

1 PETER J. ELIASBERG (SB# 189110)
peliasberg@aclusocal.org
2 BELINDA ESCOBOSA HELZER (SB# 214178)
bescobosahelzer@aclusocal.org
3 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Orange County Office
4 1851 E. First Street, Suite 450
Santa Ana, CA 92705
5 Telephone: (714) 450-3962
Facsimile: (714) 543-5240
6

7 DAVID M. HERNAND (SB #162733)
davidhernand@paulhastings.com
8 ANDREW B. GROSSMAN (SB# 211546)
andrewgrossman@paulhastings.com
9 KATHERINE F. MURRAY (SB# 211987)
katherinemurray@paulhastings.com
10 PAUL HASTINGS LLP
515 South Flower Street, Twenty-Fifth Floor
11 Los Angeles, CA 90071
Telephone: (213) 683-6000
12 Facsimile: (213) 627-0705

13 *Attorneys for Plaintiffs*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION
17

18 Kenneth Glover, et al.,
19 individually, and on behalf of all
others similarly situated

20 Plaintiffs,

21 vs.

22 CITY OF LAGUNA BEACH;
23 THE LAGUNA BEACH POLICE
DEPARTMENT, a California
24 charter city

25 Defendants.
26
27
28

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

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION**

Date: October 3, 2016
Time: 10:00 a.m.
Courtroom: 10D

Hon. Andrew J. Guilford

[Notice of Motion and Motion for Class Certification; Declarations of D. Sestini, M. Newman, R. Owens, B. Henwood, J. Day, P. Eliasberg and K. Murray and [Proposed] Order filed and served concurrently herewith]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. PRELIMINARY STATEMENT	1
II. STATEMENT OF FACTS.....	3
A. The Homeless Population In Laguna Beach.....	3
B. The History Behind Laguna Beach’s Homelessness Policy.....	3
1. The City’s Alternative Sleeping Location.....	5
2. Defendants’ Law Enforcement Practices	7
C. The Class Representatives	9
III. ARGUMENT	13
A. Standard For Class Certification.....	13
B. The Proposed Class Is Sufficiently Numerous	14
C. There Are Questions Of Law And Fact Common To The Class.....	16
D. The Class Representatives’ Claims Are Typical Of The Class.	19
E. Plaintiffs And Their Attorneys Will Fairly And Adequately Protect The Interests Of The Class.	22
IV. THE PROPOSED CLASS SATISFIES RULE 23(b)(2).....	23
V. THE COURT SHOULD DESIGNATE PLAINTIFFS’ COUNSEL AS CLASS COUNSEL UNDER RULE 23(g)(1).	24
VI. CONCLUSION	25

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001)	16, 19, 20
<i>Arnold v. United Artists Theater Circuit, Inc.</i> , 158 F.R.D. 439 (N.D. Cal. 1994)	13, 23
<i>Baghdasarian v. Amazon.com, Inc.</i> , 258 F.R.D. 383 (C.D. Cal. 2009).....	13, 21
<i>Blackie v. Barrack</i> , 524 F.2d 891 (9th Cir. 1975)	13
<i>Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg</i> , 290 F.R.D. 409 (S.D.N.Y. 2012).....	17
<i>Campbell v. Facebook Inc.</i> , No. 13-cv-5996-PJH, 2016 U.S. Dist. LEXIS 66267 (N.D. Cal. May 18, 2016).....	13
<i>Coleman through Bunn v. District of Columbia</i> , 306 F.R.D. 68 (D.D.C. 2015)	16
<i>In re Facebook, Inc., PPC Adver. Litig.</i> , 282 F.R.D. 446 (N.D. Cal. 2012)	15
<i>Gay v. Waiters’ & Dairy Lunchmen’s Union</i> , 549 F.2d 1330 (9th Cir. 1997)	15
<i>Gen. Tel. Co. of Southwest v. Falcon</i> , 457 U.S. 147, 102 S. Ct. 2364, 72 L. Ed. 2d 740 (1982)	22
<i>Gray v. Golden Gate Nat’l Rec. Area</i> , 279 F.R.D. 501 (N.D. Cal. 2011)	16
<i>Hanlon v. Chrysler</i> , 150 F.3d 1011 (9th Cir. 1998)	<i>passim</i>
<i>Hendricks-Robinson v. Excel Corp.</i> , 164 F.R.D. 667 (C.D. Ill. 1996).....	17
<i>Henrietta D. v. Giuliani</i> , No. 95 CV 0641, 1996 WL 633382 (E.D.N.Y. Oct. 25, 1996).....	18, 19
<i>Holmes v. Continental Can Co.</i> , 706 F.2d 1144 (11th Cir. 1983)	13, 23
<i>Jimenez v. Allstate Ins. Co.</i> , 765 F.3d 1161 (9th Cir. 2014)	18

TABLE OF AUTHORITIES

(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Jordan v. County of Los Angeles,
669 F.2d 1311 (9th Cir. 1982) 15

L.H. v. Schwarzenegger,
No. CIV. S-06-2042, 2007 WL 662463 (E.D. Cal. Feb. 28, 2007) 19, 20

Lewis v. Gross,
663 F. Supp. 1164 (E.D.N.Y. 1986) 14

Lynch v. Baxley,
744 F.2d 1452 (11th Cir. 1984) 22

Lynch v. Rank,
604 F. Supp. 30 (N.D. Cal. 1984) 15

Marisol A. v. Giuliani,
126 F.3d 372 (2d Cir. 1997) 24

Mazur v. eBay, Inc.,
257 F.R.D. 563 (N.D. Cal. 2009) 13

Mental Disability Law Clinic v. Hogan,
No. CV-06-6320, 2008 WL 4104460 (E.D.N.Y. Aug. 28, 2008) 14

O’Shea v. Littleton,
414 U.S. 488, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974) 22

Parra v. Bashas’, Inc.,
536 F.3d 975 (9th Cir. 2008) 17

Parsons v. Ryan,
754 F.3d 657 (9th Cir. 2014) 21, 23

Pederson v. Louisiana State Univ.,
213 F.3d 858 (5th Cir. 2000) 15

Perez-Funez v. District Director, I.N.S.,
611 F. Supp. 990 (C.D. Cal. 1984) 22

Phillips v. Joint Legislative Comm.,
637 F.2d 1014 (5th Cir. 1981) 15

Pottinger v. City of Miami,
720 F. Supp. 955 (S.D. Fla. 1989) 13, 14, 18

Rannis v. Recchia,
380 F. App’x 646 (9th Cir. 2010) 16

Rivera v. Holder,
307 F.R.D. 539 (W.D. Wash. 2015) 15

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>Rosario v. Livadities</i> , 963 F.2d 1013 (7th Cir. 1992)	19
<i>Santillan v. Ashcroft</i> , No. C 04–2686, 2004 WL 2297990 (N.D. Cal. Oct. 12, 2004)	15
<i>Sherman v. Griepentrog</i> , 775 F. Supp. 1383 (D. Nev. 1991)	15
<i>Siprelle v. City of Laguna Beach</i> , No. 08-01447 (C.D. Cal. Dec. 23, 2008).....	4
<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003)	13
<i>Sueoka v. United States</i> , 101 F. App’x 649 (9th Cir. 2004).....	15
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338, 131 S. Ct. 2541 (2011)	17, 24
STATUTES	
ADA	17, 18, 19
ADA Title II	2, 4, 18, 20
California Penal Code section 647(e).....	<i>passim</i>
Laguna Beach Municipal Code "LBMC"	
§ 8.30.030	3
§ 8.30.030	1, 7, 8
§ 18.04.020	1
§ 18.04.020	1, 3, 4
§ 18.05.010	8
§ 18.05.020	1, 3, 7
Rehabilitation Act	18, 19
Rehabilitation Act § 504	2, 3, 18, 20
Social Security Act.	24
OTHER AUTHORITIES	
California Constitution	21
7AA Charles A. Wright et al., Federal Practice and Procedure § 1775 (3d ed.).....	24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

(continued)

	Page(s)
Fed. R. Civ. P.	
23(a).....	25
23(b)(2).....	25
Rule 23.....	13, 16
Rule 23	
(a).....	13
(a)(3).....	19
(a)(4).....	22
(b)(2).....	13, 23, 24
(b)(3).....	13
(g).....	24, 25
(g)(1).....	24
(g)(1)(A)(i)-(iv).....	25
(g)(1)(B).....	24
United States Constitution	
Eighth Amendment.....	2, 20, 22
Fourteenth Amendment.....	2, 20, 22

1 **I. PRELIMINARY STATEMENT**

2 Plaintiffs David Sestini, Michael Newman and Richard Owens (collectively,
3 “Plaintiffs”) bring this case as a putative class action to vindicate violations of their
4 civil rights and to obtain relief from a failing and harmful homelessness policy
5 implemented by the City of Laguna Beach (the “City”) and the Laguna Beach Police
6 Department (“LBPD”) (collectively, “Defendants”) — violations that occur because
7 their homelessness policy fails to consider or address the needs of homeless persons
8 with disabilities.

9 The problems of homelessness — and communities’ attempts to alleviate them
10 — are not new. But homelessness is increasing at an alarming rate, and some of the
11 attempted solutions are causing more harm than good. This case presents one of
12 those unfortunate situations. In March 2009, Defendants settled an action brought by
13 a group of disabled, homeless individuals, who challenged then-Laguna Beach
14 Municipal Code (“LBMC”) section 18.04.020, which criminalized sleeping in all
15 public places at night. As part of the settlement, the City repealed portions of LBMC
16 section 18.04.020 and agreed to limit its enforcement of California Penal Code
17 section 647(e) against homeless persons for camping or sleeping in public for two
18 years. But the City did not honor its agreement for long.

19 In October 2009, the City enacted LBMC sections 8.30.030 and 18.05.020,
20 which prohibit camping on public property and sleeping in beaches and parks. In
21 November 2009, the City opened a temporary emergency shelter known as the
22 Alternative Sleeping Location (“ASL”). The City informed the public that “once the
23 [ASL] is open for use, overnight sleeping, camping and lodging will not be permitted
24 on beaches, parks or other public properties.” (Declaration of Peter J. Eliasberg
25 (“Eliasberg Decl.”), Ex. A.) Thus, soon after opening the ASL, Defendants began
26 enforcing LBMC sections 8.30.030 and 18.05.020, and Penal Code section 647(e),
27 against disabled, homeless individuals.

28 While, on its face and without context, Defendants’ creation of the ASL seems

1 laudable, their ulterior motives are far from admirable, as Defendants opened the
2 ASL so they could resume their heavy-handed enforcement against homeless persons
3 in Laguna Beach, in an attempt to “deplete the population.” (Eliasberg Decl., Ex. B.)
4 But Defendants’ motives are not even the worst part. In their haste to find a way to
5 resume enforcement of their anti-sleep ordinances, Defendants failed to consider the
6 needs of one of their most vulnerable populations — the disabled, homeless
7 community in Laguna Beach. (*See, e.g., id.*, Ex. C at p. 3) (“Once an alternative
8 sleeping location is established, there should be no reason for people to sleep in
9 parks, on beaches, or on other public properties.”). Defendants’ homelessness
10 policy, which combines the maintenance of a single, often-overcrowded emergency
11 shelter with heavy law enforcement, harassment, and scrutiny of those who sleep
12 outside, causes significant harm to disabled, homeless persons who cannot access or
13 tolerate the ASL because of their disability. These individuals are thus left with the
14 difficult choice of subjecting themselves to the intolerable conditions of the ASL, or
15 intolerable treatment by the LBPD. As a result of Defendants’ homelessness policy,
16 the homeless population in Laguna Beach is one of the sickest and most deteriorating
17 in all of Orange County, as the LBPD’s heavy-handed enforcement takes a serious
18 toll on the affected individuals’ mental states. (*See, e.g., id.* at Ex. D.)

19 Plaintiffs, therefore, bring this lawsuit as a class action to remedy Defendants’
20 violations of Title II of the Americans with Disabilities Act (“ADA”), section 504 of
21 the Rehabilitation Act, and the Eighth and Fourteenth Amendments to the United
22 States Constitution, as well as analogous provisions of the California Constitution.
23 Plaintiffs and members of the class they seek to represent — all of whom suffer from
24 mental disabilities such as bipolar disorder, schizophrenia, post-traumatic stress
25 disorder, depression, and/or physical disabilities — are victims of unlawful
26 discrimination and criminalization by Defendants in the operation of their
27 homelessness policy. Plaintiffs, therefore, seek certification of the following class
28 under Federal Rule of Civil Procedure (“Rule”) 23(b)(2):

1 All homeless persons who reside or will reside in the geographic area of
2 Laguna Beach who have a mental and/or physical disability as defined under section
3 504 of the Rehabilitation Act and Americans with Disabilities Act and who have
4 been, or are likely to be, cited for violations of California Penal Code section 647(e),
5 Laguna Beach Municipal Code section 8.30.030 and/or Laguna Beach Municipal
6 Code section 18.05.020.

7 **II. STATEMENT OF FACTS**

8 **A. The Homeless Population In Laguna Beach.**

9 Like many communities across California, Laguna Beach is facing a homeless
10 crisis. But Laguna Beach’s homeless population is unique in that it comprises
11 persons who are almost exclusively chronically homeless, *i.e.* those “with a mental
12 or physical disability who experience long-term or repeated homelessness.”
13 (Eliasberg Decl., Ex. E at pp. 3-4.) In other words, most homeless persons in Laguna
14 Beach have some form of mental and/or physical disability. *Id.*; *see also* Ex. F at p.
15 III-9 (“Individuals with a disability . . . comprise the greatest majority of Laguna’s
16 homeless at 80% . . .”). The LBPD knows, or should know, that Plaintiffs are
17 chronically homeless and have mental and/or physical disabilities. (*See* Decl. of
18 Benjamin Henwood (“Henwood Decl.”), ¶ 10; Eliasberg Decl., Ex. B (“Last night
19 we provided a list of non-locals who we believe have mental health issues to the
20 county mental health folks”; Ex. E at pp. 4-5 (“Unique to Laguna Beach as compared
21 to other cities in Orange County — the local homeless population almost exclusively
22 meets the definition of chronically homeless.”)).

23 **B. The History Behind Laguna Beach’s Homelessness Policy**

24 This is not the first time Defendants have been sued in connection with their
25 treatment of the homeless. In December 2008, several disabled, homeless
26 individuals challenged the City’s policy and practice of enforcing then-LBMC
27 section 18.04.020 against them in a manner that criminalized sleeping in all public
28 places at night by conducting “sweeps” of beaches, parks, and other public places at

1 night and in the early morning to wake and harass sleeping homeless persons, and by
2 implementing other enforcement tactics that targeted disabled, homeless individuals.
3 *Siprelle v. City of Laguna Beach*, No. 08-01447 (C.D. Cal. filed Dec. 23, 2008). The
4 lawsuit sought injunctive and declaratory relief and asserted claims for violations of
5 due process, freedom from cruel and unusual punishment, and violations of Title II
6 of the ADA. (Eliasberg Decl., Ex. G at pp. 17-20.) The *Siprelle* case settled quickly.
7 (*Id.*, Ex. H.) Following the settlement, in March 2009, the City repealed portions of
8 LBMC section 18.04.020 pertaining to camping and sleeping in public places. (*Id.* at
9 p. 1.) As part of the settlement, the City further agreed to limit enforcement of Penal
10 Code section 647(e) against homeless persons for camping or sleeping in public for a
11 period of two years. (*Id.* at pp. 2-3.)

12 Soon after the *Siprelle* settlement, and in an attempt to avoid facing another
13 *Siprelle*-type lawsuit, the City implemented a new homelessness policy, which
14 consists of two parts: (1) the creation of a single, often-overcrowded emergency
15 shelter for homeless persons with a 45-bed capacity; and (2) heavy law enforcement
16 of new anti-camping and anti-sleeping ordinances. The City relied on its creation of
17 the ASL to justify its enforcement of these new ordinances, informing the public that
18 “once the alternative [emergency] sleeping facility is open for use, overnight
19 sleeping, camping and lodging will not be permitted on beaches, parks or other
20 public properties.” (Eliasberg Decl., Ex. A.) Defendants also issued a training
21 bulletin to LBPD officers stating that with the opening of the ASL “the City can
22 effectively reinstitute its enforcement of CPC 647(e) – Illegal Lodging and other
23 similar regulations when a person claims to be residing on or occupying public
24 property out of necessity.” (*Id.*, Ex. I at p. 1.) In other words, the City built the ASL
25 so that it could reinstitute its enforcement of laws prohibiting sleeping, camping, or
26 lodging in public. (*Id.*, Ex. J at p. 1; *see also* Eliasberg Decl., Ex. C at pp. 3-4 (“We
27 recommend that the City Council direct the City Manager and the City Attorney to
28 undertake the preparations necessary to enforce the state laws regarding illegal

1 lodging on public property as soon as the site has opened.”)

2 **1. The City’s Alternative Sleeping Location**

3 The City opened the ASL on November 12, 2009. (Eliasberg Decl., Ex. A.) It
4 is partially funded by the City through federal Community Development Block Grant
5 (“CDBG”) funds received through Orange County.¹ This makeshift facility consists
6 of a single large room, plus restroom facilities, where individuals sleep side-by-side
7 on the floor. In addition, many homeless individuals sleep huddled against the
8 outside of the building or in the areas nearby. Although there are, on average, more
9 than 100 individuals who seek homeless services per month in the City, the ASL’s
10 capacity is only 45. (Eliasberg Decl., Ex. R; Ex. N at pp. 66-67 (indicating that 200
11 people sought the services of the ASL annually.) The ASL fills up nightly, and
12 many are turned away due to lack of space. (Eliasberg Decl., Ex. S (“we should
13 consider a policy that . . . turns away anyone over 45 persons . . .”); Ex. T
14 (identifying persons who left ASL “due to space constraints”; Declaration of David
15 Sestini (“Sestini Decl.”), ¶ 11.)

16 Access to the ASL is based on priority. Despite their homeless status, the City
17 gives priority to what it deems to be “local Laguna Beach residents.” (Eliasberg
18 Decl., Ex. U at p. 14, ¶ 6.) This residency requirement has a high bar — individuals
19 must demonstrate one of the following: (1) that an immediate family member
20 currently lives in Laguna Beach; (2) that they attended K-12 school in Laguna
21 Beach; (3) that they leased or paid utilities for residential property in Laguna Beach;
22 or (4) that the LBPB knows them to have been members of the Laguna Beach
23 homeless community for at least 18 months. (*Id.*, Ex. J at p. 2.) However, these

24 _____
25 ¹ Since at least 2012, the City has applied for and received federal CDBG funds
26 through Orange County’s consolidated application to HUD and has used these funds
27 to support the operations of the ASL, an integral part of Defendants’ homelessness
28 policy. (Eliasberg Decl., Ex. F at p. IV-10; Ex. K at p. 13 (indicating that the City
received \$50,000 for ASL in 2012-13 fiscal year); Ex. L at pp. 48-49 (same); Ex. M
at p. 8 (\$48,500 in 2013-14 fiscal year); Ex. N at pp. 66-67 (same); Ex. O at p.11
(\$92,150 in 2014-2015 fiscal year); Ex. P at pp. 47-48 (same); and Ex. Q at pp. 117-
18 (\$92,150 in 2015-2016 fiscal year)).

1 criteria are not applied evenly. For instance, in spite of multiple interactions with
2 disabled, homeless individuals over an 18-month period, Defendants do not consider
3 many disabled, homeless persons who have lived in Laguna Beach for more than 18
4 months to be “local Laguna Beach residents.” Consequently, these individuals are
5 less likely to be able to access the ASL. (*See, e.g.*, Sestini Decl., ¶ 7; Decl. of
6 Richard Owens (“Owens Decl.”), ¶ 10; *see also* Dkt. No. 33 (Aune Decl.), ¶¶ 5, 9;
7 Dkt. No. 35 (Aiken Decl.), ¶¶ 6, 8; Dkt. No. 37 (Holbrook Decl.), ¶ 5.)

8 An individual who does not meet the City’s residency requirement can only
9 receive shelter on any given night by entering a lottery to obtain a spot at the ASL
10 for that night. (Sestini Decl., ¶ 7; Owens Decl., ¶ 10; Dkt. No. 33, ¶ 5; Dkt. No. 35,
11 ¶ 6; Dkt. No. 37, ¶ 5; Dkt. No. 38 (Glover Decl.), ¶ 4.) The uncertainty of the lottery
12 system can be stressful. (Sestini Decl., ¶ 10; Dkt. No. 33, ¶ 6; Dkt. No. 38, ¶ 6.)
13 Individuals who are not selected through this lottery cannot stay at the shelter, there
14 is no transportation available away from the geographically isolated ASL, and there
15 is no other legal place for them to sleep within the City. (Sestini Decl., ¶ 8; Dkt. No.
16 33, ¶ 8; Dkt. No. 35, ¶ 6; Dkt. No. 37, ¶ 6.)

17 Once a person gains access to the ASL, he or she is subject to rigid rules and
18 procedures, which fail to consider and accommodate the disabilities of those seeking
19 shelter. For instance, individuals may only enter the shelter between 6:15 p.m. and
20 8:00 p.m. Once inside, residents cannot leave the facility “without good cause”;
21 those doing so lose their spot for the night. (Eliasberg Decl., Ex. U at p. 14.) Lights
22 out is at 10:30 p.m., and residents are restricted to their sleeping areas after this time.
23 (*Id.* at p. 15.) Wake up call is 5:00 a.m., and all residents must leave the ASL by
24 7:30 a.m. (*Id.*) Due to limited space, residents must limit their belongings to those
25 which fit in their personal sleeping area or duffle bags. (*Id.*) Residents are also
26 expected to behave in a courteous manner, and threats or acts of violence, including
27 loud and disruptive behaviors or fighting “will result in immediate expulsion.” (*Id.*)

28 Given their disabilities and the ASL environment, many individuals who

1 obtain a spot at the ASL for the night are unable to tolerate the environment, which
2 only worsens their mental and/or physical health. (*See, e.g.*, Henwood Decl., ¶¶ 11-
3 12.) For example, the crowded conditions of the ASL make Richard Owens feel
4 anxious and stressed out. (Owens Decl., ¶ 10.) Mr. Owens also finds it difficult to
5 follow the rules of the ASL due to his disability, as he often feels “caged in” when he
6 is not allowed to leave the facility after 8:00 p.m. (*Id.* ¶ 13.) Similarly, for Michael
7 Newman, who has bipolar disorder, severe major depressive disorder, alcoholism, a
8 hernia, hypertension and a lower back condition, staying at the ASL aggravates his
9 disabilities. (Newman Decl., ¶¶ 10-11.) The bedding of the ASL also exacerbates
10 Mr. Newman’s back condition, as it consists of a thin mat on the floor. (*Id.* ¶ 10.)
11 The experiences of Mr. Owens and Mr. Newman are typical of the experiences of
12 other disabled, homeless individuals in Laguna Beach. (*See, e.g.*, Sestini Decl., ¶¶
13 10-12; Dkt. No. 33, ¶ 6; Dkt. No. 35, ¶ 7; Dkt. No. 37, ¶¶ 6-7; Dkt. No. 38, ¶¶ 5-7.)

14 **2. Defendants’ Law Enforcement Practices**

15 In October 2009, just one month before opening the ASL, the City enacted
16 LBMC sections 8.30.030 and 18.05.020, which prohibit camping on public property
17 and sleeping in beaches and parks. Soon after the ASL opened, Defendants began
18 enforcing these ordinances, as well as Penal Code section 647(e), against disabled,
19 homeless individuals, based on its “belief and expectation [] that by providing an
20 alternative location for homeless persons to sleep at night, the City can enforce laws
21 against lodging or camping on public properties.” (Eliasberg Decl., Ex. C at pp. 2-4;
22 Ex. V.) During just the first five months of the ASL’s operations, Defendants issued
23 34 misdemeanor citations for alleged violations of LBMC 8.30.030 and Penal Code
24 section 647(e). (*Id.*) In 2011, enforcement increased — Defendants issued 160
25 misdemeanor citations under LBMC 8.30.030 and Penal Code section 647(e). (*Id.*,
26 Ex. W.) Between January 2012 and June 2014, Defendants issued 225 misdemeanor
27 citations under LBMC 8.30.030 and Penal Code section 647(e). (*Id.* ¶ 27.)

28 Sometimes LBPD officers issued these citations as violations of LBMC

1 section 8.30.030, which makes it unlawful to sleep in public parks and beaches at
2 night, on any public street or sidewalk, or on city property and to camp in any public
3 place. (*Id.* ¶ 27 and Exs. X, Y.) More commonly, LBPD officers issued these as
4 violations of Penal Code section 647(e), which defines disorderly conduct, a
5 misdemeanor, to include “lodg[ing] in any building, structure, vehicle, or place,
6 whether public or private, without the permission of the owner or person entitled to
7 the possession or in control of it.” (*Id.* ¶ 27.) The City also imposes a beach curfew
8 under Laguna Beach Municipal Code sections 18.05.010 and 18.05.02, pursuant to
9 which the beaches are closed from 1:00 a.m. to 5:00 a.m. each night. (*Id.* ¶ 28.)

10 Defendants’ citation of homeless individuals who have no means to comply is
11 counterproductive. These individuals often receive fines they cannot afford to pay
12 and develop criminal records, which can make it even more difficult for them to
13 secure and maintain housing, employment, and benefits. It can be difficult for
14 homeless individuals with mental or physical disabilities to get to court and, when
15 there, to navigate through the court system. *See No Safe Place: The Criminalization*
16 *of Homelessness in U.S. Cities*, National Law Center on Homelessness & Poverty
17 32-34 (2014).² Defendants frequently enforce or threaten to enforce these laws
18 against individuals who are sleeping outdoors because they cannot access or tolerate
19 the ASL. (*See* Sestini Decl., ¶¶ 13-14 ; Owens Decl., ¶ 15; Dkt. No. 35, ¶¶ 8-10;
20 Dkt. No. 37, ¶¶ 8-11.) In fact, LBPD officers have cited individuals for sleeping in
21 the ASL parking lot even after those individuals explained to the officers that they
22 were turned away from the ASL and had nowhere else to go. (Sestini Decl., ¶ 13;
23 Dkt. No. 33, ¶ 11; Dkt. No. 35, ¶ 10; Dkt. No. 37, ¶ 11; Dkt. No. 38, ¶ 9.)

24 Of the total number of citations issued between January 2012 and June 2014,
25 officers issued at least 44 to individuals in the ASL parking lot, even when officers
26 knew those individuals had been turned away from the shelter. (Eliasberg Decl., ¶
27 28 and Ex. X (Defendants issued 50 citations, 15 of which were issued outside of the

28 ² *See* http://www.nlchp.org/documents/No_Safe_Place, last visited Nov. 23, 2015.

1 ASL, between January 30, 2014 and June 16, 2014.)

2 Individuals who cannot access the ASL have limited options for finding a
3 place to sleep, none of which complies with the law — sleeping in the ASL parking
4 lot, in the canyon near the ASL, or undertaking a long and dangerous trek back to the
5 downtown area and beaches. (Sestini Decl., ¶ 10; Dkt. No. 33, ¶¶ 8-10; Dkt. No. 35,
6 ¶ 8; Dkt. No. 37, ¶¶ 9-11; Dkt. No. 38, ¶¶ 7-8.) But no matter where they go,
7 disabled, homeless persons cannot escape punishment in Laguna Beach. (Sestini
8 Decl., ¶¶ 13-14; Dkt. No. 33, ¶¶ 8-13; Dkt. No. 35, ¶¶ 6, 8-11; Dkt. No. 37, ¶¶ 9-11;
9 Dkt. No. 38, ¶¶ 7-10.) This criminalization and stigmatization leads to a serious
10 deterioration in mental health. (Sestini Decl., ¶ 14; Owens Decl., ¶ 10; Dkt. No. 33,
11 ¶¶ 9-10; Dkt. No. 38, ¶8; Henwood Decl., ¶¶ 13-16.) Further, Defendants have
12 engaged in more aggressive enforcement since this lawsuit was filed, thereby
13 exacerbating the decline of many individuals’ mental health. (*See* Dkt. No. 33, ¶¶
14 12-13; Dkt. No. 37, ¶¶ 9-11.)

15 C. The Class Representatives

16 David Sestini has been homeless in Laguna Beach since approximately 2011.
17 He suffers from several disabling mental health conditions, including bipolar
18 disorder, depression, anxiety and alcoholism. (Sestini Decl., ¶ 2.) He also
19 experiences ongoing cluster headaches, migraine headaches, and balance and
20 memory problems as a result of a head injury he suffered from a bike accident in
21 2006. (*Id.* ¶ 4.) About five years ago, Mr. Sestini was diagnosed with Chronic
22 Obstructive Pulmonary Disease (“COPD”), a progressive lung disease that makes
23 breathing difficult, and heart spasms. (*Id.*) Mr. Sestini has been frequently
24 hospitalized for his mental and physical health problems. (*Id.* ¶ 6.)

25 Mr. Sestini used to seek shelter at the ASL, but because the City does not
26 consider him to be a Laguna Beach resident, he would have to win a spot off the
27 lottery. (*Id.* ¶ 7.) Mr. Sestini obtained a spot through the lottery about half the time;
28 on other nights he was turned away due to lack of space. (*Id.* ¶ 11.) On some nights

1 when the City turned him away, Mr. Sestini would travel two hours to seek shelter at
2 the Armory in Santa Ana, which is open during the winter months. (*Id.* ¶ 8.)

3 Mr. Sestini found the uncertainty of the lottery system to be extremely
4 stressful because, among other things, he knew there was a good chance he would
5 not get a bed, and if he did not, he faced citation or a very long and difficult trip to
6 Santa Ana to obtain shelter. (*Id.* ¶ 10.) Even when he did secure a spot at the ASL,
7 he found the shelter environment was itself highly stressful, as he was unable to
8 conform to its rigid rules. (*Id.*) The stress affected Mr. Sestini's mental health,
9 making it difficult for him to remain calm. At times, Mr. Sestini would raise his
10 voice or argue, resulting in his being banned from the ASL. (*Id.*)

11 In 2015, Mr. Sestini was banned from the ASL for life for arguing with
12 another shelter resident. (*Id.*) Mr. Sestini has no legal place to sleep in Laguna
13 Beach. (*Id.* ¶ 12.) As a result, Mr. Sestini is forced to sleep outdoors, where he risks
14 getting cited by the LBPD. (*Id.*) In July 2013, Mr. Sestini was cited for illegal
15 lodging while he was in the ASL parking lot, after he left the ASL at about 5:00 a.m.
16 to avoid an argument with another resident. (*Id.* ¶ 13 and Ex. A thereto.) Since
17 receiving that citation, Mr. Sestini has had many contacts with LBPD officers, who
18 are very intimidating and make Mr. Sestini feel unwelcome in Laguna Beach. (*Id.*
19 ¶ 14.) This conduct by the LBPD, and Mr. Sestini's attempts to avoid detection,
20 contributes to his stress, worsens his heart and breathing problems, and exacerbates
21 his anxiety. (*Id.*) Mr. Sestini intends to reside in Laguna Beach for the foreseeable
22 future. Because he cannot sleep at the ASL, he is forced to sleep outside and runs
23 the risk of being cited or threatened again by the LBPD. (*Id.* ¶ 15.)

24 Richard Owens grew up in South Orange County and has been homeless for
25 approximately seven years. (Owens Decl., ¶ 2.) He has bipolar disorder, manic
26 depression, seizures, anxiety, and intermittent explosive disorder (IED), and has been
27 on medication since he was five years old. (*Id.* ¶ 3.) Mr. Owens also has
28 emphysema, high blood pressure, and COPD. (*Id.* ¶ 4.) He has had two strokes and

1 he has taken various medications for his conditions over the years, including Keppra
2 and Seroquel. (*Id.* ¶¶ 4, 6.) Mr. Owens has been involuntarily hospitalized in
3 psychiatric units and has been under the care of a mental health professional for the
4 last nine years. (*Id.* ¶ 5.)

5 Defendants do not consider Mr. Owens to be a “Laguna Beach resident,” so he
6 must enter the lottery to obtain a spot at the ASL. (*Id.* ¶ 10.) When he did secure a
7 spot, Mr. Owens found the environment stressful, with people constantly screaming
8 and the ASL staff using foul language. (*Id.*) Mr. Owens also could not tolerate the
9 violence at the ASL. He has seen two people get their heads kicked in while in the
10 parking lot, and he witnessed a scissor attack. (*Id.*) The chaos and violence at the
11 ASL triggers Mr. Owens’ anxiety and IED, making him more prone to seizures. (*Id.*
12 ¶¶ 10-11.) Because he is not considered a Laguna Beach resident, Mr. Owens does
13 not have a place to store his belongings. (*Id.* ¶ 12.) The effort he expends carrying
14 his belongings to and from the ASL or elsewhere exacerbates his COPD. (*Id.*) This,
15 in turn, triggers Mr. Owens’ anxiety and often leads to seizures. (*Id.*) Mr. Owens
16 has had nine seizures while either inside the ASL or in the ASL parking lot. (*Id.*)
17 Mr. Owens has been taken to the hospital by ambulance from the ASL three times as
18 a result of his seizures and breathing problems. (*Id.* ¶ 11.)

19 Mr. Owens’ disabilities also make it difficult for him to comply with the
20 ASL’s rules and regulations. For example, once the ASL staff lock the gate in the
21 evening, no one is allowed to leave the facility until the morning. (*Id.* ¶ 13.) This
22 confinement makes Mr. Owens feel “caged in” and with no means to escape a
23 situation that may be triggering the symptoms of his disabilities. (*Id.*) One night,
24 Mr. Owens left the ASL after having won a spot for the night so he could get some
25 distance between himself and another shelter resident with whom he was having a
26 disagreement. (*Id.*) After he stepped outside the shelter, the ASL staff would not let
27 Mr. Owens return inside, so he was forced to leave. (*Id.*)

28 Mr. Owens has been temporarily banned from the ASL due to a disagreement

1 with another shelter resident. (*Id.* ¶ 14.) Mr. Owens has been harassed by the LBPD
2 when he sleeps outdoors, and he worries about getting ticketed or even killed by an
3 officer, which contributes to his anxiety and seizures. (*Id.* ¶ 15.) The LBPD has
4 confiscated Mr. Owens' belongings eight times in the last four months. (*Id.*) Mr.
5 Owens intends to reside in and around Laguna Beach for the foreseeable future, as he
6 has nowhere else to go. (*Id.* ¶ 15.) Because he has been banned from the ASL, Mr.
7 Owens will continue to sleep outside and risk citation and threats by the LBPD. (*Id.*
8 ¶ 16.)

9 Michael Newman has lived in Laguna Beach for 12 years and became
10 homeless in 2009. (Newman Decl., ¶ 3.) Mr. Newman suffers from several
11 disabling mental health conditions, including bipolar disorder, severe major
12 depressive disorder, and alcoholism. (*Id.* ¶ 3.) Mr. Newman also has several serious
13 physical health conditions, including sleep apnea, a hernia, hypertension and a lower
14 back condition. (*Id.* ¶ 4.) Mr. Newman is considered a Laguna Beach resident, and
15 thus has regular access to the ASL. (*Id.* ¶ 9.) He has slept at the ASL on and off for
16 the last four years. (*Id.*) However, Mr. Newman does not tolerate the ASL well, as
17 the loud environment aggravates his depression. (*Id.* ¶¶ 10-11.) Mr. Newman tries
18 to isolate himself to avoid the fights that break out at the ASL, and he drinks alcohol
19 to escape his negative thoughts. (*Id.* ¶ 11.) Mr. Newman has been banned from the
20 ASL for drinking or smoking. (*Id.* ¶ 12.) He was recently warned that the next time
21 he is thrown out, he will be banned for good. (*Id.*) Mr. Newman finds that the
22 chaotic environment at the ASL is not conducive to staying sober and moving
23 forward with his life. (*Id.* ¶ 11.)

24 Mr. Newman also experiences pain when sleeping at the ASL, as the bedding
25 is nothing more than a thin mat on the floor. (*Id.* ¶ 10.) Each morning, Mr. Newman
26 must carry all his belongings to and from the storage bin behind the ASL, which
27 further worsens his hernia and lower back conditions. (*Id.*) Although he has not
28 received a citation because he sleeps at the ASL each night, LBPD harass Mr.

1 Newman during the day and constantly tell him he needs to move. (*Id.* ¶ 13.) Mr.
2 Newman intends to stay in Laguna Beach as he has nowhere else to go. (*Id.*) He
3 fears that if he is permanently banned from the ASL, he will be cited for sleeping
4 outdoors. (*Id.*)

5 **III. ARGUMENT**

6 **A. Standard For Class Certification**

7 As this case is a civil rights action in which Plaintiffs are primarily requesting
8 injunctive and declaratory relief, it is ideally situated for class certification. *See*
9 *Arnold v. United Artists Theater Circuit, Inc.*, 158 F.R.D. 439, 452 (N.D. Cal. 1994)
10 (noting that Rule 23(b)(2) classes were “specifically designed” for civil rights suits
11 seeking injunctive relief); *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155
12 (11th Cir. 1983). In reviewing a motion for class certification, the Court is bound to
13 take the substantive allegations of the complaint as true. *Blackie v. Barrack*, 524
14 F.2d 891, 901 n. 17 (9th Cir. 1975). While the Court may consider evidence which
15 goes to the requirements of Rule 23, it should not weigh competing evidence. *Staton*
16 *v. Boeing Co.*, 327 F.3d 938, 954 (9th Cir. 2003). Further, “[b]ecause the early
17 resolution of the class certification question requires some degree of speculation []
18 all that is required is that the Court form a reasonable judgment on each certification
19 requirement. Any doubts a court has about class certification should be resolved in
20 favor of certification.” *Baghdasarian v. Amazon.com, Inc.*, 258 F.R.D. 383, 386
21 (C.D. Cal. 2009) (citations omitted) (internal quotation marks omitted).

22 Class certification is appropriate here because Plaintiffs satisfy each of the
23 four prerequisites of Rule 23(a) and Rule 23(b)(2).³

24 ³ While not an explicit requirement of Rule 23, some courts have held that an
25 implied prerequisite to class certification is that the class be sufficiently definite.
26 *See, e.g., Mazur v. eBay, Inc.*, 257 F.R.D. 563, 567 (N.D. Cal. 2009). However,
27 “courts have drawn a distinction between Rule 23(b)(2) classes and Rule 23(b)(3)
28 classes, . . .” holding that the ascertainability requirement does not apply to Rule
23(b)(2) classes. *Campbell v. Facebook Inc.*, No. 13-cv-5996-PJH, 2016 U.S. Dist.
LEXIS 66267, at *15-16 (N.D. Cal. May 18, 2016). In any event, the proposed class
is readily ascertainable here because the class definition is based on precise and
objective criteria. *See Pottinger v. City of Miami*, 720 F. Supp. 955, 958 (S.D. Fla.

1 **B. The Proposed Class Is Sufficiently Numerous**

2 Plaintiffs easily satisfy the numerosity requirement, which requires that
3 members of the proposed class be so numerous that joinder of all members is
4 impracticable. To establish numerosity, Plaintiffs do not need to show that the class
5 is so numerous that joinder is impossible, but only that “the class is so large that
6 joinder of all members is impracticable.” *Hanlon v. Chrysler*, 150 F.3d 1011, 1019
7 (9th Cir. 1998). The Court may examine statistical data and then draw reasonable
8 inferences from the facts in determining whether the numerosity requirement has
9 been met. *See Lewis v. Gross*, 663 F. Supp. 1164, 1169 (E.D.N.Y. 1986); *Pottinger*,
10 720 F. Supp. at 958 (finding that the numerosity requirement was met based upon a
11 reasonable inference of studies conducted of the homeless population.).

12 While the current number of disabled, homeless persons in Laguna Beach is
13 not precisely known, records indicate that, on average, 100 homeless individuals
14 sought homeless services per month in the City. (Eliasberg Decl., Ex. R; Ex. N at
15 pp. 66-67 (indicating that 200 persons sought services at the ASL on an annual
16 basis).) The City has estimated that 80% of the homeless population in Laguna
17 Beach is disabled. (Eliasberg Decl., Ex. F at III-9.) Based on these records,
18 Plaintiffs estimate that the current number of putative class members is
19 approximately 80. In addition, ASL records produced by Defendants indicate that
20 the ASL served between 81 and 239 unduplicated individuals over varying time
21 periods between November 2009 and November 2012. (*Id.*, Ex. Z.) Counsel for
22 Plaintiffs has also personally met with at least 42 putative class members.
23 (Declaration of Jack Day, ¶ 6 and Ex. A thereto.) These numbers satisfy numerosity.

24 1989) (“The plaintiffs have described the class as those homeless individuals who
25 have been or expect to be arrested for conduct essential to their daily lives and who
26 reside in the . . . City of Miami. The description adequately defines the class whose
27 members will be readily ascertainable.”); *Mental Disability Law Clinic v. Hogan*,
28 No. CV-06-6320, 2008 WL 4104460, at *3, *17-18 (E.D.N.Y. Aug. 28, 2008)
(rejecting defendant’s argument that numerous fact-intensive questions regarding a
putative class member’s disability rendered the class not ascertainable; “because
only declaratory and injunctive relief is sought, individual assessments of disability
need not be made.”).

1 *See In re Facebook, Inc., PPC Adver. Litig.*, 282 F.R.D. 446, 452 (N.D. Cal. 2012)
2 (“[C]ourts generally find that the numerosity factor is satisfied if the class comprises
3 40 or more members . . .”).

4 Numerosity is also satisfied independently because the proposed class includes
5 future homeless persons with disabilities in Laguna Beach. The difficulty in
6 identifying these future class members makes joinder inherently impracticable. *See,*
7 *e.g., Pederson v. Louisiana State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000)
8 (“[w]e have found the inclusion of future members in the class definition a factor to
9 consider in determining if joinder is impracticable”); *accord Jordan v. County of Los*
10 *Angeles*, 669 F.2d 1311, 1320 (9th Cir. 1982). *See also Rivera v. Holder*, 307 F.R.D.
11 539, 550 (W.D. Wash. 2015) (“Thus, especially given the transient nature of the
12 class and the inclusion of future class members, the Court finds the class sufficiently
13 numerous and joinder impractical. Plaintiff has established numerosity.”); *Phillips v.*
14 *Joint Legislative Comm.*, 637 F.2d 1014, 1022 (5th Cir. 1981).

15 Moreover, the number of purported class members does not, alone, determine
16 whether the class should be certified. *Gay v. Waiters’ & Dairy Lunchmen’s Union*,
17 549 F.2d 1330, 1332 (9th Cir. 1997). First, the numerosity requirement is often
18 ‘relaxed’ when the primary relief sought is injunctive or declaratory in nature. *See*
19 *Sueoka v. United States*, 101 F. App’x 649, 653 (9th Cir. 2004) (finding that a
20 district court abused its discretion in not finding sufficient numerosity). In addition,
21 courts also examine class members’ ability to bring individual actions and fear of
22 retaliation. *See, e.g., Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev.
23 1991) (finding joinder impracticable because class of persons challenging Medicaid
24 policy consisted of poor and elderly or disabled who could not bring individual
25 lawsuits without great hardship); *Santillan v. Ashcroft*, No. C 04–2686, 2004 WL
26 2297990, at *9-10 (N.D. Cal. Oct. 12, 2004) (“The economic and legal resources of
27 the plaintiff class may be a factor in determining the practicality of joinder.”); *Lynch*
28 *v. Rank*, 604 F. Supp. 30, 36 (N.D. Cal. 1984) (“joinder of all plaintiffs is not

1 feasible because of geographic factors, and because members of the class, who are
2 by definition poor and disabled, do not have the economic means to pursue remedies
3 on an individual basis.”).

4 Here, members of the proposed class are not only poor, disabled individuals
5 who would have difficulty maintaining individual actions, but they are also in an
6 incredibly precarious and vulnerable situation due to their weakened mental state.
7 These factors make it unlikely that all class members would pursue their claims
8 individually. *See Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010)
9 (settlement class of 20 members satisfied numerosity where joinder of class members
10 was impracticable and decertification would have resulted in multiple lawsuits that
11 would be unnecessarily costly). The Court’s consideration of these qualitative
12 factors, more so than any strict numerical requirement, ensures that Rule 23 fulfills
13 its “principle of protection for weaker plaintiffs.” *Coleman through Bunn v. District*
14 *of Columbia*, 306 F.R.D. 68, 80-81 (D.D.C. 2015) (certifying class of 34 individuals
15 who lost their homes to foreclosure due to financial vulnerabilities).

16 **C. There Are Questions Of Law And Fact Common To The Class**

17 The commonality requirement is satisfied where, as in this case, “the lawsuit
18 challenges a system-wide practice or policy that affects all of the putative class
19 members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001); *Gray v. Golden*
20 *Gate Nat’l Rec. Area*, 279 F.R.D. 501, 509-10 (N.D. Cal. 2011) (commonality
21 established where “claims stem[med] from the same system-wide, decades-long
22 practices and policies of failing to assess and eliminate accessibility barriers . . .”
23 despite differences in the specific access barriers faced by persons with different
24 disabilities). Put another way, commonality is satisfied by “the existence of shared
25 legal issues with divergent factual predicates . . .” *Hanlon*, 150 F.3d at 1019-20.

26 This action involves a challenge to Defendants’ systemic denial of access and
27 discrimination against all disabled, homeless persons in Laguna Beach as a result of
28 Defendants’ homelessness policy, which combines minimal emergency shelter,

1 which is inaccessible to and/or inappropriate for persons with disabilities, with heavy
2 law enforcement against those who cannot access the ASL. The common questions
3 in this case include: (a) whether Defendants’ homelessness policy discriminates
4 against putative class members; (b) whether alternative housing and a cessation of
5 enforcement would alleviate these access barriers; (c) whether the City has an
6 obligation under the ADA to provide reasonable accommodations to persons with
7 disabilities in the ASL; and (d) whether alternative housing and a cessation of
8 enforcement would cause a fundamental alteration to Defendants’ homelessness
9 policy. As each class member is adversely affected by Defendants’ homelessness
10 policy, each class member has a shared interest in ensuring that Defendants comply
11 with federal and state laws. *See Brooklyn Ctr. for Indep. of the Disabled v.*
12 *Bloomberg*, 290 F.R.D. 409, 419 (S.D.N.Y. 2012) (“Here, at issue is a City-wide
13 policy and its alleged failure to take into account the needs of disabled citizens. This
14 issue is common to the proposed class because it challenges ‘acts and omission of
15 the [City] that are not specific to any particular Plaintiff.’”); *Hendricks-Robinson v.*
16 *Excel Corp.*, 164 F.R.D. 667, 670 (C.D. Ill. 1996) (certifying a class and noting that
17 it saw “no reason why a case which challenges a *policy* cannot proceed as a class
18 action under the ADA.”).

19 Furthermore, the injunctive relief Plaintiffs seek would remedy the violations
20 experienced by all class members by providing them with equal access to a safe,
21 legal place to sleep. Because the putative class seeks the same injunctive relief
22 stemming from the same conduct, resolution of Plaintiffs’ claims will resolve “in one
23 stroke” the issues that are “central to the validity” of each class member’s claims.
24 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541 (2011).

25 Moreover, any differences in the ways in which Defendants’ practices affect
26 individual members of the class do not undermine the finding of commonality. *See*
27 *Parra v. Bashas’, Inc.*, 536 F.3d 975, 978-79 (9th Cir. 2008) (although each class
28 member’s circumstances varied, commonality existed because they all sought a

1 common legal remedy for a common wrong). Rather, commonality exists because
2 the claims of all class members “stem from the same source.” *Hanlon*, 150 F.3d at
3 1019-20; *see also Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1167-68 (9th Cir.
4 2014) (“So long as the plaintiffs were harmed by the same conduct, disparities in
5 how or by how much they were harmed did not defeat class certification”);
6 *Pottinger*, 720 F. Supp. at 958 (“The status of the plaintiffs as homeless is a fact
7 common to the class. As homeless, they allege that they have been and will continue
8 to be arrested solely for conduct that is fundamental to the maintenance of life. . . .
9 This single factual issue is sufficient to sustain class certification.”).

10 In addition, the fact that class members may suffer from different disabilities
11 does not defeat commonality, as the relevant inquiry is not whether each class
12 member is a qualified individual with a disability, but whether Defendants’ policies
13 have adversely affected the class as a whole. The case of *Henrietta D. v. Giuliani*,
14 No. 95 CV 0641, 1996 WL 633382 (E.D.N.Y. Oct. 25, 1996), is instructive. In that
15 case, plaintiffs brought a putative class action on behalf of “[a]ll DAS-eligible
16 persons, *i.e.*, persons who are New York City residents, are Medicaid eligible and
17 meet the medical condition of having either (1) CDC-defined AIDS, or (2) an HIV-
18 related condition and a need for home care services[.]” alleging that the public
19 benefits system and the City’s plans to restructure it were ineffective and violated
20 Title II of the ADA and section 504 of the Rehabilitation Act. *Id.* at *1, *16. The
21 district court rejected defendants’ argument that “the question of whether plaintiffs’
22 disabilities have been reasonably accommodated [was] a question that require[d] an
23 individualized assessment of each putative plaintiff[.]” *Id.* at *13-14. Instead, the
24 court held that commonality existed because “the overarching issue for each of the
25 putative class members is actually identical, that is, whether reasonable
26 accommodation is needed to access public assistance entitlements and, . . . whether []
27 Defendants have provided such accommodation or have violated the ADA or
28 Rehab[ilitation] Act.” *Id.*

1 As in *Henrietta*, commonality exists here because “the unifying legal and
2 factual question is whether defendants violated their legal obligations to provide
3 plaintiffs with meaningful access, as required by the ADA and the Rehabilitation
4 Act, to public assistance benefits and services.” *Id.*; see also *Armstrong*, 275 F.3d at
5 868 (commonality satisfied despite individual class members having different
6 disabilities, since all suffered similar harm as a result of defendant’s actions).

7 Similarly, in *L.H. v. Schwarzenegger*, No. CIV. S–06–2042, 2007 WL
8 662463, at *11-12 (E.D. Cal. Feb. 28, 2007), the court rejected defendant’s argument
9 that certification was not proper because of “the uncertainty of the number of
10 qualified individuals with disabilities, the case-by-case review of records and files
11 necessary to determine if a plaintiff is a qualified individual with disability, and the
12 individualized nature of the relief that may be required,” noting that “[t]his argument
13 has been squarely rejected by the Ninth Circuit.” *Id.* at *11-12. Citing *Armstrong*,
14 275 F.3d at 868, the court found the commonality requirement was met because the
15 disabled plaintiffs’ allegations that defendants’ practices prevented them from
16 meaningfully participating in the parole process affected all of the putative class
17 members, “regardless of the specific nature of their individual disability.” *Id.* at *12.

18 **D. The Class Representatives’ Claims Are Typical Of The Class.**

19 Plaintiffs satisfy the typicality requirement of Rule 23(a)(3), as their claims
20 arise from the same events, practice or conduct, and are based on the same legal
21 theory as those of other class members, namely, Defendants’ operation of a
22 homelessness policy that discriminates against disabled, homeless persons.
23 *Armstrong*, 275 F.3d at 868-69. In other words, typicality is established where, as
24 here, the classes are injured through an alleged common practice. *Hanlon*, 150 F.3d
25 at 1020; *Rosario v. Livadities*, 963 F.2d 1013, 1018 (7th Cir. 1992) (the focus for
26 typicality is on the “defendant’s conduct and the plaintiff’s legal theory . . .”).
27 Here, the Plaintiffs, like members of the class they seek to represent, are disabled and
28 have suffered the same type of harm as that alleged on behalf of the putative class,

1 caused by Defendants’ operation of its homelessness policy.

2 As with the commonality requirement, differences in the particular
3 experiences or harms suffered by each Plaintiff will not defeat typicality. As the
4 Ninth Circuit explained in *Hanlon*, “[u]nder the rule’s permissive standards,
5 representative claims are ‘typical’ if they are reasonably co-extensive with those of
6 absent class members; they need not be substantially identical.” 150 F.3d at 1020.
7 Thus, for instance, in *Armstrong*, the court found typicality satisfied because the
8 injury of all plaintiffs was identical — namely, a refusal or failure to afford them
9 accommodations as required by law — and minor differences in their disabilities did
10 not defeat typicality. *Armstrong*, 275 F.3d at 869. Similarly, in *Schwarzenegger*, the
11 court rejected defendants’ assertion that plaintiffs had not shown sufficient evidence
12 that each plaintiff was disabled, because the deprivations complained of by plaintiffs
13 affected the entire class, and because inquiries into whether each class member is
14 disabled were not appropriate at the class certification stage. 2007 WL 662463 at
15 *12-13. As the court explained:

16 Defendants assert that L.H. and D.K. are not in fact disabled and
17 therefore neither of these plaintiffs meet the typicality
18 requirement. . . .

19 In light of the assertion that neither of these named Plaintiffs are
20 disabled, defendants maintain that the typicality requirement is
21 not met. The court must reject defendants’ position. As the
22 Ninth Circuit recently reiterated, “arguments evaluating the
23 weight of evidence or the merits of a case are improper at the
24 class certification stage.”

25 *Id.* at *12. Rather, at this stage of the case, “plaintiffs need only provide sufficient
26 information for the court to form a reasonable judgment about whether plaintiffs’
27 claims are typical.” *Id.* at *13.

28 Plaintiffs meet the typicality requirement. They seek to represent a class of
disabled, homeless persons and allege that Defendants’ operation of its homelessness
policy violates Title II of the ADA and section 504 of the Rehabilitation Act, as well
as the Eighth and Fourteenth Amendments to the United States Constitution, and

1 analogous provisions of the California Constitution. All of Plaintiffs’ claims arise
2 from the same event or course of conduct — the operation of Defendants’
3 homelessness policy.

4 The Ninth Circuit’s decision in *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014), is
5 helpful here. In *Parsons*, inmates challenged the Arizona Department of
6 Corrections’ (“ADC”) prison health care policies. *Id.* at 662. The plaintiffs
7 described their injury as “being exposed . . . to a substantial risk of serious harm by
8 the challenged ADC policies and practices[,]” and alleged this injury resulted from
9 “the course of conduct at the center of the class claims” rather than specific conduct
10 uniquely directed at any one plaintiff. *Id.* at 685. On appeal, the Ninth Circuit
11 observed that:

12 given that *every* inmate in ADC custody is highly likely to
13 require [health care], each of the named plaintiffs is similarly
14 positioned to all other ADC inmates with respect to a substantial
15 risk of serious harm resulting from exposure to the defendants’
16 policies and practices governing health care . . . [and] it does
17 not matter that the named plaintiffs may have in the past suffered
18 varying injuries or that they may currently have different health
19 care needs: Rule 23(a)(3) requires only that their claims be
20 “typical” of the class, not that they be identically positioned to
21 each other or to every class member.

22 *Id.* at 685-86. As in *Parsons*, every disabled homeless person in Laguna Beach is
23 likely to find the ASL inaccessible, and so each faces the risks associated with
24 Defendants’ heavy-handed enforcement measures. Plaintiffs are thus typical of the
25 putative class because they are similarly positioned to all other disabled homeless
26 persons who face a substantial risk of harm resulting from exposure to Defendants’
27 homelessness policies, regardless of any individualized reasons as to why the ASL is
28 inaccessible to a particular class member. *See, e.g., Baghdasarian*, 258 F.R.D. at
389 (“[C]ases challenging the same unlawful conduct which affects both the named
plaintiffs and the putative class usually satisfy the typicality requirement irrespective
of the varying fact patterns underlying the individual claims.”).

Furthermore, Plaintiffs’ homelessness status makes them typical of a class

1 seeking relief for violations of the Eighth and Fourteenth Amendments as Plaintiffs,
2 like the putative class, have a reasonable expectation that their conduct — sleeping
3 in public spaces — will recur. Because of the involuntary nature of their
4 homelessness and disability, Plaintiffs will continue to sleep outdoors and cannot
5 avoid future “exposure to the challenged course of conduct . . .” in which Defendants
6 engage. *O’Shea v. Littleton*, 414 U.S. 488, 497, 94 S. Ct. 669, 38 L. Ed. 2d 674
7 (1974).⁴ As Defendants have stated in no uncertain terms, “once the [ASL] is open
8 for use, overnight sleeping, camping and lodging will not be permitted on beaches,
9 parks or other public properties.” (Eliasberg Decl., Ex. A.)

10 **E. Plaintiffs And Their Attorneys Will Fairly And Adequately**
11 **Protect The Interests Of The Class.**

12 Plaintiffs meet the adequacy requirement, which provides that representative
13 plaintiffs must fairly and adequately protect the interests of the class. Rule 23(a)(4).
14 Class representatives are deemed adequate so long as their interests are not
15 antagonistic to the remainder of the class. *Gen. Tel. Co. of Southwest v. Falcon*, 457
16 U.S. 147, 157, 102 S. Ct. 2364, 72 L. Ed. 2d 740 (1982). As discussed above,
17 Plaintiffs are all members of the class they seek to represent and raise the same
18 claims, all subject to a common contention and resolution on a class-wide basis. The
19 interests of Plaintiffs and the putative class are fully aligned in seeking an injunction
20 against the City. No conflicts of interests exist that would prevent these Plaintiffs
21 from fairly and adequately protecting the interests of all class members.

22 Plaintiffs have also shown that counsel is adequate, as their counsel are
23 qualified, experienced and able to conduct the litigation. *Id.* In *Perez-Funez v.*
24 *District Director, I.N.S.*, 611 F. Supp. 990, 997 (C.D. Cal. 1984), the court

25 _____
26 ⁴ *See, e.g., Lynch v. Baxley*, 744 F.2d 1452, 1456-57 & n.6-7 (11th Cir. 1984)
27 (holding that a mentally ill plaintiff had standing to seek an injunction against
28 Alabama’s practice of detaining individuals in county jails pending civil
commitment hearings, even though the plaintiff was no longer incarcerated, because
his mental problems were likely to recur and “[t]here [was] every indication that [he]
could continue to be the subject of [future] involuntary commitment petitions . . .”).

1 specifically recognized the “qualified and experienced counsel from such
2 organizations as . . . the American Civil Liberties Union.” The attorneys for
3 Plaintiffs in this case have extensive experience both in civil rights and class actions.
4 Attorneys Peter Eliasberg and Belinda Escobosa-Helzer have significant experience
5 representing disabled, homeless persons in civil rights cases. (Eliasberg Decl., ¶¶
6 31-34.) Private counsel from Paul Hastings LLP are experienced in complex, civil
7 litigation, including class actions. (Declaration of Katherine F. Murray (“Murray
8 Decl.”), ¶¶ 2-5.)

9 **IV. THE PROPOSED CLASS SATISFIES RULE 23(b)(2).**

10 Plaintiffs seek class certification under Rule 23(b)(2), which applies when the
11 party opposing certification has acted or refused to act in a manner applicable to the
12 class generally, making injunctive or declaratory relief appropriate with respect to
13 the class as a whole. Rule 23(b)(2). Plaintiffs meet the requirements of
14 Rule 23(b)(2), as they have shown that, in creating and implementing the City’s
15 homelessness policy, Defendants have acted in a manner that fails to consider the
16 needs of its disabled, homeless population, and in so doing, have acted with respect
17 to class members generally. The injunctive relief sought in the form of a reasonable
18 accommodation and a cessation in enforcement and accompanying declaratory relief,
19 is appropriate with respect to the class as a whole. Further, in bringing a suit to
20 vindicate their civil rights, Plaintiffs’ action is exactly the kind of suit for which
21 Rule 23(b)(2) was designed. *Arnold*, 158 F.R.D. at 452; *Holmes*, 706 F.2d at 1155.

22 Here, Plaintiffs allege that Defendants applied the same allegedly unlawful
23 policy to each member of the proposed class. While the application of that policy
24 “may not affect every member of the proposed class . . . in exactly the same way, . .
25 .” Plaintiffs seek uniform injunctive and declaratory relief from policies that are
26 generally applicable to the class as a whole. *Parsons*, 754 F.3d at 688. This is
27 precisely the type of case that Rule 23(b)(2) was designed to protect. *Id.* at 686
28 (“Although we have certified many different kinds of Rule 23(b)(2) classes, the

1 primary role of this provision has always been the certification of civil rights class
2 actions.”). *See also* 7AA Charles A. Wright et al., Federal Practice and Procedure
3 § 1775 (3d ed.) (“Rule 23(b)(2) . . . has been used extensively to challenge the
4 enforcement and application of complex statutory schemes, such as suits involving
5 the award or termination of benefits under the Social Security Act.”).

6 The relief requested by Plaintiffs also conforms with Rule 23(b)(2)’s
7 requirement that “final injunctive relief or corresponding declaratory relief is
8 appropriate respecting the class as a whole.” *See Wal-Mart*, 564 U.S. at 345. Every
9 member of the proposed class is alleged to be suffering the same or at least a similar
10 injury, which can be alleviated for every class member by uniform changes to
11 Defendants’ homelessness policy. *See, e.g., Marisol A. v. Giuliani*, 126 F.3d 372,
12 378 (2d Cir. 1997) (“Defendants argue that because the plaintiffs have alleged
13 differing harms requiring individual remedies, no injunction will be appropriate for
14 the entire class We disagree. Insofar as the deficiencies of the child welfare
15 system stem from central and systemic failures, the district court did not abuse its
16 discretion in certifying a 23(b)(2) class at this stage of the litigation.”). Here, every
17 disabled, homeless person is placed at risk of harm by Defendants’ homelessness
18 policy, which combines heavy-handed enforcement with an intolerable shelter
19 environment — an injury that can be remedied on a class-wide basis.

20 **V. THE COURT SHOULD DESIGNATE PLAINTIFFS’ COUNSEL AS**
21 **CLASS COUNSEL UNDER RULE 23(g)(1).**

22 Rule 23(g) requires that the district court appoint class counsel for any class
23 that is certified. Rule 23(g)(1). The attorneys appointed to serve as class counsel
24 “must fairly and adequately represent the interests of the class” and must be listed in
25 the Court’s class certification order. Rule 23(g)(1)(B); (c)(1)(B). The Rule
26 identifies four factors that the Court must consider in appointing class counsel: (1)
27 “the work counsel has done in identifying or investigating potential claims in the
28 action;” (2) “counsel’s experience in handling class actions, other complex litigation,

