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14
15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION

17
18 Pamela Kincaid, Doug Deatherage, Charlene
Clay, Cynthia Greene, Joanna Garcia, and
19 Randy Johnson, Individually on Behalf of
Themselves and All Others Similarly Situated,
20 Plaintiffs,

21 v.

22 City of Fresno, California Department of
Transportation, Alan Autry, Jerry Dyer, Greg
23 Garner, Reynaud Wallace, John Rogers, Phillip
Weathers, and Will Kempton, individually and
24 in their official capacities; DOES 1-100,
inclusive,

25 Defendants.
26
27

Civil Action No.:

CLASS ACTION

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND FOR
DAMAGES**

DEMAND FOR JURY TRIAL

1 Plaintiffs Pamela Kincaid, Doug Deatherage, Charlene Clay, Cynthia Greene, Joanna
2 Garcia, and Randy Johnson, individually on behalf of themselves and others similarly
3 situated, complain against defendants as follows:

4 **Nature of the Case**

5 1. This action arises out of an ongoing policy and practice of defendant City of
6 Fresno, joined in by the remaining defendants, of confiscating and destroying the property
7 of homeless people who live in Fresno. Defendants' unlawful actions deprive plaintiffs and
8 similarly situated homeless people of personal belongings that are critical to their survival,
9 such as clothing, medication, tents and blankets, as well as of irreplaceable personal
10 possessions, such as family photographs, personal records and documents, and even the
11 ashes of a deceased relative contained in an urn.

12 2. As alleged with more particularity below, defendants regularly engage in what
13 amount to raids of areas where homeless people live, during which defendants intentionally
14 and indiscriminately take and destroy personal property owned by homeless people in the
15 area and immediately destroy that property.

16 3. These ongoing raids are conducted either without notice or with inadequate
17 notice and in a manner that prevents plaintiffs and other homeless persons similarly situated
18 from retrieving their personal property to avoid its destruction. In many cases, members of
19 the plaintiff Class are physically restrained or ordered by members of the Fresno Police
20 Department to stand by while their few personal possessions are seized and destroyed,
21 leaving them even more destitute and defenseless. Further, as a part of this policy and
22 practice, defendants provide no means for plaintiffs or other similarly situated homeless
23 people to claim or retrieve their personal possessions once seized. Rather, all property is
24 immediately and summarily destroyed, so that it is lost forever.

25 4. Plaintiffs, on their own behalf and on behalf of all similarly situated persons
26 in the City of Fresno, California, claim that the intentional taking and destruction of their
27 personal property constitutes a violation by defendants of plaintiffs' federal and state
28 constitutional rights to be free from unreasonable search and seizure and to due process of

1 law, a violation of plaintiffs' rights under California Civil Code § 2080, *et seq.* and Civil
2 Code §§ 52 and 52.1, as well as additional state law claims complained of herein. Plaintiffs
3 seek preliminary and permanent injunctive relief on behalf of themselves and other
4 homeless persons similarly situated enjoining defendants from taking and destroying their
5 personal property in violation of their constitutional, statutory and common law rights.

6 5. Plaintiffs further seek a declaratory judgment that the policies and practices of
7 defendants as alleged herein are unlawful under the federal and state constitutional
8 provisions and statutory rights complained of herein.

9 6. In addition to their primary claims on behalf of the class for injunctive and
10 declaratory relief, the plaintiffs seek statutory, actual and punitive damages resulting from
11 defendants' intentional destruction of their personal property in violation of plaintiffs'
12 constitutional rights, under the United States and California Constitutions, and under
13 California Government Code § 815.6, California Civil Code § 2080 *et seq.*, California Civil
14 Code §§ 52 and 52.1, and the common law doctrine of conversion.

15 Jurisdiction and Venue

16
17 7. This Court has jurisdiction based on 28 U.S.C. § 1331 and 1343, and
18 supplemental jurisdiction over state law claims under 28 U.S.C. § 1367.

19 8. Venue is proper in this District in that the events and conduct arise to the
20 violations complained of occurred in this District. In addition, the defendants performed
21 their duties and committed the conduct complained of herein within this District.

22 Parties

23
24 9. Plaintiff Pamela Kincaid is a resident of the City of Fresno and at all relevant
25 times herein was and now is homeless.

26 10. Plaintiff Doug Deatherage is a resident of the City of Fresno and at all
27 relevant times herein was and now is homeless.

1 11. Plaintiff Charlene Clay is a resident of the City of Fresno and at all relevant
2 times herein was and now is homeless.

3 12. Plaintiff Cynthia Greene is a resident of the City of Fresno and at all relevant
4 times herein was and now is homeless.

5 13. Plaintiff Joanna Garcia is a resident of the City of Fresno and at all relevant
6 times herein was and now is homeless.

7 14. Plaintiff Randy Johnson is a resident of the City of Fresno and at all relevant
8 times herein was and now is homeless.

9 15. Defendant City of Fresno (“Fresno”) is a municipal corporation, duly
10 organized and existing under the laws of the State of California.

11 16. Defendant California Department of Transportation (Caltrans) is an agency
12 of the State of California, duly organized and existing in the laws of the state of California.

13 17. Defendant Alan Autry is the Mayor of the City of Fresno and has either
14 directed or ratified the unlawful conduct alleged herein.

15 18. Defendant Jerry Dyer is Chief of the Fresno Police Department, and in that
16 capacity is responsible for the operations of the Police Department.

17 19. Defendant Greg Garner is a Captain of the Fresno Police Department and has
18 personally directed and taken part in the unlawful practices and polices alleged in this
19 complaint.

20 20. Defendant Will Kempton is the Director of Caltrans, and in that capacity is
21 responsible for the enforcement, operation and execution of all duties vested by law in that
22 agency.

23 21. Defendant Reynaud Wallace is an officer of the Fresno Police Department
24 and has personally directed and taken part in the unlawful practices and policies alleged in
25 this complaint.

26 22. Defendant John Rogers is the Manager of the Community Sanitation
27 Division of the City of Fresno and in that capacity is responsible for the operations of the
28 Community Sanitation Division.

1 23. Defendant Phillip Weathers is an employee of the Community Sanitation
2 Division of the City of Fresno and has personally directed and taken part in the unlawful
3 practices and policies alleged in this complaint.

4 24. All of the above individual defendants are sued in their individual and
5 official capacities.

6 25. Plaintiffs are informed and believe that DOES 1 through 50 at all relevant
7 times herein were officers and employees of the City of Fresno, including the Fresno Police
8 Department and the Community Sanitation Division of the City of Fresno, and that DOES
9 51 through 100 were officers and employees of Caltrans. Plaintiffs are ignorant of the true
10 names and capacities of defendants sued herein as DOES 1 through 100 and therefore sue
11 said defendants by such fictitious names. Plaintiffs will amend this complaint to allege their
12 true names and capacities when ascertained. Plaintiffs are informed and believe that each of
13 the DOE defendants is liable for, and proximately caused, the injuries and violations of
14 constitutional and statutory rights complained of herein. Plaintiffs will ask leave to amend
15 this complaint to insert further charging allegations when such facts are ascertained.

16 26. Plaintiffs are informed and believe that the acts of defendants complained of
17 herein were undertaken in the execution of customs, policies and practices of authorized
18 policymakers of the defendant City of Fresno and were joined in and/or implemented by the
19 remaining defendants, and each of them, acting as the agent, servant, employee and/or in
20 concert, and/or in conspiracy with each of said other defendants. Each of the defendants
21 caused, and is liable for, the unconstitutional and unlawful conduct and resulting injuries by,
22 among other things, personally participating in said conduct or acting jointly or conspiring
23 with others who did so; by authorizing, acquiescing or setting in motion policies, plans and
24 actions that led to the unlawful conduct; by failing to take action to prevent the unlawful
25 conduct; by failing and refusing with deliberate indifference to maintain adequate training
26 and supervision; and by ratifying the unlawful conduct taken by employees under their
27 direction and control, including failing to take remedial and disciplinary action.

1 27. The acts complained of herein were intentionally and jointly committed, and
2 will continue to be committed jointly and systematically by defendants unless restrained by
3 this Court.

4 **Class Allegations**
5

6 28. The claims set forth hereinafter are brought by plaintiffs on their own behalf
7 and as representatives of a Class of similarly situated persons pursuant to Rules 23(a),
8 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all homeless
9 persons in the City of Fresno whose personal belongings have been or will be taken and
10 destroyed by one or more of the defendants.

11 29. The members of the Class are so numerous that individual joinder of all
12 members is impossible. Plaintiffs are informed and believe on that basis allege that the
13 members of the Class well exceed 100 in number.

14 30. There are common questions of law and fact that predominate over any
15 questions affecting only individual Class members. Among the common questions of law
16 and fact are the following:

17 a. Whether defendants' policies, practices and conduct of taking and
18 destroying the personal property of homeless people, without providing either adequate
19 notice or the opportunity to retrieve personal possessions before they are destroyed, and
20 without a legitimate governmental interest, violated and continues to violate the class
21 members' state and federal constitutional rights against unreasonable search and seizure;

22 b. Whether defendants' policies, practices and conduct of taking and
23 destroying the personal property of homeless people, without providing either adequate
24 notice or the opportunity to retrieve personal possessions before they are destroyed, violated
25 and continues to violate the class members' due process rights under the California and
26 United States Constitutions;

27 c. Whether defendants' conduct of taking and destroying the personal
28 property of homeless people, without providing either adequate notice or the opportunity to

1 retrieve personal possessions before they were destroyed, and without a reasonable basis or
2 legitimate governmental interest, violated and continues to violate class members rights
3 under California Civil Code §§ 52 and 52.1, Civil Code § 2080, California Government
4 Code § 815.6 and the common law tort of conversion; and

5 d. Whether injunctive relief restraining further unconstitutional and unlawful
6 acts by defendants should be ordered by the Court and, if so, the nature of that injunctive
7 relief.

8 31. Plaintiffs will fairly and adequately protect the interests of the Class. They
9 have retained counsel who are experienced and competent in class-action and civil rights
10 litigation. Plaintiffs have no interests that are adverse or antagonistic to interests of other
11 members of the Class.

12 32. A class action is superior to any other method in order to secure a fair and
13 efficient adjudication of this controversy. As the primary relief sought is injunctive in
14 nature, the burden and expense make in impractical for class members to seek redress
15 individually for the wrongs done to them. The nature and amount of monetary damages
16 sustained by each Class member is very similar in nature and may be established by
17 common proof. Individual litigation by each class member would necessarily and
18 substantially burden the operation of the judicial system.

19 **Factual Allegations**

20 33. Between 4,400 to 8,800 of Fresno's approximately 440,000 residents are
21 homeless, according to a recent report by a consortium of local government agencies and
22 providers. (Fresno Madera Continuum of Care Plan To End Homelessness at 10-11,
23 attached as Exhibit A hereto.) However, services for low-income people in need of shelter
24 are extremely scarce. "[O]nly 1.4% of the homeless population [is] sheltered . . . leaving
25 more than 98% of the homeless population unsheltered and receiving no services." (*Id.* at
26 13.) The report indicates that there is currently an "overwhelming need for homeless
27 assistances," with a gap of approximately 7,000 shelter/housing spaces in the Fresno-
28 Madera area. (*Id.*) The lack of shelter for women is particularly acute. Naomi House, one

1 of the few shelters in Fresno for women, has capacity for only 25 women on any given
2 night. On information and belief, a lottery is held every day to choose which women will
3 be allowed to stay in the shelter on that night. Those who are not successful in this lottery
4 are turned away, and often end up staying on the streets nearby.

5 34. For more than a year, defendants have engaged in an ongoing and continuing
6 policy and practice of raids on those Fresno residents who are unsheltered, in which they
7 take and destroy the personal property of these individuals. Defendants have intensified this
8 ongoing practice since May, 2006. No legitimate or lawful basis exists for this wholesale
9 confiscation and destruction of the personal property of plaintiffs and the plaintiff Class.
10 None of these actions were authorized by a warrant. In many cases, the property the
11 defendants have taken and destroyed represents substantially all the possessions of these
12 homeless men and women.

13 35. On or about May 3, 2006, defendants raided several areas in Fresno where
14 they knew a significant number of plaintiffs and members of the plaintiff Class resided,
15 including an area on the west side of E Street near Santa Clara Avenue, abutting Highway
16 99. On information and belief, this area is owned and controlled by defendant Caltrans. In
17 this raid, Fresno employees used a bulldozer to destroy and dispose of all the personal
18 property of plaintiffs in their path. Plaintiffs had no adequate notice that defendants would
19 destroy their property. Defendants made no attempt to save items that belonged to people,
20 and in fact restrained efforts by homeless people to retrieve their personal property in order
21 to prevent it from being taken and destroyed. Nor did defendants make any provisions for
22 people to claim their property after it had been seized. Rather all plaintiffs' property that
23 was seized was summarily destroyed.

24 36. On or about May 25, 2006, defendants returned to conduct a further raid on
25 areas that had previously been raided, including the area of E Street abutting Highway 99.
26 Acting at the direction of and pursuant to the policy of the City of Fresno, City of Fresno
27 employees systematically took and destroyed all of the personal property of plaintiffs and
28 members of the plaintiff Class that they could find. Using a large bulldozer with a

1 mechanical "grabber" on the front, defendants dumped all of the personal property of
2 members of the plaintiff Class into a waiting garbage truck for immediate destruction, even
3 though it was obvious that much of what they were taking and destroying was personal
4 property owned by members of the plaintiff Class.

5 37. On or about June 22, 2006, defendants again confiscated and destroyed the
6 personal property of members of the plaintiff Class. In this raid, defendants seized and
7 destroyed property not only on the west side of E Street near Santa Clara Avenue, but also
8 in adjacent areas. As with the previous raids, representatives of the Fresno Police
9 Department acting at the direction and pursuant to the policy of the City of Fresno,
10 prevented homeless people, including members of the plaintiff Class, from retrieving their
11 personal possessions and made no attempts to save personal belongings from destruction or
12 to store them so that they could be claimed later by their owners. The week before this raid,
13 on or about June 15, 2006, the Fresno Police Department issued a memorandum addressed
14 to "All Campers on Ventura/E" stating that "On Thursday, June 22, 2006 we will be coming
15 through this area to do a clean up of Ventura, "E", Santa Clara & "G." streets. We will start
16 at 8:00 a.m. If you have property in these areas, please remove it or we will take it as
17 trash." This notice was inadequate to provide meaningful and effective notice to those who
18 would be affected by defendants' unlawful conduct, both because of the manner in which it
19 was given and because defendants knew or should have known that many members of the
20 plaintiff Class would not receive the notice or understand that their personal possessions
21 were going to be taken and destroyed by defendants. Moreover, the defendants began their
22 systematic destruction of the personal property of plaintiffs and the plaintiff Class before
23 8:00 a.m., making the notice further inadequate and misleading. Defendants also continued
24 with their policy of destroying property even while it was being claimed by the owners.

25 38. On or about July 1, 2006, defendants continued their unlawful seizures of the
26 property of plaintiffs and members of the plaintiff class. Early in the morning on July 1,
27 2006, members of the Fresno Police Department, complete with squad cars, a paddy wagon,
28 and a flatbed truck arrived near the intersection of E Street and Santa Clara Avenue and

1 began seizing property in multiple areas in the vicinity. Fresno Police Department
2 representatives unlawfully and without cause or basis confiscated shopping carts that were
3 the property of the homeless, including members of the plaintiff Class, loaded the carts onto
4 the flatbed truck and hauled them away and disposed of them. At no time did defendants,
5 or any of them, make an effort to determine the ownership of the carts or their contents, or
6 to allow plaintiffs or members of the plaintiffs' Class to make a claim for the return of their
7 personal possessions.

8 39. On or about August 26, 2006, defendants again returned to the area near E
9 Street and Santa Clara Avenue in Fresno and repeated the systematic confiscation of the
10 property of plaintiffs and members of the plaintiff Class. City of Fresno employees again
11 systematically confiscated all of the personal property of plaintiffs and/or members of
12 plaintiff Class that they could locate and again threw it into City of Fresno garbage trucks
13 for destruction. Defendant made no attempt to save valuable personal possessions but
14 rather again seized and immediately destroyed all of the property of plaintiffs and/or
15 members of the plaintiff Class. Defendants again continued their practice of destroying all
16 the property they found regardless of the fact that it was being claimed by its owners.
17 Defendants again made no provision of any kind to allow plaintiffs and/or members of the
18 plaintiff Class to claim or retrieve their property.

19 40. Early in the morning on or about October 8, 2006, members of the Fresno
20 Police Department came to an area near H Street and San Benito where plaintiffs and/or
21 members of the plaintiff Class were found. The Fresno Police Officers, without cause or
22 basis, confiscated all of the shopping carts possessed by plaintiffs and members of the
23 plaintiff Class and took them away for destruction. The Fresno Police Officers dumped all
24 the contents of all the shopping carts onto the ground resulting in damage to that property.
25 Plaintiffs' shopping carts were not stolen and no legal basis existed to confiscate them. No
26 provision was made for plaintiffs or members of the plaintiff Class to retrieve their carts,
27 which are essential to their ability to move their property from one place to another.

1 41. Early in the morning on or about October 11, 2006, members of the Fresno
2 Police Department returned to the area near H Street and San Benito Street in the City of
3 Fresno where several homeless people were found. These Police Officers forced all of the
4 homeless in this area to get out of their tents and to stand in lines while they were searched,
5 despite the fact that there was no basis for this search and treatment. A Fresno Police
6 Officer then stated to all present that they intended to return very soon to again take and
7 destroy any property of the homeless found in that area and that the Police and other
8 defendants would “do what I have to do to get you guys out of here.”

9 42. On information and belief, plaintiffs alleged defendant Caltrans and
10 defendant Kempton and other unidentified Caltrans agents and employees were aware that
11 the City of Fresno and other defendants were carrying out the raids alleged above and were
12 involved in planning, carrying out, facilitating and approving these actions.

13 43. Plaintiffs and members of the plaintiff Class have suffered the loss of
14 property, damage and treatment described in the foregoing paragraphs on one or more
15 occasions set forth above.

16 44. Plaintiff Pamela Kincaid’s personal property has been confiscated and
17 destroyed by Defendants on at least two occasions. Approximately one year ago, almost all
18 of her possessions were seized and destroyed in one of defendants’ raids, including her
19 identification; her birth certificate; her telephone/address book; and family photos, which
20 contained the only pictures she had of her sister, her daughter, and her deceased mother.
21 Approximately 2 months ago, defendants seized her shopping cart, a toolbox, and various
22 tools that she used to make crafts, such as jewelry and “dreamcatchers,” which she was able
23 to sell to make a little income. This property was not abandoned and it was obviously
24 valuable property. She was given no opportunity to save or retrieve her property.

25 45. Plaintiff Doug Deatherage’s personal property has been confiscated and
26 destroyed by Defendants on at least two occasions. On or around June 22, 2006, he and his
27 girlfriend had a tent on a strip of land between E Street and the highway in Fresno.

28 Defendants arrived and began putting items in a dump truck, so plaintiff Deatherage moved

1 his and his girlfriend's belongings to the other side of the street. Believing that his property
2 would be safe there because a police officer had told them it was okay to move their
3 belongings to that side of the street, plaintiff Deatherage left his girlfriend with their
4 belongings and went to the store. When he returned, their property had been confiscated,
5 and all attempts to move it again or save it had been summarily denied by the Fresno police.
6 In this raid, most of plaintiff Deatherage's property was destroyed, including his tent; his
7 sleeping bag; all the clothes except the ones he was wearing at the time; shoes; a coat;
8 personal hygiene supplies; an antique stamp collection; and personal papers, including
9 letters from his family. On or about August 26, 2006, defendants confiscated and destroyed
10 nearly all of his remaining possessions in the same area, including clothes and shoes that he
11 had been able to acquire since the previous raid. Again, plaintiff Deatherage was given no
12 opportunity to save or retrieve his personal property.

13 46. Plaintiff Charlene Clay's personal property has been seized and destroyed by
14 defendants on at least two occasions. Sometime during the first two weeks of April 2006,
15 she and her husband were staying on a hill off of G Street in Fresno. While they were at the
16 Poverello House, a local service provider, they heard that the City was taking people's
17 property. Plaintiff Clay went as fast as she could to where she had left her belongings, but
18 when she arrived, almost everything she owned had already been seized, including: her
19 false teeth; her medications; a small TV and laptop computer; a bike; dog food; blankets
20 and sleeping bags; and her and her husband's clothes and personal papers. Again on
21 October 8, 2006, she and her husband were under a bridge at San Benito and H Street.
22 Fresno police officers arrived without warning and confiscated homeless people's shopping
23 carts and took them away.

24 47. Plaintiff Cynthia Greene has had some or all of her belongings seized by
25 Defendants approximately five times since January 2006. Property of plaintiff Greene's
26 that Defendants have confiscated include: photographs of her deceased relatives (her father,
27 mother, and brother); bicycles; tent and bedding; and winter gear such as rain suits and an
28 umbrella, resulting in her getting sick as a result of being out in the rain without any shelter.

1 In the last such raid, on or about August 27, 2006, defendants confiscated plaintiff Greene's
2 belongings with a bulldozer truck, even as she and other homeless women were trying to
3 move their belongings. In this raid, the Fresno employees destroyed her property including
4 medication; her tent and blankets; her personal papers and identification; and her backpack.

5 48. Plaintiff Joanna Garcia has had her personal property confiscated and
6 destroyed by defendants on approximately five occasions since January 2006. The property
7 destroyed in these raids include: tents; blankets; personal papers; clothing; photographs of
8 her grandmother and her son; and a lock of her son's hair. In the most recent raid, on or
9 about August 27, 2006, Fresno police officers seized and destroyed her property in the E
10 Street area, even as she was attempting to move it to save it from destruction. Items seized
11 and destroyed by defendants in this raid included: medication, including inhalers for asthma
12 and antibiotics; food; tents and sleeping bags.

13 49. Plaintiff Randy Johnson, Sr. had his personal property confiscated by
14 defendants in April 2006. During this raid, Fresno city employees seized and destroyed his
15 shopping cart, which had in it such items as: blood pressure medication; clothing; blankets;
16 and family photographs.

17 Requisites for Relief

18 50. Defendants' policies, actions and conduct have resulted and will result in
19 irreparable injury to plaintiffs. Plaintiffs have no plain, adequate or complete remedy at law
20 to address the wrongs described herein. Defendants have made it plain by their actions, the
21 ongoing nature of their activities, and their public statements that they intend to continue the
22 unlawful conduct described above. Defendant City of Fresno has a policy and practice of
23 confiscating and destroying the personal property of plaintiffs and members of the plaintiff
24 class without legal basis and the remaining defendants have and will continue to participate
25 in implementing this policy and practice unless and until restrained by an injunctive decree
26 of this Court.

27 51. The acts of defendants as alleged above constituted violations of established
28 constitutional rights of plaintiffs, and defendants could not reasonably have thought that

1 their conduct in intentionally seizing and immediately destroying all of plaintiffs' personal
2 property as alleged herein was consistent with plaintiffs' constitutional rights.

3 52. An actual controversy exists between plaintiffs and defendants in that
4 defendants have engaged in the unlawful and unconstitutional conduct as alleged herein and
5 intend to continue this unlawful conduct as an ongoing practice and policy of Fresno
6 whereas plaintiffs claim that these practices are unlawful and unconstitutional and therefore
7 seek a declaration of rights with respect to this controversy.

8 53. As a direct and proximate result of the unconstitutional and unlawful
9 policies, practices and conduct of defendants, plaintiffs and members of the plaintiff class
10 have suffered, and will continue to suffer damages, including but not limited to deprivation
11 and destruction of property, including clothing, bedding, medication, personal documents
12 and other personal possession, leaving them without their essential personal belongings
13 necessary for shelter, health, well-being and personal dignity.

14 54. The acts of defendants were willful, wanton, malicious, and oppressive and
15 done with conscious disregard and deliberate indifference for plaintiffs and their rights.

16 55. Plaintiffs have filed administrative claims with the City of Fresno pursuant
17 to California Government Code § 910 *et seq.*

18 **First Claim for Relief**
19 **(Denial of Constitutional Right Against Unreasonable Search and Seizure- Fourth**
20 **Amendment)**

21 56. Plaintiffs reallege and incorporate here paragraphs 1 through 55 above, as
22 though fully set forth.

23 57. Defendants' above-described policies, practices and conduct violate
24 plaintiffs' right to be free from unreasonable searches and seizures under the Fourth
25 Amendment to the United States Constitutional and 42 U.S.C. § 1983.

26 **Second Claim for Relief**
27 **(Denial of Constitutional Right to Due Process of Law- Fourteenth Amendment)**

28 58. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
though fully set forth.

1 59. Defendants' above-described policies, practices and conduct violate
2 plaintiffs' right to due process of law under the Fourteenth Amendment of the United States
3 Constitution and 42 U.S.C. § 1983.

4 **Third Claim for Relief**
5 **(Denial of Constitutional Right to Equal Protection of the Laws – Fourteenth**
6 **Amendment)**

7 60. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
8 though fully set forth.

9 61. Defendants' above-described policies, practices and conduct are intended
10 and designed to single out homeless people and have the purpose and effect of depriving
11 homeless people of their property and of driving homeless people from the City of Fresno.
12 These policies and actions are based on defendants' animus towards this disfavored group
13 and lacks a rational relationship to any legitimate governmental interest. In adopting and
14 implementing these policies and practices with the intent to harm and disadvantage
15 homeless persons in the City of Fresno, the defendants have violated the Equal Protection
16 Clause of the United States Constitution and 42 U.S.C. § 1983.

17 **Fourth Claim for Relief**
18 **(Denial of Constitutional Right Against Unreasonable Search and Seizure -**
19 **California Constitution, Article 1, § 13)**

20 62. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
21 though fully set forth.

22 63. Defendants' above-described policies, practices and conduct violated
23 plaintiffs' right to be free from unreasonable searches and seizures under Article 1, § 13 of
24 the California Constitution.

25 **Fifth Claim for Relief**
26 **(Denial of Constitutional Right to Due Process of Law- California Constitution, ,**
27 **Article 1, § 7(A))**

28 64. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
though fully set forth.

1 65. Defendants' above-described policies, practices and conduct violate
2 plaintiffs' right to due process of law under Article 1, § 7(A) of the California Constitution.

3
4 **Sixth Claim for Relief**
5 **(Denial of Constitutional Right to Equal Protection of the Laws – California**
6 **Constitution, Article 1, § 7(A))**

7 66. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
8 though fully set forth.

9 67. Defendants' above-described policies, practices and conduct were and are
10 intended and designed to single out homeless people and have the purpose and effect of
11 depriving homeless people of their property and of driving homeless people from the City
12 of Fresno. These policies and actions are based on defendants' animus towards this
13 disfavored group and lacks a rational relationship to any legitimate state interest. In
14 adopting and implementing these policies and practices with the intent to harm and
15 disadvantage homeless persons in the City of Fresno, the defendants have violated the Equal
16 Protection Clause of the California Constitution, Article 1, § 7(A).

17 **Seventh Claim for Relief**
18 **(California Civil Code § 2080 *et seq.* and Government Code § 815.6)**

19 68. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
20 though fully set forth.

21 69. Defendants' above-described policies, practices and conduct violated
22 California Civil Code § 2080 *et seq.*, in that, among other things, defendants have failed to
23 safeguard the personal property of plaintiffs and members of the plaintiff Class found on
24 public land, failed to inform the owners of the personal property within a reasonable time of
25 finding this property, failed to document the property found, and failed to make restitution
26 of the property to its owners or to make arrangements to permit them to retrieve it all of
27 which are mandatory duties under Code of Civil Procedure § 2080 for which defendants are
28 liable and defendant public entities are liable under Government Code § 815.6.

1 **Eighth Claim for Relief**
2 **(California Civil Code § 52.1)**

3 70. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
4 though fully set forth.

5 71. Defendants' above-described policies, practices and conduct constitute
6 interference, and attempted interference, by threats, intimidation and coercion, with
7 plaintiffs' exercise and enjoyment of rights secured the Constitutions and laws of the United
8 States and California, in violation of California Civil Code § 52.1.

9 **Ninth Claim for Relief**
10 **(Common Law Conversion)**

11 72. Plaintiffs reallege and incorporate here in paragraphs 1 through 55 above, as
12 though fully set forth.

13 73. Plaintiffs were at all relevant times the owners of personal property
14 confiscated and destroyed by defendants as alleged above. Plaintiffs remain entitled to the
15 possession of their personal property. The personal property confiscated and destroyed by
16 defendants included tents, clothing, medication, medical devices, prescriptions, personal
17 items and documents, all of which were particularly valuable to plaintiffs in part because
18 these belongings amounted to much if not all of the relatively few possessions that plaintiffs
19 owned.

20 74. Defendants' above-described policies, practices and conduct denied
21 plaintiffs the possession of their property and constituted an unlawful conversion of that
22 property to the possession and control of defendants. Defendants have since refused to
23 return this personal property to plaintiffs, but instead have destroyed this property.

24 **Prayer for Relief**

25 WHEREFORE, plaintiffs seek relief from this Court the as follows:

- 26 1. For an order certifying the proposed plaintiff class, together with any
27 necessary and appropriate subclasses under Federal Rule of Civil Procedure
28 23;

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2. For a temporary restraining order, preliminary injunction and permanent injunction, enjoining and restraining defendants from continuing or repeating the unlawful policies, practices and conduct complained of herein;
3. For a declaratory judgment that defendants' policies, practices and conduct as alleged herein were in violation of plaintiffs' rights under the United States Constitution, the California Constitution, the laws of the United States and the laws of California;
4. For the return of plaintiffs' property;
5. For damages in amount according to proof but in no event less than \$4,000 per incident under California Civil Code §§ 52 and 52.1 and Cal. Government § 815.6;
6. For punitive and exemplary damages to be determined in accordance with proof;
7. For attorneys fees as provided by law;
8. For costs of suit; and
9. For such other and further relief as the Court may deem just and proper.

October 16, 2006

Respectfully submitted,

HELLER EHRMAN LLP

LAWYERS' COMMITTEE FOR CIVIL RIGHTS

ACLU FOUNDATION OF NORTHERN CALIFORNIA

By /s/ Paul Alexander
Paul Alexander
Attorneys for Plaintiffs