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1 WILMER CUTLER PICKERING HALE & DORR LLP  
2 Keith L. Slenkovich (SBN: 129793)  
3 keith.slenkovich@wilmerhale.com  
4 Robert M. Galvin (SBN: 171508)  
5 robert.galvin@wilmerhale.com  
6 Laura M. Goodall (SBN: 300291)  
7 laura.goodall@wilmerhale.com  
8 Francine A. Bendat (SBN: 305127)  
9 francine.bendat@wilmerhale.com  
10 950 Page Mill Road  
11 Palo Alto, CA 94304  
12 Telephone: (650) 858-6110  
13 Fax: (650) 858-6100

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8 *Attorneys for Plaintiffs*  
9 [Additional counsel listed on the following page.]

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12 UNLIMITED JURISDICTION

13 KIMBERLEE SANCHEZ,  
14 JAMES LEONE,  
15 PATRICIA MOORE, on behalf of themselves  
16 and all others similarly situated,  
17 HOMELESS ACTION CENTER,  
18 WESTERN REGIONAL ADVOCACY  
19 PROJECT,  
20 SUSAN HALPERN, and  
21 NATALIE LEIMKUHNER,

Plaintiffs,

v.

19 CALIFORNIA DEPARTMENT OF  
20 TRANSPORTATION,  
21 MALCOLM DOUGHERTY, and  
DOES 1-50, inclusive,

Defendants.

Case No.: RG16842117

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF THEIR SECOND  
AMENDED MOTION FOR CLASS  
CERTIFICATION**

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Judge: Hon. Ioana Petrou  
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1 **Additional Counsel:**

2 **WILMER CUTLER PICKERING HALE & DORR LLP**

3 Ian Coghill (*pro hac vice*)  
4 ian.coghill@wilmerhale.com  
5 60 State Street  
6 Boston, MA 02109  
7 Telephone: (617) 526-6688  
8 Fax: (617) 526-5000

9 Rommy Flores (SBN: 298770)  
10 rommy.flores@wilmerhale.com  
11 350 South Grand Ave., Suite 2100  
12 Los Angeles, CA 90071  
13 Telephone: (213) 443-5355  
14 Fax: (213) 443-5400

15 **LAWYERS' COMMITTEE FOR CIVIL RIGHTS**

16 Elisa Della-Piana (SBN: 226462)  
17 edellapiana@lccr.com  
18 131 Steuart Street, Suite 400  
19 San Francisco, CA 94105  
20 Telephone: (415) 543-9444  
21 Fax: (415) 543-0296

22 **ACLU FOUNDATION OF NORTHERN CALIFORNIA, INC.**

23 William S. Freeman (SBN: 82002)  
24 wfreeman@aclunc.org  
25 Abre' L. Conner (SBN: 306024)  
26 aconner@aclunc.org  
27 39 Drumm Street  
28 San Francisco, CA 94111  
Telephone: (415) 621-2493  
Fax: (415) 255-8437

EAST BAY COMMUNITY LAW CENTER

Thomas Osha Neumann (SBN: 127215)  
oneumann@ebclc.org  
1950 University Avenue, Suite 200  
Berkeley, CA 94704  
Telephone: (510) 548-4064  
Fax: (510) 849-1536

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1 **I. INTRODUCTION**

2 The California Department of Transportation (“Caltrans”) has been seizing and  
3 summarily destroying the essential personal property of homeless persons without adequate  
4 notice or the opportunity to reclaim this property. This unlawful conduct follows a common  
5 pattern and results in the same legal violations against all proposed class members. The  
6 Representative Plaintiffs<sup>1</sup> are presently or formerly homeless individuals who live in Berkeley,  
7 Oakland, or Emeryville and who have lost personal property because of Defendants’<sup>2</sup> conduct.  
8 Their experience is typical of the class of homeless individuals they seek to represent,  
9 comprising at least sixty, and possibly hundreds, of homeless individuals impacted by the  
10 thousands of sweeps conducted by Caltrans in the East Bay since December 2014. Plaintiffs  
11 will establish through common proof that Defendants’ policies and practices for providing  
12 advanced notice, determining whether to store or destroy property, providing reclamation  
13 opportunities, and denying submitted administrative claims violate the United States  
14 Constitution, the Constitution of the State of California, and California statutory rights<sup>3</sup>; and the  
15 appropriate remedies.

16 This case therefore meets all the requirements for class certification, and Plaintiffs ask  
17 the Court to certify the following class:

18 All persons in the Cities of Berkeley, Oakland, and Emeryville who were or are  
19 homeless, and whose personal belongings have been unlawfully taken or destroyed by  
20 one or more of the Defendants, from December 13, 2014 through the date of judgment or  
settlement approval, whichever is later.

21 Class Plaintiffs<sup>4</sup> seek (1) a declaration of the illegality of Defendants’ ongoing conduct,  
22 (2) a permanent injunction, to prevent Defendants from seizing and destroying homeless  
23 individuals’ personal property with no or insufficient notice, and without meaningful  
24

25 <sup>1</sup> The Representative Plaintiffs are the named Plaintiffs Kimberlee Sanchez, James Leone, and  
Patricia Moore.

26 <sup>2</sup> Defendants include Caltrans, Caltrans’ Director Malcolm Dougherty, and Does 1-50.

27 <sup>3</sup> The statute at issue prohibits the use of intimidation in causing a violation of a person’s legal  
or constitutional rights. Cal. Civ. Code § 52.1.

28 <sup>4</sup> Class Plaintiffs include the Representative Plaintiffs and all putative class members.

1 opportunity for individuals to retrieve their belongings, and (3) damages for losses suffered.

2         Given the inherently unequal positions of the parties and the especially limited resources  
3 of the proposed class members, it is highly unlikely that class members would be able to  
4 proceed individually. By the very nature of their circumstances, homeless individuals are ill-  
5 equipped to bring their clearly valid claims to this Court. For these reasons, courts presiding  
6 over similar cases involving government destruction of homeless individuals' property have  
7 certified classes like the one Plaintiffs propose. *See, e.g., Sullivan et al. v. City of Berkeley*, No.  
8 C-17-06051-WHA, 2018 WL 4587254, at \*5 (N.D. Cal. Sept. 25, 2018); *Kincaid v. City of*  
9 *Fresno*, 244 F.R.D. 597, 601 (E.D. Cal. 2007); *Lehr v. City of Sacramento*, 259 F.R.D. 479, 481  
10 (E.D. Cal. 2009); *Lyall v. City of Denver*, No. 16-CV-2155-WJM-CBS, 2017 WL 2167031, at  
11 \*12 (D. Colo. Apr. 27, 2017). As these courts have recognized, class certification is essential to  
12 the fair and efficient resolution of these cases.

## 13 **II. STATEMENT OF FACTS**

14         Defendants have been engaging in the ongoing, conscious practice of seizing and  
15 summarily destroying the personal possessions of homeless individuals in the Cities of  
16 Berkeley, Oakland, and Emeryville. Defendants have regularly engaged in “sweeps” of areas  
17 where homeless individuals live, intentionally and indiscriminately taking and destroying their  
18 personal property with no or insufficient prior notice, and no meaningful opportunity to reclaim  
19 their belongings.

20         Defendants' illegal actions deprive homeless individuals of belongings that are critical  
21 to their survival—such as clothing, medication, cooking utensils, tents, and blankets—as well as  
22 irreplaceable personal possessions—such as family photographs and personal records. Sanchez  
23 Decl. (Ex. A)<sup>5</sup> at ¶¶ 8-9; Leone Decl. (Ex. B) at ¶¶ 9, 15; Moore Decl. (Ex. C) at ¶¶ 9, 10; Rose  
24 Decl. (Ex. D) at ¶ 9; Thompson Decl. (Ex. E) at ¶ 6; Mercer Decl. (Ex. F) at ¶¶ 16, 18; Garcia  
25 Decl. (Ex. G) at ¶¶ 3, 5, 9; Ratto Decl. (Ex. H) at ¶ 8; Malnik Decl. (Ex. I) at ¶ 9.

26 \_\_\_\_\_  
27 <sup>5</sup> All exhibits cited herein are attached to the declaration of Keith Slenkovich concurrently filed  
28 in support of this motion.



1 Defendants' seizure and destruction of homeless individuals' property follows a definite  
2 pattern, which is evident from the declarations of the Representative Plaintiffs and putative  
3 class members. Defendants typically provide no notice, inadequate notice, or misleading notice  
4 that Caltrans will be coming to an encampment to conduct a sweep. Sanchez Decl. at ¶¶ 5-6, 8-  
5 9; Moore Decl. at ¶¶ 7, 10; Thompson Decl. at ¶ 4; Garcia Decl. at ¶ 4; Fletcher Decl. (Ex. J) at  
6 ¶ 8; Stevenson Decl. (Ex. K) at ¶ 5; Spencer Decl. (Ex. L) at ¶¶ 10, 11; Kaczmarek Decl. (Ex.  
7 M) at ¶ 4; Keller Decl. (Ex. N) at ¶ 7. Indeed, even when notices of sweeps are posted,  
8 Caltrans' practice is to identify a range of potential dates for the sweep, providing homeless  
9 individuals with no real information concerning when a sweep will actually occur. *See* Ex. S  
10 (collection of produced notices); Slenkovich Decl. ¶ 26.

11 The sweeps are generally conducted as follows. Defendants arrive at an encampment  
12 with trucks to take away peoples' belongings, often including a garbage truck equipped with a  
13 trash compaction chamber, which crushes and destroys belongings soon after they are thrown  
14 into the truck. Moore Decl. at ¶ 7; Rose Decl. at ¶ 9; Thompson Decl. at ¶ 6; Mercer Decl. at  
15 ¶ 18; Fletcher Decl. at ¶ 11. Defendants are regularly accompanied by officers from the  
16 California Highway Patrol ("CHP"). Sanchez Decl. at ¶ 5; Leone Decl. at ¶¶ 11, 15; Thompson  
17 Decl. at ¶ 4; Mercer Decl. at ¶ 17; Garcia Decl. at ¶ 3; Fletcher Decl. at ¶ 10; Spencer Decl. at  
18 ¶ 5. Upon arrival, Defendants provide either no or an insufficient opportunity for individuals to  
19 remove their belongings from the encampment. For instance, Representative Plaintiff James  
20 Leone reported that Caltrans and the CHP gave the residents of his encampment a mere five  
21 minutes to remove their belongings from the site once they arrived on April 19, 2016. Leone  
22 Decl. at ¶ 15. Putative class member John Thompson attested that after Caltrans arrived at his  
23 encampment without warning, a CHP officer informed Mr. Thompson that he had two minutes  
24 to pack his belongings. Thompson Decl. at ¶ 4. *See also* Sanchez Decl. at ¶¶ 5, 7; Moore Decl.  
25 at ¶¶ 7, 9, 10; Rose Decl. at ¶ 9; Mercer Decl. at ¶ 17.

26 Upon arrival at an encampment, Defendants proceed to seize—and often immediately  
27  
28

1 destroy—the homeless individuals’ possessions. Sanchez Decl. at ¶¶ 4-9; Leone Decl. at ¶¶ 8,  
2 12, 15; Rose Decl. at ¶ 9; Mercer Decl. at ¶ 18; Garcia Decl. at ¶ 9; Keller Decl. at ¶¶ 5, 6.  
3 Caltrans spokesperson Bob Haus has admitted that Caltrans routinely discards or destroys  
4 belongings in any kind of container, including backpacks and boxes, without regard to whether  
5 they contain people’s belongings. Darwin Bond Graham, *East Bay Homeless Campers Accuse*  
6 *Caltrans of Illegally Confiscating and Destroying Valuable Property – and Even Family*  
7 *Heirlooms*, EAST BAY EXPRESS (Aug. 9, 2016), [http://www.eastbayexpress.com/oakland/east-](http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571)  
8 [bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-](http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571)  
9 [property-and-even-family-heirlooms/Content?oid=4932571](http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571). And corporate designees of the  
10 contractor Caltrans uses to perform the sweeps have stated that Caltrans instructs them to  
11 discard property unless it is worth at least \$50. *See* Ex. CC (Bernardini Tr. at 198:5-16, 252:11-  
12 18, Phillips Tr. at 66:14-21, Taylor Tr. at 95:8-18); Slenkovich Decl. ¶ 36.

13 Individuals who attempt to protect their property are often threatened with harm or  
14 arrest. For example, a CHP officer threatened Representative Plaintiff James Leone with a taser  
15 when Mr. Leone pulled his bicycle out of the garbage truck’s trash compactor. Leone Decl. at  
16 ¶¶ 15, 16. A CHP officer handcuffed and detained putative class member Krislyn Garcia in a  
17 police car when she attempted to pull some of her belongings out of the Caltrans trash  
18 compactor. Garcia Decl. at ¶ 3. Caltrans employees mocked and acted aggressively toward  
19 putative class member John Thompson while they threw his belongings into a trash compactor.  
20 Thompson Decl. at ¶ 6. *See also* Moore Decl. at ¶¶ 10, 11; Mercer Decl. at ¶¶ 13-15.

21 Defendants also consistently fail to store seized property or provide homeless  
22 individuals with an opportunity to retrieve their belongings, even if they may have been stored.  
23 *See, e.g.*, Sanchez Decl. at ¶ 5; Leone Decl. at ¶ 19; Ex. S (collection of notices with no  
24 reclamation information). Even when Defendants provide a phone number, ostensibly for  
25 retrieving seized property, Defendants do not answer or return the calls. *See* Ex. V (Sanchez  
26 Tr.) at 374:13-21, 375:9-11 (“Q. And at some point you called a number, correct? A. I did. Q.

1 And where did you get that number? A. The first number I called was off of the posting. Q.  
2 Where did you see this posting? A. On the front where it says to retrieve – to retrieve your stuff  
3 to call – it was a 677 number. I don’t remember the last four, but it was disconnected.”);  
4 Slenkovich Decl. ¶ 33. The inability of people to retrieve their belongings is demonstrated by  
5 comparing the over 30,000 entries in Caltrans’ maintenance database relating to sweeps in the  
6 East Bay since 2014 with the handful of property collection and storage records, totaling only  
7 86 produced pages. *Compare* Ex. T (excerpt of produced and filtered data from Caltrans’  
8 IMMS database) *with* Ex. U (property storage/collection records); Slenkovich Decl. ¶¶ 27-28.<sup>6</sup>

9 Class Plaintiffs’ attempts to seek redress through Defendants’ administrative claim  
10 system have been similarly futile. First Amended Complaint (“FAC”) at ¶¶ 17, 19, 22, 27, 42,  
11 60, 61 (describing numerous administrative claims filed with Caltrans for unconstitutional  
12 property loss that have been denied as a matter of law); *see also* footnote 7 *infra* (describing  
13 produced administrative claims from sixty individuals all denied).

14 Caltrans’ consistent practices for performing sweeps are in violation of Caltrans’ own  
15 Maintenance Policy Directive (the “Policy Directive” or “Policy”). The Policy Directive was  
16 enacted to comply with a Court order and settlement agreement in *Kincaid v. City of Fresno et*  
17 *al.*, No. 06-cv-1445 (E.D. Cal. 2006) (Ex. W), where the Court held that Caltrans had violated  
18 homeless residents’ constitutional rights by immediately seizing and destroying personal  
19 property. *See* Ex. BB (Caltrans Tr.) at 88:22-89:5; 117:18-118:3; Slenkovich Decl. ¶¶ 30, 35.  
20 The Policy states, and those charged with implementing and enforcing it have expressed, that  
21 the Policy’s provisions must be followed to protect the Fourth Amendment rights of homeless  
22 individuals. Ex. X (Policy Directive); Ex. Y (internal memo from Caltrans’ District 4 Director  
23 Tony Tavares) (“These policies and guidelines protect Caltrans, as well as the Fourth  
24 Amendment right of those persons whose personal property remains at illegal encampments.”);  
25

26 \_\_\_\_\_  
27 <sup>6</sup> Caltrans has represented that it has “no other documents in response to Plaintiffs’ Requests for  
28 Documents, Set One and Set Two, that can be produced.” *See* Caltrans’ Opp’n to Pls.’ Mot. to  
Compel Compliance at 5 (Aug. 8, 2018).

1 Slenkovich Decl. ¶¶ 31, 32. These mandates include providing 72 hours’ advanced notice,  
2 bagging and tagging property of apparent value, storing property of apparent value for no less  
3 than 90 days, and providing encampment residents with information on how to retrieve their  
4 property. Ex. X (Policy Directive). Yet, Caltrans consistently fails to abide by the standards set  
5 by the court and itself to avoid violating civil rights.

6 Caltrans’ acts cause extreme difficulty and emotional harm for putative class members.  
7 *See, e.g.*, Sanchez Decl. at ¶¶ 4, 8; Moore Decl. at ¶¶ 9-12; Kaczmarek Decl. at ¶ 8. Dr.  
8 Fahmida Zaman, a Licensed Clinical Psychologist who has conducted over 250 psychological  
9 assessments of underserved populations in the Bay Area and has reviewed the deposition  
10 transcripts of the Representative Plaintiffs, explains that she sees a pattern in the effects of  
11 Caltrans’ current practices on homeless patients. Dr. Zaman Decl. (Ex. R) at ¶ 11. There are  
12 the immediate health effects: people who are often already medically vulnerable are exposed to  
13 the elements without the protection of tents, blankets, or other shelters. Dr. Zaman Decl. at  
14 ¶¶ 9(a), 13(c). In addition, the trauma of having belongings taken and destroyed without notice,  
15 by a state agency with CHP officers standing watch, has a serious impact on homeless  
16 individuals’ mental health. Dr. Zaman observes that homeless individuals are traumatized by  
17 the loss of all or most of their earthly belongings, the reality that this could happen again  
18 without notice, and the feeling that the government is treating homeless individuals as trash, in  
19 addition to their belongings. Dr. Zaman Decl. at ¶¶ 13(a)-(b). Homeless individuals’ lack of  
20 access to health care often exacerbates these effects. Dr. Zaman Decl. at ¶¶ 9(b), 10.

### 21 **III. LEGAL STANDARD**

22 California Code of Civil Procedure § 382 authorizes class certification “when the  
23 question is one of a common or general interest, of many persons, or when the parties are  
24 numerous, and it is impractical to bring them all before the court . . . .” Cal. Civ. Proc. Code  
25 § 382. Specifically, “[t]he party seeking class certification must establish (1) the existence of  
26 an ascertainable and sufficiently numerous class; (2) a well-defined community of interest; and  
27

1 (3) substantial benefits from certification that render proceeding as a class superior to the  
2 alternatives.” *Martinez v. Joe’s Crab Shack Holdings*, 231 Cal. App. 4th 362, 372 (2014). The  
3 “community of interest” is established where: (1) common questions of law or fact  
4 predominate; (2) the claims of the class representatives are typical of the class; and (3) the class  
5 representatives and their counsel can adequately represent the class. *Sav-on Drug Stores, Inc. v.*  
6 *Super. Ct.*, 34 Cal. 4th 319, 326 (2004). As a general matter, class certification is appropriate  
7 where “the issues which may be jointly tried, when compared with those requiring separate  
8 adjudication, are so numerous or substantial that the maintenance of a class action would be  
9 advantageous to the judicial process and to the litigants.” *Id.* (quotations omitted). “[T]he  
10 assessment of suitability for class certification entails addressing whether a class action is  
11 superior to individual lawsuits or alternative procedures for resolving the controversy.” *Bufile v.*  
12 *Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1204 (2008). Class certification is determined  
13 with reference to each claim asserted, and must take into account whether a class is appropriate  
14 for each claim. *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, 916 n.22  
15 (2001).

#### 16 **IV. ARGUMENT**

17 As shown below, (A) the proposed class is ascertainable and sufficiently numerous, (B)  
18 there is a well-defined community of interest, and (C) a class action is the superior form for this  
19 litigation.

#### 20 **A. The Proposed Class is Ascertainable and Sufficiently Numerous**

##### 21 **1. The Proposed Class is Ascertainable**

22 The proposed class definition is sufficiently ascertainable because it consists of  
23 objective characteristics that will permit identification of class members. *See Aguirre v.*  
24 *Amscan Holdings, Inc.*, 234 Cal. App. 4th 1290, 1299-1300 (2015) (explaining that a class  
25 definition is ascertainable if it describes “a set of common characteristics sufficient to allow a  
26 member of that group to identify himself or herself as having a right to recover”). The goal in  
27

1 defining an ascertainable class “is to use terminology that will convey sufficient meaning to  
2 enable persons hearing it to determine whether they are members of the class plaintiffs wish to  
3 represent.” *Global Minerals & Metals Corp. v. Super. Ct.*, 113 Cal. App. 4th, 836, 858 (2003).

4 Here, the proposed class consists of “[a]ll persons in the Cities of Berkeley, Oakland,  
5 and Emeryville who were or are homeless and whose personal belongings have been unlawfully  
6 taken or destroyed by one or more of the Defendants, from December 13, 2014 through the date  
7 of judgment or settlement approval, whichever is later.” Under this definition, a class member  
8 will be able to identify himself or herself as having a right to recover by showing that during the  
9 applicable class period he or she (i) was homeless in the Cities of Berkeley, Oakland, or  
10 Emeryville, and (ii) had personal property unlawfully taken or destroyed by Caltrans.

11 Other courts have held that similar class definitions satisfy the ascertainability  
12 requirement. For example, in *Kincaid v. City of Fresno*, the court found that “[a]ll persons in  
13 the City of Fresno who were or are homeless, without residence, after October 17, 2003, and  
14 whose personal belongings have been unlawfully taken and destroyed a sweep, raid, or clean up  
15 by any of the Defendants” (including Caltrans) was a “defined identifiable class.” 244 F.R.D.  
16 at 601. *See also Lehr*, 259 F.R.D. at 481 (certifying a class of “[a]ll persons in the City of  
17 Sacramento . . . who were, or are, or will be homeless at any time after August 2, 2005, and  
18 whose personal belongings have been taken and destroyed, or will be taken and destroyed, by  
19 one or more of the defendants.”).

20 Plaintiffs have already developed a potential notice plan to ensure that all class members  
21 are aware of this litigation. The notice plan will include placing bulletins in street newspapers  
22 like *Street Spirit* (a free newspaper distributed on the streets by vendors who are homeless),  
23 posting signs at encampments, and coordinating with the various service providers that assist  
24 the class population in the Cities of Berkeley, Oakland, and Emeryville. This plan will provide  
25 putative class members with a meaningful opportunity to remove themselves from the class to  
26 prevent being barred by res judicata. Thus, the class in this matter is ascertainable.

1                   **2.       The Proposed Class is Sufficiently Numerous**

2           Because the proposed class contains hundreds of individuals, it satisfies the numerosity  
3 requirement. Class certification is authorized “when the parties are numerous, and it is  
4 impractical to bring them all before the court . . . .” Cal. Civ. Proc. Code § 382. No set number  
5 is required as a matter of law for the maintenance of a class action. *Hendershot v. Ready to Roll*  
6 *Transp., Inc.*, 228 Cal. App. 4th 1213, 1222 (2014). Rather, courts consistently certify classes  
7 with as few as ten putative members. *See id.*; *see also, e.g., Rose v. City of Hayward*, 126 Cal.  
8 App. 3d 926, 934 (1981) (forty-two individuals); *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017,  
9 1030 (1972) (fifty individuals); *Collins v. Rocha*, 7 Cal. 3d 232 (1972) (forty-four individuals).

10           Here, the numerosity requirement is easily met. At least sixty putative class members  
11 have filed administrative claims, stating under penalty of perjury that had Caltrans unlawfully  
12 seized and destroyed their personal property during the previous six months in the Cities of  
13 Berkeley, Oakland, and Emeryville<sup>7</sup>, and at least seventy administrative claims were filed  
14 between September 2015 and March 2018 in Oakland alone. Ex. Z; Slenkovich Decl. ¶¶ 33, 37.  
15 These sixty individuals alone would be sufficient to satisfy the numerosity requirement, but  
16 many people who could have filed an administrative claim have likely not done so.

17           Other public and Caltrans documents suggest that the number of potential class  
18 members is likely in the hundreds. Over 5,000 of Alameda County’s residents are homeless.  
19 *See EVERYONE HOME & ALAMEDA COUNTY PUBLIC HEALTH DEPARTMENT, PRESS RELEASE ON*  
20 *THE 2017 ALAMEDA COUNTY POINT IN TIME COUNT (May 25, 2017)*. Caltrans performs over  
21 100 sweeps per month in Alameda, and it has produced more than 30,000 entries in Caltrans’  
22 IMMS database (that tracks work orders and employee assignments) relating to performing  
23 sweeps in the East Bay and Alameda County since December 13, 2014. *See Ex. AA*  
24 (representative collection of Caltrans’ schedules and other Caltrans records showing the

25 \_\_\_\_\_  
26 <sup>7</sup> The only responses to administrative claims that Caltrans has produced are denials. Caltrans  
27 represents that it has produced all East Bay administrative claims related documents in its  
28 possession. *See supra* note 6. Thus, Caltrans has rejected or ignored every single produced  
claim, which constitutes a denial as a matter of law of each claim. *See Slenkovich Decl. ¶ 37.*

1 frequency of sweeps); Ex. T (excerpt of Caltrans' IMMS database); Slenkovich Decl. ¶¶ 27, 34.  
2 Given the frequency of sweeps conducted by Defendants and the number of homeless  
3 individuals who have already been or will be affected, the proposed class will most likely  
4 include hundreds of members—more than sufficient to satisfy the numerosity requirement. *See*  
5 *Kincaid*, 244 F.R.D. at 602 (numerosity satisfied based on evidence that twenty-three  
6 administrative claims were filed, sweeps were conducted with frequency, and sweeps involved  
7 the seizure and destruction of property); *Lehr*, 259 F.R.D. at 482-83 (finding sufficient  
8 numerosity in similar suit); *Sullivan et al. v. City of Berkeley*, No. C-17-06051-WHA, 2018 WL  
9 4587254, at \*2 (N.D. Cal. Sept. 25, 2018) (“There is no dispute that the proposed Due Process  
10 Class, which encompasses nearly 1000 individuals, satisfies FRCP 23(a)(1)’s numerosity  
11 requirement” in case involving similar claims).

12 Moreover, that the class members are primarily homeless makes it “impractical to bring  
13 them all before the court” under Section 382. As *Kincaid* held, “Plaintiffs’ homeless condition  
14 and lack of resources” make it impracticable to expect them to bring individual cases or to join  
15 them as named plaintiffs. *Kincaid*, 244 F.R.D. at 602. That the proposed class members are not  
16 “economically powerful parties who are obviously able and willing to take care of their own  
17 interests individually through individual suits” argues in favor of class treatment. *Rose*, 126  
18 Cal. App. 3d at 934-35 (citation omitted).

19 **B. A Well-Defined Community of Interest Exists**

20 **1. Common Questions of Law or Fact Predominate Over Individualized**  
21 **Issues**

22 Questions of law and fact common to the proposed class predominate over individual  
23 questions, which can be easily managed. “[T]he focus in a certification dispute is on what types  
24 of questions – common or individual – are likely to arise in the action, rather than on the merits  
25 of the case.” *Sav-on*, 34 Cal. 4th at 327. Class certification is appropriate where “the issues  
26 which may be jointly tried, when compared with those requiring separate adjudication, are so  
27 numerous or substantial that the maintenance of a class action would be advantageous to the



1 judicial process and to the litigants.” *Id.* at 326 (quotations omitted). Common issues need  
2 only predominate such that they would be “the principal issues in any individual action, both in  
3 terms of time to be expended in their proof and their importance.” *Bomersheim v. Los Angeles*  
4 *Gay and Lesbian Ctr.*, 184 Cal. App. 4th 1471, 1486 (2010) (citing *Vasquez v. Super. Ct.*, 4 Cal.  
5 3d 800, 810 (1971)). Predominance does not require that each and every issue in the case be  
6 identical for each and every class member. *Collins*, 7 Cal. 3d at 238. Indeed, predominance is  
7 not defeated if there are individual issues, so long as those individual issues may be effectively  
8 managed. *Sav-on*, 34 Cal. 4th at 332-34. *See also Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
9 1019 (9th Cir. 1998) (“All questions of fact and law need not be common to satisfy the rule.  
10 The existence of shared legal issues with divergent factual predicates is sufficient, as is a  
11 common core of salient facts coupled with disparate legal remedies within the class.”). The  
12 legal and factual issues common to the Class Plaintiffs predominate over any individualized  
13 issues. The dominant common issues in this case relate to the nature of Defendants’ policies  
14 and practices and the nature and extent of their liability. Specifically, Class Plaintiffs will  
15 establish by common evidence that:

- 16 a) Defendants have a policy and/or practice of conducting sweeps without providing  
17 sufficient advance notice;
- 18 b) Defendants have a policy and/or practice of posting notices that only provide a date range  
19 and not a specific date for an upcoming sweep (*see* Ex. S for a collection of posted  
20 notices only providing a date range for an upcoming Caltrans sweep);
- 21 c) Defendants have a policy and/or practice of failing to provide information about how to  
22 reclaim seized property (*see* Ex. S for a collection of notices with the section for  
23 reclamation information left blank);
- 24 d) Defendants have a policy and/or practice of summarily destroying homeless individuals’  
25 personal property instead of storing it for potential reclamation (*see* Ex. U, showing the  
26 limited number of property storage/collection records Caltrans has produced from May  
27  
28

1 2016 to April 2018);

- 2 e) Defendants have a policy and/or practice of denying homeless individuals' administrative  
3 claims seeking redress for the seizure and/or destruction of their personal property (*see*  
4 Slenkovich Decl. ¶ 37);
- 5 f) Homeless individuals deprived of their personal property without sufficient advance  
6 notice and without a meaningful opportunity to reclaim their personal property would be  
7 likely to suffer emotional distress;
- 8 g) Defendants' policies and/or practices violate Plaintiffs' constitutional rights against  
9 unreasonable seizure under the Fourth Amendment of the United States Constitution and  
10 Article 1, § 13 of the California Constitution;
- 11 h) Defendants' policies and/or practices violate Plaintiffs' constitutional rights to Due  
12 Process of Law under the Fourteenth Amendment of the United States Constitution and  
13 Article 1, § 7 of the California Constitution;
- 14 i) Defendants' policies and/or practices violate California Civil Code § 52.1 (the Bane Act),  
15 and that as a result of such violations, Defendants are liable to Class Plaintiffs for  
16 statutory damages;
- 17 j) Defendants' policies and/or practices constitute an unlawful conversion of Plaintiffs'  
18 property and unlawful trespass to chattels by denying Plaintiffs the possession of their  
19 property when Plaintiffs are at all relevant times the owners of personal property  
20 confiscated and destroyed by Defendants; and
- 21 k) Defendants' policies and/or practices constitute a breach of duty of care owed to  
22 Plaintiffs and that Plaintiffs have suffered emotional distress and mental suffering as a  
23 result of Defendants' policies and practices for which they are entitled to damages.

24 These common issues easily predominate over the two individualized issues that exist in  
25 this case: (1) damages issues concerning the value of each class member's seized or destroyed  
26 property and emotional distress; and (2) whether a class member was personally threatened or  
27

1 intimidated by Defendants or their agents in violation of the Bane Act. *See Kincaid*, 244 F.R.D.  
2 at 606-07 (holding common issues of law and fact predominated over individualized damages  
3 questions).

4 First, any individualized damages have little bearing on class certification where, as  
5 here, Plaintiffs also seek an injunction barring further violations. The Court of Appeal has held  
6 that a proposed class meets its burden of demonstrating commonality when the class seeks  
7 injunctive relief against a state agency to remedy “a pattern and practice of failure to meet  
8 constitutional, statutory and regulatory mandates . . . .” *Capitol People First v. Dep’t of Dev.*  
9 *Servs.*, 155 Cal. App. 4th 676, 693-95 (2007). Similar to the certified class in *Capitol People*,  
10 the proposed class in this case seeks injunctive relief to remedy Caltrans’ failures to meet  
11 constitutional and statutory requirements of providing notice, of collecting and storing personal  
12 property, and of providing the opportunity to retrieve seized property. Because the proposed  
13 class will demonstrate that an injunction is warranted by common proof, class certification is  
14 appropriate.

15 Regardless, individualized damages determinations do not preclude class certification.  
16 *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1022 (2012) (“[I]f the defendant’s  
17 liability can be determined by facts common to all members of the class, a class will be certified  
18 even if the members must individually prove their damages”). Class certification is proper even  
19 when some class members have incurred fewer damages than other class members. *Id.* For  
20 example, in *Lebrilla v. Farmers Grp., Inc.*, the court held that a class action could be  
21 maintained on behalf of insureds whose automobiles had been repaired with replacement parts,  
22 because the common question of whether the replacement parts were inferior to the  
23 manufacturers’ parts provided sufficient community of interest, regardless of the type/value of  
24 the part or the extent of its inferiority. 119 Cal. App. 4th 1070, 1075-76 (2004); *see also Sav-*  
25 *On*, 34 Cal. 4th at 328-29, 332-35 (common question of whether employer violated overtime  
26 statute predominated over individualized questions of how much time each class member  
27  
28

1 worked and damages to which each was entitled). Here, too, the requisite commonality exists  
2 in the fact that the sweeps are unlawful (*i.e.*, because there is insufficient advance prior notice,  
3 personal property is summarily seized and destroyed, and class members have no meaningful  
4 opportunity to reclaim seized property or seek redress for seized property) and that all class  
5 members have been harmed by the sweeps, suffering both property loss and emotional distress.  
6 *See Kincaid*, 244 F.R.D. at 606-07; Dr. Zaman Decl. at ¶¶ 11-13 (describing consistent pattern  
7 of common harm to homeless individuals who have their belongings taken by Caltrans). This  
8 conclusion is further bolstered where, as here, the challenged actions are subject to an official  
9 written policy. *Sullivan*, 2018 WL 4587254, at \*3 (“As Berkeley itself acknowledges, the City  
10 has a long-standing written policy regarding the collection, storage, and retrieval of property  
11 from homeless encampments. Commonality has therefore been demonstrated.”).

12 Any differences in the individual damages for lost property of proposed class members  
13 would be minor. As stated by the court in *Kincaid*, “since the majority of items taken (e.g.,  
14 tents, bedding, clothes, personal effects) were common to most, if not all, class members,  
15 common evidence may be offered to establish the value of such items.” *Kincaid*, 244 F.R.D. at  
16 606-07.<sup>8</sup> *See also Sullivan*, 2018 WL 4587254, at \*3 (finding commonality where proposed  
17 class “challenge[d] Berkeley’s citywide policy and practices in connection with the collection  
18 and storage of homeless residents’ property”). Similarly, the fact that Class Plaintiffs may  
19 suffer different degrees of emotional distress as a result of Defendants’ unlawful sweeps does  
20 not defeat class certification because this issue can also be effectively managed. *Bomersheim*,  
21 184 Cal. App. 4th at 1477-88. In *Bomersheim*, plaintiffs sued a medical center for negligence  
22 after the defendant medical center alerted its patients that it had treated them with the wrong  
23 medication for syphilis. *Id.* at 1476-77. Although none of the putative class members had  
24 developed syphilis, the class members sought damages for pain and suffering for having to  
25 undergo additional medical tests, presenting “up to 663 claims of convoluted and subjective

26 \_\_\_\_\_  
27 <sup>8</sup> *See infra* Part IV.B.2. on typicality for a list of seven declarations stating that Caltrans seized  
28 similar items.

1 claims of emotional distress, all based upon variations in individual responses to information  
2 that a patient [who received the wrong treatment and] had been requested to return for  
3 retesting.” *Id.* at 1477-78, 1480, 1488. The trial court denied class certification, reasoning that  
4 “proof of damages for pain and suffering would require the personal testimony of each class  
5 member . . . [where] some persons may suffer little or no discomfort, while others may be more  
6 severely affected.” *Id.* at 1480. The Court of Appeal reversed, holding that causation was  
7 susceptible to common proof and that individualized emotional distress damages questions  
8 could be effectively managed, including by making exemplar findings to establish a range of  
9 recovery and utilizing a proof of claim questionnaire. *Id.* at 1485, 1488. Similarly, here, the  
10 fact that Defendants’ illegal and negligent conduct of seizing and destroying homeless  
11 individuals’ property causes emotional distress can be shown by common evidence. Indeed, Dr.  
12 Zaman describes the pattern in the impact of Caltrans’ current practices on homeless patients,  
13 finding the negative physical and mental effects to be common across homeless individuals that  
14 she has worked with and encountered.<sup>9</sup> Dr. Zaman Decl. at ¶¶ 11-13. Moreover, as in  
15 *Bomersheim*, individualized damages determinations can be managed here, including  
16 potentially by establishing ranges of recovery.

17 Second, the issue of whether each class member was intimidated or threatened can be  
18 effectively managed. *Sav-on*, 34 Cal. 4th at 334. Class certification is proper even where  
19 individual members will have to prove their right to recover damages. In *Jones v. Farmers Ins.*

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21 <sup>9</sup> In *Bennett v. Regents of University of California*, the Court of Appeal found that the difficulty  
22 of establishing each class member’s entitlement to emotional distress damages defeated class  
23 certification, but this case is easily distinguishable. 133 Cal. App. 4th 347 (2005). The  
24 proposed class in *Bennett* consisted of individuals who believed their relatives had been  
25 improperly cremated and disposed of in a landfill. *Id.* at 351. The court denied class  
26 certification because the plaintiffs would have to each prove that they suffered emotional  
27 distress due to a substantial degree of certainty that their relatives had been improperly  
28 cremated and disposed of instead of merely due to a more generalized concern. *Id.* at 358-59.  
Here, however, the causal link between Defendants’ illegal and negligent conduct and the class  
members’ emotional distress is clear. The Representative Plaintiffs’ declarations show that they  
suffered emotional distress after they personally witnessed their belongings being destroyed or  
upon learning about the destruction shortly thereafter. *See Sanchez Decl.* ¶¶ 2, 4, 8; *Leone*  
*Decl.* ¶¶ 8, 16, 17, 18; *Moore Decl.* ¶¶ 10 and 12.

1 *Exch.*, the defendant employer opposed class certification on the grounds that individual issues  
2 among employees—including determining what tasks each employee performed before the  
3 beginning of his or her shift, whether such activities were *de minimis*, and whether the  
4 employee’s supervisor was aware of any off-the-clock work—predominated over the common  
5 issue of whether the employer denied compensation for off-the-clock work. 221 Cal. App. 4th  
6 986, 996 (2013). The trial court denied class certification and the Court of Appeal reversed,  
7 holding that the trial court had erred by focusing on individual issues concerning the right to  
8 recover damages rather than evaluating whether the theory of recovery was amenable to class  
9 treatment. *Id.* at 997. In a similar case, the California Supreme Court held that class  
10 certification was proper even though employee class members would have to individually prove  
11 that they missed rest breaks due to defendants’ policy of not authorizing breaks. *Brinker*, 53  
12 Cal. 4th at 1022.

13 In the instant case, individuals alleging Bane Act violations will have to prove only one  
14 individualized fact: that they were threatened, intimidated, or coerced. Caltrans’ interference  
15 with their legal rights will be proven by evidence common to the whole proposed class, as  
16 described above. This individual issue can be effectively managed with a streamlined prove up  
17 hearing, and therefore does not defeat class certification. *Sav-on*, 34 Cal. 4th at 334. All  
18 members of the proposed class have suffered common harms arising out of the same unlawful  
19 events; the fact that some have suffered additional and particularly egregious harms, made  
20 actionable by statute, in addition to those common to the whole proposed class does not and  
21 should not preclude class certification.

## 22 **2. Representative Plaintiffs’ Claims Are Typical of the Class**

23 The Representative Plaintiffs’ claims are typical of the proposed class because they arise  
24 from the same unlawful policies and practices as the claims of the unnamed class members.  
25 The typicality requirement ensures that the interests of the class representatives align with those  
26 of the class. *Seastrom v. Neways*, 149 Cal. App. 4th 1496, 1502 (2007). A representative  
27

1 plaintiff's claim is typical if it arises from the same event, practice, or course of conduct that  
2 gives rise to the claims of the other class members, and if his or her claims are based on the  
3 same legal theory. *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983).

4 The declarations now before the Court amply establish that each Representative Plaintiff  
5 is a member of the class. Each has been subject to the same unlawful policies and practices that  
6 have affected the class members they seek to represent. Each presents claims based on  
7 Defendants' practice of taking and destroying the personal property of homeless individuals in  
8 the Cities of Berkeley, Oakland, and Emeryville without adequate notice and/or an opportunity  
9 to retrieve the property once it has been taken. Each Representative Plaintiff and every member  
10 of the proposed class has suffered the deprivation of his or her personal property as a result of  
11 this practice. Each Representative Plaintiff and every member of the proposed class was  
12 homeless on the streets at the time of their loss, many in the same encampments. The types of  
13 property that people lost in the sweeps are typically very similar, including items necessary for  
14 survival such as tents, blankets, clothing, and medicines; as well as irreplaceable personal  
15 possessions, such as family photographs and personal records. *Compare* Sanchez Decl. at ¶ 8  
16 (tent, bedding, clothes, stove, food) *and* Leone Decl. at ¶¶ 15, 17 (tent, sleeping bag, clothes,  
17 stove, tools) *and* Moore Decl. at ¶ 9 (tent, cot, sleeping bags, clothes, shoes, food) *with*  
18 Thompson Decl. at ¶ 6 (tent, furniture, clothes, shoes, stoves) *and* Mercer Decl. at ¶¶ 15, 18  
19 (clothes, tools, computer) *and* Ratto Decl. at ¶ 8 (tarps, bedding, clothes, stove, cooking  
20 utensils, food, computer) *and* Malnik Decl. at ¶ 9 (sleeping bags, clothes, kitchen utensils, food,  
21 cellphone, documents). *See Sullivan*, 2018 WL 4587254, at \*4 (finding typicality for similar  
22 claims). Finally, there are similar patterns in the harm caused, including the traumatic effects of  
23 this kind of loss. Dr. Zaman Decl. at ¶¶ 11-13. *See also* Sanchez Decl. ¶¶ 2, 4, 8; Leone Decl.  
24 ¶¶ 8, 16, 17, 18; Moore Decl. ¶¶ 10 and 12. Thus, Representative Plaintiffs' claims are typical  
25  
26  
27  
28

1 of the class.<sup>10</sup>

2 **3. The Class Representatives and Their Counsel Will Fairly and**  
3 **Adequately Represent the Class**

4 The Representative Plaintiffs and undersigned counsel fulfill the adequacy requirement.  
5 A class representative is adequate if he or she has no conflict of interest with the absent class  
6 members. *Capitol People*, 155 Cal. App. 4th at 687; *see also Johnson v. GlaxoSmithKline*, 166  
7 Cal. App. 4th 1497, 1509 (2008) (“To assure adequate representation, the class representative’s  
8 personal claim must not be inconsistent with the claims of other members of the class.”)  
9 (quotations omitted). “The fact that the class representatives had not personally incurred all of  
10 the damages suffered by each different class member does not necessarily preclude their  
11 providing adequate representation to the class.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App.  
12 4th 224, 238 (2001).

13 Here, Representative Plaintiffs are certainly adequate. They have experienced the  
14 common elements of each of the claims. *See* Sanchez Decl. at ¶¶ 1-9; Leone Decl. at ¶¶ 1-20;  
15 Moore Decl. at ¶¶ 1-12. None of the Representative Plaintiffs assert claims or interests adverse  
16 to any members of the class. Sanchez Decl. at ¶ 12; Leone Decl. at ¶ 23; Moore Decl. at ¶ 15.  
17 The Representative Plaintiffs further understand their duty to represent the best interests of the  
18 class. Sanchez Decl. at ¶ 13; Leone Decl. at ¶ 24; Moore Decl. at ¶ 16. They also understand  
19 that as class representatives, they must actively participate in this litigation, monitor the  
20 activities of their attorneys, engage in discovery, and testify at deposition and trial, if necessary.  
21 Sanchez Decl. at ¶ 14; Leone Decl. at ¶ 25; Moore Decl. at ¶ 17.

22 Proposed Class Counsel is also adequate. Proposed Class Counsel consists of attorneys  
23 from Wilmer Cutler Pickering Hale and Dorr LLP, Lawyers’ Committee for Civil Rights,  
24

25 <sup>10</sup> Any potential differences in the severity of emotional distress suffered would not defeat  
26 typicality. *See Bomersheim*, 184 Cal. App. 4th at 1480-81 (finding typicality met despite  
27 finding that the class members’ emotional distress could range in severity); *Parsons v. Ryan*,  
28 754 F.3d 657, 685-86 (9th Cir. 2014) (fact that named plaintiffs “may have in the past suffered  
varying injuries or that they may currently have different health care needs” does not negate  
typicality where injury “follows from the course of conduct at the center of the class claims.”).



1 ACLU Foundation of Northern California, Inc., and East Bay Community Law Center. They  
2 have expertise in class action matters, complex litigation, and the law in this area. Slenkovich  
3 Decl. at ¶ 5-6; Freeman Decl. (Ex. P) at ¶ 2-4; Della-Piana Decl. (Ex. O) at ¶¶ 5-6; Neumann  
4 Decl. (Ex. Q) at ¶ 5. One of the attorneys has previously litigated a class action on behalf of  
5 homeless plaintiffs whose belongings were taken by the City of Fresno and Caltrans. Della-  
6 Piana Decl. at ¶ 6. Proposed Class Counsel have represented Representative Plaintiffs from the  
7 inception of this case, have appeared before the Court in several proceedings, and have  
8 demonstrated their ability to serve as counsel in this case. Slenkovich Decl. at ¶ 38; Della-  
9 Piana Decl. at ¶ 7; Neumann Decl. at ¶ 6. Thus, both the Representative Plaintiffs and the  
10 Proposed Class Counsel will fairly and adequately represent the class.

11 **C. The Proposed Class Satisfies the Superiority Requirement**

12 Because a class action provides the proposed class with their only meaningful  
13 opportunity for relief, a class action is the superior procedure for resolving their claims. “[T]he  
14 assessment of suitability for class certification entails addressing whether a class action is  
15 superior to individual lawsuits or alternative procedures for resolving the controversy.” *Bufile*,  
16 162 Cal. App. 4th at 1204. “Relevant considerations include the probability that each class  
17 member will come forward ultimately to prove his or her separate claim to a portion of the total  
18 recovery and whether the class approach would actually serve to deter and redress the alleged  
19 wrongdoing.” *Johnson*, 166 Cal. App. 4th at 1509 (quotations omitted).


20 The inability of individual homeless persons to institute separate suits as well as the  
21 nature of the underlying relief Plaintiffs seek demonstrate that a class action is the superior  
22 method of resolving the controversy. *See Kincaid*, 244 F.R.D. at 607. Given their distressed  
23 conditions and lack of resources, putative class members are uniquely ill-equipped to obtain an  
24 adjudication of their rights by filing separate suits. *Id.* First, the putative class members are  
25 unfamiliar with the legal system and do not have the resources to retain legal counsel; expecting  
26 them to file individual *pro se* cases is unrealistic and impractical, and if they did so it would  
27

1 create “an undue burden on the courts.” *Id.*; *cf. Sav-on Drug Stores*, 34 Cal. 4th at 340  
2 (providing that efficiency and burden on courts are appropriate considerations). Second, their  
3 interactions with these government actors during the illegal sweeps have caused reasonable  
4 distrust and fear of law enforcement and other governmental entities. Dr. Zaman Decl. at ¶¶ 10,  
5 13(a). Finally, the universal rejection of all of the known individual administrative claims filed  
6 by the class members to address Caltrans’ actions further reinforces the perceived futility of  
7 these individuals’ efforts to correct these injustices through individual action. Thus, the  
8 putative class members are particularly ill-equipped to pursue legal remedies individually, and  
9 can likely only seek relief through a class action. Therefore, only a class approach would  
10 actually deter and redress Defendants’ wrongdoing. *See Rose*, 126 Cal. App. 3d at 935  
11 (explaining that “the very purpose of class actions is to open a practical avenue of redress to  
12 litigants who would otherwise find no effective recourse for the vindication of their legal  
13 rights”); *see also Capitol People*, 155 Cal. App. 4th at 702. A class action is not only a superior  
14 method for recovery; it may be the only method for recovery.

15 **V. CONCLUSION**

16 For these reasons, the Court should certify the requested class.

17  
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19 By:   
20 Keith L. Slenkovich

21 WILMER CUTLER PICKERING HALE & DORR LLP  
22 Keith L. Slenkovich (SBN: 129793)  
23 keith.slenkovich@wilmerhale.com  
24 Robert M. Galvin (SBN: 171508)  
25 robert.galvin@wilmerhale.com  
26 Laura M. Goodall (SBN: 300291)  
27 laura.goodall@wilmerhale.com  
28 Francine A. Bendat (SBN: 305127)  
francine.bendat@wilmerhale.com  
Alexis J. Pfeiffer (SBN: 312007)  
alexis.pfeiffer@wilmerhale.com  
950 Page Mill Road

1 Palo Alto, CA 94304  
2 Telephone: (650) 858-6110  
3 Fax: (650) 858-6100

4 Ian Coghill (*pro hac vice*)  
5 ian.coghill@wilmerhale.com  
6 60 State Street  
7 Boston, MA 02109  
8 Telephone: (617) 526-6688  
9 Fax: (617) 526-5000

10 Rommy Flores (SBN: 298770)  
11 rommy.flores@wilmerhale.com  
12 350 South Grand Ave., Suite 2100  
13 Los Angeles, CA 90071  
14 Telephone: (213) 443-5355  
15 Fax: (213) 443-5400

16 AMERICAN CIVIL LIBERTIES UNION  
17 FOUNDATION OF NORTHERN CALIFORNIA, INC.  
18 William S. Freeman (SBN: 82002)  
19 wfreeman@aclunc.org  
20 Abre' L. Conner (SBN: 306024)  
21 aconner@aclunc.org  
22 39 Drumm Street San Francisco, CA 94111  
23 Telephone: (415) 621-2493  
24 Fax: (415) 255-8437

25 LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
26 Elisa Della-Piana (SBN: 226462)  
27 edellapiana@lccr.com  
28 131 Steuart Street, Suite 400  
San Francisco, CA 94105  
Telephone: (415) 543-9444  
Fax: (415) 543-0296

EAST BAY COMMUNITY LAW CENTER  
Thomas Osha Neumann (SBN: 127215)  
oneumann@ebclc.org  
1950 University Avenue, Suite 200  
Berkeley, CA 94704  
Telephone: (510) 548-4064  
Fax: (510) 849-1536

*Attorneys for Plaintiffs*