

1 Brittany Rogers (SBN 274432)
2 brogers@omm.com
3 Nancy Lynn Schroeder (SBN 280207)
4 nschroeder@omm.com
5 O'MELVENY & MYERS LLP
6 400 South Hope Street, 18th Floor
7 Los Angeles, CA 90071
8 P: (213) 430-6000 | F: (213) 430-6407

9 [Additional Counsel listed in Signature Page]

10 *Counsel for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

13 JAMES TYSON, LENKA JOHN,
14 NOEL HARNER, CHARLES
15 CLAYTON, and MELISSA JONES,
16 individuals; SOCAL TRASH ARMY,
17 an unincorporated association,

18 Plaintiffs,

19 v.

20 CITY OF SAN BERNARDINO, a
21 municipal entity; DOES 1-20,

22 Defendants.

Case No. 5:23-cv-01539 TJH (KKx)

**FIRST SUPPLEMENTAL CIVIL
RIGHTS COMPLAINT**

AMERICANS WITH
DISABILITIES ACT (42 U.S.C. §
12132); SECTION 504 OF THE
REHABILITATION ACT (29
U.S.C. § 794); UNITED STATES
CIVIL RIGHTS ACT (42 U.S.C. §
1983); U.S. AND CALIFORNIA
CONSTITUTIONS; CAL. GOV'T
CODE §815.6; CAL. CIVIL CODE
§ 2080 ET SEQ.

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This complaint concerns the City of San Bernardino’s (the “City”)
3 systematic violation of its duties under the Americans with Disabilities Act (ADA).
4 The City demands that disabled, unhoused individuals comply with impossible
5 orders to hastily relocate themselves and all their belongings or else face
6 confrontation with City security forces and the confiscation and destruction of their
7 property.

8 2. This complaint also concerns the City’s inhumane and unconstitutional
9 practice of summarily destroying its most vulnerable residents’ personal property—
10 including essential items like medications and mobility aids that individuals with
11 disabilities need to live.

12 3. Plaintiffs Lenka John, James Tyson, Noel Harner, Charles Clayton,
13 and Melissa Jones (collectively, “Individual Plaintiffs”) are five individuals with
14 disabilities that make complying with the City’s orders to move impracticable,
15 unsafe, or otherwise unduly burdensome. In light of these difficulties, Plaintiffs
16 John, Tyson, and Harner each submitted a Reasonable Accommodation request to
17 the City, describing their disabilities and needs for accommodation when faced with
18 the City’s orders. But in each case, the City ignored the Plaintiffs’ requests, in
19 violation of the ADA.

20 4. When a crew contracted by the City arrived to remove Ms. John, she
21 repeatedly objected that, due to her mobility impairment, she was physically unable
22 to carry away all her belongings on the timeline the City demanded. After ignoring
23 her requests for disability accommodation, the City-contracted crew threw Ms.
24 John’s walker, blood-pressure monitoring cuff, heart monitor, first-aid kit, and
25 medical paperwork into a trash truck while she watched. Even after Ms. John saw
26 one of the City workers throw her medical paperwork into the truck and pleaded
27 with him to retrieve it, she was told it could not be recovered because it had already
28 gone into a trash compactor.

1 5. Similarly, after Mr. Tyson made his best efforts to comply with a City
2 relocation order by moving himself and his belongings to the closest alternative
3 location accessible in his wheelchair—a shadeless parking lot fully exposed to the
4 elements—a City crew entered the lot and threw away his clothes, food, money,
5 hygiene supplies, and other essential items, disregarding Mr. Tyson’s friend’s offer
6 to help move his belongings to yet another location if the City would just give him
7 a little more time.

8 6. Mr. Harner worried that the City will similarly deprive him of his
9 belongings. The City forced Mr. Harner to move out of the park where he was
10 living with all his belongings, which was very difficult due to his disability. After
11 being forced to relocate without assistance and with nowhere to go, Mr. Harner
12 lived in a nearby wash—a strip of dirt and rocks by a busy road—along with
13 personal items essential for his survival: his wheelchair, tent, bedding, and food.
14 This location made it exceedingly difficult for Mr. Harner to move himself and his
15 belongings. He could not move his wheelchair out of the steep, rocky terrain by
16 himself without getting out of his wheelchair and crawling, pulling it behind him.

17 7. A day after the death of his mother, the City destroyed nearly all of
18 Mr. Clayton’s possessions, including a blood pressure machine he received from
19 his physician, a tent, an inhaler, an identification card, cash, a cellphone, a
20 backpack, a portable charger, bedding, and food.. When the City announced that
21 Mr. Clayton must pack up and leave, he was not able to pack all his possessions due
22 to his bad back and knee, high blood pressure, and his nearly-blind vision due to
23 cataracts. The City’s actions left Mr. Clayton feeling despair and hopelessness.

24 8. The City also destroyed the property of Ms. Jones, who lived in a tent
25 near Mr. Clayton’s tent. The property destroyed by the City included her
26 identification card, EBT card, cash, cellphone, inhaler, asthma machine, and blood
27 pressure medication. Ms. Jones’s disabilities include high blood pressure, asthma,
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1 mental health conditions, and limited mobility after her prior abusive partner broke
2 her leg with a shovel. Without being able to pack and relocate all her possessions in
3 time, she watched the City workers throw away her property. Ms. Jones has been
4 filled with anger and feeling depressed due to the City's actions.

5 9. Ms. John, Mr. Tyson, Mr. Harner, Mr. Clayton, and Ms. Jones are not
6 alone in their experiences. The City has harmed scores of other people by engaging
7 in a widespread practice of summarily seizing and destroying its unhoused
8 residents' personal property over a span of multiple years dating back at least as far
9 as 2021. The City has stripped people of their tents, clothing, hygiene supplies,
10 wallets, identification cards, significant personal memorabilia, and even
11 prescription medication—often casting people into dangerous circumstances by
12 doing so.

13 10. The City has already acknowledged that the summary destruction of
14 property is improper. In 2022, the City discarded an individual's life-saving
15 medication, throwing it into a trash truck and ignoring his requests to retrieve it; a
16 San Bernardino Police Department officer told the individual he should go look for
17 it at the city dump. The resulting gap in access to his medicine put the individual's
18 health in serious peril. In response to legal pressure surrounding this incident, the
19 City entered into a pre-litigation settlement agreement to cease its longtime practice
20 of summarily destroying unhoused people's property and enact new policies. Yet,
21 in brazen violation of this agreement and the new policies it agreed to enact, the
22 City continues to unlawfully seize and summarily destroy unhoused people's
23 essential personal property.

24 11. In recent months, the City issued orders to vacate to dozens of people
25 living in at least four different city parks, including many people with disabilities,
26 including people with limited mobility who rely on wheelchairs and walkers,
27 people with severe epilepsy, people experiencing the effects of multiple strokes,
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1 and people recently hospitalized and recovering from serious medical conditions.
2 The City has done this as temperatures reached dangerously high levels, knowing
3 the often exacerbated impact of heat on those with disabilities and limited access to
4 hydration. With deliberate indifference to the burdens imposed on such individuals,
5 the City has abruptly demanded they move themselves and their belongings
6 elsewhere, without identifying any accessible place they can go to or providing
7 them with necessary assistance.

8 12. Flouting its requirements under the ADA and state disability laws, the
9 City utterly fails to affirmatively accommodate these disabled individuals. Further,
10 the City has no process in place to accept Reasonable Accommodation requests, to
11 respond effectively to those requests, or to engage in an interactive process with
12 requesters. As of the filing of this complaint, at least fifteen unhoused individuals
13 with disabilities formally requested Reasonable Accommodations from the City.
14 These reasonable requests included help from the City to move their belongings, to
15 find an alternative, accessible, and adequate place to move, and to access medically
16 appropriate transportation to their new location. The City failed to adequately
17 respond to any of these requests. Instead, in nearly every case, *the City failed to*
18 *provide any response at all.*

19 13. Consequently, people in wheelchairs who are unable to carry all of
20 their belongings out of the park have had to watch the City seize and summarily
21 destroy their belongings. People using walkers and wheelchairs have been forced to
22 retreat to nearby areas that are unsafe, where they must crawl across steep, muddy,
23 or otherwise inaccessible terrain. Some individuals with limited mobility have had
24 to resort to dragging their wheelchairs and walkers behind them just to reach these
25 new locations.

26 14. Due to the City's persistent and widespread practice of disregarding
27 the rights of unhoused people—backtracking from its agreement to correct its
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1 policies with flagrant disregard for its legal obligations to people with disabilities—
2 Plaintiffs now seek relief from this Court.

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction based on 28 U.S.C. §§ 1331 and 1343, 42
5 U.S.C. § 12132, and 42 U.S.C. § 1983, because Plaintiffs’ claims are brought under
6 the laws and Constitution of the United States. This Court has supplemental
7 jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367, as these
8 claims are related to Plaintiffs’ federal claims, arise out of a common nucleus of
9 operative facts, and form part of the same case or controversy as Plaintiffs’ federal
10 claims.

11 16. Venue is proper in the Central District of California under 28 U.S.C. §
12 1391(b) because all the events and omissions giving rise to the claims occurred or
13 will occur in the Central District, and all defendants are located in the Central
14 District, in the Eastern Division, in San Bernardino County. C.D. Cal. L.R. 83-1.1.

15 **PARTIES**

16 **A. Plaintiffs**

17 17. Plaintiff JAMES TYSON is a 67-year-old resident of the City of San
18 Bernardino. Mr. Tyson has experienced two strokes. As a result, he has difficulty
19 walking and problems with eyesight, balance, memory, and information processing.
20 Because of his disabilities, which substantially limit his life activities, Mr. Tyson
21 relies on a wheelchair or a walker for mobility.

22 18. Mr. Tyson is currently unhoused. He lost his housing after several
23 family members with whom he lived passed away. Mr. Tyson meets the U.S.
24 Department of Housing and Urban Development (HUD) definition of
25 homelessness, as he “lacks a fixed, regular, and adequate nighttime residence.”¹ See
26 24 CFR 91.5.

27 ¹ This complaint uses the terms “unhoused” and “homeless” interchangeably, and
28 both refer to the HUD definition of homelessness pursuant to 24 CFR 91.5.

1 19. Plaintiff LENKA JOHN is a 55-year-old resident of the City of San
2 Bernardino. Ms. John has a disability that substantially limits her major life
3 activities. In 2022, she was hospitalized for a septic infection that led to permanent
4 damage to her limbs. Continued pain, swelling, and limited function in her left leg
5 impair her mobility such that she cannot take more than a few steps without the
6 assistance of a wheelchair or walker. Ms. John also has scoliosis. She has a service
7 dog that assists with her medical needs.

8 20. At all times relevant to the events alleged herein, Ms. John was
9 unhoused. She met the HUD definition of homelessness, as she “lack[ed] a fixed,
10 regular, and adequate nighttime residence.” *See* 24 C.F.R. 91.5.

11 21. Plaintiff NOEL HARNER is a resident of the City of San Bernardino.
12 Mr. Harner has a disability that substantially limits his major life activities.
13 Specifically, his mobility is impaired due to the amputation of part of his left leg, so
14 he relies on a hand-powered wheelchair to move around.

15 22. At all times relevant to the events alleged herein, Mr. Harner was
16 unhoused. After the City demanded he leave the park where he had lived, Mr.
17 Harner was forced to relocate to a nearby, rocky, wheelchair-inaccessible wash near
18 the park where he was previously living. He met the HUD definition of
19 homelessness, as he “lack[ed] a fixed, regular, and adequate nighttime residence.”
20 *See* 24 CFR 91.5.

21 23. Plaintiff Clayton is a 58-year old resident of the City of San
22 Bernadino. Mr. Clayton has multiple disabilities that substantially limit his major
23 life activities. He has a hard time seeing during the daytime and cannot see anything
24 at night due to his developing cataracts. Mr. Clayton also is limited in his mobility
25 because he suffers from a bad back, dangerously high blood pressure, and a bad
26 knee. Mr. Clayton is currently unhoused, and he meets the U.S. Department of
27 Housing and Urban Development (HUD) definition of homelessness, as he “lacks a
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1 fixed, regular, and adequate nighttime residence.” *See* 24 CFR 91.5.

2 24. Plaintiff Jones is a 46-year old resident of the City of San Bernadino.
3 Ms. Jones has multiple disabilities that substantially limit her major life activities,
4 including a structurally damaged leg that shakes and destabilizes when she walks
5 for a continuous period, mental health conditions, high blood pressure, and asthma.
6 Ms. Jones is currently unhoused, and she meets the U.S. Department of Housing
7 and Urban Development (HUD) definition of homelessness, as he “lacks a fixed,
8 regular, and adequate nighttime residence.” *See* 24 CFR 91.5.

9
10 25. Plaintiff SOCAL TRASH ARMY (“STA”) is a volunteer-run,
11 grassroots, non-profit unincorporated association that focuses on social injustices,
12 food insecurity, environmental preservation, and promoting the dignity and equal
13 treatment of unhoused people of the Inland Empire. It was founded in July 2020,
14 with the initial goal of cleaning up trash from the natural environment in the San
15 Bernardino area. Since then, the organization has expanded its mission to include
16 providing aid to unhoused community members and people living in poverty
17 throughout the region. Many of the individuals in the organization’s service
18 population have disabilities.

19 26. STA has suffered and continues to suffer harm through the diversion
20 of its resources and frustration of its purpose resulting from the City’s violations of
21 the Federal and California constitutions and statutes.

22 **B. Defendants**

23 27. Defendant CITY OF SAN BERNARDINO (“the City”) is a municipal
24 entity organized under the laws of the State of California. The City is a legal entity
25 with the capacity to sue and be sued. The San Bernardino Public Works Department
26 (“Public Works”) and the San Bernardino Police Department (“Police Department”) are
27 departments of the City. Burrtec Waste Industries, Inc. (“Burrtec”) is a City
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1 contractor and agent of the City.

2 28. Public Works is responsible for administering and monitoring the
3 actions and activities of Burrtec, which is the sole provider of solid waste
4 management for the City and closely cooperates with Public Works to jointly carry
5 out public functions like park closures and maintenance.

6 29. The City maintains a contract with Burrtec providing that Burrtec will
7 “remove and dispose of materials from homeless or transient encampments, which
8 shall include but not be limited to . . . bedding, and personal effects” within two
9 business days of being directed to do so by the City. The contract further provides
10 that the City will make the Police Department available to Burrtec to coordinate the
11 removal and disposal of unhoused persons’ personal effects.

12 30. Public Works, the Police Department, Burrtec, and other employees
13 and agents of the City have collectively coordinated and cooperatively carried out
14 programs and activities throughout the City, under color of state law, that have
15 summarily seized and destroyed unhoused people’s property and violated the rights
16 of people with disabilities. They jointly maintain and coordinate ongoing policies,
17 customs, and practices that continue to result in unlawful seizure and destruction of
18 property and violations of disability rights laws.

19 31. On information and belief, employees and agents of the City, including
20 Public Works, the Police Department, and Burrtec, engaged in the acts complained
21 of herein pursuant to the City’s policies, practices, and customs. Each acted in
22 concert with each other. The City’s employees and agents personally participated in
23 the unlawful conduct challenged herein and, to the extent that they did not
24 personally participate, they authorized, acquiesced in, set in motion, or otherwise
25 failed to take necessary steps to prevent the acts that resulted in the unlawful
26 conduct and the harm suffered by Plaintiffs. The challenged acts caused the
27 violation of Plaintiffs’ rights.

32. The identities and capacities of Defendants DOES 1 THROUGH 20 are presently unknown to Plaintiffs, and on this basis, Plaintiffs sue these Defendants by fictitious names. Plaintiffs will amend the Complaint to substitute the true names and capacities of the DOE Defendants when ascertained. Plaintiffs are informed, believe, and thereon allege that DOES 1 through 20 are, and were at all times relevant herein, employees and/or agents of the City and are responsible for the acts and omissions complained of herein. Defendants DOES 1 through 20 are sued in both their official and individual capacities.

FACTUAL ALLEGATIONS

A. The City's Systematic Violations of Disability Rights Laws

33. The City maintains policies and practices that discriminate against people with disabilities and make the lives of unhoused residents with disabilities more difficult and dangerous. City employees and agents have displaced people with disabilities; seized and destroyed their property, including disability aids and equipment; and left them in dangerous, inaccessible situations without assistance—all while failing to provide reasonable disability accommodations or even an adequate process for considering and responding to requests for such accommodations.

34. In the City of San Bernardino, as in cities across the state and nation, many people with disabilities have been forced into homelessness because they cannot afford market-rate housing. According to the Housing Element of the City's General Plan, the City has a serious lack of affordable housing for people who are low-income or extremely low-income. This is especially true for indigent people with disabilities. Of the City's 1,777 units of specialized housing for people with disabilities, all these units are market-rate and, therefore, unaffordable to the many disabled, unhoused residents of San Bernardino living below the poverty line.

35. Nationally, people with disabilities are more than twice as likely to

1 live in poverty as people without disabilities. This is reflected in the demographics
2 of the City's unsheltered population²: 19.3% have a physical disability; 15.8% have
3 a life-threatening and chronic health condition; 7.5% have a developmental
4 disability; and 22% have a mental health disability.³

5 36. Despite having ample notice that a great many of its unhoused
6 residents are people with disabilities, the City regularly carries out programs and
7 activities targeting them in a manner that imposes greater burdens on disabled
8 individuals and without providing disability accommodations.

9 37. The City has a team trained and dedicated to removing encampments
10 where unhoused people live, consisting of Public Works, the San Bernardino Police
11 Department, and Burrtec. This team carries out programs to remove unsheltered
12 people and their property from different locations throughout the City in a
13 coordinated effort. As alleged above, Public Works staff, Police Department
14 officers, and Burrtec employees cooperate and work in concert to effectuate these
15 programs, which require unhoused people to move themselves and all their
16 belongings by a certain date and time, and include activities to dispose of any
17 belongings people cannot move.

18 38. The manner in which the City carries out these programs and activities
19 discriminates against people with disabilities. The City does not modify its policies,
20 practices, or procedures for these programs to accommodate people with
21 disabilities. Nor does it have a process in place to receive, consider, and respond to
22 Reasonable Accommodation requests from disabled people subject to these

23 ² The term "unsheltered" refers to individuals who are both unhoused *and* without a
24 physical shelter. For purposes of its Point-in-Time (PIT) count, HUD considers
25 individuals and families sleeping in a place not designed for or ordinarily used as a
26 regular sleeping accommodation (e.g., abandoned buildings, train stations, or
camping grounds) to be "unsheltered."

27 ³ San Bernardino County, 2023 Continuum of Care Homeless Count and Survey
28 Final Report, at p. 73-74, <https://www.sbcounty.gov/uploads/sbchp/content/SBC-2023-Homeless-Count-Report.pdf> (last accessed July 31, 2023)

1 programs.

2 39. According to a report by the Director of Public Works from a City
3 Council meeting on June 30, 2023, the City has coordinated and carried out
4 thousands of these programs since September 2022.

5 40. The City has designated Perris Hill Park, Meadowbrook Park, and
6 Seccombe Lake Recreation Area as sites of “high frequency” areas for these
7 programs, according to the Director of Public Works. The City conducted 346 such
8 operations at Perris Hill Park, 176 programs at Meadowbrook Park, and 60
9 programs at Seccombe Lake Recreation Area from September 2022 through June
10 2023.

11 41. Public Works also maintains the City’s public parks, including
12 providing for landscaping, pest control, graffiti abatement, painting, fencing, and
13 structural maintenance. In addition to the programs and activities described above,
14 Public Works also occasionally closes city parks entirely, at the direction of the
15 City Manager and City Council. The City has discriminated against people with
16 disabilities and failed to provide for Reasonable Accommodations in the execution
17 of these park closures as well.

18 **i. The City’s 2023 Park Closures and Property Destruction**
19 **Operations**

20 42. Prior to May of 2023, dozens of unhoused people—many of whom
21 have disabilities—lived in Perris Hill Park, Meadowbrook Park, Seccombe Lake
22 Park, and Wildwood Park. Many people had lived in these parks for months or even
23 years.

24 43. People with disabilities lived in these parks because they provided
25 relative safety compared to other locations in the City and have accessible paths and
26 terrain for their wheelchairs and walkers. The parks are also near and accessible to
27 water, food distributions, social services, stores, and a variety of other essential
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1 resources. A City senior center provides senior services at Perris Hill Park.

2 Outreach teams from the County and non-profit agencies also visit the parks to
3 provide services.

4 44. On or about May 10, 2023, the City's Public Works Department
5 announced that both Perris Hill Park and Meadowbrook Park would be closed
6 temporarily due to "maintenance, health/safety inspections, and tree work." The
7 "temporary" closure would extend from May 15, 2023 through May 19, 2023 for
8 Meadowbrook Park, and from May 15, 2023, to May 31 2023 for Perris Hill Park.
9 The City maintenance activities listed included: mosquito testing and treatment;
10 chemical application for weeds; tree removals; tree trimming; deep pressure
11 washing; signage replacement; parking lot deep-cleaning and re-striping; bathroom
12 deep-cleaning and sanitizing; minor painting; graffiti abatement; playground
13 sanitizing and inspection; tree planting; gate repairs; trash can repair; and mural art.

14 45. On May 12, 2023, Plaintiffs' attorneys wrote to the City to inform the
15 City of a high likelihood of harm to the health and well-being of unhoused
16 people—especially people with disabilities—related to the City's planned park
17 closures, and they alerted the City to the need for disability accommodations.

18 46. On May 15, 2023, Public Works and Burrtec employees acting as City
19 agents arrived at Perris Hill Park and Meadowbrook Park to effectuate the park
20 closures. Officers from the Police Department were present in the park for at least
21 parts of the operation. Public Works informed unhoused residents they needed to
22 vacate the area, and any items that were left behind would be thrown away.

23 47. Many affected residents gathered along the edges of each park, with
24 belongings piled on the sidewalk, because they had nowhere to go. People
25 conveyed to the City's employees and agents that they did not know where to go, or
26 how they would be able to carry their belongings across the busy street adjacent to
27 Perris Hill Park.

1 48. In enforcing these park closures, the City did not provide reasonable
2 accommodations for people with disabilities. It did not provide assistance to people
3 who were unable to move their belongings. It did not provide accessible alternative
4 locations for people to go to. It did not provide transportation to alternative
5 locations. It did not even provide the people living there a safe way to cross the
6 busy street while carrying whatever belongings they could, knowing that anything
7 left behind would be seized and destroyed.

8 49. The City's orders to everyone living in the park to move themselves
9 and all their belongings were impracticable for many people with disabilities.
10 People with mobility limitations struggled to collect and carry all their belongings
11 across busy streets. Some people with disabilities were forced to leave items behind
12 because they could not carry them on their persons. The property they were unable
13 to carry out of the park was seized and destroyed by the City. On information and
14 belief, no one received a post-seizure notice or opportunity to contest the
15 destruction even if they were present.

16 50. With nowhere else to go and no relocation assistance, people in
17 walkers and wheelchairs were forced to move into remote and inaccessible washes
18 or ravines next to the park, where they are unable to properly use their mobility
19 aids. They did so without the belongings they relied upon for protection from the
20 elements if they were unable to carry these items due to their disabilities.

21 51. Though the park closures were first noticed as "temporary," the City
22 never allowed unhoused residents to return to Perris Hill Park or Meadowbrook
23 Park. The stated reason for the park closures was "park maintenance," but the
24 City's leaders and agents have made comments revealing their true intent to force
25 unhoused people out of these areas. For example, at a City Council meeting on May
26 17, 2023, Councilmember Damon Alexander stated, "We clean out the parks, we
27 invest a lot of our taxpayer dollars, how do we stop them [referring to unhoused
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1 people] from re-engaging and camping there again? How do we do that?”

2 52. The City subsequently contracted after-hours private security guards to
3 patrol the parks and prevent unhoused people from returning to the area. First
4 implemented on June 1, 2023, guards now patrol multiple city parks between 8:00
5 p.m. and 6:00 a.m. at a cost of at least \$30,000 per month. The City gives the
6 guards authority and direction to issue citations to anyone who violates park rules.
7 On information and belief, this includes authorization to cite people for being in the
8 parks after hours.

9 53. Following the closures of Perris Hill Park and Meadowbrook Park, the
10 City has continued to close parks where unhoused people are known to live and to
11 demand that they move themselves and their belongings, according to the same
12 policies, customs, and practices.

13 54. On or about May 22, 2023, the City ordered unhoused people to
14 remove themselves and their belongings from Wildwood Park, displacing dozens of
15 unhoused residents, many of whom have disabilities. At that operation, a woman
16 with congestive heart failure was forced to labor unassisted in the sun, against the
17 advice of her doctor to avoid heavy lifting and direct sunlight, in order to preserve
18 her belongings from destruction by the City.

19 55. On or about June 20, 2023, the City ordered many dozens of unhoused
20 people to permanently vacate a field adjacent to Seccombe Lake Recreation Area,
21 displacing dozens of residents. A City-contracted crew indicated residents had a
22 limited amount of time to permanently exit the field with any belongings they could
23 physically carry, telling them to “hurry up.” Everything residents could not
24 physically move was destroyed by being thrown into a trash truck. People with
25 disabilities and/or medical conditions were especially burdened because their
26 disabilities made packing and moving their belongings more difficult. Disabled
27 residents were unable to move all their belongings as quickly as demanded and, as a
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1 result, permanently lost their property when the City destroyed their things.

2 56. Certain unhoused people at Seccombe Park were provided with short-
3 term hotel vouchers by a non-profit organization. However, dozens of other people
4 were displaced without a hotel voucher and had nowhere to go. Most of these
5 displaced people ended up staying on the sidewalk along 7th Street, immediately
6 adjacent to the field where they had been living. In this new location, they had little
7 protection from the elements because many had lost their tents and tarps to the
8 City's seizure and destruction. Among the people the City left in this situation was
9 a woman who had just been released from the hospital after having surgery for a
10 serious medical condition.

11 57. The City plans future park closures of this kind in addition to its
12 routine encampment removal program.

13 58. The City's park closures, and its related directives and property
14 destruction operations, impose different and greater hardships on individuals who
15 have disabilities. Compliance with the City's directives to quickly and completely
16 relocate requires intense physical activity—packing and carrying belongings, and
17 physically moving—that is especially difficult and in some regards impossible for
18 people with mobility impairments like Plaintiffs. This has resulted in people with
19 disabilities losing property and experiencing pain, suffering, and health
20 consequences that people without disabilities have not. Further, the City's park
21 closure and maintenance activities impose greater burdens on people with
22 disabilities by closing off accessible paths, resources, and spaces, driving people
23 with mobility impairments into inaccessible and unsafe areas.

24 59. The City has made clear that it intends to continue these activities by
25 the increasing frequency and escalating intensity of its park closures and the related
26 enforcement and property destruction activities.

ii. The City's Failure to Respond to Requests for Reasonable Disability Accommodations

60. On May 15, 2023, the day of the closure of Perris Hill Park and Meadowbrook Park, at least nine people with disabilities—including Plaintiffs James Tyson, Lenka John, and Noel Harner—submitted Reasonable Accommodation requests to the City related to the City's park closures and orders to vacate. On information and belief, the City did not adequately respond to any of these requests. In most cases, the City did not respond at all.

61. On or about May 22, 2023, during the closure of Meadowbrook Park, at least six people with disabilities submitted similar Reasonable Accommodation requests to the City related to the City's park closure and orders to leave the park. On information and belief, the City did not adequately respond to any of these requests. In most cases, the City did not respond at all.

62. The accommodations that people with disabilities requested from the City included: assistance with packing and transporting personal property; medically appropriate transportation to an alternate location; relocation to a wheelchair-accessible location; permission to remain in place due to difficulty moving items; placement in a non-congregate setting such as a motel; relocation to a location allowing one to remain with their service animal; and storage of personal property.

63. These requested disability accommodations are existing programs, services, and activities provided by the City. The City could modify its policies, practices, and procedures to properly consider Reasonable Accommodation requests and provide these accommodations to people with disabilities without experiencing any undue burden, or it could engage in the interactive process and determine what alternative accommodations could feasibly be offered. For the most part, however, the City did not provide the requested accommodations and declined

1 to engage in the interactive process at all.

2 64. The City already has an existing program to provide storage for
3 unhoused people's property: its "Storage Connect" program. Yet, the City did not
4 offer or provide access to this service to several people, like Plaintiffs Tyson and
5 Harner, who requested property storage in their Reasonable Accommodation
6 requests.

7 65. Similarly, the City has coordinated with service providers to secure
8 hotel vouchers for unhoused people, including a small number of the individuals
9 displaced during the May 2023 park closures. However, on information and belief,
10 these vouchers were not provided in response to individual Reasonable
11 Accommodation requests, and the hotels were not available or accessible for many
12 people with disabilities, including those who specifically requested this
13 accommodation. Further, after the one-week vouchers expired, the City did nothing
14 to ensure that people with disabilities who had been displaced had access to an
15 adequate alternative location.

16 66. City employees engaged in limited outreach to advise certain people in
17 the parks to relocate to an "alternate location." However, the "alternate location"
18 the City identified, a field near Nunez Park, is not adequate or accessible for many
19 people with disabilities. This field is far from Meadowbrook Park and Perris Hill
20 Park, in a remote location removed from social services, stores, food, water, and
21 other essential resources. The City also closed the public restrooms in this area and
22 turned off all of the water to this area soon after it encouraged unhoused people to
23 relocate there. The field is covered in gravel and dirt, as well as thick, tall, dry
24 grass, making it inaccessible for people in wheelchairs and walkers. Further, on
25 October 17, 2023—several months after City employees told unhoused people to
26 relocate to Nunez Park—the City targeted the area for a large-scale encampment
27 removal operation wherein the City failed to provide disability accommodations
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1 and destroyed multiple individuals' personal property, including tents, medicine
2 and medical supplies, clothing, and more.

3 67. The City has existing programs, services, and activities that could
4 facilitate providing reasonable accommodations to unhoused people with
5 disabilities. It has a Department of Community & Economic Development that
6 coordinates housing and homelessness services, including through its Deputy
7 Director of Housing and Homelessness, Cassandra Searcy. The City also employs
8 newly-hired homeless outreach workers who have the ability to provide
9 transportation to shelter and other services. The City receives federal funds for
10 homelessness services programs, drawing on the Coronavirus State and Local
11 Fiscal Recovery Fund, as well as Community Development Block Grants,
12 Emergency Solutions Grants, and the HOME Investment Partnership program.
13 These federal funds go towards permanent and interim housing, case management,
14 outreach, and transportation of individuals to and from needed services. Further, the
15 City's Parks & Recreation Department coordinates and offers senior services,
16 including through a senior center located at Perris Hill Park.

17 68. However, for most of the days when the City enforced its park
18 closures, none of the housing and homelessness departments arrived with services.
19 The only City employees on-site for the vast majority of the closures were Public
20 Works employees, who did not have access to the services requested as reasonable
21 accommodations and did not appear to have authority to grant requests to help
22 move property.

23 69. The City already hires workers and contractors to move and transport
24 items for its property seizure and destruction operations. It would not require
25 additional equipment or staffing for the workers on-site to provide disabled
26 individuals with their requested assistance with packing and transporting personal
27 property.
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1 70. On or about May 22, 2023, a community volunteer was present to
2 advocate for the people living in Meadowbrook Park. In response to the community
3 volunteer's pleas, Public Works employees loaded one person's belongings onto
4 the back of a flatbed truck and dumped the belongings in an adjacent parking lot
5 because the property owner—a person with disabilities who had submitted a
6 Reasonable Accommodation request—was unable to carry the items out of the park
7 himself. This demonstrates that providing such assistance with moving disabled
8 people's property as an alternative to destroying this property is feasible and would
9 not constitute a fundamental alteration of the program.

10 71. While Public Works staff and Burrtec contractors executing the City's
11 park closures spent considerable time and resources seizing and destroying people's
12 property by throwing it into trash trucks, they generally did not provide people in
13 the parks with assistance moving their belongings—despite the fact that many of
14 these people had visible mobility impairments and/or submitted Reasonable
15 Accommodation requests. On information and belief, the City and its agents knew,
16 or should have known, of the needs of these individuals and they did not assist.

17 **B. The City of San Bernardino's Unconstitutional Practice of Summarily**
18 **Seizing and Destroying Unhoused Residents' Personal Belongings**

19 72. The City of San Bernardino has a longstanding and widespread policy,
20 practice, and custom of seizing and destroying the property of unhoused
21 individuals. The City carries out these seizures with neither a warrant nor the
22 property owner's consent.

23 73. The City does not give property owners an opportunity to contest
24 either the initial seizure or the permanent deprivation of their property before
25 summarily destroying their items. Property owners receive no post-deprivation
26 notice and no opportunity to get their items back. As a result, individuals who
27 temporarily leave their belongings to go to work or an appointment come back to
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1 discover that everything they own is gone, with no way to retrieve their belongings
2 or contest the destruction.

3 74. In 2021, the City, through the Police Department and City-contracted
4 crews, carried out over 1,500 encampment removals operations. These operations
5 involved taking unhoused individuals' personal property and discarding it and/or
6 destroying it in compactor trucks, permanently depriving people of their
7 medications, bedding, tents, clothing, personal effects, identification cards,
8 important paperwork, and more.

9 75. On many occasions in the first half of 2022, in 2021, and in preceding
10 years, the City destroyed nearly all the personal property of multiple unhoused
11 people. The City destroyed one man's prescription life-saving medication over his
12 objections, as well as nearly all of his other personal property. The City destroyed a
13 woman's backpack that contained an urn holding the ashes of a deceased loved one.
14 The City destroyed another man's wheelchair and nearly all his other belongings.
15 The City destroyed one woman's tent, while her pet kitten was inside, by throwing
16 the whole thing into a compactor truck. The Police Department often used the threat
17 of arrest or citation to separate people from their belongings before City-contracted
18 crews destroyed the property.

19 76. The City has continued to seize and destroy unhoused people's
20 property to the present day. In 2023, City officials planned and carried out multiple
21 encampment removal operations across locations throughout the City, during which
22 its employees and agents threw away the belongings of numerous unhoused
23 residents, including Plaintiffs Lenka John and James Tyson.

24 77. On or about February 8, 2023, the City destroyed the personal property
25 of multiple individuals living in Wildwood Park—including blankets, bedding, and
26 clothing—leaving some people with nothing more than the clothes they were
27 wearing to keep warm. That night, temperatures dipped into the 40s.
28

1 78. On or about May 16, 2023, the City destroyed the personal property of
2 Plaintiff Lenka John, including her walker and medical supplies, in Meadowbrook
3 Park. That same day, the City also destroyed the belongings of another person
4 living in that park who was unable to comply with the City's orders to move
5 himself and all of his property due to his disability. He lost his social security card,
6 personal mementos, and other belongings. The City-contracted crew told him to
7 "write a complaint" if he was unhappy about it.

8 79. In early June of 2023, the City destroyed nearly all of Plaintiff James
9 Tyson's personal property in the parking lot next to Meadowbrook Park. Around
10 the same time period, the City destroyed the personal property of a woman in Perris
11 Hill Park, including her food, blankets, and her dog's food.

12 80. On or about June 20, 2023, the City destroyed the personal property of
13 multiple individuals living in and around Seccombe Lake Park. A City crew,
14 including Public Works, the Police Department, and Burrtec, ordered unhoused
15 residents who had been living in the location for months or even years to
16 permanently move themselves and their belongings from the area. Everything
17 residents could not physically move was destroyed by being thrown into a trash
18 truck. As a result, many people lost their property, including medications, tarps,
19 clothing, hygiene supplies, bicycles, blankets, items used to prepare and store food,
20 flashlights, food, bedding, irreplaceable sentimental items, and important
21 documents, like a birth certificate.

22 81. One person who had briefly left her belongings in a field near
23 Seccombe Lake Park returned to find all her property gone, including her high
24 blood pressure medication. Other individuals who lived in the area told her that
25 they tried to preserve or retrieve her belongings, but the City-contracted crew and
26 police did not allow them to do so.

27 82. By June 30, 2023, temperatures were in the mid-90s, leaving those
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1 who had not been able to replace their tents fully exposed to the elements. This is
2 particularly dangerous for those taking medication that requires they minimize
3 direct sunlight. In August 2023, with no end planned to the regular seizures,
4 temperatures some days will be over 100° F.

5 83. Public Works supervisors were present at all or most of the operations
6 involving the property destruction described above. Public Works management,
7 including but not limited to Ernesto Salinas and David Miller, supervised and
8 approved the actions of Burrtec and the City employees on site at these operations.
9 On information and belief, Public Works supervisors had final policymaking
10 authority delegated by the City regarding these operations, and Public Works
11 management observed, knew of, and specifically approved the seizure and
12 destruction of property by Burrtec and City employees and agents at these
13 operations.

14 84. Summary seizure and destruction of personal property are part of the
15 City's standard operating procedure for its operations to remove encampments, and
16 to clear parks and public spaces, which are jointly and cooperatively carried out by
17 Public Works, the Police Department, and Burrtec. Public Works directs the time,
18 place, and manner of Burrtec's participation in these operations. On information
19 and belief, the City has adopted an official protocol for closing parks and clearing
20 public spaces that includes directing Burrtec workers to throw into trash trucks any
21 property left behind after Public Works staff order people to leave. On information
22 and belief, the City Manager and Director of Public Works are aware of and have
23 approved this protocol.

24 85. The City has been deliberately indifferent to the substantial risk that its
25 supervision, training, and procedural safeguards are inadequate to prevent its
26 employees and contractors from seizing and destroying people's property in
27 violation of their rights, as well as the obvious consequences of such illegal
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1 property seizures. This is demonstrated by the City's disregard for the actual notice
2 it has received of both specific instances in which its employees and contractors
3 violated individuals' rights by unlawfully seizing and destroying their property, and
4 the injuries caused to such individuals by depriving them of essential items they
5 need to live.

6 86. For example, in July of 2022, Plaintiffs' counsel sent a letter to the
7 City describing multiple instances of unlawful property seizures – including the
8 destruction of people's vital prescription medications. On March 10, 2023,
9 Plaintiffs' counsel sent another letter to the offices of the City Attorney, Public
10 Works, the City Manager's office, and the City's Deputy Director of Housing and
11 Homelessness, which described the unlawful seizure of multiple unhoused
12 individuals' belongings in Wildwood Park – including people's tents, bedding, and
13 clothing. On April 7, 2023, Plaintiffs' counsel sent another letter to the City
14 Attorney and several City staff members from the City Manager's Office and Public
15 Works, providing details of eight different incidents involving the unlawful seizure
16 and destruction of unhoused people's property.

17 87. In light of the multiple notices provided to the City by Plaintiffs'
18 counsel demonstrating the existence of an ongoing and widespread practice of
19 unlawfully destroying the property of unhoused people, the City knew or should
20 have known that its supervision, training, and procedural safeguards are inadequate
21 to prevent its employees and contractors from seizing and destroying people's
22 property in violation of their constitutional rights.

23 88. On information and belief, the City has failed to properly investigate
24 repeated incidents of unconstitutional seizure and destruction of personal property,
25 and it has not disciplined, reprimanded, or punished any Public Works, Police
26 Department, or Burrtec employees for participating in these constitutional
27 violations. The City continues to award Burrtec municipal funds to participate in
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1 the City's encampment removals and its park and public space-clearing operations,
2 even though Burrtec employees have on many occasions seized and destroyed
3 unhoused persons' belongings in violation of their constitutional rights, including in
4 the presence of City police officers and Public Works officials.

5 89. The City has made clear by the increasing frequency of these property
6 seizures that it intends to continue its pattern, custom, and practice of confiscating
7 without a warrant the belongings of unhoused individuals from parks and public
8 spaces throughout the City, and immediately destroying those belongings without
9 providing property-owners adequate notice or opportunity to be heard.

10 90. The U.S. Interagency Council on Homelessness advises municipalities
11 to avoid operations that destroy unhoused people's belongings. In its "7 Principles
12 for Addressing Encampments," it issued the following guidance to local leaders:
13 "Communities should take special care to avoid destroying personal belongings
14 when an encampment closes and provide storage for an adequate period to allow a
15 person the opportunity to collect their belongings... When an encampment is
16 closing, or a person chooses to go into a shelter or treatment program that cannot
17 accommodate all of their belongings, providing secure, accessible storage options
18 can ensure that they do not lose personal items, including clothing and
19 identification."⁴

20 91. Studies have found that municipal operations that destroy unhoused
21 people's belongings can lead to worse health outcomes, particularly for individuals
22 with existing disabilities.⁵ The loss of tents, clothes, and sleeping bags can make
23 people who are already ill much sicker. Repeated encounters with municipal crews

24 ⁴ U.S. Interagency Council on Homelessness, 7 Principles for Addressing
25 Encampments,

26 [https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addressing](https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addressing_Encampments_1.pdf)
27 [Encampments_1.pdf](https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addressing_Encampments_1.pdf) (last updated June 17, 2022)

28 ⁵ Qi, D., Abri, K., Mukherjee, M.R. *et al.*, Health Impact of Street Sweeps from the
Perspective of Healthcare Providers, *J GEN INTERN MED* 37, 3707–3714 (2022).

1 that throw away people's belongings can result in repetitive traumatic experiences,
2 creating a high-stress environment that may encourage survival-based, crisis-driven
3 decision making. The mental suffering caused by these experiences can also
4 decrease hope for the future and motivation for self-care, further impairing one's
5 capacity for managing physical and mental health conditions.

6 **C. Plaintiff James Tyson's Allegations**

7 92. On or about May 11, 2023, Public Works posted a notice in
8 Meadowbrook Park, where Mr. Tyson lived, of an impending "clean up" scheduled
9 for May 15, 2023. The notice did not include any information about the planned
10 closure of the park or the City's plans to order everyone to move themselves and all
11 their belongings completely out of the park indefinitely.

12 93. On May 15, 2023, Public Works staff members told Mr. Tyson that he
13 had to remove himself and all his belongings from Meadowbrook Park, where he
14 had resided for many months. He was not offered any alternative or assistance.

15 94. Meadowbrook Park offers flat, accessible sidewalk areas, which are
16 accessible for wheelchairs and walkers. It also offers trees for shade and protection
17 from the elements. It is also the site of regular social services and food distributions
18 by homeless service providers and charities.

19 95. Because Mr. Tyson was concerned that his disabilities would make it
20 impracticable for him to comply with the City's orders, he submitted a Reasonable
21 Accommodation request to the City on May 15, 2023. His requested
22 accommodations were: additional time to relocate; assistance with packing and
23 transporting personal property; medically appropriate transportation to an alternate
24 location; relocation to a wheelchair-accessible location; placement in a non-
25 congregate setting such as a motel; and storage for his personal property.

26 96. A City employee spoke with Mr. Tyson about his request on the
27 afternoon of the day he submitted it, and the employee told Mr. Tyson he would get
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1 back in touch soon. However, Mr. Tyson never heard back from that employee or
2 anyone else at the City about his Reasonable Accommodation request.

3 97. On May 15, 2023, in response to the City's orders to relocate, Mr.
4 Tyson—with the help of friends—moved himself and his property into the parking
5 lot adjacent to Meadowbrook Park because he could not move very far due to his
6 disabilities, and because he did not know where else to go. The parking lot is a
7 shadeless strip fully exposed to the sun and the elements.

8 98. On a date in early June, a City-contracted crew seized and destroyed
9 Mr. Tyson's property located in the parking lot with no notice and no opportunity
10 to dispute the action before or after it occurred. A friend of Mr. Tyson offered to
11 move Mr. Tyson's belongings if the City's crew would just give him a little bit
12 more time. The City's crew refused his offer and continued to throw Mr. Tyson's
13 property into a trash truck. As a result, Mr. Tyson lost nearly all his personal
14 belongings, including clothes, food, money, hygiene supplies, and other essential
15 items.

16 99. After losing his property, Mr. Tyson no longer felt safe staying in the
17 parking lot because he feared that the City would destroy his property again.
18 Joining other former Meadowbrook Park residents, Mr. Tyson moved into a ravine
19 adjacent to the park. The ravine is fully exposed to the sun and the elements.
20 Getting in and out of the ravine requires traversing a steep incline.

21 100. Due to Mr. Tyson's mobility impairments, getting into the ravine area
22 requires pushing his wheelchair or walker down the slope, and then sliding down
23 the hill before transferring back to his walker or wheelchair. The area is covered in
24 rocks and dust, which make it impossible to navigate the area in a wheelchair or
25 walker.

26 101. Mr. Tyson has fallen multiple times while getting in and out of the
27 ravine—exacerbating the pain in his hips and legs. He has also missed food
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1 distributions by service providers held in the park area because it takes too long to
2 get out of the ravine. It is also difficult for Mr. Tyson to bring food and water down
3 into the ravine because of his mobility issues. As a result, Mr. Tyson has often gone
4 hungry or thirsty.

5 102. To make things worse, on or about July 31, 2023, San Bernardino
6 police officers threatened Mr. Tyson and other unhoused people in the ravine with
7 arrest if they did not leave the ravine. One officer told the group that if they were
8 not all packed up and ready to leave upon their return, their belongings would be
9 thrown away and they would be cited for trespassing.

10 103. Mr. Tyson's loss of property and loss of his sense of safety have made
11 his life more difficult. He has been forced to sleep on the hard ground without his
12 bedding, and he has been working to replace his property that was destroyed. Mr.
13 Tyson has also suffered from pain and an exacerbation of his mobility impairments
14 as a result of being forced into the ravine, which is inaccessible due to his
15 disabilities.

16 104. Mr. Tyson now lives in and around the ravine with a tent and several
17 items of essential personal property and, therefore, he is still at risk of summary
18 confiscation and destruction of his property by the City in the future. Because Mr.
19 Tyson is homeless, he is at risk of future harm resulting from the City's continuing
20 policies, customs, and practices, including the loss of his remaining property and
21 the injuries to his person that he may suffer if he is ordered to move yet again while
22 still being denied the Reasonable Accommodations he has sought.

23 **D. Plaintiff Lenka John's Allegations**

24 105. On or about May 11, 2023, Public Works posted a notice in the park
25 where Ms. John lived, Meadowbrook Park, of an impending "clean up" scheduled
26 for May 15, 2023. The notice did not include any information about the planned
27 closure of the park or the City's plans to order everyone to move themselves and all
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1 their belongings completely out of the park indefinitely.

2 106. On May 15, 2023, Public Works staff members told Ms. John that she
3 had to remove herself and her belongings that day from the park where she had
4 resided for many months.

5 107. Because her mobility impairments made it impracticable to comply
6 with the City's orders, Ms. John submitted a request for a Reasonable
7 Accommodation to the City on May 15, 2023. Her requested accommodations
8 were: assistance with packing and transporting personal property; medically
9 appropriate transportation to an alternate location; relocation to a wheelchair-
10 accessible location; relocation to a location allowing her to remain with her service
11 animal; and permission to remain in place.

12 108. A City employee spoke with Ms. John about her request that afternoon
13 and told her he would get back in touch with her soon. However, Ms. John never
14 heard back from that City employee or any other City employee about her
15 Reasonable Accommodation request.

16 109. On or about May 16, 2023, Ms. John was woken up by a different City
17 employee, who told her she needed to vacate the park early that morning. Ms. John
18 showed a copy of her Reasonable Accommodation request to the City employee,
19 who told her he would investigate it. However, Ms. John never heard back from
20 this City employee about her Reasonable Accommodation request either.

21 110. The same City employee told Ms. John that she should relocate herself
22 and her belongings to a remote field next to Nunez Park, roughly 2.5 miles away.
23 Ms. John was not familiar with this area and getting there would have required her
24 to cross over the freeway. The field is far from services, stores, and other resources.
25 The City employee did not offer Ms. John transportation to this location or any
26 other services.

27 111. Ms. John never heard back from anyone at the City about her
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1 Reasonable Accommodation request.

2 112. Under pressure to leave, Ms. John began to leave the park with all the
3 belongings she could carry in her wheelchair, while also holding onto her service
4 dog. Because of her mobility impairments, she was unable to take all her property
5 with her and had to leave many of her belongings behind.

6 113. As she left the park, Ms. John observed a City crew throwing away the
7 property she had to leave behind in the park. Ms. John understood the crew to be
8 operating under the color of City authority. She saw the workers throw a folder into
9 the back of a trash truck that she knew contained her medical records related to her
10 application for disability benefits. Ms. John went back and pleaded with the crew to
11 retrieve the folder, but was told that nothing could be done as the documents had
12 already been thrown into the trash compactor. In addition to the medical records,
13 the crew also threw away Ms. John's walker, first aid kit with a blood pressure cuff
14 and heart monitor, suitcase, and other personal items.

15 114. This experience caused Ms. John significant distress after being
16 displaced with nowhere to go, without the ability to travel very far, and losing her
17 important personal property.

18 115. The loss of Ms. John's medical records delayed her application for
19 disability benefits; the loss of her walker, which allowed her to be mobile in certain
20 situations when she does not use her wheelchair, further limited her mobility; and
21 she was forced to replace the walker and other essential items that the City
22 destroyed.

23 **E. Plaintiff Noel Harner's Allegations**

24 112. On or about May 8, 2023, representatives from the City of San
25 Bernardino came to Perris Hill Park and informed Mr. Harner and other individuals
26 staying there that the park would be closed for fifteen days starting May 15, 2023.
27 On or about May 11, 2023, Mr. Harner saw signs posted on trees in the park by the
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1 City of San Bernardino, which stated that the park would be closed starting May 15,
2 2023. The signs indicated that people would need to vacate the park on the morning
3 of May 15, 2023.

4 113. On the morning of May 15, 2023, City of San Bernardino employees
5 arrived and informed Mr. Harner that he needed to vacate. Police also arrived at the
6 park, but they did not speak with Mr. Harner. The City employees did not provide
7 any assistance to Mr. Harner after instructing him to vacate the park. Mr. Harner
8 was not told where he could or should go. He did not receive any help packing or
9 transporting his belongings. Leaving the park with his belongings was difficult due
10 to his physical impairment. Due to his limited mobility and financial resources, he
11 did not have anywhere else to go.

12 114. Because his disability made it impracticable to comply with the City's
13 orders, Mr. Harner submitted a Reasonable Accommodation request to the City on
14 the morning of May 15, 2023. He requested the following accommodations:
15 assistance with packing and transporting personal property; medically appropriate
16 transportation to another location; relocation to a wheelchair-accessible location;
17 placement in a non-congregate setting such as a motel; and storage for his personal
18 property.

19 115. After Mr. Harner submitted the request, two City employees arrived at
20 the park and approached him. They told Mr. Harner he would be given a one-week
21 voucher to stay at a motel by a local non-profit. However, they did not offer Mr.
22 Harner any assistance moving himself or his property to the motel. Fortunately, Mr.
23 Harner was able to make it to the hotel with assistance from a friend. After one
24 week there, however, his voucher expired. With nowhere to go once more, Mr.
25 Harner returned to Perris Hill Park with the assistance of a friend.

26 116. When he returned to the area, Mr. Harner discovered that Perris Hill
27 Park was still closed and would remain so indefinitely. As a result, he was unable to
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1 return to where he had been living.

2 117. The area where he had been living before the City ordered him to leave
3 the park had multiple flat pathways, which were accessible because they allowed
4 him to move his wheelchair, and it was near water, stores, and a senior center where
5 he accessed services. In contrast, the area where Mr. Harner relocated, with limited
6 mobility and nowhere else to go, is a rocky “wash” near the park. He then resided
7 on a strip of dirt and rocks next to a busy road near the park.

8 118. Mr. Harner’s new location presented significantly more challenges for
9 his disability. He could not move his wheelchair by himself in his new location, as
10 it does not roll in the rocky dirt. Getting in and out of his new location required
11 traversing a steep curb with no ramp. Without assistance, Mr. Harner had to push
12 himself in his wheelchair on the side of a busy street, get out of his wheelchair on
13 the side of the busy road, crawl over a divide, pull his wheelchair behind him, and
14 then transfer back into his wheelchair. Pushing his wheelchair in the rocky dirt is
15 impracticable and he cannot move his wheelchair very far in this location without
16 the assistance of his friends.

17 119. To date, Mr. Harner has never heard back from the City about his
18 Reasonable Accommodation request.

19 **F. Plaintiff Charles Clayton’s Allegations**

20 120. On or about November 2, 2023, the day after the death of Mr.
21 Clayton’s mother, the City of San Bernardino police came to the field near the cross
22 section of D Street and 13th Street in the early morning. At about 6:30 am, the
23 police blared on a loudspeaker that people living in the field must back up and leave
24 before the City takes away everything.

25 121. Shortly thereafter, a City worker known as “Little Dave” by the people
26 who lived on the field started forcing them to pack their belongings and leave. Mr.
27 Clayton informed the City worker of his physical limitations and explained that he
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1 therefore could not move his belongings in the time allotted.

2 122. At about 7:00 am, the City worker known as “Little Dave” announced
3 something to the effect of: “The Burrtec truck is coming. And as soon as the
4 Burrtec truck gets here, my boys are coming in and are throwing everything away.
5 So get what you need and what you can because everything else is going in the
6 trash.” Mr. Clayton tried to move his possessions but was not able to move all of
7 them. When the Burrtec truck arrived, workers started throwing away the
8 possessions of people in the field. The City also threw away many of Mr. Clayton’s
9 possessions, including his identification card, his cellphone and portable charger,
10 his backpack, his cash, his tent, his clothes, his bedding, and food.

11 123. Mr. Clayton’s loss of his tent and personal property made his life even
12 more difficult and hindered his ability to get ahead. Mr. Clayton is worried that
13 wherever he goes in the City, he will continue to be harassed by the City
14 employees. He estimates that he has experienced similar property destruction by the
15 City at least nine to ten times in the past.

16 124. To date, Mr. Clayton has never heard back from the City about this
17 incident.

18 **G. Plaintiff Melissa Jones’ Allegations**

19 125. Melissa Jones also resided in the field near the cross section of D
20 Street and 13th Street on November 2, 2023.

21 126. Ms. Jones likewise informed the City worker known as “Little Dave,”
22 along with police officers present at the scene, that she has physical limitations and
23 therefore could not move quickly enough. The police officers merely responded
24 that if Ms. Jones did not move her possessions, the workers would toss them. Little
25 Dave did not respond.

26 127. Ms. Jones tried to move her possessions from the field to a nearby
27 alley. During her efforts, the police officers informed her that she could not re-enter
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1 the field. The police officers informed Ms. Jones if she re-entered, she would be
2 arrested. Fearing potential arrest, Ms. Jones watched the city workers throw out her
3 possessions across from the field behind a fence.

4 128. Ms. Jones' loss of possession and loss of her place to stay made her
5 life even more difficult. For one, Ms. Jones was not able to take the medication that
6 the workers destroyed, including the inhaler and blood pressure medication—
7 worsening her breathing and suffering from nosebleeds. Moreover, Ms. Jones is
8 depressed and angry about what the City has done, exacerbating her mental health
9 distress.

10 129. To date, Mr. Jones has never heard back from the City about this
11 incident.

12 13 **H. Plaintiff SoCal Trash Army's Allegations**

14 130. Plaintiff SoCal Trash Army (STA) is a volunteer-run, grassroots, non-
15 profit unincorporated association that focuses on social injustices, food insecurity,
16 and promoting the dignity and equal treatment of unhoused people of the Inland
17 Empire.

18 131. STA was founded in July of 2020, with the initial goal of cleaning up
19 trash from the natural environment in the San Bernardino area. During its first trash
20 cleanups, the organization's volunteers encountered multiple unhoused people and
21 talked with them about the challenges they faced. As a result of these and similar
22 experiences working in the community, the organization expanded its mission to
23 provide aid to unhoused community members and people living in poverty
24 throughout the region.

25 132. The organization hosted its first mutual aid event focused on providing
26 food to unhoused and low-income community members on Thanksgiving of 2020.
27 At that event, volunteers provided meals to hundreds of people. The organization
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1 then began conducting regular food distributions to unhoused and other low-income
2 community members in January of 2021.

3 133. During its regular food distributions, volunteers learned that unhoused
4 people regularly have their property unlawfully seized and thrown away by the
5 City. In response, STA has diverted resources towards helping people replace the
6 items the City has destroyed. STA has replaced at least 50 tents, 50-70 tarps, and
7 hundreds of clothing items and shoes after the City destroyed these items. STA has
8 also replaced medical supplies and walkers destroyed by the City after disabled
9 individuals were unable to move their property in compliance with City orders due
10 to their disabilities. Additionally, STA has diverted volunteer time and resources
11 towards assisting individuals with replacing their driver's licenses after the City
12 seized and discarded such essential documents.

13 134. The City's policies, customs, and practices have frustrated STA's
14 mission, including its ability to find the people to whom they are trying to provide
15 food aid. Because the City regularly orders unhoused individuals to move
16 themselves and all their belongings out of established locations, STA must spend at
17 least an additional 20 minutes to one hour per week searching for individuals they
18 are assisting who have been displaced. This has taken up more volunteer time,
19 results in more driving time and mileage, and causes STA to spend more money on
20 gas and car maintenance.

21 135. It is especially difficult for STA to find people with disabilities who
22 the City has displaced, as many individuals with mobility impairments denied
23 Reasonable Accommodations have had to seek refuge in areas like ravines or
24 riverbeds near the parks where they previously lived. These areas are more difficult
25 for STA to access and locate. Further, STA has diverted resources towards helping
26 individuals with disabilities move themselves and their belongings to new locations
27 in order to comply with city directives and avoid destruction of their property, when
28

1 the City has failed to provide Reasonable Accommodations needed by disabled
2 persons to comply with the City's relocation directives.

3 136. If STA was not forced to divert its volunteers' time and resources to
4 replacing items destroyed by the City and providing assistance to people whose
5 disability rights were violated by the City, it would be able to spend more time on
6 its core mission and activities of organizing community cleanups, environmental
7 preservation, and distributing food aid to low-income individuals and families.

8 137. Because the City's unlawful practices are ongoing, STA is at risk of
9 future harm resulting from the City's continuing policies, customs, and practices,
10 including future diversion of the organization's resources and frustration of its
11 purpose.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **Discrimination Against Persons with Disabilities**

15 **Americans with Disabilities Act**

16 **42 U.S.C. § 12132; 42 U.S.C. § 12133**

17 **(All Plaintiffs Against Defendant City of San Bernardino)**

18 138. Plaintiffs reallege and incorporate the allegations set forth in the
19 paragraphs above as though fully set forth herein.

20 139. Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §
21 12132, provides that "no qualified individual with a disability shall, by reason of
22 such disability, be excluded from participation in or be denied the benefits of the
23 services, programs, or activities of a public entity, or be subjected to discrimination
24 by any such entity." The opportunity to comply with a public entity's directives in a
25 manner consistent with one's disability is a covered "benefit" under the ADA.
26 Administration of programs or activities in a way that unduly burdens disabled
27 persons by imposing a different and greater burden on them is "discrimination"
28

1 under the ADA. The ADA's implementing regulations specifically prohibit
2 providing aids, benefits, or services in such a way that disabled individuals are not
3 afforded an "equal opportunity to obtain the same result . . . as that provided to
4 others." 28 C.F.R. § 35.130(b)(1)(iii).

5 140. Individual Plaintiffs are each "qualified individual[s] with
6 disabilit[ies]" as defined by the ADA. 42 U.S.C. § 12102; 42 U.S.C. § 12131; 28
7 C.F.R. § 35.104.

8 141. Defendant City is a "public entity" as defined by the ADA. 42 U.S.C.
9 § 12131; 28 C.F.R. § 35.104.

10 142. Defendant City has discriminated against Individual Plaintiffs by
11 enforcing its relocation directives, conducting maintenance and closures of City
12 parks, and carrying out property seizure and destruction activities in ways that
13 impose different and greater hardships on Plaintiffs as a result of their disabilities.

14 143. Defendant City has denied Individual Plaintiffs meaningful access to
15 the benefit of compliance with its directives to relocate in a manner consistent with
16 their disabilities.

17 144. As a direct and proximate consequence of Defendant's acts and those
18 of its agents and employees, all Plaintiffs have suffered and continue to suffer
19 injury and loss.

20 145. Defendant's actions and those of its employees, agents, and/or
21 contractors were taken pursuant to the City's policies, patterns and/or customs of
22 discriminating against people with disabilities by imposing different and greater
23 hardships on them and denying them the benefit of compliance with their directives
24 in a manner consistent with their disabilities. These policies, patterns and/or
25 customs violate the ADA. All Plaintiffs are entitled to injunctive and declaratory
26 relief prohibiting Defendants from engaging in these unconstitutional customs,
27 policies, and practices in the future.
28

SECOND CAUSE OF ACTION

Failure to Provide Reasonable Accommodations

Americans with Disabilities Act

42 U.S.C. § 12132; 42 U.S.C. § 12133

(All Plaintiffs against Defendant City of San Bernardino)

146. Plaintiffs reallege and incorporate the allegations set forth in the paragraphs above as though fully set forth herein.

147. To avoid discriminating against individuals with disabilities, public entities are required to provide Reasonable Accommodations and/or modifications to policies or practices. A public entity that fails to provide a reasonable disability accommodation or modification, particularly after one has been requested, commits a stand-alone violation of Title II of the ADA. 28 C.F.R. § 35.130(b)(7).

148. A public entity has a duty to consider all resources available for use in the funding and operation of a service, program, or activity when determining whether a requested accommodation can be offered. If a public entity determines that a particular accommodation cannot be provided, it has a duty to provide a written statement of the reasons for reaching that conclusion. 28 C.F.R. § 35.164.

149. Defendant violated its duties and Individual Plaintiffs' rights under the ADA by ignoring or otherwise failing to respond to each of Individual Plaintiffs' Reasonable Accommodation requests.

150. Defendant failed to investigate the viability of Individual Plaintiffs' requested accommodations and did not engage in any interactive process with them.

151. Defendant failed to respond to, investigate, or engage with Individual Plaintiffs' Reasonable Accommodation requests pursuant to its systemic failure to establish policies and processes for receiving, processing, and responding to such requests, and pursuant to the City's policies, patterns, practices and/or customs of disregarding Reasonable Accommodation requests from unhoused persons with

1 disabilities.

2 152. Defendant further violated its duties and Individual Plaintiffs' rights
3 under the Americans with Disabilities Act by failing to provide Reasonable
4 Accommodations for Individual Plaintiffs' mobility impairments, even though
5 Individual Plaintiffs specifically requested Reasonable Accommodations that exist.

6 153. As a direct and proximate consequence of Defendant's failures to
7 provide Reasonable Accommodations under the ADA, and those of its agents and
8 employees, all Plaintiffs have suffered and continue to suffer injury and loss.

9 154. Defendant still does not have adequate policies and processes for
10 receiving, processing, and responding to Reasonable Accommodation requests, and
11 it continues to engage in policies, patterns, practices, and/or customs of
12 disregarding Reasonable Accommodation requests from unhoused persons with
13 disabilities. All Plaintiffs are entitled to injunctive and declaratory relief prohibiting
14 Defendants from violating the ADA by failing to provide Reasonable
15 Accommodations in the future.

16 **THIRD CAUSE OF ACTION**

17 **Intentional Discrimination / Deliberate Indifference**

18 **Americans with Disabilities Act**

19 **42 U.S.C. § 12132; 42 U.S.C. § 12133**

20 **(Individual Plaintiffs against Defendant City of San Bernardino)**

21 155. Plaintiffs reallege and incorporate the allegations set forth in the
22 paragraphs above as though fully set forth herein.

23 156. Defendant City has committed intentional discrimination under Title II
24 of the ADA by demonstrating deliberate indifference, because it had knowledge
25 that harm to Individual Plaintiffs' rights under the ADA was substantially likely to
26 occur, and it failed to act upon that likelihood.

27 157. Individual Plaintiffs' needs for disability accommodations were
28

1 obvious and known to Defendant City and they requested specific, reasonable, and
2 necessary accommodations from the City. Individual Plaintiffs all have visible
3 mobility impairments, as they rely on wheelchairs. Individual Plaintiffs all
4 submitted Reasonable Accommodation requests in writing to the City, which the
5 City acknowledged receiving.

6 158. Individual Plaintiffs' attorneys gave Defendant City specific notice in
7 advance of its park closures that there was a substantial likelihood of harm to the
8 rights of people with disabilities if the City did not plan to provide Reasonable
9 Accommodations to people with disabilities.

10 159. Nevertheless, Defendant City failed to investigate, respond, to or fulfill
11 Individual Plaintiffs' Reasonable Accommodation requests, or to offer any
12 modification of its policies, practices, or customs for enforcement of relocation
13 directives, closures of city parks, or property seizure and disposal activities.

14 160. As a direct and legal result of Defendant's actions and omissions,
15 Individual Plaintiffs have suffered injury and loss, including serious emotional
16 distress, and are entitled to compensatory damages.

17 **FOURTH CAUSE OF ACTION**

18 **Violation of § 504 of the Rehabilitation Act of 1973**

19 **29 U.S.C. § 794**

20 **(All Plaintiffs against Defendant City of San Bernardino)**

21 161. Plaintiffs reallege and incorporate the allegations set forth in the
22 paragraphs above as though fully set forth herein.

23 162. Section 504 of the Rehabilitation Act of 1973 provides that "no
24 otherwise qualified individual with a disability ... shall, solely by reason of his or
25 her disability, be excluded from the participation in, be denied the benefits of, or be
26 subjected to discrimination under any program or activity receiving Federal
27 financial assistance." 29 U.S.C. § 794(a); 34 C.F.R. § 104.4.

1 163. A public entity that receives federal funding violates Section 504
2 where it fails to provide Reasonable Accommodations to individuals who need
3 these accommodations to ensure meaningful access to the public entity's services.

4 164. The rights and obligations established by the ADA mirror those under
5 Section 504, and the two laws are applied co-extensively.

6 165. Defendant City has at all relevant times herein been a recipient of
7 federal funding to address homelessness, including funding from the Coronavirus
8 State and Local Fiscal Recovery Fund, as well as Community Development Block
9 Grants, Emergency Solutions Grants, and the HOME Investment Partnership
10 program. The City also receives and uses federal funds for the cleanup and
11 renovation of its parks, including \$265,130.36 from a Community Development
12 Block Grant used for improvements in Meadowbrook Park. These improvements
13 include "improvement of ADA access ways."

14 166. As alleged above, Defendant City has violated Individual Plaintiffs'
15 rights under the ADA and maintains policies, practices, and customs that continue
16 to violate the ADA by discriminating against persons with disabilities; denying
17 such persons the benefits of compliance with its directives in a manner consistent
18 with their disabilities; and failing to investigate, respond to, and fulfill requests for
19 Reasonable Accommodations. Based on the same facts, Defendant City violates
20 and has violated Section 504 of the Rehabilitation Act.

21 **FIFTH CAUSE OF ACTION**

22 **Violation of Right to Be Secure From Unreasonable Seizures**

23 **42 U.S.C. § 1983 - Fourth Amendment; Art. 1, § 13, California Constitution**

24 **(All Plaintiffs against all Defendants)**

25 167. Plaintiffs reallege and incorporate the allegations set forth in the
26 paragraphs above as though fully set forth herein.

27 168. Individual Plaintiffs James Tyson, Lenka John, and Noel Harner have
28

1 a vested possessory interest in their property pursuant to state, constitutional, and
2 statutory law.

3 169. Defendants violated Plaintiffs' constitutional rights to be free from
4 unreasonable seizures by threatening the seizure and destruction of their property
5 without a warrant and without any legal justification for doing so.

6 170. Defendants further violated Plaintiffs Tyson's and John's
7 constitutional rights to be free from unreasonable seizures by actually seizing their
8 property without a warrant and without any legal justification for doing so.
9 Defendants further violated their rights to be free from unreasonable seizure when
10 they summarily destroyed Plaintiffs Tyson's and John's property, without a warrant
11 and without legal justification.

12 171. Defendants' acts and those of their employees, agents, and/or
13 contractors were taken under color of state law, pursuant to the City's policies,
14 patterns, practices, and/or customs of seizing and destroying unhoused individuals'
15 property without a valid warrant or legal justification. These policies, patterns,
16 and/or customs are unreasonable and violate the Fourth Amendment of the U.S.
17 Constitution, as applied to the states by the Fourteenth Amendment of the U.S.
18 Constitution; Article 1, Section 13 of the California Constitution, and 42 U.S.C. §
19 1983.

20 172. Plaintiffs are informed and believe that Defendants' acts and those of
21 their employees, agents, and/or contractors were done with the specific, unlawful
22 intent to deprive Plaintiffs of their constitutional rights to be secure in their
23 property. Furthermore, Plaintiffs are informed and believe that Defendants' acts
24 were intentional in failing to protect and preserve Plaintiffs' property and that, at
25 minimum, Defendants were deliberately indifferent to the likely consequence that
26 the property would be seized and destroyed unlawfully.

27 173. Defendants knew or should have known that their policies and
28

1 practices of summarily seizing and destroying unhoused residents' property were
2 unlawful. There have been multiple lawsuits addressing similar policies and
3 practices in this jurisdiction.⁶

4 174. The City has failed to implement adequate supervision, discipline, and
5 training to prevent its employees, agents, and contractors from seizing and
6 destroying unhoused persons' property in violation of their constitutional rights.
7 The City has failed to train its employees and contractors to handle, in a legal and
8 constitutional manner, the usual and recurring situations in which they encounter
9 unhoused people and their property. The City has failed to implement procedural
10 safeguards to prevent its employees and contractors from seizing and destroying
11 property in violation of people's constitutional rights. The City has failed to
12 supervise its employees and contractors as necessary to prevent them from seizing
13 and destroying property in violation of people's constitutional rights.

14 175. As a direct and proximate consequence of the acts and omissions of
15 Defendants' employees, agents, and/or contractors, Plaintiffs have suffered and
16 continue to suffer injury and loss. Plaintiffs are entitled to compensatory damages
17 for their loss of property and other injuries to their persons that have resulted from
18 the violation of their Fourth Amendment and analogous state constitutional rights.

19 176. Defendants continue to engage in the property seizure customs,
20 policies, and practices that have caused and will continue to cause harm to
21 Plaintiffs. All Plaintiffs are entitled to injunctive and declaratory relief prohibiting
22 Defendants from unreasonably seizing and destroying property in the future.
23

24 ⁶ See, e.g., *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005 (C.D. Cal. 2011),
25 *aff'd*, 693 F.3d 1022 (9th Cir. 2012); *Mitchell v. City of Los Angeles*, No.
26 CV1601750SJOGJSX, 2016 WL 11519288 (C.D. Cal. Apr. 13, 2016); *Garcia v.*
27 *City of Los Angeles*, 481 F. Supp. 3d 1031 (C.D. Cal. 2020), *aff'd*, 11 F.4th 1113
28 (9th Cir. 2021). See also *Schuler et al. v. County of Orange*, Case No. SA CV 17-
0259-DOC (KESx) (Cal. Sup. Ct., February 24, 2017)

SIXTH CAUSE OF ACTION

Violation of Right to Due Process of Law

42 U.S.C. § 1983–Fifth and Fourteenth Amendments;

Art. 1, § 7, California Constitution

(All Plaintiffs against all Defendants)

177. Plaintiffs reallege and incorporate the allegations set forth in the paragraphs above as though fully set forth herein.

178. Individual Plaintiffs have a vested, possessory interest in their property pursuant to state, constitutional, and statutory law. Defendants violated Plaintiffs’ due process rights by threatening to deprive them of their property and security therein without due process of law. Defendants further violated Plaintiffs’ Tyson’s and John’s due process rights by actually depriving them of their property without due process of law.

179. Defendants provided Plaintiffs with no notice or inadequate notice that their property was at risk of being seized and/or destroyed and did not act to preserve the property or provide any means of reclaiming it in a timely manner.

180. Defendants provided Plaintiffs no opportunity to be heard before depriving them of their property. Defendants further violated their rights by providing them no opportunity to be heard before permanently depriving them of that property by discarding and/or destroying it.

181. Defendants’ actions and those of their employees, agents, and/or contractors were taken pursuant to the City’s policies, patterns and/or customs of seizing and destroying the property of unhoused individuals without adequate notice, opportunity to be heard, or opportunity to reclaim said property. These policies, patterns, and/or customs are unconstitutional and violate the Fifth and Fourteenth Amendment’s Due Process Clause and Article 1, Section 7 of the California Constitution, which provides that individuals cannot be “deprived of life,

1 liberty, or property without due process of law.”

2 182. Plaintiffs are informed and believe that the acts of the Defendants,
3 their employees, agents, and/or contractors, were intentional in failing to afford
4 Plaintiffs due process surrounding the deprivation of their property, and that, at
5 minimum, Defendants were deliberately indifferent to the likelihood that the
6 property would be seized and destroyed without due process.

7 183. As a direct and proximate consequence of the Defendants’ acts and
8 those of their agents, and employees, Plaintiffs have suffered and continue to suffer
9 injury and loss. Plaintiffs John and Tyson are entitled to compensatory damages for
10 their property and other injuries to their persons.

11 184. Defendants continue to engage in the customs, policies, and practices
12 of depriving individuals of their property without due process of law that have
13 caused and will continue to cause harm to Plaintiffs. All Plaintiffs are entitled to
14 injunctive and declaratory relief prohibiting Defendants from engaging in these
15 unconstitutional customs, policies, and practices in the future.

16 **SEVENTH CAUSE OF ACTION**

17 **Violation of California Civil Code Section 2080 *et seq.***

18 **Cal. Civil Code § 2080 *et seq.*; Cal. Gov’t Code § 815.6;**

19 **(Individual Plaintiffs James Tyson and Lenka John against All Defendants)**

20 185. Plaintiffs reallege and incorporate the allegations set forth in the
21 paragraphs above as though fully set forth herein.

22 186. California Civil Code § 2080 *et seq.* imposes mandatory statutory
23 duties on public entities and their employees and agents to maintain for a minimum
24 of 90 days unattended property over which they have taken charge, and to maintain
25 for 60 days property that they have obtained from a person for temporary
26 safekeeping. The Civil Code also imposes mandatory duties to abide by specific
27 procedures and processes related to the storage, documentation, and disposition of
28

1 property.

2 187. Defendants' policies, practices, and conduct challenged herein violate
3 California Civil Code § 2080 *et seq.* Defendants' employees and agents took charge
4 of Plaintiffs' property, which was not abandoned. Rather than complying with the
5 mandatory duty under Civil Code § 2080 *et seq.* to maintain, document, and store
6 the property for temporary safekeeping, Defendants and their employees and agents
7 summarily destroyed the items. Defendants' employees and agents failed to use due
8 care or protect and preserve Plaintiffs' personal property as required by Civil Code
9 § 2080 *et seq.* when Defendants summarily destroyed Plaintiffs' property in public
10 locations; failed to provide a written receipt, instructions for retrieval of the
11 property, or notice that the property would be destroyed; failed to make reasonable
12 efforts to identify the property's owner; and failed to track or otherwise store the
13 property so that it could be located and retrieved on request.

14 188. California Government Code § 815.6 provides a private right of action
15 for injuries caused by a public entity's failure to discharge a mandatory duty
16 imposed by an enactment.

17 189. The failure of Defendants and their employees and agents to comply
18 with their mandatory duties set forth in Civil Code § 2080 *et seq.* proximately
19 caused Plaintiffs injuries, including property loss, emotional distress, anxiety, and
20 pain and suffering, and Defendants are liable to Plaintiffs for those injuries.

21 190. Defendant's breaches of the obligations set forth in Civil Code § 2080
22 *et seq.* are ongoing, and Plaintiffs are entitled to injunctive relief to prevent further
23 breach. Pecuniary compensation will not afford adequate relief; it will be
24 extremely difficult to ascertain the amount of compensation which would afford
25 adequate relief; and injunctive relief is necessary to prevent a multiplicity of
26 judicial proceedings.

BASES FOR REQUESTED RELIEF

191. An actual controversy exists between Plaintiffs and Defendants as to each and every Cause of Action alleged herein. Plaintiffs claim that these Defendants' acts and policies, practices and/or customs are contrary to law and seek a declaration of their rights with regard to this controversy.

192. As a direct and proximate consequence of Defendants' acts and breaches of their duties, and those of their agents and employees, Plaintiffs have suffered loss and damages, including injuries to their persons and the loss of their essential personal property needed for their well-being and personal dignity.

193. Plaintiffs will continue to suffer ongoing and continuous injuries unless Defendants are restrained by this Court. Defendants' policies, practices, customs, and actions will result in irreparable injury to Plaintiffs. Plaintiffs have no other plain, adequate, or complete remedy at law to address the wrongs described herein.

194. Injunctive relief to prevent the breach of Defendants' obligations is proper because remedies available at law are inadequate, the balance of hardships justifies a remedy in equity, and the public interest would not be disserved by a permanent injunction.

195. Plaintiffs timely presented their state law claims for injury, damages, and loss to the City in compliance with the claim presentation requirements set forth in California Government Code § 910 *et seq.* Plaintiffs' counsel mailed Plaintiffs' claim letter to the San Bernardino City Clerk on August 8, 2023 and conveyed the same letter via email to the San Bernardino City Attorney on August 10, 2023.

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. For a preliminary injunction and a permanent injunction, enjoining and restraining Defendants from engaging in the policies, practices and conduct

1 complained of herein. Specifically, Plaintiffs seek injunctive relief to stop the City's
2 ongoing violations of disability laws and civil rights, by enjoining the City as
3 follows:

- 4 a. Cease discrimination against people with disabilities in the
5 administration of City programs, activities and services by:
 - 6 i. Establishing and maintaining a meaningful process for
7 Reasonable Accommodation requests to be submitted to
8 the City, investigated, responded to, and granted, relating
9 to any of the City's services, programs, or activities that
10 involve park closures, encampment removal operations,
11 and related property seizure, disposal, and destruction
12 operations;
 - 13 ii. Providing the Reasonable Accommodations requested by
14 Plaintiffs;
 - 15 iii. Affirmatively accommodating disabled persons, by
16 modifying the City's programs, services, and activities
17 related to "encampment cleanups," park closures,
18 and seizure and destruction of homeless individuals'
19 personal effects, as necessary to prevent discrimination
20 against persons with disabilities, including by providing:
 - 21 1. additional time to relocate;
 - 22 2. assistance with packing and transporting personal
23 property;
 - 24 3. medically appropriate transportation to a safe and
25 accessible alternate location;
 - 26 4. relocation to a wheelchair-accessible location;
 - 27 5. permission to remain in place until an adequate,
 - 28

- 1 accessible alternative location can be arranged;
- 2 6. placement in a non-congregate setting such as a
- 3 motel;
- 4 7. relocation to location which allows an individual to
- 5 remain with their Emotional Support Animal and/or
- 6 Service Animal;
- 7 8. and accessible storage for personal property;
- 8 iv. Conducting a “self-evaluation” pursuant to 28 CFR §
- 9 35.105 of current city services, policies, and practices
- 10 related to park closures and property clearing operations
- 11 at such closures and at encampment clearing operations
- 12 and evaluate any resulting undue burdens of these
- 13 services, policies, and practices on unhoused people with
- 14 disabilities, and to the extent modification of any such
- 15 services, policies, and practices is required and will not
- 16 constitute a fundamental alteration, making the necessary
- 17 modifications;
- 18 v. Engaging in an interactive process with individuals
- 19 requesting Reasonable Accommodations, and if the City
- 20 decides not to grant a requested accommodation, meeting
- 21 its “duties” under 28 CFR § 35.164, including by
- 22 assigning a public entity head or designee who will
- 23 investigate and consider all resources available to meet
- 24 the requesters’ needs and provide written responses to
- 25 requesters when necessary;
- 26 vi. Providing adequate training to all City staff and agents
- 27 who may interact with unhoused individuals with
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- 1 disabilities regarding how to avoid disability
2 discrimination and ensure that all legal requirements are
3 met under the ADA and other disability laws;
- 4 b. Cease the unlawful seizure and destruction of all personal
5 property of unhoused individuals, including unattended personal
6 property. This relief shall include:
- 7 i. Ensuring compliance with constitutional protections and
8 statutory obligations, including Civil Code § 2080 *et seq.*,
9 on the part of all City-funded contractors and other city
10 agents, and all city agencies;
- 11 ii. Adopting lawful storage and documentation policies and
12 practices to ensure all items seized by the City and its
13 agents are properly tagged and stored for post-seizure
14 retrieval. This documentation must include records of
15 items that the City and its agents seize and destroy as
16 “trash” and with an individual’s purported “consent”;
- 17 iii. Providing adequate notice prior to any property seizure,
18 disposal, or destruction planned at park closures and
19 encampment removal operations, including information
20 on how to utilize the City’s property storage program;
- 21 c. Suspend all operations involving the removal of unhoused
22 people and their property from particular locations until a lawful
23 plan is put in place to address the violations alleged above.

24 2. For a declaratory judgment that Defendants’ policies, practices and
25 conduct as alleged herein violate Plaintiffs’ rights under the United States
26 Constitution, the California Constitution, and federal disability laws, declaring that:

- 27 a. The City violates the Americans with Disabilities Act and
28

1 Section 504 of the Rehabilitation Act of 1973 by administering
2 programs and activities related to park closures and property
3 clearing and destruction in a discriminatory way that unduly
4 burdens disabled persons by imposing a different and greater
5 burden on them;

6 b. The City's actions of closing public parks and requiring people
7 to quickly move themselves and all their property out of those
8 parks, without providing Reasonable Accommodations for
9 people with disabilities, violate the Americans with Disabilities
10 Act and Section 504 of the Rehabilitation Act of 1973;

11 c. The City violates the Americans with Disabilities Act and
12 Section 504 of the Rehabilitation Act of 1973 by denying people
13 with disabilities the benefit of compliance with its directives to
14 move themselves and their property in a manner consistent with
15 their disabilities;

16 d. Defendants' ongoing operations that seize and destroy unhoused
17 peoples' personal property without a warrant and without any
18 legal justification violate the right to be free from unreasonable
19 seizures; and

20 e. Defendants' ongoing operations that summarily destroy
21 unhoused people's personal property violate due process
22 protections in that these operations provide inadequate notice of
23 the risk of property being seized and/or destroyed; fail to
24 preserve property; fail to provide an opportunity to be heard or
25 an opportunity to contest seizures and destructions of property;
26 and fail to provide any means of reclaiming property in a timely
27 manner.
28

f. The City's failure to adequately respond, or to respond at all, to Plaintiffs' Reasonable Accommodations violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973;

3. Damages according to proof for the loss of Plaintiffs Lenka John's and James Tyson's property; the violation of all Individual Plaintiffs' constitutional and statutory rights; and for pain and suffering resulting from Defendants' unlawful conduct and deliberate indifference, according to proof;

4. For punitive damages pursuant to 42 U.S.C. §1983 and any other applicable laws or statutes, in an amount sufficient to deter and make an example of the Defendants;

5. For prejudgment interest according to proof;

6. For reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. §§ 1983, 1988, and any other applicable provisions; and

7. For such further relief which is just and proper.

Dated: February 20, 2024

Respectfully submitted,
O'MELVENY & MYERS, LLP

/s/ Brittany Rogers

Brittany Rogers (SBN 274432)
brogers@omm.com
Nancy Lynn Schroeder (SBN 280207)
nschroeder@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
P: (213) 430-6000 | F: (213) 430-6407

Cameron Westin (SBN 290999)
cwestin@omm.com
O'MELVENY AND MYERS, LLP
610 Newport Center Drive, 17th Floor
Newport Beach, California 92660

1 P: (949) 823-6900 | F: (949) 823-6994

2 Catherine Rogers (SBN 315607)

3 krogers@aclusocal.org

4 Adrienna Wong (SBN 282026)

5 awong@aclusocal.org

6 ACLU FOUNDATION OF
7 SOUTHERN CALIFORNIA

8 1313 West 8th St.

9 Los Angeles, California 90017

10 P: (213) 977-5232 | F: 213-915-0219

11 Brooke Weitzman (SBN 301037)

12 bweitzman@eldrcenter.org

13 Allison Greenberg (SBN 347106)

14 agreenberg@eldrcenter.org

15 ELDER LAW AND DISABILITY RIGHTS
16 CENTER

17 1535 17th St #110

18 Santa Ana, CA 92705

19 P: (714) 617-5353