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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION OR OAKLAND DIVISION**

**DARREN MATHIEU II and EDWARD
JACKSON JR.,**

Plaintiffs,

v.

**CITY OF OAKLAND and OAKLAND
HOUSING AUTHORITY POLICE
DEPARTMENT,**

Defendants.

Case No. 4:18-CV-05742

COMPLAINT

INTRODUCTION

1. Darren Mathieu II has lived at Lockwood Garden (“Lockwood”), a public housing complex in Oakland, CA, since he was 2 years old. He lives there with his mother. Darren has celebrated 24 birthdays at Lockwood. And, over the past six years, Oakland Housing Authority Police Department (“OHAPD”) has stopped him approximately 63 times for standing in his own front yard, for sitting on lawn chairs outside of his home with his friends, or for just standing with other people in outdoor areas of Lockwood Gardens that are ten feet from his front door. As part of these stops, OHAPD officers ask Mathieu to show ID. They sometimes search his body and his possessions. On a few occasions, officers have handcuffed him. Mathieu has been told that he cannot spend time with his friends in the outdoor areas of Lockwood. He is told to go inside our find another place to socialize with his friends. Not a single one of these stops or interactions with OHAPD has resulted in the police finding something illegal or suspicious on Mathieu’s person. Yet OHAPD have repeatedly reported these interactions with Mathieu to the Oakland Housing Authority (“OHA”) as lease violations, threatening his and his mother’s ability to stay in their home of more than two decades.

2. Darren is not the only Oakland Housing Authority resident who experiences regular police intrusion: OHAPD has broken up family barbeques, has dispersed groups of friends simply hanging out and getting fresh air, has questioned family members coming to OHA complexes to bring family members medication and, in one particularly egregious example, questioned a resident who had family and friends gathered in front of his unit in connection with his son’s funeral—all under the guise of investigating and enforcing a city ordinance against “loitering”.

3. One of the primary legal justification given for these police intrusions into the everyday lives of these public housing residents—intrusions that would be unimaginable in a wealthy area of Oakland—is Oakland Municipal Code (“OMC”) section 9.08.250 (the “Loitering Ordinance.”). It provides: “Every person who loiters, prowls, wanders or is present without lawful business on the property of the Housing Authority of the city and who fails to leave upon request of a peace officer or authorized agent of the Housing Authority of the city or returns within seventy-two (72) hours after being asked to leave by a peace officer or authorized agent of the Housing

1 Authority of the city, is guilty of an infraction. As used in this section ‘loiter’ means to delay, to
2 linger, or to idle about any such Housing Authority of the city property without a lawful purpose for
3 being present.”

4 4. Passed in 1983, the Loitering Ordinance is similar to loitering ordinances that were
5 used to control black residents of the South in the Jim Crow era. Over time, and after the Supreme
6 Court’s decision in *Papachristou v City of Jacksonville*, 405 U.S. 156 (1972), “loitering” laws have
7 been widely criticized and struck down as enabling unjustified infringement on people’s—usually
8 people of color’s—constitutional rights.

9 5. Yet OMC section 9.08.250 remains on the books and is actively enforced against
10 public housing residents in the city of Oakland. The Loitering Ordinance is enforced by OHAPD, a
11 supplemental police force that has thirty-four sworn officers dedicated to policing 16,500 households
12 living in public, affordable housing. OHAPD enforces the Loitering Ordinance through threats,
13 citations, and reported lease violations that are placed in residents’ tenant files and threaten their
14 ability to remain in public housing. The result is an ever-deepening distrust between residents and
15 the police. Any OHAPD enforcement of the Loitering Ordinance puts their housing at risk, which
16 can lead to loss of subsidized housing, homelessness, family disruption, and community instability.
17 Of course, this concern is even more heightened in the Bay Area, where the need for affordable
18 housing is acute, and options are few.

19 6. The Loitering Ordinance does not merely contribute to these harms; it is
20 unconstitutional on its face. Because it fails to put citizens on notice of what conduct is prohibited,
21 and because it gives law enforcement officers unlimited discretion to determine what constitutes a
22 violation, it violates the Due Process Clause of the Fourteenth Amendment of the United States
23 Constitution.

24 7. Moreover, facts and incident reports gathered to date reveal that OHAPD routinely
25 uses the Loitering Ordinance as a pretext to stop, question, search, and otherwise harass OHA
26 residents and their guests, threatening their tenancy and preventing them from feeling at peace in
27 their own homes. Specifically, the customs and practices of OHAPD in routinely stopping people
28

1 who they have no objective basis to believe have done anything wrong, violates public housing
2 tenants' rights under the Fourth Amendment of the U.S. Constitution.

3 8. This action is for declaratory and injunctive relief to strike down the Loitering
4 Ordinance and to stop the pattern of harassment that flows from the statute and Defendants'
5 enforcement of it.

6 JURISDICTION

7 9. This case arises under 42 U.S.C. §1983 and subject matter jurisdiction lies in this
8 Court under 28 U.S.C. §1331 (federal question jurisdiction).

9 10. This Court is authorized to grant declaratory and injunctive relief pursuant to 28
10 U.S.C. §§ 2201 and 2202.

11 VENUE

12 11. Venue for this Complaint is proper in the Northern District of California pursuant to
13 28 U.S.C. § 1391 because (i) the events or omissions giving rise to Plaintiffs' claims occurred in this
14 District; and (ii) all of the parties reside or do business in Oakland, California.

15 INTRADISTRICT ASSIGNMENT

16 12. Pursuant to Local Rule 3-2(c) and (d), a substantial part of the events or omissions
17 which give rise to the claims in this Complaint occurred in Alameda County, and therefore this
18 action may properly be assigned to the San Francisco or Oakland divisions of this Court.

19 THE PARTIES

20 13. Plaintiff Darren Mathieu II ("Mathieu") is a resident of Oakland, California. Mathieu
21 lives in Lockwood, an apartment complex owned by and within the jurisdiction of the OHA.
22 Mathieu is twenty-six years old and has lived in Lockwood with his mother for over twenty years.
23 Mathieu cannot recall or even estimate how many times he has been stopped by OHAPD because the
24 number is so large. As far as Plaintiffs are aware, as of March of 2017, OHAPD has generated
25 approximately 63 incident reports that name Mathieu. Several of these "Incident Reports" were
26 reported to OHA as lease violations. In these Incident Reports, "loitering" is referenced
27 approximately 40 percent of the time as the sole basis or a basis for reporting Mathieu. Mathieu has
28 never been issued a citation for any actual wrongdoing.

16. Defendant City of Oakland (“Oakland”) is a municipality with a population of approximately 412,000. Despite being put on notice of the unconstitutional nature of the Loitering Ordinance, Oakland has, to date, failed to repeal it.

FACTUAL ALLEGATIONS

18. This lawsuit seeks to invalidate and strike down Oakland Municipal Code § 9.08.250, or the Loitering Ordinance. In full, the Loitering Ordinance reads:

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1 19. Because any violation of the Loitering Ordinance constitutes a criminal infraction, it
2 is punishable by a fine of up to \$250. Cal. Penal Code § 19.8. When combined with additional civil
3 penalties that are often assessed for untimely payment, the amount owed for a loitering infraction
4 can reach as high as \$785. *See* Jackson Citation, September 25, 2016, attached to this Complaint as
5 **Exhibit A**; *see generally* “Not Just A Ferguson Problem” at [https://updates-](https://updates-iccrights.pantheonsite.io/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf)
6 [iccrights.pantheonsite.io/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-](https://updates-iccrights.pantheonsite.io/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf)
7 [Drive-Inequality-in-California-4.20.15.pdf](https://updates-iccrights.pantheonsite.io/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf) at 10 (last visited Sept. 5, 2018).

8 20. As countless legal scholars have recognized, loitering laws represent a seamless
9 continuation of the Black codes that have been used since the Civil War to restrict black people’s
10 movement in public spaces and free exercise of civil rights. As the Supreme Court recently
11 recognized, “vagrancy laws were used after the Civil War to keep former slaves in a state of quasi
12 slavery.” *City of Chicago v. Morales*, 527 U.S. 41, 54 n.20 (1999); *see also*
13 Rachel D. Crutchfield *et. al.*, *Racial and Ethnic Disparity and Criminal Justice: How Much Is Too*
14 *Much?*, 100 J. Crim. L. & Criminology, 903, 905 (2010); *see also* Peter W. Low & Joel S. Johnson,
15 *Changing the Vocabulary of the Vagueness Doctrine*, 101 Va. L. Rev. 2051, 2075-79 (2015); Eva
16 Paterson, *Celebrate Rosa Parks and the Montgomery Bus Boycott: End Race Discrimination in*
17 *Public Transport Today*, 12 Race, Poverty, & the Env’t 18, 18 (2005); Dorothy E. Roberts,
18 *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. Crim. L.
19 & Criminology 775, 782 (1999); Robert J. Glennon, *The Role of Law in the Civil Rights Movement:*
20 *The Montgomery Bus Boycott, 1955-1957*, 9 L. & Hist. Rev. 59, 66 (1991). Loitering laws also give
21 police officers authority for virtually unfettered incursions into civilians’ lives by requiring people to
22 defend their very existence or presence in a particular location.

23 21. In light of this troubled history, loitering, vagrancy, and curfew laws around the
24 country have been repeatedly and routinely struck down as unconstitutionally vague and violative of
25 due process, or as otherwise inconsistent with individuals’ constitutional rights. In these cases,
26 courts have found that these laws do not put ordinary people on notice of what conduct is
27 specifically prohibited, and also do not provide sufficient direction to law enforcement to prevent
28 arbitrary and discriminatory enforcement. *See Papachristou v. City of Jacksonville*, 405 U.S. 156,

162 (1972); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *City of Chicago v. Morales*, 527 U.S. 41, 45, 60 (1999); *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 940 (9th Cir. 1997); *United States ex rel. Newsome v. Malcolm*, 492 F.2d 1166, 1171, 1174 (2d Cir. 1974); *Leal v. Town of Cicero*, No. 99 C 0082, 2000 WL 343232 (N.D. Ill. Mar. 31, 2000); *NAACP Anne Arundel Cty. Branch v. City of Annapolis*, 133 F. Supp. 2d 795 (D. Md. 2001); *Commonwealth v. Asamoah*, 809 A.2d 943 (Pa. Super. Ct. 2002); *People v. Bright*, 520 N.E.2d 1355, 1359 (N.Y. 1988); *Johnson v. Athens-Clarke Cty.*, 529 S.E.2d 613 (Ga. 2000); *State v. Burnett*, 755 N.E.2d 857 (Ohio 2001); *City of Salida v. Edelstein*, Case No. 97CR62 (Colo. Dist. Ct. 1998); *State v. Richard*, 836 P.2d 622, 623 & n.2 (Nev. 1992) (per curiam), *abrogated on other grounds by State v. Castaneda*, 245 P.3d 550 (Nev. 2010).

22. The Loitering Ordinance at issue here is no different. On its face, and specifically by using phrases like “loiters, prowls, wanders or is present without lawful business,” and by defining “loiter” as “to delay, to linger, or to idle about any such Housing Authority of the city proper without a lawful purpose for being present,” the Loitering Ordinance is unconstitutionally vague and therefore violative of the Due Process Clause of the Fourteenth Amendment. It fails to provide adequate notice of what conduct falls within its scope, and it encourages arbitrary and discriminatory enforcement by OHAPD by failing to provide any guidance as to how it should be applied.

23. Unsurprisingly, therefore, arbitrary and discriminatory policing is precisely what has resulted from the Loitering Ordinance’s existence. The Loitering Ordinance is enforced by the OHAPD. The OHAPD was founded in 1974, and was originally titled the Security and Safety Services Department. The department was purportedly created to supplement the efforts of the Oakland Police Department (“OPD”) in combating criminal and narcotic activities occurring on Oakland Housing Authority property. OHAPD officers do not, however, provide full service policing to the residents of OHA property. Instead, OPD remains the primary law enforcement agency in the City of Oakland, and it continues to respond to calls for service from OHA residents. *See* OHAPD’s 2015 Annual Report (“OHAPD does not provide full service policing to its population, and operates as a supplemental policing entity to the City of Oakland Police

1 Department.”). OHAPD has thirty-four sworn officers paid to police the more than 16,500 families
2 living in Oakland’s public affordable housing.

3 24. Perhaps in recognition of the duplicative nature of these police forces, many cities
4 across the country have eliminated their public housing authority police forces. *See, e.g.*,
5 http://articles.baltimoresun.com/2004-09-25/news/0409250205_1_city-police-housing-police-police-
6 [department](#) (last visited Sept. 15, 2018). The City of Oakland, however, has chosen to maintain
7 OHAPD. Notably, the United States Department of Housing and Urban Development (HUD) does
8 not provide local housing authorities with specific funds to maintain a separate police force. Thus,
9 those housing authorities that maintain police departments are required to use operational funds to
10 finance them, thereby decreasing the funding that would otherwise go to the maintenance or the
11 management of their properties.

12 **OHAPD’s Enforcement of the Loitering Ordinance and Harassment of Public Housing**
13 **Residents**

14 25. Because the Loitering Ordinance fails to provide clear notice as to what precise
15 conduct falls within its scope, and because it fails to provide any guidance to officers as to how it
16 should be enforced, OHAPD has routinely used its broad authority under the Loitering Ordinance to
17 stop, question, search and generally harass public housing residents, their guests, and other (mostly
18 black) citizens of Oakland, including those engaging in innocent conduct and going about everyday
19 activities.

20 26. In most of these interactions, OHAPD does not issue an actual citation for violation
21 of the Loitering Ordinance. Instead, OHAPD authors “Incident Reports,” documents that purport to
22 record some interaction between OHAPD officers and people who they chose to stop, investigate, or
23 otherwise take note of. Not all or even most of these Incident Reports report criminal or unlawful
24 activity—indeed, in many of them, OHAPD simply records their observations of an individual’s
25 behavior, even when they have made no contact with that person.

26 27. Over the course of several months, and prior to this litigation being filed, Plaintiffs,
27 through counsel, have submitted Public Records Act Requests seeking Incident Reports and other
28 records and data from OHAPD regarding its enforcement of the Loitering Ordinance. It has

endeavored to work with OHAPD on the breadth and scope of these requests as well. To date, OHAPD has turned over many of the records and Incident Reports requested by Plaintiffs; these records reveal the troubling and unlawful manner in which the Loitering Ordinance is being applied, described further below. Many of the requested records, however, have not yet been provided.¹

28. Incident Reports collected to date reveal that OHAPD routinely uses its authority under the Loitering Ordinance to stop and question OHA residents who are simply engaged in innocuous activities of daily life. For example, OHAPD has used the Loitering Ordinance to stop and question a family preparing to barbeque, even though one of those family members was a Lockwood resident. *See* January 13, 2015 Incident Report, attached to this Complaint at **Exhibit B**. Multiple reports reveal OHAPD's invocation of the Loitering Ordinance as a basis to disperse groups of friends spending time in outdoor spaces, even when one of those friends is an OHA resident. *See* Compl. Ex. B; February 8, 2016 Field Contact Report, attached to this Complaint at **Exhibit C**; December 8, 2015 Incident Report, attached to this Complaint as **Exhibit D**; November 17, 2015 Field Contact Report, attached to this Complaint as **Exhibit E**; April 24, 2015 Field Contact Report, attached to this Complaint as **Exhibit F**; March 17, 2015 Field Contact Report, attached to this Complaint as **Exhibit G**; February 15, 2016 Lease Violation Report, attached to this Complaint as **Exhibit H**; September 20, 2015 Lease Violation Report, attached to this Complaint as **Exhibit I**. Indeed, as detailed below, OHAPD routinely uses its authority under the Loitering Ordinance to stop and question Mathieu, despite the fact that OHAPD is well aware that he Mathieu is a long-time Lockwood resident.

29. In one particularly egregious example, OHAPD officers questioned for possible loitering a Lockwood resident because he had guests gathering in front of his unit to attend the funeral of his son. *See* April 15, 2016 Public Summary Report, attached to this Complaint as **Exhibit J**. As part of that surreal interaction, the resident apologized to OHAPD officers because he had guests there to attend his son's funeral.

¹ Based on the reports received to date, it appears that OHAPD uses varying titles for the data they generate describing contacts with OHA residents. These titles include "Public Summary Reports," "Field Contact Reports," "Lease Violation Reports," and "Incident Reports." For simplicity and clarity, these reports will collectively be referenced as "Incident Reports."

1 30. When these Incident Reports describe some interaction between OHAPD and an
2 OHA resident, OHAPD often reports these incidents as “lease violations” and requests that the
3 report be added to the resident’s tenant file. *See, e.g.*, August 8, 2016 Lease Violation report,
4 attached to this Complaint as **Exhibit K**. Accordingly, these unverified reports can later be used
5 against public housing residents in any unlawful detainer action brought by Oakland Housing
6 Authority.

7 31. OHAPD also uses its broad authority under the Loitering Ordinance to stop, harass,
8 or exercise authority over guests of OHA residents. Even those guests who can identify an OHA
9 resident with whom they are staying or visiting are told to “stay inside” and are admonished for
10 wandering “off throughout the property on [their] own.” *See, e.g.*, Compl. Ex. K; June 9, 2016 Field
11 Contact Report, attached to this Complaint as **Exhibit L**; January 29, 2015 Field Contact Report,
12 attached to this Complaint as **Exhibit M**. OHAPD officers have also advised guests that they are
13 guilty of “loitering” if they are simply standing or walking anywhere on OHA property
14 unaccompanied by a host tenant. *See, e.g.* Compl. Exs. K, L. Moreover, it appears that OHAPD
15 will not even allow guests to congregate with their hosts outside of apartment units. For example, in
16 one instance, a group of six individuals, including an OHA resident who they were visiting, were
17 informed that “they could not loiter at the property.” *See* Compl. Ex. G.

18 32. In one incident, OHAPD stopped a resident’s boyfriend who was “sitting at the
19 bench. . . because he and his girlfriend were involved in a minor verbal argument, and . . . he was
20 just cooling off.” OHAPD confirmed with the resident that “it was not a problem at all,” but then
21 nonetheless advised the boyfriend “that he was not allowed to be in or near Theresa’s residence,
22 because it was a state law that made it mandatory for subjects that were involved in a domestic
23 dispute to be separated for some time.” The boyfriend then left because of this instruction. *See*
24 Compl. Ex. M.

25 33. As to those individuals who are not residents or guests, OHAPD applies the Loitering
26 Ordinance to a broad range of innocent activity. Among those who OHAPD stopped and questioned
27 on the basis of “loitering” are individuals who are on the property because “the parking lot was
28 covered by shade,” July 15, 2016 Field Contact Report, attached to this Complaint as **Exhibit N**; a

1 man “taking a break on a bench”, April 17, 2016 Field Contact Report, attached to this Complaint as
2 **Exhibit O**; a woman who was “resting because her right ankle was hurting from walking so much,”
3 October 27, 2014 Field Contact Report, attached to this Complaint as **Exhibit P**; “male and female
4 subjects who were conversing in the parking lot of the property” and who “lived next door,” *see* July
5 26, 2014 Public Summary Report, attached to this document as **Exhibit Q**; and a women who was
6 “dropping off medication for her mother,” April 16, 2016 Public Summary Report, attached to this
7 Complaint as **Exhibit R**.

8 34. Moreover, OHAPD uses the Loitering Ordinance as a basis to follow, stop, and arrest
9 people who have *voluntarily dispersed* or left OHA property. *See* Compl. Exs. H, K; August 10,
10 2016 Incident Report, attached to this Complaint as **Exhibit S**; February 20, 2016 Field Contact
11 Report, attached to this Complaint as **Exhibit T**. In other words, OHAPD stops or arrests people for
12 supposed “loitering” on streets, sidewalks, or in stores that surround OHA property. In one Incident
13 Report, OHAPD describes stopping Mathieu, who was hanging out with friends outside of a
14 storefront near OHA property. *See* December 8, 2015 Public Summary Report, attached to this
15 Complaint as **Exhibit U**. Mathieu explained that he was there with his friends precisely to avoid
16 gathering on Lockwood property, but OHAPD nonetheless told him that he needed to find
17 somewhere else to spend time with his friends.

18 35. Indeed, though the Loitering Ordinance is on its face limited to Oakland Housing
19 Authority property, it is clear from the Incident Reports produced that OHAPD has repeatedly
20 enforced the Loitering Ordinance outside of OHA property. Specifically, OHAPD has regularly
21 following OHA residents and their guests to locations outside of OHA property, threatened people
22 with citations, and documented alleged “loitering” violations on the property of local businesses. In
23 response to correspondence from plaintiffs and their counsel, OHAPD has stated that it will
24 discontinue off-property enforcement, but the previous enforcement reveals OHAPD’s view of the
25 Loitering Ordinance as a broad enforcement tool to be used at its unfettered discretion.

26 36. As evidenced by the Incident Reports collected to date, in the process of “enforcing”
27 the prohibition on loitering, OHAPD routinely “contacts” individuals by stopping, seizing, detaining,
28 or placing them in handcuffs in order to determine their identity, their “purpose” for being on OHA-

1 owned property, and to check for any outstanding warrants associated with them. *See* September 14,
2 2016 Public Summary Report, attached to this Complaint as **Exhibit V**; September 28, 2016 Lease
3 Violation Report, attached to this Complaint as **Exhibit W**. In other words, OHAPD routinely
4 seizes and detains people without having any objective basis to believe that they have engaged in
5 any wrongdoing or criminal activity of any kind.

6 37. It is clear that, when seized by an OHAPD officer for questioning, residents, guests,
7 and other individuals are not free to leave. In one incident, OHAPD accused the son of longtime
8 resident of loitering and trespassing at Lockwood. As detailed in the Report, the son initially refused
9 to provide his identification, and was accordingly handcuffed and forced to comply with the officer's
10 demands. *See* May 19, 2016 Lease Violation Report, attached to this Complaint as **Exhibit X**. In
11 another report, an OHAPD officer describes seizing two male subjects in order to ask them "if they
12 had lawful business at the property." When one of the males refused to respond and tried to walk
13 away, the officer grabbed his sleeve and specifically stated that "he was not free to leave." *See*
14 January 26, 2016 Public Summary Report, attached to this Complaint as **Exhibit Y**.

15 38. Thus, OHAPD enforcement of the Loitering Ordinance is problematic for multiple
16 reasons, including (a) the reasons for the stops (or lack thereof); (b) how the stops are conducted;
17 and in many instances; and (c) where some of the stops are carried out.

18 39. OHAPD's use of the Loitering Ordinance to stop and question whomever they see on
19 OHA property has predictably created an atmosphere and fear, discomfort, and frustration among
20 Oakland public housing residents and their guests. These constant and unrelenting police contacts—
21 experienced while simply going about every day activities and spending time with friends and loved
22 ones—make public housing residents feel unwelcome and threatened in their own homes.

23 **Harassment Experienced by the Plaintiffs in this Case**

24 40. Consistent with the patterns and practices described above, Plaintiffs Mathieu and
25 Jackson have suffered ongoing harm because of the scope of the Loitering Ordinance and OHAPD's
26 enforcement of it.

27 ///

28 ///

1 ***Plaintiff Darren Mathieu***

2 41. Plaintiff Mathieu has no adult criminal convictions. Nonetheless, as a long-time
3 resident of Lockwood, Mathieu has been a frequent target of harassment and “loitering” enforcement
4 by OHAPD. Plaintiffs are aware of approximately 63 OHAPD Incident Reports between 2011 and
5 March 2017 that name or involve Mathieu. Not a single one of these 63 stops or interactions
6 describes any criminal behavior by Mathieu or the discovery of anything illegal on Mathieu’s
7 person.

8 42. Most of these reports fail to describe any noteworthy or suspicious activity of any
9 kind. For instance, OHAPD frequently records that they “observed” Mathieu with a group of friends
10 on OHA property, noting that the report is for “intelligence purposes only.” *See e.g.*, January 3,
11 2017 Incident Report, attached to this Complaint as **Exhibit Z**; September 14, 2016 Incident Report,
12 attached to this Complaint as **Exhibit AA**.

13 43. Among these incident reports referencing Mathieu, “loitering” is referenced
14 approximately 21 times, or in about 40 percent of the reports collected to date, as a purported basis
15 for issuing the report.

16 44. In some of these reports, Mathieu himself is accused of “loitering.” *See* June 14,
17 2016 Incident Report, attached to this Complaint as **Exhibit BB**; December 11, 2016 Incident
18 Report, attached to this Complaint as **Exhibit CC**; March 24, 2017 Lease Violation Report, attached
19 to this Complaint as **Exhibit DD**. For example, on August 2, 2016, OHAPD reported Mathieu for
20 “loitering” with two friends and three other individuals in the OHAPD parking lot. *See* August 2,
21 2016 Lease Violation Report, attached to this Complaint as **Exhibit EE**. As set forth in the report,
22 OHAPD “observed Darren Mathieu sitting in a folding chair in the parking hanging out.” *Id.* Based
23 on this observation, OHA reported that he was in violation of his lease. *Id.*

24 45. Notably, Mathieu has never received an actual citation for violating the Loitering
25 Ordinance. This is unsurprising, since any such citation would necessarily have to accuse him of
26 loitering in his own home.

27 46. In other reports, OHAPD faults Mathieu for the “loitering,” of others, or for failing to
28 “help” or “assist” OHAPD in dispersing other individuals. In most of these instances, the

1 individuals OHAPD was trying to disperse were not Mathieu's guests, despite OHAPD's speculation
2 to the contrary. *See* Compl. Exs. X, EE; June 23, 2016 Lease Violation Report, attached to this
3 Complaint as **Exhibit FF**; July 22, 2016 Lease Violation Report, attached to this Complaint as
4 **Exhibit GG**; September 5, 2016 Lease Violation Report, attached to this Complaint as **Exhibit HH**;
5 September 24, 2016 Lease Violation Report, attached to this Complaint as **Exhibit II**.

6 47. For example, on June 14, 2016, OHAPD issued an Incident Report describing an
7 incident where they detected a "group of male and female subjects" "loitering" in the parking
8 lot. One of the males was Mathieu. The report describes that a cameraman was filming Mathieu and
9 a few other men. OHAPD told them they "had to disperse," but stated that they "continued to loiter"
10 for approximately five more minutes "while continuing to film." OHAPD once again told them that
11 they had to "clear the area." The report concludes, "[b]ased on my investigation, I believe that
12 Darren Mathieu is in violation of his lease for not cooperating with the police in regards to
13 dispersing his group when asked to do so. . . . Mathieu is inviting outsiders to come and interview
14 him on camera causing area tenants to not enjoy the quietness of the neighborhood." *See* Compl. Ex.
15 CC.

16 48. OHAPD often characterizes the numerous Incident Reports accusing Mathieu of
17 personally "loitering" or in holding him responsible for the "loitering" of other people as "Lease
18 Violations." Due to this designation, OHAPD then forwards these Incident Reports to OHA to be
19 added to the tenant file associated with Mathieu and his mother. This tenant file, and the accusations
20 and Incident Reports contained therein, can be used as the basis for eviction, and as part of any
21 unlawful detainer action that OHA chooses to bring against Mathieu and his mother.

22 49. For example, on September 28, 2016, OHAPD officers conducted a pedestrian stop at
23 Lockwood and detained four subjects. *See* Compl. Ex. X. Following the citation, the officer
24 reported that "Mathieu is observed with the subjects" and that his association "has been an on-going
25 issue." *Id.* The OHAPD officer then reported that Mathieu's mother may be in violation of her lease
26 because her son "continues to be a main factor contributing to subjects loitering" *Id.*

27 50. Similarly, on June 14, 2016, Plaintiff Mathieu and a group of friends were filming a
28 video in the Lockwood parking lot, an activity protected by the First Amendment. *See* Compl. Ex.

1 CC. An OHAPD officer approached and asked the group to disperse, claiming they were loitering
2 and did not have a permit to film on private property. *Id.* Based on this interaction, OHAPD
3 claimed that Mathieu should be found in violation of his lease “for not cooperating with the police in
4 regards to dispersing the group when asked to do so.” *Id.*

5 51. Mathieu is under constant stress due to the unpredictability and relentlessness of
6 OHAPD’s harassment and its constant loitering accusations. Because many of these Incident
7 Reports, are reported to OHA as lease violations, Mathieu worries about the possibility of he and his
8 mother losing their housing.

9 52. In 2014, Mathieu and his mother went through an unlawful detainer proceeding in
10 which they, represented by Easy Bay Community Law Center, overcame an eviction attempt by
11 Oakland Housing Authority. In these proceedings, OHA accused Mathieu and his mother of
12 unlawfully possessing stolen property in their unit, but offered no evidence demonstrating that they
13 knowingly did so. Moreover, the frequent stops by OHAPD and the Incident Reports reporting
14 Mathieu for personally “loitering” and blaming him for the “loitering” of others, were also part of
15 OHA’s case for why eviction was appropriate. Mathieu and his mother were ultimately able to
16 maintain their housing, but they remain anxious that these Incident Reports for “loitering” will be
17 used in another eviction proceeding.

18 53. Because of OHAPD’s enforcement of the Loitering Ordinance, and the threat that it
19 poses to his tenancy, Mathieu increasingly choses to stay inside his apartment and avoid going to the
20 outdoor areas of Lockwood at all. He is worried that any interaction with the OHAPD will lead to
21 another Incident Report, another reported lease violation, and another threat to he and his mother’s
22 ability to remain in publicly subsidized housing.

23 ***Plaintiff Edward Jackson***

24 54. Jackson no longer lives at Lockwood, but he is a frequent visitor because he has a
25 number of friends and family members who are still residents.

26 55. OHAPD issued Jackson an official citation (as opposed to a mere incident report) for
27 violation of the Loitering Ordinance on September 25, 2016. Compl. Ex A. Jackson owes \$785 for
28

1 the alleged violation, according to Alameda County Superior court records. That fine remains
2 outstanding.

3 56. On September 24, 2016, a group of approximately seven friends was gathered in the
4 courtyard on benches, talking and engaging in otherwise lawful activity. At least one of these
5 individuals was a resident of Lockwood. OHAPD officers approached the group and asked each
6 person for their name, identification, and then asked a series of questions regarding their purpose for
7 being there. The group eventually dispersed. *See* September 24, 2016 Field Contact Report, attached
8 to this Complaint as **Exhibit JJ**.

9 57. The following day, on September 25, Jackson and his friends were sitting in the same
10 location at Lockwood, getting some air while watching the Oakland Raiders' football game.
11 OHAPD officers approached the group and immediately put Jackson in handcuffs, claiming that he
12 was violating a prior admonishment against loitering. Jackson protested, saying that he was never
13 admonished and that he was not doing anything wrong.

14 58. OHAPD placed Jackson in the back of an OHAPD patrol vehicle and threatened to
15 jail him for violating the Loitering Ordinance (because any such violation is a mere infraction, this
16 representation was blatantly false). Jackson was eventually issued a citation for this purported
17 violation, which he signed under the (illegal) threat of jail time.

18 59. OHAPD officers then refused to allow Jackson back on the Lockwood property to
19 retrieve his belongings, including his phone, car keys, and house keys. When Jackson protested and
20 threw the citation to the ground, OHAPD called OPD. About half a dozen OPD squad cars then
21 arrived at the scene, all to deal with a purported "loitering violation."

22 60. Following this specific alleged loitering incident, OHAPD officers generated at least
23 two more Incident Reports relating to Jackson. First, on October 22, 2016, OHAPD officers noted
24 that they "observed" that Jackson and a friend appeared to be walking "quickly" through the
25 neighborhood. *See* October 22, 2016 Incident Report, attached to this Complaint as **Exhibit KK**.
26 No stop or search was conducted; nevertheless, an incident report was produced. *Id.* Second, on
27 November 7, 2016, Jackson and some friends were gathered in the parking lot near 65th Avenue at
28 Lockwood. They were engaged in conversation; no unlawful activity of any kind was taking place.

1 See November 7, 2016 Field Contact Report, attached to this Complaint as **Exhibit LL**. OHAPD
2 officers, approached the group, asked, everyone for identification and checked everyone's names for
3 outstanding warrants. After running the names, no searches were conducted and the group cleared
4 the area. *Id.*

5 61. Jackson was previously on California "court" probation, which is an unsupervised
6 probation, and has a search condition attached to that probation. According to Jackson, he is often
7 stopped and questioned by OHAPD and then searched once OHAPD "discovers" his probationary
8 status. Jackson believes that OHAPD uses the Loitering Ordinance as a basis to confirm his identity
9 and search his person whenever they want.

10 62. Because of his interactions with OHAPD, Jackson now chooses to avoid coming to
11 Lockwood whenever possible. He worries that, any time he is seen by an OHAPD officer, that
12 officer will use his authority under the Loitering Ordinance to stop, question, and harass him, and
13 that he will eventually be subject to a search. Jackson has several close friends and close family
14 members who currently reside at OHAPD, including cousins, aunts, and uncles with whom he is
15 very close. Because of OHAPD's overzealous enforcement of the Loitering Ordinance, Jackson
16 now sees them only infrequently.

17 63. In the typical interaction between OHAPD and Mathieu and/or Jackson, the OHAPD
18 officer or officers approach the group, interrupt whatever conversation is ongoing, and immediately
19 ask to see identification. They then ask each person a series of questions regarding why they are
20 present on OHAPD property, who they are here to see, and why they are visiting that person. They
21 then usually run each individuals' name to check for outstanding warrants. Each of these
22 interactions typically lasts anywhere from several minutes to half an hour. During their interactions,
23 the OHAPD officers are in uniform, and are usually armed. In some of these encounters, Mathieu
24 and Jackson are sitting in their vehicles.

25 64. When being questioned by OHAPD, Mathieu and Jackson they do not feel that they
26 have the ability to leave or simply walk away. OHAPD orders them to provide the identification and
27 other information they ask for, they search some or all of the individuals whom they stop and,
28 sometimes, they threaten the group with criminal consequences.

General Harms from Loitering Enforcement and from Over-Policing

65. Police contact is gaining recognition as a public health crisis for people of color. Experts note that a forward-looking public health agenda “should include generating evidence of the causal relationship between police brutality and health inequities,” such as “(1) fatal injuries ...; (2) adverse physiological responses...; (3) racist public reactions [to police violence]...; (4) arrests, incarcerations, and legal, medical, and funeral bills that cause financial strain; and (5) integrated oppressive structures that cause systematic disempowerment.” Sirry Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, Am. J. Public Health, 107(5): 662–65 (May 2017).

66. A 2015 study concluded that the “anxiety and stress from interactions with police shape the daily experiences of black people – where they go, how they get there, and their sense of safety and security in their communities and the wider society. One study referred to black peoples’ experiences of police interaction as ‘mundane extreme environmental stressors.’ Constant background stress can profoundly influence the emotional and physical development of youth, changing how youth interact with each other, adults, and institutions like schools.” Human Impact Partners. *Stress on the Streets (SOS): Race, Policing, Health, and Increasing Trust not Trauma*. Oakland, CA (December 2015).

67. The detrimental effects of policing on people of color have been observed in the Bay Area for years. See, e.g., Delgado, Angelica, *Police Brutality: Impacts on Latino and African American Lives and Communities*, Ethnic Studies Commons (2016) (citing Nikki Jones, “*The Regular Routine*”: Proactive Policing and Adolescent Development Among Young, Poor Black Men, New Directions for Child and Adolescent Development (143), 33-54 (2014), concluding that “body searches were very common in [heavily policed] neighborhoods, and that by the time African Americans are in their late teens, they have learned how to behave like professional suspects...[whose] bodies are state property, so simply witnessing those encounters leads to secondary shame and degradation—something that African American adolescents are particularly vulnerable to.”).

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68. The majority of public housing residents in Oakland are black. OHAPD's enforcement of the Loitering Ordinance perpetuates this public health crisis by generating involuntary police contacts with young black men under the guise of legitimate police work. In so doing, they reinforce a false notion of criminality while causing deleterious health consequences for the entire community.

Prior Communication with the Defendants

69. Prior to filing this suit, undersigned counsel contacted Defendants and explained the unconstitutionality of the Loitering Ordinance and how it is being enforced, and requested that Defendants revoke and cease enforcing it.

70. On August 23, 2017, East Bay Community Law Center ("EBCLC") sent a detailed letter to the Oakland City Attorney. The letter explained that the Loitering Ordinance was unconstitutionally vague and overbroad and asked that it be repealed. EBCLC had follow-up conversations about the ordinance. However, in the intervening year, the City of Oakland has not taken action to remove or alter the ordinance.

71. On May 25, 2018, undersigned counsel sent a demand letter to OHAPD describing concerns with both the language of the Loitering Ordinance and the way it was being enforced. Counsel requested that OHAPD stop enforcing the Loitering Ordinance and revoke all citations currently pending under the provision.

72. OHAPD responded on June 8, 2018, taking the position that "OHAPD staff uses the [Loitering Ordinance] to prevent trespassing on OHAPD property." In connection with this response, OHAPD also issued Special Order 18-4 to all employees, which purports to provide guidance as to how the Loitering Ordinance should be enforced. This guidance advises that the Loitering Ordinance should be enforced only on the property of OHA. It further instructs that, to enforce the Loitering Ordinance, OHAPD should "contact" an individual (apparently any individual) and, if they are not an "authorized resident" or a "resident's guest," they should "seek to determine" why they are on the property. The issued guidance, therefore, formally authorizes OHAPD to make contact with anyone on OHAPD property at any time.

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NEED FOR INJUNCTIVE AND DECLARATORY RELIEF

73. Plaintiffs hereby reallege and incorporate by reference the allegations contained in Paragraphs 1-72 as though fully set forth herein.

74. Plaintiffs, their family members, and their guests, as well as other OHA residents affected by the overzealous and unlawful enforcement of the Loitering Ordinance by OHAPD, intend to continue to enjoy and exercise their constitutional rights while on OHA property, including their rights under the Fourteenth and Fourth Amendments to the United States Constitution. Based on their past experiences, they reasonably expect that, in the absence of any order from the Court enjoining the OHAPD from enforcing or otherwise utilizing OMC Section 9.08.250, Defendants will continue to violate Plaintiffs' constitutional rights. This will result in irreparable harm; a future award of damages cannot remedy the loss of constitutional rights or the harms they will suffer in the absence of an injunction. Both the public interest and equity favor granting an injunction against OHAPD from enforcing or otherwise utilizing OMC Section 9.08.250 to allow plaintiffs to exercise and enjoy the right guaranteed to them under the United States Constitution.

75. There exists an actual, present, and justiciable controversy between Plaintiffs and Defendants concerning their rights and duties with respect to Defendants' conduct described herein. Plaintiffs contend that Defendants violated, and will continue to violate, Plaintiffs' rights under the Constitution and laws of the United States—specifically Plaintiffs' rights to due process, and the right to be free from unreasonable search and seizure. On information and belief, Defendants deny that their conduct violated, or continues to violate, Plaintiffs' rights under the Constitution and laws of the United States. Plaintiffs fear and believe that they will again be subjected to such unlawful and unconstitutional actions, and seek a judicial declaration that the Loitering Ordinance is unconstitutional.

76. This controversy is ripe for judicial decision, and declaratory relief is necessary and appropriate so that the parties may know the legal obligations that govern their present and future conduct.

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CLAIMS FOR RELIEF

**COUNT I: VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION (42 U.S.C. 1983)**

77. Plaintiffs hereby reallege and incorporate by reference the allegations contained in Paragraphs 1-76 as though fully set forth herein.

78. The Fourteenth Amendment to the United States Constitution guarantees due process of law to the people of the United States.

79. To ensure due process under the Fourteenth Amendment, laws must be defined such that: (1) “ordinary people can understand what conduct is prohibited;” and (2) the laws do not “encourage arbitrary and discriminatory enforcement” by police officers. *See Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

80. The Loitering Ordinance fails both prongs of this test because it relies upon undefined terms, and because it fails to provide adequate guidance to law enforcement as to how to enforce its provision and determine whether it has been violated. It is therefore unconstitutionally vague.

81. Because the Loitering Ordinance is unconstitutionally vague, as long as it remains the law, Plaintiffs are being denied due process of law as guaranteed by the Fourteenth Amendment.

**COUNT II: VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES
CONSTITUTION (42 U.S.C. 1983)**

82. Plaintiffs hereby reallege and incorporate by reference the allegations contained in Paragraphs 1-81 as though fully set forth herein.

83. The Fourth Amendment to the United States Constitution protects the rights of people to be free from unreasonable searches and seizures. Accordingly, an officer may detain a suspect briefly for questioning only when he has “a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.” *Brown v. Texas*, 443 U.S. 47, 51 (1979).

84. As detailed above, Defendants’ policies and practices in enforcing the Loitering Ordinance have violated Plaintiffs’ clearly established rights under the Fourth Amendment. OHAPD routinely seizes people without reasonable suspicion of criminal activity and subjects them

1 to prolonged questioning and, at times, searches of their person, under the guise of investigating a
2 loitering violation.

3 85. Defendants' actions are not isolated incidents; rather, Defendants' actions in this
4 regard, and their use of the Loitering Ordinance to unlawfully seize individuals, including Plaintiffs,
5 have become so widespread that they rise to level of policy, practice, and custom. Moreover, the
6 recently issued Special 18-4 memorializes and reinforced this unconstitutional policy, practice, and
7 custom by expressly authorizing OHAPD to stop and question any individual on OHAPD at any
8 time, with or without suspicion of any actual criminal activity, as a purported method of enforcing
9 the Loitering Ordinance.

10 86. Plaintiffs also seek prospective declaratory and injunctive relief because they have no
11 adequate remedy at law to prevent future injury caused by being stopped, seized, and searched by
12 OHAPD officers under the perceived authority granted to them under the Loitering Ordinance.

13 **COUNT III: VIOLATION OF ARTICLE I, SECTION 13 OF THE CALIFORNIA**
14 **CONSTITUTION (42 U.S.C. 1983)**

15 87. Plaintiffs hereby reallege and incorporate by reference the allegations contained in
16 Paragraphs 1-86 as though fully set forth herein.

17 88. Like the Fourth Amendment to the United States Constitution, Article I, Section 13 of
18 the California Constitution protects the rights of people to be free from unreasonable searches and
19 seizures.

20 89. Therefore, Defendants' policies and practices in enforcing the Loitering Ordinance
21 have violated Plaintiffs' clearly established rights under the California Constitution as well.
22 OHAPD routinely seizes people without reasonable suspicion of criminal activity and subjects them
23 to prolonged questioning and, at times, searches of their person, under the guise of investigating a
24 loitering violation.

25 90. As alleged above, Defendants' over-policing based on the Loitering Ordinance rises
26 to the level of policy, practice, and custom. Therefore, both Defendants are additionally liable for
27 violating Plaintiffs' rights under the California Constitution.

28 ///

91. As with the above, Plaintiffs also seek prospective declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by being stopped, seized, and searched by OHAPD officers under the perceived authority granted to them under the Loitering Ordinance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. A temporary restraining order, preliminary and permanent injunction under Federal Rule of Civil Procedure 65:

1. Prohibiting Defendants from enforcing the Loitering Ordinance, OMC Section 9.08.250; and

2. Prohibiting Defendants from unlawfully seizing individuals on OHA property absent objectively reasonable suspicion of criminal activity;

B. A judgment declaring that the Loitering Ordinance is facially unconstitutional under Fourteenth Amendment to the United States Constitution and Article I, Section 13 of the California Constitution ;

C. A judgment declaring that the Defendants' policy, practice, and custom of conducting suspicionless stops, seizures, and searches, as described in this Complaint, violates the Plaintiffs' and other OHA residents' rights under the Fourth Amendment to the United States Constitution and under Article I, Section 13 of the California Constitution;

D. Costs and attorneys' fees incurred in this action pursuant to 42 U.S.C. § 1988, and other applicable authority; and

E. Such other and further relief as this Court deems just and proper.

Dated: September 19, 2018

KING & SPALDING LLP

/s/ George R. Morris

Anne M. Voigts

George R. Morris

Attorneys for Plaintiffs Darren Mathieu and
Edward Jackson

1 Dated: September 19, 2018

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

2
3 /s/ Elisa Della-Piana

4 Elisa Della-Piana

5 Jude Pond

*Attorneys for Plaintiffs Darren Mathieu and
Edward Jackson*

6
7 Dated: September 19, 2018

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

8 /s/ Shilpi Argarwal

9 Shilpi Agarwal

10 Christine P. Sun

*Attorneys for Plaintiffs Darren Mathieu and
Edward Jackson*

11
12 Dated: September 19, 2018

EAST BAY COMMUNITY LAW CENTER

13 /s/ Whitney Rubenstein

14 Whitney Rubenstein

15 Meghan Gordon

*Attorneys for Plaintiffs Darren Mathieu and
Edward Jackson*

JURY DEMAND

Plaintiffs hereby request a trial by jury.

Dated: September 19, 2018

KING & SPALDING LLP

/s/ George R. Morris

Anne M. Voigts

George R. Morris

*Attorneys for Plaintiffs Darren Mathieu and
Edward Jackson*

Signature Attestation (N.D. Cal. L.R. 5-1(i)(3))

I, George R. Morris, attest that concurrence in the filing of this document has been obtained from each signatory whose ECF user ID and password are not being used in the electronic filing of this document.

/s/ George R. Morris
Attorney for Plaintiffs

DATED: September 19, 2018