

LAW OFFICES OF
WALKUP, MELODIA, KELLY & SCHOENBERGER
A PROFESSIONAL CORPORATION

650 CALIFORNIA STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108-2615
T: (415) 981-7210 · F: (415) 391-6965

MICHAEL A. KELLY (Ca. State Bar #71460)
mkelly@walkuplawoffice.com
RICHARD H. SCHOENBERGER (Ca. State Bar #122190)
rschoenberger@walkuplawoffice.com
MATTHEW D. DAVIS (Ca. State Bar #141986)
mdavis@walkuplawoffice.com
ASHCON MINOIEFAR (Ca. State Bar #347583)
aminoiefar@walkuplawoffice.com

SHANIN SPECTER, (Pennsylvania State Bar No. 40928)
shanin.specter@klinespecter.com
(Pro Hac Vice Application Pending)
ALEX VAN DYKE (Ca. State Bar No. 340379)
Alex.VanDyke@klinespecter.com

KLINE & SPECTER, P.C.
1525 Locust Street
Philadelphia, PA 19102
Telephone: (215) 772-1000
Facsimile: (215) 772-1359

ATTORNEYS FOR ALL PLAINTIFFS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

JANE ROE, an individual; MARY ROE,
an individual; SUSAN ROE, an
individual; JOHN ROE, an individual;
BARBARA ROE, an individual;
PHOENIX HOTEL SF, LLC, a California
limited liability company; FUNKY FUN,
LLC, a California limited liability
company; and 2930 EL CAMINO, LLC, a
California limited liability company,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, a California public entity,

Defendant.

Case No.

**COMPLAINT FOR INJUNCTIVE
AND EQUITABLE RELIEF**

I. INTRODUCTION

1
2 1. The Tenderloin neighborhood lies in the heart of San Francisco,
3 bounded on the north by Geary Street, on the east by Mason Street, on the south by
4 Market Street, and on the west by Polk Street.

5 2. The Tenderloin has been a downtown residential community since
6 shortly after the California Gold Rush in 1849. It was among the first districts in San
7 Francisco to be integrated, and to this day remains culturally, racially, economically,
8 and ethnically diverse.

9 3. Many families call the Tenderloin their home. Over 3,000 children live
10 there, more per capita than almost any other district in San Francisco.

11 4. Living in the Tenderloin is affordable compared to other San Francisco
12 neighborhoods. Many residents work in the service industry and earn low, hourly
13 wages. Many are disabled or are senior citizens who must get by on fixed incomes.

14 5. The Tenderloin has also been a place where entrepreneurs with little
15 capital, from the hardworking owner of a sandwich shop to the operator of a boutique
16 hotel, can start a business.

17 6. Plaintiffs are residents of and stakeholders in the Tenderloin. Today,
18 they and others who live, go to school, work or run a business in that district face an
19 existential crisis caused by defendant City and County of San Francisco’s treatment
20 of their neighborhood as a “containment zone” for narcotic activities. For years, the
21 *de facto* policy of the City has been to corral and confine illegal drug dealing and
22 usage, and the associated injurious behaviors, to the Tenderloin. The City tries to
23 keep such crimes and nuisances out of other San Francisco neighborhoods by
24 “containing” them in the Tenderloin.

25 7. The City’s acts and omissions have harmed and damaged each plaintiff
26 by causing the public sidewalks and spaces around their homes and businesses to
27 become dangerous, impassable and unsanitary. However, plaintiffs do not seek to
28 recover money damages from the City in this lawsuit. Rather, they bring this action

1 to stop the City from treating the Tenderloin as a containment zone. Plaintiffs sue to
2 force the City to comply with its responsibility to ensure that their neighborhood’s
3 sidewalks and public spaces are clean, safe and accessible, and to treat them and
4 their neighbors fairly and equitably.

5 8. While plaintiffs are currently unaware of any writing that formally
6 codifies the City’s containment zone policy, it is undisputable that for years the City
7 has known that drug dealers brazenly sell narcotics on the streets and sidewalks in
8 the Tenderloin. Similarly, for years the City has allowed individuals to openly buy
9 and use narcotics in the Tenderloin, and to remain, under the obvious influence of
10 drugs, on the sidewalks and public spaces of the neighborhood.

11 9. Over the past approximate six years, fentanyl and other potent, highly
12 addictive, and deadly synthetic opiates have come to dominate the narcotics market
13 in the Tenderloin.¹ Fentanyl’s “effects include extreme happiness, drowsiness,
14 nausea, confusion, constipation, sedation, tolerance, addiction, respiratory depression
15 and arrest, unconsciousness, coma, and death.... People addicted to fentanyl who
16 stop using it can have severe withdrawal symptoms that begin as early as a few
17 hours after the drug was last taken. These symptoms include: muscle and bone pain;
18 sleep problems; diarrhea and vomiting; cold flashes with goose bumps; uncontrollable
19 leg movements; [and] severe cravings. These symptoms can be extremely
20 uncomfortable....”² Fentanyl addicts engage in “compulsive drug seeking and use
21 despite adverse consequences,”³ such as refusing treatment, losing employment,
22 alienating and breaking contact with family and friends, living on the streets,
23

24 ¹ [https://www.sfchronicle.com/projects/san-francisco-drug-overdose-](https://www.sfchronicle.com/projects/san-francisco-drug-overdose-deaths/#:~:text=In%20recent%20years%2C%20that%20epidemic,to%20address%20the%20escalating%20epidemic.)
25 [deaths/#:~:text=In%20recent%20years%2C%20that%20epidemic,to%20address%20the%20escalating%20epidemic.](https://www.sfchronicle.com/projects/san-francisco-drug-overdose-deaths/#:~:text=In%20recent%20years%2C%20that%20epidemic,to%20address%20the%20escalating%20epidemic.)

26 ² <https://nida.nih.gov/publications/drugfacts/fentanyl>

27 ³ See [https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-](https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction/#:~:text=Addiction%20is%20defined%20as%20a,stress%2C%20and%20self%2Dcontrol.)
28 [misuse-](https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction/#:~:text=Addiction%20is%20defined%20as%20a,stress%2C%20and%20self%2Dcontrol.)
[addiction/#:~:text=Addiction%20is%20defined%20as%20a,stress%2C%20and%20self%2Dcontrol.](https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction/#:~:text=Addiction%20is%20defined%20as%20a,stress%2C%20and%20self%2Dcontrol.)

1 ignoring personal hygiene, and resorting to crime to support their habit.

2 10. The City’s *de facto* containment zone policy effectively herds fentanyl
3 users into the Tenderloin, where they can easily buy fentanyl and openly get high.⁴
4 Once there, they quickly learn that the City and others will provide “support” if they
5 live on that neighborhood’s streets, with some organizations going so far as to deliver
6 drug kits to their sidewalk encampments. As a foreseeable consequence of their
7 disease, fentanyl addicts opt to live on the Tenderloin’s sidewalks, as opposed to, for
8 example, undergoing treatment in a structured residential setting.

9 11. Addicts living on the Tenderloin’s streets foreseeably support their habit
10 by stealing (*e.g.*, shoplifting, car break-ins, burglaries, robberies) and hawking the
11 stolen merchandise on the sidewalks. As their disease progresses, their mental and
12 physical health declines, resulting in them acting erratically, ignoring serious
13 medical problems (*e.g.*, open sores at injection sites), rummaging through trash,
14 discarding garbage on the sidewalk around them, going partially clothed, and
15 defecating in public.

16 12. Those who deal fentanyl and other deadly narcotics know that the City
17 treats the Tenderloin as a containment zone. They thus flock to the neighborhood
18 and blatantly sell drugs to the addicts living on the sidewalks. The City knows that
19 the fentanyl dealers who operate in the Tenderloin belong to competing gangs, and
20 that they use intimidation, threats and violence to protect their market.

21 13. Drug dealers not only sell narcotics to the addicts who the City allows to
22 live on the sidewalks, but they take advantage of the City’s attitude about the
23 Tenderloin in other ways. For example, to avoid law enforcement consequences,
24 dealers recruit addicts to stash narcotics in their encampments, and to function as
25 go-betweens in drug transactions.

26 14. There is no therapeutic benefit to, and nothing compassionate about,
27

28 ⁴ Even more pernicious illegal narcotics are emerging. See, *e.g.*,
<https://www.dea.gov/alert/dea-reports-widespread-threat-fentanyl-mixed-xylazine>

1 allowing and enabling someone in the throes of addiction to deteriorate on the
2 Tenderloin's streets. But it does render the sidewalks and other public spaces in the
3 neighborhood unsanitary, unsafe and inaccessible, causing great harm to the
4 residents, local businesses and visitors.

5 15. The City nevertheless prefers that people in the grip of addiction stay on
6 the streets of the Tenderloin rather than go to other San Francisco districts, even
7 though the City knows that those it herds to Tenderloin will: (a) openly inject and
8 smoke narcotics in front of children, seniors and others; (b) roam the neighborhood
9 while intoxicated or undergoing withdrawal; (c) block passage of the sidewalks with
10 encampments, bulky items and illegal street vending; (d) commit crimes to support
11 their habit; and (e) produce garbage, used drug paraphernalia, and human waste
12 that will befoul the area.

13 16. As part of its containment zone policy, the City permits throngs of
14 people to gather on the Tenderloin's sidewalks, where they freely sell, buy, and use
15 illegal narcotics, fight, commit thefts, and hawk stolen goods.⁵ The image below
16 shows a McAllister Street sidewalk shortly after midnight.



27

28 ⁵ See <https://sfstandard.com/2024/03/07/san-francisco-kids-selling-drugs-stolen-goods/>

1 17. The City has allowed what is seen above to become the rule, not the
2 exception, in the Tenderloin. It is inconceivable that the City would tolerate such
3 late-night turmoil in Pacific Heights, the Inner Sunset, Alamo Square, Bernal
4 Heights, or Telegraph Hill.

5 18. Foreseeably, the City's containment zone policy has led to violence in
6 the public spaces of the Tenderloin. There have been drug-related murders, stabbings
7 and gun battles on the streets and sidewalks.

8 19. In sum, the City-owned public walkways and spaces in the Tenderloin
9 are dangerous, unsanitary and no longer open and accessible to plaintiffs and other
10 members of the public. The consequences of the containment zone policy to the
11 residents of and stakeholders in the Tenderloin have been devastating and constitute
12 a violation of their dignity and fundamental civil rights. This is a state-created
13 danger. It is both a public and a private nuisance. It has deprived plaintiffs of equal
14 protection of the law and of fundamental liberty interests protected by the United
15 States and California Constitutions. And it has deprived disabled people, included
16 two plaintiffs in this suit, of the full and equal use of the Tenderloin's sidewalks and
17 public spaces.

18 II. JURISDICTION AND VENUE

19 20. Plaintiffs assert the claims herein pursuant to 42 U.S.C. § 1983; the
20 Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq. (the "ADA"); Section 504
21 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq. ("Section 504"); and the
22 Fifth and Fourteenth Amendments of the United States Constitution. This Court has
23 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 2201 & 2202.

24 21. This Court has supplemental jurisdiction over plaintiffs' state law
25 claims pursuant to 28 U.S.C. § 1367, as they arise from the same case or controversy
26 as plaintiffs' federal claims.

27 22. Plaintiffs only seek equitable and injunctive relief for their state law
28 claims. Accordingly, plaintiffs need not submit a claim with any local public entity

1 pursuant to the California Tort Claims Act, California Government Code §§ 810 *et*
2 *seq.*

3 23. The acts and omissions complained of herein occurred in the Northern
4 District of California. Accordingly, pursuant to 28 U.S.C. § 1391, venue is proper in
5 this Judicial District.

6 III. INTRADISTRICT ASSIGNMENT

7 24. The events or omissions that give rise to the claims asserted herein
8 occurred within the City and County of San Francisco, and the property that is the
9 subject of this action is situated in the City and County of San Francisco.

10 IV. THE PARTIES

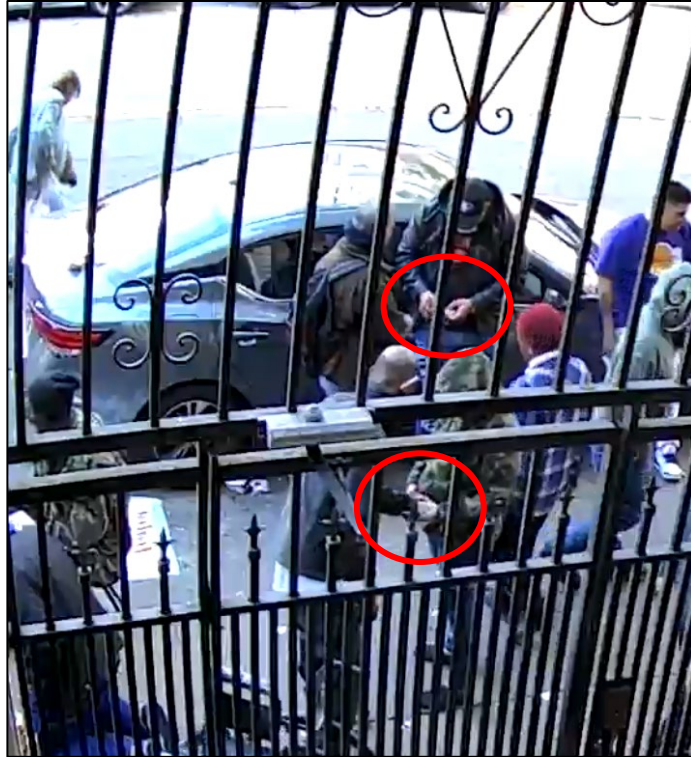
11 A. Plaintiff Jane Roe

12 25. Plaintiff Jane Roe is a pseudonym and not her real name. Submitted
13 with this complaint is an application for an order permitting her to use a pseudonym
14 to protect her safety and the safety of her family.

15 26. Jane Roe works full-time as a housekeeper. She is married. Her
16 husband works full-time as a cook. Both are immigrants. Neither speaks much
17 English. They have two daughters, ages 9 and 5. The family lives in an apartment on
18 Ellis Street, between Hyde and Larkin, in the center of the Tenderloin. They share
19 the apartment with another family with young children.

20 27. Open-air drug deals occur on the sidewalk in front of Jane Roe's
21 apartment building. She describes the drug-dealing as happening "all day, every
22 day." Those involved in narcotics sales block the entrance to her building. The image
23 below shows a typical scene, including blatant drug transactions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



28. When Jane Roe enters or leaves her apartment, she encounters drug dealers, users openly injecting or smoking narcotics, and people lying on the sidewalk who appear unconscious or dead.

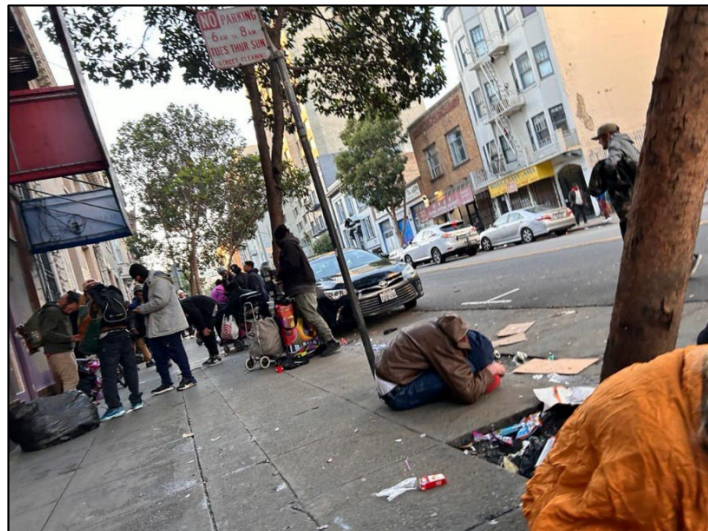
29. On one occasion, a person in front of Jane Roe’s building threatened to cut her throat. On other occasions, people threatened her with knives and hammers.

30. People gathered in front of the family’s apartment building sometimes start smokey bonfires, using things like old tires, trash, or discarded furniture as fuel. One of Jane Roe’s daughters has severe asthma and cannot tolerate smoke. Jane Roe has politely asked people in front of the building not to burn things for the sake of her daughter’s health. They responded by threatening to kill her. The City does nothing to stop the sidewalk fires.

31. Encampments and bulky items block the sidewalk in front of Jane Roe’s apartment. Habitants of the encampments keep unleashed dogs that bark and growl at Jane Roe and her family when they pass. Displays of stolen goods for sale block the sidewalk. Trash and biohazards, such as used syringes and feces, litter the area.

1 She and her husband and daughters must step into the busy street to bypass these
2 hazards, dangers and obstacles.

3 32. The images below depict typical conditions that Jane Doe and her family
4 encounter when they go outside.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



33. A mass shooting, believed to be drug related, that left one person dead

1 and four injured recently happened near Jane Doe’s home.⁶ She rarely sees
2 uniformed members of the San Francisco Police Department on foot patrol in the
3 neighborhood. When she has seen SFPD officers, she has asked for help with the
4 people who have taken over the sidewalks. In response, officers have told her that
5 there is nothing they can do because, “the City gives them more protection than you.”

6 34. As an example of how the City treats the Tenderloin as a containment
7 zone, the City recently decided to enforce the laws that prohibit illegal street vending
8 in the Mission neighborhood.⁷ The City has not done the same in the Tenderloin.
9 Foreseeably, illegal street vending increased in the Tenderloin after the City’s
10 crackdown in the Mission.

11 35. Every school day morning, Jane Roe escorts her daughters to the bus
12 stop and then rides with them to their school. She does the same thing in reverse in
13 the afternoon. She is terrified for her daughters’ safety each time she makes the trip.
14 Her girls can never be outside unless accompanied by her or her husband.

15 36. When Jane Roe ventures out of her apartment, either alone or with
16 family, she “is really scared because when I walk, I am always afraid something bad
17 will happen to us.” She and her husband are not high wage earners. She says, “I
18 really wish my daughters could grow up in a better place, which does not have so
19 much corruption, drugs, bad people. It is a frustration I have every day. We don’t
20 have enough money to move.”

21 **B. Plaintiff Susan Roe**

22 37. Plaintiff Susan Roe is a pseudonym and not her real name. Submitted
23 with this complaint is an application for an order permitting her to use a pseudonym
24 to protect her personal safety.

25 38. Susan Roe lives in a residence on Eddy Street, between Jones and
26

27 ⁶ <https://www.ktvu.com/news/tenderloin-shooting-leaves-1-dead-four-injured>

28 ⁷ <https://www.axios.com/local/san-francisco/2024/02/08/sf-illegal-vending-ban-law-when-extended>

1 Leavenworth, in the Tenderloin. She is elderly. She is disabled. She depends on a
2 walker to ambulate.

3 39. The sidewalks and public spaces in Susan Roe’s neighborhood are
4 impassable and inaccessible to her. Encampments and bulky items, such as duffle
5 bags, shopping carts and disassembled bicycles, obstruct the sidewalks.

6 40. Large crowds also block the sidewalks around Susan Roe’s residence.
7 People in these crowds openly smoke and inject drugs, scream and act erratically.
8 She attends community events and receives services at a senior center on Turk
9 Street. These events and services are important to her. However, she dreads going to
10 the center because intimidating crowds block a corner where she must cross the
11 street. She must also be on the lookout for and navigate around excrement, used
12 syringes, vomit and garbage. These obstacles make it impossible for her to use the
13 sidewalk. She instead walks in the busy street, which is dangerous.

14 **C. Plaintiff Mary Roe**

15 41. Plaintiff Mary Roe is a pseudonym and not her real name. Submitted
16 with this complaint is an application for an order permitting her to use a pseudonym
17 to protect her personal safety.

18 42. Mary Roe, a native of San Francisco, is a senior citizen and the mother
19 of grown children. She works as a counselor. She has pulmonary and spinal
20 conditions that make it difficult for her to walk. She lives in the Tenderloin, in an
21 apartment on Turk Street, between Jones and Leavenworth. She laments, “My
22 neighborhood has become disgusting and dangerous.”

23 43. Crowds of drug dealers and users block the sidewalks around Mary
24 Roe’s apartment building. Encampments, stolen goods for sale, carts, disassembled
25 bicycles, and other bulky items also obstruct passage. When she ventures outside,
26 she has no choice but to jaywalk, which is especially dangerous because her age and
27 medical conditions make it difficult for her to avoid moving vehicles.

28 44. Mary Roe sees people inject and smoke narcotics on the sidewalk. She

1 must avoid people who scream and act erratically, or who are partially clothed or
2 completely naked. She sees people defecate in public. The sidewalks around her home
3 are littered with garbage, human waste, and used drug paraphernalia. There have
4 been so many overdoses that she often wonders whether a person lying prostrate on
5 the sidewalk is dead rather than merely passed out. In sum, whenever she ventures
6 outside, she is always afraid and frequently mortified.

7 45. There is a storefront on Mary Roe's block occupied by an organization
8 that purports to provide a "community building program." People affiliated with that
9 organization hand out fentanyl drug kits, *e.g.*, packets with foil, tubes and smoking
10 devices, on the sidewalk in front of the storefront. Crowds gather when these
11 handouts occur. When the people finish distributing the kits, they retreat inside the
12 storefront, locking the doors behind them. Chaos then ensues. People ingest drugs,
13 become intoxicated and act erratically. Mary Roe has observed other citizens try to
14 discourage people from ingesting narcotics on the sidewalk, only to have people
15 affiliated with the organization come out of the storefront and intercede, proclaiming
16 that people have the right to use drugs in public. The City knows that this
17 organization and other groups hand out fentanyl kits and encourage illegal drug use
18 in public spaces in the Tenderloin. The City would not tolerate such arrogant and
19 reckless conduct in other neighborhoods, but because the City has decided to treat
20 the Tenderloin as a containment zone, it does nothing to discourage such activity
21 despite the harm it causes to Tenderloin residents and stakeholders.

22 46. Around the corner from Mary Roe's apartment, on the 200 block of
23 Leavenworth Street, are three markets that stay open all night. People gather in
24 front of these markets, especially after dark. They completely block the sidewalk
25 while selling, buying and using drugs and hawking stolen items. The same thing
26 happens near many other markets in the Tenderloin. The City would not tolerate
27 such nuisances around markets elsewhere, but because the City treats the
28 Tenderloin as a containment zone, the City does little to nothing in response.

1 **D. Plaintiff John Roe**

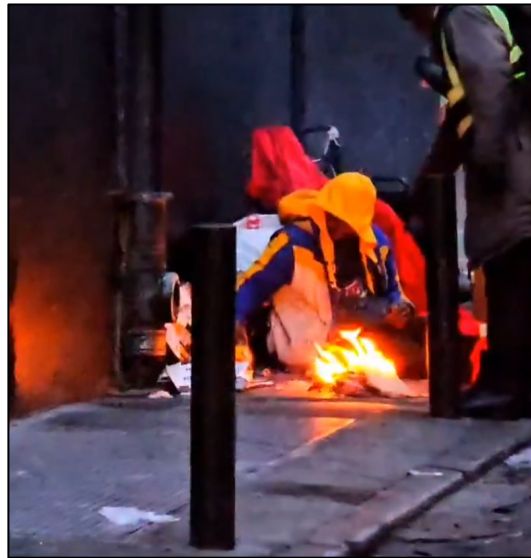
2 47. Plaintiff John Roe is a pseudonym and not his real name. Submitted
3 with this complaint is an application for an order permitting him to use a pseudonym
4 to protect his personal safety.

5 48. Plaintiff John Roe, born in South America, has resided in the United
6 States for over 15 years. He is in his late 50s. He is a behavioral health worker.
7 About four years ago he and his husband purchased a home near the corner of Turk
8 and Larkin Streets in the Tenderloin.

9 49. The conditions around his home “logistically and emotionally” affect and
10 drain John Doe. Drug deals happen around his residence at all hours. Dealers dress a
11 specific way and obviously belong to gangs. They are intimidating. He sees people on
12 the sidewalk inject drugs. People light fires in front of his home. He hears people in
13 the throes of drug-induced psychotic episodes scream. The medical examiner’s van
14 recently blocked his driveway to pick up the corpse of someone who overdosed. The
15 images below show what he regularly encounters in front of home:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



50. John Roe sometimes hears gunshots. The drug-related violence leaves him fearful and in despair. He sees biological hazards and garbage “everywhere” on the sidewalks and streets. He recently encountered someone defecating in his doorway. When he asked that person to leave, the man threatened him.

51. John Roe cannot walk on the sidewalks around his home because drug dealers and addicts gather and block passage. Encampments and stolen goods displayed for sale also make the sidewalks impassable. He must step into the street to bypass these dangers and obstacles.

52. John Doe regularly reports the problems around his home to the City, which rarely responds. Despite the constant open-air crime, John Roe seldom sees members of the SFPD on foot patrol in his neighborhood.

E. Plaintiff Barbara Roe

53. Plaintiff Barbara Roe is a pseudonym and not her real name. Submitted with this complaint is an application for an order permitting her to use a pseudonym to protect her personal safety.

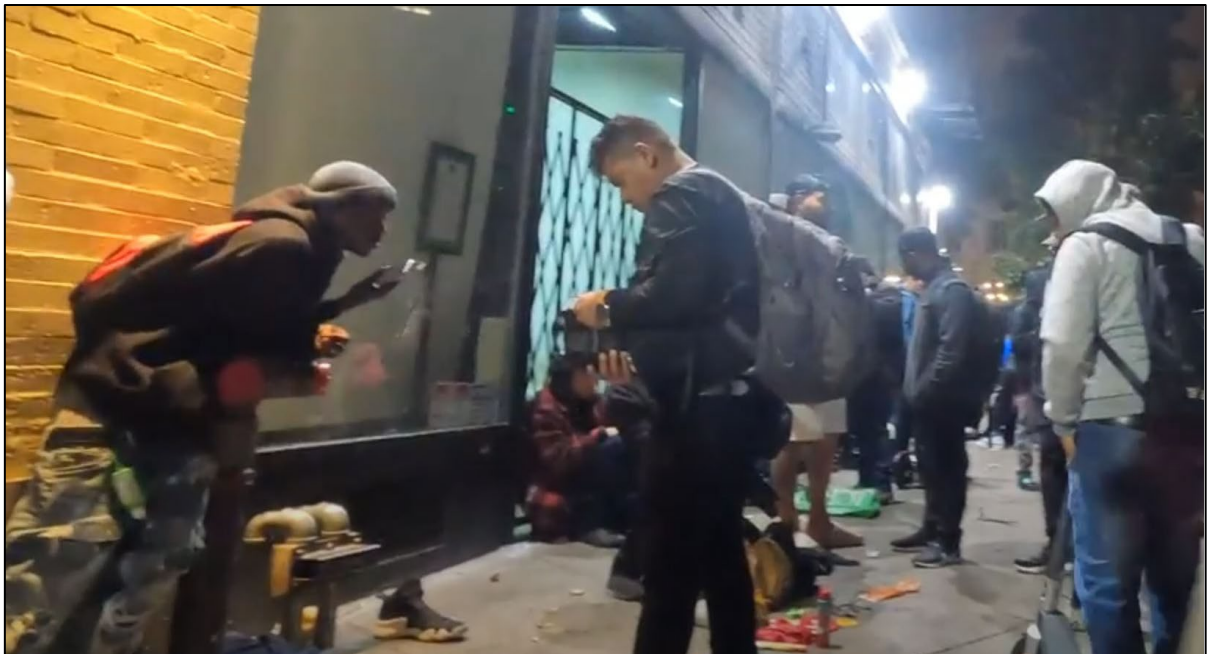
54. In 2020, Barbara Roe and her husband purchased a condominium in a

1 multi-unit building on McAllister Street in the Tenderloin.

2 55. Large crowds gather in front of and around Barbara Roe’s building
3 every night. The typical after-dark crowd ranges from seventy to over one hundred
4 people. Those in the crowd openly sell, inject and smoke drugs, and hawk stolen
5 items.

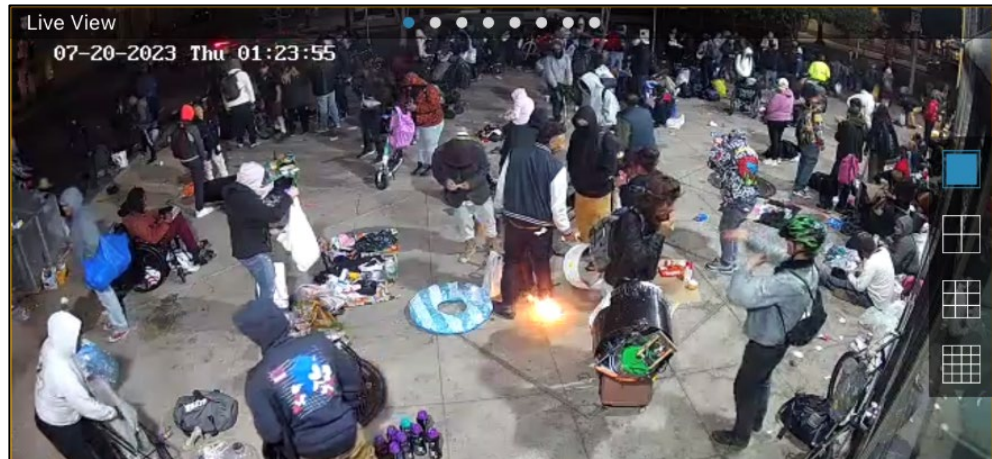
6 56. Barbara Roe finds it “difficult and scary” to navigate through the crowds
7 around her residence. People under the influence block the door to her building.
8 When she politely asks them to move so that she can pass, she fears that they will
9 attack her. Recently, one of her neighbors was attacked and injured at the entrance
10 to their building and had to go to the emergency room to receive stitches. There are
11 bonfires on the sidewalk. The smoke sometimes triggers her building’s fire alarm,
12 forcing her and her neighbors to evacuate into the threatening crowd.

13 57. Barbara Roe must step into the busy street to bypass the sidewalk
14 obstacles near her building. The images below show typical nighttime conditions in
15 front of her building and on nearby sidewalks.



27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. The Phoenix Hotel Plaintiffs

58. Plaintiff Phoenix Hotel SF, LLC is a California limited liability company in good standing.

59. A hotel has been in operation at 601 Eddy Street in the Tenderloin since the 1960s. In 1987, an affiliate of plaintiff Phoenix Hotel SF, LLC acquired a leasehold interest in the property, and renovated and converted it into the “Phoenix Hotel.” The Phoenix Hotel has since become a San Francisco landmark and an iconic institution in the Tenderloin. The entrance to the Phoenix Hotel is on Eddy Street. Larkin Street borders the eastern side of the hotel property.

60. Beginning in 2011, plaintiff Phoenix Hotel SF, LLC took over the leasehold interest and operations of the Phoenix Hotel.

61. Plaintiff Funky Fun, LLC is a California limited liability company in good standing. In 2011, it opened a restaurant and bar within the Phoenix Hotel commonly known as “Chambers Eat + Drink” or the Chambers restaurant.

62. Plaintiffs Phoenix Hotel SF, LLC and Funky Fun, LLC are hereafter referred to in the collective as the “Phoenix Hotel Plaintiffs.”

63. The principals of the Phoenix Hotel Plaintiffs care deeply about the Tenderloin. Since taking over the hotel and restaurant, the Phoenix Hotel Plaintiffs have been committed to improving and promoting the neighborhood.

1 64. From 1987 through 2019 at the hotel, and from 2011 through 2019 at
2 the restaurant, business was vibrant. Operations brought many visitors to the
3 Tenderloin and put the neighborhood in a favorable light. Guests of the hotel
4 included famous musicians, artists and celebrities. People from all over the world
5 dined at the Chambers restaurant and gave it rave reviews. The Phoenix Hotel
6 Plaintiffs employed an average of about 50 people during this time, providing them
7 with good jobs in the hospitality industry. The Phoenix Hotel Plaintiffs were proud of
8 the employment, business, energy, goodwill and excitement that they brought to the
9 Tenderloin.

10 65. The pandemic of 2020 caused the restaurant to shut down completely
11 and the hotel to scale back operations. The Phoenix Hotel Plaintiffs, however, were
12 determined to survive and continue operations in the Tenderloin when the pandemic
13 passed. However, conditions around the Phoenix Hotel have changed and worsened
14 considerably since 2019.

15 66. Because the City treats the Tenderloin as a containment zone, people
16 who appear to be gang members now openly sell fentanyl and other potent drugs
17 around the Phoenix Hotel. People freely inject and smoke and ingest drugs on the
18 sidewalks around the property.

19 67. The Phoenix Hotel Plaintiffs must comply with the Americans with
20 Disabilities Act and other laws that mandate that their facilities be open and
21 accessible to those with disabilities, *e.g.*, patrons who use a wheelchair. However,
22 crowds of hostile people selling and using narcotics block passage of the sidewalks
23 abutting the hotel. Encampments, garbage and biological hazards make it difficult or
24 impossible for even able-bodied guests and patrons to navigate on the public
25 walkways around the hotel. The images below depict typical conditions.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



68. The conditions around the Phoenix Hotel scare prospective hotel guests and restaurant patrons. Current business has plummeted as a result, down by about two-thirds compared to 2011 to 2019. Below are excerpts from recent emails and social media reviews:

“The neighborhood is sort of shocking & sad - I have traveled the world & spent significant time in SF many years ago - SF is like a war zone these days - The Tenderloin needs to be cleaned up - at least around the hotel so guests feel safe upon arrival & walking out of the hotel.”

“I wanted to give you a little update as we’ve just spoken to the client and unfortunately they have decided that they won’t be going ahead with Chambers [restaurant] on this occasion. They thought the venue was great but there were concerns raised by the leadership team about the safety of the surrounding area so unfortunately they’ve had to discount it as a dinner venue.”

“It’s truly just the surroundings that ruin it for the place. Other than that it was a great stay. Sadly the people loitering on the street - doing drugs & burning something were VERY off putting. I generally am comfortable with street people but this was extreme. I know you can’t change the neighborhood but I am hesitant to write a review because of that.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“Good: Hotel was beautiful clean and accommodating
Bad: Location was horrible, homeless everywhere, didn’t
feel safe walking off the hotel parking lot.”

“Know it’s a difficult situation but the homeless and drug
dealers on the street corner would probably dissuade me
from booking at the Phoenix again. Love the staff, vibe but
just don’t feel safe walking out of the hotel.”

“This hotel is in a terrible neighborhood. Going out
anywhere was a challenge due to MANY drugged out
individuals carpeting the sidewalk along with thick litter.
I’m glad I survived.”

69. The average number of people employed by the Phoenix Hotel Plaintiffs has dropped to about 20 because of the downturn in business. It is difficult for the Phoenix Hotel Plaintiffs to retain existing employees and to hire new ones. When a hotel employee recently asked a trespasser to leave the parking lot, the man struck the employee on the head with an object. The restaurant has been unable to recruit a qualified chef because the neighborhood conditions deter applicants.

70. The lease for the Phoenix Hotel ends in September 2025. Had the conditions in the Tenderloin in general and around the hotel in particular not deteriorated, then the Phoenix Hotel Plaintiffs would have renewed the lease. They want to continue to do business in the Tenderloin. They want to provide good jobs. They want to continue to improve and promote the neighborhood. However, renewing a lease is a long-term commitment that requires a reinvestment in the property and a good-faith belief that customers will patronize the business in the future. The current conditions around the hotel have caused the Phoenix Hotel Plaintiffs to decline to renew the lease.

G. The Best Western Plaintiff

71. Plaintiff 2930 El Camino, LLC, a California limited liability company in good standing, has an ownership interest in real property located at 700 Eddy Street, on the northwest corner of Polk Stret, in the Tenderloin. The back of the property

1 borders Willow Street. Plaintiff 2930 El Camino, LLC operates a short-term hotel at
2 this location that is commonly known as the “Best Western Road Coach Inn.”
3 Plaintiff 2930 El Camino, LLC is hereafter referred to as the “Best Western
4 Plaintiff.”

5 72. The City’s containment zone policy has caused horrific conditions on the
6 sidewalks and public spaces around the Best Western Road Coach Inn. Narcotic
7 transactions happen around the hotel at all hours. Addicts live in unsanitary
8 sidewalk encampments next to the hotel. Hotel staff regularly clean and hose down
9 the sidewalks abutting the hotel, but they are quickly re-littered with excrement,
10 used syringes and garbage. The image below show trespassers ingesting drugs in the
11 parking lot of the hotel, which is open to the street.



25 73. The Best Western Plaintiff must comply with the Americans with
26 Disabilities Act and other laws that mandate that its facilities be open and accessible
27 to those with disabilities, *e.g.*, patrons who use a wheelchair. However, the sidewalks
28 around the hotel are inaccessible to guests. The images below show typical conditions

1 on the Polk Street side of the hotel:
2
3
4
5
6
7
8
9
10
11



12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

74. Despite the efforts and hard work of hotel employees, the conditions on the sidewalks mortify and scare guests. Here are some recent online reviews:

“The staff is amazing & work really hard to make their guests comfortable. That being said; if your room is near the alley you get to listen to screaming all night and smell the outside toilet. Every morning the staff has to pressure wash the poo off the driveway and sidewalk. The smell doesn't go away. It's a great hotel. It would be amazing in another location and where guests felt safe.”

1 “Sirens every 20 minutes, homeless and drugs were on all
2 streets surrounding the hotel. Trash on all the sidewalks,
as well as people, sleeping and living there.”

3 *****

4 “Typical Best Western but the area is terrible. Lots of
5 homeless, drugged people. Walking is not recommended.”

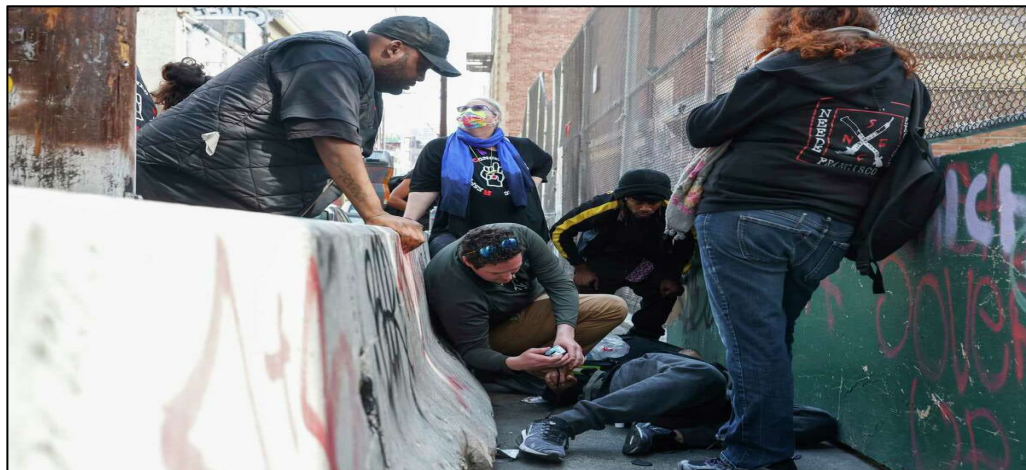
6 *****

7 “There’s a lot of noise from homeless people at night, hard
8 to sleep and unsafe to walk at night.”

9 75. An example of how the City treats the Tenderloin as a containment zone
10 occurred on August 31, 2023, when “activists” made a public show of setting up tents
11 on Willow Street and inviting addicts to come there to collect drug paraphernalia and
12 ingest fentanyl. The images below show what took place:



Source: <https://sfstandard.com/2023/08/31/san-francisco-activists-pop-up-safe-drug-use-site/>



Source: <https://www.sfchronicle.com/opinion/article/san-francisco-tenderloin-drug-prevention-site-18314454.php>



Source: <https://www.sfchronicle.com/opinion/article/san-francisco-tenderloin-drug-prevention-site-18314454.php>

76. As one news site reported, “At the renegade safe-consumption site, [the reporter] witnessed several people using drugs under the tent while many others lined up to obtain fresh materials to consume their drugs with.”⁸

77. Operating a narcotics ingestion site, such as the one on Willow Street, is a crime under California law, punishable by up to one year in jail.⁹ Federal law makes it a *felony*, punishable by imprisonment up to 20 years, to be involved in the operation of a site like the one on Willow Street.¹⁰

78. The illegal narcotics ingestion site on Willow Street operated only a few hundred feet from the Tenderloin Community Elementary School. Seniors and low-income families with young children live nearby. The site operated in the middle of restaurants and shops in the “Little Saigon” subdistrict of the Tenderloin. These businesses were already struggling to stay open in the face of deplorable conditions caused by the City’s treatment of area as a containment zone.¹¹

⁸ <https://sfstandard.com/2023/08/31/san-francisco-activists-pop-up-safe-drug-use-site/>

⁹ California Health & Safety Code §§ 11365, 11366.

¹⁰ 21 U.S.C. § 856. “The statute forbids opening and maintaining any place for visitors to come use drugs.” *United States v. Safehouse*, 985 F.3d 225, 243 (3rd Cir. 2021) (declaring that a nonprofit that intentionally opens its facility to visitors it knows will use drugs there violates 21 U.S.C.A. § 856).

¹¹ <https://sfstandard.com/2024/01/22/san-francisco-little-saigon-homeless-center/>

1 79. The City does nothing to discourage such outrageous, disrespectful and
2 harmful conduct from happening in the Tenderloin. To the contrary, a news report
3 quoted a member of the San Francisco Board of Supervisors as praising those who
4 ran the Willow Street site.¹² An employee of a nonprofit that receives hundreds of
5 millions of dollars in funding from the City may have helped set up and operate the
6 site.¹³ That those who operated the site had the temerity to block a public sidewalk in
7 the Tenderloin, and publicly proclaim their participation in criminal narcotics
8 activity, comes as no surprise given the City’s attitude about the Tenderloin. The
9 City itself previously opened a “wellness hub” in the neighborhood that, in fact,
10 operated as a “supervised” narcotics consumption site in violation of state and
11 federal law.¹⁴

12 **H. Defendant City and County of San Francisco**

13 80. Defendant City and County of San Francisco is a municipal entity
14 existing under the laws of the State of California, with the capacity to sue and be
15 sued.

16 **V. CLAIMS FOR RELIEF**

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of Title II of the Americans with Disabilities Act**
19 **42 U.S.C. §§ 12131 *et seq.***
20 **(Plaintiffs Mary Roe and Susan Roe)**

21 81. Plaintiffs Mary Roe and Susan Roe re-allege and incorporate herein by
22 this reference each and every allegation set forth in Paragraphs 1 through 80 of this
23 Complaint as though set forth fully herein.

24 _____
25 ¹² <https://abc7news.com/overdose-awareness-day-2023-san-francisco-tenderloin-safe-injection-sites-pop-up-site/13723380/>

26 ¹³ See <https://www.sfchronicle.com/opinion/article/san-francisco-tenderloin-drug-prevention-site-18314454.php>; <https://www.sfchronicle.com/bayarea/article/nonprofit-ceo-contract-pay-18667516.php>

27 ¹⁴ See <https://www.cbsnews.com/sanfrancisco/news/tenderloin-center-safe-injection-site-closure-advocates-sf-superviors-push-back-mayor-breed-sfdph/>

1 82. The ADA provides that people with disabilities be afforded “the full and
2 equal enjoyment of the goods, services, facilities, privileges, advantages, or
3 accommodations of any place of public accommodation....”¹⁵ Further, the ADA
4 ensures that transportation facilities are constructed to a set of standards that
5 ensures accessibility for the disabled. Sidewalks are the most common element of
6 transportation infrastructure, yet if they are not accessible, they pose great
7 challenges and dangers to anyone in a wheelchair, dependent on a walker, or who
8 has other mobility restrictions.

9 83. Sidewalks are subject to the access requirements of Title II of the ADA
10 and § 504 of the Rehabilitation Act.¹⁶ Accordingly, sidewalk width requirements
11 ensure that sidewalks are accessible for use by wheelchair-bound individuals.

12 84. The minimum width for an ADA-compliant sidewalk is 36 inches.¹⁷ “A
13 public entity shall maintain an operable working condition those features of facilities
14 and equipment that are required to be readily accessible to and usable by persons
15 with disabilities by the Act or this part.”¹⁸

16 85. Throughout the Tenderloin, the City fails to uphold its obligations to
17 maintain clear and accessible sidewalks and public rights-of-way for its disabled
18 residents and visitors, resulting in regular violations of the Americans with
19 Disabilities Act. These ADA violations are obvious and known to the City both
20 through its own inspections and various reports to the City of blocked sidewalks due
21 to illegal sidewalk vending, crowds engaged in narcotics activities, encampments,
22 piles of garbage, bicycle “chop shops,” and similar obstructions. The City and its
23

24 ¹⁵ 42 U.S.C. § 12182(a).

25 ¹⁶ *Willits v. City of Los Angeles*, 925 F. Supp. 2d 1089, 1093 (C.D. Cal. 2013) (“Any
26 public sidewalk over which the City of Los Angeles has responsibility to inspect and
27 notify property owners of repair needs is a ‘program, service, or activity’ within the
28 meaning of Title II of the Americans with Disabilities Act and Section 504 of the
Rehabilitation Act of 1973.”).

¹⁷ 36 C.F.R. § 1191, app. D, § 403.5.1 (“the clear width of walking surfaces shall be 36
inches (915 mm) minimum”).

¹⁸ 28 C.F.R. § 35.133(a).

1 agents and employees have failed and continue to fail to provide reasonable
2 accommodations for disabled persons using public sidewalks in the Tenderloin.

3 86. The City is obligated to operate the “service, program, or activity” “so
4 that..., when viewed in its entirety, it is readily accessible to and useable by
5 individuals with disabilities.”¹⁹ Yet when “viewed in its entirety” public rights-of-way
6 are not provided by the City to be “readily accessible to and useable” by individuals
7 bound to wheelchairs and assistive walking devices.

8 87. The discrimination and denial of access to the City’s rights-of-way for
9 persons with disabilities in the Tenderloin is the direct result of the City’s policies
10 and practices of tolerating: (a) crowds blocking sidewalks while selling, buying and
11 ingesting narcotics; (b) widespread illegal sidewalk vending; (c) encampments; (d)
12 garbage and biohazards accumulating on the sidewalks; and (d) activities such as the
13 operation of a stolen bicycle chop shops that block the sidewalks. The City has failed
14 to adopt or implement any adequate procedures for regularly inspecting and
15 maintaining the pedestrian rights-of-way clear of these obstructions.

16 88. As a direct and proximate result of the aforementioned acts, including
17 but not limited to The City’s deliberate indifference to the violation of plaintiffs Mary
18 Roe’s and Susan Roe’s federally protected rights, and these plaintiffs have suffered
19 pain, humiliation, hardship, anxiety, indignity, and severe mental and emotional
20 anguish. This deprives these plaintiffs’ of their independence and prevents them from
21 accessing the services and benefits of public establishments.

22 89. Pursuant to 42 U.S.C. § 12133 and 29 U.S.C. § 794a(b), plaintiffs Mary
23 Roe and Susan Roe are entitled to recover reasonable attorneys’ fees and costs
24 incurred in bringing this action.

25 ///

26 ///

27

28

¹⁹ 28 C.F.R. § 35.150(a).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CLAIM FOR RELIEF
Violation of Section 504 of the Rehabilitation Act
29 U.S.C. §§ 794 *et seq.*
(Plaintiffs Mary Roe and Susan Roe)

90. Plaintiffs Mary Roe and Susan Roe re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set forth fully herein.

91. Section 504 of the Rehabilitation Act of 1973 provides in relevant part:

[N]o otherwise qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....²⁰

92. Plaintiffs Mary Roe and Susan Roe are otherwise qualified to participate in the services, programs, or activities that are provided to individuals in the City. The City is a recipient of federal financial assistance and therefore subject to Section 504. The City and its agents and employees have violated and continue to violate Section 504 of the Rehabilitation Act by excluding plaintiffs Mary Roe and Susan Roe from participation in, denying them the benefits of, and subjecting them to discrimination regarding the benefits and services involved in utilizing public rights-of-way based solely on their disability.

93. Upon information and belief, said discrimination occurred with deliberate intent and/or reckless disregard of plaintiffs Mary Roe’s and Susan Roe’s rights. These plaintiffs seek injunctive relief and the cost of attorneys’ fees in bringing this action.

THIRD CLAIM FOR RELIEF
Violation of California Disabled Persons Act
California Civil Code §§ 54 *et seq.*
(Plaintiffs Mary Roe and Susan Roe)

94. Plaintiffs Mary Roe and Susan Roe re-allege and incorporate herein by

²⁰ 29 U.S.C. § 794(a).

1 this reference each and every allegation set forth in Paragraphs 1 through 80 of this
2 Complaint as though set forth fully herein.

3 95. California’s Disabled Persons Act codifies requirements that ensure
4 equal and full access to individuals with disabilities. That Act provides, in part:

5 Individuals with disabilities or medical conditions have the
6 same right as the general public to the full and free use of
7 the streets, highways, sidewalks, walkways, public
8 buildings, medical facilities, including hospitals, clinics,
9 and physicians’ offices, public facilities, and other public
10 places.²¹

11 Further,

12 Individuals with disabilities shall be entitled to full and
13 equal access, as other members of the general public, to
14 accommodations, advantages, facilities, medical facilities,
15 including hospitals, clinics, and physicians’ offices . . . and
16 other places to which the general public is invited, subject
17 only to the conditions and limitations established by law, or
18 state or federal regulation, and applicable alike to all
19 persons.²²

20 96. Plaintiffs Mary Roe and Susan Roe seek injunctive relief and the cost of
21 attorneys’ fees in bringing this action.

22 **FOURTH CLAIM FOR RELIEF**
23 **Public Nuisance**
24 **California Civil Code §§ 3490 *et seq.***
25 **(All Plaintiffs)**

26 97. All plaintiffs re-allege and incorporate herein by this reference each and
27 every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set
28 forth fully herein.

98. California has defined nuisance as:

Anything which is injurious to health, including, but not
limited to, the illegal sale of controlled substances, or is
indecent or offensive to the senses, or an obstruction to the
free use of property, so as to interfere with the comfortable
enjoyment of life or property, or unlawfully obstructs the
free passage or use, in the customary manner, of... any

²¹ Cal. Civ. Code § 54(a).
²² Cal. Civ. Code § 54.1(a)(1).

1 public park, square, street, or highway, is a nuisance.²³

2 99. The nuisance statute “is an expression of the Legislature’s public policy
3 against public nuisances, and it is plainly aimed at protecting the public from the
4 hazards created by public nuisances.”²⁴ In addition to health and safety hazards, “[a]
5 reduction in property values caused by activities on a neighboring piece of land, and
6 an assault on the senses by noise, dust, and odors, are just the kinds of harm that
7 common law suits to abate a nuisance are designed to redress.”²⁵ A public nuisance is
8 the substantial and unreasonable interference with a public right.²⁶

9 100. As described above, the City, by its failure to maintain the public
10 property under its control and to enforce the laws requiring the same, is perpetuating
11 and facilitating a public nuisance.

12 101. All plaintiffs have experienced a substantial and unreasonable
13 interference with the enjoyment of their property, whether that be an apartment, a
14 home, or commercial property, and with their right of free passage and use; each has
15 suffered and continues to be threatened with respect to his, her, or its health and
16 welfare, by reason of the crowds blocking sidewalks and public spaces while engaged
17 in illegal narcotic activities and other dangerous and injurious conduct, illegal street
18 vending, the presence of encampments, trash, human waste, biohazards and other
19 nuisances on the sidewalks and public spaces outside their homes and businesses.

20 102. Each plaintiff has been damaged in his, her, or its own right, in a
21 manner specially injurious to himself, herself, or itself. No plaintiff consented to the
22 City’s conduct.

23 103. Plaintiffs seek injunctive relief and the cost of attorneys’ fees in bringing
24 this action.

25

26 ²³ Cal. Civ. Code § 3479.

27 ²⁴ *People v. ConAgra Grocery Prods. Co.*, 17 Cal. App. 5th 51, 136 (2017).

28 ²⁵ *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 505 (7th Cir. 1996).

²⁶ *San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal. 4th 893, 938 (1996).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CLAIM FOR RELIEF
Private Nuisance
California Civil Code §§ 3501 *et seq.*
(All Plaintiffs)

104. All plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set forth fully herein.

105. Each plaintiff owns, leases, occupies, or otherwise controls all of a portion of the home or business identified. The City's actions and inactions have created conditions or permitted conditions to exist that are harmful to the health, are indecent and offensive to the senses, obstruct the free passage and use of public parks, squares, streets, highway, and sidewalks, permit unlawful sales and consumption of illicit narcotics, illegal street vending, and constitute a fire hazard, as described *supra*.

106. The City's conduct has been and is intentional and unreasonable, or unintentional but negligent or reckless. Alternatively, the conditions permitted to exist were the result of abnormally dangerous activity that substantially interfered with each plaintiff's use or enjoyment of his, her, or its land that would reasonably annoy or disturb an ordinary person. No plaintiff consented to the City's conduct; each was harmed; the City's conduct was a substantial factor in causing the harm; and the seriousness of the harm outweighs any public benefit of such conduct.

107. Plaintiffs seek no monetary damages hereunder and assert this cause of action for the purpose of obtaining equitable and injunctive relief only. Accordingly, the City is not entitled to any claim of immunity, pursuant to California Government Code § 814.

SIXTH CLAIM FOR RELIEF
Violation of Due Process
42 U.S.C. § 1983; U.S. Const. Amend. V/XIV
(All Plaintiffs)

108. All plaintiffs re-allege and incorporate herein by this reference each and

1 every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set
2 forth fully herein.

3 109. The City, by abdicating its duties under the law to ensure safe and
4 secure living conditions in the Tenderloin, has denied residents and visitors due
5 process of law as guaranteed by the Fifth and Fourteenth Amendments of the United
6 States Constitution. The dangerous and squalid conditions of the public walkways
7 and spaces in the Tenderloin have denied plaintiffs and other residents and
8 stakeholders of their unimpeded liberty and use of their property. The City allowed
9 conditions to fester that threaten their safety, health and lives.

10 110. Upon information and belief, this was done with deliberate intent and/or
11 reckless disregard of plaintiffs' rights. Plaintiffs seek injunctive relief and the cost of
12 attorneys' fees in bringing this action.

13 **SEVENTH CLAIM FOR RELIEF**
14 **Violation of Equal Protection**
15 **42 U.S.C. § 1983; U.S. Const. Amend. V/XIV**
16 **(All Plaintiffs)**

17 111. All plaintiffs re-allege and incorporate herein by this reference each and
18 every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set
19 forth fully herein.

20 112. The City, by enforcing the laws in some areas and declining to enforce
21 those laws in the Tenderloin, has arbitrarily determined where illicit narcotics
22 activities can occur, where crowds of persons engaged in illegal activities can gather,
23 where sidewalk encampments may or may not be located, and what communities
24 should be affected, without following its own procedures and in violation of both state
25 and federal law. This has placed a disproportionate burden on persons and
26 businesses in the Tenderloin, over those in other neighborhoods.

27 113. Upon information and belief, this was done with deliberate intent and/or
28 reckless disregard of plaintiffs' rights.

114. Plaintiffs seek injunctive relief and the cost of attorneys' fees in bringing

1 this action.

2 **EIGHTH CLAIM FOR RELIEF**
3 **Violation of Due Process Clause, State-Created Danger Doctrine**
4 **42 U.S.C. § 1983; U.S. Const. Amend. XIV**
5 **(All Plaintiffs)**

6 115. All plaintiffs re-allege and incorporate herein by this reference each and
7 every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set
8 forth fully herein.

9 116. By the acts and omissions described above, the City has affirmatively
10 created or increased the risk that plaintiffs would be exposed to dangerous
11 conditions, which placed plaintiffs specifically at risk, and plaintiffs were harmed as
12 a result.

13 117. The City knew or should have known that its acts or omissions
14 specifically endangered plaintiffs, and the City was deliberately indifferent thereto.

15 118. Plaintiffs seek injunctive relief and the cost of attorneys' fees in bringing
16 this action.

17 **NINTH CLAIM FOR RELIEF**

18 **Negligence**
19 **(All Plaintiffs)**

20 119. All plaintiffs re-allege and incorporate herein by this reference each and
21 every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set
22 forth fully herein.

23 120. The City, by and through its agents and employees, has the sole right
24 and responsibility to control, maintain, and keep safe and clean the public and
25 public-right-of-way areas in San Francisco, including parks, sidewalks, streets, and
26 public buildings, and to make and enforce laws assuring the public health and safety
27 thereof for its citizens and their guests. Among other things, the City has the duty to
28 maintain these areas in a manner that does not unreasonably interfere with the free
passage or use by plaintiffs and that addresses and alleviates conditions that are

1 harmful to health or indecent or offensive to the senses, that create a fire hazard, or
2 that permit crime to occur unabated including the illegal sale narcotics.

3 121. As controlling law makes clear, “The public is entitled to the free and
4 unobstructed use of the entire streets and sidewalks....”²⁷ Indeed, municipalities
5 “have the duty to keep their communities’ streets open and available for movement of
6 people and property, the primary purpose to which the streets are dedicated.”²⁸

7 122. The City and its agents have breached their duty to the Tenderloin’s
8 citizens, including and specifically to plaintiffs, and each plaintiff has suffered as a
9 result. The bases of this claim for relief include the conduct, acts, and omissions of
10 individual responsible City officials, based on the theory of *respondeat superior*.

11 123. Plaintiffs seek no monetary damages hereunder and make this claim for
12 only equitable and injunctive relief. Accordingly, the City is not entitled to any claim
13 of immunity, pursuant to California Government Code § 814.

14 **TENTH CLAIM FOR RELIEF**
15 **Deprivation of the Guarantee of Safety and the Pursuit of Happiness**
16 **California Constitution, Article I, § 1**
17 **(All Plaintiffs)**

18 124. All plaintiffs re-allege and incorporate herein by this reference each and
19 every allegation set forth in Paragraphs 1 through 80 of this Complaint as though set
20 forth fully herein.

21 125. California Constitution, Article I § 1 provides:

22 All people are by nature free and independent and have
23 inalienable rights. Among these are enjoying and defending
24 life and liberty, acquiring, possessing, and protecting
25 property, and pursuing and obtaining safety, happiness,
26 and privacy.

27 126. The actions by the City have limited, damaged, and/or burdened
28 plaintiffs’ constitutionally guaranteed inalienable rights, including plaintiffs’ rights

27 ²⁷ *Vanderhurst v. Tholcke*, 113 Cal. 147, 152 (1896).

28 ²⁸ *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 160, 60 S. Ct.
146, 150 (1939).

1 to enjoy and defend their life and liberty; to acquire, possess, and protect their
2 property; and to pursue and obtain safety, happiness, and privacy.

3 127. Plaintiffs seek no monetary damages hereunder and submit this claim
4 for only equitable and injunctive relief. Accordingly, the City is not entitled to any
5 claim of immunity, pursuant to California Government Code § 814.

6 **VII. DEMAND FOR JUDGMENT**

7 WHEREFORE, plaintiffs pray for judgment against defendant and County of
8 San Francisco, as follows:

- 9 1. Injunctive/equitable relief in a manner to be determined by law;
- 10 2. An award of costs of suit, including attorneys' fees, as permitted by law;
- 11 and
- 12 3. Such other and further relief as this Court deems just and proper.

13 Dated: March 14, 2024

14 WALKUP, MELODIA, KELLY & SCHOENBERGER

15 KLINE + SPECTER

16
17
18 By: 

19 MICHAEL A. KELLY
20 RICHARD H. SCHOENBERGER
21 MATTHEW D. DAVIS
22 ASHCON MINOIEFAR

23 SHANIN SPECTER
24 ALEX VAN DYKE

25 Attorneys for Plaintiffs
26
27
28

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jane Roe, an individual; et al.

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael A. Kelly #71460; Matthew D. Davis #141986; Walkup Melodia Kelly & Schoenberger, 650 California St., 26th Fl, SF, CA 94108 (415) 981-7210

DEFENDANTS

City and County of San Francisco, a California Public Entity,

County of Residence of First Listed Defendant San Francisco (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

X

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. sec. 12131 et seq.

Brief description of cause: ADA Violation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Honorable Jon S. Tigar DOCKET NUMBER 4:20-cv-03033-JST

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 03/13/2024

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of attorney

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.