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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

Michael Diehl,

Plaintiff,

v.

County of Orange, Shane L Silsby, Director
OC Public Works Department in his official
capacity Sandra Hutchens, Sheriff of the
County of Orange, in her official capacity,

Defendants.

Case No. 8:17-cv-246

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

2 **Jurisdiction and Venue**

3 1. This action is brought pursuant to the Fourth and Fifth Amendments to the
4 Constitution of the United States and to 42 U.S.C. § 1983 and under state common
5 law barring false imprisonment. This Court has jurisdiction under 28 U.S.C. §§ 1331,
6 1343(a) and 1367 (supplemental jurisdiction)

7 2. Venue is proper in the United States District Court for the Central District of
8 California pursuant to 28 U.S.C. § 1391.

9 **Introduction**

10 This cases challenges the recent erection of chain link fences by Orange
11 County Public Works Department and the Orange County Sheriff’s Department
12 along the east side of the Santa Ana River and across the river by the Chapman an
13 Orange Avenue Bridges, which has effectively imprisoned 75-100 homeless people
14 who have been living in an encampment along the river bank. Defendants’ actions
15 have not only illegally restricted the liberty of the homeless people living in the
16 encampment, but it has also cut them off from access to food, water, and medical
17 care thus threatening their health and well-being.

18 **Parties**

19 Plaintiff, Michael Diehl, is a 46 year man who has lived in Orange County on
20 and off for decades and continuously since 2005. He has a disability as a result of
21 having been shot in the head while walking to a convenience store in Tustin,
22 California in 2009.

23 Doctors were unable to remove the bullet from his head. He lost his right eye,
24 has very poor depth perception, suffers from seizures, has poor balance and gets
25 dizzy easily as a result of the gun shot. He has been taken to the ER at least several
26 dozen times as the result of the seizures. He take the generic version of Tegretol
27 twice a day to control the seizures, but recently they have become more frequent. He
28 has had three seizures in the last couple of months, whereas in the past he went as

1 long as eight months without a seizure. The increase in my seizures corresponds
2 with the increased policing in the riverbed and the precariousness of his living
3 situation.

4 After he was shot he lost everything, including his home and job and became
5 homeless.

6 He has lived in a tent on the Orange side of the Santa Ana riverbed for the last
7 3 years with his dog Osiris between Chapman Ave. and Oranewood Ave., closer to
8 Oranewood.

9 Defendant County of Orange (hereafter "County") is a public
10 entity organized and existing under the laws of the State of California.

11 Defendant Shane L. Silsby is Director of OC Public Works, which is a
12 Department of the County of Orange. Employees of OC Public Works have, in
13 concert with Orange County Sheriff's Department (OCSD) personnel, erected the
14 fences along the riverbank and beneath the bridges that are preventing Plaintiff and
15 other homeless people in the area from leaving the area or leaving and being able to
16 return as necessary to retrieve their personal property. In addition, if anyone does
17 cut a hole in the fence allowing people who are aware of the hole to leave the area,
18 OC Public Works personnel are quickly dispatched to repair the hole.

19 Defendant Silsby is sued in his official capacity for declaratory and injunctive
20 relief.

21 Defendant Sandra Hutchens is the Sheriff of Orange County. As Sheriff, she
22 is the chief executive officer of the OCSD. OCSD personnel have been working
23 with personnel from OC Public Works to restrict access to the encampment to people
24 who wanted to get back in to retrieve their belongings. Plaintiffs sue Defendant
25 Sheriff Hutchens in her official capacity for declaration and injunctive relief.

26 **Facts**

27 For a number of years people who are homeless have lived in an encampment
28 along the river bank of the Santa Ana River between the Chapman and Oranewood

1 Avenue bridges in the City of Orange.

2 1. As the homeless problem in Orange County has continued to get worse, in and
3 the County has failed to fund its own Ten-Year Plan to end homelessness in Orange
4 County, the number of people living in the encampment has swelled. In addition,
5 law enforcement agents in various parts of the County have told homeless people
6 whom they interacted with that if they wanted to avoid getting cited for violations
7 like sleeping in public, they should move to the river bank. Currently, 75-100 people
8 live in the encampment

9 2. A wide variety of people live in the encampment, including elderly people,
10 people with physical and mental disabilities, and parents with children.

11 3. The encampment is on a flat, dirt path which is between the 57 freeway, on the
12 east side, and the Santa Ana River, on the west side.

13 4. On the east side of the encampment there is a chain link fence made of metal
14 that runs along the 57 freeway. The fence is about 5-6 feet in height, and it topped
15 by triangle-shaped fencing

16 5. On the west side of the encampment there is a fairly steep embankment that
17 leads down to the riverbed bottom. It is interrupted by a bike path. In most places
18 that the embankment is at about a 45 degree angle ranges from about 5 feet from
19 bottom to top under the bridges to about 30 feet from bottom to top in the area
20 between the bridges. The embankment is composed of large rocks or boulders, which
21 have been covered with cement.

22 6. Until recently people living in the encampment would exit and enter the
23 encampment on the sidewalks of Chapman Ave. and Oranewood Ave.

24 7. Over the past several days, employees from the OC Public Works Department,
25 working with personnel from the Orange County Sheriff's Department, have sealed
26 off those entry and exit paths off with chain link fences across the river by the
27 Chapman and Oranewood Avenue bridges.

28 8. In other places concrete barriers prevent people from leaving the riverbed. As

1 a result of the fencing on the east side of the embankment, the fences by the Chapman
2 and Orangewood Avenue bridges, and the concrete barriers, the only way to leave
3 the encampment is by climbing one of the fences, cutting a hole in the fence, or trying
4 to cross the river bed, and then scrambling up the steep rocky embankment on the
5 west side of the river bed. While there are a few gates at various parts of the fencing
6 around the encampment, they are either welded shut, or kept locked.

7 9. None of these options is safe or realistic for many people living in the
8 encampment. For example, there are elderly people and people with physical
9 disabilities including the Plaintiff, Mr. Diehl, who live in the encampment, who are
10 unable to climb a 5-6 foot chain link fence and have no bolt cutters to cut through the
11 fence. They are afraid to cross the river bed, which not only has water in it, but the
12 bottom has become muddy with a consistency of quick sand because of the recent
13 heavy rains. In addition, sometimes a veritable flood of water comes down the river
14 bed without warning, apparently when the Army Corps of Engineers releases water
15 backed up behind the Prado Dam.

16 10. Even if people were able to leave the encampment through a hole in a fence
17 that someone else had cut, they likely would not be able to return because of the
18 fences, the continuous effort of OC Public Works personnel to repair the holes,
19 locked gates, and extreme difficulty of navigating the steep embankment and
20 crossing the river bed. Moreover, even if they were able to leave, they would be
21 unable to take all their property with them because of the difficulty getting through
22 a hole in the fence and the amount of personal property they possess.

23 11. The people trapped in the encampment do not have access to food or water.
24 Being trapped also poses severe medical risks. One woman who is prone to seizures
25 recently had a seizure in the encampment. Someone with her called the paramedics,
26 but they struggled for a long time to reach her because they were unable to get
27 through the fence to attend to her.

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CAUSES OF ACTION

First Cause of Action –

4th Amendment Seizure of Persons –

42 U.S.C. Section 1983

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5 1. On Wednesday, February 8, 2017, Defendants, COUNTY OF ORANGE,
6 SHANE L SILSBY, DIRECTOR OC PUBLIC WORKS DEPARTMENT IN HIS
7 OFFICIAL CAPACITY SANDRA HUTCHENS, SHERIFF OF THE COUNTY OF
8 ORANGE, IN HER OFFICIAL CAPACITY, did seize Plaintiff's person by
9 intentionally restricting his freedom of movement through erecting physical barriers
10 that do not allow him to exit the Santa Ana Riverbed.

11 2. Defendants' seizure of Plaintiff is unreasonable in its manner because he is
12 being held outdoors on the side of a riverbed with no safe access to water, food, or
13 medical care.

14 3. Defendants have restricted Plaintiff's freedom of movement for over 24 hours
15 without obtaining a warrant. Plaintiff is not free to leave because he cannot exit the
16 Riverbed due to Defendants' actions. Defendants have taken no steps to bring
17 Plaintiff before a judge for a probable cause hearing, despite his *de facto* arrest.

18 4. Plaintiff has suffered from harm from his *de facto* arrest. Plaintiff is a disabled
19 individual who suffers from seizures and is blind in one eye as the result of being the
20 victim of a gunshot wound to his head. His arrest has caused him severe stress and
21 anxiety, raising his risk of seizure. Were he to have a seizure, the physical barriers
22 erected by Defendants would cause substantial delay in paramedics being able to
23 reach Plaintiff. Plaintiff is unable to replenish his food and water. Plaintiff is also at
24 risk of harm should the Santa Ana River rise to the level of his tent because he would
25 have no means of escape.

26 5. Defendants' conduct was the main factor in causing Plaintiff's harm.

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Second Cause of Action
Fourteenth Amendment Due Process
42 U.S.C. Section 1983

1. On Wednesday, February 8, 2017, Defendants, COUNTY OF ORANGE, SHANE L SILSBY, DIRECTOR OC PUBLIC WORKS DEPARTMENT IN HIS OFFICIAL CAPACITY SANDRA HUTCHENS, SHERIFF OF THE COUNTY OF ORANGE, IN HER OFFICIAL CAPACITY, did intentionally deprive Plaintiff of his liberty by confining him in the area of the Santa Ana riverbed through the erection of physical barriers, i.e., fences, at the Santa Ana Riverbed in the City of Orange, completely blocking any viable exits so that Plaintiff is unable to exit the Riverbed without risking serious physical injury. Plaintiff has been unable to exit the Riverbed since that time.

2. Defendants have not provided Plaintiff with reasonable process, including notification of the reasons for his confinement, the length of time he will be confined or any opportunity to contest his confinement.

3. Defendants are principally responsible for depriving Plaintiff and continuing to deprive him of his liberty and failing to provide him with any reasonable process before doing so

Third Cause of Action
False Imprisonment – California Common Law

1. On Wednesday, February 8, 2017, Defendants, COUNTY OF ORANGE, SHANE L SILSBY, DIRECTOR OC PUBLIC WORKS DEPARTMENT IN HIS OFFICIAL CAPACITY SANDRA HUTCHENS, SHERIFF OF THE COUNTY OF ORANGE, IN HER OFFICIAL CAPACITY, did intentionally deprive Plaintiff of his freedom of movement through the erection of physical barriers, i.e., fences, at the Santa Ana Riverbed in the City of Orange, completely blocking any viable exits so that Plaintiff is unable to exit the Riverbed without risking serious physical injury. Plaintiff has been unable to exit the Riverbed since that time.

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

Dated: February 10, 2017

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

by: s/ Brendan Hamme
Brendan Hamme
Staff Attorney for Plaintiff