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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 SOUTHERN DIVISION

19 Kenneth Glover; David Sestini;
20 Douglas Frederes Jr.; Jeffrey Aiken;
21 Katrina Aune; John Miller; and Lisa
Holbrook, individually, and on behalf
22 of all others similarly situated

23 Plaintiffs,

24 vs.

25 CITY OF LAGUNA BEACH; THE
LAGUNA BEACH POLICE
26 DEPARTMENT, a California charter
city

27 Defendants.
28

CASE NO. 8:15-CV-01332-AG-DFM

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Title II of the Americans with Disabilities
Act; Section 504 of the Rehabilitation Act
of 1973; the Eighth and Fourteenth
Amendments and California Constitution,
Art. I. sec. 7, 17

Judge: Hon. Andrew J. Guilford
Ctrm: 10D

1 its heavy use of law enforcement against disabled, homeless persons as appropriate
2 and legally-permissible.

3 7. The City's policy and practice places unique burdens on disabled,
4 homeless persons who live in the City, particularly those who suffer from disabling
5 mental illnesses. For such individuals, it can be extremely difficult, if not
6 impossible, to cope with the crowded, noisy, and chaotic environment of a
7 homeless shelter, such as the ASL. Some can only stay in this shelter environment
8 for a short period before they experience deterioration in their mental condition that
9 forces them to leave. Others are kicked out because their disabilities prevent them
10 from being able to conform to the behavioral requirements of the shelter. When
11 they cannot access this shelter, they are without *any* safe, legal place to sleep within
12 the City and are at risk of criminal citation for merely sleeping or lying down with
13 their belongings. The increased anxiety, fear, and paranoia associated with trying
14 to find a place to rest free from police scrutiny or harassment adds to the inherent
15 stress and dangers of living outdoors. As they remain unsheltered, their mental and
16 physical health worsens and it becomes even harder for them to cope with the
17 demands the City's policy and practice places upon them and to secure the housing,
18 employment and/or benefits needed to escape homelessness. For such disabled,
19 homeless individuals the only effective way to get them off the streets is to provide
20 permanent supportive housing.

21 8. Despite knowing that the vast majority of homeless persons in Laguna
22 Beach are disabled and that many of these individuals require permanent supportive
23 housing, the City has not only failed to create this desperately-needed resource, it
24 has persisted in its strategy of heavy law enforcement. Numerous disabled,
25 homeless persons have been cited for sleeping or resting in public – innocent
26 activities they cannot avoid while they remain in Laguna Beach. LBPD uses a
27 variety of prohibitions to target those they find sleeping, including California Penal
28 Code (“Penal Code”) section 647(e) (prohibits “lodging” in public), and Laguna

1 Beach Municipal Code (“L.B.M.C.”) sections 8.30. 030 (prohibits “camping” in
2 public), 18.05.020 (beach curfew). Further, because of the fear of being found and
3 cited by police, homeless individuals turned away from the ASL often end up in
4 more precarious situations, such as traveling on foot along the dark, winding
5 roadway back to town or seeking refuge in the canyon around the shelter. Both of
6 these options are risky – in at least five high-profile incidents in the past several
7 years, homeless persons have been killed or seriously injured along this roadway or
8 in the canyon.

9 9. Because of this unlawful and unconstitutional conduct of the City and
10 the LBPD, Plaintiffs bring this action for preliminary and permanent injunctive
11 relief and declaratory relief. This action is based upon the rights secured to
12 Plaintiffs by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 (the
13 “ADA”); Section 504 of the Rehabilitation Act of 1973 (the “Rehabilitation Act”)
14 and under the Eighth and Fourteenth Amendments to the United States
15 Constitution, and Article I, sections 7 and 17 of the California Constitution.

16 **PARTIES**

17 **Plaintiffs**

18 10. Plaintiffs are chronically homeless individuals who live in Laguna
19 Beach, each of whom suffers from mental and/or physical disabilities. Each
20 Plaintiff is “chronically homeless” in that he or she has either experienced
21 homelessness for an extended period or has repeatedly cycled in and out of
22 homelessness *and* has a disabling condition. As disabled, homeless individuals
23 living in Laguna Beach they face constant scrutiny as they try to navigate and cope
24 with the resources and restraints that comprise the City’s homelessness program,
25 including the limited, often inaccessible, shelter and risks of criminal citation when
26 they cannot access this shelter. The constant scrutiny often worsens their mental
27 and physical health.

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1 11. Each Plaintiff needs permanent supportive housing, a resource that is
2 not currently available through Laguna Beach’s homelessness program. In addition
3 to seeking resources locally, some plaintiffs have also sought permanent supportive
4 housing or other assistance through countywide programs. However, they are not
5 sure if they meet the eligibility requirements for these programs or when, or if, they
6 will be placed.

7 12. Plaintiff KENNETH GLOVER is a forty-seven-year-old, chronically
8 homeless Orange County native. He was raised in Laguna Niguel and Dana Point,
9 but moved to Laguna Beach in 2011 and considers it his home. Glover was
10 employed as a commercial fisherman, but lost his job during the recent recession.
11 He has been diagnosed with depression and alcoholism.

12 13. Despite living in Laguna Beach for four years,¹ Glover was not
13 considered a “Laguna Beach homeless resident” by the City and could only sleep at
14 the ASL when he won the lottery for an empty space. For several years, Glover
15 tried to sleep at the ASL and was able to win a space only about twice per week.
16 While grateful whenever he was permitted to stay, he found staying at the ASL very
17 stressful and experienced difficulty sleeping because of the noise and nightmares he
18 often suffered while staying there.

19 14. On nights when Glover did not get a space at the ASL, he had no legal
20 place to sleep. On one such night, September 6, 2012, Glover slept in the parking
21 lot of the ASL after having been turned away. He was discovered by police the
22 next morning and cited for violating Penal Code section 647(e). On another
23 occasion, he was discovered by police at around 9:30 p.m. after being put on the
24 “alternate” list for the ASL. The LBPD told Glover he had to leave town and
25 provided him with a bus pass to get to the Armory Shelter in Fullerton. However,
26

27 ¹ Soon after this action was filed, Glover was placed in housing by Friendship
28 Shelter. It is not clear whether this placement is suitable for someone with Glover’s
needs and, therefore, will end up being permanent.

1 after the long bus ride from Laguna Beach to Fullerton, the Armory Shelter had
2 already closed its doors for the evening and Glover was forced to sleep outdoors in
3 an unfamiliar city. After that, Glover tried to avoid sleeping in the ASL parking lot.
4 Instead, Glover sought spots on the beach or in surrounding areas where he could
5 avoid the police and local residents. In 2012, Glover was riding his bicycle along
6 Laguna Canyon Road after being unable to secure a shelter spot and was hit by a
7 car. He suffered a disabling injury to his right hand that has made it more difficult
8 to find work.

9 15. Glover continued to seek shelter and, on nights when he was
10 unsuccessful, was forced to make the two-and-a-half-mile journey along Laguna
11 Canyon Road by foot in the dark to find a place to sleep that is out of sight of the
12 police. Glover was not always successful in avoiding LBPD's attention – he was
13 cited for sleeping on the beach in violation of L.B.M.C. section 18.05.020 on May
14 30, 2014, and June 7, 2014. In addition, he was cited for “camping” under
15 L.B.M.C. section 8.30.030 on March 22, 2014. During this period, an LBPD
16 officer asked if there was anything the officer could do to get Glover to leave the
17 City for good.

18 16. A safe, legal, and stable place to sleep is necessary for Glover's
19 wellbeing. Shortly before the inception of this action, Glover stopped seeking
20 shelter at the ASL because the extreme anxiety of the experience – not knowing
21 whether he would get a spot, having to travel back downtown to seek a safe place to
22 hide if he did not or having to cope with the noisy, crowded environment if he did –
23 became unbearable and caused a deterioration in his mental health. Glover's doctor
24 recently prescribed him a stronger medication to help him cope with this anxiety,
25 but while taking it, Glover had trouble standing, walking, and communicating. He
26 discontinued this medication and continued to suffer anxiety because he knew he
27 would have to find a place to hide each night.

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1 17. Plaintiff DAVID SESTINI (“Sestini”) is a fifty-three-year-old,
2 chronically homeless man who grew up in Orange and Los Angeles Counties. He
3 has lived in Laguna Beach since July 2012. He suffers from bipolar disorder,
4 depression, anxiety, alcoholism, chronic obstructive pulmonary disease (COPD),
5 and heart spasms. In 2006 he received a traumatic head injury from a bicycle
6 accident, leaving him with cluster headaches/migraines and balance and memory
7 problems that continue today. Sestini became homeless four years ago after he left
8 a sober living facility because he could not tolerate the living environment. Sestini
9 has difficulty keeping work because of his physical and mental health issues and is
10 frequently hospitalized.

11 18. The City does not consider Sestini to be a Laguna Beach resident;
12 therefore, he can only sleep at the shelter when he wins a lottery spot. On the
13 nights he does not obtain a space at the shelter, he sleeps on local park benches. In
14 the cold winter months, Sestini travels to Fullerton to sleep at the Armory, but this
15 alternative is not available year round. On the morning of July 25, 2013, the LBPD
16 cited Sestini just outside the shelter for illegal lodging under Penal Code section
17 647(e), despite the fact that he had spent most of the night sleeping inside the
18 shelter. Sestini had moved outside at approximately 5:00 a.m. to avoid an argument
19 with another person staying there. The citing officer did not give Sestini any
20 alternatives or respond when Sestini told him why he was sleeping outside.

21 19. In the last year, Sestini has been kicked out of the shelter several times
22 because his bipolar disorder and anxiety make it difficult for him to control his
23 emotions around other people at the shelter and conform his behavior to that
24 required by the shelter. During these times, he suffered from the constant stress of
25 trying to find a place to sleep without attracting the attention of the LBPD, which
26 exacerbated his breathing and heart conditions. After being kicked out of the
27 shelter for two weeks during the fall of 2014, Sestini was overcome with worries
28 about losing his job, started having suicidal thoughts and was committed to an

1 inpatient psychiatric ward for several weeks.

2 20. Recently, Sestini was permanently banned from the shelter. Although
3 he considers Laguna Beach his home, he initially tried to obtain services from a
4 sober living facility in Huntington Beach. This placement did not last and Sestini is
5 now back in Laguna Beach without any safe, legal place to sleep.

6 21. Plaintiff DOUGLAS FREDERES, JR. (“Frederes”) is a thirty-five-
7 year-old, chronically homeless man who grew up in South Orange County.
8 Frederes lived² in Laguna Beach for at least three years, with the exception of a
9 seven-month stint in Las Vegas after increasingly intense harassment from the
10 LBPB forced Frederes to leave town. Frederes was diagnosed with bipolar disorder
11 at the age of fourteen and spent several months in a mental health facility; he often
12 suffers from paranoia. As a result, he has a difficult time finding and keeping work.
13 In the past, he has performed work in carpentry, as a machinist, and in working
14 with granite and marble, but he has not held a paid position since 2009.

15 22. The City never considered Frederes to be a Laguna Beach resident;
16 therefore, he could only sleep at the ASL when he won a space in the nightly
17 lottery. Frederes used to sleep at the shelter often, but he found the noisy and
18 chaotic shelter environment caused him significant stress and worsened his mental
19 health symptoms. In addition, Frederes has been kicked out of the shelter because
20 of difficulties arising from his mental illness, getting along with the other homeless
21 individuals who frequent the shelter and conforming his behavior to that required
22 by shelter staff. As a result, Frederes frequently slept on the beach or elsewhere
23 instead. Frederes has been cited at least 14 times while sleeping outdoors in
24 Laguna Beach, including three times under L.B.M.C. section 8.30.030 (May 12,
25 2013, July 20, 2013, and January 20, 2014), six times under L.B.M.C. section
26 18.05.020 (July 13, 2013, January 27, 2014, February 4, 2014, February 15, 2014,
27 August 13, 2014, and July 15, 2015), four times under California Penal Code

28 ² Frederes is currently incarcerated.

1 section 647(e) (March 27, 2013, April 16, 2013, April 25, 2013, and August 10,
2 2013), and once under L.B.M.C. section 18.04.020 (July 31, 2015), an ordinance
3 not in force at the time of the citation.³ In addition, LBPD members recently
4 pressured Frederes to leave town again. Because Frederes had no income and no
5 money, he could not afford transportation out of town, and in any case, there was
6 nowhere else for him to go.

7 23. Plaintiff JEFFREY AIKEN (“Aiken”) is a 54-year-old homeless
8 veteran who has lived in Laguna Beach for two years. He grew up in Orange
9 County, graduated from Orange Coast College in 1983, and served for 10 years in
10 the Air Force until he was discharged for disability in 1998. He has not had steady
11 employment since his discharge. Aiken suffers from mental disabilities including
12 depression and schizophrenia, and physical disabilities from a knee injury and from
13 a brain injury.

14 24. The City does not consider Aiken to be a Laguna Beach resident;
15 therefore, he can only sleep at the ASL when he wins a lottery spot. Aiken stays at
16 the shelter from time to time, but finds the environment stressful because some of
17 the other occupants are frequently agitated or intoxicated. When he cannot stay at
18 the shelter, Aiken sleeps in a location in Laguna Canyon that he keeps a closely
19 guarded secret, or on the beach. Because he is sometimes forced to sleep outside,
20 Aiken has been cited for beach curfew violations under L.B.M.C. section 18.05.020
21 and a violation of the L.B.M.C. section 8.30.030 for sleeping in public on April 15,
22 2014. More recently, he received a warning for sleeping in the ASL parking lot
23 after being turned away the evening of April 9, 2015.

24 25. Plaintiff KATRINA AUNE (“Aune”) is a thirty-five-year-old native of
25 Vancouver, Canada who has been homeless in Laguna Beach since late-2011 or
26 early-2012. Aune has two children, aged 9 and 12, both of whom have permanent

27 _____
28 ³ Provisions of this ordinance were repealed in March 2009, following an earlier
legal challenge. *See infra* ¶¶ 43-44.

1 housing. Aune has been diagnosed with depression, and suffers from post-
2 traumatic stress disorder and obsessive compulsive disorder.

3 26. Aune briefly stayed in a transitional housing program but was forced
4 to leave because she did not follow directions, including taking the medications
5 prescribed by her doctor. Aune has been staying at the ASL intermittently for the
6 last three or four years, but because the City does not considered her a Laguna
7 Beach resident, she must rely on winning a lottery spot. Even on nights where
8 Aune is able to obtain a bed at the shelter, she finds it difficult to sleep because of
9 the noise and commotion. She also feels that she is harassed and threatened by
10 other shelter occupants. On nights that Aune does not win a spot, she sleeps in the
11 shelter parking lot or sometimes at the beach in the vicinity of others for safety.
12 Aune considers sleeping outside “torture” because the police frequently interrupt
13 her sleep. Aune has been ticketed by the LBPD for illegal lodging on at least one
14 occasion on September 15, 2013 and received a verbal warning for sleeping in the
15 shelter parking lot in early April 2015. Her emotional state is deteriorating from the
16 constant stress of sleeping at the shelter and outdoors.

17 27. Plaintiff JOHN MILLER (“Miller”) is a 50-year-old man who attended
18 high school in Laguna Beach and lived and worked in Laguna Beach after high
19 school. Miller has not worked since 2002 due to his disabilities, and has received
20 Social Security Income for the past twelve years. Nevertheless, his modest income
21 is not enough to enable him to obtain housing, and he has been homeless in Laguna
22 Beach for the last three to five years. Miller has been diagnosed with clinical
23 depression, as well as several chronic health conditions including Chronic
24 Obstructive Pulmonary Disease, chronic back pain, neuropathy, and early onset
25 Parkinson’s Disease. In addition, he suffers from Post-Traumatic Stress Disorder.
26 Further, Miller has been prescribed numerous medications, one of which
27 incapacitates him and makes him vulnerable to victimization.

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1 28. Miller sleeps at the ASL on most nights, but often finds that the noise,
2 chaos and unsanitary conditions there aggravate his mental health and force him to
3 sleep elsewhere. Sometimes being at the ASL causes him to be severely depressed
4 to the point that he cannot engage in self-care activities, such as eating, and has
5 suicidal thoughts. When Miller cannot tolerate the ASL, he has no safe, legal place
6 to sleep and must sleep outside in Laguna Beach, where he risks scrutiny from the
7 LBPD. He received a ticket under Penal Code section 647(e) on October 5, 2015,
8 after this action was filed.

9 29. Plaintiff LISA HOLBROOK (“Holbrook”) is a 49-year-old woman
10 who has been homeless in Laguna Beach for four years. She first became homeless
11 after a battle with ovarian cancer in her twenties and thirties left her disabled and
12 unable to work. She was diagnosed with anxiety ten years ago and with bipolar
13 disorder two years ago.

14 30. Even when Holbrook is able to win a spot in the ASL lottery, the
15 noisy, chaotic conditions at the ASL aggravate Holbrook’s anxiety and bipolar
16 disorder symptoms. She is sometimes harassed by other residents or the LBPD in
17 parking, lot, which makes her irritable, anxious, worsens her insomnia, and even
18 triggers panic attacks. As a result she sometimes has difficulty coping with the
19 ASL environment. Other times, she has been kicked out of the ASL because her
20 symptoms make it difficult to stay calm. On nights where she cannot stay in the
21 ASL environment due to her disabilities, Holbrook is forced to sleep outside, which
22 terrifies her, and where she runs the risk of being cited by the LBPD for sleeping in
23 public.

24 31. Many of these experiences – including difficulties accessing shelter or
25 coping with the shelter environment, citation and harassment at the hands of the
26 police, and declining mental and physical health – are shared by other disabled,
27 homeless persons living in Laguna Beach.

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Defendants

32. Defendant Laguna Beach is a municipal entity, organized as a charter city under the laws of the State of California, with the capacity to sue and be sued. Defendant Laguna Beach is the legal and political governmental entity responsible for the actions of the LBPD, its officials, its agents, and its employees. Defendant Laguna Beach is sued in its own right and on the basis of the acts of its officials, agents, and employees, including the LBPD.

33. Defendant LBPD provides law enforcement services in Laguna Beach and enforces Laguna Beach’s municipal code and the California Penal Code.

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

35. Each Defendant was acting on behalf of Laguna Beach or at the direction of another Defendant on Laguna Beach’s behalf.

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

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

STATEMENT OF FACTS

Chronic Homelessness in Laguna Beach

1. Unlike other areas in Orange County, the homeless population of Laguna Beach is comprised of persons who are almost exclusively chronically homeless, *i.e.* those “with a mental or physical disability who experience long-term or repeated homelessness.” City of Laguna Beach Homeless Task Force Final Recommendations at 3-4 (2008). Therefore, most homeless persons in Laguna Beach suffer from some form of mental and/or physical disability. *Id.* Defendants are aware that the vast majority of homeless persons living in Laguna Beach are

1 disabled. *See id.*; Christa Woodall, *Addressing Laguna Beach's Homeless*, O.C.
2 Register, Sept. 5, 2007 (quoting Police Chief as estimating that half of City's
3 homeless population "battle mental illness, most without acknowledging the
4 problem"); *see also* City of Laguna Beach's Housing Element, 2013-2021
5 ("Individuals with a disability . . . comprise the greatest majority of Laguna's
6 homeless at 80% . . .").

7 2. Mental and physical disabilities are both causes and consequences of
8 homelessness. While persons with disabilities have a greater risk of homelessness,
9 studies have also shown that the adversity and stress of homelessness can lead to
10 the development or exacerbation of mental illness. Further, unsheltered homeless
11 persons have a greater risk of experiencing violence and physical health problems,
12 which increases their likelihood of developing mental health problems.

13 3. For chronically homeless persons, the only effective way to address
14 their homelessness and their underlying or co-occurring disabilities is permanent
15 supportive housing (housing with wrap-around services including, but not limited
16 to, mental health and case management services). There is a growing recognition
17 that living in a shelter can be nearly impossible for some people with serious mental
18 and physical health issues. These chronically homeless individuals need to be
19 permanently and safely housed before they can meaningfully access and benefit
20 from treatment. Nationally – and in Orange County – chronically homeless persons
21 are significantly more likely than other homeless persons to be living in public
22 places because they cannot access and complete treatment while remaining in
23 temporary shelter. Meanwhile, the unhealthy and unsafe conditions associated with
24 prolonged homelessness worsen mental and physical health conditions – making
25 these individuals even less likely to be able to survive in temporary shelter and
26 creating a downward spiral of homelessness and mental or physical illness.

27 4. Permanent supportive housing is now considered by the federal
28 government and experts on homelessness as the best means of housing and treating

1 chronically homeless individuals, defined to include those experiencing extended or
 2 repeated periods of homelessness who also suffer from a disabling condition. U.S.
 3 Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to*
 4 *Prevent and End Homelessness* 18 (2010) (“For people experiencing chronic
 5 homelessness, the research is clear that permanent supportive housing using a
 6 Housing First approach is the solution.”). Research has demonstrated that
 7 permanent supportive housing is both effective at permanently reducing
 8 homelessness and saves taxpayers money as compared to the costs of emergency
 9 shelter and of cycling homeless persons through the criminal justice system. *Id.*
 10 (reviewing results of 13 studies demonstrating that it is cheaper to provide
 11 permanent supportive housing as compared to the costs of chronic homelessness,
 12 including jail and health care costs).

13 **History of Laguna Beach Homelessness Policy**

14 ***Sippelle* Litigation and Settlement**

15 5. The City, through LBPD, has a history of targeting disabled, homeless
 16 persons for increased law enforcement, harassment, and scrutiny – and has been put
 17 on notice that such conduct violates the rights of these disabled, homeless
 18 individuals.

19 6. In December 2008, the ACLU of Southern California and co-counsel
 20 filed suit on behalf of several disabled, homeless individuals challenging the City’s
 21 policy and practice of enforcing Laguna Beach Municipal Code (“L.B.M.C.”)
 22 section 18.04.020⁴ against disabled, homeless persons in a manner that criminalized
 23 sleeping in all public places at night and conducting “sweeps” of beaches, parks,
 24 and other public places at night and in the early morning to wake and harass

25 _____
 26 ⁴ L.B.M.C. section 18.04.020 provided that “No person shall pitch a tent or camp or
 27 sleep upon any beach, park, public street, alley or passageway, or sleep in any
 28 automobile parked at any place within the city; provided that between the hours of
 seven a.m. and seven p.m. it shall not be unlawful to sleep upon any beach within
 the city.”

1 sleeping homeless persons, as well as other enforcement tactics that targeted
2 disabled, homeless individuals. *Sipprelle v. City of Laguna Beach*, No. 08-01447
3 (C.D. Cal. filed Dec. 23, 2008). The lawsuit sought injunctive and declaratory
4 relief and included claims for violating plaintiffs’ rights to due process, freedom
5 from cruel and unusual punishment, and under Title II of the ADA.

6 7. The case settled extremely quickly, without any decision from the
7 Court. In March 2009, the City of Laguna Beach repealed portions of L.B.M.C.
8 section 18.04.020 pertaining to camping and sleeping in public places. In the
9 settlement agreement, Defendants further agreed to limit enforcement of Penal
10 Code section 647(e) against homeless persons for camping or sleeping in public for
11 a period of two years.

12 8. Despite the lawsuit and settlement, in November 2009, the City
13 enacted L.B.M.C. section 8.30.030, a new ordinance prohibiting camping and
14 sleeping in public areas, criminalizing the same involuntary activity as that
15 prohibited by the repealed L.B.M.C. section 18.04.020. LAGUNA BEACH, CAL.,
16 CODE § 8.30.030 (the “New Ordinance”). Specifically, the New Ordinance makes
17 it unlawful to sleep in public parks and beaches at night, on any public street or
18 sidewalk, or on City property and to camp in any public place. Camping is defined
19 broadly to include “residing in or using any public areas for living accommodation
20 or lodging purposes . . . with one’s possessions or while storing one’s possessions.”
21 LAGUNA BEACH, CAL., CODE § 8.30.020. While the definition of camping excludes
22 “merely sleeping outside or the use of a blanket, towel, or mat,” *id.*, given the broad
23 language prohibiting residing in public areas with possessions and the extent of the
24 separate sleeping prohibition, it is impracticable for an unsheltered homeless
25 individual to sleep in compliance with the ordinance.

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**Creation of the Alternate Sleeping Location and
Need for Permanent Supportive Housing**

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3 9. At the same time the City enacted the New Ordinance, the City
4 authorized and funded the creation and operation of a small emergency shelter for
5 homeless individuals referred to as the “Alternate Sleeping Location” or “ASL.”
6 The City contends that the creation of the ASL allows it to legally enforce laws
7 prohibiting sleeping, camping, or lodging in public – despite its small size and
8 limited accessibility, especially for those with disabilities.

9 10. The ASL is currently operated by Friendship Shelter and funded by the
10 City (partially through federal Community Development Block Grant (“CDBG”)
11 funds received through Orange County). It is located approximately two-and-a-half
12 miles outside of the downtown area, along Laguna Canyon Road – a twisting
13 roadway which runs from downtown Laguna Beach inland through Laguna Canyon
14 towards the City of Irvine. A van is provided to transport homeless individuals
15 from the downtown area to the ASL in the evening. Access to the ASL is limited –
16 on any given night 5-15 people are turned away because of a lack of capacity.

17 11. At the City’s behest, the ASL gives priority to those who can
18 demonstrate that they are “local Laguna Beach residents.” This residency
19 requirement for homeless individuals has an extremely high bar – individuals must
20 demonstrate that an immediate family member currently lives in Laguna Beach,
21 that they attended K-12 school in Laguna Beach, that they leased or paid utilities
22 for residential property in Laguna Beach, or that the LBPD knows them to have
23 been members of the Laguna Beach homeless community for at least 18 months.
24 However, these criteria are not applied evenly. Many disabled, homeless persons
25 who have lived in Laguna Beach for more longer than 18 months are not considered
26 “local Laguna Beach residents” by the City and/or the LBPD and are therefore less
27 likely to be able to access this shelter. This is in spite of the homeless persons’
28 multiple interactions with the LBPD over an 18-month period in some cases,

1 reflecting LBPD’s knowledge of the individuals’ local Laguna Beach resident
2 status under the operative definition.

3 12. An individual who does not meet this City residency requirement can
4 only receive shelter by appearing there in person each night and adding his or her
5 name to a waitlist. ASL staff members draw names from the waitlist to determine
6 who can stay at the shelter on that night. Individuals whose names are not selected
7 in this lottery cannot stay at the shelter, and there is no other legal place for them to
8 sleep within the City. In addition, the van does not transport individuals that are
9 turned away back to the downtown area, so such individuals typically end up
10 stranded two-and-a-half miles up Laguna Canyon Road. Their options are limited
11 to sleeping in the shelter parking lot, sleeping in the canyon near the shelter, or
12 undertaking the dangerous trek back to the downtown area and beaches to find a
13 place to sleep.

14 13. While the ASL was created to serve the needs of Laguna Beach’s
15 homeless population, almost entirely composed of those who are chronically
16 homeless, many individuals within this population cannot access the ASL because
17 they suffer from mental disabilities. As is typical of emergency shelter, the ASL is
18 extremely crowded, noisy, and chaotic. Chronically homeless individuals suffering
19 from certain mental health conditions – such as PTSD, bipolar disorder, severe
20 depression and anxiety, and schizophrenia – cannot tolerate this environment.
21 Some cannot stay at the shelter for even a night, while others can stay for a short
22 time before needing to leave. Still others try to stay at the ASL but are forced to
23 leave because their disabilities prevent them from being able to conform their
24 conduct to that required by ASL staff. Those who do stay at the ASL report not
25 being able to sleep because of the noise and the anxiety caused by the crowded,
26 chaotic environment, as well as worsening mental and physical health symptoms.

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1 17. Finally, the City imposes a beach curfew under which the beaches are
2 closed from 1:00 a.m. to 5:00 a.m. each night. LAGUNA BEACH, CAL., CODE §
3 18.05.010. Ostensibly, “no person shall enter, remain or stay on any city beach or
4 in any city park at any time when such beach or park is closed.” *Id.* § 18.05.020.
5 Yet, the L.B.M.C. also provides a number of exceptions for nearly every other
6 activity one would engage in at the beach – except sleeping. *Id.* § 18.05.040
7 (permitting walking, jogging, fishing, or grunion hunting, ... scuba diving, surfing,
8 or swimming in the ocean” while beaches are “closed”).

9 18. LBPD frequently enforces the New Ordinance and Penal Code section
10 647(e) against individuals who sleep outdoors because they cannot access the ASL
11 – either because the individuals failed to win a lottery spot or because the
12 individuals cannot tolerate the ASL due to their mental or physical disabilities.
13 Moreover, the City has relied more heavily on the beach curfew ordinances to
14 punish the same underlying conduct.

15 19. Individuals turned away from the ASL are stranded several miles out
16 of town and have limited options for lodging. None of those options complies with
17 the law. Individuals sleeping in the ASL parking lot have been cited by LBPD
18 officers even after explaining to the officers that they were turned away from the
19 ASL and had nowhere else to go. To avoid such citations, some individuals leave
20 the immediate area of the ASL and sleep in the brushy areas in the nearby canyon
21 instead. Others make their way back to the downtown or beach areas to seek a
22 hidden place to sleep. Both of these options are dangerous. In several high-profile
23 incidents in the last few years, homeless persons have died or been seriously injured
24 while traveling on the dark, winding stretch of Laguna Canyon Road between the
25 ASL and downtown or in the canyon. However, LBPD officers also seek out and
26 cite disabled, homeless persons for sleeping in the canyon area, downtown, or at the
27 beaches. No matter where they go, disabled, homeless persons cannot escape
28 punishment in Laguna Beach.

CLASS ALLEGATIONS

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20. Plaintiffs seek to have a class certified under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

21. The class represented by the individual plaintiffs is defined as the class of all persons who (a) are chronically homeless at the time judgment is entered; (b) live in the City of Laguna Beach; and (c) suffer from a mental and/or physical disability.

22. The class is so numerous that joinder of all members is impractical. Plaintiffs believe that currently between 40-100 disabled, homeless persons are subject to Defendants’ unlawful policies, practices and customs. There are questions of law and fact in common to all members of the class. The claims of the representative parties are typical of the claims of the class members. The representative parties will fairly and adequately represent the interests of the class.

23. Defendants’ policy or practice will affect all members of the class in the same way, because each class member is denied the benefit of a safe, legal place to sleep by the City’s homelessness program, and has been subjected to law enforcement efforts for engaging in the necessary activity of sleeping in public. Injunctive relief requiring the creation of permanent supportive housing and a cessation of enforcement, as well as declaratory relief declaring the City’s enforcement of anti-sleeping and anti-camping laws unconstitutional would remedy these problems class-wide , and is therefore appropriate to the class as a whole.

24. The common questions of law to be determined are whether (a) the City’s homelessness policy and practice denies benefits to, or otherwise discriminates against, disabled, chronically homeless persons who require permanent supportive housing to be stably housed and are subject to increased law enforcement, harassment, and scrutiny because they cannot access existing shelter in Laguna Beach because of their disabilities; (b) the issuance of criminal citations to disabled, homeless persons forced to sleep outdoors because they cannot access

1 shelter or housing constitutes cruel and unusual punishment; and (c) the City's
2 homelessness policy and practice violates disabled, homeless persons due process
3 rights by exposing them to an increased risk of danger. These questions of law are
4 common to all members of the class and predominate over any question affecting
5 individual class members.

6 25. The common questions of fact to be determined include whether
7 permanent supportive housing and a cessation of enforcement are reasonable
8 accommodations of Defendants' homelessness program under the ADA and
9 Rehabilitation Act.

10 26. No notice is required under for a class certified under Federal Rule of
11 Civil Procedure 23(b)(2) unless the Court directs that such notice be given.

12 27. The claims of the class representatives are typical of the claims of the
13 class members, because (1) all class members are suffering from physical or mental
14 disabilities and have been deprived of the benefits of the City's homelessness
15 program (i.e., a safe, legal place to sleep) in violation of the ADA and the
16 Rehabilitation Act, (2) all class members have been subjected to citation or the
17 threat of citation, or risk such citation, for sleeping in public even when they have
18 no safe, legal alternative in violation of the Eighth Amendment, Fourteenth
19 Amendment, and the California Constitution, and (3) all class members are subject
20 to an increased risk of danger due to the City's homelessness program, in violation
21 of the Fourteenth Amendment and the California Constitution.

22 28. The class representatives know of no conflict of interest among class
23 members. Plaintiffs are represented by the attorneys shown on the caption page,
24 including attorneys from the ACLU FOUNDATION OF SOUTHERN
25 CALIFORNIA, who have experience litigating civil rights cases on behalf of
26 homeless and disabled plaintiffs, and private counsel from PAUL HASTINGS LLP,
27 all of whom will vigorously prosecute this action.

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FIRST CLAIM FOR RELIEF

Violation of Title II of the ADA (42 U.S.C. § 12132)

29. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 28 as though fully alleged herein.

30. In 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. §§ 12101 -12181 (“ADA”), in order to secure and advance the civil rights of people with disabilities. The Congressional intent in enacting the ADA is “the elimination of discrimination against individuals with disabilities.” 42 U.S. C. § 12101(b)(1). Congress thus found that “historically, society has tended to isolate and segregate individuals with disabilities,” and that these forms of discrimination “continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2). Congress also determined that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic sufficiency for such individuals.” 42 U.S.C. § 12101(a)(8).

31. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

32. Each of the Plaintiffs is an individual with a mental or physical disability within the meaning of 42 U.S.C. § 12132 and is subject to Defendants’ homelessness program by virtue of living in the City. Defendants’ homelessness program – which comprises the City’s policy and practice of maintaining limited shelter, often inaccessible to those with disabilities, combined with heavy law enforcement (particularly under Penal Code section 647(e) and L.B.M.C. sections 8.30.030, 18.05.020), harassment, and scrutiny of those who are forced to sleep outside because they cannot access this shelter – burdens disabled, homeless persons in a manner different from and greater than the burdens experienced by homeless persons who do not have disabilities.

1 integration in society, employment, independent living, and economic and social
2 self-sufficiency, for such individuals....”

3 38. Section 504 of the Rehabilitation Act (29 U.S.C. §§ 706, 794) and
4 associated regulations (28 C.F.R. Parts 41 and 42) prohibit the exclusion of or
5 discrimination against an otherwise qualified disabled individual under any
6 program or activity receiving federal financial assistance.

7 39. Defendants receive federal financial assistance within the meaning of
8 Section 504 of the Rehabilitation Act. At minimum, Defendants’ homelessness
9 program is funded, in part, by CDBG funds received from the federal government
10 through the County of Orange.

11 40. Each of the Plaintiffs is an individual with a mental and/or physical
12 disability within the meaning of Section 504 of the Rehabilitation Act and is subject
13 to Defendants’ homelessness program by virtue of living in the City. Defendants’
14 homelessness program – which comprises the City’s policy and practice of
15 maintaining limited shelter, often inaccessible to those with disabilities, combined
16 with heavy law enforcement (particularly under Penal Code section 647(e) and
17 L.B.M.C. sections 8.30.030, 18.05.020), harassment, and scrutiny of those who are
18 forced to sleep outside because they cannot access this shelter – burdens disabled,
19 homeless persons in a manner different from and greater than the burdens
20 experienced by homeless persons who do not have disabilities.

21 41. Despite knowledge that the majority of homeless persons living in
22 Laguna Beach are chronically homeless and suffer from mental and/or physical
23 disabilities and that these individuals are frequently subject to citation or
24 harassment because they cannot access the ASL, Defendants have failed to modify
25 their homelessness program to accommodate Plaintiffs’ disabilities or the
26 disabilities of other homeless persons living in Laguna Beach. The provision of
27 permanent supportive housing and cessation of heavy law enforcement, harassment,
28 and scrutiny, is necessary for many of the disabled, homeless persons living in

1 Laguna Beach, including Plaintiffs, and would constitute a reasonable
2 accommodation.

3 42. The acts and omissions of Defendants, and each of them, including
4 devising and implementing a homelessness policy and practice combining minimal
5 shelter often inaccessible to disabled, homeless persons with heavy law
6 enforcement, harassment, and scrutiny of those who cannot access this shelter,
7 constitute discriminatory animus or deliberate indifference and violate the rights of
8 Plaintiffs under Section 504 of the Rehabilitation Act.

9 **THIRD CLAIM FOR RELIEF**

10 **Violation of Eighth and Fourteenth Amendments (42 U.S.C. § 1983)**
11 **and California Constitution §§ 7, 17 (Cruel and Unusual Punishment)**

12 43. Plaintiffs reallege and incorporate by reference each and every
13 allegation set forth in paragraphs 1 through 42 as though fully alleged herein.

14 44. The acts and omissions of Defendants, and each of them, as described
15 herein, violate the rights of all plaintiffs to be free from actual or threatened cruel
16 and unusual punishment. By virtue of their involuntary status as homeless and
17 disabled, and the absence and insufficiency of shelter or housing in Laguna Beach,
18 Plaintiffs have no way to comply with the laws Defendants have sought and
19 continue to seek to enforce against them, in particular Penal Code section 647(e),
20 and L.B.M.C. sections 8.30.030, 18.05.020.

21 **FOURTH CLAIM FOR RELIEF**

22 **Violation of the Fourteenth Amendment (42 U.S.C. § 1983)**
23 **and California Constitution § 7 (Substantive Due Process)**

24 45. Plaintiffs reallege and incorporate by reference each and every
25 allegation set forth in paragraphs 1 through 44 as though fully alleged herein.

26 46. The acts and omissions of Defendants, and each of them, as described
27 herein, violate the constitutional rights of Plaintiffs under the Due Process Clause
28 of the United States Constitution. Defendants' policy and practice of combining

1 minimal shelter, often inaccessible to those with disabilities, with heavy law
2 enforcement (particularly under Penal Code section 647(e) and L.B.M.C. sections
3 8.30.030, 18.05.020), harassment, and threats against those who are forced to sleep
4 outside because they cannot access this shelter places Plaintiffs in a position of
5 increased physical danger. Defendants are aware of the danger because of several
6 high-profile incidents in which homeless individuals were killed or seriously
7 injured and have acted with deliberate indifference to this danger. In addition, the
8 exacerbation of Plaintiffs' existing physical and mental disabilities that results from
9 Defendants' policy and practice places Plaintiffs in a position of increased risk of
10 danger.

11 **ACTUAL CONTROVERSY**

12 47. There exists an actual controversy between Plaintiffs and Defendants
13 as to each and every Claim for Relief alleged herein. Plaintiffs have suffered and
14 will continue to suffer ongoing and continuous injuries so long as the City
15 continues its policy and practice of supporting only minimal shelter inaccessible to
16 and/or inappropriate for disabled, homeless persons while citing, harassing, and
17 threatening disabled, homeless persons who cannot access this shelter. These
18 controversies warrant judicial determinations. Absent relief from this Court,
19 Plaintiffs will suffer irreparable injury as a consequence of Defendants'
20 unconstitutional and illegal acts and omissions.

21 **REQUEST FOR RELIEF**

22 Plaintiffs request relief as follows:

23 1. A preliminary injunction and a permanent injunction, enjoining
24 Defendants, their officers, agents, and employees, from enforcing California Penal
25 Code section 647(e) and Laguna Beach Municipal Code sections 8.30.030,
26 18.05.020 against disabled, homeless individuals who have no practical way to
27 comply by virtue of their homelessness and disability;

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1 2. A permanent injunction requiring Defendants to create and fund a
2 program to provide permanent supportive housing within the Laguna Beach city
3 limits sufficient to house the City’s disabled, homeless population;

4 3. For a declaration that Defendants’ past, present, and threatened future
5 actions deny Plaintiffs the benefits of the City’s Homelessness Program or subject
6 them to discrimination on the basis of their disabilities in violation of Title II of the
7 ADA and Section 504 of the Rehabilitation Act;

8 4. For a declaration that Defendants’ past, present and threatened future
9 actions violate Plaintiffs’ rights to be free from cruel and unusual punishment under
10 the Constitution of the United States and the California Constitution;

11 5. For a declaration that Defendants’ past, present, and threatened future
12 actions violate Plaintiffs’ rights to be free from due process violations under the
13 Constitution of the United States and the California Constitution;

14 6. For nominal damages;

15 7. For costs of suit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988,
16 as well as the analogous provisions of California law;

17 8. For attorneys’ fees pursuant to 42 U.S.C. § 1988; and

18 9. For such other relief as this Court deems just and proper.

19 DATED: October 16, 2015

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA and PAUL HASTINGS LLP

22 By: /s/ Heather Maria Johnson
HEATHER MARIA JOHNSON

23 Attorneys for All Plaintiffs

25 PAUL HASTINGS LLP

26 Attorneys for Plaintiffs Kenneth Glover, David
27 Sestini, Douglas Frederes, Jr., Jeffrey Aiken, and
28 Katrina Aune