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19 IRVIN JOSUE HERNANDEZ ORTEGA
20 and AYAT JALAL

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 ANITA MIRALLE, JODII LE'GRAND) Case No. 4:18-cv-06823-HSG
24 EVERETT, I, TINA SCOTT, AIYAHNNA)
25 JOHNSON; IRVIN JOSUE) **FIRST AMENDED COMPLAINT FOR**
26 HERNANDEZ ORTEGA; and AYAT) **DAMAGES AND INJUNCTIVE RELIEF**
27 JALAL,)

28) Hon. Haywood S. Gilliam, Jr.

Plaintiffs,)

vs.)

23 CITY OF OAKLAND, a subdivision of)
24 the State of California; LIBBY SCHAAF;)
25 JOE DEVRIES; ANNE KIRKPATRICK;)
26 and SABRINA LANDRETH,)

Defendants.)

INTRODUCTION

1
2 1. Oakland is experiencing unprecedented homelessness and a lack of
3 adequate shelter for its homeless residents. In 2017, the City of Oakland formally
4 acknowledged that it is home to over 2,700 homeless individuals. This represented a
5 25% increase from the number of people experiencing homelessness in 2015. The City
6 reported that in 2018, it expected that number of people experiencing homelessness to
7 increase three-fold.

8 2. In September 2017, acknowledging its failures to provide adequate shelter
9 to those experiencing homeless and acknowledging the dangers inherent with living on
10 the streets, the Oakland City Council declared a shelter crisis allowing it to suspend
11 certain state and local health and safety regulations to provide unconventional shelter
12 options to homeless residents. In its declaration, the City acknowledged that “the
13 current number of homeless individuals in Oakland far outpaces the number of existing
14 shelter beds, transitional housing or permanent supportive housing units available.” It
15 admitted that “a significant number of persons are without the ability to obtain shelter,
16 and that the situation has resulted in a threat to the health and safety of those persons. .
17 . [T]his shelter crisis affects Oakland’s citizens disproportionately with more African
18 American, Latino and elderly individuals experiencing homelessness.” It determined
19 that “the long term and recent decreases in Federal and State funding for housing
20 programs has resulted in an erosion of shelter options for the most vulnerable
21 populations including the elderly, youth, victims of domestic violence, sexually
22 exploited minors and persons suffering from mental illness, HIV/AIDS, substance
23 abuse and disabilities.” The City also declared that “analysis and evidence has
24 demonstrated that providing decent, safe and stable housing combined with crucial
25 support services are two primary components of successful transition from
26 homelessness to a safer and healthier way of living.”

27 3. Despite the City’s declaration and statistics that show that Oakland’s
28 homeless population grew by 700 people between 2015 and 2017, and despite the City’s

1 belief that its homeless population grew by 2,300 to 5,000 in 2018 alone, the City has
2 only increased its emergency shelter beds by 360, its traditional shelter beds by 100
3 beds and its transitional housing beds (the only beds where a transition to permanent
4 housing is contemplated) by 90 since 2017. The increase in shelter beds as compared to
5 the astronomical growth of the homeless population in Oakland was so deeply
6 inadequate that in February 2019, City Council President Rebecca Kaplan proposed
7 declaring a state of local emergency under California Government Code section 8630
8 with regards to the City's homelessness crisis.

9 4. These conditions are so stark that a United Nations Special Rapporteur
10 visited Oakland and remarked that “[a]ttempting to discourage residents from
11 remaining in informal settlements or encampments by denying access to water,
12 sanitation and health services and other basic necessities, as has been witnessed by the
13 Special Rapporteur in San Francisco and Oakland, California, United States of America,
14 constitutes cruel and inhuman treatment and is a violation of multiple human rights,
15 including the rights to life, housing, health and water and sanitation.”

16 5. The City's response has not been to provide these basic needs. Rather, it
17 responds to human rights violations it creates by performing sweeps designed to force
18 homeless residents to move under threat of arrest and to confiscate and dispose of their
19 property. The City created an Encampment Management Policy that instructs the City
20 to perform sweeps on homeless encampments if they are close to schools, senior
21 centers, and other “community resources” to which the City apparently concludes
22 homeless residents are not entitled.

23 6. During these operations, the City will take and destroy the property of
24 residents or force property abandonment through threat of arrest. As a result, homeless
25 residents are stripped of critical property necessary for safety and survival and of
26 precious belongings. The operations often force homeless residents into unfamiliar
27 areas with less protection from the elements and from those who wish to prey on their
28 vulnerability, less property, and less stability. The City regularly fails to offer the

1 homeless residents it has forcibly removed from their encampment communities
2 options for alternative shelter. The experience often causes homeless residents
3 depression, fear, anxiety and stress.

4 7. It was with this backdrop that plaintiffs, homeless women and men,
5 attempted to establish an encampment focused on security for women and families,
6 sobriety, and creating resources for the unhoused community. Plaintiffs, like many
7 homeless residents in Oakland, experienced the destruction of their encampment, the
8 seizure and destruction of their property, and their casting out into unfamiliar streets
9 when the City chose to eliminate their encampment.

10 **JURISDICTION AND VENUE**

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

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

20 **PARTIES**

21 **Plaintiffs**

22 10. At all times relevant hereto, plaintiff ANITA MIRALLE, was a homeless
23 resident of Oakland, California and a resident of the Housing and Dignity Village at
24 Edes Avenue and S. Elmhurst Avenue. Ms. Miralle lives with her two daughters, one of
25 whom is a minor, in a camper. She runs a catering and vendor business and regularly
26 works late into the night. Her minor child is a student who receives high school credit
27 for classes she takes at Berkeley City College.
28

1 CITY. Defendant SCHAAF is being sued in her individual and official capacities.

2 17. At all times relevant hereto, defendant JOE DEVRIES was the Assistant to
3 the City Administrator of City of Oakland responsible for policies regarding
4 homelessness and he was acting within the course and scope of that employment. As
5 Assistant to the City Administrator, defendant DEVRIES is in charge of certain
6 homelessness working groups. He is a policy-making official for defendant CITY OF
7 OAKLAND with the power to make official and final policy for the CITY. Defendant
8 DEVRIES is being sued in his individual and official capacities.

9 18. At all times relevant hereto, defendant ANNE KIRKPATRICK was the
10 Police Chief of the CITY OF OAKLAND responsible for all policies and operations of the
11 Oakland Police Department, including those with respect to the homeless, and she was
12 acting within the course and scope of that employment. As Police Chief, she is a policy-
13 making official for defendant CITY OF OAKLAND with the power to make official and
14 final policy for the CITY. Defendant KIRKPATRICK is being sued in her individual and
15 official capacities.

16 19. At all times relevant hereto, defendant SABRINA LANDRETH was the
17 City Administrator of the CITY OF OAKLAND with final decision making power on all
18 homeless encampment closures, and she was acting within the course and scope of that
19 employment. As City Administrator, defendant LANDRETH is a policy-making official
20 for defendant CITY OF OAKLAND with the power to make official and final policy for
21 the CITY. Defendant LANDRETH is being sued in her individual and official capacities.

22 20. At all times relevant hereto, defendant CITY OF OAKLAND was a
23 municipal corporation, duly organized and existing under the laws of the State of
24 California. Under its authority, defendant CITY OF OAKLAND operates the Oakland
25 Police Department and employs its officers and the Oakland Department of Public
26 Works and employs its city workers.

27
28 ///

FACTUAL ALLEGATIONS

1
2 21. Plaintiff Anita Miralle is a homeless activist who advocates to defendants
3 for the rights of the homeless, including the rights of the homeless to build intentional
4 communities and to be self-determining and self-sufficient. Ms. Miralle lived in
5 Oakland prior to becoming homeless and she has been homeless for a little over a year,
6 when her landlord doubled her rent.

7 22. Beginning on October 27, 2018, Ms. Miralle, plaintiffs, and other
8 homeless women and men moved to an unused lot at the corner of Edes Avenue and S.
9 Elmhurst Avenue in East Oakland.

10 23. The lot was owned by the City and had been unused for a decade.
11 Plaintiffs and other residents cleaned the land, which had been used for years for illegal
12 dumping.

13 24. Prior to living on the lot, all plaintiffs were living in tents, campers,
14 recreational vehicles, and/or vehicles throughout the City of Oakland by necessity and
15 had no other way to shelter themselves.

16 25. Plaintiffs formed the encampment as an intentional, sober community
17 that was safe for women and their families. Plaintiffs collected clothing, bedding, tents,
18 and other necessary survival items that they distributed to anyone in need. They also
19 cooked communal breakfasts and dinners four days a week to share with those in need.
20 They held interfaith religious services. They had a health clinic where professionals
21 provided free basic medical service to members of the Housing and Dignity Village and
22 the surrounding neighborhood community.

23 26. On November 7, 2018, the City notified the encampment that it would
24 forcibly remove their encampment. On its notice, the City included two phone numbers
25 that residents could call to get information about the closure. However, one phone
26 number was out of service and the other led only to a voicemail that was frequently full.
27 Plaintiffs tried to call the numbers but they were not able to get a hold of a person.
28

1 27. The City performs two types of enforcement actions against
2 encampments: a “clean and clear” and a “closure.” During a “clean and clear,” the
3 Department of Public Works and the Police come to an encampment and “clean up”
4 and clear items and debris, but residents of the encampment are permitted to remain in
5 or near the location after they have vacated the location for the duration of the “clean
6 up.” During a “closure,” the Department of Public Works and the Police destroy the
7 encampment and force its residents to move.

8 28. During these operations, the City takes and destroys residents’ property
9 and forces residents to move from the encampment location. The City does not provide
10 the encampment residents who are being forcibly evicted with an alternative shelter
11 option. As there is not enough shelter in the City for all of its homeless residents, the
12 City does not and cannot offer shelter to all residents of an encampment during a
13 closure.

14 29. As part of these enforcement actions, the City often takes property when it
15 is momentarily unattended with no investigation into its ownership. The City provides
16 arbitrary lengths of time for residents to move their belongings, and they take and
17 destroy its residents’ personal property that that is not removed by that deadline,
18 whether or not the owner is still present.

19 30. It is the natural and predictable consequence of the City’s actions that
20 homeless residents with no means to move their property, nowhere to move, and no
21 City assistance are forced to leave behind belongings they desire to keep and that are
22 integral to their lives and their efforts to get off the streets. Instead of storing them for
23 residents or moving their items to a new safe location for the encampment, the City
24 disposes of homeless residents’ belongings.

25 31. At any enforcement action, City of Oakland police threaten arrest and/or
26 citation if the residents do not comply, and can and do cite and arrest people.

27 32. Plaintiffs are familiar with these practices because they have witnessed
28

1 them and experienced them. For example, in February 2017, the City used a bulldozer,
2 two dump trucks and approximately 80 police officers in full riot gear to destroy a
3 similar encampment community in Marcus Garvey Park at 36th street and Martin
4 Luther King Jr. Way in Oakland. Plaintiff Ms. Miralle lost belongings when the City
5 destroyed that encampment. In addition to her own experiences, she has witnessed
6 more than 40 of the City's operations since 2016. Plaintiff Mr. Hernandez had his
7 property and shelter destroyed by the City on several occasions.

8 33. After plaintiffs were unsuccessfully in challenging the City's plans in
9 court, the City posted notice at the encampment stating that it would return December
10 5, 2018, to enforce a closure.

11 34. At around 8 a.m. on December 5, 2018, Oakland Police and Department
12 of Public Works arrived to close the encampment and evict the residents. There was a
13 significant amount of media and approximately a hundred supporters of the plaintiffs
14 present at the encampment.

15 35. Plaintiffs had not moved because they did not have anywhere to go, but
16 informed City officials that they were interested in any accessible shelter options that
17 the City could provide for them.

18 36. The defendants failed to offer the plaintiffs accessible and/or adequate
19 shelter options. For example, adult plaintiffs who were not living with minor children
20 were told they could stay a night in the St. Vincent de Paul Shelter. The shelter operates
21 only during the evening, allows a person to bring only two bags of belongings with her,
22 does not allow residents to bring pets, and does not guarantee a resident more than a
23 single night's stay.

24 37. Plaintiffs Ms. Scott, Mr. Everett, Mr. Hernandez, and Mr. Jalal were
25 single adults not living with children. They would have been forced to abandon most of
26 their belongings before entering the shelter for the night. Mr. Jalal would have had to
27 abandon his dog to stay in the shelter. Mr. Hernandez often worked late nights and
28

1 would have been forced to quit his job. Further, plaintiffs were not guaranteed any long
2 term stay or temporary or permanent housing option following their stay.

3 38. The adult plaintiffs living with their children were informed that they
4 could stay at the only family shelter Oakland provides, which is in the City of Alameda.

5 39. Plaintiffs Ms. Miralle and Ms. Johnson were adults living with their minor
6 children. They too would have to abandon the majority of their property and navigate
7 the logistics of getting their minor children to their Oakland and Berkeley schools in the
8 morning and the logistics of getting themselves to their jobs to stay a night in the
9 shelter. Ms. Miralle would have also been forced to abandon her cats, as the shelter
10 does not accommodate pets.

11 40. In order to get into the family shelter, the City informed plaintiffs, the
12 City would have to move them to the front of a waiting list, displacing other Oakland
13 families who were waiting for a spot in that shelter.

14 41. The plaintiffs asked for written information on the shelters, including the
15 addresses and any restrictions or limitations, but the City would not provide this
16 information.

17 42. Throughout the morning of December 5, plaintiffs and their advocates
18 negotiated in good faith with representatives of the City of Oakland to stay in the site,
19 address the situation without destroying the Housing and Dignity Village and/or place
20 the plaintiffs in appropriate shelters. The City of Oakland eventually agreed to allow
21 plaintiffs to stay pending a community meeting facilitated by Candice Elder of the East
22 Oakland Collective and Margaretta Lin from the Dellums Institute for Social Justice.

23 43. Representatives from the City and Council Member Larry Reid's office,
24 including Assistant City Administrator Marakeshia Smith and Councilmember Reid
25 assistant Ray Leon, explicitly agreed to refrain from evicting the plaintiffs or clearing
26 the encampment until this meeting was held. Plaintiffs were relieved and looked
27 forward to negotiating with the City to resolve the situation.
28

1 44. However, the next day, December 6, 2018, without notice or warning,
2 approximately 28 police officers and a dozen Department of Public Works employees
3 came to clear the encampment.

4 45. Many residents were not present. Plaintiff Mr. Hernandez was at work.
5 Plaintiffs Ms. Miralle, Ms. Johnson, Mr. Everett, and Mr. Jalal were the only plaintiffs
6 present.

7 46. Plaintiffs who were present at this time asked the City officials for more
8 time to pack and remove their belongings, and to allow the residents who were not
9 there at that time the opportunity to do so, but the City officials refused. As a result,
10 plaintiffs and other residents did not have the opportunity to pack or preserve their
11 belongings.

12 47. Department of Public Works workers tore down shelters and structures,
13 and failed to store property that plaintiffs specifically requested be stored. The city
14 workers did not appear to be placing in bags or labeling anything they were taking. The
15 plaintiffs and residents who were present at the time frantically tried to salvage their
16 most important and valuable personal belongings, as well as for those who were not
17 present, but City employees threw plaintiffs' possessions in the back of flatbed trucks
18 and trash compactors, breaking and destroying many of plaintiffs possessions as they
19 cleared the community. Police officers formed a line to prevent plaintiffs, residents and
20 supporters from helping to gather the remaining property. Defendants filled multiple
21 flatbed trucks with plaintiffs' property and removed it from the site. Finally, police
22 handcuffed and forcibly removed the last four remaining people and destroyed the
23 encampment.
24

25 48. Plaintiffs have been homeless since the eviction and defendants have
26 made no efforts to help them find a shelter bed after December 5. They have been
27 forced to live without their property.

28 49. Plaintiffs Ms. Johnson, Ms. Miralle, Mr. Hernandez, Mr. Everett, and Mr.

1 Jalal each tried multiple times to contact the City officials responsible for giving them
2 access to any of their property that the City may have stored. They always got a
3 voicemail and did not receive a return phone call after leaving a message.

4 50. Plaintiff Ms. Johnson repeatedly called all of the numbers provided by the
5 City in an attempt to get her property back. No one answered any of these calls and she
6 was forced to leave messages about her property, which she repeatedly did. She did not
7 receive any calls back. On the day of the eviction, Ms. Johnson heard they were taking
8 her property to 5050 Coliseum Way in Oakland. After Christmas, she went to 5050
9 Coliseum Way, but it was closed. In January 2019, she was given another number for
10 Public Works, which was not listed on the eviction notice. She called that number and
11 left a message. On January 23, 2019, she received a call from Leland Moore from Public
12 Works. On January 24, 2019, Ms. Johnson sent Mr. Moore an email asking him when
13 she and the other plaintiffs could come and get their property, and offered to organize a
14 time that would work for all of the plaintiffs. She did not receive an email back.

15 51. Plaintiff Ms. Miralle repeatedly contacted City officials about her property
16 in December 2018. On January 11, 2019, she called and got through to a person at
17 Public Works who connected her to another person at Public Works, who connected her
18 to two other Public Works employees that they said she needed to talk to in order to
19 retrieve any of her stored property. She left messages for both but never heard back.
20 On or about January 27, 2019, Ms. Miralle spoke with Peter Dunlap from Public Works,
21 who told her that each resident needed to produce an itemized list with specific details
22 about each item she was “claiming” the City took. On February 6, 2019, Ms. Miralle
23 emailed Mr. Dunlap a four page, detailed list of the property taken by the City as
24 requested. Ms. Miralle did not hear back from Mr. Dunlap.

25
26 52. On March 1, 2019, three months after the City cleared plaintiffs from their
27 encampment community and took their property, plaintiffs’ counsel wrote an email to
28 City Attorney Jamilah Jefferson and informed her that the plaintiffs and residents had

1 made numerous attempts to retrieve their property since it was taken on December 6
2 but had not been able to get any of their property back. Plaintiffs' counsel requested
3 that City Attorney Jefferson help ensure that plaintiffs could get their property back.

4 53. On March 5, City Attorney Jefferson responded to plaintiffs' counsel's
5 email and informed them that the City "is currently undergoing the process of
6 reviewing" plaintiffs' property. The City provided a list of plaintiffs' items that the City
7 said it still had in its possession, but this list omitted many of the items that plaintiffs
8 desired to retrieve and which should have been collected and maintained pursuant to
9 City policy. The list itself states that many of the items on the inventory presented by
10 plaintiffs "were not present." The omission of these items indicates that they were
11 either destroyed or otherwise not stored.

12 54. For example, the City did not report having stored plaintiff Ms. Miralle's
13 catering equipment that she uses for personal and business purposes, Mr. Jalal's work
14 clothing and poetry and personal writings stored in notebooks and journals, and Ms.
15 Johnson's religious materials.

16 55. On March 29, 2019, Ms. Miralle emailed Mr. Leland to set up a time for
17 plaintiffs to view the condition of and retrieve the property that was said to be stored.

18 56. Mr. Leland responded by email and told Ms. Miralle that he would
19 contact her "on Monday 04/01/09 to arrange a date and time." When he failed to do so,
20 Ms. Miralle emailed him again on April 3, 2019, after which he told her he was
21 attempting to set it up for April 8, 2019. However, plaintiffs still have not been able to
22 view or retrieve their belongings that were reportedly stored.

23 57. Plaintiffs cannot confirm that the City indeed stored anything it claims to
24 have because the City has denied plaintiffs any meaningful process for them to secure
25 the return of their property.

26 58. After the City closed the Housing and Dignity Village, plaintiffs were
27 forced back into the streets without tents, bedding, clothing and other necessary
28

1 property and sentimental belongings. Ms. Miralle has trouble sleeping through the
2 night because of the constant disruption from predators and/or police telling her she
3 has to move from where she is parked. Two of the women residents relapsed because of
4 the stress of the eviction and of returning to the streets. One resident was raped three
5 weeks after Housing and Dignity Village was closed.

6 59. Plaintiffs remain homeless and as such they are subject at any time to the
7 City's practices during homeless encampment sweeps.

8 **FIRST CLAIM FOR RELIEF -**
9 **DENIAL OF DUE PROCESS IN VIOLATION OF THE FOURTH AND**
10 **FOURTEENTH AMENDMENTS**

(By plaintiffs against all defendants.)

(42 U.S.C. § 1983)

11 60. Plaintiffs incorporate by reference paragraphs 1 through 59 above as
12 though fully set forth herein.

13 61. By virtue of the foregoing, defendant fails to provide adequate notice
14 before taking actions against plaintiffs that outright destroy or otherwise fail to
15 preserve their property thereby denying them any meaningful opportunity for the
16 return of their property, depriving plaintiffs their right under the Fourth and
17 Fourteenth Amendments to the United States Constitution to be free from the seizure
18 of property without due process.

19 62. As a direct and proximate consequence of the acts of defendants and their
20 agents and employees, plaintiffs have suffered and continue to suffer loss of their
21 personal property and are entitled to compensatory damages for their property and
22 other injury to their person.

23 **SECOND CLAIM FOR RELIEF -**
24 **UNLAWFUL SEIZURE IN OF PROPERTY IN VIOLATION OF THE FOURTH**
25 **AMENDMENT**

(By plaintiffs against all defendants)

(42 U.S.C. § 1983)

26 63. Plaintiffs incorporate by reference paragraphs 1 through 62 above as
27 though fully set forth herein.

28 64. Defendants violated plaintiffs' Fourth Amendment rights to be free from

1 unreasonable seizure of their property by confiscating and then destroying plaintiffs'
2 property without sufficient warning and at times under threat of arrest if plaintiffs
3 reentered the cordoned off encampment. Defendants' unlawful actions was done with
4 the specific intent to deprive plaintiffs of their constitutional rights to be secure in their
5 property or with reckless disregard of their rights.

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

11 66. As a direct and proximate consequence of the acts of defendants and their
12 agents and employees, plaintiffs have suffered and continue to suffer loss of their
13 personal property and are entitled to compensatory damages for their property and
14 other injury to their person.

15 **THIRD CLAIM FOR RELIEF –**
16 **VIOLATION OF THE SUBSTANTIVE DUE PROCESS CLAUSE OF THE**
17 **FOURTEENTH AMENDMENT**

18 (By plaintiffs against all defendants.)

19 (42 U.S.C. § 1983)

20 67. Plaintiffs incorporate by reference paragraphs 1 through 66 above as
21 though fully set forth herein.

22 68. Poverty, unemployment, untreated mental and physical illness, and the
23 City's failure to provide adequate shelter space often force plaintiffs and other homeless
24 individuals to sleep in public places, which the City admits is dangerous for homeless
25 residents.

26 69. To protect themselves from harsh elements such as rain and cold, as well
27 as to provide basic means of security and privacy, homeless residents use tents and
28 construct shelters using materials purchased, donated and salvaged.

69. When the City performs homeless sweeps, it destroys or otherwise fails to
preserve shelters for these homeless residents.

1 71. The City provides no alternative adequate shelter for the residents whose
2 shelters they've destroyed, nor could it considering the number of homeless residents as
3 compared to the number of shelter beds available in the City.

4 72. By doing so, defendants put plaintiffs in a more dangerous situation than
5 they were in before the City intervened, in violation of the Fourteenth Amendment to
6 the United States Constitution.

7 73. As a direct and proximate consequence of the acts of defendants and their
8 agents and employees, plaintiffs have suffered and continue to suffer from the danger
9 the City has put them in and are entitled to damages for injury to their person.

10 **FOURTH CLAIM FOR RELIEF –**
11 **CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH**
12 **AMENDMENT**

 (By plaintiffs against all defendants.)

 (42 U.S.C. § 1983)

13 74. Plaintiffs incorporate by reference paragraphs 1 through 73 above as
14 though fully set forth herein.

15 75. Poverty, unemployment, untreated mental and physical illness, and the
16 City's failure to provide adequate shelter space often force plaintiffs and other homeless
17 individuals to sleep in public places.

18 76. Although plaintiffs are homeless and have no way to comply with
19 California Penal Code section 647(e) or Oakland Municipal Codes preventing persons
20 from sitting or lying because they must sleep outdoors, defendants and their agents have
21 cited, arrested, or threatened plaintiffs for sleeping in public places in Oakland.
22 Defendants are punishing plaintiffs and other homeless individuals based on their
23 status as homeless persons.

24 77. Defendants' actions that penalize plaintiffs for their involuntary status
25 constitute cruel and unusual punishment in violation of plaintiffs' well established rights
26 under the Eighth Amendment of the United States Constitution as incorporated in, and
27 applied to the states through, the Fourteenth Amendment.
28

1 78. Plaintiffs seek redress for defendants' violation of their right to be free
2 from cruel and unusual punishment.

3 79. As a direct and proximate consequence of the acts of defendants and their
4 agents and employees, plaintiffs have suffered and continue to suffer and are entitled to
5 damages for injury to their person.

6 **FIFTH CLAIM FOR RELIEF -**
7 **RETALIATION AGAINST PROTECTED ACTIVITY IN VIOLATION**
8 **OF THE FIRST AMENDMENT**

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

9 80. Plaintiffs incorporate by reference paragraphs 1 through 79 above as
10 though fully set forth herein.

11 81. By virtue of the foregoing, defendants targeted plaintiffs for eviction in
12 the dead of winter based on the content of their speech and their political engagement.

13 82. As a direct and proximate consequence of the acts of defendants and their
14 agents and employees, plaintiffs have suffered and continue to suffer and are entitled to
15 damages for injury to their person.

16 **SIXTH CLAIM FOR RELIEF -**
17 **SELECTIVE ENFORCEMENT IN VIOLATION**
18 **OF THE FOURTEENTH AMENDMENT**

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

19 83. Plaintiffs incorporate by reference paragraphs 1 through 82 above as
20 though fully set forth herein.

21 84. By virtue of the foregoing, defendants targeted plaintiffs for enforcement
22 in the dead of winter based on the content of their speech and their political
23 engagement while allowing other homeless residents who were not politically active
24 remain in encampments.

25 85. As a direct and proximate consequence of the acts of defendants and their
26 agents and employees, plaintiffs have suffered and continue to suffer and are entitled to
27 damages for injury to their person.
28

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1 **SEVENTH CLAIM FOR RELIEF -**
2 **DELIBERATE INDIFFERENCE TO VIOLATIONS OF CONSTITUTIONAL**
3 **RIGHTS**

4 (By plaintiffs against the defendant CITY OF OAKLAND)
5 (42 U.S.C. § 1983)

6 86. Plaintiffs incorporate by reference paragraphs 1 through 85 above as
7 though fully set forth herein.

8 87. Defendant CITY OF OAKLAND enforced policies and practices that it
9 knew violated the constitutional rights of plaintiffs, as enumerated above, and
10 deliberately disregarded its obligation to refrain from doing so.

11 88. By virtue of the foregoing, defendant CITY OF OAKLAND was
12 deliberately indifferent to the obvious consequences of its policy and the practices of its
13 employees. As a result, defendant CITY OF OAKLAND deprived plaintiffs of their
14 rights, as set forth above.

15 89. As a direct and proximate consequence of the acts of defendant CITY OF
16 OAKLAND and its agents and employees, plaintiffs have suffered and continue to suffer
17 and are entitled to compensatory damages and damages for injury to their person.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for the following relief:

- 20 (a) For compensatory, general, and special damages against each defendant,
21 jointly and severally, amounts to be proven at trial;
- 22 (b) Punitive and exemplary damages against individually named defendants
23 in an amount appropriate to punish defendant(s) and deter others from
24 engaging in similar misconduct;
- 25 (c) Prejudgment interest;
- 26 (d) For costs of suit and reasonable attorneys' fees and costs as authorized by
27 statute or law;
- 28 (e) For restitution as the Court deems just and proper;
- (f) For injunctive relief;
- (g) For declaratory relief;

1 (h) For such other relief as the Court may deem proper.

2 **DEMAND FOR TRIAL BY JURY**

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

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6 Dated: April 19, 2019

7 SIEGEL, YEE, BRUNNER & MEHTA

8
9 By /s/EmilyRose Johns

10 EmilyRose Johns

11
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