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12 and ADAM BREDENBERG

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 CLARK SULLIVAN, JAMES BLAIR,
16 TOAN NGUYEN, ARIKA MILES, and
17 ADAM BREDENBERG,

18 Plaintiffs,

19 vs.

20 CITY OF BERKELEY and SAN
21 FRANCISCO BAY AREA RAPID
22 TRANSIT DISTRICT,

23 Defendants.

) Case No. 3:17-cv-06051-WHA
)
) **FIRST AMENDED COMPLAINT**
) **FOR INJUNCTIVE AND**
) **DECLARATORY RELIEF AND**
) **DAMAGES**
)
) **(Civil Rights)**
)
) **Demand for Jury Trial**
)
)
)

24 **INTRODUCTION**

- 25 1. Berkeley is home to nearly 1,000 homeless residents.
26 2. The 2017 Point in Time (“PIT”) count, conducted once every two years as
27 required by the U.S. Department of Housing and Urban Development, showed a 23
28 percent increase in homelessness from the 2009 count. Of those currently homeless,

1 two thirds live without shelter.¹

2 3. Between 2015 and 2017, the chronically homeless population in Berkeley
3 increased 29 percent, according to the PIT count.

4 4. The City of Berkeley has consistently failed to offer enough shelter beds
5 for its homeless residents.

6 5. As of 2013, the City of Berkeley had only 189 emergency shelter beds and
7 157 transitional housing beds.²

8 6. Although Berkeley has increased the amount of shelter beds since 2013,
9 the increase has been minimal and Berkeley's homelessness crisis has only increased.

10 7. Berkeley created a homeless coordinated entry program, known as the
11 "HUB," in January 2016 which centralized the referral to services and housing for
12 homeless Berkeley residents. Between its launch on January 5, 2016 and the 2017 PIT
13 count at the end of January 2017, the HUB was able to house only 46 individuals and
14 place 59 high-needs individuals in shelters and transitional housing, despite screening
15 1, 823 people in need of services.

16 8. During the rise of Berkeley's homelessness crisis, the Berkeley City
17 Council passed ordinances that sought to criminalize the condition of being homeless.
18 Combined with the lack of available shelter beds, homeless residents of Berkeley risk
19 daily arrest simply for being homeless.

20 9. Despite these efforts, the Berkeley City Council did acknowledge its
21 shelter bed shortage. In light of the abysmal growth rate of Berkeley's homeless
22 population, the Berkeley City Council declared a Homeless Shelter Crisis on January 19,
23 2016, pursuant to California Government Code Section 8698 *et seq.* This allows the city
24 to designate "public facilities" including parks, schools, and vacant lots, for occupation
25 by persons needing shelter. It also relaxes the city's exposure to liability in the

26
27 ¹ http://everyonehome.org/wp-content/uploads/2016/02/BERKELEY_5-Final-1.pdf

28 ² <http://www.berkeleyside.com/wp-content/uploads/2016/06/Berkeley-Final-CAS-Report-Submitted-090514.pdf>

1 designated areas and relaxes regulations prescribing standards of housing, health and
2 safety.

3 10. On information and belief, the City has yet to designate any public
4 facilities for this purpose.³

5 11. On November 15, 2016, Berkeley City Council renewed the state of
6 emergency for another year.

7 12. On October 13, 2017, California Governor Edmund G. Brown Jr. declared
8 a state-wide State of Emergency due to an outbreak of Hepatitis A in California
9 homeless encampments.⁴

10 13. The First They Came for the Homeless (“FTCftH”) encampment is an
11 intentional community of homeless Berkeley residents that was formed in 2015. It
12 publicly opposes Berkeley’s increasing efforts since 2015 to criminalize the condition of
13 homelessness.

14 14. Members of FTCftH have been cited, arrested, and jailed, for sleeping in
15 public.

16 15. Members of FTCftH have been evicted from many locations throughout
17 Berkeley.

18 16. Each time they are evicted, the City of Berkeley comes before dawn,
19 hurries residents out of the encampment allowing them to take only what they can
20 carry, with no regard to physical or mental disability, and disposes of everything that is
21 left over, including any unattended tents.

22 17. The City makes no efforts to give residents receipts for what is taken,
23 inventory what is collected, or store property in a manner that protects it from the
24 elements.

25
26 ³ The City of Berkeley is building a “Pathways Project” to house 50 homeless residents,
27 but it is not clear that the land there is designated under this statute.

28 ⁴ <http://abcnews.go.com/Health/hepatitis-california-outbreak-triggers-state-emergency/story?id=50513882>

1 18. Residents are given no information on where they can go to find shelter,
2 beyond contacting the HUB, and are given no direction on where they may be able to
3 lawfully camp.

4 19. After several years of targeted evictions from public spaces throughout
5 Berkeley, the FTCftH encampment formed in its current location on a parcel of land on
6 the west side of the BART tracks at the Oakland/Berkeley Boarder that the San
7 Francisco Bay Area Rapid Transit District (“BART”) claims to own.

8 20. The camp is known at the “Here/There” camp due to its position around
9 an art instillation on the land with signs reading “HERE” and “THERE.”

10 21. On Saturday, October 21, 2017, BART posted notices around the FTCftH
11 camp and another camp on the east side of the BART tracks declaring its intent to evict
12 residents in 72 hours.

13 22. On Sunday, October 22, 2017, BART posted a subsequent notice that told
14 residents to contact the “HUB” or Berkeley Homeless Coordinated Entry System to get
15 shelter or housing.

16 23. BART and the City of Berkeley know that the HUB does not have
17 sufficient resources to house Berkeley’s homeless residents.

18 24. Despite this, BART, with the assistance of the City of Berkeley, intends to
19 evict the peaceful encampment.

20 25. Residents filed an emergency petition for a Temporary Restraining Order
21 (“TRO”) to prevent BART from executing the eviction.

22 26. On October 24, 2017, the Court issued a TRO until plaintiffs could be
23 heard on October 31, 2017.

24 27. Pursuant to their noticed intent, BART police, Berkeley police, City of
25 Berkeley Parks and Waterfront workers, and BART workers arrived at the neighboring
26 camp on the east side of the BART tracks at 5 a.m. on October 25, 2017.

27 28. As plaintiffs have experienced in the past, the residents of that
28

1 encampment were hurried out of the encampment, took only what they could carry
2 with no regard to physical or mental disability, and the items that remained were
3 disposed of with no inventory taken or receipts issued.

4 29. If evicted, residents of the FTCftH encampment can expect no better
5 treatment. As any other homeless person in Berkeley, they will have no place to go for
6 shelter and will be forced to find another parcel of land to reside on.

7 30. If that land is in the City of Berkeley, residents are guaranteed to face
8 many more evictions.

9 **JURISDICTION AND VENUE**

10 31. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §
11 1331 (claims arising under the U.S. Constitution) and § 1343(a)(3) (claims brought to
12 address deprivations, under color of state authority, of rights, privileges, and
13 immunities secured by the U.S. Constitution), and 42 U.S.C. § 1983.

14 32. The state law claims in this action are so related to claims in the action
15 within original jurisdiction that they form part of the same case or controversy under
16 Article III of the United States Constitution. The Court's jurisdiction over these claims is
17 invoked under 28 U.S.C. § 1367.

18 33. Venue is proper in the United State District Court for the Northern
19 District of California pursuant to 28 U.S.C. § 1391(b)(1) because the defendants are
20 located in the Northern District of California and § 1391(b)(2) because all of the acts
21 and/or omissions complained of herein occurred within the Northern District of
22 California.

23 **PARTIES**

24 **Plaintiffs**

25 34. At all times relevant hereto, plaintiff Clark Sullivan was a homeless
26 resident of Alameda County and member of the First They Came for the Homeless
27 encampment.

1 35. At all times relevant hereto, plaintiff James Blair was a homeless resident
2 of Berkeley. Plaintiff James Blair is member of the First They Came for the Homeless
3 encampment and has been since January 2017.

4 36. At all times relevant hereto, plaintiff Toan Nguyen was a resident of
5 Oakland or a homeless resident of Berkeley. Plaintiff Toan Nguyen is a member of the
6 First They Came for the Homeless encampment and has been since October 2017.

7 37. At all times relevant hereto, plaintiff Arika Miles was a homeless resident
8 of Berkeley. Plaintiff Arika Miles is a member of the First They Came for the Homeless
9 encampment and has been since January 2017.

10 38. At all times relevant hereto, plaintiff Adam Bredenberg was a homeless
11 resident of Berkeley and member of the First They Came for the Homeless
12 encampment.

13 **Defendants**

14 39. At all times relevant hereto, defendant City of Berkeley was a municipal
15 corporation, duly organized and existing under the laws of the State of California.
16 Under its authority, defendant City of Berkeley operates the Berkeley Police
17 Department and employs its officers.

18 40. At all times relevant hereto, defendant San Francisco Bay Area Rapid
19 Transit District was a public transportation agency run by a Board of Directors elected
20 by the public and representing each district through which the Bay Area Rapid Transit
21 trains run.

22 **FACTUAL ALLEGATIONS**

23 41. The First they Came for the Homeless (“FTCftH”) encampment was
24 established in 2015 as Berkeley City Council was passing ordinances that, in the opinion
25 of the camp residents, had the effect of criminalizing homelessness.

26 42. The encampment established themselves in prominent places near City
27 administration buildings and the provider of the City’s coordinated homeless services
28

1 to demand respite in the form of a City-sanctioned encampment.

2 43. Members of the encampment regularly attend City Council meetings and
3 write op-eds criticizing the City for its mismanagement of the homelessness crisis.

4 44. Meanwhile, FTCftH established a set of rules that residents in the
5 encampment must follow in order to stay in the encampment. This includes remaining
6 hard drug and alcohol free and participating in consensus decision making and non-
7 violent conflict resolution.

8 45. On January 5, 2016, the City of Berkeley established a Homeless
9 Coordinated Entry System known as the “HUB” that was meant to centralize services
10 for the homeless and encourage greater success in housing homeless Berkeley
11 residents.

12 46. The City poured millions of dollars into the HUB, which after a year had
13 performed intakes for 1,823 people yet housed only 46.

14 47. Despite that abysmal service rate, the City of Berkeley evicted FTCftH
15 from each encampment it established and ushered them to the HUB to get housed.

16 48. For those three winter months, and in response to the encampment’s
17 stinging criticisms of Berkeley’s handling of the homelessness crisis, Berkeley began an
18 aggressive campaign of evictions.

19 49. During those months, the City of Berkeley evicted the FTCftH
20 encampment at least 12 times. They were evicted on or about the following dates from
21 approximately the following locations:

22 a. Friday, October 7, 2016 from the sidewalk in front of the HUB at
23 1901 Fairview Avenue.

24 b. Tuesday, October 18, 2016 from the median strip at Adeline Street
25 and Ward Street.

26 c. Wednesday, October 19, 2016 from the Adeline Street and Shattuck
27 “triangle.”
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- 1 d. Friday, November 4, 2016 from Fairview Street and Adeline Street
- 2 near the HUB.
- 3 e. Monday, November 7, 2016 from the steps of Berkeley City Hall.
- 4 f. Thursday, November 17, 2016, from the lawn South of Berkeley
- 5 City Hall.
- 6 g. Friday November 18, 2016, from Civic Center Park at Milvia Street
- 7 and Allston Street.
- 8 h. Friday, December 2, 2016 from the North lawn of Berkeley City
- 9 Hall.
- 10 i. Wednesday, December 21, 2016 from Adeline Street and Oregon
- 11 Street.
- 12 j. Wednesday, December 21, 2016 from the lawn near Berkeley's
- 13 former City Hall building on Martin Luther King Jr. Way and
- 14 Allston Street.
- 15 k. Thursday December 22, 2016 from University Street and West
- 16 Street near the Ohlone path.
- 17 l. Friday, January 6, 2017 from the median on Shattuck between Vine
- 18 St. and Rose St.

19 50. Prior to some evictions, the residents were provided posted notice of the
20 date by which they needed to move, but they were provided no opportunity to be heard
21 and advocate for their right to remain in place. Other times they were provided no
22 notice at all.

23 51. The winter of 2016 experienced many rain storms and cold weather.

24 52. Each eviction was brutal due to these weather conditions.

25 53. When the City of Berkeley performs encampment evictions, they are done
26 callously and without sufficient procedures for protecting property that the residents
27 may not be able to move without assistance.

1 54. During the winter 2016 evictions, some FTCftH residents and allies were
2 arrested. One former resident, Mike Zint, was arrested on November 17, 2016, for not
3 packing his belongings fast enough. He has COPD and emphysema and suffered a
4 respiratory attack at 5 a.m. when he was awoken by the police. He was given 10 minutes
5 to pack his belongings and when he demanded more time because of his respiratory
6 attack, he was arrested.

7 55. Disabilities are not evaluated or accommodated, despite some residents
8 having known or visible disabilities.

9 56. Plaintiff Clark Sullivan is wheelchair bound. He was never offered
10 assistance from the City of Berkeley to move his property. He was never provided
11 assistance in getting his property back.

12 57. During each eviction, Berkeley Police would section off the block with
13 caution tape and would not let community members into the encampment to assist
14 residents with packing or carrying items away.

15 58. The City of Berkeley collects anything that appears unattended including
16 tents and clothing. They also dispose of anything that evicted residents cannot carry.
17 They put these items in a dumpster and do not properly store them so that they can be
18 collected and used when retrieved.

19 59. City employees even dispose of disability appliances. One former
20 encampment resident, Brett Schnaper, who is physically disabled, had his brace boot,
21 osteo-shoes, ankle assist, and cane disposed of after one of the evictions that occurred
22 on December 21, 2016, with no regard to his medical need for those devices. He was not
23 able to retrieve the devices and suffered from pain and mobility issues as a result.

24 60. After the November 17, 2016, eviction, the City of Berkeley collected
25 residents' belongings and stored them in a dumpster, outside, at the Transfer Station in
26 Berkeley. When residents went to retrieve their items, they found them tangled in with
27 other people's items and with garbage. The items had also been soaked through due to
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1 heavy rain. The items in the dumpster included identification cards and medications.

2 61. Plaintiffs Sullivan lost personal property during evictions and both
3 plaintiffs Sullivan and Adam Bredenberg lost shared property during evictions.

4 62. As the property that Berkeley discards or stores improperly included
5 tents, sleeping bags, winter coats, and tarps, residents spent nights that winter exposed
6 to the elements until community members could donate those items. This put them at
7 severe risk of weather-induced illnesses.

8 63. The residents have been safe from these violations of their constitutional
9 and statutory rights for ten months since establishing the Here/There encampment.

10 64. Since establishing themselves at the Here/There encampment, residents
11 have garnered support from their housed neighbors.

12 65. Community groups such as Friends of Adeline purchase necessary items
13 for the encampment from time to time.

14 66. In the height of a state-wide Hepatitis A outbreak, Friends of Adeline
15 purchased a porta-potty and hand-washing station for the encampment when the City
16 refused to do so. This is a life-saving measure that helps stabilize the encampment.

17 67. Before June 2017, the city did not receive a complaint about the
18 encampment from housed neighbors. After an encampment moved in on the east side
19 of the tracks, housed community members began complaining but FTCftH was not the
20 cause of the complaints.

21 68. At the encampment, members have to abide by a set of rules. They are
22 invited to perform chores around the encampment to ensure it is well-kempt and
23 accessible, with able-bodied members taking on more responsibility for camp upkeep.
24 Decisions about camp rules and camp members are made by graduated consensus, and
25 residents are subject to a three-strikes and you're out policy.

26 69. In the unfortunate event of an encampment member having to be
27 removed, the remaining encampment members help the individual pack up all of their
28

1 belongings and help them move, in the most supportive way that they are able.

2 70. The encampment is violence and serious crime-free.

3 71. On October 21, 2017, at or around 4 p.m., both the FTCftH encampment
4 and the east encampment were served with a notice that the BART police would enforce
5 an eviction in 72 hours.

6 72. The notice which bore a BART logo alleged that residents were trespassing
7 on private property in violation of California Penal Code section 602(m).

8 73. A subsequent notice posted on October 22, 2017, bearing a BART police
9 logo told residents to leave immediately or risk arrest for violating California Penal
10 Code section 647(e).

11 74. Residents of FTCftH have been arrested for violations of California Penal
12 Code section 647(e) before and risk arrest for that every day as the vague language of
13 the statute appears to prohibit sleeping in public.

14 75. On information and belief, BART had been planning the October 24, 2017,
15 eviction for six weeks. Despite that, they gave residents only 72 hours, over a weekend
16 when the HUB is not open, to move or risk losing their belongings or being arrested.

17 76. BART cited complaints by neighbors, for which the residents of FTCftH
18 encampment were not able to defend them selves in any hearing.

19 77. BART will use the City of Berkeley and the Berkeley police department to
20 enforce the eviction on the FTCftH encampment.

21 78. On October 25, 2017, BART police and employees and Berkeley Police and
22 city employees evicted the encampment on the east of the tracks. They arrived between
23 4:30 and 5 a.m. and all residents were gone by 6:30 a.m. There was innumerable
24 property remaining at the encampment after 6:30 a.m., and BART and City workers
25 removed the property using pitch forks. They did not inventory the items or label them.
26 The residents' belongings were discarded in dumpsters that were hauled away by trucks
27 with BART insignia.

1 79. On information and belief, no resident of the encampment was offered
2 housing. Many residents moved to the aquatic park.

3 80. FTCfH expects that their eviction will be carried out in this same way,
4 which resembles every eviction they have ever suffered.

5 81. Plaintiffs Sullivan, Bredenberg, James Blair, Toan Nguyen, and Arika
6 Miles fear that an eviction would be destabilizing.

7 82. At the camp, each is able to contribute to a community that provides
8 meaning in their lives, enjoys the safety of a well-self-policed community, and enjoys
9 the support of a housed community that provides life-saving services such as port-a-
10 potties and hand-washing stations.

11 83. There is a substantial risk of irreparable harm including risk of injury,
12 illness, and permanent loss of property just before the winter months if BART is
13 allowed to evict residents of FTCfH.

14 **CLASS ALLEGATIONS**

15 84. The named individual Plaintiffs bring this action on behalf of themselves
16 and on behalf of a class of all those similarly situated pursuant to Rule 23(a) and (b)(2)
17 of the Federal Rules of Civil Procedure.

18 **Definition**

19 85. Plaintiffs seek to represent a class of all present and future residents of the
20 encampment known as First They Came for the Homeless, an intentional community of
21 homeless individuals.

22 **Numerosity**

23 86. The class is so numerous that joinder of all members is impractical.

24 87. Plaintiffs are informed and believe, and based thereon allege, that there
25 are anywhere from twenty to thirty members of First they Came for the Homeless at any
26 given time. Due to the nature of homelessness and the rules of the intentional
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1 community, membership fluctuates such that joining all potentially impacted
2 individuals is impracticable. It is unknown how many additional 664 unsheltered
3 homeless Berkeley residents and additional future homeless residents would seek to join
4 First They Came for the Homeless if the encampment were permitted to remain in place.
5 Moreover, members of the class who may suffer future injury are not capable of being
6 identified at this time, as the class includes future members of the encampment.
7

8 **Common Questions of Law and Fact**

9 88. Common questions of law and fact predominate, and include: (a) whether
10 defendants reasonably accommodate the known and perceived disabilities of plaintiffs
11 and the putative class during enforcement actions; (b) whether defendants' policies,
12 practices and conduct of seizing and destroying the personal property of individuals who
13 are homeless, without providing sufficient or any prior notice or a meaningful
14 opportunity to retrieve vital personal possessions before they are destroyed violated and
15 continue to violate the class members' constitutional rights against unreasonable
16 seizure; (c) whether these same policies, practices and conduct violated and continue to
17 violate the class members' constitutional rights to due process; (d) whether the policies,
18 practices and conduct of defendants violated and continue to violate the class members'
19 federal constitutional rights to be free from cruel and unusual punishment; (e) whether
20 the City of Berkeley targets the members of the encampment for enforcement actions
21 based on the content of their speech; (f) whether injunctive relief should issue to enjoin
22 the policy, practice and conduct of the defendants' agents.
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25 **Typicality**

26 89. The claims of the class representatives are typical of those of the class
27 members with respect to the constitutionality and legality of the defendants' policies,
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1 practices and conduct at issue here. The prosecution of individual actions against the
2 defendants by individual class members would create a risk of inconsistent and varying
3 adjudications, which would result in variable standards of conduct for defendant.

4
5 **Adequacy of Representation**

6 90. The named plaintiffs are members of the proposed class and will fairly and
7 adequately represent and protect the interests of the class. Plaintiffs intend to prosecute
8 this action rigorously in order to secure remedies for the entire class. Counsel of record
9 for plaintiffs are experienced in federal civil rights litigation and class actions.

10 **FIRST CLAIM FOR RELIEF**
11 **FAILURE TO REASONABLY ACCOMMODATE IN VIOLATION OF TITLE II**
12 **OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

13 (By plaintiffs against all defendants)
14 (42 U.S.C. § 12132.)

15 91. Plaintiffs incorporate by reference paragraph 1 through 90 above as
16 though fully set forth herein.

17 92. By virtue of the foregoing, defendants failed to reasonably accommodate
18 plaintiffs' and the putative class' disabilities during prior evictions. Defendants have no
19 plan or intention of accommodating plaintiffs' and the putative class' disabilities in
20 future eviction actions. As a result of such failure, plaintiffs did suffer injury and
21 indignity at the hand of defendants and are at substantial risk of suffering injury and
22 indignity at the hand of defendants.

23 **SECOND CLAIM FOR RELIEF**
24 **DENIAL OF DUE PROCESS IN VIOLATION OF THE FOURTH**
25 **AMENDMENT**

26 (By plaintiffs against all defendants)
27 (42 U.S.C. § 1983)

28 93. Plaintiffs incorporate by reference paragraphs 1 through 92 above as
though fully set forth herein.

94. By virtue of the foregoing, defendants punish plaintiffs by destroying their
property and forcing them to move in poor weather conditions based only on

1 complaints from housed community members, without offering plaintiffs or the
2 putative class an opportunity to be heard, depriving plaintiffs and the putative class
3 their right under the Fourth Amendment to the United States Constitution to be free of
4 punishment without due process.

5 **THIRD CLAIM FOR RELIEF**
6 **UNLAWFUL SEIZURE IN OF PROPERTY IN VIOLATION OF THE FOURTH**
7 **AMENDMENT**

8 (By plaintiffs against all defendants.)
9 (42 U.S.C. § 1983)

10 95. Plaintiffs incorporate by reference paragraphs 1 through 94 above as
11 though fully set forth herein.

12 96. Defendants violated plaintiffs' Fourth Amendment rights to be free from
13 unreasonable seizure of their property by confiscating and then destroying plaintiffs'
14 property without sufficient warrant and at times under threat of arrest if plaintiffs
15 reentered the cordoned off encampment. Defendants' unlawful actions, through the
16 conduct of its employees from the Berkeley and BART police departments and other
17 city departments was done with the specific intent to deprive plaintiffs of their
18 constitutional rights to be secure in their property.

19 97. Plaintiffs are informed and believe that the acts of the defendants'
20 employees and agents were intentional in failing to protect and preserve their property
21 and that, at minimum, the defendants were deliberately indifferent to the likely
22 consequence that the property would be seized and destroyed unlawfully, based on the
23 past circumstances of similar constitutional and statutory violations of the law.

24 98. As a direct and proximate consequence of the acts of defendants' agents
25 and employees, plaintiffs have suffered and continue to suffer loss of their personal
26 property and are entitled to compensatory damages for their property and other injury
27 to their person.
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1 **FOURTH CLAIM FOR RELIEF**
2 **CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH**
3 **AMENDMENT**

4 (By plaintiffs against all defendants.)
5 (42 U.S.C. § 1983)

6 99. Plaintiffs incorporate by reference paragraphs 1 through 98 above as
7 though fully set forth herein.

8 100. Poverty, unemployment, untreated mental and physical illness and the
9 City's failure to provide adequate shelter space often force plaintiffs and other homeless
10 individuals to sleep in public places.

11 101. Although Plaintiffs are homeless and have no way to comply with
12 California Penal Code section 647(e) because they must sleep outdoors, defendants have
13 cited, arrested, or threatened Plaintiffs for sleeping in public places in Berkeley.
14 Defendants are punishing plaintiffs and other homeless individuals based on their
15 status as homeless persons.

16 102. Defendants' actions that penalize Plaintiffs for their homeless status
17 constitute cruel and unusual punishment in violation of Plaintiffs' well established
18 rights under the Eighth Amendment of the United States Constitution as incorporated
19 in, and applied to the states through, the Fourteenth Amendment.

20 103. Plaintiffs seek redress for Defendants' violation of their right to be free
21 from cruel and unusual punishment.

22 **FIFTH CLAIM FOR RELIEF**
23 **RETALIATION AGAINST PROTECTED ACTIVITY IN VIOLATION**
24 **OF THE FIRST AMENDMENT**

25 (By plaintiffs against the all defendants)
26 (42 U.S.C. § 1983)

27 104. Plaintiffs incorporate by reference paragraphs 1 through 103 above as
28 though fully set forth herein.

 105. By virtue of the foregoing, defendants targeted plaintiffs and the putative
class for evictions in harsh winter months based on the content of their speech and
their political engagement.

DECLARATORY RELIEF ALLEGATIONS

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2 106. Plaintiffs incorporate paragraphs 1 through 105 as though fully set forth
3 herein.

4 107. A present and actual controversy exists between Plaintiffs and Defendants
5 concerning their rights and respective duties. Plaintiffs contend that Defendants
6 violated their rights and the rights of the Class under federal anti-discrimination law
7 and constitutional law. Plaintiffs are informed and believe and based thereon allege
8 that Defendants deny these allegations. Declaratory relief is therefore necessary and
9 appropriate.

10 **INJUNCTIVE RELIEF ALLEGATIONS**

11 108. Plaintiffs incorporate paragraphs 1 through 107 as though fully set forth
12 herein.

13 109. No plain, adequate, or complete remedy at law is available to Plaintiffs and
14 the Class to redress the wrongs addressed herein.

15 110. If this Court does not grant the injunctive relief sought herein, Plaintiffs
16 and the Class will be irreparably harmed.

17 **PRAYER FOR RELIEF**

18 WHEREFORE Plaintiffs respectfully pray that this Court:
19

- 20 (1) Certify the proposed Class;
21 (2) Enter an order declaring that defendants have violated plaintiffs
22 constitutional and statutory rights;
23 (3) Issue preliminary and permanent injunctions restraining defendants and
24 their officers, agents, employees, successors, and any other persons acting in
25 concert with them from violating plaintiffs' constitutional and statutory rights
26 during interactions with plaintiffs and the class;
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- 1 (4) Issue preliminary and permanent injunctions requiring defendants to
2 permit plaintiffs to remain housed in their current location;
3 (5) Award reasonable attorneys' fees and costs, pursuant to 28 U.S.C. § 1988
4 and any other applicable provisions of federal law; and
5 (6) Order such other and further relief as the Court deems appropriate.
6

7
8 **DEMAND FOR TRIAL BY JURY**

9 Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal
10 Rules of Civil Procedure.

11 Dated: October 26, 2017

12 SIEGEL, YEE & BRUNNER

13 By: /s/EmilyRose Johns
14 EmilyRose Johns

15 Attorney for Plaintiffs
16 CLARK SULLIVAN, JAMES BLAIR,
17 TOAN NGUYEN, ARIKA MILES and
18 ADAM BREDENBERG
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