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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

GINA MAHELONA, DESMOND CANITE,
JARED CASTRO, FAIMAFILI TUPUOLA, and
MICHAEL DAVID BRYAN on behalf of
themselves and others similarly situated,

Plaintiffs,

vs.

CITY AND COUNTY of HONOLULU,

Defendant.

Case No.
(Declaratory Judgment)

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

I. INTRODUCTION

1. Defendant City and County of Honolulu (the “City”) criminalizes houseless people¹ in Honolulu for their presence in public spaces and routinely deprives them of their property.² Through a combination of ordinances and a campaign of targeted enforcement and harassment, the City punishes houseless people for engaging in universal and unavoidable acts of survival in public spaces, even when they lack any realistic option to live indoors. The City’s actions violate the rights of houseless individuals under the Hawai‘i Constitution.

2. Named Plaintiffs Gina Mahelona, Desmond Canite, Jared “Spider” Castro, Faimafili “Fili” Tupuola, and Michael David Bryan (“Plaintiffs”), like the vast majority of houseless people in Honolulu, did not choose to be houseless. They cannot afford permanent housing in Honolulu, where, as of 2023, the fair market rent for a modest 1-bedroom apartment was \$1,670—an amount that would require a resident to work 107 hours per week at the state minimum wage to afford.³ Compounding the problem, few vacancies exist at houseless shelters in Honolulu. On any given night, more than 2,300 individuals in Honolulu are unsheltered. These individuals, including each of the Plaintiffs, have no realistic option to live indoors.

¹ This complaint uses the term “houseless” coextensively with the federal statutory definition, including “an individual or family who lacks a fixed, regular, and adequate nighttime residence,” “an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings,” those living in or exiting a temporary shelter, those who will imminently lose their housing, and those who have experienced houselessness intermittently for a long period. 42 U.S.C. § 11302(a). Plaintiffs prefer “houseless” to the more stigmatizing label “homeless.”

² This complaint uses the “City” to refer to the governmental entity that is the Defendant in this lawsuit and “Honolulu” to refer to the geographic location.

³ National Low Income Housing Coalition, *Out of Reach 2023: Hawaii* (last accessed: June 26, 2023), <https://nlihc.org/oor/state/hi> (ranking Hawai‘i as the second-least affordable state in the country for renters); *see also* Olivia Peterkin, *Report: Hawaii Has the Highest Housing Wage in the US*, Pacific Business News (July 15, 2020), <https://www.bizjournals.com/pacific/news/2020/07/15/hawaii-has-the-highest-housing-wage-in-the-us.html>.

3. Yet, the City has criminalized a wide range of innocent conduct that houseless individuals have no choice but to perform in outdoor public places. The City has made it illegal: to sleep or spend the night in any public park or beach; to sleep on a public sidewalk in a tent, on a sleeping pad, or on any other sleeping structure; to rest on a public sidewalk during daytime hours in large sections of Honolulu; to maintain personal property in a public place; and to use a tarp, tent, or any structure on a public sidewalk for protection against the elements.⁴ These ordinances—collectively referred to as the “Anti-Homeless Ordinances”—are enforceable by fine, imprisonment, seizure of personal property, and/or physical displacement.

4. The two most recently enacted Anti-Homeless Ordinances—which became enforceable by law in 2018—are particularly vague and give law enforcement virtually limitless power to force houseless people out of public spaces. One of the ordinances criminalizes “obstruction on a public sidewalk,” which it defines so broadly that it could apply to anyone who happens to be present on a public sidewalk at the same time as a police officer.⁵ The other authorizes a police officer to force anyone found resting or sleeping in any public place whatsoever to move if the officer believes there is space available at a shelter—regardless of whether the shelter space is realistically available to that individual.⁶

5. The City also enforces several criminal statutes of the State of Hawai‘i against houseless people who are engaged in innocent acts of survival. Those include State laws that

⁴ See Revised Ordinances of Honolulu (“ROH”) §§ 10-1.2 (criminalizing camping in public parks and beaches), 10-1.3(a)(2) (same), 13-8.1 (criminalizing structures on sidewalks), 13-15.1 (criminalizing sitting or lying on sidewalks), 13-15A.2 (same), 13-15B.1 (same), 13-16.3 (allowing summary removal of nuisances on sidewalks), 13-19.3 (allowing impoundment of personal property on public property), 13-20.1 (criminalizing obstructions on sidewalks), and 13-21.1 (criminalizing resting or sleeping in public places).

⁵ ROH § 13-20.1.

⁶ ROH § 13-21.1.

forbid sidewalk obstructions⁷ and trespass in public places.⁸ As applied to houseless people who are merely engaged in daily life activities in public places, these laws, together with the Anti-Homeless Ordinances, are collectively referred to as the “Anti-Homeless Laws.”

6. The majority of these policies are rarely, if ever, enforced against housed individuals—even though they would squarely apply to a tourist napping on Waikiki Beach, a business person who has stopped to take a cell phone call in the middle of Fort Street Mall, or a hiker sitting on the sidewalk by the Koko Crater Railway trailhead. Instead, they are used to justify a campaign of criminalization, harassment, displacement, and property dispossession targeted exclusively at the houseless community. Over the past three years, each of the Plaintiffs have been issued citations for between 3 and 231 violations under the Anti-Homeless Laws, and several have been arrested multiple times.

7. Despite contrary recommendations from the U.S. Centers for Disease Control and Prevention (“CDC”), the City regularly conducts sweeps of houseless encampments (which the City refers to as “enforcement actions”). In a sweep, City police officers, accompanied by City utility and garbage trucks, descend on a houseless encampment, issue citations widely, check for warrants, make physical arrests, confiscate and discard personal belongings and materials used to create shelter, and evict houseless individuals from their makeshift residences.⁹ The property the City regularly seizes during sweeps is usually all that encampment residents own, including items that are required for health and safety: tents and other shelter materials, bedding, clothing,

⁷ Haw. Rev. Stat. (“HRS”) § 711-1105.

⁸ HRS §§ 708-814.5, 708-814.7, 708.815.

⁹ See Jessica Terrell, *Nowhere to Go: Lack of Housing and Staff Is Undercutting Efforts to Deal with Homelessness in Hawaii*, Civil Beat, <https://www.civilbeat.org/2023/03/nowhere-to-go-lack-of-housing-and-staff-is-undercutting-efforts-to-deal-with-homelessness-in-hawaii/> (March 13, 2023).

food, personal identification, bicycles, valuables, currency, keepsakes, sanitary products, lifesaving medications, and assistive devices for people with disabilities. Oftentimes, individuals are never able to recover their personal belongings, even when the seized property is supposed to be placed in temporary storage.

8. The City’s enforcement scheme lacks consideration for the basic human needs of houseless people, including the fact that many houseless individuals in Honolulu are survivors of trauma—including the trauma often experienced during police encounters. The City’s encampment sweeps in particular, and its enforcement of the Anti-Homeless Laws generally, inflict disproportionate harm on individuals with trauma-related mental health conditions.

9. The City’s enforcement of criminal laws that prohibit sleeping, sitting, lying, having possessions, or engaging in other universal and unavoidable conduct on public property violates the Hawai‘i Constitution’s Cruel or Unusual Punishment Clause as applied to houseless people who have no access to housing or adequate indoor shelter.¹⁰ Enforcement of the Anti-Homeless Laws punishes people for their houseless status rather than voluntary conduct. In addition, the City violates Plaintiffs’ right to free movement in violation of the principles of substantive due process, and puts them at increased risk of danger in violation of due process as guaranteed by the Hawai‘i Constitution.

10. On August 14, 2020, Plaintiffs sent a letter to the City offering to resolve this dispute through structured negotiations, rather than litigation. The City eventually agreed, and from that time until approximately May 2023, the Parties participated in periodic conference calls in which they discussed issues related to houselessness in Honolulu. Although the City was

¹⁰ See *State v. Guidry*, 105 Haw. 222, 237 (2004). See also *Martin v. Boise*, 920 F.3d 584, 615-18 (9th Cir. 2019); *Blake v. City of Grants Pass*, No. 1:18-CV-01823-CL, 2020 WL 4209227, at *6–10 (D. Or. July 22, 2020); *Warren v. City of Chico*, No. 2:21-cv-00640-MCE-DMC, 2021 WL 2894648, at *2–3 (E.D. Cal. July 8, 2021).

initially willing to share information, it ultimately refused to change its unconstitutional policies and practices, and Plaintiffs were forced to file this lawsuit after providing the City with 30 days' notice that Plaintiffs intended to initiate this litigation.

11. The City's unconstitutional anti-homeless campaign violates the rights of houseless individuals throughout Honolulu, including many who would have great difficulty bringing their own lawsuit due to dire poverty or severe mental illness. Therefore, Plaintiffs bring this action on behalf of all persons living in the City and County of Honolulu who are or will be involuntarily "homeless," as defined by federal statute,¹¹ and who are or will be "unsheltered," as defined by federal regulation,¹² at any time prior to final judgment in this matter. Plaintiffs seek declaratory and injunctive relief.

II. JURISDICTION AND VENUE

12. This court has jurisdiction over the claims in this action pursuant to Hawai'i Revised Statutes § 603-21.5 and § 632-1, and Article I, sections 5 and 12 of the Hawai'i Constitution.

13. Venue is proper in this court pursuant to Hawai'i Revised Statutes § 603-36 because the claims for relief arose within, and the defendant is domiciled in, this circuit.

III. PARTIES

14. Plaintiff GINA MAHELONA is and was at all times relevant to this Complaint a houseless person in the City and County of Honolulu.

15. Plaintiff DESMOND CANITE is and was at all times relevant to this Complaint a houseless person in the City and County of Honolulu.

¹¹ 42 U.S.C. § 11302(a).

¹² 24 C.F.R. § 578.7(c)(2)(i).

16. Plaintiff JARED CASTRO is and was at all times relevant to this Complaint a houseless person in the City and County of Honolulu.

17. Plaintiff FAIMAFILI TUPUOLA is and was at all times relevant to this Complaint an individual experiencing houselessness in the City and County of Honolulu.

18. Plaintiff MICHAEL DAVID BRYAN is and was at all times relevant to this Complaint a houseless person in the City and County of Honolulu.

19. Defendant CITY AND COUNTY OF HONOLULU (the “City”) is a municipality established by the laws of the State of Hawai‘i. The City is a state actor and therefore bound to uphold the guarantees of the Hawai‘i Constitution.

IV. FACTUAL ALLEGATIONS

A. **According to Official Counts, There Is Insufficient Shelter for Honolulu’s Houseless Community.**

20. Partners in Care is a coalition of representatives from various Honolulu-based organizations that (among other responsibilities) collects statistics on houselessness in Honolulu in accordance with regulations of the United States Department of Housing and Urban Development (“HUD”).¹³ Specifically, Partners in Care is required to conduct a biennial “Point-in-Time Count” of houseless individuals living in Honolulu on a particular night of the year, usually in January.¹⁴ HUD requires a count of houseless individuals who are unsheltered, meaning that they are spending the night in “a place not designed or ordinarily used as a regular sleeping accommodation for humans.”¹⁵ It also requires a count of individuals who are sheltered, meaning that they are staying at a shelter for houseless people on the night the Point-

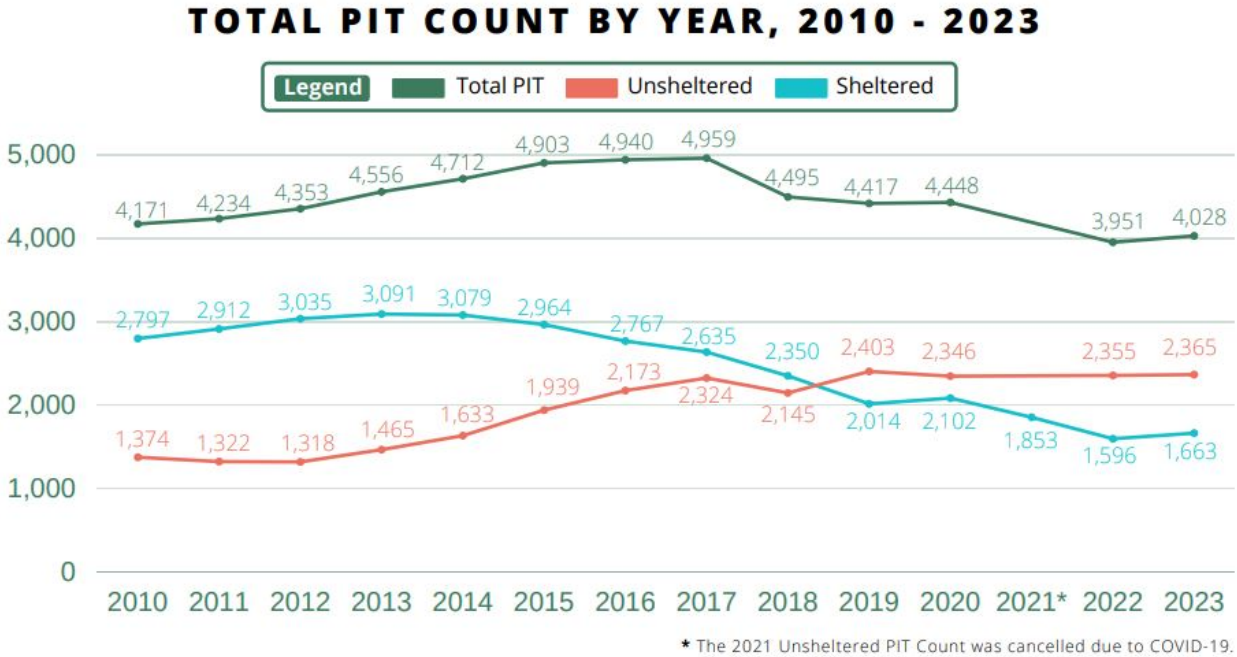
¹³ See 24 C.F.R. §§ 578.5, 578.7.

¹⁴ 24 C.F.R. § 578.7(c)(2).

¹⁵ 24 C.F.R. § 578.7(c)(2)(i).

in-Time Count takes place.¹⁶ Courts generally regard the Point-in-Time Count as official and accurate for purposes of understanding the approximate houseless population in a jurisdiction.¹⁷

21. The Point-in-Time Count paints a bleak picture of houselessness in Honolulu. On January 23, 2023, Partners in Care counted 4,028 houseless individuals in Honolulu, 2,365 of whom were unsheltered (59%).¹⁸ As the below graphic from the Point-in-Time Count report shows¹⁹, unsheltered individuals were once a small minority of the overall houseless population in Honolulu but, for the last several years, have increasingly outnumbered sheltered individuals:



¹⁶ 24 C.F.R. § 578.7(c)(2)(ii)

¹⁷ See, e.g., *Martin*, 920 F.3d at 604.

¹⁸ See Partners in Care, *2023 Point in Time Count* at 4 (May 11, 2023), https://partnersincareoahu-my.sharepoint.com/:b:/g/personal/pic_partnersincareoahu_org/EdZzFks4ZSpBvXh8FXXLwi8BKQclzizC2qAgARpSo7gHiw?e=88zhLo.

¹⁹ *Id.*

22. As part of the Point-in-Time Count, Partners in Care collects certain additional demographic information about the houseless community. Its data show that Native Hawaiians are highly overrepresented in the houseless population of Honolulu, making up between 28% and 37% of the houseless population, compared with 19% of the overall population of Oahu.²⁰

23. Partners in Care also publishes information regarding the number of shelter vacancies on almost a daily basis.²¹ According to these counts, the number of shelter beds available each day to people who are not veterans for the entire island of Oahu has generally fluctuated between about 20 and 50 beds for the past several years. This number is grossly insufficient for Oahu's estimated daily population of 2,365 unsheltered people. In other words, on any given night, Oahu's shelter system has enough vacancies to serve only about 1-2% of the unsheltered population.

24. Even if temporary indoor shelter spaces were sufficiently available, they would not be realistically accessible to all of the City's unsheltered population. Even when a shelter bed is technically open, an individual must navigate multiple practical and administrative barriers to obtain it. Individuals must go through a screening process that may require them to provide proof of a tuberculosis test, social security card, birth certificate, and photo identification. Many houseless individuals do not have practical access to these items, and many have lost them when they were seized during encampment sweeps.

25. Additionally, many of the shelters in Honolulu charge fees, generally ranging from \$60 to over \$200 per month. Although some shelters allow residents to perform manual

²⁰ *Id.* at 7. Native Hawaiians made up 28% of the total surveyed population, but 37% of those surveyed whose race or ethnicity is known.

²¹ See Partners in Care, Vacancy Grid, <https://www.partnersincareoahu.org/shelter-vacancies> (showing how many beds are available in houseless shelters, and how many of which are available only to veterans).

tasks or community service in lieu of paying fees, these tasks are often difficult or impossible for some people with disabilities. The shelters generally do not provide reasonable accommodations to people with disabilities who struggle with chore requirements, rules, or other policies, which means that it is even more difficult for houseless people who are disabled to access shelters. In addition, many of the shelters also have strict schedules and rules of conduct that further restrict access. Shelters limit the number of personal possessions residents can bring, and pets, which often offer emotional support to people who have experienced trauma, are excluded.

26. For people with certain types of disabilities, there is little to no suitable shelter space anywhere on the island. In order to gain admission to most local shelters (including all of those that occasionally have vacancies), a person must demonstrate that they can perform all of the six activities of daily living without assistance: bathing, dressing, eating, transferring, toileting, and continence. In addition, if an individual uses a wheelchair for mobility, they are required to demonstrate that they can get out of the wheelchair, lay on the ground, then get up and get into a bed independently. If someone is not capable of performing these tasks without assistance, they are denied admission to the shelter.

27. Alone and in combination, these restrictions make Honolulu's shelters practically inaccessible to many houseless people, including Plaintiffs.

28. Neither the City nor the State of Hawai'i licenses or monitors the conditions in houseless shelters, which are often poor. Many shelters are overcrowded and unclean, and abuse and harassment (either from staff or other residents) are common. As a result, even in the rare event that space at a shelter is available, many houseless individuals simply do not feel safe there.

29. Moreover, shelters are often inappropriate settings for individuals who have experienced trauma, who are overrepresented in the houseless community. Trauma survivors are more likely to become houseless, and houselessness itself is often traumatic. Trauma is widely recognized as a causal factor in depressive, personality, dissociative, panic and anxiety, psychotic, and substance use disorders. Houseless women are highly likely to have at some point experienced severe physical and/or sexual trauma.²²

30. The City's enforcement of the Anti-Homeless Laws falls especially hard on people who have experienced trauma because enforcement tends to exacerbate symptoms, disrupt recovery, and interfere with access to treatment. Examples of these disproportionate harms include, but are not limited to: violating individuals' privacy, personal boundaries, and sense of safety; needlessly forcing them into situations that trigger mental health symptoms and compound their trauma; interfering with the ability of service providers and informal support networks to maintain contact with the individuals; and depriving them of adequate sleep and rest. Frequent encounters with police have been shown to cause trauma and to exacerbate symptoms of existing mental health conditions.²³

31. Shelters also offer only temporary accommodation with varying rules regarding how long an individual is allowed to stay. Moreover, even those who are currently residing at a shelter generally must leave during the day, when most shelters are closed. Thus, even if

²² See Maureen A. Hayes, Megan Zonneville, & Ellen Bassuk, *The Service and Housing Interventions for Families in Transition Final Report*, 41-42 (2010), https://www.air.org/sites/default/files/SHIFT_Service_and_Housing_Interventions_for_Families_in_Transition_final_report.pdf.

²³ See J.L. Hirschtick et al., *Persistent and aggressive interactions with the police: potential mental health implications*, 29 *Epidemiology and Psychiatric Sciences* 1 (2020); Abigail A. Sewell et al., *Living under surveillance: Gender, psychological distress, and stop-question-and-frisk policing in New York City*, 159 *Social Science & Medicine* 1 (2016).

someone is able to access and fully utilize a shelter bed, that person might still be subject to the Anti-Homeless Laws during the times when shelters are not open or accessible.

32. While the City itself does not operate any shelters, it operates a program called Homeless Outreach and Navigation for Unsheltered Persons (“HONU”). HONU is essentially a City-endorsed outdoor houseless encampment run by police officers. Because it is an encampment rather than a facility, it does not meet HUD’s definition of “emergency shelter.” *See* 24 C.F.R. § 576.2. Therefore, vacancies at HONU do not count toward the total number of available shelter beds. HONU residents must follow strict rules making it unsuitable for many houseless individuals—for instance, residents must comply with strict curfews, are only allowed to leave the encampment once per day, and are only permitted to keep a small number of personal possessions. Moreover, like the shelters, the City requires people to prove that they can perform all of their activities of daily living independently and transfer from a wheelchair to the ground to a bed in order to gain admission to HONU. Even if living at HONU were a suitable option for some houseless people, like the shelters, it has limited capacity of 60 to 100 participants. HONU comes nowhere close to accommodating the thousands of individuals who are unsheltered on any given night in Honolulu.

33. Accordingly, Plaintiffs, among thousands of other houseless people in Honolulu, do not have practical access to shelter and have no choice but to live in outdoor public places.

B. The City Has Enacted a Series of Laws that Target and Punish Houseless People for Living in Outdoor Public Space.

34. The City has long treated its houseless community as an embarrassment to be hidden rather than a constituency to be served. As the unsheltered population has grown, the City has taken increasingly severe measures to conceal houseless individuals from public view, no matter the cost to these individuals or to the City’s budget.

35. Through its web of Anti-Homeless Ordinances and targeted enforcement of the Anti-Homeless Laws, the City systematically criminalizes and otherwise penalizes houseless people for sitting, lying down, sleeping, maintaining personal property, and/or being merely present in public space—even though these individuals have no other realistic or practical alternatives.

36. *Illegal to sit or lie down.* The City’s punitive approach to houselessness is aptly illustrated by its gradually expanding prohibitions on sitting or lying in public places (“Sit/Lie Ordinances”). The Sit/Lie Ordinances provide that “[n]o person shall sit or lie on a public sidewalk, or on a tarp, towel, sheet, blanket, sleeping bag, bedding, planter, chair, bench, or any other object or material placed upon a public sidewalk” in specific areas of Honolulu for large portions of the day.²⁴

37. The first such ordinance (“Waikiki Ban”), enacted in 2014, pertained specifically to the Waikiki District, which caters to tourists.²⁵ The City has since expanded the reach of its Sit/Lie Ordinances to cover numerous additional areas of Honolulu, including areas that are not frequented by tourists.²⁶ The Waikiki Ban applies twenty-four hours a day, and the others are effective from 5:00 a.m. until late evening (generally 11:00 p.m., but for a few areas 7:00 p.m. or 10:00 p.m.).

38. The Sit/Lie Ordinances cover *all* streets in downtown Honolulu and streets in 16 other neighborhoods in Honolulu’s urban core. More significantly, they cover the areas of Honolulu containing the most important government buildings, along with medical services,

²⁴ ROH §§ 13-15.1(a), 13-15A.2(a), 13-15B.1(a).

²⁵ See ROH § 13-15.1.

²⁶ See Adam Nagourney, *Aloha and Welcome to Paradise. Unless You’re Homeless.*, New York Times (June 3, 2016), <https://www.nytimes.com/2016/06/04/us/hawaii-homeless-criminal-law-sitting-ban.html>.

grocery stores, and other amenities. By prohibiting houseless people from resting on the sidewalk during the day in those areas, the Sit/Lie Ordinances make it harder for houseless individuals to access those crucial services.

39. The Sit/Lie Ordinances provide exceptions that cover most of the reasons why a housed person would sit or lie on a public sidewalk—for instance, to view a festival or to wait in line in front of a business. While all people need rest, housed people can generally rest at home, and individuals with the means to patronize restaurants, cafes, and other businesses can often rest in those places. By contrast, houseless people, who typically do not have the means to patronize businesses (and may be forced out of or barred from entering businesses due to their houseless status), generally have no choice but to rest in public places. The Sit/Lie Ordinances therefore severely limit where houseless individuals can travel throughout the day without risking punishment if they need to rest.

40. In discussions of the Sit/Lie Ordinances at City Council meetings, Councilmembers openly recognized that the Sit/Lie Ordinances target the houseless community and that their purpose is to keep houseless individuals like Plaintiffs out of tourist and commercial areas, so that they are out of public view.

41. ***Illegal to sleep in public parks.*** Section 10 of the ROH sets out rules and regulations for Honolulu’s public parks²⁷ and provides that, “[w]ithin the limits of any public park,” it is unlawful for any person to:

- a. “Enter or remain in any public park during the night hours that the park is closed, provided that signs are posted indicating the hours that the park is closed”; or

²⁷ The term “public parks” covers a wide variety of public places. It is defined as “any park, park roadway, playground, athletic field, beach, beach right-of-way, tennis court, golf course, swimming pool, or other recreation area or facility under the control, maintenance and management of the department of parks and recreation.” ROH § 10-1.1.

b. “Camp at any park not designated as a campground.”²⁸

42. Camping is defined as “the use and occupation of a public park as a temporary or permanent dwelling place or sleeping place between the hours of 10:00 p.m. and 5:00 a.m.” Thus, an individual can be punished simply for sleeping in broadly defined “public parks,” even without a tent.²⁹

43. ROH section 10-1.3(a)(2) forbids camping in parks designated as campgrounds without a permit. There are only 14 City parks (and 4 state parks) that have designated campgrounds. The City park nearest downtown Honolulu that allows camping is about 10 miles away, and the State park nearest downtown Honolulu that allows camping is about 5 miles away from downtown. Moreover, reservations are allowed only for three- or five-day periods, and no parks allow camping on Wednesday or Thursdays. Permits also cost between about \$10-20 per night per campsite.³⁰ Thus, houseless individuals in Honolulu are prohibited from camping in public parks without paying for costly, time-limited permits and moving away from downtown Honolulu, where most of Plaintiffs’ social and medical service providers are located.

44. The City’s laws not only prohibit sleeping in broad swaths of the City, but they also restrict houseless people’s ability to stay warm, dry, or even minimally sheltered while sleeping. Section 13 of the ROH governs streets, sidewalks,³¹ malls, and other public places.

²⁸ ROH §§ 10-1.2(a)(12) & 10-1.2(a)(13).

²⁹ ROH § 10-1.1.

³⁰ See City and County of Honolulu, *Camping Information*, <http://www.honolulu.gov/parks/beach-parks/camping.html#:~:text=Permits%20may%20be%20obtained%20online,Monday%20in%20the%20Permits%20Office>.

³¹ “Sidewalks” are defined broadly as “that portion of a street between a curb line or the pavement of a roadway, and the adjacent private or public property line, whichever the case may be, intended for the use of pedestrians, including any setback areas acquired by the city for road widening purposes.” ROH § 13-1.1.

ROH section 13-16 addresses so-called “sidewalk-nuisances.” A “sidewalk-nuisance” is defined as “any object or collection of objects constructed, erected, installed, maintained, kept, or operated on or over any sidewalk, including but not limited to structures, stalls, stands, tents, furniture, and containers, and any of their contents or attachments.”³² Sidewalk-nuisances are subject to immediate removal unless they conform with strict requirements, including a size limit that is smaller than any tent or sleeping mat.³³ As a result, even in the areas not covered by the Sit/Lie Ordinances described above, houseless people in Honolulu cannot lawfully sleep on anything but the bare ground on the City’s broadly defined public sidewalks.

45. ***Illegal to sleep or be present in public spaces.*** In 2018, the City Council passed, and then-Mayor Kirk Caldwell signed into law, Bills 51 and 52, which are now respectively codified as ROH section 13-20.1 and ROH section 13-21.1. These overbroad and vague measures further give law enforcement officers wide-ranging power to penalize and/or forcibly displace houseless individuals simply for sleeping or being present in public spaces.

46. ROH section 13-20.1(a) provides:

No person shall create, cause, or maintain an obstruction on a public sidewalk that interferes, impedes, and/or prevents the full, free, and unobstructed passage of pedestrians upon public sidewalks or interferes with the normal flow of pedestrian traffic upon a public sidewalk during the hours from 6:00 a.m. to 10:00 p.m.

ROH section 13-20.1 provides exceptions where individuals obstruct a sidewalk for specific reasons (such as to watch a parade or wait in line in front of a business), but it contains no geographical limits. It defines “obstruct” as “[t]o block up, stop up, or close up, or place an

³² ROH § 13-16.2.

³³ ROH § 13-16.6(1).

obstacle in or fill with obstacles or impediments that interfere with the passing of a pedestrian or to be or come in the way of a pedestrian’s free use of the sidewalk.”³⁴

47. ROH section 13-20.1 is punishable by a \$100 fine.³⁵ It empowers City police officers to remove houseless people for being present on sidewalks, even when there is no evidence of obstruction.

48. ROH section 13-21.1 makes it unlawful to “lodge”—defined as either to sleep or “to come to rest and refuse to vacate the area when requested [by a police officer]”—in any “public place,” which is defined as any place open to the general public.³⁶ It is punishable by a fine of up to \$1,000 or up to thirty days’ imprisonment.³⁷ It has no geographic or temporal limits, and would apply to any person sleeping or resting in any publicly accessible place within the City’s jurisdiction.

49. ROH section 13-21.1 provides that it can only be enforced where: “(1) Shelter space is readily available; (2) An offer has been made to transport the person to the available shelter; and (3) The officer requests or orders the person to refrain from the alleged violation”³⁸ Importantly, however, ROH section 13-21.1 does not define “readily available” or limit geographically where such shelter may be available. That a shelter might list open beds does not mean that a houseless individual is able to access one. A high-barrier screening process for admission is required, and a shelter’s particular conditions may make it unsuitable for that individual. ROH section 13-21.1 does not take these realities into account. Instead, it assumes

³⁴ ROH § 13-20.1(d).

³⁵ ROH § 13-20.2.

³⁶ ROH § 13-21.1; ROH § 13-1.1.

³⁷ ROH § 13-21.2.

³⁸ ROH § 13-21.1(b).

that a person can simply show up at a shelter that has a vacancy and gain immediate admission. Additionally, ROH section 13-21.1 does not prohibit enforcement during daytime hours when most shelters are closed.

50. ROH section 13-21.1 provides further that:

A person may be cited or arrested for a violation of this section if the person fails to comply after receiving the oral request or order and refuses to go to or to be transported to the available shelter after being given one hour to relocate from the sidewalk or other public place.³⁹

Thus, ROH section 13-21.1 empowers a law enforcement officer who sees an individual resting or sleeping in any public place at any time, and who believes—whether accurately or not—that there is space available at a temporary shelter, to require the individual to relocate within one hour, or else be cited, arrested, or forcibly transported to the shelter.

51. ROH sections 13-20.1 and 13-21.1 are merely the latest tools given to the police to cite, arrest, and otherwise harass anyone they perceive to be houseless in a public space anywhere on Oahu. As the preamble to the first version of ROH section 13-21.1 readily admitted, the law is part of an effort to “gently coerce” houseless people into (insufficient, inadequate, unsafe, and otherwise unavailable) shelter.⁴⁰ As part of that same effort, the City has effectively criminalized houseless people’s public presence in the entire City.

52. While Plaintiffs have not received any citations under these laws, citation and arrest are not the only punishments available under ROH sections 13-20.1 and 13-21.1. Rather, these ordinances enable police officers to forcibly displace houseless people simply for being present in any public place while houseless. Officers have forcibly displaced and continue to

³⁹ ROH § 13-21.1.1(c).

⁴⁰ See Bill 52, *Relating to Illegal Lodging* (July 5, 2008), <http://www4.honolulu.gov/docushare/dsweb/Get/Document-206774/52.PDF>.

forcibly displace Plaintiffs and other houseless individuals under the authority of ROH sections 13-20-1 and 13-21.1 and the other Anti-Homeless Laws. Plaintiffs also remain at risk of citation or arrest under ROH sections 13-20.1 and 13-21.1 in the future.

53. ***Illegal to maintain personal property.*** ROH section 13-19 forbids storing personal property in any public place in Honolulu, including but not limited to “any street, sidewalk, replacement sidewalk, medial strip, space, ground, mall, building, structure, public park, and any other property of the City.”⁴¹ Under this section, personal belongings that are found in public are subject to seizure if not removed within twenty-four hours of service of written notice, which in practice often does not occur.⁴² Houseless people generally have no choice but to keep their personal possessions with them in public places. Accordingly, all of their possessions, including those necessary for day-to-day survival, are subject to seizure and permanent deprivation.

54. ROH section 13-8.1 also forbids establishing, constructing, maintaining, keeping, or operating “a newsstand, public telephone enclosure, curbside teller, freight elevator, freight chute or any other structure or appliance on, above or below a public sidewalk or mall without a permit.”⁴³ Under this section, houseless people are regularly cited for anything deemed an “unpermitted or illegal structure,” whether a tarp, umbrella, tent, or anything used to protect themselves from the elements.

55. Several of the Anti-Homeless Ordinances are punishable by arrest and imprisonment, and others by fine.⁴⁴ Enforcement of the Anti-Homeless Ordinances is targeted at

⁴¹ ROH §§ 13-19.2, 13-19.3(a).

⁴² ROH § 13.19.3(b).

⁴³ ROH § 13-8.1.

⁴⁴ See ROH §§ 10-1.6(d), 13-15.2 (citing HRS §§ 706-640, 706-663), 13-15A.3 (same), 13-

houseless people, and, as described further below, Plaintiffs have all received numerous citations under the Anti-Homeless Ordinances for conduct that they had no option but to perform in outdoor public space.

56. Beyond the City’s enforcement of its Anti-Homeless Ordinances, the City’s enforcement of state laws places additional burdens on houseless people’s ability to lawfully rest, maintain property, or be present in public space. Hawai‘i law forbids knowingly or recklessly “[o]bstruct[ing] any highway or public passage” or “[p]rovid[ing] less than thirty-six inches of space for passage on any paved public sidewalk.”⁴⁵ Although it did not enact this statute, the City enforces it within its jurisdictional boundaries.

57. Hawai‘i law also criminalizes trespassing on public and private property alike. Plaintiffs do not challenge the City’s enforcement of the State’s trespass laws as they pertain to privately owned or restricted-access areas. However, two state statutes pertain specifically to places that are accessible to the general public, such as public parks and recreation areas,⁴⁶ and the crime of simple trespass could likewise apply to publicly accessible places.⁴⁷ Under these laws, a houseless person can be cited or arrested for staying in a park after it closes or after being instructed to leave by a police officer—even if that individual has nowhere else to go.

58. Just as with the Anti-Homeless Ordinances, the City selectively enforces the state laws regarding sidewalk obstructions and trespass in public places against Plaintiffs and other houseless people, with the purpose of excluding them from public spaces.

15B.2 (same), 13-21.1.2 (same), 13-8.11, 13-20.2.

⁴⁵ HRS § 711-1105.

⁴⁶ HRS §§ 708-814.5, 708-814.7.

⁴⁷ HRS §§ 708-815.

59. The state’s laws further restrict the locations where houseless people can lawfully rest so that, in effect, there is virtually no place on the island they can lawfully be. On state-owned land on Oahu, camping is prohibited except at specific designated campgrounds, and there only with a permit.⁴⁸ Permits are \$20 to \$30 per night, limited to five nights at a time, and not available on Wednesday or Thursday nights.⁴⁹ Punishments for unauthorized camping on state land can include fines between \$50 and \$500, banishment from the park, and/or up to thirty days’ imprisonment.⁵⁰ Trespass on private property is punishable by a fine ranging from \$100 to \$2,000 and/or imprisonment for up to one year.⁵¹ Nor may houseless individuals sleep at the federally owned military bases⁵² or National Wildlife Refuges.⁵³ Plaintiffs do not challenge the laws cited in this paragraph but point them out to further illustrate the severe restrictions on places where houseless individuals are permitted to be.

C. Along with Tickets and Arrests, the City Enforces the Anti-Homeless Laws by Displacing Encampments and Destroying Houseless People’s Property.

60. Although the City can enforce the Anti-Homeless Laws with tickets and arrests at any time—and in fact, does so on a daily basis—it also enforces its policies through a procedure

⁴⁸ See Haw. Dep’t of Nat. Resources, Div. of State Parks, Parks – Island of O’ahu, <https://dlnr.hawaii.gov/dsp/parks/oahu/> (listing Hawai‘i State Parks where camping is available with a permit); Haw. Admin. Rules § 13-146-3; Haw. Admin. Rules § 15-210-13(a)(13) (prohibiting camping at all four parks in downtown Honolulu owned by Hawai‘i Community Development Authority (“HCDA”)).

⁴⁹ See Haw. Dep’t of Nat. Resources, Div. of State Parks, Camping & Lodging – O’ahu, <https://dlnr.hawaii.gov/dsp/camping-lodging/oahu/>.

⁵⁰ See HRS § 708-814.5 (defining criminal trespass onto public parks and recreational grounds as a petty misdemeanor); Haw. Admin. Rules § 15-210-4(d) (prescribing penalties for violations in HCDA-owned parks and land).

⁵¹ See HRS §§ 708-813 (criminal trespass in the first degree), 708-814 (criminal trespass in the second degree), 708-815 (simple trespass).

⁵² Unlawful entry onto a United States military base is punishable by fine or up to six months’ imprisonment. 18 U.S.C. § 1382.

⁵³ See 50 C.F.R. §§ 26:21, 26:34.

known as an encampment sweep. A sweep is essentially a mass eviction of an encampment from its location, accompanied by seizure and, often, permanent deprivation and/or destruction of houseless people's property. The Anti-Homeless Ordinances require the City to provide only twenty-four hours' notice before each sweep. However, the City only effects notice via its website, which many houseless people cannot access because they do not have a smartphone or other internet connection. Sometimes, the City fails even to post notice on its website.

61. During a sweep, City officials descend on an area of the City where unsheltered individuals are known or reported to be living. They require unsheltered people to remove what personal property they can physically move under strict time constraints, seize people's remaining personal belongings, issue citations widely under the Anti-Homeless Laws, and arrest individuals for whom they have warrants. A sweep effectively clears the area of houseless individuals.

62. Although the City's policies provide for storage of certain belongings in City facilities, in practice, individuals are often unable to recover stored property because the City's sole storage facility is in a remote location that is far from the Honolulu urban core and is therefore practically inaccessible to most houseless people. Additionally, the City often fails to store personal property and instead discards it directly into industrial garbage trucks or dumpsters.

63. Sweeps cause tremendous emotional, psychological, material, and physical harms to houseless people. Frequently, the City seizes or destroys property that is essential for life and health, including: tents, tarps, and makeshift shelters; sleeping bags, blankets, and pillows; food, water bottles, utensils, and dishes; clothing and valuables; medications and medical or disability-related equipment; and personal identification documents. Sweeps greatly exacerbate the

instability that houseless people already face, forcing them to constantly relocate and hampering their efforts to secure social services and long-term housing. It disrupts the close-knit communities and *hānai* families that houseless people often form for mutual protection and survival. Many houseless individuals in Honolulu, including Plaintiff Castro, have lost items during sweeps, such as identification and Social Security cards, that they later needed to obtain shelter, employment, or government benefits.

64. Sweeps happen alongside constant enforcement of the Anti-Homeless Laws by the Honolulu Police Department. Thus, houseless people can be swept in the morning, relocate to a new place not scheduled for a sweep later that day, and then be cited in the afternoon and again at night for the sole reason that they exist and have no other place to lawfully be.

D. Plaintiffs' Experiences.

65. Each of the Plaintiffs has experienced houselessness for several years, has little to no income, cannot afford housing or access adequate indoor shelter, and must rely on public property, such as sidewalks and public parks, to rest and maintain personal property. Each has been harmed by the City's policies and practices described above.

66. ***Gina Mahelona.*** Plaintiff Gina Mahelona is a 51-year-old woman of Hawaiian and Puerto Rican descent. She was born and raised in Kaneohe. She has been involuntarily houseless for about eight years. Plaintiff Mahelona lost her home in 2015 when her mother, with whom Plaintiff Mahelona lived in subsidized housing, passed away. Plaintiff Mahelona is currently unemployed, but she has worked as a cashier and in customer service.

67. Plaintiff Mahelona currently lives under the bridge across Kapiolani Boulevard from Kaimuki High School. This location is not fit for human habitation: Plaintiff Mahelona sleeps, cooks, and eats within a few feet of a dirty waterway that sometimes floods. She has no

access to clean running water and nowhere to shower or use the restroom. In addition, by virtue of her living area being out of public view, Plaintiff Mahelona is more vulnerable to violent crime and theft. However, the City has coerced Plaintiff Mahelona to live under the bridge by relentlessly targeting her through sweeps, citations, arrests, harassment, and displacement when she tried to live elsewhere.

68. In the past three years, Plaintiff Mahelona has received citations for about 122 violations related to her houseless status. Most of those were incurred during the first half of 2021, when she lived in Crane Community Park. Nearly all the citations that the City has issued Plaintiff Mahelona were for simply existing in a public place when she had no other option: she has most often been cited for alleged violations of the park closure rules and rules posted in parks, the sidewalk obstruction laws, and the sit/lie bans. She has also been arrested several times on charges related to her houseless status, often based on a previous citation for which she missed a court date. Plaintiff Mahelona has received citations and been arrested on violations related to her houseless status since moving under the bridge, but on a less frequent basis than when she lived in Crane Community Park.

69. Plaintiff Mahelona has been subject to many encampment sweeps conducted by the City, particularly when she lived in Crane Community Park. The City has seized many of her belongings, including an umbrella, chairs, a bicycle, clothes, dog food, work clothes, food items, bedding, body soap, shampoo, and dish soap.

70. Plaintiff Mahelona has never succeeded in getting admitted to a shelter that is suitable for her circumstances. In particular, she lives with her boyfriend, with whom she has three dogs who are important for her mental and emotional well-being. Most of the shelters would not allow Plaintiff Mahelona, her boyfriend, and her dogs to all stay together. Moreover,

Plaintiff Mahelona and her boyfriend lack reliable transportation and therefore need to stay close to her boyfriend's job, which is their only source of income.

71. ***Desmond Canite.*** Plaintiff Desmond Canite is a 60-year-old man who grew up in Aiea and lived there for most of his life. He has been involuntarily houseless for about six years. Plaintiff Canite has acute cellulitis in both legs that causes severe, chronic pain and swelling and prevents him from standing for longer than about twenty minutes at a time.

72. Currently, Plaintiff Canite lives on the shoreline of Sand Island. He would strongly prefer to stay closer to town, where he would be closer to his medical providers, other service providers, grocery stores, businesses, friends, and community. However, when he lived closer to town, the sweeps, citations, arrests, displacement, and harassment he experienced at the hands of the City were relentless and unbearable. The City left him no meaningful choice but to move somewhere remote—out of the sight of tourists and most of Honolulu's housed residents—even though it makes it difficult for him to get to his medical appointments and maintain connections with his community.

73. In the past three years, Plaintiff Canite has received citations for about 127 violations related to his houseless status, including violations of HRS section 711-1105 (obstructing), ROH section 13-15A.2 (sit/lie ban outside of Waikiki), and ROH section 29-8.1 (structures on, above, or below sidewalk). Most of those were incurred from 2020 to 2021, when he lived in town. When Plaintiff Canite received these citations, he was engaged in innocent acts of survival in public places out of necessity. He has also been arrested several times on charges related to his houseless status.

74. Even though Plaintiff Canite is subject to less harassment and criminalization now that he lives on Sand Island, the City still targets him when he ventures out. For instance, last

August, he was visiting a houseless friend who was staying in Kapahulu and received a citation for illegal camping from an officer who recognized him as a houseless person—even though he was only visiting a friend there, not camping.

75. From about 2017 through the end of 2021, Plaintiff Canite lived in various locations in urban Honolulu, including at Crane Community Park. There, he was subject to the City’s regular surveillance, harassment, and enforcement of the Anti-Homeless Laws, including frequent sweeps. He has lost many personal belongings that the City seized from him during sweeps, including clothing, shoes, food, bedding, and medical items he needed to treat his cellulitis like antibiotics, gauze, and bandages. Repeatedly losing medical supplies made it difficult to manage his condition and prevent further infection.

76. Around the end of 2021, Plaintiff Canite obtained a spot at Hale Mauiola, a shelter consisting of converted shipping containers on Sand Island. Initially, Plaintiff Canite was pleased to be living at Hale Mauiola and hopeful that the case workers there could help him get into long-term housing. However, he was required to pay \$150 per month in rent, which eventually became impossible. Plaintiff Canite cannot work due to his cellulitis, but he has also been denied disability benefits, so he has no income. When he could no longer pay rent, Plaintiff Canite was kicked out of Hale Mauiola and resumed living outside at Sand Island.

77. **Jared “Spider” Castro.** Plaintiff Jared “Spider” Castro is 54 years old and has been involuntarily houseless since around 1998 or 1999. He lives in the area of Mo‘ili‘ili Neighborhood Park and has also stayed in other areas while houseless, including near the Ala Wai, Ala Moana, and the Convention Center. He has a job delivering newspapers for the Star Advertiser in the morning, but he does not make enough money to afford housing in Honolulu.

Formerly, he worked as a plumber and mechanic, but the tools he needed for these jobs were seized by the City during an encampment sweep.

78. In the past three years, Plaintiff Castro has received citations for about 231 violations related to his houseless status, including 23 that were issued during the past six months. Among other citations, Plaintiff Castro has been cited for violating ROH section 10-1.2 (park rules), ROH section 13-19 (property in any public place), and ROH section 7-4.2 (stray dog), merely for owning two small dogs that live unsheltered with Plaintiff Castro. When Plaintiff Castro received these citations, he was engaged in innocent acts of survival in public places.

79. Until last year, Plaintiff Castro was in a long-term romantic and life partnership with Georgette Preston, who was also houseless. Ms. Preston had a mobility disability and serious medical conditions, including diabetes and infections on her legs. She used a scooter for mobility. Ms. Preston died in August 2022 while in custody at Oahu Community Correctional Center.

80. Plaintiff Castro has been swept countless times while he has been houseless. Currently, the City conducts sweeps of the Mo‘ili‘ili Neighborhood Park where he lives once or twice per week. Plaintiff Castro has had innumerable personal possessions seized by the City that he was never able to recover, including the bicycle that he was using to deliver newspapers, the tools that he once used for plumber and mechanic jobs, prescription and over-the-counter medications, identification documents, cookware, clothes, a tent, bedding, and blankets. Once, when Ms. Preston was still alive, the City seized Ms. Preston’s scooter that she used for mobility during a sweep. Plaintiff Castro was present on that occasion and pleaded with City staff to

leave the scooter, but they took it anyway, leaving Ms. Preston without options for independent mobility.

81. Plaintiff Castro often has no notice of sweeps, because even when the City posts notice on its website, Plaintiff Castro frequently does not see or hear about it because he and his community lack consistent access to the internet.

82. For numerous reasons, it is virtually impossible for Plaintiff Castro to gain admission to a shelter. First, when Ms. Preston was still alive, she and Plaintiff Castro could not stay in a shelter together because the shelters would not accommodate her mobility disability. Second, Plaintiff Castro has dogs, which provide him with security and emotional comfort, but which he is not permitted to bring with him to a shelter. Third, the shelters enforce strict curfews that conflict with his work schedule. Finally, Plaintiff Castro lacks certain personal identification documents that are generally required for admission to a shelter, because the City confiscated his identification documents during sweeps. For similar reasons, staying at HONU has not been a viable option for him either: HONU also has strict curfews, does not allow pets, requires identification documents, and does not accommodate people with certain mobility disabilities.

83. ***Faimafili “Fili” Tupuola.*** Plaintiff Faimafili “Fili” Tupuola is a 41-year old woman of Samoan descent who grew up on Oahu. She has been involuntarily houseless since around June 2022 and experienced a previous period of houselessness from 2006 to 2009. She has a history of substance use disorder. Plaintiff Tupuola previously worked in a managerial position at a Subway restaurant but lost her job for reasons related to her substance use disorder, and she currently has no income or benefits. As a result, she cannot afford housing, nor can she afford to pay rent at a shelter.

84. Plaintiff Tupuola also has a history of incarceration. Her experiences with incarceration and the criminal legal system caused her a great deal of trauma, and this trauma still affects her. Plaintiff Tupuola feels immense fear and anxiety whenever she interacts with police officers because she feels like she could be arrested at any moment while in the park. As a houseless person, she feels like she is a convenient target for law enforcement and has no way to protect herself from their constant surveillance and harassment. For this reason, staying at HONU, which is run by police officers, is not a viable option for her. Nonetheless, in the past year, City police officers have tried to coerce Plaintiff Tupuola to go to HONU by threatening to arrest her if she did not agree.

85. In the past three years, Plaintiff Tupuola has received citations for about 18 violations related to her houseless status, including three that were issued this year. Plaintiff Tupuola has been cited for violating ROH section 10-1.2 (park rules), ROH section 13-19 (property in any public place), HRS section 711-1105 (obstructing sidewalk), HRS section 708-829 (criminal littering), and ROH section 29-16.3(a) (sidewalk nuisance). As an unsheltered person, Plaintiff Tupuola necessarily sleeps on sidewalks to avoid trespass charges and does not “criminally litter” by maintaining her belongings outside. When Plaintiff Tupuola received these citations, she was engaged in innocent acts of survival in public places.

86. The City has conducted many sweeps of parks where Plaintiff Tupuola was living. Currently, Plaintiff Tupuola stays at Mō‘ili‘ili Neighborhood Park, where she has a trusted community of houseless individuals who look out for one another. The City conducts multiple sweeps per week at Mō‘ili‘ili Neighborhood Park. Plaintiff Tupuola has often had no notice of sweeps, either because the City failed to post notice to its website, or because she and her community had no way of checking the City’s website prior to the sweep.

87. The City has taken important possessions from Plaintiff Tupuola while sweeping, arresting, and/or citing her, including tents, bedding, bicycles, clothing, medication, a cooler, food, plates, utensils, toiletries, a phone, speakers, a stove, and luggage. Plaintiff Tupuola was never able to recover any of the belongings that were seized from her, because she has no transportation to Halawa, where the City takes and temporarily stores items confiscated during sweeps.

88. Earlier this year, Plaintiff Tupuola was infected with Methicillin-resistant Staphylococcus aureus (“MRSA”) and had surgery on her leg to treat the infection. In February, when Plaintiff Tupuola was recovering from the surgery in Mō‘ili‘ili Neighborhood Park, City police officers conducted a sweep of the park. Because she was recovering from leg surgery, Plaintiff Tupuola was physically unable to move her belongings out of the park in anticipation of the sweep. She explained her situation to the officers and asked for leniency, but the officers gave her a citation anyway. A few days later, when Plaintiff Tupuola was still recovering, officers returned to the park, arrested her, and seized all her possessions, including the medication she needed to treat her MRSA infection.

89. **Michael David Bryan.** Plaintiff Michael David Bryan is a 63-year-old man of Hawaiian descent who was born and has lived his entire life in Hawai‘i. He has been involuntarily houseless for about the last four years and was intermittently houseless before that. Plaintiff Bryan has numerous medical problems, including stage three kidney disease, high blood pressure, and prostate problems. He currently lives in his van with his two dogs, who are his emotional support animals. Before he had a van to live in, Plaintiff Bryan lived outside in the Kaka‘ako area.

90. Plaintiff Bryan experiences severe targeting and harassment from City police officers when he stays in his van overnight in public parking spaces. As a result, he attempts to park overnight in private lots that are not under the City's parking authority, but he is concerned about having nowhere to park overnight in the near future. During the day, Plaintiff Bryan often stays in and around Magic Island. He needs to stay close to Queen Emma Clinics, where he receives treatment for his medical conditions.

91. Although Plaintiff Bryan has generally had trouble getting into shelters on Oahu due to the severe shortage of available beds, a few years ago, he was admitted to the Keauhou Shelter in Makiki. However, the shelter kicked him out after a year and a half, without explaining why. During his shelter placement, Plaintiff Bryan tried without success to secure transitional or long-term housing.

92. In the past three years, Plaintiff Bryan has received citations for about 3 violations related to his houseless status, including one issued during the past six months. Plaintiff Bryan has been cited for violating ROH § 10-1.2 (park rules), HRS 708-815 (simple trespass), and ROH 29-8.1 (permit required for a sidewalk structure). When Plaintiff Bryan received these citations, he was engaged in innocent acts of survival in public places.

93. Plaintiff Bryan has been arrested numerous times for reasons related to his houseless status. His most recent arrest was a few months ago. The arrest was wrongful: it was for a trespassing charge that was already closed. When Plaintiff Bryan appeared in court, the bailiff was finally able to verify that Plaintiff Bryan had already paid the fine for the trespassing charge, but only after Plaintiff Bryan had spent the night in jail. Plaintiff Bryan believes that the City targeted him for this wrongful arrest on the basis of his houseless status.

94. Plaintiff Bryan has been subject to numerous sweeps by the City, particularly before he lived in his van. The City has taken away many of Plaintiff Bryan’s belongings, either during sweeps or during one-on-one police encounters. Property that the City has seized from him includes medication he needed to treat serious medical conditions, paperwork that he needed to apply for unemployment benefits, clothing, a tent, food, a moped, and a motorcycle. Plaintiff Bryan has never been able to recover any of these items, even though he has tried. Once, he went to Halawa to try to get his moped back, but the City worker refused, saying that Plaintiff Bryan did not have the right documentation of ownership.

95. Plaintiff Bryan has also been singled out by City workers and police officers for harassment and disparaging insults. One police officer threatened to shoot his dogs when they were present in a public park, even though Plaintiff Bryan observed that there were housed people who had their dogs in the park at the same time. Another officer has pounded on the side of his van when Plaintiff Bryan was trying to rest. City workers have told him to “get a job.”

V. CLASS ACTION ALLEGATIONS

96. Plaintiffs bring this action individually and on behalf of a putative class consisting of: all persons living in the City and County of Honolulu who are or will be involuntarily “homeless,” as defined by federal statute,⁵⁴ and who are or will be “unsheltered,” as defined by federal regulation,⁵⁵ at any time prior to final judgment in this matter (the “Class”). Plaintiffs seek only injunctive and declaratory relief on behalf of themselves and the Class.

97. The Class meets all requirements for certification under Rule 23(b)(2) of the Hawai‘i Rules of Civil Procedure. First, the Class contains no fewer than 2,000 individuals, and

⁵⁴ See 42 U.S.C. § 11302(a).

⁵⁵ 42 U.S.C. § 578.7(c)(2)(i).

likely many more. Every year since 2016, Partners in Care has counted more than 2,000 unsheltered individuals on Oahu on a certain night of the year.⁵⁶ On January 23, 2023, Partners in Care counted 2,365 unsheltered individuals.⁵⁷ It is unlikely that the number of unsheltered people has fallen below 2,000 since then. Even if it had, there are more than 4,000 houseless individuals on Oahu in total, many of whom may soon become unsheltered, even if they are not currently, due to the limited shelter space on the island, the short-term nature of shelter placements, and the lack of affordable long-term housing. Those individuals are vulnerable to being targeted under the City's anti-homeless campaign. Thus, the Class likely numbers well over 2,000 and is sufficiently numerous that joinder of all members is impracticable.⁵⁸

98. There are ample questions of law and fact common to the Class,⁵⁹ including:

a. Whether the number of unsheltered individuals in Honolulu exceeds the number of available shelter beds;

b. Whether the City violates the Cruel or Unusual Punishment Clause of Article I, Section 12 of the Hawai'i Constitution by enforcing the anti-camping laws against involuntarily houseless individuals when there are insufficient shelter beds available for all of the unsheltered people in Honolulu;

⁵⁶ Partners in Care, *Point in Time Count 2023* at 4 (May 11, 2023), https://partnersincareoahu-my.sharepoint.com/personal/pic_partnersincareoahu_org/_layouts/15/onedrive.aspx?id=%2Fpersonal%2Fpic%5Fpartnersincareoahu%5Forg%2FDocuments%2FPartners%20In%20Care%2FPoint%20in%20Time%20Count%2F2023%20PIT%20Count%2FFinal%20PIT%20Count%202023%2Epdf&parent=%2Fpersonal%2Fpic%5Fpartnersincareoahu%5Forg%2FDocuments%2FPartners%20In%20Care%2FPoint%20in%20Time%20Count%2F2023%20PIT%20Count&ga=1.

⁵⁷ *Id.*

⁵⁸ Haw. R. Civ. P. 23(a)(1); *see also Life of the Land v. Land Use Commission of State of Hawaii*, 623 P.2d 431, 444 (Haw. 1981) (numerosity met where there were over 150 members).

⁵⁹ Haw. R. Civ. P. 23(a)(2); *see also Nakamura v. Countrywide Home Loans, Inc.*, 225 P.3d 680, 685-86 (Ct. App. Haw. 2010) (commonality met where four common questions were articulated in complaint).

c. Whether the City violates the Cruel or Unusual Punishment Clause of Article I, Section 12 of the Hawai‘i Constitution by enforcing the park closure laws and other park rules against involuntarily houseless individuals when there are insufficient shelter beds available for all of the unsheltered people in Honolulu;

d. Whether the City violates the Cruel or Unusual Punishment Clause of Article I, Section 12 of the Hawai‘i Constitution by enforcing the sidewalk obstruction laws against involuntarily houseless individuals when there are insufficient shelter beds available for all of the unsheltered people in Honolulu;

e. Whether the City violates the Cruel or Unusual Punishment Clause of Article I, Section 12 of the Hawai‘i Constitution by enforcing the property storage laws against involuntarily houseless individuals when there are insufficient shelter beds available for all of the unsheltered people in Honolulu;;

f. Whether the City infringes unduly on the fundamental rights of free movement of involuntarily houseless individuals under Article I, Section 5 of the Hawai‘i Constitution by forcing houseless people out of public view through its targeted campaign of citation, arrest, physical displacement, harassment, property dispossession, and harassment; and

g. Whether the City infringes unduly on the fundamental rights of safety and bodily integrity of involuntarily houseless individuals under Article I, Section 5 of the Hawai‘i Constitution by targeting them with citation, arrest, physical displacement, harassment, property dispossession, and harassment.

99. The claims of Named Plaintiffs are typical of those of the Class in that they arise from the same course of conduct engaged in by the City. Named Plaintiffs’ and Class Members’ claims alike are based on the City’s policies and practices in enforcing the Anti-Homeless Laws.

The relief sought herein will benefit all Class Members in similar ways in that it will free them from the City's oppressive, harmful anti-homeless campaign.⁶⁰

100. Named Plaintiffs will fairly and adequately represent the interests of the Class. They have no interests adverse to the interests of other members of the Class and have retained counsel who are competent and experienced in litigating complex class actions, including large-scale constitutional rights cases.⁶¹

101. The City has acted and refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.⁶² The City has conducted and continues to conduct a campaign of harassment, displacement, and criminalization against houseless individuals throughout the City and County of Honolulu. It has aggressively enforced the Anti-Homeless Laws against houseless individuals who were engaged in innocent acts of survival, even though these individuals had no choice but to live in public places due to inadequate shelter space in Honolulu. Effectively, the City has inflicted criminal punishment on these individuals for their houseless status rather than any voluntary act. It has encumbered their free movement and endangered their health and safety by forcing them out of public view and into places not fit for human habitation. The City has refused to discontinue its unlawful policies and practices even after years of negotiation with Plaintiffs and their counsel.

⁶⁰ Haw. R. Civ. P. 23(a)(3); *Nakamura*, 225 P.3d at 687 (“Although there are incidental factual differences between *Nakamura* and the Class members, the nature of *Nakamura*'s individual claim and the Class members' claims are essentially similar and there is no conflict of interest . . . [so] *Nakamura*'s claim was typical of the Class members under Rule 23(a)(3).”).

⁶¹ Haw. R. Civ. P. 23(a)(4); *Nakamura*, 225 P.3d at 688 (adequacy requirement met where there was no showing of a conflict of interest between class representatives or their counsel and unnamed class members).

⁶² Haw. R. Civ. P. 23(b)(2); *Akau v. Olohana Corp.*, 65 Haw. 383, 392 (1982).

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Cruel or Unusual Punishment

Hawai‘i Constitution Article I, Section 12

102. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

103. Article I, section 12 of the Hawai‘i Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.” Hawai‘i courts construe Article I, section 12 at least as broadly as protections in federal case law under the Eighth Amendment and do “not hesitate to extend the protections of the Hawaii Bill of Rights beyond those of textually parallel provisions”⁶³

104. The cruel or unusual punishment clause of the Hawai‘i Constitution prohibits the imposition of penalties that are “punitive in nature.”⁶⁴

105. A public entity violates the cruel or unusual punishment clause by punishing acts inextricably linked with houseless status.⁶⁵

106. The cruel or unusual punishments clause of the Hawai‘i Constitution includes a proportionality element that is more protective than the United States Constitution.⁶⁶ Under Hawai‘i law, punishment is cruel or unusual when it is so disproportionate to the wrongs allegedly committed as to shock the conscience.⁶⁷

107. Plaintiffs Gina Mahelona, Desmond Canite, Jared Castro, Faimafili Tupuola, and Michael Bryan, along with all members of the Class, lack sufficient access to housing and

⁶³ *Huihui v. Shimoda*, 64 Haw. 527, 531 (1982) (internal citations omitted).

⁶⁴ *Guidry*, 105 Haw. at 237.

⁶⁵ *Id.* See also *Martin*, 920 F.3d at 615-18; *Blake*, 2020 WL 4209227, at *6–10; *Warren*, 2021 WL 2894648, at *2–3.

⁶⁶ *Guidry*, 105 Haw. at 237.

⁶⁷ *State v. Kahapea*, 111 Haw. 267, 282 (2006).

suitable, adequate shelter. There are substantially more houseless individuals in Honolulu than there are shelter beds. Even when space is available, costs and other practical and administrative barriers prevent Plaintiffs and Class Members from accessing shelter.

108. Even though the City's lack of housing and adequate shelter forces Plaintiffs and the Class to live in outdoor public places, the City has maintained a practice of citing, arresting, and threatening them for sleeping, sitting, lying, and maintaining personal possessions in public places. The City enforces the Anti-Homeless Laws against Plaintiffs and the Class even when there is no housing or indoor shelter available to them, and Plaintiffs and the Class have no way to comply with the Anti-Homeless Laws the City enacted and continues to enforce against them.

109. Plaintiffs have all been cited, arrested, threatened, displaced, and otherwise punished numerous times under the Anti-Homeless Laws for innocent conduct that is a universal and unavoidable consequence of being houseless. Plaintiffs and the Class are at risk of being further cited, arrested, threatened, displaced, and otherwise punished under the Anti-Homeless Laws in the future for such conduct.

110. Furthermore, the City's campaign of citation and arrest based on Plaintiffs' and the Class's status as houseless violates standards set by international human rights laws. Article 9 of the International Covenant on Civil and Political Rights ("ICCPR"), G.A. Res. 2200 (XXI) A (Dec. 16, 1966)⁶⁸ and Article 3 of the Universal Declaration of Human Rights ("UDHR")⁶⁹ establish a right to freedom of security of person and from arbitrary arrest and detention. These

⁶⁸ The U.S. ratified the ICCPR in 1992. Article 9 states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

⁶⁹ Article 3 of the UDHR declares, "Everyone has the right to life, liberty and the security of person."

standards are violated when governments impose significant physical and psychological burdens on houseless people, particularly during arrest. In evaluating whether punishment is cruel or unusual under our “evolving standards of decency,” courts look to the international stage.⁷⁰ Beyond our borders, the criminalization of life-sustaining conduct is widely viewed as fundamentally unjust and disproportionate.

111. Through enforcement of the Anti-Homeless Laws, the City punishes Plaintiffs and the Class based on their homeless status. The Anti-Homeless Laws also prescribe punishment that is grossly disproportionate to the proscribed conduct of resting, maintaining personal property, and being present in public space. Therefore, these actions constitute cruel or unusual punishment in violation of Article 1, section 12 of the Hawai‘i Constitution.

112. Plaintiffs and the Class are entitled to declaratory relief, injunctive relief, attorneys’ fees, and costs for these violations.

SECOND CLAIM FOR RELIEF

Violation of Substantive Due Process – Fundamental Right of Free Movement Hawai‘i Constitution Article I, Section 5

113. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

114. Article I, section 5 of the Hawai‘i Constitution states that “no person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person’s civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.”

⁷⁰ See *Roper v. Simmons*, 543 U.S. 551, 575-78 (2005) (“The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.”); *Graham v. Florida*, 560 U.S. 48, 80-82 (2010) (“The Court has looked beyond our Nation’s borders for support for its independent conclusion that a particular punishment is cruel and unusual.”).

115. Article I, section 2 of the Hawai‘i Constitution states that “[a]ll persons are free by nature and are equal in their inherent and inalienable rights.” It guarantees the right to “the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property.” This clause has been interpreted as guaranteeing a fundamental right of free movement.⁷¹ As the Supreme Court of Hawai‘i has explained:

Freedom would be incomplete if it does not include the right ... to move from place to place, to walk in the fields in the country or on the streets of a city, to stand under open sky in a public park and enjoy the fresh air, to lie down on a public beach and enjoy a sunbath, to visit a friend in [their] home and enjoy an evening together

116. A public entity violates substantive due process rights when it interferes with a fundamental right absent a compelling state interest.⁷²

117. An ordinance or set of ordinances that effectively penalize houseless individuals for living or being present in a city, or in a particular area within a city, burdens their fundamental right of free movement.⁷³

118. The Anti-Homeless Ordinances, and the City’s enforcement of the Anti-Homeless Laws, interfere with Plaintiffs’ and the Class’s fundamental rights of free movement, and therefore violate their substantive due process rights, in numerous ways, including:

- a. Penalizing their mere presence in public areas,⁷⁴
- b. Preventing them “from performing activities that are ‘necessities of life,’ such as sleeping, in any public place when they have nowhere else to go”;⁷⁵

⁷¹ *State v. Shigematsu*, 52 Haw. 604, 610–11 (1971).

⁷² *State v. Mallan*, 86 Haw. 440, 444 (1998).

⁷³ *Pottinger v. Miami*, 810 F. Supp. 1551, 1580-81 (S.D. Fla. 1992).

⁷⁴ See *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 940, 949 (9th Cir. 1997).

⁷⁵ *Pottinger*, 810 F. Supp. at 1580.

- c. Interfering with Plaintiffs’ and the Class’s “freedom to loiter for innocent purposes”;⁷⁶
- d. Functionally excluding Plaintiffs and the Class from commercial and downtown areas due to enforcement of the Anti-Homeless Laws;
- e. Allowing Plaintiffs and the Class to only occupy certain remote and inaccessible areas of Honolulu that Plaintiffs and the Class are not legally allowed to occupy because they are not fit for human habitation;
- f. Regularly conducting encampment sweeps, thereby forcing Plaintiffs and Class Members to constantly relocate, lose their belongings, and attempt to recover confiscated belongings; and
- g. Allowing law enforcement officers to force anyone whom they find occupying space on any public sidewalk, sleeping in any public place, or resting in any public place, including Plaintiffs and Class Members to relocate or else be arrested or cited.

119. Plaintiffs Gina Mahelona, Desmond Canite, Jared Castro, Faimafili Tupuola, and Michael Bryan, along with all members of the Class, have had their freedoms of movement infringed by the Anti-Homeless Ordinances and the City’s enforcement of the Anti-Homeless Laws. Plaintiffs and the Class are all at risk of further infringements of their rights to freedom of movement in the future.

120. The City cannot justify its infringement on Plaintiffs’ and the Class’s freedom of movement based on a compelling governmental interest. Moreover, the Anti-Homeless

⁷⁶ *Vasquez v. Rachaukas*, 734 F.3d 1025, 1042 (9th Cir. 2013) (quoting *City of Chicago v. Morales*, 527 U.S. 41, 53 (1999)).

Ordinances and the City's enforcement of the Anti-Homeless Laws are not narrowly tailored to serve any governmental interest, let alone a compelling one.

121. The City's restriction of Plaintiffs' and the Class's freedom of movement is not only unconstitutional, it also violates international human rights standards. The freedom to move within a state's borders is protected by Article 13 of the UDHR⁷⁷ and Article 12(1) of the ICCPR,⁷⁸ as well as Article 5(d)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD")⁷⁹ and Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").⁸⁰

122. Therefore, the City's actions are unconstitutional as applied to Plaintiffs and the Class. Plaintiffs and the Class are entitled to declaratory relief, injunctive relief, attorneys' fees, and costs for these violations.

THIRD CLAIM FOR RELIEF
Violation of Substantive Due Process – State Created Danger
Hawai'i Constitution Article I, Section 5

123. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

124. Article I, section 5 of the Hawai'i Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be

⁷⁷ Article 13 of the UDHR states: "Everyone has the right to freedom of movement and residence within the borders of each state."

⁷⁸ Article 12(1) of the ICCPR states: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

⁷⁹ Article 5 of the ICERD requires States to "guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...[t]he right to freedom of movement and residence within the border of the State." The United States ratified the ICERD in 1994.

⁸⁰ Article 15(4) of the CEDAW states: "States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile." The United States signed the CEDAW in 1980.

discriminated against in the exercise thereof because of race, religion, sex or ancestry.” This clause has been interpreted as providing the same protections as the Due Process Clause of the United States Constitution.⁸¹

125. The Due Process Clause of the Fourteenth Amendment protects individuals’ liberty interests in their own bodily security.⁸²

126. A public entity violates a person’s Due Process rights by exposing them to dangers they would not have faced absent the public entity’s intervention.⁸³

127. The City’s policies and practices with respect to conducting homeless encampment sweeps and enforcing the Anti-Homeless Laws have infringed Plaintiffs’ and the Class’s rights to bodily security in numerous ways, including:

- a. Displacing Plaintiffs and Class Members from relatively safe locations, thereby exposing them to the elements, violent crime, and other dangers;
- b. Forcing Plaintiffs and Class Members constantly to move from place to place, which disrupts their community relationships, hanai families, connections with service providers, and overall sense of safety and stability;
- c. During sweeps, confiscating Plaintiffs’ and Class Members’ needed personal belongings such as medications, medical devices, assistive devices, food, bedding, shelter, and personal identification;

⁸¹ See, e.g., *State v. Bani*, 97 Haw. 285, 293 (2001); *A.A. v. B.B.*, 139 Haw. 102, 109 (2016).

⁸² *Kennedy v. Ridgefield City*, 439 F.3d 1055, 1061 (9th Cir. 2006) (citing *Ingraham v. Wright*, 430 U.S. 651, 673-74 (1977); *Wood v. Ostrander*, 879 F.2d 583, 589 (9th Cir. 1989)).

⁸³ *Id.*

d. In conjunction with sweeps, shutting off access to clean water and sanitation facilities in public parks and other public areas such that Plaintiffs and Class Members are less able to protect themselves from infection and disease;

e. Forcing houseless people into dangerous, unsanitary places and circumstances through its targeted campaign of harassment, citation, arrest, dispossession of property, and displacement; and

f. During sweeps, placing added stress on Plaintiffs and Class Members, including those who suffer from psychiatric and mental health conditions, triggering or exacerbating symptoms such as psychotic episodes, panic attacks, or traumatic flashbacks.

128. Plaintiffs Gina Mahelona, Desmond Canite, Jared Castro, Faimafili Tupuola, and Michael Bryan, along with all members of the Class, have had their rights to bodily security infringed by the City's encampment sweeps, enforcement of the Anti-Homeless Laws, and other policies and practices targeting houseless individuals. They are all at risk of having their rights to bodily security further infringed by the City in the future.

129. The City cannot justify its infringement on Plaintiffs' and Class Members' rights to bodily security based on a compelling governmental interest. Moreover, the Anti-Homeless Ordinances and the City's enforcement of the Anti-Homeless Laws are not narrowly tailored to serve any legitimate governmental interest, let alone a compelling one.

130. Thus, the City's actions are unconstitutional as applied to houseless individuals under Hawai'i Constitution Article I, section 5.⁸⁴

⁸⁴ The City's conduct additionally violates international human rights standards, including the right to freedom of security of person, *see* Article 9 of the ICCPR and Article 3 of the UDHR, and the evolving and fundamental right to clean water. The right to clean water and sanitation is referenced in many international human rights documents. *See, e.g.*, Committee on Economic, Social and Cultural Rights, General Comment 15. E/C.12/2002/11 20 January 2003, ¶ 1 ("The

131. Plaintiffs and the Class are entitled to injunctive and declaratory relief, attorneys' fees, and costs.

FOURTH CLAIM FOR RELIEF
Violation of Substantive Due Process – Void for Vagueness and Overbreadth
Hawai'i Constitution Article I, Section 5
(Individual Plaintiffs Only)

132. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth.

133. Article I, section 5 of the Hawai'i Constitution forbids public entities from “depriv[ing] any person of life, liberty, or property, without due process of law.”

134. A criminal statute is void for vagueness and violates the right of due process unless it gives a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited and gives explicit guidance to those who enforce the statute. *State v. Bates*, 84 Haw. 211, 220–21933 P.2d 48, 57 (1997).

135. ROH § 13-20.1 does not satisfy the requirements of due process, because it fails to inform Plaintiffs and other members of the public as to what conduct will subject them to penalties and what will not. ROH § 13-20.1 broadly criminalizes any “obstruction of a public sidewalk.” It defines “obstruct” as “to block up, stop up, or close up, or place an obstacle in or fill with obstacles or impediments that interfere with the passing of a pedestrian or to be or come in the way of a pedestrian’s free use of the sidewalk.” Under this definition, it is unclear whether merely being present on a public sidewalk could qualify as an obstruction, or if some additional action is necessary.

136. ROH § 13-20.1 is overbroad and fails to provide Plaintiffs and other individuals with adequate notice or guidance for them to ascertain beyond mere speculation what constitutes

human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”).

a sidewalk obstruction and invites selective enforcement against Plaintiffs and other houseless people. The City has enforced ROH § 13-20.1 against Plaintiffs Gina Mahelona, Desmond Canite, Jared Castro, Faimafili Tupuola, and Michael Bryan, including by ordering them to relocate from publicly accessible places for no reason beyond their houseless status, under threat of citation, arrest, or other criminal punishment.

137. Likewise, ROH § 13-21.1 does not satisfy the requirements of due process because it fails to inform Plaintiffs and other members of the public as to what conduct will subject them to penalties and what will not. Its overbroad definition of “lodge”—“to sleep; to come to rest and refuse to vacate the area when requested [by a police officer]”—leaves unclear whether Plaintiffs or other individuals who are merely sitting in any public place or resting at the beach could be deemed to be illegally “lodging” by a law enforcement officer.

138. Moreover, ROH § 13-21.1 does not define “readily available” with respect to shelter space. It is not apparent whether a police officer could determine that shelter space is “readily available” simply because a shelter is listed as having available space, even if the requirements for admission would exclude Plaintiffs and other houseless people based on their gender, marital status, physical or medical condition, or other administrative rules and requirements, or the shelter’s physical distance from the person receiving the citation.

139. ROH § 13-21.1 fails to provide adequate notice or guidance for Plaintiffs and other individuals to ascertain beyond mere speculation what constitutes a sidewalk obstruction, lodging, or whether shelter is readily available. The ordinance therefore invites selective enforcement against Plaintiffs and other houseless people. The City has enforced ROH § 13-21.1 against Plaintiffs, including by ordering them to relocate from publicly accessible areas for

no reason beyond their houseless status, under threat of citation, arrest, or other criminal punishment.

140. ROH § 13-20.1 and ROH § 13-21.1 should therefore be declared unconstitutionally vague and overbroad both on their faces and as applied to Plaintiffs in violation of the Article I Section 5 of the Hawai'i Constitution. Plaintiffs are entitled to injunctive and declaratory relief, attorneys' fees, and costs.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue a declaratory judgment that each of the following laws is unconstitutional and unenforceable as applied to Plaintiffs and Class Members who lack practical access to adequate shelter: sections 10-1.2, 10-1.3(a)(2), 13-8.1, 13-15.1, 13-15A.2, 13-15B.1, 13-16, 13-19, 13-20.1, and 13-21.1 of the Revised Ordinances of Honolulu; and sections 708-814.5, 708-814.7, 708-815 (as it pertains to publicly accessible places), 708-829, and 711-1105 of the Revised Statutes of Hawai'i.

2. Issue a declaratory judgment that the following laws are facially unconstitutional and invalid: sections 13-20.1 and 13-21.1 of the Revised Ordinances of Honolulu.

3. Issue a preliminary and permanent injunction enjoining and restraining the City (and its divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with the City or pursuant to the City's authority) from enforcing the following laws in a manner that unconstitutionally punishes Plaintiffs and the Class for stopping, sitting, lying, or sleeping on public property when there is no adequate or practically available shelter: sections 10-1.2, 10-1.3(a)(2), 13-8.1, 13-15.1, 13-15A.2, 13-15B.1, 13-16, 13-19, 13-20.1, and 13-21.1 of the Revised Ordinances of Honolulu; and sections 708-814.5, 708-814.7, 708-815 (as it pertains to

publicly accessible places), 708-829, and 711-1105 of the Revised Statutes of Hawai‘i.

4. Retain jurisdiction over the City until such time as the Court is satisfied that the City’s unlawful customs, policies, practices, rules, regulations, acts, and omissions complained of herein no longer exist and will not recur.

5. Award reasonable attorneys’ fees, costs, and other expenditures incurred as a result of bringing this action, pursuant to any applicable law.

6. Grant further relief as the Court may deem just and proper.

DATED: July 26, 2023

Respectfully submitted,

/s/ Jongwook “Wookie” Kim
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