extraordinary power and
22 authority over the shelter residents, as they determined whether residents had a place to
23 live. Inappropriate groping occurring during the execution of such searches was a
24 foreseeable consequence of these policies and the resulting injuries were proximately
25 caused by acts of shelter staff and security personnel. Under the vicarious liability
26 provisions of the Fair Employment and Housing Act, an agent or employee who engages
27 in sexual harassment may be considered to be acting within the scope of their agency or
28 employment even if their actions are "incidental" to their job-related tasks. Cal. Code

1 Regs. tit. 2, § 12010(b)(2).

2 251. The non-consensual touching of residents' bodies created particular trauma
3 for survivors of past abusive nonconsensual touching, such as survivors of sexual abuse,
4 sexual assault, and intimate partner violence. Because women are disproportionately
5 survivors of sexual abuse, sexual assault and intimate partner violence, the search policies
6 which utilized non-consensual touching had a disparate impact on women residents.

7 252. There is no legally sufficient justification for the invasive searches; they were
8 not necessary to achieve an important purpose sufficiently compelling to override the
9 discriminatory effect; and there are feasible alternative practices that would equally or
10 better accomplish the policy's identified purpose with a less discriminatory effect.
11 Defendants failed to train their staff in proper search techniques, or employ less physically
12 invasive methods to search Plaintiffs. Defendants searched Plaintiffs repeatedly, even
13 when Plaintiffs had no opportunity to obtain contraband after a previous search.

14 253. Plaintiffs complained about or otherwise made clear that they objected to the
15 conduct described above, and staff continued to engage in or condone the unwelcomed
16 conduct. Once Defendants knew or should have known that shelter staff and security
17 personnel were engaged in inappropriate conduct in the course of their official duties, and
18 failed to take prompt action to prevent further sexual harassment, Defendants were liable
19 for violating the Fair Employment and Housing Act. Cal. Code Regs. tit. 2, §
20 12010(a)(1)(B). The Fair Employment and Housing Act also imposes vicarious liability on
21 housing providers for sexual harassment committed by their agents or employees
22 regardless of whether the provider knew of the conduct. Cal. Code Regs. tit. 2, § 12010(b).

23 254. Plaintiffs were harmed by these searches and the searches were a substantial
24 factor in causing the harm.

1 **FOURTH CAUSE OF ACTION**

2 Sex-Based Discrimination and Harassment
3 (Cal. Gov't Code § 11135; Cal. Gov't Code §§ 810, 815 *et seq.*)
4 **(Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman Against Defendants County,
City, Midnight Mission, and Illumination Foundation)**

5 255. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

6 256. Government Code § 11135 prohibits any program or activity that receives any
7 financial assistance from the State from discriminating against or denying full and equal
8 access to any benefit to any person on the basis of sex.

9 257. The shelters at issue here receive financial assistance from the State, directly
10 and through the City and County. Accordingly, Defendants violated Cal. Gov't Code §
11 11135 and regulations promulgated thereunder.

12 258. The Defendants' conduct of invasive searches, propositioning, leering, vulgar
13 comments, groping, unwanted sexual touching, and other conduct described above deny
14 women full and equal access to the services and benefits offered by Defendants and
15 constitute sex discrimination in violation of Cal. Gov't Code § 11135. In addition,
16 Defendants' conduct has the purpose and effect of discriminating against female residents
17 without adequate justification on the basis of sex. Defendants required shelter staff to
18 search all shelters residents upon entry into the shelters. Defendants failed to train their
19 staff in proper search techniques, or employ less physically invasive methods to search
20 Plaintiffs. Defendants searched Plaintiffs repeatedly, even when Plaintiffs had no
21 opportunity to obtain contraband after a previous search.

22 259. California Government Code § 815.2 provides for liability against a public
23 entity for injuries caused by a public employee within the scope of their employment.

24 260. Defendants County and City developed shelter security and search-on-entry
25 policies and required Defendant Illumination Foundation to implement and follow such
26 policies through contractual obligations. The decision to implement and the development
27 of such policies required discretionary policy-level decision-making from City. The
28 administration of these policies was purely administrative.

1 261. Shelter staff and security personnel were required to follow the shelter
2 security and search-on-entry policies. Shelter staff and security personnel were afforded
3 no authority to choose who and what to search at the shelters. Rather, shelter staff and
4 security personnel merely followed the policies that County and City required Midnight
5 Mission and Illumination Foundation to implement.

6 262. California Government Code § 815.6 provides for liability against a public
7 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of
8 persons protected by the enactment; (3) the enactment is intended to protect against the
9 type of injury complained of by the plaintiffs; (4) the violation of the enactment is the
10 proximate cause of the injury; and (5) the public entity did not exercise reasonable
11 diligence in discharging its duty established by the enactment.

12 263. An enactment includes a federal or state constitutional provision, a statute,
13 charter provision, ordinance, or properly adopted regulation.

14 264. California Government Code § 11135 is an enactment within the meaning of
15 California Government Code § 815.6. Plaintiffs are in the class of persons protected by this
16 enactment, and the enactment is intended to protect against the type of injury complained
17 of by the plaintiffs. If Defendants receive governmental funds to provide housing,
18 Government Code § 11135 creates a mandatory duty to provide housing free of
19 discrimination.

20 265. Defendants County, City, Midnight Mission, and Illumination Foundation are
21 all public entities within the meaning of California Government Code § 815.6.

22 266. Because the required searches performed by shelter staff were not a policy
23 decision or the product of any exercise of discretion, in that they required no conscious
24 balancing of risks and advantages, any tortious act underlying a body search performed
25 by shelter staff would not be immunized under California Government Code § 820.2.

26 267. Because the shelter staff's acts are not entitled immunity, Defendants County,
27 City, Midnight Mission, and Illumination Foundation are not entitled to immunity and are
28 vicariously liable for injury proximately caused by acts or omissions of employees within

1 the scope of their employment under California Government Code § 815.2.

2 268. The body searches conducted by shelter staff were done so under the full
3 authority granted to them by their shelter employers. A body search of a shelter resident
4 by shelter staff inherently requires the physical touching of that shelter resident. Shelter
5 staff do not touch or communicate with shelter residents during such searches for
6 personal reasons but rather are required to do so under the required search and security
7 policies.

8 269. Inappropriate and unwanted touching and groping occurring during the
9 execution of such searches is a foreseeable consequence of these policies and is not a
10 substantial departure from the duties of shelter staff and security personnel.

11 270. Defendants County, City, Midnight Mission, and Illumination Foundation
12 also violated Government Code § 11135 when staff at La Mesa and the Courtyard sexually
13 touched, propositioned, leered, groped, or made vulgar comments to Plaintiffs Kraft,
14 Lancaster, Moore, Powitzky, and Utzman. Shelter staff committed these acts of
15 harassment during the scope of their work.

16 271. Shelter staff also had the authority under their employment with the shelters
17 to write-up shelter residents and remove shelter residents from the shelter. Write-ups and
18 evictions from shelter staff stemming from inappropriate reasons are a foreseeable result
19 of such authority and are not a substantial departure from shelter staff's authority.

20 272. Plaintiffs complained about or otherwise made clear that they objected to the
21 conduct described above, and staff continued to engage in or condone the unwelcomed
22 conduct. Once Defendants knew or should have known that shelter staff and security
23 personnel were engaged in inappropriate conduct in the course of their official duties, and
24 failed to take prompt action to prevent further sexual harassment, Defendants were liable
25 for violating Cal. Gov't. Code § 11135.

26 273. As a direct and proximate result of the Defendant's violations of Cal. Gov't
27 Code § 11135, Plaintiffs have been injured as set forth herein.
28

1 **FIFTH CAUSE OF ACTION**

2 Invasion of Privacy (Cal. Const. Art. I, § 1 and Common Law;
3 Cal. Gov't Code §§ 810, 815 *et seq.*)

4 **(Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman Against Defendants County,
5 City, Midnight Mission, Illumination Foundation, and Protection America, Inc.)**

6 274. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

7 275. The California Constitution and the common law prohibit private and
8 governmental actors from engaging in unjustified invasions of personal privacy.

9 276. Plaintiffs had a reasonable expectation of privacy while living at Defendants'
10 shelters.

11 277. Defendants City and Illumination Foundation violated that right to privacy
12 by subjecting Plaintiffs Moore, Powitzky, and Utzman to invasive searches. Illumination
13 Foundation and Protection America staff were acting within the scope of their
14 employment when they searched Plaintiffs. The very nature of the searches required by
15 the City included physical contact with residents. A body search of a shelter resident by
16 shelter staff inherently requires the physical touching of that shelter resident. Shelter staff
17 do not touch shelter residents during such searches for personal reasons but rather are
18 required to do so under the required search and security policies.

19 278. The staff and security personnel maintained extraordinary power and
20 authority over the shelter residents, as they determined whether residents had a place to
21 live. Inappropriate groping occurring during the execution of such searches is a
22 foreseeable consequence of these policies and the resulting invasions of privacy were
23 proximately caused by acts of shelter staff and security personnel. Inappropriate and
24 unwanted touching, propositioning, leering, vulgar comments, and groping occurring
25 during the execution of such searches is a foreseeable consequence of these policies and is
26 not a substantial departure from the duties of shelter staff and security personnel.

27 279. Defendants County, City, Midnight Mission, and Illumination Foundation
28 also violated the privacy provisions of the Constitution when staff at La Mesa and the
Courtyard sexually touched, propositioned, leered, groped, and made vulgar comments to

1 Plaintiffs Kraft, Lancaster, Moore, Powitzky, and Utzman. Midnight Mission and
2 Illumination Foundation staff were acting within the scope of their employment when
3 they committed these acts which violated Plaintiffs' right to privacy.

4 280. California Gov't Code § 815.2 provides that a public entity is liable for injury
5 caused by its employee acting within the scope of their employment if the act or omission
6 would have given rise to a cause of action against that employee.

7 281. Because the shelter staff's acts are not entitled to immunity, Defendants
8 County, City, Midnight Mission, and Illumination Foundation are not entitled to
9 immunity and are vicariously liable for injury proximately caused by acts or omissions of
10 employees within the scope of their employment under California Government Code §
11 815.2.

12 282. Defendants' highly invasive searches, groping, improper touching, and
13 watching Plaintiffs dress are unjustified and violate Plaintiffs' right to privacy.

14 283. Plaintiffs were harmed by these invasions of privacy, and Defendants' actions
15 were a substantial factor in causing that harm.

16
17 **SIXTH CAUSE OF ACTION**

18 Sexual Battery (Cal. Civ. Code § 1708.5; Cal. Gov't Code §§ 810, 815.2)
19 **(Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman Against Defendants County,
City, Midnight Mission, Illumination Foundation, and Protection America, Inc.)**

20 284. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

21 285. Defendants intended to cause a harmful or offensive contact with Plaintiffs'
22 intimate parts and a sexually offensive contact with Plaintiffs resulted, either directly or
23 indirectly. The invasive body searches conducted by Illumination Foundation and
24 Protection America staff against Plaintiffs Moore, Powitzky, and Utzman constitute sexual
25 battery. The non-consensual hugging, groping, and other unwanted touching described
26 above perpetrated by Illumination Foundation and Midnight Mission staff against
27 Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman also constitute sexual battery.

28 286. Any alleged consent to searches was only given to the extent consent was

1 necessary for a standard screening procedure, and any screening procedures that
2 exceeded this standard exceeded the scope of the alleged consent. Any purported consent
3 for the invasive searches was coerced as a condition of staying in the La Mesa shelter.

4 287. California Gov't Code § 815.2 provides that a public entity is liable for injury
5 caused by its employee acting within the scope of their employment if the act or omission
6 would have given rise to a cause of action against that employee.

7 288. Defendant City developed shelter security and search-on-entry policies and
8 required Defendant Illumination Foundation to implement and follow such policies
9 through contractual obligations.

10 289. Illumination Foundation and Protection America staff were required to
11 follow the shelter security and search-on-entry policies. Illumination Foundation and
12 Protection America staff were afforded no authority to choose who and what to search at
13 the shelters. Rather, Illumination Foundation and Protection America staff merely
14 followed the policies that City required Illumination Foundation to implement.

15 290. Illumination Foundation and Protection America staff were acting within the
16 scope of their employment when they conducted the invasive searches. The very nature
17 of the searches required by the City included physical contact with residents. A body
18 search of a shelter resident by shelter staff inherently requires the physical touching of that
19 shelter resident. Shelter staff do not touch shelter residents during such searches for
20 personal reasons but rather are required to do so under the required search and security
21 policies. The body searches conducted by shelter staff were done so under the fully
22 authority granted to them by their shelter employers.

23 291. Inappropriate and unwanted touching and groping occurring during the
24 execution of such searches is a foreseeable consequence of these policies and is not a
25 substantial departure from the duties of shelter staff and security personnel.

26 292. Midnight Mission and Illumination Foundation staff were also acting within
27 the scope of their employment when they engaged in non-consensual hugging, groping,
28 and other unwanted touching of Plaintiffs Kraft, Lancaster, Moore, Powitzky, and

1 Utzman.

2 293. Plaintiffs complained about or otherwise made clear that they objected to the
3 conduct described above, and staff continued to engage in or condone the unwelcomed
4 conduct. Defendants Midnight Mission, Illumination Foundation, Protection America,
5 County, and City knew or should have known that shelter staff and security personnel
6 were engaged in inappropriate conduct in the course of their official duties, and failed to
7 take prompt action to prevent further sexual battery.

8 294. Because the shelter staff's acts are not entitled to immunity, Defendants
9 County, City, Midnight Mission, and Illumination Foundation are not entitled to
10 immunity and are vicariously liable for injury proximately caused by acts or omissions of
11 employees within the scope of their employment under California Government Code §
12 815.2.

13 295. Plaintiffs were harmed or offended by Defendants' searches and other
14 unwanted touching and a reasonable person in Plaintiffs' situation would have been
15 harmed or offended by the touching.

16 **SEVENTH CAUSE OF ACTION**

17 **Common Law Battery**
18 **(Plaintiffs Kraft, Lancaster, Moore, Powitzky and Utzman Against**
19 **Defendant Protection America, Inc.)**

20 296. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

21 297. Defendant Protection America's security personnel intentionally touched
22 Plaintiffs Moore, Powitzky, and Utzman or caused them to be touched.

23 298. The invasive searches and other unwanted touching described above
24 constitute battery. Any alleged consent for searches was only given to the extent consent
25 was necessary for a standard screening procedure, and any screening procedures that
26 exceeded this standard exceeded the scope of the alleged consent. Any purported consent
27 for the invasive searches was coerced as a condition of staying in the shelter.

28 299. Plaintiffs were harmed or offended by Defendants' touching and a reasonable

1 person in Plaintiffs' situation would have been harmed or offended by the touching.

2
3 **EIGHTH CAUSE OF ACTION**

4 **Retaliation (Cal. Gov't Code § 12955 *et seq.*, Cal. Gov't Code §§ 810, 815 *et seq.*)**
5 **(Plaintiffs Moore, Powitzky and Utzman Against Defendants County, City,**
6 **Illumination Foundation, and Midnight Mission)**

6 300. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

7 301. Government Code § 12955(f) prohibits owners of housing accommodations
8 from harassing, evicting, or otherwise discriminating against any person to retaliate
9 against a person who has opposed practices unlawful under § 12955, informed law
10 enforcement agencies of practices believed unlawful under this section, has testified or
11 assisted in any proceeding under this part, or has aided or encouraged a person to exercise
12 or enjoy the rights secured by the statute.

13 302. Government Code § 12955.7 makes it unlawful to coerce, intimidate, threaten,
14 or interfere with any person in the exercise or enjoyment of, or on account of that person
15 having exercised or enjoyed, or on account of that person having aided or encouraged any
16 other person in the exercise or enjoyment of, any right granted or protected by Cal. Gov't
17 Code § 12955.

18 303. The retaliatory acts described above violate these provisions.

19 304. California Gov't Code § 815.2 provides that a public entity is liable for injury
20 caused by its employee acting within the scope of their employment if the act or omission
21 would have given rise to a cause of action against that employee. Midnight Mission and
22 Illumination Foundation staff were acting within the scope of their employment when
23 they retaliated against Plaintiffs Moore, Utzman, and Powitzky for complaining about
24 sexual harassment at La Mesa and the Courtyard.

25 305. California Government Code § 815.6 provides for liability against a public
26 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of
27 persons protected by the enactment; (3) the enactment is intended to protect against the
28 type of injury complained of by the plaintiffs; (4) the violation of the enactment is the

1 proximate cause of the injury; and (5) the public entity did not exercise reasonable
2 diligence in discharging its duty established by the enactment.

3 306. An enactment includes a federal or state constitutional provision, a statute,
4 charter provision, ordinance, or properly adopted regulation.

5 307. The California Fair Employment and Housing Act, California Government
6 Code §§ 12955 *et seq.*, is an enactment within the meaning of California Government Code
7 § 815.6. Plaintiffs are in the class of persons protected by this enactment, and FEHA is
8 intended to protect against the type of injury complained of by Plaintiffs. If Defendants
9 provide housing, FEHA creates a mandatory duty to provide housing free of
10 discrimination, and to take prompt action to correct a discriminatory practice.

11 308. Defendants County, City, Illumination Foundation, and Midnight Mission are
12 all public entities within the meaning of California Government Code § 815.6.

13 309. The Fair Employment and Housing Act imposes vicarious liability on
14 housing providers for a discriminatory housing practice engaged in by their agents or
15 employees regardless of whether the provider knew of the conduct. Cal. Code Regs. tit. 2,
16 § 12010(b). Midnight Mission, Illumination Foundation, City, and County are vicariously
17 liable for the retaliatory actions that Midnight Mission and Illumination Foundation staff
18 took against Plaintiffs Moore, Powitzky, and Utzman for complaining about sexual
19 harassment.

20
21 **NINTH CAUSE OF ACTION**

22 Retaliation (Cal. Const., art. I §§ 2, 3; Cal. Gov't Code §§ 810, 815 *et seq.*)
23 **(Plaintiffs Moore, Ogle, Powitzky, and Utzman Against Defendants County, City,
Illumination Foundation, Midnight Mission, and Mercy House Living Centers)**

24 310. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

25 311. The California Constitution's Liberty of Speech clause, Cal. Const., art. I § 2,
26 provides broad protection for speech, particularly speech related to a matter of public
27 concern.

28 312. Article I § 3 of the California Constitution protects the right to petition the

1 government for redress of grievances.

2 313. Governmental, and in some cases private, entities that restrict this speech and
3 petitioning or retaliate against people because of their speech, violate these protections.

4 314. The retaliation against residents for complaining about sex discrimination
5 and shelter conditions and rules violates the Liberty of Speech and petition clauses.

6 315. Any purportedly legitimate reasons offered by Defendants to justify their
7 denial of housing rights to Plaintiffs was pre-textual.

8 316. California Gov't Code § 815.2 provides that a public entity is liable for injury
9 caused by its employee acting within the scope of their employment if the act or omission
10 would have given rise to a cause of action against that employee. Midnight Mission,
11 Mercy House Living Centers, and Illumination Foundation staff were acting within the
12 scope of their employment when they retaliated against Plaintiffs Moore, Ogle, Utzman,
13 and Powitzky for complaining about sexual harassment and unsanitary conditions at the
14 Courtyard, Bridges, and La Mesa. City and County are vicariously liable for the injuries
15 caused by Midnight Mission, Mercy House Living Centers, and Illumination Foundation.

16
17 **TENTH CAUSE OF ACTION**

18 **Due Process (Cal. Const., art. I § 7)**
(Plaintiffs Powitzky and Oma's Angel Foundation against Defendants County, City)

19 317. Plaintiffs incorporate by reference the above allegations, as if set forth in full.

20 318. The California Constitution protects the right to intrastate travel, including
21 the right to travel freely within a city.

22 319. The limitations on shelter residents' travel created by the Lock-in/Shut-out
23 Policy – the prohibition on their leaving or entering the shelter by foot or on bicycle – is a
24 direct and unjustified restriction of this right.

25 320. Defendants County and City are ultimately responsible for these policies;
26 Defendant Mercy House Living Centers enforces them as an agent of the government.
27 City requires Anaheim Emergency Shelter to enforce this policy.
28

1 TWELFTH CAUSE OF ACTION

2 Breach of Implied Warranty of Habitability (Cal. Gov't Code §§ 810, 815 *et seq.*)
3 **(All Plaintiffs Against Defendants County, City, Illumination Foundation, Midnight**
4 **Mission, and Mercy House Living Centers)**

5 326. Plaintiffs incorporate herein by reference the above allegations and Counts(s),
6 as if set forth in full.

7 327. California Gov't Code § 815.2 provides that a public entity is liable for injury
8 caused by its employee acting within the scope of their employment if the act or omission
9 would have given rise to a cause of action against that employee.

10 328. California Government Code § 815.6 provides for liability against a public
11 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of
12 persons protected by the enactment; (3) the enactment is intended to protect the type of
13 injury complained of by the plaintiffs; (4) the violation of the enactment is the proximate
14 cause of the injury; and, (5) the public entity did not exercise reasonable diligence in
15 discharging its duty established by the enactment.

16 329. An enactment includes a federal or state constitutional provision, a statute,
17 charter provision, ordinance, or properly adopted regulation.

18 330. Defendants have statutory and common-law duties to ensure that their
19 facilities are sanitary and fit for human habitation. *See, e.g.,* Cal. Civ. Code § 1941; Cal.
20 Health & Safety Code § 17920.3; Cal. Code Regs. tit. 25, §§ 34, 7959(f), 8417; Orange
21 County, Cal., Municipal Code § 7-9-148.8(d)(7) (2013) (In effect during relevant time
22 period) and Anaheim, Cal., Municipal Code §§ 18.38.125.0404-0405; 18.38.125.1101-1102
23 (2012) (In effect during relevant time period). These statutes are enactments within the
24 meaning of California Government Code § 815.6. These duties run both to the residents of
25 these facilities but also to the government agencies that finance them and, ultimately, to
26 the people and to the taxpayers. Plaintiffs are in the class of persons protected by these
27 enactments, and these enactments are intended to protect against the type of injury
28 complained of by Plaintiffs. Defendants County, City, Illumination Foundation, Midnight

1 Mission, and Mercy House Living Centers are all public entities within the meaning of
2 California Government Code § 815.6.

3 331. Plaintiffs are the intended third-party beneficiaries of the contracts between
4 Defendant City and Illumination Foundation and between County and Midnight Mission
5 and Mercy House Living Centers.

6 332. There was an implied-in-fact contract between Illumination Foundation and
7 Plaintiffs Utzman, Moore, and Powitzky that the Plaintiffs would agree to certain
8 conditions in return for Illumination Foundation providing habitable shelter. There was
9 an implied-in-fact contract between Midnight Mission and Plaintiffs Utzman, Bui,
10 Lancaster, and Kraft that Plaintiffs would agree to certain conditions in return for
11 Midnight Mission providing habitable shelter. There was an implied-in-fact contract
12 between Mercy House Living Centers and Plaintiffs Utzman, Bui, Ogle and Rutter that
13 Plaintiffs would agree to certain conditions in return for Mercy House Living Centers
14 providing habitable shelter.

15 333. All Defendants knew or should have known about the substandard
16 conditions at La Mesa, Bridges, and the Courtyard. Defendants were given a reasonable
17 time to correct these conditions and failed to do so.

18 334. Defendants have failed to comply with their duties under the law, resulting
19 in the conditions described above. This failure has resulted in physical and mental injuries
20 to plaintiffs Patrick Bui, Deborah Kraft, Jordynne Lancaster, Catherine Moore, Joshua
21 Ogle, Wendy Powitzky, Callie Rutter, and Cyndi Utzman. Defendants' failure to comply
22 with these duties has also harmed Plaintiff Oma's Angel Foundation, by diverting
23 resources from its mission, and forcing it to assist shelter residents harmed by Defendants'
24 unsanitary conditions and violations of residents' rights.

25 335. Defendants have failed to provide an adequate number of working showers,
26 sinks, and toilets, and failed to maintain the ones they do provide.

27 336. During the relevant periods at issue in this case, the County required that
28 shelters provide one toilet and one shower for every ten beds. Orange County, Cal.,

1 Municipal Code § 7-9-148.8(d)(7) (2013). During the times that Plaintiffs resided at La
2 Mesa, the City required shelters to have to have a minimum of one toilet for every eight
3 beds per gender and a minimum of one shower per every eight beds per gender.
4 Anaheim, Cal., Municipal Code §§ 18.38.125.0404-0405; 18.38.125.1101-1102 (2012).

5 337. The Courtyard had 430 beds but provided only 16 toilets and 9 showers.

6 338. Bridges has 200 beds but provides only 11 toilets and 6 urinals and not all of
7 them are functional.

8 339. La Mesa had 102 beds but rarely had 10 functioning toilets and 10 functioning
9 showers that were clean enough to use safely.

10 **THIRTEENTH CAUSE OF ACTION**

11 Common Law Negligence (Cal. Gov't Code §§ 810, 815 *et seq.*)
12 **(All Plaintiffs Against All Defendants except as limited below**
13 **for violations of Cal. Civ. Code § 1714)**

14 340. Plaintiffs incorporate herein by reference the above allegations and Counts(s),
15 as if set forth in full.

16 **Defendants Committed Negligence Per Se**

17 341. All Defendants violated numerous statutes, including but not limited to Cal.
18 Civil Code § 1941, Cal. Gov't §§ 12955 *et. seq.*; Cal. Health & Safety Code § 17920.3, Cal.
19 Code Regs. tit. 25, §§ 34, 8417, Orange County, Cal., Municipal Code § 7-9-148.8(d)(7)
20 (2013) and Anaheim Municipal Code §§ 18.38.125.0404-0405; 18.38.125.1101-1102 (2012).
21 These statutes were meant to protect persons like Plaintiffs. These statutes are enactments
22 within the meaning of California Government Code § 815.6.

23 342. Defendants Illumination Foundation, Midnight Mission, and Mercy House
24 Living Centers violated California Civil Code § 1714. This statute was meant to protect
25 persons like Plaintiffs. This statute is an enactment within the meaning of California
26 Government Code § 815.6.

27 343. California Gov't Code § 815.2 provides that a public entity is liable for injury
28

1 caused by its employee acting within the scope of their employment if the act or omission
2 would have given rise to a cause of action against that employee.

3 344. California Government Code § 815.6 provides for liability against a public
4 entity when: (1) the entity violates an enactment; (2) the plaintiffs are in the class of
5 persons protected by the enactment; (3) the enactment is intended to protect against the
6 type of injury complained of by the plaintiffs; (4) the violation of the enactment is the
7 proximate cause of the injury; and (5) the public entity did not exercise reasonable
8 diligence in discharging its duty established by the enactment.

9 345. An enactment includes a federal or state constitutional provision, a statute,
10 charter provision, ordinance, or properly adopted regulation.

11 346. Defendants County, City, Illumination Foundation, Midnight Mission, and
12 Mercy House Living Centers are all public entities within the meaning of California
13 Government Code § 815.6.

14 347. Defendants have statutory and common-law duties to maintain their facilities
15 so that they are sanitary and fit for human habitation, and to ensure that their employees
16 and contractors do not take actions that violate residents' rights.

17 348. Defendants have failed to comply with these duties, resulting in the sexual
18 harassment and conditions described above. This failure has resulted in physical and
19 mental injuries to plaintiffs Patrick Bui, Deborah Kraft, Jordynne Lancaster, Catherine
20 Moore, Joshua Ogle, Wendy Powitzky, Callie Rutter, and Cyndi Utzman. Defendants'
21 failure to comply with these duties has also harmed Plaintiff Oma's Angel Foundation, by
22 diverting resources from its mission, and forcing it to assist shelter residents harmed by
23 Defendants' unsanitary conditions and violations of residents' rights.

24 349. Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

25 350. Defendants' conduct in tortiously breaching their duty to maintain their
26 shelters in habitable conditions, free of discrimination, has been grossly negligent.
27
28

1 **FOURTEENTH CAUSE OF ACTION**

2 Unlawful Expenditure of Public Funds (Cal. Civ. Proc. Code § 526a)
3 **(All Plaintiffs against Defendant County and Plaintiffs Moore, Ogle, Utzman,
Powitzky, Kraft, Lancaster, and Oma’s Angel Foundation against Defendant City)**

4 351. Plaintiffs incorporate herein by reference the above allegations and Counts(s),
5 as if set forth in full.

6 352. Plaintiffs have been assessed and have paid taxes that fund these Defendants
7 within one year before the commencement of this action.

8 353. Defendants are and will be expending public funds by paying the shelters at
9 issue to house homeless people, and paying the salaries of peace officers and others who
10 enforce anti-camping and other laws against homeless individuals who decline to stay at
11 the shelters.

12 354. For the reasons described in the previous Counts, these expenditures of
13 public funds on shelters that violate the law, and on the County and City’s violations of
14 the law, are illegal expenditures of, waste of, or injury to public funds and property, and
15 therefore those illegal shelter policies and practices should be enjoined and declared
16 unlawful under Code of Civil Procedure § 526a and the common law. California
17 Government Code § 814 provides that the government immunity provisions do not apply
18 to “the right to obtain relief other than money or damages against a public entity or public
19 employee.”

20 **RELIEF REQUESTED**

21 Therefore, Plaintiffs ask the Court for the following:

22 1. That the Court issue a declaration, a writ of mandate, and an injunction
23 prohibiting Defendants from engaging in the unlawful conduct described above.

24 2. That the Court award damages and any applicable penalties for the acts
25 described above, including punitive damages.

26 3. That Plaintiffs be awarded attorneys’ fees and costs under Civil Code § 51.9,
27 Code of Civil Procedure § 1021.5, Government Code § 12965, and any other applicable
28

1 law.

2 4. Such other and further relief as the Court deems proper and just.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs demand trial by jury on all claims and causes of action so triable.

5 DATED: March 20, 2023

6 Respectfully submitted,

7 ACLU FOUNDATION OF SOUTHERN
8 CALIFORNIA

9 /s/Minouche Kandel

10 Minouche Kandel
11 Catherine Rogers
12 AMERICAN CIVIL LIBERTIES UNION
13 FOUNDATION OF SOUTHERN CALIFORNIA
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15 Los Angeles, CA 90017
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VERIFICATION

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I, Heidemarie Zimmermann, am the President of Oma’s Angel Foundation and authorized to verify this Petition as an officer. I have read this Verified Petition for Writ of Mandate and Complaint in Utzman et al v. County of Orange et al. and know its contents. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

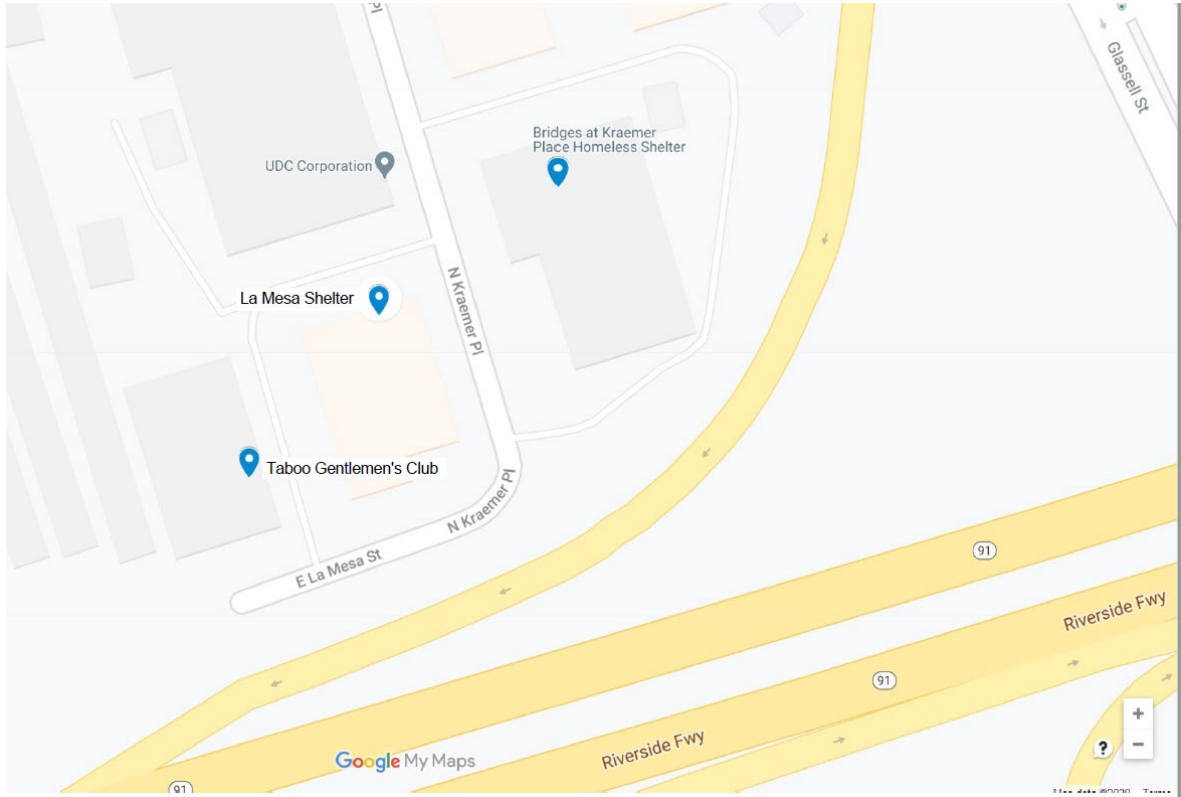
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: Mar 19, 2023

Heidemarie Zimmermann
Heidemarie Zimmermann (Mar 19, 2023 18:46 PDT)
Heidemarie Zimmermann

APPENDIX A

Map Showing Location of La Mesa Shelter and Bridges at Kraemer Place



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APPENDIX B

Temperature Reading From Inside the Courtyard on July 7, 2018



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Temperature Reading From inside the Courtyard on December 31, 2018



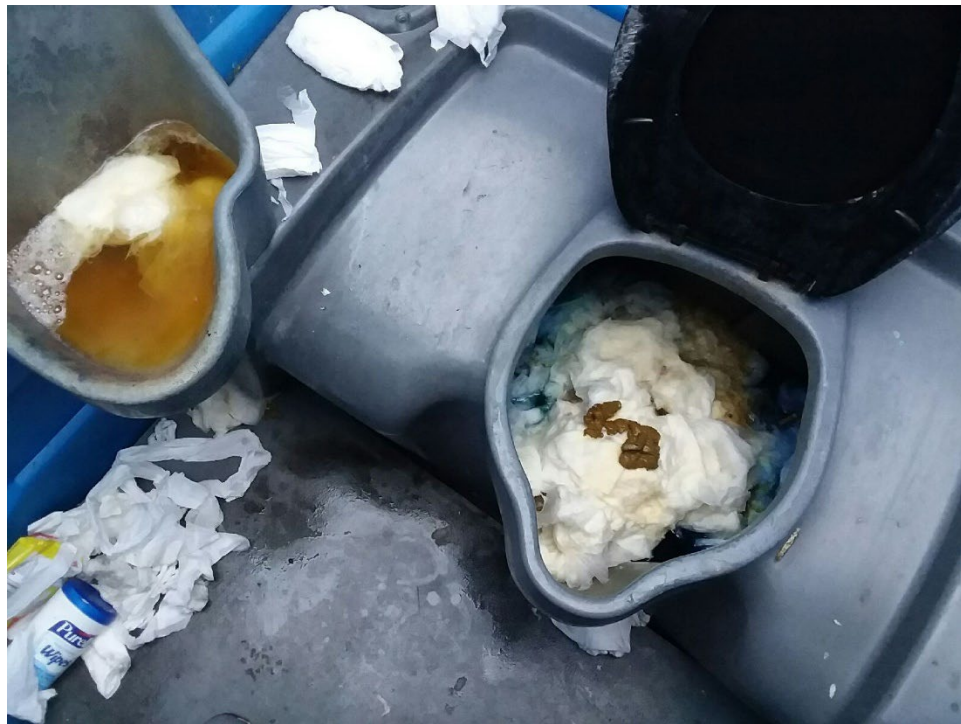
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APPENDIX C

Photograph of portable toilet at The Courtyard taken December 17, 2018



Photograph of portable toilet at The Courtyard taken July 30, 2018



1 **PROOF OF SERVICE**

2 I, Hector Murillo, am employed in the County of Los Angeles, State of California. I
3 am over the age of 18 and not a party to the within action; my business address is 555
4 South Flower Street, Los Angeles, CA 90071.

5 On March 20, 2023, I served a copy of the following document described as:

6 **SECOND AMENDED VERIFIED COMPLAINT AND PETITION FOR WRIT OF
7 MANDATE**

8 on the interested parties in this action as follows:

9 **By U.S. Mail**

10 By placing a copy of the document listed above in a sealed envelope in the
11 United States mail to the addressees set forth below. Under the firm's practice
12 of collection and processing of documents for mailing, it would be deposited
13 with the United States Postal Service on that same day with postage thereon
14 fully prepaid at Los Angeles, California in the ordinary course of business.

15 **By E-Service**

16 By causing such documents to be electronically served via One Legal pursuant
17 to section 1010.6 of the Code of Civil Procedure. The file transmission was
18 reported as completed and a copy of the transmission page will be maintained
19 with the documents in our office.

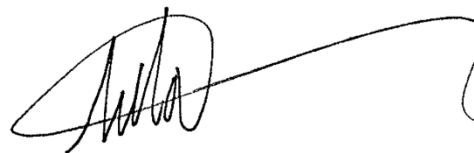
20 **By Electronic Mail**

21 I caused said document to be transmitted by electronic mail. The names and
22 email addresses of the persons served are set forth in the service list. The
23 document was transmitted by electronic transmission and without error.

24 **SEE ATTACHED SERVICE LIST**

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed on March 20, 2023 at Los Angeles, California.

27 

28 _____
Hector Murillo

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