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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISON

12 Kenneth Glover; David Sestini;
13 Douglas Frederes Jr.; Jeffrey Aiken;
14 Katrina Aune; John Miller; and Lisa
Holbrook, individually, and on behalf
15 of all others similarly situated
Plaintiffs,

16 vs.

17 CITY OF LAGUNA BEACH; THE
LAGUNA BEACH POLICE
18 DEPARTMENT, a California charter
city

19 Defendants.

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

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION**

Date: December 21, 2015

Time: 10:00 a.m.

Courtroom: 10D

Hon. Andrew J. Guilford

[Memorandum of Points and Authorities
in Support Motion for Preliminary
Injunction; Declarations of H. Johnson,
K. Aune, D. Sestini, J. Aiken, L.
Holbrook, J. Miller, K. Glover, D.
Frederes, J. Oldham, P. Donaldson, and
B. Henwood in Support Thereof; Notice
of Motion and Motion for Provisional
Class Certification; Memorandum of
Points and Authorities in Support of
Motion for Provisional Class
Certification; and [Proposed] Orders filed
and served concurrently herewith]

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1 **TO DEFENDANTS CITY OF LAGUNA BEACH AND THE LAGUNA**
2 **BEACH POLICE DEPARTMENT:**

3 NOTICE IS HEREBY GIVEN that at 10:00 a.m. on December 21, 2015, or
4 as soon thereafter as counsel may be heard in Court room 10D of the above entitled
5 Court, located at 411 West Fourth Street, Santa Ana, CA 92701, Plaintiffs will and
6 hereby do move for an Order for a Preliminary Injunction restraining Defendants
7 City of Laguna Beach, the Laguna Beach Police Department, and their agents,
8 servants, employees, and those in active concert or participation with them
9 (collectively “Defendants”), from enforcing or threatening to enforce – either
10 through written citation and/or warnings, verbal warnings, and/or threats, or general
11 intimidation and/or harassment where no other alleged violation of law is suspected
12 – California Penal Code section 647(e) and Laguna Beach Municipal Code
13 (“LBMC”) sections 8.30.030, 18,05.020 against disabled, homeless individuals for
14 sleeping, lying, or resting in public, outdoor places.

15 This Motion is made on the grounds that: Plaintiffs are likely to succeed on
16 the merits of their claims; that irreparable injury will likely result to Plaintiffs and
17 other disabled, homeless individuals¹ unless such an injunction is issued; and that
18 Defendants will suffer minimal hardship if a preliminary injunction were entered.
19 This Motion will be based on this Notice of Motion and Motion, the accompanying
20 Memorandum of Points and Authorities, all supporting declarations and evidence
21 filed concurrently herewith, the entire record of the case, and any oral argument that
22 may be presented.

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27 ¹ In a concurrently filed motion, Plaintiffs also seek provisional certification of a
28 class comprising disabled, homeless persons in Laguna Beach for the limited
purpose of seeking and enforcing the requested preliminary injunction.

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15 Plaintiffs,

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17 CITY OF LAGUNA BEACH; THE
18 LAGUNA BEACH POLICE
DEPARTMENT, a California charter
19 city

20 Defendants.
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Case No. 8:15-CV-01332-AG-DFM

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: December 21, 2015
Time: 10:00 a.m.
Courtroom: 10D

Hon. Andrew J. Guilford

[Notice of Motion and Motion for Preliminary Injunction; Notice of Motion and Motion for Provisional Class Certification; Memorandum of Points and Authorities in Support Thereof; Declarations of H. Johnson, K. Aune, D. Sestini, J. Aiken, L. Holbrook, J. Miller, K. Glover, D. Frederes, J. Oldham, P. Donaldson, and B. Henwood in Support of Motions; and [Proposed] Orders filed and served concurrently herewith]

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1 **I. INTRODUCTION**

2 Plaintiffs Katrina Aune, David Sestini, Jeffrey Aiken, Lisa Holbrook, and John
 3 Miller, individually and on behalf of those similarly situated (collectively
 4 “Plaintiffs”),¹ bring this class action to rectify the egregious and discriminatory
 5 treatment of disabled, homeless individuals living in Laguna Beach by Defendants,
 6 the City of Laguna Beach (“City”) and its police department (“LBPD”) (collectively
 7 “Defendants”). Defendants’ conduct violates the Eighth Amendment’s proscription
 8 against cruel and unusual punishment, as well as Title II of the Americans with
 9 Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act. Plaintiffs — all
 10 of whom suffer from serious mental disabilities, including such disabilities as bipolar
 11 disorder, schizophrenia, post-traumatic stress disorder, depression, and/or various
 12 physical disabilities — experience unlawful discrimination and punishment by
 13 Defendants in the operation of Defendants’ homelessness program.

14 Defendants’ homelessness program comprises the City’s policy and practice
 15 of maintaining a single, often-overcrowded emergency shelter for homeless persons,
 16 combined with heavy law enforcement, harassment, and scrutiny of those who are
 17 forced to sleep outside because they cannot access this shelter. If a disabled,
 18 homeless person does not obtain shelter on any given night at the City’s Alternative
 19 Sleeping Location (“ASL”), which sleeps only 45 out of a homeless population that
 20 exceeds 100, that person is at risk of criminal sanctions and police harassment for
 21 merely sleeping or lying down with their belongings — innocent activities they

22 _____
 23 ¹For ease and clarity, the term “Plaintiffs” will include the named Plaintiffs, as well
 24 as the members of the putative class. Plaintiffs are concurrently filing with this
 25 motion a motion for provisional class certification, so that the injunctive relief sought
 26 can extend to all putative class members, not only the named Plaintiffs. However,
 27 Plaintiffs Kenneth Glover and Douglas Frederes do not move for preliminary
 28 injunction or for provisional class certification. Shortly after the filing of this
 lawsuit, Mr. Glover was provided housing (*see* Decl. of Kenneth Glover (“Glover
 Decl.”), ¶ 3), and Mr. Frederes is currently incarcerated.

1 cannot avoid. Further, disabled, homeless individuals frequently experience
2 difficulties accessing and tolerating the ASL. Yet Defendants unlawfully rely on the
3 existence of the ASL to justify criminalizing disabled, homeless individuals.

4 Many disabled, homeless individuals are targeted, harassed, and subject to
5 criminal sanctions by police because they cannot seek shelter at the ASL. Indeed,
6 Defendants' homelessness program places unique burdens on those homeless
7 individuals who suffer from mental and/or physical disabilities. The ASL not only
8 has limited capacity, but it is operated and maintained in a way that discourages
9 and/or excludes individuals with disabilities. The LBPD, which determines who of
10 the more than 100 homeless individuals in Laguna Beach gets priority (and thus a
11 bed for the night) at the ASL, applies its authority in an arbitrary and selective
12 manner that impacts disabled individuals. Therefore, it can be extremely difficult, if
13 not impossible, for these individuals to obtain shelter at the ASL.

14 Even when Plaintiffs are able to obtain a place at the ASL for the night, it is
15 difficult, if not impossible, for them to cope with living in the shelter environment,
16 which disabled, homeless individuals describe as crowded, noisy, chaotic, and
17 stressful, because the environment exacerbates their disabilities. Some can only stay
18 in this environment for a short period of time before experiencing a deterioration in
19 their mental condition that forces them to leave. Others are expelled because their
20 disabilities prevent them from being able to conform to the rules of the shelter.

21 When Plaintiffs cannot access this shelter, they are left with no legal place to
22 sleep within the City. As a result, they not only are at risk of criminal sanctions and
23 police harassment, but they experience increased anxiety, fear, and paranoia
24 associated with trying to find a place to rest free from police scrutiny. These
25 circumstances add to the inherent stress and dangers of living outdoors. The longer
26 or more frequently these individuals remain unsheltered, the more their mental and
27 physical health deteriorates and it becomes even harder for them to cope with the
28 demand that Defendants' homelessness program places upon them.

1 This Court can temporarily stop the continuing campaign of harassment,
 2 criminalization, and the resulting decline of Plaintiffs' mental health, by enjoining
 3 Defendants from enforcing California Penal Code section 647(e) and Laguna Beach
 4 Municipal Code ("LBMC") sections 8.30.030 and 18.05.020 against disabled,
 5 homeless individuals in Laguna Beach.

6 **II. STATEMENT OF FACTS**

7 **A. Homelessness in Laguna Beach.**

8 Laguna Beach's homeless population is comprised of persons who are almost
 9 exclusively chronically homeless, *i.e.* those "with a mental or physical disability who
 10 experience long-term or repeated homelessness." (Decl. of Heather Johnson
 11 ("Johnson Decl."), Ex. A at 402-03.) In other words, most homeless persons in
 12 Laguna Beach suffer from some form of mental and/or physical disability, a fact that
 13 is well known to Defendants. (*Id.*; *see also id.* Ex. B at 2931 (quoting Police Chief
 14 as estimating that half of City's homeless population "battle mental illness, most
 15 without acknowledging the problem"); Ex. C at 2818 ("Individuals with a disability .
 16 . . . comprise the greatest majority of Laguna's homeless at 80%")).

17 The named Plaintiffs are all chronically homeless in Laguna Beach. Katrina
 18 Aune, a 35 year old mother of two has been homeless in Laguna Beach for almost
 19 four years.² (Decl. of Katrina Aune ("Aune Decl."), ¶¶ 2, 5.) Ms. Aune became
 20 homeless, in part, because of trauma she experienced as a child. (*Id.* ¶ 4.) She has
 21 been diagnosed with depression, and suffers from post-traumatic stress disorder and
 22 obsessive compulsive disorder. (*Id.* ¶ 3.) Jeffrey Aiken is a 44 year old graduate of
 23 Orange Coast College who served in the Air Force for ten years until he was
 24 discharged for disability in 1998. (Decl. of Jeffrey Aiken ("Aiken Decl."), ¶ 2.) Mr.
 25 Aiken has not been employed since 1998 and has been homeless in Laguna Beach
 26 for two years. (*Id.* ¶¶ 2, 6.) Mr. Aiken suffers from mental disabilities including

27 _____
 28 ² Ms. Aune's children, ages 9 and 12, have permanent housing. (Aune Decl. ¶ 2.)

1 depression and schizophrenia, and physical disabilities from a knee injury and from a
 2 brain injury. (*Id.* ¶¶ 3-4.) Lisa Holbrook is 49 years old and has been homeless in
 3 Laguna Beach for four years. (Decl. of Lisa Holbrook (“Holbrook Decl.”), ¶¶ 2, 5.)
 4 Ms. Holbrook’s mental disabilities have contributed to her homelessness. (*Id.* ¶¶ 3-
 5 4.) She has been diagnosed with bipolar disorder and suffers from an anxiety
 6 disorder. (*Id.* ¶ 3.) David Sestini suffers from bipolar disorder, depression, anxiety,
 7 alcoholism, and Chronic Obstructive Pulmonary Disease (COPD). (Decl. of David
 8 Sestini (“Sestini Decl.”), ¶¶ 2-3.) He also experiences ongoing cluster headaches,
 9 migraine headaches, and balance and memory problems as a result of a head injury
 10 he suffered in 2006. (*Id.* ¶ 3.) John Miller is 50 years old and has been homeless in
 11 Laguna for the last three to five years. (Decl. of John Miller (“Miller Decl.”), ¶¶ 2,
 12 5.) He suffers from clinical depression, COPD, chronic back pain, neuropathy, and
 13 early onset Parkinson’s Disease, which contribute to his homelessness. (*Id.* ¶¶ 3-4.)³

14 Laguna Beach police officers know, or should know, that Plaintiffs are
 15 chronically homeless and suffer from mental and/or physical disabilities. (*See*
 16 *Frederes Decl.* ¶¶ 8, 12; *see also Aune Decl.* ¶ 9; *Aiken Decl.* ¶ 8; *Sestini Decl.* ¶ 9;
 17 *Glover Decl.* ¶ 8; Decl. of Benjamin Henwood (“Henwood Decl.”), ¶ 10; *Johnson*
 18 *Decl., Ex. A* at 403-04 (“Unique to Laguna Beach as compared to other cities in
 19 Orange County — the local homeless population almost exclusively meets the
 20 definition of chronically homeless.”); (“Very few of our homeless residents work at
 21 anything other than occasional jobs because of the limitations of mental and/or
 22 physical disabilities.”)).

23 **B. Laguna Beach’s Homelessness Program**

24 In December 2008, several disabled, homeless individuals challenged the
 25 City’s policy and practice of enforcing then-LBMC section 18.04.020 against them

26 ³ (*See also Glover Decl.* ¶¶ 2, 3; Decl. of Douglas Frederes (“Frederes Decl.”), ¶¶ 2-
 27 4; Decl. of Joshua Oldham (“Oldham Decl.”), ¶¶ 2-4; Decl. of Pati Donaldson
 28 (“Donaldson Decl.”), ¶¶ 2-4.)

1 in a manner that criminalized sleeping in all public places at night by conducting
2 “sweeps” of beaches, parks, and other public places at night and in the early morning
3 to wake and harass sleeping homeless persons, and by implementing other
4 enforcement tactics that targeted disabled, homeless individuals. *Siprelle v. City of*
5 *Laguna Beach*, No. 08-01447 (C.D. Cal. filed Dec. 23, 2008). The lawsuit sought
6 injunctive and declaratory relief and asserted claims for violations of due process,
7 freedom from cruel and unusual punishment, and violations of Title II of the ADA.
8 (Johnson Decl., Ex. D at 2926-29.) The case settled quickly. (*Id.*, Ex. E.) In March
9 2009, the City repealed portions of LBMC section 18.04.020 pertaining to camping
10 and sleeping in public places. (*Id.* at 2933.) As part of the settlement, the City
11 further agreed to limit enforcement of Penal Code section 647(e) against homeless
12 persons for camping or sleeping in public for a period of two years. (*Id.* at 2934-35.)

13 Soon after the *Siprelle* settlement, the City created its homelessness program,
14 which comprises the City’s policy and practice of maintaining a single, often-
15 overcrowded emergency shelter for homeless persons, combined with heavy law
16 enforcement. Specifically, in October 2009, the City enacted LBMC sections
17 8.30.030 and 18.05.020, which prohibits camping in public property and sleeping in
18 beaches and parks. The City also planned to open an emergency shelter, the ASL.
19 (Johnson Decl., Ex. F; *see also* Laguna Beach Municipal Code §§ 8.30.030,
20 18.05.020.) The City used the creation of an emergency shelter to justify its new
21 ordinances, informing the public that “once the alternative [emergency] sleeping
22 facility is open for use, overnight sleeping, camping and lodging will not be
23 permitted on beaches, parks or other public properties.” (Johnson Decl., Ex. G at
24 520; *see also id.*, Ex. F.) Defendants also issued a training bulletin to LBPD officers
25 stating that with the opening of the ASL “the City can effectively reinstitute its
26 enforcement of CPC 647(e) – Illegal Lodging and other similar regulations when a
27 person claims to be residing on or occupying public property out of necessity.” (*Id.*,
28 Ex. H at 172.) In other words, the City contends that the creation of the ASL allows

1 it to legally enforce laws prohibiting sleeping, camping, or lodging in public. (*Id.*,
2 Ex. I at 454.)

3 1. The City's Alternative Sleeping Location

4 On November 12, 2009, the City opened the ASL. (Johnson Decl., Ex. G at
5 520; *see also id.*, Ex. J at 461.) This makeshift facility comprises a single large
6 room, plus restroom facilities, where individuals sleep side-by-side on the floor. In
7 addition, many homeless individuals sleep huddled against the outside of the
8 building or in the areas nearby. Although there are on average more than 100
9 individuals who seek homeless services per month in the City (*id.*, Ex. G at 522-23;
10 *see also id.*, Ex. K at 2481-82 (indicating that 200 people sought the services of the
11 ASL annually)), the ASL's capacity is only 45, (*id.*, Ex. G at 524; *see also id.*, Ex. I
12 at 454-55). The ASL funded by the City partially through federal Community
13 Development Block Grant ("CDBG") funds received through Orange County.⁴

14 The City also gives priority to what it deems to be "local Laguna Beach
15 residents." (*Id.*, Ex. I at 455; *see also id.*, Ex. J at 476.) This residency requirement
16 for homeless individuals has a high bar — individuals must demonstrate either that
17 an immediate family member currently lives in Laguna Beach, that they attended K-
18 12 school in Laguna Beach, that they leased or paid utilities for residential property
19 in Laguna Beach, or that the LBPD knows them to have been members of the
20 Laguna Beach homeless community for at least 18 months. (*Id.*, Ex. I at 455.)

21 However, these criteria are not applied evenly. For instance, in spite of multiple
22

23 ⁴ Since at least 2012, the City has applied for and received federal CDBG funds
24 through Orange County's consolidated application to HUD and has used these funds
25 to support the operations of the ASL, an integral part of Defendants' homelessness
26 program. (Johnson Decl., Ex. C at 2835; Ex. P at 1287 (indicating that City received
27 \$50,000 for ASL in 2012-13 fiscal year); Ex. Q at 2229-30 (same); Ex. R at 1529
28 (\$48,500 in 2013-14 fiscal year); Ex. K at 2481-82 (same); Ex. S at 1747 (\$92,150 in
2014-2015 fiscal year); Ex. T at 2721-22 (same); and Ex. U at 1991-92 (\$92,150 in
2015-2016 fiscal year)).

1 interactions with disabled, homeless individuals over an 18-month period,
 2 Defendants do not consider many disabled, homeless persons who have lived in
 3 Laguna Beach for more than 18 months to be “local Laguna Beach residents.”
 4 Consequently, these individuals are less likely to be able to access the ASL. (Aune
 5 Decl. ¶¶ 5, 9; Aiken Decl. ¶¶ 6, 8; Holbrook Decl. ¶ 5; Sestini Decl. ¶¶ 5, 8; *see also*
 6 Oldham Decl. ¶¶ 4, 7; Glover Decl. ¶¶ 3, 4, 8; Frederes Decl. ¶¶ 4, 5, 8.)

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

16 Further, even when individuals are given access to the ASL, many, including
 17 Plaintiffs, often cannot tolerate the emergency shelter environment of the ASL,
 18 which worsens their mental health. (*See, e.g.*, Henwood Decl. ¶ 11.) For example,
 19 Mr. Miller finds the ASL environment very stressful. (Miller Decl. ¶ 7.) Being at
 20 the ASL — which is a single large open room in which persons sleep close together
 21 on mats on the floor — makes him sleepless, agitated, depressed and even suicidal to
 22 the point where he was hospitalized. (*Id.* ¶ 8.) Mr. Miller’s experience at the ASL is
 23 typical of the experiences of other disabled, homeless individuals. (Aune Decl. ¶ 6;
 24 Frederes Decl. ¶ 6; Sestini ¶ 6; Aiken Decl. ¶ 7; Glover Decl. ¶¶ 5-7; Donaldson
 25 Decl. ¶ 6; Holbrook Decl. ¶¶ 6-7; Oldham Decl. ¶ 5.)

26 2. Defendants’ Law Enforcement Practices

27 Soon after the ASL was established, Defendants resumed their enforcement of
 28 the LBMC and Penal Code section 647(e) against disabled, homeless individuals.

1 (Johnson Decl., Ex. L.) During just the first five months of the ASL’s operations,
 2 Defendants issued 34 misdemeanor citations for alleged violations of LBMC
 3 8.30.030 and Penal Code section 647(e). (*Id.*) In 2011, enforcement increased —
 4 Defendants issued 160 misdemeanor citations under LBMC 8.30.030 and Penal
 5 Code section 647(e) to individuals sleeping in public. (*Id.*, Ex. M.) Between
 6 January 2012 and June 2014, Defendants issued 225 misdemeanor citations under
 7 LBMC 8.30.030 and Penal Code section 647(e). (*Id.* ¶ 16.)

8 Sometimes LBPD officers issued these citations as violations of LBMC
 9 section 8.30.030, which makes it unlawful to sleep in public parks and beaches at
 10 night, on any public street or sidewalk, or on city property and to camp in any public
 11 place. (*Id.* ¶16 and Ex. M.) More commonly LBPD officers issued these as
 12 violations of Penal Code section 647(e), which defines disorderly conduct, a
 13 misdemeanor, to include “lodg[ing] in any building, structure, vehicle, or place,
 14 whether public or private, without the permission of the owner or person entitled to
 15 the possession or in control of it.” (*Id.* ¶ 16.) The City also imposes a beach curfew
 16 under which the beaches are closed from 1:00 a.m. to 5:00 a.m. each night, Laguna
 17 Beach Municipal Code §§ 18.05.010, 18.05.020, a practice it has more recently
 18 instituted for the same underlying offense — sleeping in public. (*Id.* ¶ 17.)

19 Such citation of homeless individuals who have no means to comply is
 20 counterproductive. These individuals often receive fines they cannot afford to pay
 21 and develop criminal records, which can make it even more difficult for them to
 22 secure and maintain housing, employment, and benefits. In addition, it can be
 23 difficult for homeless individuals with mental or physical disabilities to get to court
 24 and, when there, to navigate the court system. *See No Safe Place: The*
 25 *Criminalization of Homelessness in U.S. Cities*, National Law Center on
 26 Homelessness & Poverty 32-34 (2014).⁵ In addition, such treatment can adversely

27 _____
 28 ⁵ *See* http://www.nlchp.org/documents/No_Safe_Place, last visited Nov. 23, 2015.

1 impact the mental health of disabled, homeless persons. Defendants frequently
2 enforce or threaten to enforce these laws against individuals who are sleeping
3 outdoors because they cannot access or tolerate the ASL. (See Aiken Decl. ¶¶ 8-10;
4 Frederes Decl. ¶¶ 7-8; Miller Decl. ¶¶ 10, 13; Holbrook Decl. ¶¶ 8-11.) In fact,
5 LBPD officers have cited individuals for sleeping in the parking lot of the shelter
6 even after those individuals explained to the officers that they were turned away
7 from the ASL and had nowhere else to go. (Sestini Decl. ¶ 8; Aiken Decl. ¶ 10;
8 Glover Decl. ¶ 9; Aune Decl. ¶ 11; Donaldson Decl. ¶ 9; Holbrook Decl. ¶ 11.) Of
9 the total number of citations issued between January 2012 and June 2014, at least 44
10 were issued to individuals in the ASL parking lot, even when officers were aware
11 that those individuals had been turned away from the shelter. (Johnson Decl. ¶ 16
12 and Ex. N (indicating that between January 30, 2014 to June 16, 2014, Defendants
13 issued 50 citations, 15 of which were issued outside of the ASL)).

14 Individuals who cannot access the ASL have limited options for finding a
15 place to sleep, none of which complies with the law. Plaintiffs are limited to
16 sleeping in the shelter parking lot or in the canyon near the shelter, or undertaking a
17 long and dangerous trek back to the downtown area and beaches to find a place to
18 sleep. (Aune Decl. ¶¶ 8-10; Frederes Decl. ¶ 7; Sestini Decl. ¶¶ 7, 8; Aiken Decl. ¶
19 8; Glover Decl. ¶¶ 7-8; Donaldson Decl. ¶ 7; Holbrook Decl. ¶¶ 9-11; Miller Decl. ¶
20 13.) But no matter where they go, disabled, homeless persons cannot escape
21 punishment in Laguna Beach. (Aiken Decl. ¶¶ 6, 8-11; Frederes Decl. ¶¶ 7-11; Aune
22 Decl. ¶¶ 8-13; Sestini Decl. ¶¶ 7-10; Glover Decl. ¶¶ 7-10; Donaldson Decl. ¶¶ 7, 9;
23 Holbrook ¶¶ 9-11; Miller Decl. ¶¶ 11, 13.) This criminalization and stigmatization
24 leads to a serious deterioration in mental health. (Aune Decl. ¶¶ 9-10; Sestini Decl. ¶
25 9; Miller Decl. ¶ 11; Glover Decl. ¶ 8; Oldham Decl. ¶ 7; Donaldson Decl. ¶ 8;
26 Henwood Decl. ¶¶ 12-13.) Further, Defendants have engaged in more aggressive
27 enforcement since this lawsuit was filed, thereby exacerbating the decline of many
28 Plaintiffs' mental health. (See Aune Decl. ¶¶ 12-13; Sestini Decl. ¶ 9; Miller Decl.

1 ¶¶ 11, 13; Holbrook Decl. ¶¶ 9-11; Frederes Decl. ¶¶ 9-13.)

2 ARGUMENT

3 The Court should award Plaintiffs the interim relief sought in this Motion, as
 4 Plaintiffs meet all the requirements for injunctive relief. “A plaintiff seeking a
 5 preliminary injunction must establish that he is likely to succeed on the merits, that
 6 he is likely to suffer irreparable harm in the absence of preliminary relief, that the
 7 balance of equities tips in his favor, and that an injunction is in the public interest.”
 8 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed.
 9 2d 249 (2008). To preserve the status quo and prevent the irreparable loss of
 10 Plaintiffs’ rights before judgment, this Court should grant Plaintiffs’ request for a
 11 preliminary injunction. Plaintiffs meet each of these requirements.⁶ *See Sierra On-*
 12 *Line, Inc. v. Phx. Software, Inc.*, 739 F.2d 1415, 1421-22 (9th Cir. 1984).

13 **III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR CLAIM THAT** 14 **DEFENDANTS VIOLATED THE EIGHTH AMENDMENT.**

15 An integral part of Defendants’ homelessness program is its enforcement of
 16 Penal Code section 647(e) and LBMC sections 8.30.030 and 18.05.020 against
 17 disabled, homeless individuals who have no means and no mental or physical ability
 18 to comply. (*See generally* Declarations of K. Aune, J. Aiken, D. Sestini Decl., J.
 19 Miller, L. Holbrook, D. Frederes, K. Glover, P. Donaldson, and J. Oldham.) Since

21 ⁶ This Court has the authority to issue the requested interim relief without requiring
 22 Plaintiffs to post a security. *See People ex rel. Van de Kamp v. Tahoe Reg’l*
 23 *Planning Agency*, 766 F.2d 1319, 1325-26 9 (9th Cir. 1985). Among the factors
 24 supporting waiving the security requirement are a strong likelihood of success on the
 25 merits; a plaintiff’s limited financial resources; a finding that the security
 26 requirement would hamper plaintiff’s ability to enforce a federal right in court; and a
 27 speculative fiscal impact of an injunction on a defendant. *See id.*; *see also Smith v.*
 28 *Board of Election Comm’rs for Chicago*, 591 F. Supp. 70, 72 (N.D. Ill. 1984);
Orantes-Hernandez v. Smith, 541 F. Supp. 351, 385-86 n.42 (C.D. Cal. 1982). All
 these reasons support waiving any security in this case. (*See* Aune Decl. ¶2; Miller
 Decl. ¶¶ 3-4; Holbrook Decl. ¶ 4.)

1 2011, Defendants have issued more than 400 misdemeanor citations to homeless
 2 persons in Laguna Beach for sleeping or resting in public in violation of these laws.
 3 (Johnson Decl., Ex. N (160 citations in 2011); ¶ 16 (225 citations from Jan. 2012-
 4 June 2014); ¶ 17 (at least 25 misdemeanor citations).)⁷ Of these citations, at least 44
 5 were issued to individuals in the ASL parking lot, even when officers were told that
 6 these individuals had been turned away from the shelter. (*Id.* ¶ 16.) As such,
 7 Plaintiffs and other disabled, homeless individuals without access to a safe, legal
 8 place to sleep are subject to criminalization at Defendants' hands.

9 By punishing disabled, homeless individuals whenever and wherever they fall
 10 asleep, Defendants violate the Eighth Amendment, which proscribes the infliction of
 11 cruel and unusual punishment. In addition to "limit[ing] the kinds of punishments
 12 that can be imposed on those convicted of crimes," the Eighth Amendment "imposes
 13 substantive limits on what can be made criminal and punished as such"

14 *Ingraham v. Wright*, 430 U.S. 651, 667, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).

15 Plaintiffs are thus likely to prevail on their Eighth Amendment claim because
 16 Defendants' homelessness program, which criminalizes the status of being disabled
 17 and homeless in Laguna Beach, and also criminalizes conduct inseparable from this
 18 status, constitutes cruel and unusual punishment.

19 **A. Defendants Unconstitutionally Criminalize the Status of Being**
 20 **Disabled and Homeless in Laguna Beach.**

21 The Supreme Court has long made clear that it is beyond the power of
 22 government to punish persons for their status alone. In *Robinson v. California*, 370
 23 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962), the Court invalidated a California

24 _____
 25 ⁷ This is likely an undercount. The ACLU received comprehensive records of such
 26 citations through public records act requests covering the period from January 2012
 27 to June 2014. More recently, the ACLU has only received citations provided directly
 28 by Plaintiffs or other homeless individuals or the records of Plaintiffs' citations
 available from the OC Courts website. (Johnson Decl. ¶ 19.)

1 statute that made “the ‘status’ of narcotic addiction a criminal offense” *Id.* at
 2 666. The Court explained: “It is unlikely that any State at this moment in history
 3 would attempt to make it a criminal offense for a person to be mentally ill, or a leper,
 4 or to be afflicted with a venereal disease.” *Id.* Thus, criminalizing an individual’s
 5 “status” constitutes cruel and unusual punishment as proscribed by the Eighth
 6 Amendment. *Id.* at 667. Here, Defendants are doing just that — they are
 7 criminalizing Plaintiffs because they are disabled and homeless, a chronic condition
 8 which these individuals acquired innocently and involuntarily. (Aune Decl. ¶¶ 3-4;
 9 Aiken ¶¶ 2-5; Sestini Decl. ¶¶ 2-4; Miller Decl. ¶¶ 3-4; Holbrook Decl. ¶¶ 3-4; *see*
 10 *also* Frederes Decl. ¶¶ 2-3; Glover Decl. ¶¶ 2-3; Donaldson Decl. ¶¶ 2-3.)

11 Defendants are aware, or reasonably should be aware, that the vast majority of
 12 homeless individuals living in Laguna Beach are disabled and that most suffer from
 13 mental illnesses. (Johnson Decl., Ex. B at 2931; Ex. C at 2818; Henwood Decl. ¶
 14 10.) Yet, Defendants have designed a homelessness program that denies disabled
 15 individuals a safe, legal alternative to police enforcement by only offering a single
 16 emergency shelter with too little capacity and in a form known and intended to be
 17 inaccessible to many disabled homeless persons. Indeed, Defendants act in an
 18 arbitrary and selective way that adversely impacts disabled, homeless individuals
 19 when exercising their authority to give “Laguna residents” priority at the ASL. For
 20 example, although those who are homeless in Laguna Beach for at least 18 months
 21 are supposed to be guaranteed a space at the ASL (*see* Johnson Decl., Ex. I at 455),
 22 Defendants refuse to consider many individuals who have been homeless in Laguna
 23 Beach for longer than 18 months as residents. (Aune Decl. ¶ 5; Aiken Decl. ¶ 6;
 24 Holbrook Decl. ¶ 5; Frederes Decl. ¶ 5; Glover Decl. ¶ 4.) Moreover, even if these
 25 individuals are granted access to the ASL and there are beds available on a particular
 26 night, the environment of the ASL is intolerable to most, if not all, disabled,
 27 homeless individuals, resulting in a deterioration of their mental health (Aune Decl. ¶
 28 6; Miller Decl. ¶ 8; Glover Decl. ¶ 5); avoidance of the ASL because they cannot

1 tolerate the conditions (Aiken Decl. ¶¶ 7-8; Holbrook Decl. ¶ 8; Donaldson Decl. ¶
 2 6); or being permanently or temporarily banned from the shelter because their mental
 3 disability makes it difficult for them to conform to the environment (Aune Decl. ¶ 7;
 4 Holbrook Decl. ¶ 8; Sestini Decl. ¶ 6). (*See also* Henwood Decl. ¶ 11.)

5 Unfortunately, disabled, homeless individuals have no legal place to asleep aside
 6 from the ASL, so many seek a spot at the ASL and risk a deterioration in their
 7 mental condition to avoid Defendants' heavy handed enforcement. In addition,
 8 Defendants have prevented or delayed the creation of permanent supportive housing,
 9 an option which would meet the needs of disabled, homeless individuals and provide
 10 them a legal place to sleep. (Johnson Decl., Ex. O.)⁸

11 Defendants' homelessness program, therefore, operates to punish those who
 12 are homeless and disabled. As this punishment rests on Defendants' failure to
 13 provide an alternative legal place to sleep for those with disabilities, the program
 14 criminalizes the status of being disabled and homeless in Laguna Beach in violation
 15 of the Eighth Amendment. *See Robinson*, 370 U.S. at 666.

16 **B. Defendants Unconstitutionally Criminalize Involuntary Acts that**
 17 **are Inseparable from the Status of Being Homeless and Disabled.**

18 Because disabled, homeless persons in Laguna Beach have no legal place to
 19 sleep, the City has violated the Eighth Amendment by criminalizing the unavoidable
 20

21 ⁸ Permanent supportive housing is stable housing with supportive services, such as
 22 mental health treatment and case management. Such housing not only provides the
 23 services needed by this population, it also offers a more private, stable environment
 24 that can be tolerated by those with mental and physical disabilities. Permanent
 25 supportive housing is inherently flexible with the specific supportive services
 26 determined after placement based on individual needs. *See* U.S. Interagency Council
 27 on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End*
 28 *Homelessness* [hereinafter *Opening Doors*] 18 (2010) ("For people experiencing
 chronic homelessness, the research is clear that permanent supportive housing using
 a Housing First approach is the solution."), *available at* [http://usich.gov/
 opening_doors/](http://usich.gov/opening_doors/).

1 act of sleeping while being involuntarily mentally ill or physically disabled and
2 homeless. In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2006), the
3 Ninth Circuit applied the principle articulated in *Robinson*, 370 U.S. at 666 — that
4 the Eighth Amendment prohibits punishment based on a person’s “status” — and
5 held that the city could not enforce an ordinance against homeless individuals for
6 involuntarily sitting, lying, and sleeping in public when the number of homeless
7 persons in the city surpassed the number of shelter beds.⁹ In analyzing the Supreme
8 Court’s decisions in *Robinson* and *Powell v. Texas*, 392 U.S. 514, 88 S. Ct. 2145, 20
9 L. Ed. 2d 1254 (1968), the *Jones* court recognized that “the involuntariness of the act
10 or condition the City criminalizes is the critical factor delineating a constitutionally
11 cognizable status, and incidental conduct which is integral to and an unavoidable
12 result of that status, from acts or conditions that can be criminalized consistent with
13 the Eighth Amendment.” *Jones*, 444 F.3d at 1132.

14 Here, Defendants are criminalizing the act or condition of sleeping outdoors in
15 public places. Such acts, however, are “universal and unavoidable consequences of
16 being human.” *Id.* at 1136; *see also Johnson v City of Dallas*, 860 F. Supp. 344, 350
17 (N.D. Tex. 1994), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995) (recognizing
18 that it is a “foregone conclusion that maintaining human life requires certain acts,
19 among them . . . sleeping.”) Plaintiffs have no choice but to sleep in public because
20 they cannot access or tolerate the ASL. *See id.* Accordingly, they have no legal
21 place to sleep or rest in Laguna Beach and are forced to find other, hidden places,

22 ⁹ Although the *Jones* decision was vacated pursuant to a settlement agreement
23 between the parties, 505 F.3d 1006 (9th Cir. 2007), its logic, reasoning, and analysis
24 of Supreme Court precedent remains sound and persuasive. The U.S. Department of
25 Justice has recently supported the reasoning in *Jones* and urged its adoption. U.S.
26 Dep’t of Justice Stmt of Interest Br. at 4, *Bell v. City of Boise*, No. 1:09-cv-540 (D.
27 Idaho Aug. 6, 2015) (“[T]he *Jones* framework is the appropriate legal framework for
28 analyzing Plaintiffs’ Eighth Amendment claims. Under the *Jones* framework, the
Court should consider whether conforming one’s conduct to the ordinance is possible
for people who are homeless.”). *See Johnson Decl.*, Ex. V.

1 where they are less likely to be found by police where they can engage in the
2 biologically necessary activity of sleep. That said, sleeping in public is “involuntary
3 and inseparable from” Plaintiffs’ status or condition of being homeless, and the
4 Defendants’ criminalization of such violates the Eighth Amendment.

5 **IV. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR ADA AND**
6 **REHABILITATION ACT CLAIMS.**

7 Plaintiffs are also likely to succeed on their claims that Defendants’
8 homelessness program violates Defendants’ obligations under Title II of the ADA
9 and Section 504 of the Rehabilitation Act to reasonably accommodate homeless
10 persons with disabilities. Title II provides that “no qualified individual with a
11 disability shall, by reason of such disability, be excluded from participating in or be
12 denied the benefits of the services, programs, or activities of a public entity, or be
13 subjected to discrimination by any such entity.” 42 U.S.C. § 12132. This prohibits
14 not only intentional discrimination and policies which disproportionately impact
15 those with disabilities, but it also mandates that public entities provide persons with
16 disabilities “reasonable accommodations” so they can have meaningful access to a
17 public entity’s services, programs, or activities. *McGary v. City of Portland*, 386
18 F.3d 1259, 1266 (9th Cir. 2004); *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir.
19 1996). “The purpose of the ADA’s reasonable accommodation requirement is to
20 guard against the façade of ‘equal treatment’ when particular accommodations are
21 necessary to level the playing field.” *McGary*, 386 F.3d at 1267.¹⁰

22 To establish a violation of Title II, a plaintiff must demonstrate that he (1) is a
23 qualified individual with a disability, (2) was excluded from participation in, denied
24 the benefits of the services, programs or activities of, or otherwise discriminated

25 _____
26 ¹⁰ Although Title II of the ADA uses the term “reasonable modification,” rather than
27 “reasonable accommodation,” these terms create identical standards and are used
28 interchangeably. *McGary*, 386 F.3d at 1266 n.3 (citing *Wong v. Regents of Univ. of*
Cal., 192 F.3d 807, 816 n.26 (9th Cir. 1999)).

1 against by a public entity, and (3) such exclusion, denial or discrimination was by
 2 reason of the disability. *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002).
 3 Plaintiffs must also identify available reasonable accommodations. *Cmtys. Actively*
 4 *Living Indep. & Free v. City of Los Angeles* (“*Living Independent*”), No. 09-0287,
 5 2011 U.S. Dist. LEXIS 118364, at *35 (C.D. Cal. Feb. 10, 2011). Plaintiff will
 6 likely succeed in establishing these elements.

7 There is “no significant difference in the analysis of rights and obligations
 8 created by” Title II of the ADA and Section 504 of the Rehabilitation Act, *McGary*,
 9 386 F.3d at 1269 n.7 (citing *Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir.
 10 2002)), except, under the latter, plaintiffs must also establish that the program at
 11 issue receives federal financial assistance. *See* 29 U.S.C. § 794. As such, courts
 12 typically evaluate Title II and Section 504 claims in tandem. *Id.*; *see also Living*
 13 *Independent*, 2011 U.S. Dist. LEXIS 118364, at *35. The City uses federal CDBG
 14 funds to support its homelessness program.¹¹ Thus, the analysis of the remaining
 15 elements of the Title II and Section 504 claims is identical.

16 **A. Plaintiffs are Qualified Individuals with Disabilities.**

17 Plaintiffs are disabled within the meaning of the ADA because they all suffer
 18 from “a physical or mental impairment that substantially limits one or more . . .
 19 major life activities[,]” have “a record of such an impairment[,]” or are “regarded as
 20 having such an impairment.” 28 C.F.R. 35.104. The definition of “major life
 21 activities” includes caring for one’s self, learning, and working. *Id.* As described
 22 above, Plaintiffs suffer from mental and/or physical impairments that limit their
 23 ability to work, as well as care for themselves.

24 In addition, by virtue of being homeless in Laguna Beach, Plaintiffs are also
 25 subject to, and are therefore “qualified individuals” with respect to Defendants’
 26 homelessness program. *See* 42 U.S.C. § 12131(2); 28 C.F.R. 35.104; *Crowder*, 81

27 _____
 28 ¹¹ *See supra* n.4.

1 F.3d at 1483-84; *McGary*, 386 F.3d at 1268-70. This concept of eligibility is not
2 narrowly limited to the criteria required of those voluntarily seeking to receive a
3 service or benefit from a public entity, but applies equally to the criteria used to
4 determine who is subject to a public entity’s mandatory programs or activities. For
5 example, in *McGary*, the Ninth Circuit held that the ADA applies equally to those
6 whose participation in programs is mandatory, including those subject to municipal
7 law enforcement. 386 F.3d at 1268-70. The *McGary* plaintiff was a disabled man
8 who sought additional time to comply with the City of Portland’s enforcement of a
9 municipal ordinance relating to nuisance abatement while he was hospitalized. The
10 government argued that since “compliance with the nuisance abatement ordinance
11 was compelled, rather than voluntary, the City was under no obligation to
12 accommodate his disability.” *McGary*, 386 F.3d at 1268. In rejecting this argument,
13 the Ninth Circuit observed that there is “no reason to distinguish between municipal
14 code enforcement and the other mandatory activities [it had] found to fall within the
15 purview of the ADA.” *Id.* at 1268-70; *see also Pa. Dep’t of Corrs. v. Yeskey*, 524
16 U.S. 206, 211, 118 S. Ct. 1952, 141 L. Ed. 2d 215 (1998) (holding that prison-based
17 programs, services, and activities fall within the purview of the ADA’s reasonable
18 modifications requirement, although participation in such may be mandatory); 28
19 C.F.R. 42.540(j) (defining the term “benefit” to include mandatory “treatment,
20 handling, decision, sentencing, confinement, or other prescription of conduct”).

21 As in *McGary*, homeless individuals in Laguna Beach are subject to the
22 enforcement of municipal ordinances and other prohibitions against sleeping in
23 public. Therefore, Plaintiffs, and members of the class they seek to represent, are all
24 “qualified individuals” entitled to the protections of the ADA.

25 **B. Plaintiffs are Denied a Benefit of Defendants’ Program.**

26 By relying solely on a single, often over-crowded emergency shelter, which is
27 either inaccessible or intolerable to Plaintiffs, Defendants are denying Plaintiffs a
28 benefit of the City’s homelessness program — namely, a safe, legal place to sleep

1 and rest that does not subject them to citation.¹²

2 The ADA not only prohibits intentional discrimination, but “applies with
3 equal force to facially neutral policies that discriminate against individuals with
4 disabilities.” *Living Independent*, 2011 U.S. Dist. LEXIS 118364, at *37 (citing
5 *McGary*, 386 F.3d at 1265). When individuals with disabilities are denied
6 meaningful access to a benefit of a public entity’s programs, services, or activities,
7 that public entity must provide a reasonable accommodation in order to comply with
8 the ADA. *Id.* at *37-38. In *Living Independent*, the City of Los Angeles denied
9 disabled individuals meaningful access to the benefits of its emergency preparedness
10 program by failing to consider the special needs that people with disabilities may
11 face in an emergency. *Id.* at *39-45. Specifically, they were denied program
12 benefits, such as notification, evacuation, transportation and shelter in the event of an
13 emergency because local agencies failed to assess their capacity to assist individuals
14 with disabilities and to consider the need for reasonable accommodations. *Id.* The
15 specific benefit sought can be assistance needed to comply with the law. In *McGary*,
16 the hospitalized plaintiff was denied the benefit of being allowed sufficient time to
17 comply with the city’s nuisance abatement code. 386 F.3d at 1269-70.

18 Here, the City established and maintains the ASL in order to justify
19 Defendants’ practice and policy of heavy law enforcement, harassment, and scrutiny
20 of those who sleep in public, particularly areas more visible to housed residents and
21 tourists, such as the downtown area and nearby beaches. *See supra* 6. Therefore,
22 one benefit provided by Defendants’ homelessness program is the provision of a
23 safe, legal place to sleep. However, in designing and evaluating this program,
24 Defendants did not assess whether this benefit would be available to those with

25 _____
26 ¹² Although not a basis for this application for preliminary relief, Plaintiffs also
27 contend that Defendants deliberately designed their homelessness program in a way
28 that denies benefits to those with mental disabilities, which constitutes discrimination
in contravention of the ADA. (First Am. Compl. at 23-25, ¶¶ 33-35, 41-42.)

1 disabilities, particularly those with mental illnesses, nor did they make any
2 accommodations for those whose disabilities render the ASL an inaccessible or
3 inappropriate place for them to sleep. (*See Johnson Decl.*, Ex. C at 2818 (in City’s
4 Housing Element, in which jurisdiction must evaluate housing needs of special needs
5 populations, including people with disabilities, and people experiencing
6 homelessness, there is no evaluation of disabled, homeless persons’ ability to access
7 ASL)). As a result, disabled, homeless individuals are often denied the benefit of a
8 safe and legal place to sleep because their disabilities prevent them from accessing
9 the ASL, and there is no other place they can safely and legally sleep within the City.
10 *See supra* 7-8. Further, even those who are able to secure a spot at the ASL
11 frequently experience difficulty sleeping and a deterioration in their mental health.
12 *See supra* 7-8; *infra* 16-17. In such circumstances, they are also denied the program
13 benefit, as the ASL is not safe for them.

14 **C. Plaintiffs are Denied Benefits by Reason of Their Disability.**

15 Defendants have denied benefits to disabled, homeless persons because of
16 their disabilities. In evaluating whether an exclusion or denial of benefits is by
17 reason of disability, courts look to whether the neutral policies at issue deny access
18 to those with disabilities, while the benefits of the program remain open and easily
19 accessible to others. *Living Independent*, 2011 U.S. LEXIS 118364, at *46-47;
20 *Crowder*, 81 F.3d at 1484. In *Living Independent*, the Court found that Los Angeles’
21 emergency preparedness program rendered those with disabilities
22 “disproportionately vulnerable to harm” in the event of an emergency, 2011 U.S.
23 LEXIS 118364, at *46-47, burdening those with disabilities “in a manner different
24 and greater than it burdens others.” *Id.* at *48 (citing *Crowder*, 81 F.3d at 1484
25 (holding that Hawaii’s quarantine requirement that applied equally to all persons
26 entering the state with a dog, denied benefits to those with visual impairments by
27 reason of their disability)).

1 Due to the inadequacies and limitations of the ASL, Defendants’ homelessness
2 program denies disabled, homeless persons a safe and legal place to sleep because of
3 their disabilities. For example, Ms. Holbrook, who has been diagnosed with bipolar
4 disorder and suffers from anxiety, experiences a further exacerbation in her mental
5 disabilities when staying at the ASL. (Holbrook Decl. ¶¶ 6-7.) Similarly, the
6 stressful environment of the ASL, coupled with his delicate mental health, made it
7 difficult for Mr. Sestini to remain calm while at the ASL, often resulting in his
8 expulsion for arguing with staff. (Sestini Decl. ¶ 6.) This happened with enough
9 frequency that Mr. Sestini was permanently banned from the ASL, thereby losing the
10 benefit of a safe, legal place to sleep within the City. (*Id.*) Ms. Aune, who has been
11 diagnosed with depression and suffers from PTSD and obsessive compulsive
12 disorder, also has difficulty coping with the shelter environment because of her
13 disability and sometimes gets kicked out by staff because she cannot communicate
14 calmly. (Aune Decl. ¶¶ 3, 6-8.) When this happens she is denied the benefit of a
15 safe, legal place to sleep because of her disability. Even when Ms. Aune is able to
16 remain at the ASL, doing so worsens her mental health. (*Id.* ¶ 6.) The deterioration
17 in Ms. Aune’s mental health that results from staying at the ASL also constitutes a
18 denial of the benefit of a safe, legal place to sleep because of her disability.

19 The experiences of Ms. Holbrook, Mr. Sestini and Ms. Aune are
20 representative of those faced by other disabled, homeless individuals. (*See, e.g.*,
21 Aiken Decl. ¶¶ 2-4, 7; Glover Decl. ¶¶ 2-3, 9-11; Frederes Decl. ¶¶ 6-7, 9-10;
22 Donaldson Decl. ¶¶ 2, 6-7; Henwood Decl. ¶ 11.) As explained by Dr. Benjamin
23 Henwood, a nationally recognized expert on the mental health impacts of
24 homelessness policies on people experiencing serious mental illness, “the crowded,
25 chaotic, and noisy environment that typically characterizes shelter living can
26 negatively impact mental health symptoms” and “can lead to a deterioration in []
27 mental health.” (Henwood Decl. ¶¶ 1, 3-7, 11.) Those who manage to stay in this
28 environment, frequently “experience interrupted sleep and sleep deprivation” that

1 exacerbate the negative impact on mental health symptoms and the overall
 2 deterioration in mental health. (*Id.* ¶ 11.) Homeless individuals with mental illness
 3 often avoid the consequences of staying in the shelter environment by sleeping
 4 outdoors and are “more likely to be forced to leave shelters because symptoms of
 5 their conditions are mistaken by staff as misbehavior.” (*Id.*)

6 As in *Living Independent*, Defendants’ failure to consider and address the
 7 needs of those homeless persons with disabilities means they are more likely to be
 8 left without access to the benefit of a safe, legal place to sleep. As such, Defendants’
 9 program burdens disabled, homeless individuals “in a manner different and greater
 10 than it burdens others” and such denial is by reason of disability.

11 **D. Plaintiffs Have Identified Available Reasonable Accommodations**

12 Plaintiffs have also identified available reasonable accommodations in support
 13 of their Title II and Section 504 claims. An accommodation is deemed to be an
 14 “available,” where a local agency has considered the accommodation or where
 15 federal guidance documents discuss the accommodation, regardless of whether that
 16 particular accommodation has been implemented. *See Living Independent*, 2011
 17 U.S. Dist. LEXIS 118364, at *35 (accommodations were deemed to be “reasonable
 18 available accommodations” where plaintiffs showed that measures had been
 19 previously identified in recommendations to a local agency, as well as in federal
 20 guidance documents.)

21 Here, Plaintiffs’ proposed accommodation is permanent supportive housing
 22 and a cessation in enforcement against those who sleep in public out of necessity.
 23 Both the City’s Homeless task Force and federal agencies have already identified
 24 these as appropriate options. (*See Johnson Decl.*, Ex. A at 407 (identifying
 25 permanent supportive housing as “the most successful model for housing people who
 26 experience chronic homelessness”). *See also* Permanent Supportive Housing: How
 27 It Works And Why Laguna Beach Needs It, Friends of Supportive Housing,
 28 <http://friendsofsupportivehousing.com/> (last visited Sept. 30, 2015) (noting that

1 Friendship Shelter’s proposed permanent supportive housing development was
 2 projected to save the City at least \$150,000 in direct costs annually); Opening Doors
 3 at 15, *supra* n.7 (“Permanent supportive housing is widely recognized as the solution
 4 for people facing the greatest challenges to housing stability, including serious and
 5 persistent physical and behavioral health problems. Permanent supportive housing
 6 also costs less than allowing people to continue through public systems.”); *id.* at 24-
 7 26, 41; *id.* at 53-54 (“Criminalizing acts of survival is not a solution to homelessness
 8 and results in unnecessary public costs for police, courts, and jails.”); Johnson Decl.,
 9 Ex. V (U.S. Dept. of Justice Statement of Interest Brief at 16, *Bell v. City of Boise*,
 10 No. 1:09-cv-540 (D. Idaho Aug. 6, 2015) (“[C]riminalizing homelessness is both
 11 unconstitutional and misguided public policy, leading to worse outcomes for people
 12 who are homeless and for their communities.”)).

13 **V. PLAINTIFFS ARE LIKELY TO SUFFER IRREPARABLE HARM**
 14 **ABSENT INTERIM INJUNCTIVE RELIEF.**

15 Defendants’ treatment of disabled, homeless persons takes a heavy toll.
 16 Absent the requested injunctive relief, these individuals will continue have their
 17 constitutional rights violated, and will suffer serious and irreparable harm to their
 18 mental health. The constant police scrutiny and heavy enforcement of laws with
 19 which these individuals are unable to comply, have a severe impact on their mental
 20 health.¹³

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 23 ¹³ A violation of a constitutional right constitutes irreparable harm. *See Elrod v.*
 24 *Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976) (“[T]he loss of
 25 First Amendment freedoms, for even minimal periods of time, unquestionably
 26 constitutes irreparable injury.”); *see also Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d
 27 Cir.1984) (“When an alleged deprivation of a constitutional right is involved, most
 28 courts hold that no further showing of irreparable injury is necessary.”); *Huston v.*
Burpo, No. C94-20771, 1995 WL 73097, at *5 (N.D. Cal. Feb. 13, 1995) (“[A]
 violation of a constitutional right would constitute an irreparable injury . . .”).

1 As explained by Dr. Henwood, such enforcement “can negatively impact the
2 mental health symptoms of persons experiencing homelessness and serious mental
3 illness,” including anxiety, paranoia, sleep deprivation, lethargy, low self-worth,
4 irritability, and depression, which can “lead to a deterioration in their mental health.”
5 (*Id.* ¶ 12.) In addition, the experience of being under such scrutiny and subject to
6 such enforcement can be “deeply stigmatizing,” which negatively impacts mental
7 health further. (*Id.*) The trauma caused by such treatment can be “serious” and
8 “long-lasting.” (*Id.* ¶ 13.) In some cases, without intervention, the consequences to
9 the mental health of those experiencing homelessness can last a lifetime. (*Id.*)

10 Dr. Henwood’s opinion is borne out by the experiences of two homeless
11 individuals recently placed in permanent supportive housing, both of whom continue
12 to suffer deteriorating mental health. (*See* Donaldson Decl. ¶ 10 (“My experiences at
13 the ASL and my encounters with the Laguna Beach police department have had
14 lasting effects on my mental health. I continue to feel angry, inhibited, frightened,
15 and inadequate. I continue to have difficulty sleeping. . . . I know I will have a long
16 road to recovery.”); Glover Decl. ¶ 11 (“Even though I am housed, I feel like I am
17 still looking over my shoulder, I still feel some paranoia. It is still difficult for me to
18 sleep.”).) Without an immediate cessation in enforcement, Plaintiffs will experience
19 irreparable injury. *See Gonzalez v. Zika*, No. C 11-5561, 2012 WL 4466584, at *10-
20 11 (N.D. Cal. Sept. 26, 1012) (granting preliminary injunction where prisoner
21 demonstrated irreparable harm to his psychological health would result from being
22 double-celled with another prisoner); *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 709-
23 10 (9th Cir. 1988) (holding that a plaintiff who proved he was likely to suffer
24 “emotional or psychological” injury demonstrated irreparable harm).

25 **VI. THE BALANCE OF EQUITIES TIPS IN PLAINTIFFS’ FAVOR.**

26 As set forth above, the heightened law enforcement scrutiny, harassment, and
27 citation of disabled, homeless individuals poses a grave and irreparable harm to
28 Plaintiffs. These hardships outweigh any hardship to Defendants that might result

1 from the preliminary injunction Plaintiffs seek.

2 If the Court grants Plaintiffs' Motion, Defendants would merely be required to
3 stop enforcing Penal Code section 647(e) and Laguna Beach Municipal Code
4 sections 8.30.030, 18.05.020 against disabled, homeless individuals who have no
5 practical way to comply with those laws by virtue of their homelessness and
6 disability until final resolution of this litigation. While Defendants may argue that
7 enforcement is necessary to protect public health and safety, such an argument is
8 undercut by the fact that citations cannot and will not deter disabled, homeless
9 individuals from sleeping outside when they have no other place to sleep. This
10 purported injury to public health and safety is weak and illusory. It also does not
11 overcome the very real threat of irreparable injury to Plaintiffs if they continue to be
12 denied a safe, legal place to sleep and are punished for the involuntary act of
13 sleeping outside. *See, e.g., Sak v. City of Aurelia*, 832 F. Supp. 2d 1026, 1046 (N.D.
14 Iowa 2011). Any possible harm to Defendants would be slight when weighed
15 against the deteriorating mental health experienced by the Plaintiffs, not to mention
16 the negative impact that such enforcement will have on their ability to secure
17 housing or employment in order to escape homelessness. Therefore, the balance of
18 equities tips in favor of granting Plaintiffs' requested preliminary injunctive relief.

19 **VII. A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST.**

20 Given Defendants' ongoing and increasingly aggressive violation of disabled,
21 homeless individuals' civil rights, the public interest is best served by granting
22 Plaintiffs' requested preliminary injunction. In evaluating the effect that interim
23 relief would have on the public interest, a "court must consider both what public
24 interest might be injured and what public interest might be served by granting or
25 denying a preliminary injunction." *Sierra Club v. U.S. Army Corps of Eng'rs*, 645
26 F.3d 978, 997-98 (8th Cir. 2011). This evaluation "is also dependent on the
27 determination of the likelihood of success on the merits, because it is in the public
28 interest to protect rights." *Sak v. City of Aurelia*, 832 F. Supp. 2d 1026, 1046-47

1 (N.D. Iowa 2011) (citing *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008));
2 *see also* *Awad v. Ziriak*, 670 F.3d 1111, 1132 (10th Cir. 2012) (“[I]t is always in the
3 public interest to prevent the violation of a party’s constitutional rights.”).

4 As discussed above, Plaintiffs — some of Laguna Beach’s most vulnerable
5 residents — are experiencing severe, ongoing violations of their civil rights that will
6 cause irreparable harm to their mental health and to their future prospects for
7 obtaining housing and employment. Allowing such violations to continue during the
8 pendency of this litigation is against the public interest. This is particularly true
9 given the importance of the interests served by the ADA. “[I]n enacting the ADA,
10 Congress demonstrated its view that the public has an interest in ensuring the
11 eradication of discrimination on the basis of disabilities.” *Enyart v. Nat’l Conf. of*
12 *Bar Examiners, Inc.*, 630 F.3d 1153, 1167 (9th Cir. 2011) (citing 42 U.S.C. §
13 12101(a)(9)). “This public interest is served by requiring entities to take steps to
14 ‘assure equality of opportunity’ for people with disabilities.” *Id.*

15 In contrast, the public interest is not served by maintaining Defendants’
16 draconian enforcement against persons who have no ability to comply. As discussed
17 above, any professed injury to public health and safety resulting from enjoining
18 enforcement will be weak or illusory in nature. Therefore, the public interest weighs
19 in favor of granting Plaintiffs’ requested preliminary injunction.

20 **CONCLUSION**

21 For all the foregoing reasons, Plaintiffs respectfully request that the Court
22 grant Plaintiff’s Motion for a Preliminary Injunction.

23 DATED: November 23, 2015

24 ACLU FOUNDATION OF SOUTHERN
25 CALIFORNIA and PAUL HASTINGS LLP

26 By: /s/

27 Heather Maria Johnson
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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISON

13 Kenneth Glover; David Sestini;
14 Douglas Frederes Jr.; Jeffrey Aiken;
15 Katrina Aune; John Miller; and Lisa
Holbrook, individually, and on behalf
16 of all others similarly situated
Plaintiffs,

17 vs.

18 CITY OF LAGUNA BEACH; THE
LAGUNA BEACH POLICE
19 DEPARTMENT, a California charter
city

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

CLASS ACTION

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
INJUNCTION**

Date: December 21, 2015

Time: 10:00 a.m.

Dept: 10D

Judge: Hon. Andrew J. Guilford

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1 This Court heard Plaintiffs’ Motion for a Preliminary Injunction in the
2 above-referenced action on December 21, 2015, at 10:00 a.m.

3 Having considered the papers filed in support of and opposition to Plaintiffs’
4 Motion, the arguments of counsel, the Court finds and orders as follows:

5 1. Plaintiffs have demonstrated that they are likely to succeed on the
6 merits of their claims.

7 2. Plaintiffs have demonstrated that they are likely to suffer irreparable
8 harm in the absence of preliminary relief.

9 3. Plaintiffs have demonstrated that the balance of equities tips clearly
10 their favor.

11 4. Plaintiffs have demonstrated that a preliminary injunction is in the
12 public interest.

13 IT IS HEREBY ORDERED that Plaintiffs’ request for preliminary injunction
14 is GRANTED.

15 IT IS FURTHER ORDERED that the City of Laguna Beach and the Laguna
16 Beach Police Department, and their agents, servants, employees, and those in active
17 concert or participation with them (collectively “Defendants”), are restrained and
18 enjoined pending trial of this action from enforcing or threatening to enforce –
19 either through written citation and/or warnings, verbal warnings, and/or threats, or
20 general intimidation and/or harassment where no other alleged violation of law is
21 suspected – California Penal Code section 647(e) and Laguna Beach Municipal
22 Code (“LBMC”) sections 8.30.030, 18,05.020 against disabled, homeless
23 individuals in public, outdoor places.

24 IT IS FURTHER ORDERED THAT Defendants are restrained and enjoined
25 pending trial of this action from discriminating against the disabled, homeless
26 individuals by reason of their disability.

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IT IS FURTHER ORDERED THAT this Order shall become effective immediately, and shall continue in effect until this Court enters final judgment in this action or otherwise lifts the injunction.

Dated: _____

The Honorable Andrew J. Guilford
U.S. District Court Judge