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18 Attorneys for Plaintiffs

19 ORANGE COUNTY SUPERIOR COURT

C61

Judge Layne Melzer

Case No.: 30-2019-01098573-CU-WM-CJC

20 HOUSING IS A HUMAN RIGHT

21 ORANGE COUNTY, an unincorporated

22 association; EMERGENCY SHELTER

23 COALITION, a non-profit corporation;

24 DUANE NICHOLS, an individual, and all

25 as taxpayers,

26 Plaintiffs,

27 v.

28 THE COUNTY OF ORANGE, THE CITY

OF SAN CLEMENTE, DOES 1-10,

Defendants.

1 **VENUE AND JURISDICTION**

2 1. Venue is proper in this Court because the City is located in Orange
3 County and the violations of law alleged herein occurred in Orange County.

4 2. This Court has jurisdiction over this action pursuant to Code of Civil
5 Procedure sections 187, 526(a), 1060, and 1085.

6
7 **INTRODUCTION**

8 3. Orange County has one of the largest homeless populations in the
9 State with nearly half of the total unsheltered. To a significant degree, the
10 County’s homelessness crisis is a result of a statewide housing crisis of historic
11 proportions. As the Legislature has found, “[t]he lack of housing . . . is a critical
12 problem that threatens the economic, environmental, and social quality of life in
13 California,” and the housing that does exist is the most expensive in the country.
14 (Gov. Code, § 65589.5, subd. (a)(1)(A), (B).) This crisis is “hurting millions of
15 Californians, robbing future generations of the chance to call California home,
16 stifling economic opportunities for workers and businesses, worsening poverty and
17 homelessness, and undermining the state’s environmental and climate objectives.”
18 (Id., subd. (a)(2)(A).) The failure of local governments to plan for the necessary
19 housing supply has been a key factor contributing to this crisis. The problems in
20 the County mirror the critical issues statewide.

21 4. The 2019 Point-in-Time count reports approximately 3900 individuals
22 living unsheltered in the streets and in vehicles, up from approximately 2400 in the
23 2017 PIT.¹ The numbers are devastating. With a more accurate process than
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27 ¹ Spencer Custodio, *Over 3400 Homeless People on OC Streets, According to*
28 *Initial Headcount*, VOICE OF OC (Jan. 25, 2019),
<https://voiceofoc.org/2019/01/over-3400-homeless-people-on-oc-streets-according-to-initial-headcount/>

1 earlier years, the increase in people experiencing homelessness in the County is up
2 more than 42 percent from the 2017 PIT. While the greatest increases are in the
3 North and Central Service Planning Areas (“SPA”s), the South SPA cities saw an
4 increase of over 11 percent from the 2017 PIT count, bringing the total of
5 individuals experiencing homelessness in South County to approximately 763
6 persons. This number is greater than the 701 year-round emergency shelter beds
7 reported in the 2019 PIT for the entire county. According to the 2017 Point-in-
8 Time count, half of those experiencing homelessness in Orange County are
9 unsheltered on any night, 50% above the national average. APHA 11-7-17.
10 Almost 90,000 people are on the County’s housing authority waiting lists hoping
11 for access to affordable housing.²

12 5. Until April 2018, several hundred houseless persons camped on the
13 Plaza of the Flags in the County Civic Center in Santa Ana, reaching as high as
14 approximately 500 persons in 2017. The site most resembled a refugee camp in a
15 war zone. In late March 2018, United States District Court judge David O. Carter
16 directed the closure of the Civic Center encampment and the relocation of persons
17 living there. The directive issued in *Orange County Catholic Worker, et al. v.*
18 *County of Orange, et al.*, Case No. 18-cv-00155 DOC KES. The Court directed
19 the County to work with the Santa Ana Police Department to facilitate the humane
20 closure of the Civic Center. This included providing assessments by County
21 healthcare workers to determine appropriate placements and qualifications for
22 various services.

23 6. As part of this order, the federal court also directed that all available
24 beds at The Courtyard, the County’s sole drop-in shelter, be reserved for
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27 ² Susan Price, *An Assessment of Homeless Services in Orange County*,
28 [http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REP
ORT_10.18.2016.pdf](http://bos.ocgov.com/ceo/care/HOMELESS%20ASSESSMENT%20DCC%20REPORT_10.18.2016.pdf), pg. 21

1 individuals relocated in the closure of the Civic Center. At the time, it was the
2 practice of nearly all of the cities in the County to transport unsheltered individuals
3 from their cities to The Courtyard. On information and belief, the other cities in
4 the County contracted with private entities such as CityNet and Mercy House,
5 among others; however, none of these cities had shelter resources in their own
6 jurisdictions despite the Legislature’s requirement that every government entity’s
7 General Plan detail how it intended to address special needs populations within its
8 boundaries, including seniors, disabled persons, low-income residents and
9 homeless individuals. Santa Ana documented the extensive “dumping” of
10 homeless individuals in its jurisdiction, which led to the prior Civic Center
11 encampment.

12
13 **SOUTH COUNTY SHELTERS:**

14 7. The Alternative Sleep Location (ASL) in Laguna Beach is the only
15 low-barrier shelter in South County. It is a very small shelter, with a capacity of
16 45 beds in trailers. The facility was created following the settlement of a lawsuit
17 challenging police enforcement of anti-camping laws against homeless individuals
18 in Laguna Beach.

19 8. According to 2017 Orange County Homeless Management
20 Information System (HMIS) data, of 401 people who stayed at the ASL over a year
21 and who provided a “last known permanent address,” more than half of these
22 individuals reported an address in Orange County outside of Laguna Beach. Only
23 11 percent of the guests reported a last known address in the City. Aliso Viejo
24 topped the list of other Orange County cities with 28 individuals, totaling seven
25 percent of the population at the ASL. Mission Viejo had the second largest
26 number of guests at the ASL, with 13 individuals, followed by San Clemente with
27 10 individuals.

1 9. Until recently, the ASL facility did not open until 6 p.m. and required
2 people seeking entry to arrive no later than 8 p.m. The City provided limited free
3 transportation to and from the facility, which is located in Laguna Beach Canyon.
4 The shelter closed at 7:30 a.m. daily. A few months ago, a van service was
5 instituted, providing more opportunities to travel to and from the ASL.

6 10. Starting on February 4, 2019, the ASL introduced a pilot program,
7 “enrolling” clients and, for the broader group of those experiencing homelessness,
8 opening the shelter on a drop-in basis for showers, laundry, mail, lunch, computer
9 access and social services from 10 a.m. to 1 p.m. Under the new program, only
10 persons enrolled in the new program are allowed in the shelter from 5 p.m. to 10
11 a.m. No drop-in services will be offered during these hours.

12 11. Those individuals approved for the enrollment program are offered
13 overnight places at the shelter for 30 days, extendable if the person actively
14 pursues housing solutions in that time period. Each enrolled person is assigned a
15 housing coordinator to help create a housing plan. For now, enrollment is
16 restricted to persons who meet the city’s “locals” conditions and prioritization
17 criteria set by the ASL. Based on the success of the pilot program, the ASL is now
18 open all day for various programs.

19 12. Both because of its limited capacity and the success of its program,
20 the ASL is full nearly every night, with individuals sleeping outside where they are
21 often subjected to questioning and harassment by the police. The only
22 recommendation the ASL suggests for alternative shelter is the County winter
23 shelter program at the two armories in Fullerton and Santa Ana, in the North and
24 Central SPA, respectively. Those suggestions are not practical because of the
25 limited options for transit to those facilities, as well as recently-imposed
26 restrictions on walk-in admissions.

27 13. Moreover, it is anticipated that only the Fullerton winter shelter will
28 open in 2019. The Santa Ana armory will not open because the City of Santa Ana

1 opened its own shelter in late 2018. On information and belief, Plaintiffs allege
2 that it is the position of Santa Ana that it has done more than its share to provide
3 shelter and low-income housing in the County: because Santa Ana is the County
4 seat and site of the courts, the County jail and all County service offices,
5 unsheltered individuals regularly come to the City, or are transferred there forcibly,
6 with no assistance in returning to their cities of residence when they are released
7 from the jail. When other cities are permitted simply to move their unsheltered
8 communities to Santa Ana to the winter shelter or The Courtyard, it greatly
9 expands the pressures on Santa Ana's resources.

10 11 **SOUTH COUNTY LETTER TO SUPERVISOR BARTLETT**

12 14. On or about August 2, 2019, mayors from several South County cities,
13 including Dan Bane, Mayor Pro Tem of Defendant San Clemente, sent a letter to
14 Orange County Board of Supervisor Chair Lisa Bartlett. Supervisor Bartlett
15 represents District 5, covering South County. In their letter, the mayors asserted
16 that the County's division of service provider areas into three sections was an
17 artificial creation and a barrier to addressing homelessness. The mayor's also
18 proposed that all of the unsheltered homeless persons in South County be
19 transported to existing facilities in the North and Central SPAs. The mayors
20 contended that there was no need for South County to carry its fair share of
21 responsibility because the 2019 Point-in-Time count found that there were 500
22 empty emergency and transitional housing beds in the North and Central SPA.

23 15. On or about August 14, 2019, Supervisor Bartlett responded to the
24 South County mayors, emphasizing that funding and assistance was available for
25 cities working regionally to address these issues. The Supervisor also noted that
26 there were not 500 beds available in the Central and North SPAs and that the 2019
27 Point-in-Time report emphasized that more than half of the vacancies were at
28 facilities reserved for families with children and similar restrictions. Most of the

1 remaining beds were at the seasonal shelters, which are only open, at most, four
2 months out of the year. So the suggestion by the South County mayors that
3 adequate facilities already existed and, thus, there was no need for them to locate a
4 shelter in any of their cities, was refuted by Supervisor Bartlett’s letter.

5
6 **PAST LITIGATION IN ORANGE COUNTY:³**

7 16. Plaintiff ORANGE COUNTY CATHOLIC WORKER filed a lawsuit
8 against the County of Orange and the cities of Orange, Anaheim and Costa Mesa
9 on January 29, 2018. Case No. 18-cv-01115 DOC - JDE (C.D. Cal.). The lawsuit
10 challenged the County’s intended closure of the Santa Ana Riverbed encampment.

11 17. In response to the Court’s order to end the encampment at the
12 Riverbed, and the Court’s subsequent order to end the encampment at the Santa
13 Ana Civic Center, the County Board of Supervisors (BOS) voted to open three
14 temporary emergency shelters to provide placements for the majority of the
15 approximately 1200 people displaced from the Riverbed and Civic Center. The
16 three temporary facilities were to be located in Irvine, Huntington Beach and
17 Laguna Niguel. The announced intention of the BOS was to open the Irvine

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20 ³ There are several additional actions brought against San Clemente. Based on the
21 relocation of unhoused persons to the sewage plant lot, Plaintiff Emergency Shelter
22 Coalition filed an action challenging violations of the Coastal Act, the Land Use
23 Act, and the California Environmental Quality Act. *See Emergency Shelter*
24 *Coalition v. City of San Clemente, et al.*, Case No. 30-2019-01080355-CU-WM-
CxC.

25 An administrative complaint was also filed with the California Coastal
26 Commission, alleging that the designated campsite is a “development” within the
27 definition of the term as used by the Coastal Commission. At the September 11,
28 2019 Coastal Commission meeting, the staff announced that it found actions taken
by the City were subject to the Coastal Act, informed the City by phone, and would
be taking next steps to send a letter to the city with its decision that the campsite
was an unpermitted “development.”

1 location first and then, if more space was needed, open the temporary facility in
2 Huntington Beach and, if more additional space was needed, open the temporary
3 facility in Laguna Niguel.

4 18. The County’s plan was met with intense opposition from each
5 community. Nearly 600 Irvine residents traveled to the BOS meeting to protest
6 against the plan. Despite having one of the largest number of homeless individuals
7 of any South County City, Irvine officials and residents adamantly argued that
8 there was no place in Irvine – the largest land mass city in the County - that could
9 accommodate an emergency shelter, let alone any shelter.

10 19. In late April 2018, the South County Mayors counter-proposed use of
11 a former elementary school in Silverado Canyon. Subsequently, the possibility of
12 using the now closed juvenile detention facility in the Cleveland National Forest
13 was also raised. Neither site was appropriate. Both were isolated and did not meet
14 the requirements of SB2 to ensure that facilities for unhoused persons were close to
15 transportation so that individuals can get to work, access social services, medical
16 appointments, and other basic resources.

17 20. The lack of adequate and appropriate resources was reinforced in a
18 2017 report issued by United Way, prepared with the University of California
19 Irvine and the Association of California Cities. The report, “Homelessness in
20 Orange County: The Costs to Our Community,” found that 75 percent of homeless
21 individuals surveyed lived in Orange County for at least six years, with most more
22 than 10 years.⁴ Cutting against the stereotypes that homeless individuals are
23 substance abusers or mentally ill, the United Way report found that the single
24 greatest factor leading to homelessness in Orange County, by far, is “the gap
25 between the availability of affordable housing and work that pays a wage sufficient

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28 ⁴ Homelessness in Orange County: The Costs to Our Community, available at
unitedwayoc.org/wp-content/uploads/2017/08/united-way, p. 31.

1 to enable the economically marginal to access that housing.”⁵ While the County
2 has created several hundred more low-barrier and bridge shelter beds over the last
3 three years, it is nowhere near the number of beds needed to address their
4 responsibility.

5 21. The need to respond to the increasing numbers of unsheltered
6 individuals in Orange County is hardly new and neither is the disfavored approach
7 of criminalizing - rather than housing - people who are homeless. More than a
8 decade ago, the Orange County Grand Jury issued a report on “The Homeless
9 Crisis in Orange County.” The report noted then that “[h]omelessness is on the
10 rise, often misunderstood, and is inextricably linked to poverty.” From 1990 to
11 2005 the homeless population increased at a far greater rate than the overall
12 increase in population in the County. The Grand Jury report concluded that
13 addressing the problem “does not appear to be a priority with the Board of
14 Supervisors.” The Grand Jury listed a series of measures to address the crisis then
15 being considered by various municipal entities in the County, including plans to
16 add housing for homeless individuals at the former El Toro Marine Air Station;
17 shelters in San Clemente, Buena Park, Westminster, La Habra and Cypress. A
18 dozen years later, few, if any, of these intentions are realized, although Buena
19 Park, La Habra and Cypress are part of a North SPA 12-city collaboration to open
20 two facilities. While Santa Ana, Anaheim, Costa Mesa and Tustin opened new
21 facilities in the last year, South County cities opted for criminalization over shelter.

22 22. The 2005 Grand Jury Report also reviewed the history of proposals in
23 similar reports, going back to 1988 and found that few of the earlier
24 recommendations were implemented. The Report proves that, over the past 25
25 years, the primary response of the County and the Cities has been to treat the
26 visible presence of homeless people as a blight, without significantly reducing the

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⁵ *Id.*, p. 34.

1 number of residents on the street each night. These approaches include
2 criminalizing homelessness by arresting homeless individuals for loitering, making
3 it illegal to sleep in public places at night, seizing and destroying homeless
4 people’s property, and engaging in a pattern of warrantless stops and
5 interrogations. The identical practices have been repeatedly challenged and
6 enjoined by judges of the Central District in Los Angeles and the Ninth Circuit,
7 uniformly rejecting these practices criminalizing homelessness as a violation of the
8 First, Fourth, Eighth and Fourteenth Amendments.

9 23. The 2017-2018 Grand Jury Report, “Where There’s Will, There’s a
10 Way Housing Orange County’s Chronically Homeless,” issued in late May, 2018,
11 echoed the conclusions in the 2005 Grand Jury Report. It cited the lack of political
12 will and cooperation between the County and the cities as a significant factor in the
13 inability to develop and implement a comprehensive plan to address the unhoused
14 population in the County, emphasizing the extraordinary cost benefits to providing
15 housing and services as a proactive measure.

16 24. Beyond the financial costs to the government from having a
17 significant unsheltered population living on the streets and in the parks, the Grand
18 Jury underscored the dire consequences for people left to survive on the streets. As
19 discussed above, people experiencing homelessness are more susceptible to illness
20 and infection because of exposure to the elements, poor nutrition and other factors.
21 The consequence is that the average life expectancy for an unhoused person in the
22 United States of only 50 years, almost 50 percent less than the 78-year life
23 expectancy for the housed population.

24 25. Defendants’ approach is even more indefensible when viewed against
25 the directives by the United States Interagency Council on Homelessness
26 (“USICH”), composed of nineteen federal cabinet and agency heads to organize
27 federal efforts to end homelessness. The most recent USICH report, “Ending
28 Homelessness for People Living in Encampments,” emphasized the importance of

1 “intensive and persistent outreach and engagement,” but underscored that outreach
2 is meaningless without real options for placements and services.

3 26. San Clemente illustrates this point. The City contracted with Mercy
4 House to provide services, but the only shelter option offered was the Courtyard in
5 Santa Ana. That is not a realistic option for a number of reasons. First, as set forth
6 above, the federal District Court restricted other cities across the County from
7 “dumping” individuals off at the Courtyard when those same cities lacked shelters
8 in their own jurisdictions. This disfavored practice led to increased numbers of
9 homeless individuals in Santa Ana and Anaheim, the two cities in the County that
10 have carried more than their share of the obligation to address homelessness.

11 27. Requiring individuals to travel to Santa Ana or Anaheim to find
12 shelter is an impossible challenge for those with disabilities for a number of
13 reasons. As the County has now recognized, among other deficiencies, the
14 Courtyard is not structured to accommodate individuals with significant
15 disabilities, as many unsheltered individuals have.

16 28. The Courtyard does not provide adequate reasonable accommodation
17 of disabilities. For persons with a trauma-enhanced disability, the conditions in the
18 Courtyard, as well as the two County-run emergency winter shelters at the
19 armories, exacerbate their mental health conditions. Hundreds of people sleep
20 nightly at the Courtyard, in close quarters on small cots with no privacy for
21 women, half of whom are likely victims of sexual violence. On most nights,
22 people camp on the sidewalk outside the Courtyard because they cannot get a bed
23 inside. Because it is not near any other shelter, a person who shows up and is told
24 that the Courtyard is full has no choice but to sleep outside because it is too late to
25 find transportation and get to other shelters to ask for a bed, such as the armories,
26 before they close for the night. Most of the year, there is no other shelter available.

27 29. In April 2018, to ensure that there was space for individuals being
28 relocated from the nearby Santa Ana Civic Center, the Court limited the County

1 from placing people who were not Santa Ana residents at the Courtyard and also
2 directed that other cities, acting through contract agencies such as CityNet, stop
3 transporting people to the Courtyard to ensure that there was space for individuals
4 being relocated from the nearby Santa Ana Civic Center encampment. Until the
5 Court's directive, people were regularly dropped off there by hospitals, various
6 cities' police, social workers contracted with other cities in the County, and others
7 with nowhere else to bring homeless people.

8 30. The only other options for low-barrier facilities are the winter
9 emergency shelters at the armories in Santa Ana and Fullerton, both of which
10 suffer from numerous deficiencies. People sleep on thin mats on the floor, making
11 it difficult for anyone with a physical disability to accommodate to as a matter of
12 course. There is no accommodation for persons with psychological trauma.
13 Moreover, the armories only accept people who are able to come and go at the
14 restricted hours. For those who work, need to attend court or school or meet with
15 service providers, restricted entrance and exit hours impose an additional and often
16 insurmountable hurdle. Both armories require everyone to leave very early in the
17 morning and preclude readmission until the evening. Beginning in 2018, the
18 armories did not allow walk-ups, requiring arrival on a scheduled bus. While this
19 change was, no doubt, made to discourage individuals from moving to nearby
20 parks to wait all day until the armory reopened, the impact of this policy change is
21 devastating: unsheltered individuals have no place to be during the day without
22 facing a threat of citation or arrest if they are in public places.

23 31. The third reason why transporting people from South County to Santa
24 Ana and Anaheim is an untenable and unlawful solution is that it makes it nearly
25 impossible for homeless individuals to get to jobs and services in South County.
26 San Clemente is 31.5 miles from Santa Ana. By public transportation, the travel
27 time is nearly 2 hours once a person gets to the train transit sites at either end,
28 which involve walking slightly more than a mile at each end. For a disabled

1 individual, the one-mile walk can take considerable time, because of physical
2 mobility and cognitive impairments. For an individual with circulatory problems
3 and other medical conditions, the walk to get to the train may be physically
4 impossible. For someone such as Plaintiff Duane Nichols, it may be unnavigable
5 because of his visual disability. Finally, for any unsheltered person, the cost of the
6 train may be prohibitive and there is no place to put their property.

7 32. In addition to the Courtyard and Bridges, there are private facilities
8 providing a continuum of options for unhoused persons. Each has strict limitations
9 on eligibility for services. Nearly all have significant time constraints on how long
10 a person may reside at the facility, ranging from one night to six months. Some
11 require a referral and/or a background check for entry, which can delay entry for
12 days or weeks. Some are restricted by gender, some for pregnant women, and
13 some only for women or families with children. Still others, such as the Rescue
14 Mission in Tustin, require participation in sectarian worship as a condition of
15 receiving services. Most have a blanket prohibition on pets other than service
16 animals despite the fact that federal and state Fair Housing laws apply to public
17 and private shelters and, with federal and state disability protections, require that
18 emotional assistance animals be allowed as a reasonable accommodation.

19 33. For example, the Salvation Army Hospitality House in Santa Ana is
20 listed in the Housing Element of most of the cities in Orange County as a resource
21 for each city's unsheltered population. It has only 25 beds for transitional housing
22 and 25 beds for emergency shelter, all for men. To stay there, a man must be able-
23 bodied and employable. Service animals are allowed only with appropriate
24 paperwork. No emotional assistance animals are allowed. Attendance is required
25 at a pre-dinner meeting that includes a sectarian religious service with prayer.
26 Clients must arrive between 3:30 and 5:00 p.m. Men seeking admission must
27 arrive by 3:30 in the afternoon to enter a lottery for any available emergency
28 shelter beds. If not selected, they can wait until 5:00 to see if a man who is already

1 approved missed curfew. There are almost always more applicants than beds. In
2 January 2018, between 2 and 12 lottery beds were available nightly.

3 34. Friendship Shelter operates the Alternative Sleeping Location (ASL)
4 in Laguna Beach in South County. The shelter has only 45 beds, all of which are
5 usually filled each night. In addition to the ASL, Friendship Shelter operates a
6 second facility in Laguna Beach that is a 60-day self-sufficiency program.
7 According to Friendship Shelter’s website, the 32-person facility always has a
8 waiting list and is only available to individuals who are able to work.

9 35. The Rescue Mission in Tustin is one of the larger private shelters in
10 the County, with approximately 200 beds. It requires persons to submit to an
11 intensive Christian religious program to receive services. Also, the Rescue
12 Mission does not permit people to bring in prescriptions containing opioids
13 although commonly prescribed for mental health conditions, especially panic and
14 anxiety disorders. This leaves people with lawful medical prescriptions at risk of
15 psychological deterioration and, in some cases, has produced suicidal ideation
16 from the sudden and complete withdrawal of prescribed medications. Individuals
17 are not allowed to have assistance animals other than registered service animals.

18
19 **THE OBLIGATION TO PROVIDE FOR HOUSING NEEDS AT ALL**
20 **INCOME LEVELS**

21 36. 1982, the California Legislature passed the California Housing
22 Accountability Act. California Government Code § 65589.5. Formerly known as
23 the Anti-NIMBY law, the statute bans discrimination against housing for lower-
24 income households. The legislature declared that the provision of housing for all
25 Californians is a “priority of the highest order.” §65580.

26 37. Pursuant to this statute, every city and county is required to adopt a
27 General Plan governing the use of land and development projects in its jurisdiction.
28 One of seven mandatory components to the General Plan is a “housing element,”
that must be addressed and approved by the State of California’s Housing and

1 Community Development Department (“HCD”). The Housing Element is
2 prepared every 10 years, with updates in between at five or eight year intervals.
3 Submission to, and approval of, the Housing Element by HCD is a necessary
4 prerequisite for local governments to qualify for public funding for various
5 development programs.

6 38. Each local entity must act consistently with its General Plan and
7 housing element. All land use decisions, zoning codes, the General Plan and all
8 other ordinances and policies affecting land use must be consistent with the
9 housing element. §65580.5, §65860. All local land-use decisions, including site
10 specific plans, must be consistent with the adopted General Plan. §65454. Each
11 local government must prepare a housing element that, *inter alia*, identifies
12 sufficient sites to meet that entity’s fair share of the RHNA at each income level.
13 (Id., §§ 65583, 65583.2.) Sites must be suitable for residential development and
14 must be available during the planning period. (Id., § 65583.2, subd. (a).) If a
15 sufficient quantity of adequate sites is not currently available, the housing element
16 must commit to identifying and rezoning additional sites within three years from
17 the date of adoption. (Id., §§ 65583, subd. (c)(1), 65583.2, subd. (h).) On
18 information and belief, this requirement has not been met by San Clemente.

19 39. In 2007, the Legislature reiterated its intent to provide for the needs of
20 residents of all income levels and special communities, including seniors, disabled
21 persons and individuals experiencing homelessness, when it passed Senate Bill 2
22 (SB2). SB2 extended the protections of the 1982 Housing Accountability Act to
23 emergency shelters and clarified that it also covers transitional and supportive
24 housing. This measure imposed increased requirements on cities and counties for
25 low-income housing, emergency shelters and transitional/supportive housing.
26 Each city and county must evaluate its need for shelters and provide a comparison
27 to available facilities to address the identified need. The need for emergency
28

1 shelters must be assessed annually and seasonally. §65583(a)(7). On information
2 and belief, none of the defendants has complied with this requirement.

3 40. Each entity must also designate at least one location where a year-
4 round shelter may be operated without further approval by the local government.
5 The shelter must have sufficient capacity to meet the entity's entire local need for
6 emergency shelter. The designated location may then be used by right, subject
7 only to reasonable zoning restrictions. On information and belief, none of the
8 municipal defendants has fully complied with this requirement.

9 41. Each housing element must also assess what, if any, governmental
10 constraints exist on the development of housing for all income levels in the
11 jurisdiction and must show local efforts to remove such constraints that impede a
12 local entity's ability to meet its share of the RHNA. (Gov. Code, § 65583, subd.
13 (a)(5).) To the extent that San Clemente claims it complied with this provision, the
14 City's efforts have been inadequate. At present, there is no appropriate and
15 feasible location included within any proposed sites by the City. The City recently
16 advanced a 35-bed shelter site but the proposal was voted down by the full
17 Council, so San Clemente still has no shelter and no viable site approved for a
18 shelter as required by the California Government Code. Even if approved, a 35-
19 bed facility would not meet the City's entire local need for emergency shelter,
20 hosting barely one-third of the total number of unsheltered persons in the 2019
21 Point-in-Time Count.

22 42. The express legislative intent of SB2 was to expand the Housing
23 Accountability Act to prevent local entities from denying a proposal to create an
24 eligible facility if it is needed and otherwise consistent with the locality's zoning
25 and development standards. Recognizing the NIMBY-ism the statute was enacted
26 to combat, the Legislature expressly prohibited the ability of local entities to
27 impose hurdles such as "a conditional use permit or any discretionary" approval
28 from the local government. §65583(a)(4)(A).

1 43. The statute enumerated factors that may be imposed on a proposed
2 facility. These include, but are not limited to, the number of beds or persons
3 served, off-street parking restrictions, outside lighting, etc. §65583(a)(4)(A)(i)-
4 (viii). However, the local entity has the burden to establish that any restrictions
5 imposed on a proposed facility, as well as any permit processing standards applied,
6 are objective and directly advance the creation of emergency shelters. If the local
7 entity has an existing shelter that satisfies the statute’s intent, a conditional use
8 permit or similar prerequisite may be required to open a new shelter in the same
9 community. The Housing Accountability Act provides that an entity shall not
10 “disapprove” a proposed emergency shelter unless it makes written findings, based
11 on substantial evidence, that one of five exceptions are met. §65589.5(d). The
12 allowed exceptions are: (1) the jurisdiction has met or exceeded the need for
13 emergency shelter identified in its housing element; (2) the project would
14 adversely impact the public health or safety in a significant, quantifiable, direct and
15 unavoidable way that cannot be mitigated; (3) denial is required to comply with
16 specified state or federal law and there is no way to comply without rendering the
17 shelter project infeasible; (4) the shelter is proposed on land zoned for agriculture
18 or resource preservation; and, (5) the shelter is inconsistent with both the zoning
19 ordinance and general plan land use designation (but this reason is not allowed if
20 the city failed to identify the mandated “by right” zones, or that its zones have
21 sufficient capacity to accommodate the need and failed to demonstrate that the
22 zones can accommodate at least one emergency shelter). §65589.5(d)(1)-(5). On
23 information and belief, Plaintiffs allege that this requirement has not been met. It
24 certainly was not met by the County when the BOS proposed three locations in
25 South County for emergency shelters to respond to the closure of the Riverbed and
26 Civic Center encampments, only to withdraw the proposal in the face of
27 community pressure fueled by former Supervisor Todd Spitzer but in direct
28 violation of Government Code §65589.5(d)(1)-(5).

1 44. Local entities may satisfy the mandate of SB2 in several ways.
2 Jurisdictions that are successfully implementing a supportive housing program
3 model under the entity’s 10-year plan to End Chronic Homelessness are credited
4 for supportive housing units created under the 10-year plan if the entity can
5 demonstrate that the units are identified in the 10-year plan and are either currently
6 vacant or have all funding needed to construct the units during the planning period.
7 Local entities may also meet the requirements of SB2 by entering into a multi-
8 jurisdiction agreement provided that any emergency shelter will be opened within
9 two years of the start of the planning period. Gov. Code §65583(d)(1). Entities
10 involved in a joint project must adopt an agreement which, among other
11 conditions, assigns a portion of the new shelter to each jurisdiction. Specifically,
12 the agreement “shall allocate a portion of the new shelter capacity to each
13 jurisdiction as credit toward its emergency shelter need ...” §65583(d)(1)(2).
14 Also, the housing element for each participating local government must set out the
15 following: the method for allocating bed capacity for the shelter; how the
16 jurisdiction’s emergency shelter need is met by the proposed facility; the amount
17 of the financial contribution each entity will make for the development, operation
18 and ongoing management of the shelter; the amount and source of money to be
19 contributed to the shelter; and, finally, that the aggregate total capacity claimed by
20 each participating entity in its housing element is not greater than the total beds
21 available at the shelter. § 65583(d)(1)(3)(A)-(C).

22 45. In other words, if several cities enter in a multi-jurisdiction agreement
23 for a 200-bed shelter, they may not each claim all 200 beds as compliance with the
24 mandate to provide shelter resources. There is no such agreement in existence
25 involving any City in South County that would satisfy this alternative. On
26 information and belief, the ASL in Laguna Beach receives no funding from any
27 other City and, by priority, serves Laguna Beach residents first. The City has
28 enacted admission policies to determine whether an individual has sufficient ties to

1 residency in Laguna Beach to qualify for admission and services at the ASL.
2 Persons who do not meet these standards are turned away or required to wait and
3 see if there is an empty bed on any given night not claimed by a qualified resident
4 of Laguna Beach. Nearly every city in the County and the County currently rely on
5 the same shelters to demonstrate that they are meeting the need for emergency
6 shelter identified in each entity's housing element. Because each housing element
7 lists the same facilities, most of which are in Santa Ana or Anaheim, there is no
8 possible way that most local entities in Orange County can show they meet the
9 need for emergency shelter identified in their housing elements. Thus, most, if not
10 all, of the local entities in Orange County are in violation of the requirements of
11 the Housing Accountability Act, as amended by SB2.

13 **THE COUNTY'S EFFORTS TO OPEN ADDITIONAL SHELTERS**

14 54. In its General Plan, the Defendant County states it is proactive in
15 responding to the needs of the homeless population. When the County prepared its
16 2013-2021 General Plan, there was only one small emergency shelter located in the
17 unincorporated area of the County – American Family Housing in Midway City,
18 with a maximum capacity of 20 persons. Recognizing the significant shortfall
19 between available and needed emergency shelter, and to encourage additional
20 shelter facilities, the County amended its Zoning Code to allow shelters by-right in
21 the commercial and industrial portions of the Housing Opportunities Overlay Zone.
22 This added 177 acres that meet the requirements of SB2 as locations that are
23 served by transit and other critical resources and available for additional
24 emergency shelters.

25 55. Over the course of the past several years, multiple cities in the
26 County, including Fullerton, Irvine, Huntington Beach and Laguna Niguel, have
27 blocked the County's plans to locate new emergency shelters in their communities
28 for reasons other than those allowed by the Housing Accountability Act. In each

1 instance, the cities acted based on NIMBYism and failed, completely, to provide
2 any justification for the denial that complies with the requirements of SB2.

3 56. In 2013, the County identified two locations as potential sites for
4 emergency shelters. The first was in Santa Ana. Although the city originally
5 approved the County's proposal, its approval was rescinded after community
6 objections. The County then identified a location in Fullerton in a commercial site.
7 The County BOS approved the purchase of the site in early January 2013. Two
8 years earlier, following the killing by Fullerton Police of Kelly Thomas, a mentally
9 ill homeless man, Fullerton created a homelessness task force. The task force
10 issued a report in 2012 with eight recommendations, one of which was to establish
11 a year-round emergency shelter in the City in partnership with the County. To date,
12 that has not happened and repeated attempts to open a shelter in Fullerton failed.

13 57. Instead, when the County proposed a location in the city for the first
14 emergency shelter in the area, Fullerton asked that the project be delayed to allow
15 the City to review it further. Ultimately, based on objections by the community,
16 the City blocked the shelter, resulting in a lawsuit against the City by non-profit
17 groups. The lawsuit alleged that the City's actions violated Government Code §
18 65589.5. Last fall, the Fullerton City Council has again rejected a proposal to
19 create a shelter in the city, concluding first that it was "too soon" to make the
20 decision and then, after a local election was completed, rejecting the proposal. The
21 City has now committed financial support to two new shelters in the Northern
22 SPA, both located in other cities. Fullerton has approximately 300 unsheltered
23 persons in the City currently. The combined capacity of the two North SPA
24 shelters is insufficient to accommodate all of the Fullerton's needs and, in any
25 event, the amount of financial contribution Fullerton is making to the North SPA
26 facilities would only permit reservation of sufficient beds to meet no more than
27 one-quarter of Fullerton's needs. In addition, as a condition of opening the winter
28

1 emergency shelter at the Fullerton Armory, the City has required that admission to
2 a winter emergency shelter be by referral only.

3 58. After losing out on the initial Santa Ana and Fullerton sites, the
4 County then identified the former bus terminal in Santa Ana for the first – and only
5 – year-round, low-barrier emergency shelter in the County. The shelter opened in
6 2016 with approximately 250 beds, but soon rose to nearly 500 people sleeping
7 there each night, evincing the demand for shelter among people experiencing
8 homelessness in Orange County. The Courtyard shelter continues to operate at or
9 slightly above the number on a nightly basis, limited only by orders of the District
10 Court restricting the capacity because of the challenges overcrowding presents to a
11 service population experiencing multiple disabilities. The current expectation is
12 that The Courtyard will close once the County’s new facility is opened. The
13 settlement agreement in *OCCW* provides 18 months for the County to bring its
14 shelters into compliance with federal HUD Emergency Shelter requirements. That
15 timeframe coincides with the anticipated completion of the County’s new facility.

16 59. With the relocation a year ago of more than 750 unsheltered people
17 living at the Riverbed and the Court’s order to dismantle the Civic Center
18 encampment, the County Board of Supervisors voted to approve three additional
19 locations for short-term emergency shelters while it developed and implemented a
20 long-term plan for addressing homelessness because the beds at the Courtyard and
21 Bridges, a referral-only facility in Anaheim, were full. The vote to approve
22 additional sites occurred in late March 2018. Each proposed site was on County-
23 owned land in an SB2 zone. Three locations were announced: Irvine, Huntington
24 Beach and Laguna Niguel, all in South County.

25 60. Immediately after the County vote, all three cities objected
26 vigorously, ultimately forcing the BOS to rescind the vote. Irvine transported
27 nearly 600 people by chartered bus to the BOS meeting where the proposal was
28 ultimately withdrawn. The City sued the County, raising claims of Brown Act

1 violations in the site approval process and characterizing the planned emergency
2 shelter as a “public nuisance.” At the same time, Irvine touted its affordable
3 housing work. But, affordable housing is not a substitute for housing for homeless
4 persons as required by State law by Government Code § 65530 et seq., the
5 Housing Accountability Act and SB2. None of the three proposed cities has an
6 emergency shelter in its geographic boundary, as Irvine implicitly conceded in its
7 lawsuit touting only its efforts to include “affordable” housing. The shelter
8 resources each City lists in its Housing Element are in other cities or restrict
9 services based on employability, gender, pregnancy status, families with minor
10 children and other categories.

11 61. The November 2016 list of Emergency Shelters and Housing
12 Programs available on the website of South County Outreach documents the lack
13 of facilities in this region specifically and the County generally.⁶ Approximately
14 three dozen resources offer housing for unsheltered families, women with children,
15 pregnant women, single women and domestic violence survivors. Many, if not
16 most, of these are private and run by religious groups. Some of these programs
17 have prerequisites to entry, such as a \$300 fee or referral by an emergency shelter
18 program. Only seven facilities accept single men. Of these, some allow only a
19 one-night stay, others 14 days, while still others require that a person be
20 employable. The South Coast Outreach list of Emergency Shelters and Housing
21 Programs is the same list that nearly every entity puts forward in its General Plan.

22 62. Most of the facilities listed in each entity’s Housing Element are the
23 same resources as are on every city’s list in each of the three SPAs. Many of these
24 are in Santa Ana, which is more than 30 miles from San Clemente with limited
25 reasonable transportation options.

26
27
28
⁶ www.sco-oc.org/wp-content/uploads/2014/05/Shelters.pdf

1 **LIABILITY FOR FAILURE TO PROVIDE FOR THE NEEDS OF**
2 **HOMELESS AND DISABLED PERSONS**

3 63. California Government Code § 815.6 provides that:

4 Where a public entity is under a mandatory duty imposed by an
5 enactment that is designed to protect against the risk of a
6 particular kind of injury, the public entity is liable for an injury
7 of that kind proximately caused by its failure to discharge the
8 duty unless the public entity establishes that it exercised
9 reasonable diligence to discharge the duty.

10 64. The requirement to provide a plan for how an entity will provide for
11 low-income, seniors, disabled, and homeless individuals in the General Plan and to
12 adhere to the requirements of the government code is an “obligatory duty which a
13 governmental entity is required to perform,” not a permissive one. Failure to meet
14 this duty gives rise to liability if the underlying enactment allows a private right of
15 action or is self-executing. The term “enactment” includes “a constitutional
16 provision, statute, charter provision, ordinance or regulation.” Cal. Govt. Code
17 §810.6. To date, San Clemente has failed to meet the mandatory duty created by
18 the California Housing Accountability Act.

19 **THE SAN CLEMENTE DESIGNATED CAMPSITE**

20 65. In or around May 21, 2019, Defendant **CITY OF SAN CLEMENTE**
21 enacted a series of ordinances creating a designated campsite for unsheltered
22 individuals in the City. The City passed this law in late May after the amended
23 decision issued in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), holding
24 that it is a violation of the Eighth Amendment’s prohibition on cruel and unusual
25 punishment to arrest a homeless person for living in public when there are no
26 available appropriate indoor shelter placements. The law limited “camping” in the
27 City to a single location in a lot that was part of the City’s sewage plant and
28 previously the location of the City animal shelter. The animal shelter was
 damaged in a landslide on the property. The City deemed the location unfit for
 rebuilding the animal shelter and, later, unfit for human habitation as the site of a

1 proposed physical homeless shelter, in part because the site failed to meet the
2 requirement under state law that any location of a shelter be within a specified
3 distance of basic services needed by homeless individuals. There is no principled
4 distinction to justify a claim that **SAN CLEMENTE** met its obligations under
5 state law by setting up a tent city that does not meet the requirements for a shelter
6 to be within a specified distance of essential services as the need is the same.

7 66. The campsite on Avenida Pico has no potable water, no shade, no
8 adequate sanitation, and no access to food. It is accessible only by climbing a
9 substantial hill. Both the access barriers and the conditions on site violate the
10 rights of disabled persons forced to the location. A significant percentage of the
11 residents of the campsite are “qualified individuals” who suffer from one or more
12 disabilities, including visual, physical, psychological and medical challenges. The
13 deficiencies, environment and barriers at the campsite exacerbate their disabilities
14 and, despite repeated requests, the City has failed completely to provide any
15 response and any reasonable accommodations to remove the disability barriers
16 inherent in the current parameters of the services and programs it offers at the
17 designated campsite.

18 67. In June, the City passed another law, banning tents during the day at
19 the site even though there is no shade. On or about August 30, 2019, the City
20 instituted yet another change at the campsite. This time, the City seized all of the
21 tents and shade structure of the homeless residents and issued new, uniform tents.
22 During that process, belongings including medication were taken and even those
23 who requested reasonable accommodations were not permitted to reclaim their
24 property in a timely manner. The following week, a few individuals who were on
25 site during an unannounced one-hour window were permitted to reclaim their
26 property and medication. The City’s policies and practices on this issue are totally
27 arbitrary and capricious.

1 68. Across the board, the new tents are smaller and do not meet the
2 disability needs of the residents. They do not allow for airflow. For example, Mr.
3 Nichols is very tall and suffers from serious circulatory problems. He takes
4 medication to prevent blood clots. It is a basic that he needs sufficient room to
5 stretch out so that he is not forced to sleep with bent legs, creating the conditions
6 that promote blood clots. Moreover, he is required to keep his medication at a
7 controlled temperature, which he cannot do in an environment that provides no
8 shade and in a small tent that exacerbates the heat. Similarly, he is required to stay
9 out of environments where the temperature is over 80 degrees as it adversely
10 impacts his medication's effectiveness and his condition.

11 69. On information and belief, Plaintiffs allege that the temperature in the
12 small tents rose to about 100 degrees or more in the recent summer heat. For other
13 disabled persons at the campsite, the small tent is equally an issue because it
14 provides insufficient space for them to move in because of a physical disability.

15 70. Notably, although the homeless individuals with disabilities adversely
16 impacted by heat and sun are prohibited from having shade at the site during the
17 day, the City staff there have erected shade structures for their use.

18 71. In the same tent removal event, the City seized and immediately
19 destroyed the personal property of homeless individuals with insufficient advance
20 notice and no opportunity to reclaim the property. Plaintiff Nichols was one of the
21 persons who was subjected to this action. When he requested an accommodation
22 for more time to sort through his property and make arrangements to have some of
23 it stored, he was denied any additional time even though it is well established that
24 such an accommodation is reasonable and required by law, even if it is not
25 similarly provided to non-disabled persons, unless the City can show some
26 significant adverse impact on its program or service, which it could not and did not
27 try to do in this instance, opting instead to carry out immediate seizure and
28 destruction of the property of Mr. Nichols and others. The City has repeated this

1 conduct, ignoring repeated requested by disabled individuals of the need for
2 reasonable accommodations.

3 72. The City should be aware that unsheltered individuals in the City have
4 special needs. In surveys done in the County, 51% of the population have one or
5 more disabilities, 42% have a significant mental health concern, and almost 40
6 percent are victims of domestic violence or sexual assault, resulting in a high rate
7 of PTSD, anxiety and other trauma-related mental health concerns. In contrast,
8 only 8.5% of the County's total population is affected by one or more disabilities.
9 See: 2012 -2016 American Community Survey 5-Year Estimates: Disability in
10 Orange County, California. Defendant knew or should have known that their
11 actions were violative of the rights of unhoused disabled persons.

12 73. At approximately the same time, the City introduced a new residency
13 requirement for admission to the designated campsite. The City began the program
14 with no notice to the unsheltered persons then staying there and no discussion at
15 the City Council. The policy was administered in an arbitrary and capricious
16 manner. After everyone was forced out of the camp, the City Manager and/or his
17 designee sat at a table and decided who could reenter and who could not. Because
18 this was done when City offices are closed, before a holiday weekend, and because
19 many homeless individuals lose their identification living on the streets, there was
20 no way for most people to establish proof that they met the newly-imposed
21 residency requirements. Even those the Sheriff instructed to go to the lot as
22 residents were in many cases not on the City approved list and not permitted re-
23 entry despite Sheriff verification.

24 74. Prior to the application of this new rule, approximately 75 to 80
25 individuals were staying at the designated campsite. As a consequence of this new
26 rule, the number of purportedly "qualified" individuals is down to fewer than 30
27 persons. The remainder of those previously at the campsite are now located in
28

1 nearby areas, where they face the threat of arrest because the City has deemed that
2 they are not residents.

3 75. The policy of **SAN CLEMENTE** is unlike any other entity's
4 residency requirement in the County. For example, the ASL in Laguna Beach
5 gives priority to residents but admits non-residents as space is available nightly.
6 Similarly, Santa Ana has a restriction for its higher-level facility, The LINK, but is
7 able to place anyone who does not qualify for The LINK in The Courtyard and
8 other nearby facilities. So, the choice in Laguna Beach and Santa Ana is not
9 residents or arrest, as it is in San Clemente.

10 11 **PARTIES**

12 **Plaintiffs:**

13 76. Plaintiff **HOUSING IS A HUMAN RIGHT ORANGE COUNTY**
14 (**"HHROC"**) is a coalition of entities and individuals working together to achieve
15 supportive, affordable, and permanent housing for homeless individuals in Orange
16 County, with appropriate and adequate wrap around services as needed. The
17 members of the organization include unhoused individuals, as well as housed
18 community members. The participants in **HHROC** provide much-needed support
19 to unsheltered individuals in the County of Orange and, specifically, in the City of
20 San Clemente. This includes, but is not limited to, buying essential supplies for
21 unsheltered individuals, creating community through preparing and sharing meals,
22 collecting and distributing clothing; assist with making appointments and
23 transporting individuals to doctor/dentist, DMV, Social Services, and veterinarian
24 appointments, and coordinating with service providers to distribute goods.

25 77. The members of **HHROC** expend their own funds to provide this
26 assistance, including purchasing food and other items needed by persons
27 experiencing homeless. The members of **HHROC**, and each of them, pay taxes to
28 the County of Orange and the City of San Clemente when they make these

1 purchases. On information and belief, the municipal Defendant receives funds
2 derived from the payment of taxes to the County, as well as revenue from the
3 additional taxes levied only within the City. Because of the lack of adequate
4 shelter for people experiencing homeless in Orange County, including in San
5 Clemente, **HHROC** is required to shift and expend resources to providing
6 immediate direct services, as described above, and redirect its time and money
7 from its primary focus of achieving supportive, affordable and permanent housing
8 for people experiencing homelessness in the County.

9 78. **HHROC** has recently been forced to expend resources on behalf of
10 unhoused persons due to San Clemente's policy of forcing them to stay in a shade-
11 less campsite far from any water or amenities. **HHROC** has visited the campsite
12 on average five days a week, sometimes more, to bring the people residing there
13 water and food and to assist people with their needs. In particular, on July 25,
14 2019, members of **HHROC** were required to expend resources when San Clemente
15 had a day of moving everyone out of the campsite and then moving everyone back
16 in. It took most of the day to pack up the belongings of the over 50 people staying
17 in the campsite and move them completely out of the campsite so that San
18 Clemente personnel could re-chalk the outlines on the ground around the tents.
19 **HHROC** assisted with packing and moving belongings and brought water and
20 snacks for people who were unable to leave the campsite and go to other services
21 that day. **HHROC** would not have expended its resources in that way were it not
22 for San Clemente's policy of forcing unhoused persons to share this small
23 campsite.

24 79. Plaintiff **EMERGENCY SHELTER COALITION OF SAN**
25 **CLEMENTE ("ESC")** is now, and at all times since its incorporation on July 30,
26 2018 was, a non-profit organization under the laws of the State of California. The
27 members of the **ESC** share a common goal to establish a year-round emergency
28 shelter and resource center in San Clemente to provide people experiencing

1 homelessness with a safe place to sleep, engage in fundamental daily life activities
2 and obtain counseling and referral services. The members of **ESC** include
3 individuals who are residents of, employed in, or recreate in the City and who
4 devote their time and resources to assisting persons experiencing homelessness in
5 San Clemente, regardless of the reason. Because of the lack of resources
6 throughout South County, **ESC** and its board members provide assistance to
7 persons experiencing homelessness in the region. Because of the lack of services
8 throughout South County, the **ESC** provides assistance to individuals experiencing
9 homelessness not only in San Clemente, as well as most other cities that have
10 similarly failed to provide assistance to unsheltered individuals in their respective
11 communities in South County. The members of **ESC** pay taxes to the County of
12 Orange and the City of San Clemente. .

13 80. Beginning in or about 2014, **ESC** was engaged in litigation with the
14 City of San Clemente to compel the City to bring itself into compliance with its
15 statutory duties under Government Code §65588(e) to adopt an updated Housing
16 Element that (1) establishes at least one zone in which emergency shelters are
17 permitted by right without any discretionary approvals by the City; (2)
18 demonstrates adequate capacity to meet the City’s need for emergency shelter; and
19 (3) promulgates standards designed to encourage and facilitate the development of
20 emergency shelters in appropriate locations, including at least one year-round
21 facility. In August 2016, the Hon. Robert J. Moss of the Orange County Superior
22 Court entered judgment in favor of **ESC**, directing the City to revise its Housing
23 Element to conform to its statutory obligations.

24 81. The City has a legal obligation to address how it would provide for
25 the needs of homeless individuals in the 2013 Housing Element submitted to the
26 California Department of Housing and Community Development (“HCD”) as a
27 statutory condition of approval of the City’s General Plan. Despite the success of
28 the **ESC**’s litigation, the City has still not met its responsibilities. The City first

1 created and limited the Emergency Shelter Overlay Zone to the local Business
2 Park. The City knew or should have known that this proposed location did not
3 meet the requirements under SB2 because, among other bases, the Business Park is
4 located miles away from the City's downtown area, is not served by public
5 transportation, and is composed of very expensive buildings not conducive to a
6 shelter. **ESC** continues to work toward developing a shelter in the Emergency
7 Shelter Overlay Zone identified as a result of the successful litigation by **ESC**.

8 82. Plaintiff **DUANE NICHOLS** is a 60-year-old veteran who is
9 homeless in San Clemente. He is eligible and has begun the process to upgrade his
10 original "Other than Honorable" discharge. He has no income at present. Because
11 of his significant disabilities and the distance involved, he is unable to get to a
12 County office to apply for General Relief or any other form of public assistance.
13 The County has no services located in South County that are accessible to disabled
14 individuals such as Mr. Nichols.

15 83. Over the course of the past eight months, he has been contacted a few
16 times by Mercy House, the contract services outreach agent for San Clemente. The
17 primary assistance offered by Mercy House was an offer to transport him to the
18 Courtyard in Santa Ana or the ASL in Laguna Beach. OCSD deputies threaten
19 him with jail if he does not go to a shelter, but neither the Courtyard or the ASL are
20 viable options because both are generally at or over capacity every night, with
21 people sleeping on the sidewalks around the facilities. Both require a referral for
22 admission or give priority to local residents. Moreover, beginning a year prior in
23 April 2018, the Courtyard in Santa Ana was not an available option as the federal
24 court in the *OCCW* blocked "dumping" by other cities of their homeless population
25 in Santa Ana. During one recent rainstorm, Mercy House came to Mr. Nichols and
26 others in San Clemente with Defendant Orange County OCSD deputies and
27 offered motel rooms with two people in a room for two nights only. When Mr.
28 Nichols arrived at the motel, he learned that there were 4 people in a very small

1 room and that they would only be sheltered for one night, returning him to the
2 streets after that.

3 84. Mr. Nichols is physically, medically and visually disabled. His
4 disabilities are known to the Defendants. He uses a tricycle for mobility
5 assistance. A few months ago, a medical professional accompanied the outreach
6 workers from Mercy House. They offered Nichols medical assistance on the
7 condition that he check in at the Family Assistance Ministries (“FAM”). His
8 compound disabilities make it difficult, if not impossible, for him to get to the
9 FAM location. He suffers from COPD, blood clot issues, hip problems, limited
10 vision and severe arthritis. Moreover, he fears losing his property because he has
11 no place to leave his property when he goes to FAM and cannot transport it with
12 him. With great difficulty, he has made the trip to FAM several times to check in
13 with a FAM caseworker but was repeatedly told only to come back in two
14 weeks. For an individual with disabilities, the trip was daunting to begin with and
15 nothing more than an empty promise.

16 85. Mr. Nichols has been at the designated campsite since it opened. His
17 experience there has taken a serious toll on his health and exacerbated his
18 disabilities. He has repeatedly expressed to Defendants his need for disability
19 accommodations. All of his requests have been ignored or expressly denied.

20 **Defendants:**

21 86. Defendant **ORANGE COUNTY** is a government entity with the capacity to
22 sue and be sued. The Board of Supervisors is the governing entity for the County.
23 The Board of Supervisors is responsible for developing and implementing the
24 General Plan, including addressing the needs for low-income, seniors, disabled and
25 homeless individuals. The departments of the COUNTY include the Orange
26 County Sheriff. Employees of the COUNTY have engaged in the acts complained
27 of herein pursuant to the policies, practices and customs of the COUNTY.

1 87. The OCSD is the contract law enforcement entity for 13 cities in the
2 County, most of which are in South County, including but not limited to San
3 Clemente. The OCSD has engaged with homeless individuals in contract cities
4 and enforced local ordinances in those jurisdictions that mirror the ordinances
5 criminalizing homelessness in the Defendant County and cities. The OCSD has
6 also applied and threatened to apply the County’s “quality-of-life” ordinances to
7 compel members of the Plaintiff class to move from public spaces when they have
8 no other place they can lawfully be. In each of the defendant municipalities, law
9 enforcement has made it clear that homeless persons are not welcome in the city,
10 their mere presence is a crime, and they will be ticketed or arrested if they remain.

11 88. The **CITY OF SAN CLEMENTE** is a government entity with the
12 capacity to sue and be sued. The OCSD is the contract law enforcement agency
13 for the City, acting as employees charged with enforcing City law within its
14 geographic boundaries. One department of the Defendant City is the San Clemente
15 Code Enforcement. Employees of the City have engaged in unlawful activity,
16 taking property without notice that they know or should know is the essential
17 property of unsheltered homeless individuals in San Clemente, who have no to
18 leave their property during the day while they go to services, work and attend to
19 other daily tasks. Although the OCSD has stopped arresting homeless individuals
20 for quality-of-life violations, deputies continue to threaten citation or arrest if
21 homeless people do not leave public spaces where they have a constitutional right
22 to be and remain. Moreover, the City’s Code Enforcement employees, among
23 other City employees, have been increasingly present and interacting with
24 unhoused persons at a newly-created designated campsite and elsewhere in the
25 City. The Code Enforcement officers, lacking adequate, if any, training on
26 constitutional rights, repeatedly threaten Plaintiff Nichols and other unhoused
27 persons both at the designated campsite and throughout the City, with arrest,
28 seizure and destruction of their property, and exclusion from the City. The City

1 also hired private security guards to be present at and monitor the campsite. These
2 individuals, like the Code Enforcement and other City employees, are not trained
3 to engage with persons with disabilities.

4 89. The **CITY OF SAN CLEMENTE** was previously sued by the
5 organizational Plaintiff ESC based on the City's failure to comply with the
6 mandatory requirements of Gov. Code §§65583 et seq., in that the City failed to
7 identify any site within the City that met the requirements of state law to allow
8 operation by right of a shelter serving homeless individual without additional
9 governmental restrictions on the entity. The Orange County Superior Court
10 enjoined the City from approving any development plans until it was in
11 compliance. Although the City then identified a zone where a shelter could be
12 located and operated by right, the property was, in fact, not feasible and the City
13 knew or should have known that. At present, there is no location in the City that is
14 approved and meets the requirements of §§65583 et seq. The City has rejected
15 every proposal by the Plaintiff ESC to identify a location for a shelter in the City.

16 90. Over several months, the **CITY OF SAN CLEMENTE**, through its
17 employees and agents, fostered a climate of fear directed at people experiencing
18 homelessness in the city. Homeless individuals were barred from locations where
19 they previously stayed, largely out of sight. They were told by the OCSD, the
20 contract LEO for San Clemente, that they could not be at the train station except
21 limited purposes, could not stay at the beach or a public grassy area where they had
22 stayed, and other similar relocations every time they moved. They were forced
23 into more public spaces where they became the target of residents virulently
24 opposed to the presence of homeless individuals. For example, as part of a
25 concerted campaign to force homeless individuals out of public view and out of the
26 city, several individuals parked their trucks in such a manner as to have the fumes
27 from the exhaust blow in the direction of homeless individuals on public
28 sidewalks, where they have a right to be under *Martin v. City of Boise* in a

1 municipality that lacks any shelter beds, and where they have a right to be at any
2 time like any other member of the public. These individuals left their trucks
3 running to maximize the toxic impact of the engine exhaust. Others made it a
4 point to transit the sidewalk with wheelchairs, challenging ADA compliance.
5 Some, if not most or all of the individuals are able-bodied as evinced by the fact
6 that these individuals are observed rotating who is being pushed and who is sitting
7 in the wheelchair. Still others scream at the homeless individuals in public spaces
8 while law enforcement does nothing. Since unsheltered persons were forced to
9 move to the camp on Avenida Pico, the community harassment has continued with
10 housed residents throwing firecrackers into the camp, standing outside the fence
11 and shouting at people and similar harassment.

12 91. Each of the Defendants, their employees and agents, participated
13 personally in the unlawful conduct challenged herein and, to the extent that they
14 did not personally participate, authorized, acquiesced, set in motion, or otherwise
15 failed to take necessary steps to prevent the acts that resulted in the unlawful
16 conduct and the harm suffered by Plaintiffs. Each acted in concert with each other.
17 The Defendants developed and implemented a coordinated plan to increase
18 enforcement actions against the homeless community in the Riverbed and
19 surrounding cities. The challenged acts caused the violation of Plaintiffs' rights.

20 92. The identities and capacities of defendants DOES 1 through 10 are
21 presently unknown to plaintiffs, and on this basis, Plaintiffs sue them by fictitious
22 names. Plaintiffs will amend the Complaint to substitute the true names and
23 capacities of the DOE defendants when ascertained. Plaintiffs are informed,
24 believe, and thereon allege that DOES 1 through 10 are, and at all times relevant
25 herein were, employees and/or agents of the Defendant COUNTY and Defendant
26 CITIES and are responsible for the acts and omissions complained of herein.
27 Defendants DOES 1 through 10 are sued in their official and individual capacities.
28

1 cause to believe that the individual had or was about to commit a crime other than
2 a purported violation of a law necessitated by their status as homeless individuals
3 plus the lack of available shelter.

4 99. Plaintiffs and other unhoused persons have a “First Amendment” right
5 to be present in a public space, to “loiter” in a public space for no reason and to not
6 be excluded from such public space by threat, intimidation or coercion for alleged
7 crimes directly related to their status as individuals experiencing homelessness
8 who have no place to live other than in public spaces.

9 100. As a direct consequence of Defendants’ past and threatened future
10 actions, Plaintiffs have suffered and will continue to suffer a violation of their
11 constitutional rights.

12
13 **THIRD CAUSE OF ACTION**
14 **Right To Due Process Of Law**
15 **California Constitution Article I, §7**
16 **(Against All Defendants)**

17 101. Plaintiffs reallege and incorporate the allegations set forth in the
18 preceding paragraphs as though fully set forth hereat.

19 102. Due process prohibits government officials, and those acting in
20 concert with them as their employees and agents, from depriving persons of “life,
21 liberty, or property” without due process of law.

22 103. In violation of this constitutional provision, The CITY OF SAN
23 CLEMENTE, its employees and agents, violated and continue to violate the rights
24 of unsheltered persons in the City.

25 104. Defendant CITY of San Clemente continues to seize and destroy the
26 unhoused Plaintiffs’ possessions with no notice that their property was at risk of
27 being seized and did not act to preserve the property or provide any means of
28 reclaiming it, even though Defendant CITY was put on notice by past court

1 decisions, including decisions at the Ninth Circuit Court of Appeals, that such
2 notice and preservation of property was required.

3 105. Plaintiffs are informed and believe that the acts of Defendant CITY,
4 and its employees and agents acted arbitrarily and capriciously in deciding that
5 Plaintiffs property would be seized and destroyed and were intentional in failing to
6 protect and preserve Plaintiffs' property and that, at minimum, Defendant CITY
7 was deliberately indifferent to the likelihood that the property would be seized and
8 destroyed without due process based on the past occurrences of these same
9 constitutional and statutory violations of the law.

10 106. In addition, the right to due process of law was violated here by each
11 of the Defendants through the application of constitutionally vague laws used to
12 threaten intimidate, and coerce Plaintiffs to leave public space to avoid citation or
13 arrest for, *inter alia*, "camping" in public, loitering, and placing their possessions
14 on public property when they have no other place to engage in daily life activities.
15 Defendants' regulations at the designated campsite lack adequate standards and
16 guidelines. Moreover, the City has delegated unrestricted discretion to the City
17 Manager, who makes up and applies laws without adequate notice at the
18 designated campsite. The laws violate due process because they are so vague as to
19 be impossible to comply with and because the lack of standards and guidelines
20 results in arbitrary and capricious application of rules. Provisions similar to the
21 ordinances enforced against Nichols and similarly situated unhoused persons have
22 been repeatedly found unconstitutionally vague and overbroad in the past.

23 107. The acts and omissions of Defendants were not the product of
24 accident or inadvertence and were not random. In so doing, Defendants were
25 deliberately indifferent to the rights of Plaintiffs and the class they represent and
26 acted in willful and reckless disregard of the rights of Plaintiffs and the class.

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SIXTH CAUSE OF ACTION
Violation of California Civil Code § 52.1
(Against All Defendants)

119. Plaintiffs reallege and incorporate the allegations set forth in the proceeding paragraphs as through fully set forth hereat.

120. The Defendants' conduct, as described herein, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise and enjoyment of Plaintiffs' rights as secured by the United States Constitution or laws of the United States, and of the rights secured by the Constitution or laws of the state of California.

121. Defendants have engaged in concerted and repeated conduct and threatened to cite and arrest Plaintiffs repeatedly. Defendants engaged in coercive and intimidating tactics by conducting unwarranted stops and collecting information on Plaintiffs to push them out of Defendants' respective jurisdictions.

122. Defendants' actions are the proximate cause of the harm suffered by the individual Plaintiffs, as well as the failure to fulfill the statutory obligation to provide for homeless individuals within their respective jurisdictions.

123. Defendants' continued unlawful acts against and affecting the Plaintiffs and the class they represent is ongoing and will continue unless and until the Court enjoins this unlawful conduct.

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SEVENTH CAUSE OF ACTION
Violation of California Government Code §11135
(Against All Defendants)

124. Plaintiffs reallege and incorporate the allegations set forth in the proceeding paragraphs as though fully set forth hereat.

125. California Government Code section 11135 provides that:

No person ... shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic

information, or disability, be unlawfully denied full and equal access to the

1 benefits of, or be unlawfully subjected to discrimination under, any program
2 or activity that is conducted, operated, or administered by the state or by any
3 state agency, is funded directly by the state, or receives any financial
4 assistance from the state.

5 126. The Defendants, and each of them, are entities subject to the
6 requirements and prohibitions of section 11135 in that they receive public monies
7 and financial assistance from state agencies and other state funds.

8 127. The term “disability” applies to both mental, medical and physical
9 disabilities as defined in California Government Code section 12926. The
10 Defendants, and each of them, directly and through their contractors and agents,
11 discriminated against Plaintiffs on the basis of their disabilities.

12 128. As a direct and proximate result of Defendants’ actions, and those of
13 its contractors and agents, Plaintiffs experienced and continue to experience direct
14 injury, including pain and suffering.

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16 **EIGHTH CAUSE OF ACTION**
17 **TAXPAYERS’ SUIT: DECLARATORY AND INJUNCTIVE RELIEF**
18 **California Code of Civil Procedure § 526a**
19 **(Against All Defendants)**

20 129. Plaintiffs reallege and incorporate the allegations set forth in the
21 preceding paragraphs as though fully set forth here.

22 130. The County of Orange assesses a sales tax and a property tax. The
23 City of San Clemente assesses a sales tax that is added to the basic state sales tax
24 of 6 percent, and the County sales tax of \$.25. Plaintiffs, and each of them, have
25 been assessed and are liable to pay taxes in and to the County of Orange and the
26 City of San Clemente. Plaintiffs represent have suffered and, unless the Court
27 restrains Defendants, will continue to suffer irreparable harm.

28 131. Plaintiffs are informed and believe, and on that basis allege, that the
conduct of Defendants, their employees, agents and contractors, has been and,

1 unless restrained, will continue to be deleterious to the constitutional and statutory
2 rights of Plaintiffs and the general public. Plaintiffs thereby seek to enforce
3 important rights affecting the public interest within the meaning of California Code
4 of Civil Procedure § 1021.5.

5 132. Plaintiffs have no adequate remedy at law.

6 133. Unless the Defendants are enjoined from continuing their unlawful
7 course of conduct, Plaintiffs will suffer ongoing and irreparable injury to their
8 rights. Plaintiffs seek injunctive relief pursuant to California Code of Civil
9 Procedure § 526a and the substantive standards reflected in the claims stated
10 above, for which injunctive and declaratory relief are appropriate remedies.

11 134. Defendants have expended public monies and threaten and will
12 continue to spend such monies to implement and engage in the illegal conduct
13 described herein.

14 135. Pursuant to California Code of Civil Procedure §§526 and 526a, and
15 the constitutional and statutory provisions set forth above, the Plaintiffs, as
16 taxpayers and as injured parties entitled to relief, seek declaratory and injunctive
17 relief and an accounting to prevent continued harm and to protect themselves and
18 the public from the defendants' unlawful policies and practices.

19 42. There is a controversy between HCD and the City as to whether the
20 2013 Housing Element substantially complies with California's Housing Element
21 Law (Gov. Code, § 65580, et seq.). Based on the foregoing, Plaintiffs believe that
22 the current Housing Element in San Clemente still is out of compliance. Further,
23 based on information and belief, the facts alleged hereinabove, the City is aware
24 that its current Housing Element does not substantially comply and has failed to
25 take sufficient action to substantially comply.

26 43. It is necessary and appropriate for the Court to render a declaratory
27 judgment that sets forth the parties' legal rights and obligations with respect to
28 these issues. Among other things, such a

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2 **WHEREFORE**, Plaintiffs pray as follows:

- 3 1. For an order enjoining and restraining the Defendants, and each of
4 them, their employees and agents, from citing or arresting and
5 threatening to cite or arrest individuals for violations of quality of life
6 violations, including but not limited to camping, property or loitering
7 laws application in public spaces in each jurisdiction, no matter how
8 titled, when there is no adequate shelter or other placement available;
- 9 2. For a declaratory judgment that the policies, practices and conduct
10 alleged herein violate California constitution and statutory laws
11 identified herein;
- 12 3. For a declaratory judgment that Defendant San Clemente's Housing
13 Element fails to meet the City's regional housing needs goals and
14 fails to meet the mandatory duty to provide for residents at all income
15 levels, including disabled and homeless residents in its jurisdictions,
16 as codified in Gov. Code §§65583 et seq.;
- 17 4. For an order enjoying the issuance of all development permits in
18 Defendant San Clemente unless and until the City is in compliance
19 with the Housing Accountability Act , Gov. Code §§65583 et seq.;
- 20 5. For costs of suit and attorney fees as provided by law;
- 21 6. For such other relief as the Court deems just and proper.

22
23 Dated: September 16, 2019 Respectfully submitted,

24 LAW OFFICE OF CAROL A. SOBEL
25 ELDER LAW & DISABILITY RIGHTS CENTER
26 SCHONBRUN SEPLOW HARRIS & HOFFMAN

27 /s/ Carol Sobel
28 By: CAROL A. SOBEL
Attorneys for Plaintiffs