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VIA EMAIL AND HAND DELIVERY

March 18, 2016

Councilmember Herb J. Wesson Jr., President
Los Angeles City Council
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

RE: Proposed Amendment to Los Angeles Municipal Code Section 56.11

Dear Council President Wesson and Members of the Los Angeles City Council:

On Monday, March 14, our clients, the Los Angeles Catholic Worker, Los Angeles Community Action Network, and four individuals, filed a lawsuit against the City of Los Angeles for the illegal seizure and destruction of homeless people's property. *See Mitchell v. City of Los Angeles*, 2:16-cv-01750 (attached). We write on behalf of our clients to express our grave concern that the passage of these amendments and the ensuing enforcement will simply entrench the constitutional violations at issue in this litigation. Moreover, the passage and enforcement jeopardizes millions of dollars in federal funds from the United States Department of Housing and Urban Development to house the homeless, including our clients.

The amendments as drafted create significant sanctions against homeless people and gives unprecedented authority to City employees and contractors to seize and ultimately destroy homeless people's property. The seizures and destruction described in the current litigation, and even worse, the devastating consequences for homeless residents of this City serve to foreshadow what will occur if the City moves forward with the proposed Los Angeles Municipal Code Section 56.11. The amendments proposed today give broad-sweeping impounding authority to the same agencies and departments responsible for the unconstitutional and discriminatory actions in this case. The same departments and agencies that are seizing and destroying property today are the ones given the explicit authority to impound and confiscate property under the revised Los Angeles Municipal Code Section 56.11.

The adoption of the proposed ordinance and the inevitable enforcement creates significant sanctions against homeless people and gives unprecedented authority to City employees and contractors to seize and destroy homeless individuals' property. In doing so, it violates the United States Constitution. To be clear, giving City departments explicit authority under a municipal ordinance will not render these actions constitutional. The City has routinely made such arguments, and the arguments have uniformly been rejected. As the Ninth Circuit

held in *Lavan v. City of Los Angeles*, “violation of a City ordinance does not vitiate the [Constitutional] protection of one’s property.” 693 F.3d 1022, 1029 (9th Cir. 2012).

Numerous provisions in the ordinance as amended constitute unreasonable seizures in violation of the Fourth Amendment or provide insufficient due process protections, in violation of the Fourteenth Amendment. For example, under the proposed draft, if a person leaves their property unattended, even for a moment, the property can be tagged and then removed after 24 hours, even if the property is then moved to another location. *See* Draft Ordinance Amending Los Angeles Municipal Code Section 56.11(3)(a), (4)(a)(5) (“Draft 56.11”). It provides no mechanism for an individual to cure the violation before the property can be seized. This makes the subsequent seizure unreasonable. Other provisions allow the City to impound an individual’s property without any notice, and to discard property the City or its contractors¹ deems “evidence of a crime or contraband”. These provisions provide no limitations on this authority or provide any due process of any kind. *See* Draft 56.11(3)(h).

The City’s current practices violate homeless people’s constitutional rights and lead to the destruction of tents, blankets, clothing, and other critical items necessary for a person to survive on the street. They passage and subsequent enforcement of Los Angeles Municipal Code 56.11 as drafted will simply serve to entrench these unconstitutional policies regarding the seizure and destruction of homeless people’s property.

In addition, the passage of this draft of Los Angeles Municipal Code Section 56.11 jeopardizes tens of millions of dollars in federal funding from the United States Department of Housing and Urban Development. The new ordinance, if adopted as drafted, runs contrary to the representation made by the Los Angeles Homeless Services Authority in the application for Continuum of Care (CoC) funding from the United States Department of Housing and Urban Development (HUD) in November 2015 that the City of Los Angeles had amended Los Angeles Municipal Code Section 56.11 to remove sanctions and criminal penalties.

Continuum of Care funds from HUD account for a significant portion of the funds available for the City and County to provide housing to people who are homeless. In September 2015, HUD issued a Notice of Funds Available (NOFA) for Continuum of Care funding for the FY2015 and took the unprecedented step of conditioning the award of points in part on a Continuum of Care demonstrating that “recipients have implemented specific strategies that prevent criminalization of the homeless.”²

As part of its FY2015 application for \$110,004,000.00 in funding for the City and County of Los Angeles, LAHSA represented that “on November 17, 2015, the LA City Council amended [LAMC Section 56.11] to remove sanctions and criminal penalties” for placing personal

¹ An amendment at the March 16, 2016 Homelessness and Poverty Committee meeting included giving City contractors the same authority as city employees. As the ordinance is currently constructed, this includes giving City contractors the authority to seize and destroy property.

² FY 2015 CoC Program NOFA at p. 44.

possessions on public property.³ The application also stated that the new amended ordinance reduces sanctions further than in the initial municipal code.

As discussed above, the new ordinance does not remove sanctions and criminal penalties. Far from it. The draft ordinances retain a number of draconian provisions that allow for the impounding of individuals' personal property, none of which appeared in the original municipal code. The impounding of a person's personal property not only raise considerable constitutional concerns, at the very least and contrary to LAHSA's representations in the Continuum of Care, these provision constitute significant sanctions against homeless individuals for having property in public. The ordinance gives no justification for the impounding of property, other than it remains in public in violation of the ordinance, and that constitutes a heavy sanction for a person who relies on these items to survive. And the impact of these sanctions are amplified by the City's continued failure to provide adequate voluntary storage or even to provide storage of impounded property within a reasonable distance of the location of the seizure.

The new draft ordinance also retains criminal penalties and creates new misdemeanor crimes. For example, the new draft makes it a misdemeanor to interfere with the imposition of these sanctions by "resist[ing], delay[ing] or obstruct[ing] a City employee from moving, removing, impounding or discarding Personal Property Stored in a Public Area". Draft 56.11(10)(a). *See also* Draft 56.11 (d), (e), and (f). It is also a misdemeanor to refuse to take down a tent or shelter between 6:00 a.m. and 9:00 p.m., even if that refusal occurs in the middle of a heat wave. Draft 56.11(10)(b), (c). Therefore, a person who disagrees with a City employee or contractor's determination that their property is evidence of a crime and can therefore be immediately discarded, or who holds onto their backpack after it has been tagged when unattended, can be charged with a misdemeanor and arrested. Therefore, far from removing all sanctions and criminal penalties, the new draft ordinance retains significant elements that criminalize homelessness in Los Angeles.

Numerous departments and agencies within the Federal Government have indicated that criminalization is no longer an acceptable strategy to address homelessness, and HUD's position on this issue is very clearly reflected in the NOFA. Funding for Continuum of Care programs is divided into two tiers, and although the Los Angeles County Continuum of Care received funding in the Tier I funding cycle from HUD, the Tier II funding cycle is significantly more competitive. The loss of 2 points could significantly undercut the City and County's request for over 24 million dollars in federal funding for housing, at a time when the City and County can scarcely afford to lose a single dollar in federal funding for homelessness.

Council members expressed concern at the March 16, 2016 Homelessness and Poverty Committee meeting that failing to amend LAMC Section 56.11 would be more problematic to HUD than leaving the ordinance as drafted. Passing an amendment to the ordinance that fundamentally contradicts the statement made in the County's Continuum of Care application and that continues to criminalize homelessness, is undoubtedly far worse than keeping the

³ City and County of Los Angeles Continuum of Care application, at p. 10, available at documents.lahsa.org/programs/supernofa/2015/2015LosAngelesCoCAApplication.pdf

ordinance passed in June 2015 at bay while this Council attempts to come up with an equitable and constitutional solution to the issues facing the City of Los Angeles, without criminalizing homelessness..

The passage and enforcement of these amendments creates a double bind for the City, of prolonging the Constitutional violations, while removing the funds necessary to solve the underlying homeless crisis that has led to these violations. It provides no legal or humane way forward for the City to resolve the years of litigation that have preceded the filing of our lawsuit and that continue with our client's case. As the City struggles to find the money to pay for its plan to reduce homelessness, it is anathema to this Council's financial obligations to residents of this City, both housed and homeless, for the Council to take an action today that potentially jeopardizes tens of millions of dollars in Federal Funding, and will undoubtedly cost the City a significant amount in litigation costs.

Sincerely,

Barbara Schultz, Director of Litigation & Policy
Shayla Myers
Legal Aid Foundation of Los Angeles

Carol Sobel
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Enc.

CC: **Councilmember Gilbert Cedillo**
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17 (ADDITIONAL COUNSEL ON NEXT PAGE)

18 UNITED STATES DISTRICT COURT
 19 FOR THE CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

20 CARL MITCHELL, et al.,
 21
 22 PLAINTIFFS,
 23 v.
 24 CITY OF LOS ANGELES, et al.,
 25
 26 DEFENDANTS.

Case No.: 16-cv-01750 SJO (JPR)
 AMENDED COMPLAINT:
 FILED AS OF RIGHT

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1 **JURISDICTION AND VENUE**

2 1. This is an action for injunctive relief and damages pursuant to 42
3 U.S.C. § 1983 based upon the continuing violations of Plaintiffs’ rights under the
4 Fourth, Fifth and Fourteenth Amendments to the United States Constitution.
5 Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343 based on 42 U.S.C.
6 §1983 and questions of federal constitutional law. Jurisdiction also exists under
7 the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202. Supplemental
8 jurisdiction over Plaintiffs’ state law claims is pursuant to 28 U.S.C. §1367.

9 2. Venue is proper in the Central District in that the events and conduct
10 complained of herein all occurred in the Central District.

11 **PRELIMINARY STATEMENT**

12 3. “[T]he greatest of our evils and the worst of our crimes is poverty.”¹
13 Los Angeles has the second largest unhoused population in the nation, but the
14 largest unsheltered community by far. Declaring a “State of Emergency” last Fall,
15 the City Council described this situation as “unprecedented.” The word used in
16 almost every motion and statement by public officials is that Los Angeles has a
17 homelessness “crisis.” According to the Los Angeles Homeless Services
18 Authority (LAHSA) 2015 count, the number of individuals living on the streets of
19 the City in the last two years has increased by approximately 12 percent as wages
20 stagnated, rents increased dramatically and the affordable housing stock declined
21 in the face of gentrification in formerly low-income neighborhoods across Los
22 Angeles. This translates to almost 5,000 additional individuals, nearly all of
23 whom are living in tents, various makeshift shelters and in their vehicles
24 throughout the city.

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27
28 ¹ George Bernard Shaw, “Major Barbara.”

1 4. According to the LAHSA 2015 count, 25,000 of the approximately
2 44,000 homeless persons in Los Angeles County are located in the City of Los
3 Angeles. While the City has made some progress in helping families and
4 veterans to get housed, the same is not true for the remainder of the individual
5 homeless persons. In 2014, the City projected that there was a 72 percent
6 shortfall between available shelter and the demand for it. City officials blame the
7 situation Los Angeles faces now on a combination of “a tremendous lack of
8 emergency shelter” and a “chronic shortage of affordable housing.” They
9 estimate that more than 10,000 units a year must be added to the City’s housing
10 stock for the next five years to meet the need for “very low-low income
11 households.” However, with thousands of people becoming homeless each
12 month, as reported by the Economic Roundtable, even this estimate seems out of
13 touch with the severity of the situation.

14 5. At the first meeting of the newly-formed City Council Homelessness
15 and Poverty Committee last year, Councilmember Bonin began his introductory
16 statement by conceding that the City failed to do what it needed to do after the
17 2007 settlement in *Jones v. City of Los Angeles*. 444 F.3d 1118 (2006), *vacatur*
18 *approved per settlement*, 505 F.3d 1006 (9th Cir. 2007). The *Jones* settlement
19 suspended nighttime enforcement of LAMC § 41.18(d), the ban on sitting, lying,
20 or sleeping on the sidewalk, consistent with the decision of the Ninth Circuit
21 Court of Appeals. The nighttime enforcement ban remains in effect until an
22 additional 1,250 units of housing are created for chronically homeless persons,
23 half of which must be on Skid Row and the immediate surrounding downtown
24 area. Almost a decade later, the City has not met this obligation. In fact, if the
25 low-income housing units lost on Skid Row since 2007 are added into the
26 calculus, few, if any, units have been added toward the *Jones* requirement.

27 6. In September 2015, City officials held a press conference, describing
28 a state of emergency regarding homelessness and promising comprehensive

1 proposals to address this dire situation. A motion introduced in the City Council
2 on September 22, 2015, characterized the situation as “a moral, humanitarian and
3 public health crisis.” The City promised to commit at least \$100 million annually
4 for housing and other services. More recently, the City announced its long-term
5 plan to address this critical situation.

6 7. But the promise has proved to be an empty one because, at the same
7 time that City officials concede the desperate need for these programs, they claim
8 that there is no money to fund them. Elected officials now talk about putting a
9 bond measure on the ballot next November that, if passed by the necessary two-
10 thirds majority, might provide some funds in a few years. The Mayor has
11 publicly discounted the bond measure in favor of a \$75 tax on each document
12 filed with the City government for commercial developments. Mayor Garcetti
13 projects this proposal would produce \$30 to \$40 million dollars annually, far less
14 than the promised \$100 million annually calculated as necessary to implement
15 these critical programs. But, even if this proposal is adopted, it would take
16 several years to generate the projected funds. There is no immediate source of
17 funding for the City that will alter the homelessness crisis soon. In the meantime,
18 the City has begun a renewed vigorous and cruel enforcement of so-called
19 “quality of life” offenses against the homeless, charging many with misdemeanor
20 offenses, jailing them for these quality of life offenses, and seizing and destroying
21 their property.

22 8. The need to respond to the increasing numbers of unsheltered
23 individuals in Los Angeles is hardly new and neither is the approach of
24 criminalizing - rather than housing - people who are homeless. Over the past 25
25 years, the City’s primarily response has been to invest in approaches that address
26 the visible presence of homeless people, without actually reducing the number of
27 residents on the street each night. These approaches include criminalizing
28

1 homeless and the destruction of homeless people's property. These practices
2 have been repeatedly challenged and struck down by the Court.

3 9. In 2006, the Ninth Circuit Court of Appeals enjoined nighttime
4 enforcement of Los Angeles Municipal Code ("LAMC") § 41.18(d), making it a
5 crime to lie, sit or sleep on a public sidewalk any time of day or night anywhere
6 in the City. The Court held that the law, as enforced, violated the Eighth
7 Amendment. *Jones*, 444 F.3d at 1138. In 2014, the Court struck down as
8 unconstitutionally vague LAMC § 85.02, which made it a crime for a person to
9 park or stand a vehicle on any public property in the City if the person "lived" in
10 the vehicle "day to day, overnight or otherwise." *Desertrain v. City of Los*
11 *Angeles*, 754 F.3d 1147 (9th Cir. 2014).

12 10. In 2003, the City was also successfully sued to enjoin a sweeping
13 "stop and frisk" policy instituted immediately after Chief Bratton began his tenure
14 in Los Angeles and now-Chief Beck was the new Captain III at Central Station.
15 *See Fitzgerald v. City of Los Angeles*, CV 03-01876 DDP; 485 F.Supp.2d 1137
16 (C.D. Cal. 2007). The policy, dubbed "Operation Enough," was to locate
17 probation and/or parole violators or absconders but, in fact, swept up black males
18 on Skid Row without reasonable suspicion. Over the course of six years of
19 litigation, the district court enjoined the practice twice before a final settlement
20 was reached in 2009, requiring the LAPD to provide ongoing training on Fourth
21 Amendment requirements to all patrol officers at Central Station.

22 11. In addition to criminalizing homelessness with laws and actions the
23 Court has held to be unconstitutional, the City has also embarked on an
24 unconstitutional campaign to seize homeless people's property and to remove
25 homeless individuals from the public sidewalks. The City has persisted with this
26 approach despite repeatedly being rebuked by the courts. The City was
27 successfully sued three times to stop the unlawful seizure of the personal property
28 of homeless individuals on Skid Row. *See Bennion v. City of Los Angeles*, LASC

1 Case C637718 (1987); *Justin v. City of Los Angeles*, 2000 U.S. Dist. LEXIS
2 17881; CV-00-12352 LGB (CD Cal. 2000); *Lavan v. City of Los Angeles*, 797 F.
3 Supp. 2d 1005 (CD Cal. 2011); *aff'd*, 693 F.3d 1022 (9th Cir. 2013). It has also
4 been sued twice to challenge the same practices in the Venice area.

5 12. In the most recent Court case, *Lavan v. City of Los Angeles*, in 2011,
6 after the City was caught seizing and destroying homeless people's shopping carts
7 and belongings, the U.S. District Court granted an injunction against the City of
8 Los Angeles, prohibiting it from seizing property that is not abandoned, evidence
9 of a crime or creates a public hazard, and from destroying that property without
10 first storing for 90 days for someone to be able to claim it. The Ninth Circuit
11 upheld the injunction. 693 F.3d 1022 (9th Cir. 2013).

12 13. The City's practices towards people who are homeless have been
13 condemned by the Courts. In affirming the rights of the plaintiffs in *Lavan* the
14 Ninth Circuit underscored that the "simple rule [i.e. notice and an opportunity to
15 be heard by an impartial tribunal] holds whether the property in question is an
16 Escalade or a [tent], a Cadillac or a cart." *Id.* at 1032.

17 14. Even as these laws have been struck down and the approaches
18 rebuked, the City continues its criminalization of homelessness. A report issued
19 in 2015 by the City's Chief Administrative Officer, analyzed the resources spent
20 by the City to respond to the homeless in the prior year. The report identified
21 between \$87 and \$100 million spent indirectly by the City on responses to
22 homelessness. Ninety percent of that money was spent by the LAPD to enforce
23 laws against homelessness such as LAMC Section 41.18(d).

24 15. The City has continued to allocate nearly the bulk of its current
25 resources directed to addressing homelessness to target homeless communities as
26 criminals. In the Skid Row area alone, the City employs two Special Details, the
27 East Side Detail and the Safer Cities Initiative, which has now been rebranded
28 RESET. The primary mission of the East Side Detail is to enforce these laws

1 against homelessness in the Central Division. Through RESET, the LAPD
2 deploys 50 uniformed officers, six sergeants and a lieutenant to suppress crime in
3 the area.

4 16. The City's approach is even more indefensible when viewed against
5 the directives issued by the United States Interagency Council on Homelessness
6 ("USICH"), composed of nineteen federal cabinet and agency heads to organize
7 federal efforts to end homelessness. The most recent USICH report, "Ending
8 Homelessness for People Living in Encampments," is directly on point and
9 counter to the criminalization approach taken by Los Angeles to homeless
10 individuals forced to live on the streets in large part because of the government's
11 failures over decades.

12 17. Specifically, the USICH underscored that "forced dispersal" of
13 homeless encampments is inappropriate and undermines the goal of providing
14 services to homeless individuals. While the USICH underscored the importance
15 of "intensive and persistent outreach and engagement," the City of Los Angeles
16 implemented "intensive and persistent" citations, arrests, and destruction of
17 personal property, putting an already vulnerable community at extreme peril.

18 PARTIES

19 **PLAINTIFFS**

20 **Carl Mitchell**

21 18. Plaintiff CARL MITCHELL has been living on Skid Row for the
22 past several years. Prior to that time, he lived in various facilities with supportive
23 services. Mr. MITCHELL lived in a sober living facility for several years, until
24 the building was sold and the facility closed. After that, Mr. MITCHELL moved
25 to another supportive facility but was forced to move when the building was shut
26 down because of bed bug infestations. At that time, Mr. MITCHELL came to
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28

1 Skid Row, where he has been since. Mr. MITCHELL is almost 62 years old and
2 suffers from several significant health problems.

3 19. On December 15, 2015, Plaintiff MITCHELL was approached by a
4 supervisor in the LAPD and asked if a specific cart belonged to him. Mr.
5 MITCHELL responded that his carts were the two Hippie Kitchen carts next to
6 him and that the third cart, located on his other side, was not his. Despite his
7 repeated insistence that the third cart did not belong to him, he was arrested and
8 charged with a misdemeanor for possession of a stolen shopping cart. Mr.
9 MITCHELL was handcuffed and placed in the back of a patrol car. He watched
10 as the officer directed that the property in all three carts – his two Hippie Kitchen
11 carts and the third cart – be dumped out and then thrown in the back of a truck.
12 Mr. MITCHELL's property was not segregated from the property in the
13 purportedly illegal shopping cart that belonged to another person. Although Mr.
14 MITCHELL asked that the officer give him his backpack with his medications,
15 medical appointment papers and other personal items, his request was rejected.

16 20. Mr. MITCHELL had not been arrested for any offense in a decade
17 when this incident occurred. Although he committed no crime in the first place,
18 his purported "crime" should have been charged as an infraction for a violation of
19 LAMC § 41.45(c) ("Illegal Possession of a Shopping Cart"). Even if erroneously
20 charged as a misdemeanor, because Mr. MITCHELL had his identification, he
21 should not have been taken into custody, pursuant to Volume 4, Section 216.66 of
22 the Los Angeles Police Department Manual. Had this occurred, Mr. MITCHELL
23 would not have had his property taken and he would not have been taken into
24 custody, charged with a misdemeanor, booked and held for about 18 hours at the
25 Metropolitan Detention Center before being released in the middle of the night.

26 21. On the night Mr. MITCHELL was released from the jail, the
27 temperature in Downtown Los Angeles was 40 degrees. That night, he slept in
28 the cold with only a single blanket he found on the sidewalk as cover. When he

1 was released, he was not given any receipt or inventory for the property seized at
2 the time of his arrest. The only property receipt he received listed his shoelaces, a
3 belt and one or two other items that were on his person when he was arrested. He
4 was given no notice of where or how his backpack and other property could be
5 reclaimed. None of his property that was not destroyed has been returned. Mr.
6 MITCHELL had to go to JWCH, also known as Homeless Healthcare, where he
7 is a patient, to replace his medication. After all of this, Mr. MITCHELL's
8 charges were rejected by the City Attorney, and he was not charged with a crime.

9 **Michael Escobedo**

10 22. Plaintiff MICHAEL ESCOBEDO had his tent taken and destroyed
11 around Christmas Eve 2015. Mr. ESCOBEDO has severe vision problems that
12 have left him legally blind, uses a white cane to navigate passage on the streets
13 and sidewalks and has the assistance of a support dog he has trained to guide him.
14 In the past, he tried to secure housing in a downtown Residential Hotel, only to be
15 told that they could not accommodate individuals with his disability or with
16 service animals. For the same reasons, Mr. ESCOBEDO cannot access the
17 shelters on Skid Row. Because his support dog is not a licensed guide dog, he
18 cannot bring her into a shelter.

19 23. On the morning that his property was taken, Mr. ESCOBEDO was
20 not informed of any notice that a clean-up of the area was schedule. Mr.
21 ESCOBEDO left his property in the care of his neighbor while he went to get
22 coffee at about 7 a.m. When he returned a short time later, he observed that the
23 area of the sidewalk where he kept his property had been taped off with yellow
24 tape and public employees were removing property. Mr. ESCOBEDO was given
25 a few minutes to take some of his possessions out of his tent, but because of his
26 disability, this was insufficient, and he was not allowed to take the tent. He
27 observed the tent dumped into the back of a garbage truck by City employees.
28 After his tent was seized and destroyed, Mr. ESCOBEDO was forced to sleep

1 with only a tarp for protection for several months until he could replace the tent.
2 The tarp was insufficient to protect him from the cold, rain and wind, and he was
3 unable to get more than a few hours of sleep each night. Without the tent, his
4 personal property, including all of his clothes, was soaked and became mildewed.

5 **Salvador Roque**

6 24. Plaintiff SALVADOR ROQUE is an unsheltered resident of Skid
7 Row. He has only been homeless for a few months, following personal events
8 that caused him to suffer severe depression, for which he takes prescription
9 medications. On the morning of February 23, 2016, he was sweeping the
10 sidewalk area where he sleeps at night when an LAPD patrol car drove by. The
11 officers in the vehicle used the loudspeaker system to announce that everyone on
12 the block had to take down their tents. Before Mr. ROQUE could comply with
13 the order, the officers asked him for identification, ran a wants and warrants
14 check, and found an outstanding charge of a Failure to Appear on a prior
15 infraction.

16 25. Mr. ROQUE was handcuffed, arrested and placed in a patrol car. As
17 he was in the back of the vehicle, he observed LAPD officers use yellow tape to
18 surround his property. On information and belief, none of the property was
19 booked by the LAPD when Mr. ROQUE was arrested and held on \$750 bail. He
20 was released the following day. At the time of his release, he was not given a
21 receipt for any of his property. He has attempted to find his property at several
22 locations, as advised by the LAPD, all to no avail to date.

23 26. For the last three weeks, he has stayed with a friend in a Residential
24 Hotel a few nights a week. Most nights, he stays awake all night and sleeps
25 during the day. As a result of being exposed to the cold and dampness all night,
26 he developed a cough, congestion in his chest and a sore throat.

27 27. As Plaintiff ROQUE was being arrested and his property was being
28 seized, the LAPD also took the opportunity to seize the property of his neighbor,

1 Ernesto Aguirre, who was not at the scene; he was receiving medical care at the
2 JWCH Healthcare for the Homeless clinic.

3 28. Defendant City's employees and agents knew that the property next
4 to Mr. ROQUE's property did not belong to Mr. ROQUE, yet they seized them
5 without prior notice. Several individuals attempted to intervene and told the
6 police that the property owner was nearby at Homeless Healthcare for a medical
7 appointment. The City's employees and agents continued to throw away the
8 majority of the property, while one of the bystanders ran to retrieve Mr. Aguirre.

9 29. City employees threw away most of the property of Plaintiff
10 ROQUE and Mr. Aguirre, and as to the few items that were not thrown away,
11 including all of Mr. Aguirre's medications, they were commingled with the
12 property of Plaintiff ROQUE.

13 30. While all of the City's employees and agents were still on site, Mr.
14 Aguirre, who was in medical distress but had been told what was going on with
15 his property, returned to the scene to retrieve his property, He told the officer in
16 charge at the scene, Sgt. Richter, that he needed his belongings. One of the
17 individuals who had gone to get him also told the LAPD officers that Mr. Aguirre
18 needed his medications, which were now in a bag with Mr. ROQUE's property.
19 Sgt. Richter ignored these entreaties, grabbed the bag with the commingled
20 property and put it in the back of the LAPD truck, which then drove off. During
21 all of this time, Mr. Aguirre was collapsed on the sidewalk, his pleas ignored by
22 Sgt. Richter, who was standing right in front of him. Only after the property was
23 removed did Sgt. Richter call an ambulance to take Mr. Aguirre to the hospital for
24 emergency treatment.

25 31. Since his release from custody the following day, Mr. ROQUE has
26 tried multiple times to reclaim his property, including as recently as the date of
27 the filing of this action. Each time, he has been told by the LAPD that he has to
28 go to a different location, or talk to a different person, to see if someone knows

1 where his property is stored. Because of his disabilities, attempting to track down
2 any property that might have been saved has been even more difficult, and all of
3 these efforts are to no avail. Mr. ROQUE lost everything, including medications,
4 blankets, money and important personal documents, including papers he needed
5 for his medical conditions and his efforts to obtain Social Security disability
6 benefits. Neither Mr. ROQUE nor Mr. Aguirre received any documents
7 inventorying the property that was taken or giving them notice that the property
8 could be reclaimed. Mr. ROQUE's property was seized attendant to an arrest;
9 Mr. Aguirre's property was seized without any prior notice and without cause.

10 **Judy Coleman**

11 32. Plaintiff JUDY COLEMAN is a disabled person who is homeless
12 and lives on Towne Avenue. She suffers from multiple conditions, including
13 severe arthritis in her hips and knees, diabetes, high blood pressure and
14 respiratory problems. Her health conditions require her to take medication, use
15 medical equipment and test her blood sugar levels regularly. On February 12,
16 2016, she was awakened at approximately 4:00 a.m. by an announcement over a
17 loud speaker on an LAPD vehicle. The announcement was that everyone had to
18 be packed and off the street by 6:00 a.m. because of a clean-up that was going to
19 occur. The announcement included a warning that anyone who did not comply
20 would be subject to arrest. Plaintiff COLEMAN complied fully with the order,
21 moving all of her property around the corner to Fifth Street.

22 33. Soon thereafter, LAPD Lieutenant Mathis approached her about a
23 silver shopping cart about five to six feet away from Ms. COLEMAN. She told
24 Lt. Mathis that the cart did not belong to her and that she did not know whose it
25 was. Lt. Mathis responded by insisting that the silver cart was hers now and that
26 she had too much property. He then placed her under arrest for possession of a
27 stolen shopping cart. Although possession of a stolen shopping cart is an
28 infraction under the Los Angeles Municipal Code, in order to be able to arrest

1 her, officers charged Ms. COLEMAN with violating a provision of the California
2 Business and Professions Code, a nearly identical state law that allows the
3 violation to be charged as a misdemeanor and therefore, result in arrest.

4 34. While Ms. COLEMAN was being arrested, she asked to grab her
5 medication and to allow her to use her walker. The officers refused both requests.

6 35. Ms. COLEMAN was held in custody for two days, and was finally
7 released on Sunday, February 14, 2016. When she was released, she had no
8 medications or other equipment needed for her medical conditions, even though
9 the LAPD was aware of her medical situation and she was provided some
10 treatments while in custody. She was given a property receipt that listed only
11 that "multiple" bags were stored at the off-site property storage facility. Because
12 she was released on Sunday, she could not access her property until no earlier
13 than Tuesday.

14 36. Following her release, she had no blanket, tent or other items to
15 protect her from the elements. A few days after her release, she developed
16 pneumonia and was then hospitalized for treatment.

17 37. Plaintiff COLEMAN has attempted to retrieve her property without
18 success. She has called the telephone number on the property receipt she
19 received on her release from custody, but that location is generally unstaffed,
20 making it difficult, if not impossible to recover property. The signs at the storage
21 location in the parking lot across from the Roybal Building indicate the days and
22 hours that the facility is supposed to be open, but the facility is not staffed..
23 Because she has mobility issues, she cannot carry her property back to the area
24 where she receives services and stays at night, without some form of
25 transportation. The LAPD provides no assistance to transport any remaining
26 property that may have been salvaged, from the excess property storage facility.

1 38. The appearance date on the citation for violation of the Business and
2 Professions Code was March 10, but no charges have been filed against her to
3 date.

4 **Los Angeles Catholic Worker**

5 39. Plaintiff Los Angeles Catholic Worker, (“LACW”) founded in 1970,
6 is an unincorporated lay Catholic community of women and men that operate a
7 free soup kitchen, hospitality house for the homeless, hospice care for the dying
8 and by-monthly newspaper. Nicknamed the “Hippie Kitchen,” the facility is
9 located on the Northeast corner of 6th Street and Gladys Avenue in Skid Row.
10 LACW provides full meals to the community three times a week. In furtherance
11 of its mission, the Hippie Kitchen associates to provide other services, including
12 access to dental care, over-the-counter medications, podiatry services, toiletries
13 and other personal items. In furtherance of its mission, for the past several years,
14 the Hippie Kitchen has purchased shopping carts to provide them to unsheltered
15 homeless persons to store and move their personal belongings.

16 40. The shopping carts are a bright red with the LACW name marked on
17 the handle and a distinctive sign affixed to the front of each cart, stating that these
18 carts are the private property of LACW and provided as “Shopping Carts for the
19 Homeless.” Over the last three months, employees and agents of the City have
20 seized these carts without lawful justification. Nearly six dozen carts were
21 rescued by the fortuitous intervention of Plaintiff LACW; returned to Plaintiffs by
22 private shopping cart retrieval companies, which informed LACW that they were
23 given to them by the Los Angeles Police Department; or picked up from a
24 location where the LAPD stores collected carts. Significantly, in *Lavan*,
25 Defendant City submitted declarations to the Court, attesting that the LAPD
26 would never take a Hippie Kitchen cart and throw away the property in the cart.
27 Despite the City’s averments, the documentary evidence demonstrated that this
28

1 statement was false and the Court so found. *See Lavan*, 797 F.Supp.2d at 1014
2 (citing Duncanson Decl. ¶ 5).

3 41. As a result of Defendants' actions to seize the Hippie Kitchen carts,
4 Plaintiff LACW has had to expend personnel resources to prevent removal of the
5 carts and to reclaim the carts once unlawfully taken by Defendants. In addition,
6 because many carts are never returned by Defendants, LACW has to expend
7 scarce financial resources to replace the carts and some of the property destroyed.
8 The policies of Defendants also interfere with Plaintiff LACW's mission to
9 provide a safe place for the homeless community. Individuals cannot leave their
10 shopping carts to obtain the assistance provided by the Hippie Kitchen because
11 they risk of losing their property when it is unlawfully seized and destroyed.

12 **CANGRESS**

13 42. Plaintiff CANGRESS, also known as the Los Angeles Community
14 Action Network ("LA CAN"), is an grassroots, non-profit organization operating
15 in Skid Row for approximately two decades. More than 800 low-income
16 residents of Skid Row are involved with LA CAN, many of whom are
17 unsheltered each night. The primary purpose of the organization is to organize
18 and empower community residents to work collectively to address systemic
19 poverty and oppression in the community. Since its founding in 1999, LA CAN
20 has been the only member-driven organization in Skid Row whose goal is to
21 protect the rights and prevent the further disenfranchisement of homeless and
22 poor people in Los Angeles. LA CAN brings this action on behalf of its members
23 and associates whose property has been seized by employees and agents of the
24 CITY pursuant to the enforcement policies, practices and customs of seizing and
25 destroying property in Skid Row. As a result of Defendants' unlawful actions,
26 LA CAN has expended personnel resources to try and prevent property from
27 being seized and to try and locate if and where any property was taken so that
28

1 they can assist their members and associates to recover the property.
2

3 **DEFENDANTS:**

4 43. Defendant City of Los Angeles ("CITY") is a municipal entity with
5 the capacity to sue and be sued. It is a Charter City under the laws of the State of
6 California. The departments of the City of Los Angeles include the Los Angeles
7 Police Department and the Los Angeles Department of Public Works and its
8 departments and agencies. Employees of the CITY have engaged in the acts
9 complained of herein pursuant to the policies, practices and customs of the CITY.

10 44. Defendant Lt. Andrew Mathis, Sgt. Hamer and Sgt. Richter are all
11 supervisors in the Los Angeles Police Department and presently assigned to
12 Central Division. They are the individual employees of Defendant CITY who
13 were on site and directed the unlawful seizure and destruction of Plaintiffs'
14 property and directed the false arrest of certain of the Plaintiffs on a misdemeanor
15 crime of possession of stolen shopping carts.

16 45. Each of the Defendants, their employees and agents, participated
17 personally in the unlawful conduct challenged herein and, to the extent that they
18 did not personally participate, authorized, acquiesced, set in motion, or otherwise
19 failed to take necessary steps to prevent the acts that resulted in the unlawful
20 conduct and the harm suffered by Plaintiffs. Each acted in concert with each
21 other. The challenged acts caused the violation of Plaintiffs' rights.

22 46. The identities and capacities of defendants DOES 1 through 10 are
23 presently unknown to plaintiffs, and on this basis, Plaintiffs sue these defendants
24 by fictitious names. Plaintiffs will amend the Complaint to substitute the true
25 names and capacities of the DOE defendants when ascertained. Plaintiffs are
26 informed, believe, and thereon allege that DOES 1 through 10 are, and were at all
27 times relevant herein, employees and/or agents of the Defendant CITY and are
28

1 responsible for the acts and omissions complained of herein. Defendants DOES 1
2 through 10 are sued in both their official and individual capacities.

3 4 **THE SEIZURE AND DESTRUCTON OF PROPERTY**

5
6 47. Despite five lawsuits against it for removing property without
7 adequate pre-deprivation notice or post-deprivation notice, the CITY has returned
8 to the same unlawful policies and practices. This time, the due process violations
9 are compounded by the simultaneous arrests of homeless persons.

10 48. On information and belief, since at least December 2015, the Los
11 Angeles Police Department has had a policy, custom or practice of arresting
12 homeless individuals for non-violent quality of life crimes which would otherwise
13 be charged as infractions, and incident to those arrests, seizing and destroying
14 their property.

15 49. Since at least 2013, it has been the City Attorney's policy to charge
16 a number of quality of life offenses as infractions, a policy which was codified in
17 an interoffice memorandum. Following the issuance of the Revised Filing
18 Guidelines for Direct Citations, the Los Angeles Police Department issued a
19 similar directive, instructing officers to charge these violations as infractions as
20 well. The ordinances covered by these customs and procedures include LAMC
21 §41.18(d), which prohibits sitting, sleeping, or lying on the sidewalk and LAMC
22 §41.45, which prohibits the "unauthorized removal, use or possession of shopping
23 carts" that have affixed to them a sign identifying the private business owners.

24 50. While law enforcement officers retain discretion to charge these
25 violations as misdemeanors, the practice of charging these crimes as infractions
26 was supported by the Los Angeles Police Department, the Los Angeles Police
27 Commission, and the Los Angeles City Council, following a report by the Los
28 Angeles Police Department. The report, which was completed at the direction of
the City Council and approved by both the Police Commission and the City

1 Council, found that the infraction policy was advantageous both in terms of the
2 costs and benefits of arrests and consistent with current LAPD practices. The
3 review overwhelmingly showed that individuals charged with violations of these
4 crimes were being cited for infractions and were not being arrested. For example,
5 in 2012, the LAPD did not arrest anyone for having a shopping cart in violation
6 of LAMC Section 41.45(c).

7 51. When charged as an infraction, these violations may not form the
8 basis of arrest. Even when charged as a misdemeanor, the LAPD standard
9 operating procedure and state law provides that a person can be to be cited and
10 released from custody with the issuance of a Notice to Appear, without being
11 taken to a police station or held for any amount of time longer than necessary to
12 issue a Notice to Appear.

13 52. Despite this City-wide policy, since at least December 2015, the
14 LAPD has had a custom, policy, or practice of arresting homeless individuals in
15 Skid Row for violations of these quality of life ordinances, in order to seize and
16 destroy their property.

17 53. When a homeless individual is arrested for violations of these minor
18 offenses, LAPD has a custom, policy, and practice of contacting the Bureau of
19 Sanitation and Street Services trucks to respond to the scene. Since at least
20 February 2016, both the East Side Detail and RESET have been assigned a
21 deployment of trash trucks from the Department of Sanitation and Street Services,
22 which are now present in Skid Row every day.

23 54. When one of the City departments responds to deal with a homeless
24 person's property, it responds with a trash truck, a flatbed pickup truck, and/or a
25 skiploader. When an arrestee is taken into custody, the LAPD and responding
26 department tape off a portion of the sidewalk with police tape, warning
27 individuals not to cross or enter the area. During these sweeps, the area covered
28 by the tape can include other individuals' property. LAPD officers and City

1 Workers often use this opportunity to seize and destroy property other than the
2 property that belongs to the arrestee. LAPD officers instruct City personnel to
3 investigate property that does not belong to the arrestee; a single arrest can lead to
4 the clearing of an entire City block.

5 55. City workers responding to the property do not use care in handling
6 the property. It is treated as if it is presumptively trash. The workers use knives
7 to rip open tents, destroying them in the process. They crush the tent poles and
8 items in the tent. When Bureau of Sanitation responds to a call from the LAPD
9 regarding an arrestee's property, they seize and dispose of nearly all of the
10 property, including tents, blankets, shoes, clothing, and often medications,
11 medical assistance equipment such as walkers, diabetes testing machines and
12 nebulizers, personal documents, and other critical items. Items that the CITY
13 determines should be thrown away are shoveled or thrown in a Department of
14 Sanitation trash truck for immediate disposal.

15 56. After an arrestee is taken into custody, the arrestee is not given a
16 chance to deal with their property in any way. Officers do not allow them to pack
17 up their belongings or to identify items that are critically important, like
18 Identification cards, medications, or family photos. Even when these items are
19 stored in a single backpack or bag, the officers do not allow the arrestees the
20 opportunity to identify these items, so that the items can be transported with the
21 arrestee and stored for release at the same time arrestee is released from custody.
22 The seizure and destruction of the backpacks is especially troubling because the
23 City Council is considering the City Attorney's proposed revision to LAMC
24 Section 56.11, which would allow unsheltered individuals to keep a backpack
25 only with what the CITY has called "essential" personal property, including
26 medications and personal papers. Individuals who are arrested are also not
27 allowed to leave their property in the care of another person near them. Instead,
28 the arrest provides the City of Los Angeles with the opportunity to clear the

1 homeless individual's property from the streets. The majority of the property is
2 simply thrown away.

3 57. If any property is saved, it is bagged, and according to LAPD policy,
4 should be itemized and tagged as the arrestee's excess personal property.
5 Officers and city employees do not take care to ensure that only the arrestee's
6 property is bagged and tagged. As a result, the property of other arrestees or
7 individuals who are not arrested, have their property comingled with the
8 arrestees' property. These individuals cannot get this property back because it is
9 stored under the arrestee's name, and only the arrestee can retrieve the property.

10 58. Arrestees' property that is bagged and tagged is not taken and stored
11 along with the arrestee, either at the Metropolitan Detention Center or the County
12 Jail. As a result, the property is not accessible to the arrestee upon his or her
13 release from custody. Instead, any small amount of property that is saved from
14 destruction is supposed to be given to the East Side Detail to store at the Central
15 Division "excess property warehouse," a warehouse that the Detail operates. This
16 warehouse is separate and distinct from the Bureau of Sanitation 90-day storage
17 facility, where property is stored that is seized during Operation Healthy Streets
18 sweeps or when the Bureau of Sanitation picks up property on the streets during
19 any of its now daily cleanings.

20 59. If the property is collected by the RESET detail, it is not necessarily
21 transported directly to the warehouse. Because the East Side Detail only works
22 between the hours of 4:00 a.m. and 2:00 p.m. Monday through Friday, any
23 property that is picked up by RESET outside of these hours is transferred to the
24 Central Division and left by the East Side Detail truck until it can be transported
25 by a member of East Side Detail to the warehouse.

26 60. The LAPD's excess property storage facility is not located at the
27 Metropolitan Detention Center or the Parker Center, where arrestees are routinely
28 transported. Instead, it is located in a hard-to-identify spot in the middle of a

1 parking lot across from the Roybal Federal Courthouse. The address given for
2 the warehouse leads to the City of Los Angeles parking lot entrance, with
3 prominent signs announcing that only City employees may use the lot. The
4 Excess Property warehouse sign itself is significantly smaller, and is next to a
5 number of gates that are locked. In order to access the walkway, one must walk
6 through the main vehicle entrance and through the parking lot to the building.
7 Individuals can access their property from the warehouse only between the hours
8 of 8:00 a.m. and 1:00 p.m., Tuesday through Friday. The warehouse is not
9 regularly staffed however; in order to gain access to the facility and their
10 property, an individual must have access to a working and charged telephone, and
11 must call the non-emergency telephone number for the Central Division. At
12 times, this number is not answered, either by an individual or even a voicemail
13 system. If an individual is able to contact someone at the Central Division, they
14 must then wait, often for hours, for someone from the East Side Detail to respond
15 to the call to open up the warehouse during the limited hours that the warehouse
16 will be accessed.

17 61. Because of the limited hours that the individual can obtain their
18 property, someone who is arrested likely will not be able to obtain their property
19 the day they are arrested and released, if at all. Anyone arrested later than
20 Thursday afternoon will not be able to obtain whatever property was saved from
21 destruction, until Tuesday of the following week, regardless of how long they are
22 held in custody, because the facility is closed.

23 62. If an individual manages to find the warehouse when it is open, in
24 order to obtain the property, the arrestee must show a Property Receipt. Before
25 an arrestee is released, the arrestee is supposed to be given this receipt. This
26 property receipt should list all items that were stored; however, the LAPD lists
27 the items in vague terms, and does not itemize what has been retained. The
28 arrestee has no way of knowing what property was stored, and no way of

1 knowing what property was destroyed. This property receipt provides the
2 arrestee with the sole notice where their property is being housed and how it can
3 be retrieved. If the arrestee is not given a receipt, they have no way of knowing
4 where the remainder of their property that was not thrown away is being stored.
5 If another individual's property is stored with the arrestee's property, the property
6 owner will have no way to obtain the property.

7 63. Property that is seized during a street cleaning or at any other time
8 other than incident to an arrest is stored at another facility. Therefore, individuals
9 whose property is seized are left to guess whether their property has been stored
10 and where it can be reclaimed. Because adequate post-deprivation notice is not
11 provided at the location of the seizure and even law enforcement officers in
12 charge of the facilities are unable to provide accurate information, individuals
13 whose property has been taken must often must walk from location to location,
14 trying to search out what City employees did with their property. For individuals
15 with disabilities that impair their ability to navigate this process, or who have
16 mobility issues, and in particular if their mobility devices have been seized and
17 not returned, this is an impossible feat. As a result, even if any items are stored,
18 the individual never sees them again.

19 20 **THE HEALTH AND SAFETY RISK TO UNHOUSED PERSONS**

21
22 64. A large percentage of the persons living on the streets in Los
23 Angeles have or are at serious risk for health problems. The risk is greatly
24 increased by several factors, including a lack of shelter, especially in the winter
25 months when it is cold and rains; preexisting health conditions; and the advanced
26 age of many chronically homeless residents.

27 65. The danger created for unhoused individuals by the systematic
28 seizure and destruction of their property, including the most basic necessities like

1 medications, blankets, tents and tarps, is obvious and particularly so in the winter.
2 Although Los Angeles often enjoys warm weather during daytime in the winter,
3 at night the temperature regularly drops to 50 and below. This crosses the
4 threshold for the risk of hypothermia, and increases the risk of other illnesses that
5 can result from sleeping unsheltered on the streets, particularly in the rain.
6 Moreover, when the wind-chill factor² is included, the threat increases.

7 66. The National Oceanic and Atmospheric Administration (“NOAA”)
8 utilizes an index that takes into account advances in meteorology,
9 biometeorology, and computer modeling to create a formula that accurately
10 calculates this perceived temperature, and warns the public about the dangers
11 from exposure to winter winds and low temperatures. Essentially, this index
12 shows how wind speeds dramatically impact how quickly the human body loses
13 heat.

14 67. According to NOAA records, this past December, the average
15 minimum temperature in Los Angeles was 47.1 degrees. To illustrate, at this
16 temperature, winds of only 5 miles per hour reduce applied temperatures by 2
17 degrees; winds of 15 miles per hour create a wind-chill factor that reduces the
18 temperature felt by the body by 6 degrees; and winds traveling 25 miles per hour
19 produce a wind-chill factor of -8.1 degrees. In the rain coupled with lightning
20 and thunder on March 7, 2015, wind gusts reached as high as 33 miles per hour.
21 With a raw temperature of 51 degrees during the storm, the force of the wind
22 resulted in a wind-chill factor of -8 degrees, lowering the temperature to
23 approximately 43 degrees. Thus, even in Los Angeles’ so-called “moderate
24 winters,” the temperatures experienced by homeless individuals exposed to the

25
26
27
28 ² Wind-chill is the cooling effect of wind on exposed skin. See,
www.nws.noaa.gov/forecasts/wfo/definitions/defineWindChill.html

1 elements consistently fall well-below 50 degrees, the threshold where individuals
2 are exposed to hypothermia.

3 68. Defendants are well aware of the danger the homeless community
4 faces and recognized it in their plan for the limited winter shelter program and
5 other emergency pop-up shelters. But even without this public recognition, it is
6 plain common sense that protection from the cold and rain is an identifiable
7 human need. Unprotected exposure to cold and rain presents a serious risk of
8 illness and, as already happened once this winter, death to someone living on the
9 sidewalk with only minimal or no protection once their property is seized and
10 destroyed. A policy that ignores the “mutually enforcing effect” of destroying
11 property and leaves people to live on the streets manifests actionable deliberate
12 indifference.

13 69. The immediate risk to the health and safety of the homeless
14 community far outweighs any element based on the perceived public health
15 hazard that may exist and are used to justify the seizure and destruction of
16 property, like the presence of rat droppings on property, or the fact that personal
17 possessions become wet as a result of the rain. The CITY is well aware of this.
18 In 2012, after the injunction was entered in *Lavan*, the CITY approached the Los
19 Angeles County Public Health Department to identify public health issues on
20 Skid Row. On May 21, 2012, Jacqueline Taylor, Bureau Director for Region 1,
21 issued a report on the County’s findings. Significantly, the County did not find
22 that identified health hazards justified the removal and destruction of personal
23 property. To the contrary, the County opined that if the property was moved
24 regularly and, if possible, kept 18 inches off the ground, such as in a shopping
25 cart or other mobile device, the problem would be alleviated. Without seizing
26 and destroying the property of homeless persons, the CITY implemented the
27 clean-up policies recommended by the County and, in fact, received a favorable
28 report from the County just a few months later.

1 70. Notably, the solution the County directed for most of the issues was
2 to provide additional public toilets, adequate trash bins with frequent disposal of
3 garbage, and access to soap and water to minimize the transmission of disease
4 because people were living on the streets in “desperate situations.” Although the
5 CITY did add a few trash cans in Skid Row since the County issued its report
6 four years ago, there are still only a few toilets, and no soap or water for the
7 number of homeless individuals, which has increased by more than 20 percent
8 since the County issued its report in 2012.

9 71. Defendants’ present justification for destroying Plaintiffs’ property is
10 based on the purported contamination of those items. This was not a justification
11 the County Public Health Department would sanction in 2012 and it is not a
12 sufficient rationale today. But even if some of the property is contaminated, this
13 approach strips Plaintiffs of their constitutional rights precisely because of
14 Defendants’ failure to take adequate, let alone any, steps to address the most
15 fundamental needs of homeless persons for a safe environment. Moreover, the
16 consequence of Defendants’ policies and practices is to leave Plaintiffs in the
17 cold, literally. When Plaintiff MITCHELL was falsely arrested and then released
18 at approximately 3 a.m. on December 16, 2015, the low temperature in
19 Downtown Los Angeles was 40 degrees. Mr. MITCHELL was released from jail
20 with nothing to protect him from the elements as he slept on the sidewalk that
21 night other than a thin blanket he found in someone else’s cart.

22
23 **FIRST CAUSE OF ACTION**
24 **Right to Be Secure From Unreasonable Seizures**
25 **42 U.S.C. §1983 - Fourth Amendment; Art. 1, §13, California**
26 **Constitution**

27 72. Plaintiffs reallege and incorporate the allegations set forth in the
28 preceding paragraphs as though fully set forth hereat.

1 73. Defendants and their employees and agents violated Plaintiffs'
2 Fourth Amendment rights to be free from unreasonable seizure of their property
3 by confiscating and then destroying Plaintiffs' property without a warrant.

4 74. Defendants and their employees and agents violated Plaintiffs
5 MITCHELL's and COLEMAN's rights to be free from false arrest.

6 75. These unlawful actions were done with the specific intent to deprive
7 Plaintiffs of their constitutional rights to be secure in their property.

8 76. Plaintiffs are informed and believe that the acts of the Defendant and
9 their employees and agents were intentional in failing to protect and preserve
10 Plaintiffs' property and that, at minimum, Defendants were deliberately
11 indifferent to the likely consequence that the property would be seized and
12 destroyed unlawfully, based on the past circumstances of similar constitutional
13 and statutory violations of the law.

14 77. As a direct and proximate consequence of these unlawful acts,
15 Plaintiffs have suffered and continue to suffer loss of their personal property and
16 are entitled to compensatory damages for their property personal injury.

17
18 **SECOND CAUSE OF ACTION**
19 **Right To Due Process Of Law; 42 U.S.C. § 1983**
20 **Fifth And Fourteenth Amendments; Art. I, § 7**

21 78. Plaintiffs reallege and incorporate the allegations set forth in the
22 preceding paragraphs as though fully set forth hereat.

23 79. Defendants, their employees and agents, owed Plaintiffs a duty under
24 the due process clauses of the Fifth and Fourteenth Amendments to the U.S.
25 Constitution and Article I, § 7 of the California Constitution to protect the
26 personal property of the Plaintiffs. This duty applied to preserving the personal
27 property of individuals arrested and taken into custody.

28 80. Despite this well-defined duty, Defendants provided Plaintiffs with
no notice that their property was at risk of being seized and/or destroyed and did

1 not act to preserve the property or provide any means of reclaiming it in a timely
2 manner, even though Defendant CITY was put on notice by the Los Angeles
3 Superior Court, the United States District Court for the Central District of
4 California and the Ninth Circuit Court of Appeals that such notice and
5 preservation of property was required.

6 81. Plaintiffs are informed and believe that the acts of the Defendants,
7 their employees and agents, were intentional in failing to protect and preserve
8 Plaintiffs' property and that, at minimum, Defendants were deliberately
9 indifferent to the likelihood that the property would be seized and destroyed
10 without due process based on the past occurrences of these same constitutional
11 and statutory violations of the law.

12 82. Defendants have seized and destroyed the personal property of the
13 Plaintiffs without due process, lawful justification, or just compensation.

14 83. As a direct and proximate consequence of the acts of Defendants'
15 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
16 personal property and are entitled to compensatory damages for their property and
17 other injury to their person.

18
19 **THIRD CAUSE OF ACTION**

20 **Violation of Civil Rights: 42 U.S.C. § 1983, Fourteenth Amendment**
21 **State Created Danger**

22 84. Plaintiffs reallege and incorporate the allegations set forth in the
23 preceding paragraphs as though fully set forth hereat.

24 85. By taking and destroying the medicine, tents, tarps and blankets of
25 the Plaintiffs, the acts of Defendants, their employees and agents, have created a
26 danger for Plaintiffs by exposing them to the elements in the winter without
adequate shelter on the streets.

27 86. As a direct and proximate consequence of the acts of Defendants'
28 agents and employees, Plaintiffs have suffered and continue to suffer actual and

1 potential injury to their health and safety and are entitled to compensatory
2 damages for their property and other injury to their person.

3
4 **FOURTH CAUSE OF ACTION**

5 **Violation of 42 U.S.C. § 12101 et seq.: Title II of the Americans with**
6 **Disabilities Act**

7 87. Plaintiffs reallege and incorporate the allegations set forth in the
8 preceding paragraphs as though fully set forth hereat.

9 88. Title II of the ADA provides in pertinent part: “[N]o qualified
10 individual with a disability shall, by reason of such disability, be ... denied the
11 benefits of the services, programs, or activities of a public entity, or be subjected
12 to discrimination by any such entity.” 42 U.S.C. § 12132.

13 89. At all times relevant to this action, Defendants, their employees and
14 agents, were public entities within the meaning of Title II of the ADA and
15 provided programs, services, or activity to the general public.

16 90. At all times relevant to this action, Plaintiffs MITCHELL, ROQUE,
17 and COLEMAN were qualified individuals with one or more disabilities within
18 the meaning of Title II of the ADA and met the essential eligibility requirements
19 under Title II.

20 91. Defendants’ policies and practices in seizing and destroying
21 Plaintiffs’ medications and medical devices and equipment have utilized methods
22 of administration that violate Plaintiffs’ rights on the basis of their disabilities. 28
23 C.F.R. § 35.130(b)(3).

24 92. The acts and omissions of the Defendants, their agents and
25 employees, subjected the above-identified Plaintiffs to discrimination on the basis
26 of their disabilities in violation of Title II of the ADA by destroying their
27 property, including prescription medication and medical devices provided to them
28 by health services, and for storing any remaining items following the seizures in a

1 way that was inaccessible and unreasonable. After seizing Plaintiffs' medications
2 and medical devices, Defendants, their agents and employees, released Plaintiffs
3 from custody without provision for replacement of their medically necessary
4 prescriptions and devices.

5 93. Plaintiffs knew, or should have known, that the incidence of
6 disabilities for people who are homeless is extremely high, with estimates as high
7 as more than one in two homeless individuals suffering from some significant
8 mental, medical or physical disability, and many, like Plaintiff COLEMAN,
9 suffering from compound disabilities. On information and belief, Plaintiffs allege
10 that Defendants could have reasonably retained Plaintiffs' prescription
11 medications, medical devices, and critical personal papers. As a public entity,
12 Defendants are required to "make reasonable modifications in policies practices,
13 or procedures when the modifications are necessary to avoid discrimination on
14 the basis of disability" where, as here, modifications to would not "fundamentally
15 alter the nature of the service, program or activity." 28 C.F.R. § 35.130(b)(7).
16 This includes the need to make reasonable accommodations to protect the
17 essential life-protecting and mobility assistive property of persons who are
18 homeless, as well as provide prompt and reasonable access to ensure that
19 individuals are able to recover seized property. The policies, practices and
20 procedures challenged in this action, even if otherwise facially neutral, unduly
21 burden disabled persons who are without shelter and within the federal definition
22 of homeless.

23 94. Defendants committed the acts and omissions alleged herein with
24 intent and/or reckless disregard for the rights of each of these Plaintiffs.

25 95. Plaintiffs are informed and believe that Defendants and their agents
26 and employees have failed and continue to fail to adopt and enforce adequate
27 policies and procedures for interacting with homeless individuals with
28 disabilities.

1 96. As a result of the actions of Defendant and their agents and
2 employees, Plaintiffs have suffered injury to their persons and property and are
3 entitled to damages.
4

5 **FIFTH CAUSE OF ACTION**
6 **Violation of 29 U.S.C. § 794: Section 504 of the**
7 **Rehabilitation Act of 1973**

8 97. Plaintiffs reallege and incorporate the allegations set forth in the
9 preceding paragraphs as though fully set forth hereat.

10 98. Section 504 of the Rehabilitation Act of 1973 provides in pertinent
11 part: “[N]o otherwise qualified individual with a disability ... shall, solely by
12 reason of his or her disability, ... be subjected to discrimination under any
13 program or activity receiving federal financial assistance” 29 U.S.C. § 794.

14 99. Plaintiffs MITCHELL, ROQUE and COLEMAN were, at all
15 relevant times, qualified individuals within the meaning of the Rehabilitation Act
16 because they have a mental and/or medical impairment that substantially limits
17 one or more of their major life activities.” 29 U.S.C. § 705(20)(B).

18 100. At all relevant times and continuing to the present, Defendant CITY
19 was the recipient of federal funding within the meaning of the Rehabilitation Act.

20 101. The acts and omissions by Defendants and their agents and
21 employees complained of herein were committed with intent and/or reckless
22 disregard for the rights of the above-named Plaintiffs and discriminated against
23 them on the basis of their respective disabilities.

24 102. As a direct and proximate result of the aforementioned acts and
25 omissions by Defendants, Plaintiffs have suffered and continue to suffer injury to
26 their persons, including pain and suffering and are entitled to compensatory
27 damages according to proof.
28

1 **SIXTH CAUSE OF ACTION**

2 **Violation of Civil Rights: Interference By Threat, Intimidation or Coercion**
3 **California Civil Code § 52.1**

4 103. Plaintiffs reallege and incorporate the allegations set forth in the
5 preceding paragraphs as though fully set forth hereat.

6 104. Defendants' agents and employees have used arrests, threats of arrest
7 and intimidation to interfere with Plaintiffs' rights to maintain their personal
8 possessions in the exercise of Plaintiffs' rights secured by the Constitution of the
9 United States, the Constitution of the State of California, and the statutory laws of
10 the State of California.

11 105. Plaintiffs are entitled to an injunction pursuant to California Civil
12 Code §52.1. Plaintiffs are also entitled to damages pursuant to Civil Code §§ 52
13 and 52.1. Plaintiffs have filed tort claims with the Defendant CITY. Plaintiffs
14 will amend this action to include damages under this provision once they have
15 exhausted their administrative remedies.

16 **SEVENTH CAUSE OF ACTION**

17 **California Government Code § 11135**

18 106. Plaintiffs reallege and incorporate the allegations set forth in the
19 preceding paragraphs as though fully set forth hereat.

20 107. Section 11135(a) of the California Government Code provides in
21 pertinent part: "No person in the State of California shall, on the basis of ...
22 disability, ... be unlawfully subjected to discrimination under any program or
23 activity that is funded directly by, or receives any financial assistance from, the
24 state."

25 108. Upon information and belief, at all times relevant to this action,
26 Defendants received funding and/or other financial assistance from the State of
27 California sufficient to invoke the protections of Section 11135 et seq.
28

1 109. Defendants, their agents and employees, have violated Government
2 Code § 11135 by unlawfully subjecting Plaintiffs MITCHELL, ROQUE and
3 COLEMAN to discrimination for the reasons set forth above.

4 110. As a direct and proximate result of the acts and omissions of
5 Defendants, their agents and employees, Plaintiffs have suffered and continue to
6 suffer injury, including but not limited to pain and suffering.

7
8 **EIGHTH CAUSE OF ACTION**

9 **Violation of Unruh Civil Rights Act: Civil Code § 51 et seq.**

10 111. Plaintiffs reallege and incorporate the allegations set forth in the
11 preceding paragraphs as though fully set forth hereat.

12 112. California Civil Code 51 et seq. provides in pertinent part that: “All
13 persons within the jurisdiction of this state are free and equal, and no matter what
14 their ... disability ... are entitled to the full and equal ... privileges, or services in
15 all business establishments of every kind whatsoever.”

16 113. Pursuant to California Civil Code § 51(f), a violation of the ADA
17 necessarily is a violation of the Unruh Civil Rights Act.

18 114. Defendants, through their agents and employees in the LAPD and
19 other City Departments, are “business establishments” within the meaning of §
20 51.

21 115. The acts and omissions complained of herein denied Plaintiffs their
22 rights on the basis of their disabilities and were done with intent or reckless
23 disregard for the rights of Plaintiffs’ as disabled individuals.

24 116. As a direct and proximate result of the aforementioned acts,
25 Plaintiffs have suffered and continue to suffer injury, including but not limited to
26 pain and suffering. Plaintiffs are entitled to all of the relief available pursuant to
27 California Civil Code § 52.

1 **NINTH CAUSE OF ACTION**
2 **California Civil Code § 2080, et seq.**

3 117. Plaintiffs reallege and incorporate the allegations set forth in the
4 preceding paragraphs as though fully set forth hereat.

5 118. Defendant's policies, practices and conduct challenged herein
6 violated California Civil Code § 2080 *et seq.*, in that Defendant's agents and
7 employees failed to protect and preserve the personal property of Plaintiffs when
8 the property was on the public sidewalk and streets; failed to provide written
9 notice that the property would be taken and failed to provide post-deprivation
10 notice so that Plaintiffs would have the opportunity to reclaim it within a
11 reasonable time. California Code of Civil Procedure § 2080 *et seq.* imposes a
12 mandatory duty to maintain property that is not abandoned.

13 **TENTH CAUSE OF ACTION**
14 **CONVERSION**

15 119. Plaintiffs reallege and incorporate the allegations set forth in the
16 preceding paragraphs as though fully set forth hereat.

17 120. Plaintiffs were in possession of their personal property at the time
18 that Defendants' agents and employees ordered that the property be seized and
19 most, if not all of it, be immediately destroyed without prior notice. Defendants'
20 agents and employees unlawfully prohibited Plaintiffs from securing their
21 personal property.

22 121. Defendants, their agents and employees, had a duty owed to
23 Plaintiffs to protect their personal property under Los Angeles Municipal Code
24 §52.55 and California Civil Code §§ 2080.2, 2080.4 and 2080.6. Plaintiffs'
25 property was not abandoned at the time that Defendant seized it and immediately
26 destroyed it. Defendants breached the duty to protect Plaintiffs' personal
27 property when their agents and employees wrongly exerted dominion over the
28 property and denied Plaintiffs' their constitutional and statutory rights.

1 122. Defendants had no legitimate governmental interest that gave their
2 agents and employees the legal right or justification to confiscate Plaintiffs'
3 property and then immediately demolish it without prior notice to Plaintiffs and
4 without a procedure to permit Plaintiffs to recover their property, and without fair
5 compensation to Plaintiffs.

6 123. As a direct and proximate consequence of the acts of Defendants'
7 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
8 personal property and are entitled to compensatory damages

9
10 **ELEVENTH CAUSE OF ACTION**
11 **FALSE ARREST**

12 124. Plaintiffs reallege and incorporate the allegations set forth in the
13 preceding paragraphs as though fully set forth hereat.

14 125. Plaintiffs MITCHELL and COLEMAN were falsely arrested for
15 possession of "illegal" shopping carts. Defendants were informed that the carts in
16 question were not theirs. Despite this, Defendants arrested Plaintiffs. No
17 charges were filed against either Plaintiff.

18 126. As a direct and proximate consequence of the acts of Defendants'
19 agents and employees, Plaintiffs have suffered and continue to suffer injury.

20 **INJUNCTIVE RELIEF**

21 127. Plaintiffs reallege and incorporate the allegations set forth in the
22 preceding paragraphs as though fully set forth hereat.

23 128. A real and immediate difference exists between Plaintiffs and
24 Defendants regarding Plaintiffs' rights and Defendants' duty owed to Plaintiffs to
25 protect Plaintiffs' personal property present on public sidewalks and streets in
26 Skid Row. Defendants' policies and actions have resulted and will result in
27 irreparable injury to Plaintiffs. There is no plain, adequate or complete remedy at
28 law to address the wrongs described herein. Defendants have made clear by their

1 repeated escalation of the criminalization of the homeless community in Los
2 Angeles that they intend to continue these practices of confiscating and
3 immediately destroying the property of homeless individuals from the public
4 streets and sidewalks without a warrant and notice. Defendants have also made
5 clear that they intend to continue the practices described above that make it
6 impossible for homeless individuals to reclaim their property, even when some of
7 it is not immediately destroyed. Unless restrained by this Court, Defendants will
8 continue to implement these unlawful policies and practices.

9 129. Defendants' acts alleged above violate established constitutional
10 rights of Plaintiffs and Defendants could not reasonably have thought that the
11 conduct of their agents and employees in seizing and destroying Plaintiffs'
12 property was lawful.

13 130. An actual controversy exists between Plaintiffs and Defendants in
14 that Defendants, their agents and employees, have engaged in the unlawful and
15 unconstitutional acts alleged herein and intend to continue to do so. Plaintiffs
16 claim that these acts are contrary to law and seek a declaration of their rights with
17 regard to this controversy.

18 131. As a direct and proximate consequence of the acts of Defendants'
19 agents and employees, Plaintiffs have suffered and will continue to suffer injury
20 to their person and the loss of their personal property, including all their clothing,
21 bedding, medication, personal papers and other personal possessions, stripping
22 them of the essentials needed for their well-being and personal dignity and
23 placing them at serious and immediate risk of illness.

24 132. Plaintiffs filed administrative claims with the Defendant CITY.
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WHEREFORE, Plaintiffs pray as follows:

1. For a temporary restraining order, preliminary and permanent injunction, enjoining and restraining Defendants from engaging in the policies, practices and conduct complained of herein;
2. For a declaratory judgment that Defendants' policies, practices and conduct as alleged herein violate Plaintiffs' rights under the United States and California constitutions and the laws of California;
3. For an order directing Defendants to provide replacement blankets, tents, tarps, medications, clothing and replacement of critical personal documents to anyone whose property is seized for whatever reason, including purported public health and safety grounds;
4. For an order directing that any property taken be segregated by owners and not combined with the property of any other person;
5. For damages in an amount to be determined according to proof.
6. For costs of suit and attorney fees as provided by law;
7. For such other relief as the Court deems just and proper.

Dated: March 17, 2015

Respectfully submitted,

LAW OFFICE OF CAROL A. SOBEL
 LEGAL AID FOUNDATION OF LOS
 ANGELES
 SCHONBRUN, SEPLOW, HARRIS &
 HOFFMAN

/s/ Carol A. Sobel
 By: CAROL A. SOBEL
 Attorneys for Plaintiffs