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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 SOUTHERN DIVISION

20 Kenneth Glover, an individual; David
Sestini, an individual; Douglas
21 Frederes Jr., an individual; Jeffrey
Aiken, an individual; Katrina Aune, an
22 individual,

23 Plaintiffs,

24 vs.

25 CITY OF LAGUNA BEACH; THE
LAGUNA BEACH POLICE
26 DEPARTMENT,

27 Defendants.
28

CASE NO.

CLASS ACTION

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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

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

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

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

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

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

16 **PARTIES**

17 **Plaintiffs**

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

28

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

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

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

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

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

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

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

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

1 problems that continue today. Sestini became homeless four years ago after he left
2 a sober living facility because he could not tolerate the living environment. Sestini
3 has difficulty keeping work because of his physical and mental health issues and is
4 frequently hospitalized.

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

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

24 20. Recently, Sestini was permanently banned from the shelter. Although
25 he still considers Laguna Beach his home, he has recently tried to obtain services
26 for his alcohol addiction in Huntington Beach. Sestini is not sure whether he will
27 be able to stay for a long period, especially since he has had problems tolerating
28 such programs in the past.

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

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

25 23. Plaintiff JEFFREY AIKEN (“Aiken”) is a 54-year-old homeless
26 veteran who has lived in Laguna Beach for two years. He grew up in Orange
27 County, graduated from Orange Coast College in 1983, and served for 10 years in
28 the Air Force until he was discharged for disability in 1998. He has not had steady

1 employment since his discharge. Aiken suffers from mental disabilities including
2 depression and schizophrenia, and physical disabilities from a knee injury and from
3 a brain injury.

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

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

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

1 her sleep. Aune has been ticketed by the LBPD for illegal lodging on at least one
2 occasion on September 15, 2013 and received a verbal warning for sleeping in the
3 shelter parking lot in early April 2015. Her emotional state is deteriorating from the
4 constant stress of sleeping at the shelter and outdoors.

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

9 Defendants

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

16 29. Defendant LBPD provides law enforcement services in Laguna Beach
17 and enforces Laguna Beach's municipal code and the California Penal Code.

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

21 31. Each Defendant was acting on behalf of Laguna Beach or at the
22 direction of another Defendant on Laguna Beach's behalf.

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

25 33. Thus, each of the complained violations of law, were intentionally
26 committed by Defendants, their officials, agents, and employees, acting under color
27 of law.

28

1 on notice that such conduct violates the rights of these disabled, homeless
2 individuals.

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

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

20 41. Despite the lawsuit and settlement, in November 2009, the City
21 enacted L.B.M.C. section 8.30.030, a new ordinance prohibiting camping and
22 sleeping in public areas, criminalizing the same involuntary activity as that
23 prohibited by the repealed L.B.M.C. section 18.04.020. LAGUNA BEACH, CAL.,
24 CODE § 8.30.030 (the "New Ordinance"). Specifically, the New Ordinance makes

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

1 it unlawful to sleep in public parks and beaches at night, on any public street or
2 sidewalk, or on city property and to camp in any public place. Camping is defined
3 broadly to include “residing in or using any public areas for living accommodation
4 or lodging purposes . . . with one’s possessions or while storing one’s possessions.”
5 LAGUNA BEACH, CAL., CODE § 8.30.020. While the definition of camping excludes
6 “merely sleeping outside or the use of a blanket, towel, or mat,” *id.*, given the broad
7 language prohibiting residing in public areas with possessions and the extent of the
8 separate sleeping prohibition, it is impracticable for an unsheltered homeless
9 individual to sleep in compliance with the ordinance.

10 **Creation of the Alternate Sleeping Location and**
11 **Need for Permanent Supportive Housing**

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

18 43. The ASL is currently operated by Friendship Shelter and funded by the
19 City (partially through federal Community Development Block Grant (“CDBG”)
20 funds received through Orange County). It is located approximately two-and-a-half
21 miles outside of the downtown area, along Laguna Canyon Road—a twisting
22 roadway which runs from downtown Laguna Beach inland through Laguna Canyon
23 towards the City of Irvine. A van is provided to transport homeless individuals
24 from the downtown area to the ASL in the evening. Access to the ASL is limited –
25 on any given night 5-15 people are turned away because of a lack of capacity.

26 44. At the City’s behest, the ASL gives priority to those who can
27 demonstrate that they are “local Laguna Beach residents.” This residency
28 requirement for homeless individuals has an extremely high bar – individuals must

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

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

23 46. While the ASL was created to serve the needs of Laguna Beach’s
24 homeless population, almost entirely composed of those who are chronically
25 homeless, many individuals within this population cannot access the ASL because
26 they suffer from mental disabilities. As is typical of emergency shelter, the ASL is
27 extremely crowded, noisy, and chaotic. Chronically homeless individuals suffering
28 from certain mental health conditions – such as PTSD, bipolar disorder, severe

1 depression and anxiety, and schizophrenia – cannot tolerate this environment.
2 Some cannot stay at the shelter for even a night, while others can stay for a short
3 time before needing to leave. Still others try to stay at the ASL but are forced to
4 leave because their disabilities prevent them from being able to conform their
5 conduct to that required by ASL staff. Those who do stay at the ASL report not
6 being able to sleep because of the noise and the anxiety caused by the crowded,
7 chaotic environment, as well as worsening mental and physical health symptoms.

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

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

24 **Renewed Enforcement**

25 49. Soon after the expiration of the *Siprelle* settlement agreement, the City
26 of Laguna Beach resumed its targeted harassment of disabled, homeless
27 individuals. LBPD officers routinely issue misdemeanor citations to disabled,
28

1 homeless individuals for sleeping outdoors – sometimes as violations of the New
2 Ordinance, but more commonly as violations of Penal Code section 647(e), which
3 defines disorderly conduct, a misdemeanor, to include “lodg[ing] in any building,
4 structure, vehicle, or place, whether public or private, without the permission of the
5 owner or person entitled to the possession or in control of it.”

6 50. Finally, the City imposes a beach curfew under which the beaches are
7 closed from 1:00 a.m. to 5:00 a.m. each night. LAGUNA BEACH, CAL., CODE §
8 18.05.010. Ostensibly, “no person shall enter, remain or stay on any city beach or
9 in any city park at any time when such beach or park is closed.” *Id.* § 18.05.020.
10 Yet, the L.B.M.C. also provides a number of exceptions for nearly every other
11 activity one would engage in at the beach—except sleeping. *Id.* § 18.05.040
12 (permitting walking, jogging, fishing, or grunion hunting, . . . scuba diving, surfing,
13 or swimming in the ocean” while beaches are “closed”).

14 51. LBPB frequently enforces the New Ordinance and Penal Code section
15 647(e) against individuals who sleep outdoors because they cannot access the ASL
16 – either because the individuals failed to win a lottery spot or because the
17 individuals cannot tolerate the ASL due to their mental or physical disabilities.
18 Moreover, the City has relied more heavily on the beach curfew ordinances to
19 punish the same underlying conduct.

20 52. Individuals turned away from the ASL are stranded several miles out
21 of town and have limited options for lodging. None of those options complies with
22 the law. Individuals sleeping in the ASL parking lot have been cited by LBPB
23 officers even after explaining to the officers that they were turned away from the
24 ASL and had nowhere else to go. To avoid such citations, some individuals leave
25 the immediate area of the ASL and sleep in the brushy areas in the nearby canyon
26 instead. Others make their way back to the downtown or beach areas to seek a
27 hidden place to sleep. Both of these options are dangerous. In several high-profile
28 incidents in the last few years, homeless persons have died or been seriously injured

1 while traveling on the dark, winding stretch of Laguna Canyon Road between the
2 ASL and downtown or in the canyon. However, LBPD officers also seek out and
3 cite disabled, homeless persons for sleeping in the canyon area, downtown, or at the
4 beaches. No matter where they go, disabled, homeless persons cannot escape
5 punishment in Laguna Beach.

6 **CLASS ALLEGATIONS**

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

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

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

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

22 57. The common questions of law to be determined are whether (a) the
23 City's homelessness policy and practice denies benefits to, or otherwise
24 discriminates against, disabled, chronically homeless persons who require
25 permanent supportive housing to be stably housed and are subject to increased law
26 enforcement, harassment, and scrutiny because they cannot access existing shelter
27 in Laguna Beach because of their disabilities; (b) the issuance of criminal citations
28 to disabled, homeless persons forced to sleep outdoors because they cannot access

1 shelter or housing constitutes cruel and unusual punishment; and (c) the City's
2 homelessness policy and practice violates disabled, homeless persons due process
3 rights by exposing them to an increased risk of danger. These questions of law are
4 common to all members of the class and predominate over any question affecting
5 individual class members.

6 58. The class representatives know of no conflict of interest among class
7 members. Plaintiffs are represented by the attorneys shown on the caption page,
8 including attorneys from the ACLU FOUNDATION OF SOUTHERN
9 CALIFORNIA, who have experience litigating civil rights cases on behalf of
10 homeless and disabled plaintiffs, and private counsel from PAUL HASTINGS LLP,
11 all of whom will vigorously prosecute this action.

12 **FIRST CLAIM FOR RELIEF**

13 **Violation of Title II of the ADA (42 U.S.C. § 12132)**

14 59. Plaintiffs reallege and incorporate by reference each and every
15 allegation set forth in paragraphs 1 through 58 as though fully alleged herein.

16 60. In 1990, Congress enacted the Americans with Disabilities Act, 42
17 U.S.C. §§ 12101 -12181 ("ADA"), in order to secure and advance the civil rights of
18 people with disabilities. The Congressional intent in enacting the ADA is "the
19 elimination of discrimination against individuals with disabilities." 42 U.S. C. §
20 12101(b)(1). Congress thus found that "historically, society has tended to isolate
21 and segregate individuals with disabilities," and that these forms of discrimination
22 "continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).
23 Congress also determined that "the Nation's proper goals regarding individuals
24 with disabilities are to assure equality of opportunity, full participation, independent
25 living, and economic sufficiency for such individuals." 42 U.S.C. § 12101(a)(8).

26 61. Title II of the ADA provides that "no qualified individual with a
27 disability shall, by reason of such disability, be excluded from participation in or be
28

1 denied the benefits of the services, programs, or activities of a public entity, or be
2 subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

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

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

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

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1 with heavy law enforcement (particularly under Penal Code section 647(e) and
2 L.B.M.C. sections 8.30.030, 18.05.020), harassment, and scrutiny of those who are
3 forced to sleep outside because they cannot access this shelter – burdens disabled,
4 homeless persons in a manner different from and greater than the burdens
5 experienced by homeless persons who do not have disabilities.

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

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

22 **THIRD CLAIM FOR RELIEF**

23 **Violation of Eighth and Fourteenth Amendments (42 U.S.C. § 1983)** 24 **and California Constitution §§ 7, 17 (Cruel and Unusual Punishment)**

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

27 74. The acts and omissions of Defendants, and each of them, as described
28 herein, violate the rights of all plaintiffs to be free from actual or threatened cruel

1 and unusual punishment. By virtue of their involuntary status as homeless and
2 disabled, and the absence and insufficiency of shelter or housing in Laguna Beach,
3 Plaintiffs have no way to comply with the laws Defendants have sought and
4 continue to seek to enforce against them, in particular Penal Code section 647(e),
5 and L.B.M.C. sections 8.30.030, 18.05.020.

6 **FOURTH CLAIM FOR RELIEF**

7 **Violation of the Fourteenth Amendment (42 U.S.C. § 1983)** 8 **and California Constitution § 7 (Substantive Due Process)**

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

11 76. The acts and omissions of Defendants, and each of them, as described
12 herein, violate the constitutional rights of Plaintiffs under the Due Process Clause
13 of the United States Constitution. Defendants' policy and practice of combining
14 minimal shelter, often inaccessible to those with disabilities with heavy law
15 enforcement (particularly under Penal Code section 647(e) and L.B.M.C. sections
16 8.30.030, 18.05.020), harassment, and threats against those who are forced to sleep
17 outside because they cannot access this shelter places plaintiffs' in a position of
18 increased physical danger. Defendants are aware of the danger because of several
19 high-profile incidents in which homeless individuals were killed or seriously
20 injured and have acted with deliberate indifference to this danger.

21 **ACTUAL CONTROVERSY**

22 77. There exists an actual controversy between Plaintiffs and Defendants
23 as to each and every Claim for Relief alleged herein. Plaintiffs have suffered and
24 will continue to suffer ongoing and continuous injuries so long as the City
25 continues its policy and practice of supporting only minimal shelter inaccessible to
26 and/or inappropriate for disabled, homeless persons while citing, harassing, and
27 threatening disabled, homeless persons who cannot access this shelter. These
28 controversies warrant judicial determinations. Absent relief from this Court,

1 Plaintiffs will suffer irreparable injury as a consequence of Defendants’
2 unconstitutional and illegal acts and omissions.

3 **REQUEST FOR RELIEF**

4 Plaintiffs request relief as follows:

5 1. A preliminary injunction and a permanent injunction, enjoining
6 Defendants, their officers, agents, and employees, from enforcing California Penal
7 Code section 647(e) and Laguna Beach Municipal Code sections 8.30.030,
8 18.05.020 against disabled, homeless individuals who have no practical way to
9 comply by virtue of their homelessness and disability;

10 2. A permanent injunction requiring Defendants to create and fund a
11 program to provide permanent supportive housing within the Laguna Beach city
12 limits sufficient to house the City’s disabled, homeless population;

13 3. For a declaration that Defendants’ past, present, and threatened future
14 actions deny Plaintiffs the benefits of the City’s Homelessness Program or subject
15 them to discrimination on the basis of their disabilities in violation of Title II of the
16 ADA and Section 504 of the Rehabilitation Act;

17 4. For a declaration that Defendants’ past, present, and threatened future
18 actions violate Plaintiffs’ rights to be free from cruel and unusual punishment under
19 the Constitution of the United States and the California Constitution;

20 5. For a declaration that Defendants’ past, present, and threatened future
21 actions violate Plaintiffs’ rights to be free from due process violations under the
22 Constitution of the United States and the California Constitution;

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

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

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

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DATED: August 20, 2015

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA and PAUL HASTINGS LLP

By: _____
HEATHER MARIA JOHNSON