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13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 SOUTHERN DIVISION

16 Kenneth Glover, an individual; David
 17 Sestini, an individual; Douglas
 18 Frederes Jr., an individual; Jeffrey
 Aiken, an individual; and Katrina
 Aune, an individual,

19 Plaintiffs,

20 vs.

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

24 Defendants.

CASE NO.

CLASS ACTION

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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

1 1. Plaintiffs, chronically homeless individuals who live in the City of
2 Laguna Beach and each of whom suffers from mental and/or physical disabilities,
3 bring this litigation against Defendants City of Laguna Beach (“City”) and Laguna
4 Beach Police Department (“LBPD”) for violation of Title II of the Americans with
5 Disabilities Act (42 U.S.C. § 12132), Section 504 of the Rehabilitation Act (29
6 U.S.C. §§ 706, 794), and the Eighth and Fourteenth Amendments to the United
7 States Constitution (42 U.S.C. § 1983). Defendants’ homelessness program –
8 which comprises the City’s policy and practice of maintaining limited shelter, often
9 inaccessible to those with disabilities, combined with heavy law enforcement,
10 harassment, and scrutiny of those who are forced to sleep outside because they
11 cannot access this shelter – discriminates against, criminalizes, and endangers
12 disabled, homeless persons and, in so doing, violates their civil rights.

13 **JURISDICTION AND VENUE**

14 2. This Court has subject matter jurisdiction over Plaintiffs’ claims
15 pursuant to 28 U.S.C. § 1331 (in that this case arises under the Constitution of the
16 United States); § 1343(a)(3) (in that it is brought to redress deprivations, under
17 color of state authority, of rights, privileges and immunities secured by the United
18 States Constitution); § 1343(a)(4) (in that it seeks to secure equitable relief under an
19 Act of Congress, specifically under Title II of the ADA, Section 504 of the
20 Rehabilitation Act, and under 42 U.S.C. § 1983); and the Declaratory Judgment
21 Act, 28 U.S.C. §§ 2201(a) and 2202.

22 3. This Court has personal jurisdiction over Defendant City of Laguna
23 Beach (“Laguna Beach” or “the City”) because it is a political subdivision of the
24 State of California located in Orange County and Defendant Laguna Beach Police
25 Department (“LBPD”) because it operates in Orange County and enforces the
26 City’s laws.

1 4. Venue is proper in the Central District of California under 28 U.S.C. §
2 1391(b). Defendants are located in the Central District and all of the acts and/or
3 omissions complained of herein have occurred or will occur in this District.

4 **INTRODUCTION**

5 5. Laguna Beach, one of the most affluent communities in the country, is
6 openly hostile to the plight of disabled, homeless individuals living in the City.
7 Rather than provide the permanent supportive housing (housing with supportive
8 services, such as mental health treatment and case management) necessary to meet
9 the needs of this population, the City's policy and practice with respect to
10 homelessness is to maintain minimal shelter inaccessible to many of its disabled,
11 homeless inhabitants and far from the downtown area while, through the LBPD,
12 engaging in a strategy of increased law enforcement, harassment, and scrutiny of
13 those experiencing homelessness who cannot access this shelter.

14 6. The City's policy and practice is intended to discourage homeless
15 individuals from remaining in the City – or, failing that, to discourage their visible
16 presence in the downtown area and nearby beaches. This strategy is not new –
17 earlier litigation brought by the ACLU against the City based on the same pattern of
18 law enforcement, harassment, and scrutiny resulted in a settlement limiting such
19 enforcement. It also led to the creation of a small emergency shelter (the “Alternate
20 Sleeping Location” or “ASL”). Because of its small size, the City prioritizes shelter
21 space for those it considers “local Laguna Beach homeless.” Others – including
22 some who have lived in Laguna Beach for years – must seek a spot at the shelter on
23 a nightly basis through a waitlist and lottery system. While appropriate for some
24 homeless persons living in Laguna Beach, this shelter is inaccessible to many
25 disabled, homeless persons. Further, because the needs of different members of the
26 homeless population differ and sometimes conflict, it is impossible for the ASL to
27 provide emergency shelter to all homeless persons in Laguna Beach, even aside
28 from capacity issues. Despite this, the City uses the existence of the ASL to justify

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

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

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

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

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

16 **PARTIES**

17 **Plaintiffs**

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

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

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

12 13. Despite living in Laguna Beach since 2011, Glover is not considered a
13 "Laguna Beach homeless resident" by the City and can only sleep at the ASL when
14 he wins the lottery for an empty space. For several years, Glover tried to sleep at
15 the ASL and was able to win a space only about twice per week. While grateful
16 whenever he was permitted to stay, he found staying at the ASL very stressful and
17 experienced difficulty sleeping because of the noise and nightmares he often
18 suffered while staying there.

19 14. On nights when Glover did not get a space at the ASL, he had no legal
20 place to sleep. On one such night, September 6, 2012, Glover slept in the parking
21 lot of the ASL after having been turned away. He was discovered by police the
22 next morning and cited for violating Penal Code section 647(e). On another
23 occasion, he was discovered by police at around 9:30 p.m. after being put on the
24 "alternate" list for the ASL. The LBPD told Glover he had to leave town and
25 provided him with a bus pass to get to the Armory Shelter in Fullerton. However,
26 after the long bus ride from Laguna Beach to Fullerton, the Armory Shelter had
27 already closed its doors for the evening and Glover was forced to sleep outdoors in
28 an unfamiliar city. Since then, he has tried to avoid sleeping in the ASL parking

1 lot. Instead, Glover looks for spots on the beach or in surrounding areas where he
2 can avoid the police and local residents. In 2012, Glover was riding his bicycle
3 along Laguna Canyon Road after being unable to secure a shelter spot and was hit
4 by a car. He suffered a disabling injury to his right hand that has made it more
5 difficult to find work.

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

15 16. Glover desperately wants a safe, legal place he can sleep. He has
16 recently stopped seeking shelter because the extreme anxiety of the experience –
17 not knowing whether he will get a spot, having to travel back downtown to seek a
18 safe place to hide if he does not or having to cope with the noisy, crowded
19 environment if he does – has become unbearable and has caused a deterioration in
20 his mental health. Glover's doctor recently prescribed him a stronger medication to
21 help him cope with this anxiety, but while taking it, Glover had trouble standing,
22 walking, and communicating. He discontinued this medication and continues to
23 suffer anxiety because he knows he will have to find a place to hide each night.

24 17. Plaintiff DAVID SESTINI (“Sestini”) is a fifty-three-year-old,
25 chronically homeless man who grew up in Orange and Los Angeles Counties. He
26 has lived in Laguna Beach since July 2012. He suffers from bipolar disorder,
27 depression, anxiety, alcoholism, chronic obstructive pulmonary disease (COPD),
28 and heart spasms. In 2006 he received a traumatic head injury from a bicycle

1 accident, leaving him with cluster headaches/migraines and balance and memory
2 problems that continue today. Sestini became homeless four years ago after he left
3 a sober living facility because he could not tolerate the living environment. Sestini
4 has difficulty keeping work because of his physical and mental health issues and is
5 frequently hospitalized.

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

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

25 20. Recently, Sestini was permanently banned from the shelter. Although
26 he still considers Laguna Beach his home, he has recently tried to obtain services
27 for his alcohol addiction in Huntington Beach. Sestini is not sure whether he will
28

1 be able to stay for a long period, especially since he has had problems tolerating
2 such programs in the past.

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

12 22. The City does not consider Frederes to be a Laguna Beach resident;
13 therefore, he can only sleep at the ASL when he wins a space in the nightly lottery.
14 Frederes used to sleep at the shelter often, but he finds the noisy and chaotic shelter
15 environment causes him significant stress and worsens his mental health symptoms.
16 In addition, Frederes has been kicked out of the shelter because of difficulties,
17 arising from his mental illness, getting along with the other homeless individuals
18 who frequent the shelter and conforming his behavior to that required by shelter
19 staff. As a result, Frederes frequently sleeps on the beach or elsewhere instead.
20 Frederes has been cited many times for beach curfew violations under L.B.M.C.
21 section 18.05.020 (March 27, 2013, April 16, 2014, April 25, 2013, August 10,
22 2013) and sleeping in public in violation of the L.B.M.C. section 8.30.030 (May
23 12, 2013 and January 20, 2014). In addition, LBPB members have been pressuring
24 Frederes to leave town again. Because Frederes has no income and no money, he
25 cannot afford transportation out of town, and in any case, there is nowhere else for
26 him to go.

27 23. Plaintiff JEFFREY AIKEN (“Aiken”) is a 54-year-old homeless
28 veteran who has lived in Laguna Beach for two years. He grew up in Orange

1 County, graduated from Orange Coast College in 1983, and served for 10 years in
2 the Air Force until he was discharged for disability in 1998. He has not had steady
3 employment since his discharge. Aiken suffers from mental disabilities including
4 depression and schizophrenia, and physical disabilities from a knee injury and from
5 a brain injury.

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

16 25. Plaintiff KATRINA AUNE (“Aune”) is a thirty-five-year-old native of
17 Vancouver, Canada who has been homeless in Laguna Beach since late-2011 or
18 early-2012. Aune has two children, aged 9 and 12, both of whom have permanent
19 housing. Aune has been diagnosed with depression, and suffers from post-
20 traumatic stress disorder and obsessive compulsive disorder.

21 26. Aune briefly stayed in a transitional housing program but was forced
22 to leave because she did not follow directions, including taking the medications
23 prescribed by her doctor. Aune has been staying at the ASL intermittently for the
24 last three or four years, but because the City does not considered her a Laguna
25 Beach resident, she must rely on winning a lottery spot. Even on nights where
26 Aune is able to obtain a bed at the shelter, she finds it difficult to sleep because of
27 the noise and commotion. She also feels that she is harassed and threatened by
28 other shelter occupants. On nights that Aune does not win a spot, she sleeps in the

1 shelter parking lot or sometimes at the beach in the vicinity of others for safety.
2 Aune considers sleeping outside “torture” because the police frequently interrupt
3 her sleep. Aune has been ticketed by the LBPD for illegal lodging on at least one
4 occasion on September 15, 2013 and received a verbal warning for sleeping in the
5 shelter parking lot in early April 2015. Her emotional state is deteriorating from the
6 constant stress of sleeping at the shelter and outdoors.

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

11 **Defendants**

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

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

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

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

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

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

4 **STATEMENT OF FACTS**

5 **Chronic Homelessness in Laguna Beach**

6 34. Unlike other areas in Orange County, the homeless population of
7 Laguna Beach is comprised of persons who are almost exclusively chronically
8 homeless, *i.e.* those “with a mental or physical disability who experience long-term
9 or repeated homelessness.” City of Laguna Beach Homeless Task Force Final
10 Recommendations at 3-4 (2008). Therefore, most homeless persons in Laguna
11 Beach suffer from some form of mental and/or physical disability. *Id.* Defendants
12 are aware that the vast majority of homeless persons living in Laguna Beach are
13 disabled. *See id.*; Christa Woodall, *Addressing Laguna Beach’s Homeless*, O.C.
14 Register, Sept. 5, 2007 (quoting Police Chief as estimating that half of City’s
15 homeless population “battle mental illness, most without acknowledging the
16 problem”); *see also* City of Laguna Beach’s Housing Element, 2013-2021
17 (“Individuals with a disability . . . comprise the greatest majority of Laguna’s
18 homeless at 80% . . .”).

19 35. Mental and physical disabilities are both causes and consequences of
20 homelessness. While persons with disabilities have a greater risk of homelessness,
21 studies have also shown that the adversity and stress of homelessness can lead to
22 the development or exacerbation of mental illness. Further, unsheltered homeless
23 persons have a greater risk of experiencing violence and physical health problems,
24 which increases their likelihood of developing mental health problems.

25 36. For chronically homeless persons, the only effective way to address
26 their homelessness and their underlying or co-occurring disabilities is permanent
27 supportive housing (housing with wrap-around services including, but not limited
28

1 to, mental health and case management services). There is a growing recognition
2 that living in a shelter can be nearly impossible for some people with serious mental
3 and physical health issues. These chronically homeless individuals need to be
4 permanently and safely housed before they can meaningfully access and benefit
5 from treatment. Nationally – and in Orange County – chronically homeless persons
6 are significantly more likely than other homeless persons to be living in public
7 places because they cannot access and complete treatment while remaining in
8 temporary shelter. Meanwhile, the unhealthy and unsafe conditions associated with
9 prolonged homelessness worsen mental and physical health conditions – making
10 these individuals even less likely to be able to survive in temporary shelter and
11 creating a downward spiral of homelessness and mental or physical illness.

12 37. Permanent supportive housing is now considered by the federal
13 government and experts on homelessness as the best means of housing and treating
14 chronically homeless individuals, defined to include those experiencing extended or
15 repeated periods of homelessness who also suffer from a disabling condition. U.S.
16 Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to*
17 *Prevent and End Homelessness* 18 (2010) (“For people experiencing chronic
18 homelessness, the research is clear that permanent supportive housing using a
19 Housing First approach is the solution.”). Research has demonstrated that
20 permanent supportive housing is both effective at permanently reducing
21 homelessness and saves taxpayers money as compared to the costs of emergency
22 shelter and of cycling homeless persons through the criminal justice system. *Id.*
23 (reviewing results of 13 studies demonstrating that it is cheaper to provide
24 permanent supportive housing as compared to the costs of chronic homelessness,
25 including jail and health care costs).

History of Laguna Beach Homelessness Policy

Sipprelle Litigation and Settlement

1
2
3 38. The City, through LBPD, has a history of targeting disabled, homeless
4 persons for increased law enforcement, harassment, and scrutiny – and has been put
5 on notice that such conduct violates the rights of these disabled, homeless
6 individuals.

7 39. In December 2008, the ACLU of Southern California and co-counsel
8 filed suit on behalf of several disabled, homeless individuals challenging the City’s
9 policy and practice of enforcing Laguna Beach Municipal Code (“L.B.M.C.”)
10 section 18.04.020¹ against disabled, homeless persons in a manner that criminalized
11 sleeping in all public places at night and conducting “sweeps” of beaches, parks,
12 and other public places at night and in the early morning to wake and harass
13 sleeping homeless persons, as well as other enforcement tactics that targeted
14 disabled, homeless individuals. *Sipprelle v. City of Laguna Beach*, No. 08-01447
15 (C.D. Cal. filed Dec. 23, 2008). The lawsuit sought injunctive and declaratory
16 relief and included claims for violating plaintiffs’ rights to due process, freedom
17 from cruel and unusual punishment, and under Title II of the ADA.

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

24
25 _____
26 ¹ L.B.M.C. section 18.04.020 provided that “No person shall pitch a tent or camp or
27 sleep upon any beach, park, public street, alley or passageway, or sleep in any
28 automobile parked at any place within the city; provided that between the hours of
seven a.m. and seven p.m. it shall not be unlawful to sleep upon any beach within
the city.”

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

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

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

23 43. The ASL is currently operated by Friendship Shelter and funded by the
24 City (partially through federal Community Development Block Grant (“CDBG”)
25 funds received through Orange County). It is located approximately two-and-a-half
26 miles outside of the downtown area, along Laguna Canyon Road—a twisting
27 roadway which runs from downtown Laguna Beach inland through Laguna Canyon
28 towards the City of Irvine. A van is provided to transport homeless individuals

1 from the downtown area to the ASL in the evening. Access to the ASL is limited –
2 on any given night 5-15 people are turned away because of a lack of capacity.

3 44. At the City’s behest, the ASL gives priority to those who can
4 demonstrate that they are “local Laguna Beach residents.” This residency
5 requirement for homeless individuals has an extremely high bar – individuals must
6 demonstrate that an immediate family member currently lives in Laguna Beach,
7 that they attended K-12 school in Laguna Beach, that they leased or paid utilities
8 for residential property in Laguna Beach, or that the LBPD knows them to have
9 been members of the Laguna Beach homeless community for at least 18 months.
10 However, these criteria are not applied evenly. Many disabled, homeless persons
11 who have lived in Laguna Beach for more longer than 18 months are not considered
12 “local Laguna Beach residents” by the City and/or the LBPD and are therefore less
13 likely to be able to access this shelter. This is in spite of the homeless persons’
14 multiple interactions with the LBPD over an 18-month period in some cases,
15 reflecting LBPD’s knowledge of the individuals’ local Laguna Beach resident
16 status under the operative definition.

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

28

1 46. While the ASL was created to serve the needs of Laguna Beach's
2 homeless population, almost entirely composed of those who are chronically
3 homeless, many individuals within this population cannot access the ASL because
4 they suffer from mental disabilities. As is typical of emergency shelter, the ASL is
5 extremely crowded, noisy, and chaotic. Chronically homeless individuals suffering
6 from certain mental health conditions – such as PTSD, bipolar disorder, severe
7 depression and anxiety, and schizophrenia – cannot tolerate this environment.
8 Some cannot stay at the shelter for even a night, while others can stay for a short
9 time before needing to leave. Still others try to stay at the ASL but are forced to
10 leave because their disabilities prevent them from being able to conform their
11 conduct to that required by ASL staff. Those who do stay at the ASL report not
12 being able to sleep because of the noise and the anxiety caused by the crowded,
13 chaotic environment, as well as worsening mental and physical health symptoms.

14 47. Shelter and housing options for chronically homeless persons with
15 disabilities are extremely limited in Laguna Beach. Although not part of Laguna's
16 homelessness program, Friendship Shelter (the non-profit that manages the ASL)
17 also operates a transitional shelter that is constantly full with a waitlist and
18 otherwise is not appropriate for many chronically homeless persons. Friendship
19 Shelter also runs a small, scattered-site permanent supportive housing program that
20 serves the entire South Orange County area. This program caters to the needs of
21 disabled or chronically homeless persons; however, this program is typically full
22 with only rare openings.

23 48. Recognizing the dire need for permanent supportive housing to shelter
24 and treat Laguna Beach's disabled, homeless population, Friendship Shelter and
25 several partner organizations have proposed creating a new permanent supportive
26 housing development. If built, this could significantly lower the number of
27 disabled, homeless persons who are unsheltered and untreated in Laguna Beach. In
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1 addition, the proposed shelter is projected to result in cost-savings to the City,
2 overall. The City has not approved the proposal.

3 **Renewed Enforcement**

4 49. Soon after the expiration of the *Sipprelle* settlement agreement, the
5 City of Laguna Beach resumed its targeted harassment of disabled, homeless
6 individuals. LBPD officers routinely issue misdemeanor citations to disabled,
7 homeless individuals for sleeping outdoors – sometimes as violations of the New
8 Ordinance, but more commonly as violations of Penal Code section 647(e), which
9 defines disorderly conduct, a misdemeanor, to include “lodg[ing] in any building,
10 structure, vehicle, or place, whether public or private, without the permission of the
11 owner or person entitled to the possession or in control of it.”

12 50. Finally, the City imposes a beach curfew under which the beaches are
13 closed from 1:00 a.m. to 5:00 a.m. each night. LAGUNA BEACH, CAL., CODE §
14 18.05.010. Ostensibly, “no person shall enter, remain or stay on any city beach or
15 in any city park at any time when such beach or park is closed.” *Id.* § 18.05.020.
16 Yet, the L.B.M.C. also provides a number of exceptions for nearly every other
17 activity one would engage in at the beach—except sleeping. *Id.* § 18.05.040
18 (permitting walking, jogging, fishing, or grunion hunting, ... scuba diving, surfing,
19 or swimming in the ocean” while beaches are “closed”).

20 51. LBPD frequently enforces the New Ordinance and Penal Code section
21 647(e) against individuals who sleep outdoors because they cannot access the ASL
22 – either because the individuals failed to win a lottery spot or because the
23 individuals cannot tolerate the ASL due to their mental or physical disabilities.
24 Moreover, the City has relied more heavily on the beach curfew ordinances to
25 punish the same underlying conduct.

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

13 **CLASS ALLEGATIONS**

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

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

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

26 56. Defendants' policy or practice will affect all members of the class in
27 the same way, thereby making injunctive and declaratory relief appropriate to the
28 class as a whole.

1 “continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).
2 Congress also determined that “the Nation’s proper goals regarding individuals
3 with disabilities are to assure equality of opportunity, full participation, independent
4 living, and economic sufficiency for such individuals.” 42 U.S.C. § 12101(a)(8).

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

9 62. Each of the Plaintiffs is an individual with a mental or physical
10 disability within the meaning of 42 U.S.C. § 12132 and is subject to Defendants’
11 homelessness program by virtue of living in the City. Defendants’ homelessness
12 program – which comprises the City’s policy and practice of maintaining limited
13 shelter, often inaccessible to those with disabilities, combined with heavy law
14 enforcement (particularly under Penal Code section 647(e) and L.B.M.C. sections
15 8.30.030, 18.05.020), harassment, and scrutiny of those who are forced to sleep
16 outside because they cannot access this shelter – burdens disabled, homeless
17 persons in a manner different from and greater than the burdens experienced by
18 homeless persons who do not have disabilities.

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

1 64. Further, despite knowing that the majority of homeless persons living
2 in Laguna Beach are chronically homeless and suffer from mental and/or physical
3 disabilities, Defendants often target such individuals with heightened law
4 enforcement, harassment, and scrutiny to discourage them from remaining in the
5 City.

6 65. The acts and omissions of Defendants, and each of them, including
7 devising and implementing a homelessness policy and practice combining minimal
8 shelter often inaccessible to disabled, homeless persons with heavy law
9 enforcement, harassment, and scrutiny of those who cannot access this shelter,
10 constitute discriminatory animus or deliberate indifference and violate the rights of
11 Plaintiffs under the ADA.

SECOND CLAIM FOR RELIEF

Violation of Section 504 of the Rehabilitation Act (29 U.S.C. §§ 706, 794)

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14 66. Plaintiffs reallege and incorporate by reference each and every
15 allegation set forth in paragraphs 1 through 65 as though fully alleged herein.

16 67. Congress enacted the Rehabilitation Act of 1973 (29 U.S.C. § 701 et
17 seq.) (the “Rehabilitation Act”) in order to “provid[e] individuals with disabilities
18 with the tools necessary to... achieve equality of opportunity, full inclusion and
19 integration in society, employment, independent living, and economic and social
20 self-sufficiency, for such individuals...”

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

25 69. Defendants receive federal financial assistance within the meaning of
26 Section 504 of the Rehabilitation Act. At minimum, Defendants’ homelessness
27 program is funded, in part, by CDBG funds received from the federal government
28 through the County of Orange.

1 70. Each of the Plaintiffs is an individual with a mental and/or physical
2 disability within the meaning of Section 504 of the Rehabilitation Act and is subject
3 to Defendants' homelessness program by virtue of living in the City. Defendants'
4 homelessness program – which comprises the City's policy and practice of
5 maintaining limited shelter, often inaccessible to those with disabilities, combined
6 with heavy law enforcement (particularly under Penal Code section 647(e) and
7 L.B.M.C. sections 8.30.030, 18.05.020), harassment, and scrutiny of those who are
8 forced to sleep outside because they cannot access this shelter – burdens disabled,
9 homeless persons in a manner different from and greater than the burdens
10 experienced by homeless persons who do not have disabilities.

11 71. Despite knowledge that the majority of homeless persons living in
12 Laguna Beach are chronically homeless and suffer from mental and/or physical
13 disabilities and that these individuals are frequently subject to citation or
14 harassment because they cannot access the ASL, Defendants have failed to modify
15 their homelessness program to accommodate Plaintiffs' disabilities or the
16 disabilities of other homeless persons living in Laguna Beach. The provision of
17 permanent supportive housing and cessation of heavy law enforcement, harassment,
18 and scrutiny, is necessary for many of the disabled, homeless persons living in
19 Laguna Beach, including Plaintiffs, and would constitute a reasonable
20 accommodation.

21 72. The acts and omissions of Defendants, and each of them, including
22 devising and implementing a homelessness policy and practice combining minimal
23 shelter often inaccessible to disabled, homeless persons with heavy law
24 enforcement, harassment, and scrutiny of those who cannot access this shelter,
25 constitute discriminatory animus or deliberate indifference and violate the rights of
26 Plaintiffs under Section 504 of the Rehabilitation Act.

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THIRD CLAIM FOR RELIEF

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

73. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 72 as though fully alleged herein.

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

FOURTH CLAIM FOR RELIEF

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

75. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 74 as though fully alleged herein.

76. The acts and omissions of Defendants, and each of them, as described herein, violate the constitutional rights of Plaintiffs under the Due Process Clause of the United States Constitution. Defendants' policy and practice of combining minimal shelter, often inaccessible to those with disabilities with heavy law enforcement (particularly under Penal Code section 647(e) and L.B.M.C. sections 8.30.030, 18.05.020), harassment, and threats against those who are forced to sleep outside because they cannot access this shelter places Plaintiffs in a position of increased physical danger. Defendants are aware of the danger because of several high-profile incidents in which homeless individuals were killed or seriously injured and have acted with deliberate indifference to this danger.

1 **ACTUAL CONTROVERSY**

2 77. There exists an actual controversy between Plaintiffs and Defendants
3 as to each and every Claim for Relief alleged herein. Plaintiffs have suffered and
4 will continue to suffer ongoing and continuous injuries so long as the City
5 continues its policy and practice of supporting only minimal shelter inaccessible to
6 and/or inappropriate for disabled, homeless persons while citing, harassing, and
7 threatening disabled, homeless persons who cannot access this shelter. These
8 controversies warrant judicial determinations. Absent relief from this Court,
9 Plaintiffs will suffer irreparable injury as a consequence of Defendants’
10 unconstitutional and illegal acts and omissions.

11 **REQUEST FOR RELIEF**

12 Plaintiffs request relief as follows:

- 13 1. A preliminary injunction and a permanent injunction, enjoining
14 Defendants, their officers, agents, and employees, from enforcing California Penal
15 Code section 647(e) and Laguna Beach Municipal Code sections 8.30.030,
16 18.05.020 against disabled, homeless individuals who have no practical way to
17 comply by virtue of their homelessness and disability;
- 18 2. A permanent injunction requiring Defendants to create and fund a
19 program to provide permanent supportive housing within the Laguna Beach city
20 limits sufficient to house the City’s disabled, homeless population;
- 21 3. For a declaration that Defendants’ past, present, and threatened future
22 actions deny Plaintiffs the benefits of the City’s Homelessness Program or subject
23 them to discrimination on the basis of their disabilities in violation of Title II of the
24 ADA and Section 504 of the Rehabilitation Act;
- 25 4. For a declaration that Defendants’ past, present, and threatened future
26 actions violate Plaintiffs’ rights to be free from cruel and unusual punishment under
27 the Constitution of the United States and the California Constitution;
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5. For a declaration that Defendants’ past, present, and threatened future actions violate Plaintiffs’ rights to be free from due process violations under the Constitution of the United States and the California Constitution;

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

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

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

DATED: August 20, 2015

ACLU FOUNDATION OF SOUTHERN CALIFORNIA and PAUL HASTINGS LLP

By: /s/ Heather Maria Johnson
HEATHER MARIA JOHNSON

Attorneys for Plaintiffs