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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**
17

18 YESICA PRADO, ERIN SPENCER, AMBER
19 WHITSON, JERMAINE WHITE, MONIQUE
20 WILLIAMS, and WHERE DO WE GO F/K/A
WHERE DO WE GO BERKELEY, on behalf
of themselves and all others similarly situated,

21 Plaintiffs,

22 v.

23 CITY OF BERKELEY,

24 Defendant.
25
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27
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Case No. 23-cv-04537-EMC

**CORRECTED THIRD AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

CLASS ACTION

Judge: Edward M. Chen

1 Plaintiffs Yesica Prado, Erin Spencer, Amber Whitson, Jermaine White, Monique
2 Williams, and Where Do We Go (“Plaintiffs”) complain and allege, on behalf of themselves and
3 all others similarly situated, as follows:

4 **I. INTRODUCTION**

5 1. The City of Berkeley (“City” or “Defendant” or “Berkeley”) is home to over
6 1,000 unhoused residents, over 800 of whom are unsheltered. Over 60% of Berkeley’s unhoused
7 residents have a mental health disability, over 18% have a developmental health disability, and
8 over 30% have a physical disability.¹ Many members of this group need accommodations to
9 access the homelessness services offered by Berkeley. Berkeley is aware of these statistics and
10 the need for accommodations, yet the City consistently and systematically fails to accommodate
11 unhoused residents’ disability-related needs.

12 2. The City of Berkeley’s policies and practices for addressing homelessness
13 consistently and systematically deprive Berkeley’s unhoused residents of rights under state and
14 federal laws, and subject unhoused residents to a devastating cycle of property loss, trauma,
15 community separation, and criminalization. During enforcement actions at encampments
16 (referred to herein as “sweeps,” “closures,” or “abatements”), the City of Berkeley engages in a
17 practice of disposing of unhoused residents’ belongings, including necessary survival gear such
18 as tents, bedding, jackets, medications, and mobility devices. If residents refuse to leave areas
19 subject to abatement or closure, they are subject to arrest.

20 3. The City of Berkeley, by its own admission, does not have enough shelter space
21 to accommodate its unsheltered residents. It couples its shelter outreach efforts with its eviction
22 efforts, forcing individuals to either move to another area on the street with only what they can
23 carry (losing everything else), or to give up their existing shelter and communities to enter
24 temporary shelter facilities that have strict property-storage limits and other restrictive rules.
25 Most, if not all, of the temporary shelter facilities are not accessible to people with disabilities, or
26

27 ¹ City Manager Dee Williams-Ridley, Memorandum to Honorable Mayor and Members of the
28 City Council re: Eighth St and Harrison St Encampment Efforts 34 (Feb. 20, 2024),
[https://berkeleyca.gov/sites/default/files/documents/2024-02-20-
%20Eighth%20St%20and%20Harrison%20St%20Encampment%20Efforts.pdf](https://berkeleyca.gov/sites/default/files/documents/2024-02-20-%20Eighth%20St%20and%20Harrison%20St%20Encampment%20Efforts.pdf).

1 they fail to make accommodations to their policies to accommodate the disability-related needs
2 of unhoused residents. Rather than using its shelter to prioritize people with disabilities who are
3 most in need, the City often reserves its shelter beds for individuals it plans to sweep, while
4 people with disabilities who have been desperately seeking shelter are ignored. For example,
5 when Berkeley resident Rufus White Jr., who uses a wheelchair and was unhoused at the time,
6 followed up with the City about an offer of shelter, a City employee told him that there were “no
7 open ADA rooms” and that he would need to wait until one became available.

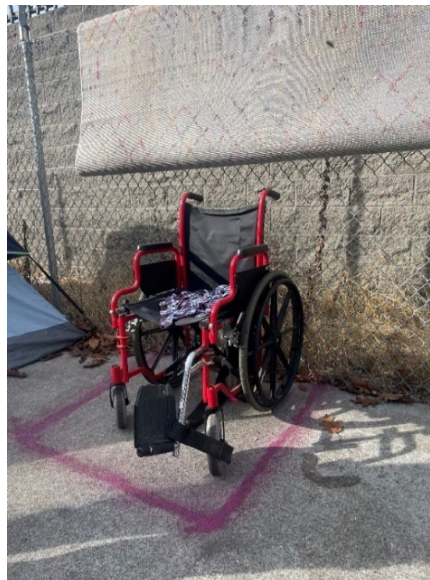
8 4. For residents who do receive shelter offers during sweeps, in order to enter the
9 shelter facilities, they are often forced to give up their previous sources of shelter including RVs,
10 tents, and built structures, in addition to many of their other belongings. The majority of the
11 City’s shelters are temporary in nature, both because the programs place limits on participants’
12 stays and because the City engages in a practice of temporarily leasing shelter spaces and then
13 exiting remaining program participants back onto the streets when those leases end. Thus,
14 Berkeley residents who do enter temporary homeless shelters are frequently terminated from
15 programs and forced to return to homelessness without the belongings and sources of shelter to
16 which they previously had access, thereby placing them in increased risk of harm.

17 5. This complaint challenges the City’s failure to accommodate the needs of
18 unhoused residents with disabilities with respect to three aspects of the City’s service provision.
19 First, when the City conducts outreach to its unhoused residents, it fails to do so in a way which
20 acknowledges and accommodates their mental health and other disability-related needs. This is
21 best illustrated by the fact that the City’s homeless outreach team does not include any mental
22 health professionals or other people with sufficient mental health training, and is also apparent in
23 the City’s practice of coupling the majority of its outreach and shelter offers with traumatizing
24 encampment abatements and closures, rendering it difficult or impossible for many individuals
25 with mental health disabilities to access this outreach.

26 6. Second, when the City enforces the municipal code provisions that most impact
27 unhoused individuals, it does so in a way that (1) makes it impossible for many unhoused
28 residents to comply, especially given their disabilities; (2) deprives them of property including

1 tents and vehicles, which are essential to their survival on the streets; and (3) places them in
2 increased danger by depriving them of their shelter without providing them with anywhere to go.

3 7. For example, the City enforces a regulation and policy that requires Plaintiffs and
4 Class members residing on the street to reduce their belongings to items that would fit into a “9
5 square foot” area, without any consideration of the amount of space people (particularly people
6 with disabilities) need for shelter and survival. On November 2, 2023, the City of Berkeley
7 spray-painted a square of this size on the sidewalk, and instructed Plaintiffs Erin Spencer and
8 Yesica Prado and Berkeley resident Lucien Jeffords, who was unhoused at the time, that any of
9 their possessions that do not fit within this square footage would be subject to immediate
10 disposal, if not otherwise marked for storage. As depicted below, a square area of this size is
11 barely large enough to accommodate an individual’s wheelchair, and certainly cannot



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21 accommodate essential survival gear of any individual.

22 8. In fact, at an August 2024 meeting of the City of Berkeley Peace and Justice
23 Commission, Assistant to the City Manager and Neighborhood Services Manager Peter Radu
24 admitted that it is impossible for someone to even maintain a sleeping bag in a designated 9
25 square foot space. Although in that same meeting Mr. Radu falsely claimed that the City does not
26 enforce this regulation, the City in fact provides notices in relation to encampment sweeps that
27 routinely reference this regulation and instruct residents to reduce their possessions to a nine
28 square foot space, threatening those who fail to comply with citation and arrest.

1 9. Third, temporary shelters operated by the City do not accommodate individuals'
2 physical and mental health disabilities. Many of the shelters have physical access barriers; there
3 are extremely limited spaces accessible to individuals who have mobility disabilities.
4 Additionally, a number of rules in place at the shelters pose difficulties for residents with
5 disabilities, especially mental health disabilities. For example, all of the shelters prohibit visitors,
6 even prohibiting shelter residents to visit each other in their rooms; yet many individuals with
7 disabilities who live on the streets rely on their community for emotional and other support, and
8 being isolated in a motel room without being able to have visitors exacerbates their mental health
9 issues. Additionally, the shelters limit residents' privacy, which is triggering for residents who
10 have experienced violence and violation of their personal spaces during their years living on the
11 streets. The City has been informed that residents need accommodations to these policies and has
12 refused to engage in the interactive process or modify these rules.

13 10. Plaintiffs are all unhoused residents of Berkeley with physical, intellectual, and/or
14 mental health disabilities who, on behalf of a class of those similarly situated, call on this Court
15 to require the City to: (1) provide reasonable accommodations and modifications to its policies,
16 practices and procedures to enable them to benefit from Berkeley's services and activities related
17 to homelessness, and to avoid a disparate impact on people with disabilities (as described in
18 more detail in the Prayer for Relief, below); (2) to end its practice of seizing and destroying
19 property of Plaintiffs and class members during sweeps (including without constitutionally-
20 required notice); (3) to adopt and follow clear policies allowing for the storage and return of
21 seized property (including constitutionally sufficient post-deprivation processes); (4) to end the
22 City's policies, practices, and procedures that place Plaintiffs and Class members in state-created
23 danger by depriving them of their essential belongings and survival gear without first ensuring
24 that they have access to adequate and appropriate shelter, sanctioned safe haven locations for
25 unsheltered individuals to camp or park, or, at a minimum, an alternative location to encamp or
26 park without threat of being subject to another sweep; and (5) appoint a monitor to oversee
27 compliance with the Court's order and require City of Berkeley to submit to regular monitoring
28 and compliance checks by the Court at defendant City of Berkeley's expense.

1 **II. JURISDICTION AND VENUE**

2 11. Plaintiffs' claims arise under the laws and Constitution of the United States,
3 including 42 U.S.C. § 12132 and 42 U.S.C. § 1983. Therefore, this Court has jurisdiction over
4 this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

5 12. This Court has jurisdiction to issue a declaratory judgment pursuant to the federal
6 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

7 13. This Court has supplemental jurisdiction over Plaintiffs' related state law claims
8 pursuant to 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy
9 under Article III of the United States Constitution. Plaintiffs' state law claims share common
10 operative facts with their federal law claims, and the parties are identical. Resolving Plaintiffs'
11 federal and state claims in a single action serves the interests of judicial economy, convenience,
12 consistency, and fairness to the parties.

13 14. Venue is proper in the United States District Court for the Northern District of
14 California pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2) because Defendant City of Berkeley is
15 located in this district and a substantial part of the events and/or omissions were committed in this
16 district.

17 15. Because the events and omissions giving rise to Plaintiffs' claims occurred in
18 Alameda County, this case is properly assigned to the Northern District's San Francisco
19 Division, pursuant to N.D. Cal. L.R. 3-2(d).

20 **III. THE PARTIES**

21 **A. Plaintiff Yesica Prado**

22 16. Named Plaintiff Yesica Prado is a journalist and community advocate. She has
23 lived in her RV in numerous locations in Berkeley, often joining established RV encampment
24 communities because they provide her with safety, security, and support that is necessary for her
25 to succeed. Her RV is currently parked on 8th Street between Harrison and Gilman. Though it is
26 operable, it has mechanical issues that prevent it from being moved more than a few hundred
27 feet.
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1 17. Plaintiff Prado has, as both an unhoused resident and a journalist, witnessed and
2 been subject to numerous evictions carried out by Defendant City of Berkeley. The City has
3 taken and destroyed her belongings without her consent, and she has seen others lose everything,
4 even the tent they were sleeping in, during evictions. In her current community at 8th and
5 Harrison, she and her neighbors support each other through mutual aid and chores, and they have
6 welcomed other unhoused residents to join the community.

7 18. Plaintiff Prado is a “qualified person with a disability” and a person with “a
8 disability” within the meaning of all applicable statutes and regulations including 42 U.S.C.
9 § 12131(2), 28 C.F.R. § 35.104, and California Government Code § 12926. Ms. Prado has been
10 diagnosed with Post Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity
11 Disorder (ADHD). These disabilities limit major life activities, including by affecting her ability
12 to handle stressful situations, feel safe, learn, read, think, and communicate. As a result of her
13 ADHD, to process information, she often needs to take notes or record spoken information to be
14 able to go back over it to be sure she can take it in. Being in community and being able to live
15 with others is critical to her mental health and ameliorating her PTSD.

16 19. The trauma from the City’s repeated, highly stressful sweeps, both threatened and
17 actualized, have exacerbated Plaintiff Prado’s mental health conditions, impacting her ability to
18 work, engage in self-care, and to plan and make decisions.

19 20. Because Plaintiff Prado is still homeless, she is at risk of future harms resulting
20 from the City’s continuing discriminatory policies, customs, and practices, including the loss of
21 her property and injuries she may suffer if ordered to move or if she were to lose her vehicle,
22 unless and until the City permanently modifies those policies and practices to comply with both
23 the constitution and with relevant disability rights laws.

24 **B. Plaintiff Erin Spencer**

25 21. Named Plaintiff Erin Spencer is a veteran of the U.S. Marine Corps. He has lived
26 on the streets of Berkeley for at least eight years in many locations around the city. He has faced
27 numerous encampment sweeps carried out by the City of Berkeley in which he lost most of his
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1 property and was forced to relocate. He currently lives in a structure he has built on the sidewalk
2 of Harrison Street between 7th and 8th streets in Berkeley, along with several other residents.

3 22. Plaintiff Spencer is a “qualified person with a disability” and a person with “a
4 disability” within the meaning of all applicable statutes and regulations including 42 U.S.C.
5 § 12131(2), 28 C.F.R. § 35.104, and California Government Code § 12926. Plaintiff Spencer has
6 physical disabilities, including injuries in his shoulder and back that cause him significant
7 chronic pain, and limit his shoulder mobility. These limitations impact his ability to engage in
8 daily life activities, including lifting and carrying heavy objects and cleaning his space. When he
9 lifts heavy objects, it is extremely painful and he is debilitated for days afterward, exacerbating
10 his condition. He became disabled during his military service.

11 23. Additionally, Plaintiff Spencer has been diagnosed with mental health disabilities,
12 including Major Depressive Disorder and PTSD. He has complex trauma from a childhood of
13 abuse and neglect, from his time in the military, and from his time in jail. The blank walls, rules,
14 and violence of the military and jail were traumatizing for him. These disabilities impact his
15 ability to function within rigid, hierarchical rule structures, to comply with orders, to process
16 information when he is stressed, and they sometimes lead to panic attacks. Plaintiff Spencer’s
17 past traumas make institutional settings triggering for him and make him feel unsafe, and such
18 settings can exacerbate his mental health conditions. Evictions are also traumatizing for him. He
19 has had panic attacks during evictions conducted by the City. When City agents surround him
20 and begin throwing away his belongings and taking apart his home, he can only see the people
21 around him as enemies and his experience from the military overwhelms him. The experience of
22 continually moving and losing his possessions and shelter exacerbates his PTSD and makes him
23 feel lost. It also makes it hard for him to remember dates clearly. He also struggles with
24 hoarding, partially related to his trauma of constantly losing his belongings in City sweeps. His
25 mental health disabilities require him to have close contact with his social support system. The
26 community of people living at Harrison Street welcomed Mr. Spencer when the City left him
27 with nowhere else to go without fear of removal. He relies on the community support he receives
28 from his neighbors for his survival, emotional support, and physical support.

1 24. Because Plaintiff Spencer is still homeless, he is at imminent risk of future harms
2 resulting from the City’s continuing discriminatory policies, customs, and practices, including
3 the loss of his property and injuries he may suffer if ordered to move, unless and until the City
4 permanently modifies those policies and practices to comply with both the Constitution and with
5 relevant disability rights laws.

6 **C. Plaintiff Amber Whitson**

7 25. Named Plaintiff Amber Whitson is a 44-year-old woman who has been homeless
8 for over 28 years. She first became homeless when she was 16. Ms. Whitson began living in RVs
9 in 2014, parking in various locations until enforcement by police forced her to move. She
10 previously lived in the City-run Safe Parking and Respite Kickstart (“SPARK”) parking lot, until
11 it closed in 2022. When the SPARK program closed, she was not connected with other shelter
12 and so was forced to move back to living in her RV on the street on Dwight Way between 5th
13 and 6th Streets, even though her disabilities make it impossible for her to comply with the City’s
14 72-hour parking law. She now lives in an unhoused community with several other disabled
15 women for support and protection.

16 26. Plaintiff Whitson has the RV she lives in, and an RV where she keeps her tools
17 that she uses to support herself as a mechanic. The RV she lives in runs, but it takes an immense
18 amount of effort to move because it must be placed on blocks when it is parked to keep it level
19 so the appliances inside work. This means that each time she moves, she has to go through the
20 labor-intensive process of securing all her belongings, maneuvering the RV off the blocks using
21 ramps, moving the system of blocks to her new space, and then maneuvering the vehicle back
22 onto the blocks. She must also find space to relocate her other RV. Ms. Whitson works as a
23 shade tree mechanic: she fixes the vehicles of other unhoused people and nonprofits in the area.
24 Ms. Whitson is actively working to register her vehicles and pay off unpaid parking tickets.

25 27. Plaintiff Whitson is a “qualified person with a disability” and a person with “a
26 disability” within the meaning of all applicable statutes and regulations including 42 U.S.C.
27 § 12131(2), 28 C.F.R. § 35.104, and California Government Code § 12926. Plaintiff Whitson has
28 Complex Posttraumatic Stress Disorder (CPTSD), Attention Deficit Hyperactivity Disorder

1 (ADHD); Gastrointestinal Reflux Disease (GERD), sciatica, lymphedema, and dysmenorrhea.
2 Plaintiff Whitson's disabilities impact major life activities and also cause her to be in physical
3 pain that limits her ability to work. Her sciatica causes extreme back and leg pain, and her
4 dysmenorrhea causes such severe menstrual pain for five to seven days each month that she
5 cannot do much of anything at all. As a result of the immense pain she often experiences, it is
6 incredibly difficult for Plaintiff Whitson to relocate her vehicles as required by the City of
7 Berkeley. Some times she is not able to move them at all due to her disabilities, but when she is
8 well enough to move them, the act of moving them takes an immense physical toll on her. She
9 receives Supplemental Security Insurance (SSI).

10 28. Because Plaintiff Whitson is still homeless, she is at imminent risk of future
11 harms resulting from the City's continuing discriminatory policies, customs, and practices,
12 including the loss of her property and injuries she may suffer if ordered to move or if she were to
13 lose her vehicle, unless and until the City permanently modifies those policies and practices to
14 comply with both the Constitution and with relevant disability rights laws.

15 **D. Plaintiff Jermaine Lee "Cat" White**

16 29. Named Plaintiff Jermaine Lee "Cat" White was born in Modesto, California, and
17 raised in Berkeley. He has experienced intermittent homelessness in Berkeley since 2016. He has
18 lived in and been evicted from a number of encampments in Berkeley, including encampments
19 on Gilman and Harrison Street. He was living in a tent on the Adeline median in Berkeley before
20 he was evicted from that location. He then moved across the street to the west side of Adeline
21 where the encampment was targeted for multiple deep cleanings. On or about February 7, 2024,
22 Plaintiff White moved into the Berkeley Inn during a strong winter storm, despite trauma from
23 having participated in shelter programs in the past and being exited from shelter or housing
24 placements, and then being back on the streets without the survival gear he had lost.² Mr. White

25 _____
26 ² Mr. White was previously terminated from a temporary shelter program when the
27 program was unable to identify a housing placement for him because he lacked income. He later
28 participated in a shelter program where he was subsequently placed into a subsidized housing
unit and was illegally locked out during a temporary absence from his unit. His social worker
identified his hoarding behaviors as a result of his hoarding disorder as a basis for the landlord's
grievance with him. In both circumstances he had surrendered possession of his belongings and

1 is back living on the street after being told to leave the Berkeley Inn, once again having lost and
2 had to replace his survival gear.

3 30. Recently, Mr. White was told to leave the Berkeley Inn for three days. Back on
4 the street, Mr. White’s mental health and PTSD symptoms deteriorated so much that he was too
5 anxious to return to the shelter after the three days had passed. As a result, the City exited him
6 from the shelter program without an opportunity to appeal this decision. When he eventually
7 inquired about returning, the City did not communicate clearly about the steps he needed to take
8 to receive shelter. With no other options or clear communication from the City, Mr. White has
9 since been back to living in a tent on the corner of 8th and Harrison. Mr. White wishes to stay in
10 shelter and would like to return to the Berkeley Inn.

11 31. Plaintiff Jermaine White is a “qualified person with a disability” and a person
12 with “a disability” within the meaning of all applicable statutes and regulations including
13 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and California Government Code § 12926. Mr. White
14 has mental health disabilities that are directly tied to his experience of being unhoused, including
15 complex PTSD, which makes him experience anxiety, and hoarding disorder. These disabilities
16 impact his major life activities, including his ability to concentrate, process information,
17 communicate, and sort and organize his belongings. His mental health issues are directly
18 exacerbated by Defendant’s practice of destroying his belongings and forcing him to move.
19 When he knows the City is coming to clear an encampment, Mr. White experiences a trauma
20 response that manifests in him hiding or simply walking away to avoid the trauma of seeing his
21 belongings destroyed and thrown away. Mr. White has been subjected to so many encampment
22 sweeps and closures that it has impacted his memory and ability to tell events chronologically.
23 None of his belongings have been stored by the City during any of his evictions. The experience
24 of losing his belongings repeatedly has left him afraid to leave his belongings unwatched during
25 the day. This makes it difficult for him to take steps to identify housing or seek services.

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28 survival gear to move into a temporary shelter, and then was returned back onto the streets
without the survival gear and possessions he lost.

1 32. Because Plaintiff Jermaine White is still homeless, he is at imminent risk of future
2 harms resulting from the City’s continuing discriminatory policies, customs, and practices,
3 including the loss of his property and injuries he may suffer if ordered to move, unless and until
4 the City permanently modifies those policies and practices to comply with both the Constitution
5 and with relevant disability rights laws. Plaintiff Jermaine White is also currently deterred from
6 accepting or accessing Berkeley’s shelter Program and related programs, because of the
7 discriminatory policies and practices alleged herein.

8 **E. Plaintiff Monique Williams**

9 33. Named Plaintiff Monique Williams currently lives at the Campus Motel in
10 Berkeley. Before living at the motel, Ms. Williams lived in her RV for about a year at the 8th and
11 Harrison encampment.

12 34. Plaintiff Williams is a “qualified person with a disability” and a person with “a
13 disability” within the meaning of all applicable statutes and regulations including 42 U.S.C.
14 § 12131(2), 28 C.F.R. § 35.104, and California Government Code § 12926. Ms. Williams has
15 PTSD related to an abusive relationship and other incidents, and other mental health disabilities,
16 including impaired short-term memory due to blunt trauma to her head. Ms. Williams also
17 suffers from a serious hip injury that makes sitting for long periods extremely difficult. She has
18 metal pins in her arms that hurt when it is cold outside or when she is exposed to extreme
19 elements. These disabilities impact major life activities, including her ability to withstand
20 exposure to the cold, sit for long periods of time, and her ability to process information.

21 35. Ms. Williams has repeatedly reached out to officials from the City of Berkeley,
22 expressing her need for support due to her mental health condition and past experiences with
23 domestic violence. She has specifically requested a reasonable accommodation to the City’s “no
24 visitor policy,” seeking permission for her daughter to visit her and provide necessary care.
25 Despite her numerous pleas, the City of Berkeley has not granted her any accommodations for
26 her disabilities. The “no visitor policy” implemented in the Berkley shelter system severely
27 impacts her ability to cope with trauma, as staying connected with her family and friends is
28 essential to her well-being.

1 36. Because Plaintiff Williams is still homeless, she is at imminent risk of future
2 harms resulting from the City’s continuing discriminatory policies, customs, and practices,
3 including the loss of her property and injuries she may suffer if ordered to move, unless and until
4 the City permanently modifies those policies and practices to comply with both the Constitution
5 and with relevant disability rights laws. Plaintiff Williams is also currently impacted by the
6 City’s discriminatory shelter policies in place at the Campus Motel.

7 **F. Plaintiff Where Do We Go**

8 37. Plaintiff Where Do We Go (“WDWG”), formerly known as Where Do We Go
9 Berkeley, is a 501(c)(3) nonprofit Corporation whose board is made up of people who are
10 homeless or housing insecure and advocates. WDWG’s mission is to serve, support and advocate
11 for homeless individuals in the East Bay. WDWG was founded in September 2019 in response to
12 local government policies and practices of evicting and sweeping homeless encampments
13 without providing residents with accessible shelter, housing, or indeed any legal place to go.

14 38. WDWG provides direct outreach, advocacy, and material support for people
15 living on the street and for people temporarily housed in shelters and transitional facilities funded
16 by government and operated by nonprofits.

17 39. Over the years, WDWG has developed strong relationships with people living
18 unsheltered in East Bay encampments. By spending time in their communities, it has acquired an
19 intimate knowledge of unhoused residents’ material needs. It has provided port-a-potties, fire and
20 rodent abatement, hand washing stations, tents, tarps, medical support, harm reduction supplies,
21 food, tent heaters, hotel rooms, pet supplies, employment, trash removal, clothing, furniture,
22 blankets, and a host of other items critical to the survival of people experiencing homelessness
23 living on the streets and sidewalks of Berkeley and neighboring jurisdictions and on state
24 property.

25 40. In addition to providing material support, WDWG advocates on behalf of people
26 experiencing homelessness with city, county, and state officials, and with nonprofit service
27 providers. It works to connect people experiencing homelessness with organizations, agencies,
28 volunteers and nonprofits, which serve the homeless such as Consider the Homeless, Berkeley

1 Free Clinic, Suitcase Clinic, East Bay Community Law Center, Lifelong Homeless Medical
2 Street Team, Berkeley Outreach Coalition, Berkeley Mental Health Services, East Bay Angels,
3 Berkeley Needle Exchange and Emergency Distribution, Homeless Action Center, Berkeley
4 Copwatch, and many more.

5 41. When Berkeley evicts people living in encampments without providing them an
6 accessible legal place where they can go, it frustrates the mission of WDWG to support them and
7 prevent the violation of their constitutional and statutory rights. When evictions happen,
8 established encampments that WDWG has supported and supplied with material resources are
9 disbanded, and individuals who had been living in those encampments scatter. WDWG is then
10 forced to expend resources providing replacement tents, sleeping bags, and other basic survival
11 equipment, as well as finding residents who have been displaced, reestablishing a relationship,
12 and reconnecting them to various supports. This diversion of resources negatively impacts
13 WDWG's ability to help people in the community.

14 42. Evictions without the provision of accessible alternatives make it particularly
15 difficult to provide services to people with disabilities. Additionally, the evictions make it
16 difficult for WDWG to keep track of the sick, elderly, mentally and physically disabled it has
17 been working to help. If WDWG and other providers cannot find a person they have been
18 working with, that person can easily lose their connection to other service providers that WDWG
19 was helping them stay in touch with. They may then lose all housing opportunities and will have
20 to start the process again once they are located. Spending time and resources tracking down
21 people to continue providing services frustrates WDWG's mission and impacts their ability to
22 help more people.

23 43. When the City of Berkeley destroys people's possessions during sweeps and
24 evictions, it drains the resources of WDWG, which is forced to expend limited funds replacing
25 belongings the City has destroyed that are essential for survival on the street. Following evictions
26 by the City of Berkeley, WDWG has resupplied people with new shelters and tents, sleeping
27 bags, clothes, undergarments, food, shoes, tent heaters, tarps, buckets for fecal waste,
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1 toothbrushes, toothpaste, toilet paper, socks, deodorant, blankets, medicines, storage tubs, and
2 many other items that were destroyed or discarded by the City.

3 44. WDWG has been required to divert resources to advocating for people residing in
4 transitional facilities such as motels operated by non-profit service providers under contract with
5 the City of Berkeley. There is no independent review board to investigate complaints against
6 operators of transitional housing and shelters such as Insight Berkeley, which runs the Campus
7 Motel. WDWG has received numerous complaints about service providers that operate these
8 facilities who do not accommodate the disabilities of residents and enforce rules and regulations
9 arbitrarily in ways that render the facilities inaccessible to people with disabilities. It receives
10 complaints about the poor quality of food provided residents; failure to assure the safety of
11 residents, particularly female residents; failure to respect the privacy of residents; excessively
12 strict enforcement of curfews that result in vulnerable and disabled residents being locked out for
13 the night; failure to provide housing navigation services to move people into permanent housing;
14 failure to accommodate people with disabilities in the provision of services; and failure to
15 provide a fair and accessible way that people can bring grievances to the organization facilities
16 and have complaints fairly evaluated and addressed. The need to devote a disproportionate
17 amount of time to dealing with grievances about transitional facilities frustrates the mission of
18 WDWG to support the greatest possible number of people experiencing homelessness in the East
19 Bay.

20 **G. Defendant City of Berkeley**

21 45. Defendant City of Berkeley is a municipal corporation organized under the laws
22 of the State of California. Upon information and belief, it provides homeless shelter and housing
23 services through its contracts, it sets the policies for evictions and property destruction, and it is
24 in all ways responsible for the violations of the laws alleged herein.

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1 **IV. FACTUAL ALLEGATIONS**

2 **A. The majority of Berkeley's unhoused and unsheltered residents have**
 3 **disabilities.**

4 46. According to Berkeley's 2022 Point In Time Count, there were over 1,000
 5 individuals in the City of Berkeley experiencing homelessness.³ Of those individuals, 53%
 6 depend on a tent for their primary shelter and 34% depend on their car, camper, or RV as their
 7 primary form of shelter.⁴ In 2023, the City reported that as many as 2,000 people will experience
 8 homelessness over the course of a year, most of them unsheltered.⁵

9 47. Among those experiencing homelessness in Berkeley, people with disabilities are
 10 disproportionately represented. In 2023, it was reported that 80% of people experiencing
 11 homelessness in Berkeley have one or more types of disability.⁶ 62% of unhoused residents in
 12 Berkeley reported having a severe mental health disability, 33% reported a physical disability,
 13 30.6% had a chronic health condition, and 18.3% had a developmental health condition.⁷

14 48. According to a recent City Council report submitted by Assistant City Manager
 15 Peter Radu, the City is aware people with disabilities make up an increasingly large percentage
 16 of the City's homeless residents and the proportion of people with a disability who are
 17 experiencing homelessness in the City is trending up over time.⁸

18
 19
 20 ³ EveryOne Home, Berkeley 2022 Point In Time Count: Unsheltered & Sheltered Report (2022),
 21 <https://everyonehome.org/wp-content/uploads/2022/05/Berkeley-PIT-2022-Infographic-Report.pdf>.

22 ⁴ *Id.*

23 ⁵ Peter Radu, Memorandum to Honorable Mayor and Members of the City Council re: Referral
 24 Response: Gap Analysis of Berkeley's Homelessness System of Care 3 (July 9, 2024),
 25 <https://berkeleyca.gov/sites/default/files/documents/2024-07-09%20Item%2016%20Referral%20Response%20%20Gap%20Analysis%20of%20Berkeley%E2%80%99s%20Homelessness.pdf>.

26 ⁶ *Id.*

27 ⁷ City Manager Dee Williams-Ridley, Memorandum to Honorable Mayor and Members of the
 28 City Council re: Eighth St and Harrison St Encampment Efforts 34 (Feb. 20, 2024),
<https://berkeleyca.gov/sites/default/files/documents/2024-02-20-%20Eighth%20St%20and%20Harrison%20St%20Encampment%20Efforts.pdf>.

⁸ Radu Memorandum, *supra* Note 5, at 23.

1 49. Despite the City’s awareness of the significant disability-related needs among
2 Berkeley’s unhoused residents, the City has failed to make its homeless services accessible to
3 people with disabilities.

4 50. Nearly two-thirds of Berkeley’s unhoused population report having a severe
5 mental health disability, yet mental health professionals or others with sufficient training are not
6 regularly included in outreach to unhoused residents or in communications between City staff
7 and these residents regarding service options.

8 51. Enforcement actions are noticed and carried out against encampments without any
9 effort to accommodate the needs of unhoused people with disabilities. Additionally, the
10 temporary shelters run by the City do not accommodate the needs of individuals with disabilities.
11 There is a lack of shelter space that is accessible to individuals with mobility disabilities, and
12 many shelters fail to meet basic accessibility guidelines. Additionally, shelter policies frequently
13 render these facilities inaccessible for those with mental health disabilities.

14 **B. Berkeley violates the rights of unhoused residents with disabilities by**
15 **operating its homeless outreach, enforcement, and shelter activities without**
16 **consideration of their unique needs.**

17 52. The job of addressing and providing services to Berkeley’s unhoused population,
18 upon information and belief, falls primarily on Berkeley’s Neighborhood Services Division. This
19 division, “brings together staff from different City departments and partners in the community to
20 address citizen complaints and other problems that affect the quality of life in Berkeley, such as
21 blight, unsafe living conditions and graffiti. This division includes the Code Enforcement Unit
22 and Homeless Response Team.”⁹

23 53. In addition to routinely failing and refusing to consider or grant individual
24 requests for reasonable accommodation, the City’s written policies and the actual practice of the
25 Neighborhood Services division and homeless outreach, sweeps, and shelter programs and
26 activities impose a discriminatory disparate impact on people with disabilities by systemically
27 failing to assess, consider, or respond to their unique disability-related needs.

28 ⁹ City of Berkeley, City Manager’s Office: Neighborhood Services Division (2024)
<https://berkeleyca.gov/your-government/about-us/departments/city-managers-office>.

1 59. In an April 2023 email to Plaintiffs’ counsel subsequently forwarded to Assistant
2 City Manager Peter Radu, a communication from Olivia deBree, Associate Medical Director of
3 Lifelong Street Medicine, which provides medical services to residents of the Harrison Street
4 encampment that summarized the specific disability needs of encampment residents as follows:

5 “There are numerous seniors living at 8th and Harrison, most of whom have chronic
6 [musculoskeletal] or joint issues that make moving, carrying, lifting challenging.

7 --There are people with serious psychiatric issues who use art therapy to cope. In the
8 midst of a sweep, taking possessions that they make art with means risking manic or
psychotic episodes.

9 --There are people with serious foot injuries that mean they can’t walk easily/normally
10 and will need transportation to wherever they are supposed to be next and care not to
11 throw away mobility devices (shoes that fit deformed or surgically repaired feet, crutches,
etc.), bikes that enable them to get to appointments because they can’t walk but can
pedal.

12 --There are people with major mobility issues for different reasons. If their mattresses,
13 food, clothing, adult diapers, etc. are taken, they will not be able to get new ones. They
14 don’t have the capacity to do so. Neither person can pack things, throw things away,
move things, etc. It should not be assumed that others will help them.

15 --Psych issues: many of our patients have passive suicidal ideation regularly. At 8th and
16 Harrison, there are also some individuals with significant suicidal ideation. The
17 possibility that they could be pushed to the brink by a stressful or traumatic event should
18 be considered. There are also numerous people with PTSD who experience flashbacks,
19 hypervigilance, panic attacks and need extra time and trauma-informed care/interactions.
Exacerbating depression and PTSD can lead to risky substance use, which can lead to
overdoses.

20 --Risk of MI/CVA: There are people at high risk for MI or stroke at this camp. We advise
21 strongly against additional stressors on these individuals.

22 --Anyone who is pregnant at the camp needs extra care. I wish I could say more on this
23 but cannot for patient privacy reasons. I cannot urge CAUTION enough.

24 --The health of people at 8th and Harrison will be most improved by rapid housing.
25 Anything that results in people losing documents necessary to being housed can mean
26 months of delays to replace them which can have major health impacts including
27 overdose and death.”
28

1 60. Despite this knowledge, the City has consistently failed to account for the known
2 mental health needs and other known disability-related needs of houseless residents at Harrison
3 Street and elsewhere, as further detailed below.

4 61. Instead, the City conducts (or allows the entities with which it contracts to
5 conduct) its homeless outreach, enforcement, shelter, and other related activities and programs
6 without consideration of their unique needs, and without making necessary reasonable
7 accommodations or modifications for those needs.

8 62. Though facially neutral, the City’s insistence on conducting outreach,
9 enforcement, shelter, and other activities according to “standard operating procedures”—that is,
10 generally without any evaluation or consideration of disability-related needs, and without any
11 necessary accommodations of those needs—has a disparate impact on encampment residents
12 with disabilities.

13 63. The City’s failure to accommodate or respond to the known or obvious disability-
14 related needs of encampment residents has had tragic results: for example, in August 2023,
15 Jennifer Gerlach, was having a severe medical and mental health crisis after being discharged
16 from the hospital to Harrison Street. Despite repeated requests for mental health support, the City
17 never sent mental health outreach. Without mental health outreach, Ms. Gerlach was unable to
18 access medical care. She died lying behind a dumpster on Harrison Street on August 19, 2023.

19 2. Berkeley fails to accommodate the mental health needs or cognitive
20 disabilities of unhoused residents when conducting outreach, or when
21 giving “notice” prior to enforcement actions.

22 64. The City continually neglects unhoused residents with serious mental health or
23 cognitive disabilities during outreach efforts, excluding such residents from the benefits of the
24 City’s outreach program. As part of this neglect, the City denies these residents genuine
25 opportunities to be connected to housing or services and to be informed of upcoming City
26 enforcement actions that will affect them.

27 65. When the City’s Homeless Response Team conducts outreach to unhoused
28 residents prior to an enforcement action, mental health professionals are rarely included, despite

1 multiple specific requests for their presence by individuals who need their support to access the
2 outreach services, and despite the City's knowledge of this obvious need among encampment
3 residents with known serious mental health or cognitive disabilities.

4 66. For example, on August 15, 2023, City officials from the City's Homeless
5 Response Team (including Joshua Jacobs, Okeya Vance, and several Berkeley Police Officers)
6 came to 8th and Harrison to inform residents that they would need to leave by August 22, 2023,
7 or risk arrest.

8 67. City officials did not bring anyone with mental health training to speak with
9 residents. Concerned about the City's lack of engagement to assess if individuals need
10 accommodations in communication, Plaintiff Prado set up her own tent by the creek to support
11 residents. Eve, an unhoused resident, lives in a tent near the creek to feel safe. Eve has serious
12 mental health disabilities, but is able to engage with people she trusts. Plaintiff Prado asked
13 Assistant City Manager Peter Radu if he had talked with Eve to inform her of the enforcement
14 action, and he claimed she would not engage with him.

15 68. Plaintiff Prado asked Mr. Radu if trained outreach workers from the Berkeley
16 Mental Health Department could come to speak with Eve and try to communicate with her in a
17 manner that would be accessible to her given her mental health needs. Mr. Radu replied that the
18 Mental Health Department did not do outreach, and that Eve would need to either call them or go
19 in person during their limited hours. Plaintiff Prado stated that this was an emergency situation as
20 Eve was at risk of losing her shelter and could be arrested if she did not comply with the orders
21 of City officials. Eventually, four Berkeley Mental Health workers came to 8th and Harrison and
22 went to talk to Eve and she did engage with them.

23 69. Plaintiff Prado and others have repeatedly requested that the City provide mental
24 health professionals prior to and when conducting encampment sweeps. In response, Ms. Prado
25 has been told that residents themselves must call the mental health phone number or go in person
26 during limited hours to access services. When Ms. Prado raises practical issues such as the fact
27 that some residents do not have phones or transportation, City employees have told her that they
28 could use Ms. Prado's phone or she could help transport them. When she has raised the fact that

1 some residents may be too unwell to call or visit and require in-person meetings to engage in
2 services, the City has not meaningfully responded.

3 70. For instance, the City ignores the mental health needs of Victoria, who lives on
4 Harrison Street, in its outreach efforts. Instead of attempting to use professionals with
5 appropriate training to engage with her, City outreach workers simply claim that she refuses
6 services, despite the fact that she can engage with other residents and advocates. Similarly, the
7 City ignores Mama Lisa, who has lived at 8th and Harrison for years, during outreach efforts.
8 Because City staff or contractors do not know how to communicate effectively with her as a
9 result of her mental health issues, she is effectively denied the benefits of those efforts.

10 71. The City of Berkeley similarly has a policy and practice of informing
11 encampment residents of upcoming sweeps, cleanings, and other actions through written notice,
12 despite knowing that these notices are incomprehensible to Plaintiffs and many other
13 encampment residents as a direct result of their mental health or cognitive disabilities.

14 72. Unhoused Berkeley resident Lucien Jeffords, whom the City knows or should
15 know has mental health disabilities that affect his ability to concentrate and process information,
16 has repeatedly asked for clarification of notices when he has seen outreach staff posting them,
17 because they cannot understand the notices. In response, Mr. Jeffords has been told that “the
18 notices speak for themselves.”

19 73. When Plaintiff Prado attended her intake meeting for shelter, she requested
20 accommodations related to her disabilities to be allowed to record the meeting and have someone
21 with her to assist her in understanding both what she needed to do and all the rules of shelter. She
22 was initially denied her requested accommodations based on “privacy” grounds. It took the
23 intervention of the City’s ADA coordinator and counsel to allow her to have those necessary
24 accommodations for the intake meeting.

25 74. Plaintiff Jermaine White has requested that he receive more time prior to sweeps
26 to speak with his caseworker to help him process shelter offers and upcoming sweeps, and these
27 requests have been denied.
28

1 75. Plaintiffs and others have repeatedly asked the City to communicate the content of
2 notices orally to encampment residents (ideally by people with experience and training in
3 communicating with people who have serious mental health disabilities or cognitive
4 impairments). Despite these requests, and despite knowing that the vast majority of encampment
5 residents have mental health or cognitive disabilities that make the City’s written notices
6 impossible to read or comprehend, the City has repeatedly failed and refused to communicate the
7 content of notices in an accessible manner advance of its various enforcement actions. One of the
8 more recent such refusals occurred in connection with a July 30, 2024 “deep cleaning” of the
9 Harrison Street encampment.

10 76. Similarly, the City has generally failed and refused to post key information
11 regarding enforcement actions (such as the planned date, time, specific location, details of what
12 will be done, and details of what encampment residents must do to comply) in a clear and
13 simplified format, despite multiple requests that it do so, and despite its knowledge that the vast
14 majority of encampment residents have mental health or cognitive disabilities that make the
15 City’s standard notices impossible to read or comprehend.

16 3. Berkeley violates the rights of its disabled unhoused residents under the
17 ADA when it “abates” and closes encampments.

18 77. The City of Berkeley has a pattern and a set of practices that it employs when
19 seeking to sweep or clear an encampment. Throughout the enforcement process, the City has a
20 pattern and practice of refusing to provide encampment residents with reasonable
21 accommodations that they need in order to comply with the City’s actions.

22 a. *Berkeley violates disabled unhoused residents’ rights when it fails*
23 *to provide reasonable accommodations to the notices posted for*
these residents during enforcement actions.

24 78. When the City posts abatement notices, the City does not engage in meaningful
25 outreach and does not communicate effectively with unhoused people with disabilities. On the
26 rare occasion when the City conducts outreach related to an abatement, the City does so in an
27 inaccessible manner such that residents still cannot understand how to comply and secure their
28 belongings. Abatement notices are often posted by City of Berkeley personnel that do not have

1 training on how to meaningfully explain the notices to Plaintiffs and Class members impacted by
2 the abatement procedure. In some closures, such as the one at the Adeline median, the only pre-
3 closure outreach was conducted by Berkeley Police, which can be traumatizing to class members
4 who have PTSD from negative interactions with police officers.

5 79. Even if the notices provided by Defendant prior to encampment closures and
6 cleanings were in plain language and not vague and confusing, certain unhoused residents with
7 disabilities need additional accommodations in order to understand the implications of the notice.

8 80. As a result of his disabilities, Berkeley resident Lucien Jeffords, who was
9 unhoused at the time, was so confused by the notice he received on September 1, 2023, that he
10 could not understand it. Mr. Jeffords faced similar difficulty in processing and comprehending
11 another abatement notice he received on October 30, 2023.

12 81. Similarly, as a result of her disabilities, Plaintiff Yesica Prado was so confused by
13 the lengthy and contradictory notice issued on September 1, 2023, that she believed her RV was
14 subject to abatement, when at the time it was not.

15 82. The City knows (or should know) that numerous encampment residents—
16 including Plaintiffs—have PTSD, mental health or cognitive disabilities, and other conditions
17 that make it difficult or impossible to understand the complex and often contradictory
18 information contained in its standard notices. And yet, it has taken no affirmative steps to
19 accommodate these known disabilities and to ensure that essential information is actually
20 communicated to encampment residents in an effective way - such as in the form of a simple
21 plain-language, larger-print, document containing key information, combined with in-person
22 outreach by individuals who are trained to communicate with people who have serious mental
23 health or cognitive disabilities.

24 *b. Berkeley violates disabled unhoused residents' rights when it fails*
25 *to provide accommodations during sweeps.*

26 83. The City has a standard policy and practice of failing to evaluate or consider the
27 disability-related needs of encampment residents in connection with sweeps and other
28

1 enforcement actions, instead using a “one size fits all” approach to enforcement that disparately
2 impacts people with disabilities, and leaves them particularly vulnerable to harm.

3 84. In addition, the City has a standard policy and practice of refusing to make any
4 accommodations to meet the disability-related needs of encampment residents in connection with
5 sweeps and other enforcement actions, even when that disability-related need is or should be
6 known to the City (as in the case of people with obvious physical disabilities or mental health
7 disabilities that the City is already aware of), and even when specific requests for
8 accommodation have been made.

9 85. During sweeps and clean-ups, the City frequently requires encampment residents
10 to move their shelter and belongings from one area to another. Many unhoused residents have
11 obvious physical disabilities which prevent them from being able to pack their items quickly or
12 to move large objects around.

13 86. For example, Berkeley resident Rufus Lee White Jr. uses a wheelchair or a walker
14 and is unable to move his tent or belongings during encampment cleanings. The City repeatedly
15 failed or refused to provide Mr. White with assistance moving his belongings to a place where
16 they would not be destroyed, despite the fact that his need for such assistance was readily
17 apparent.

18 87. On July 24, 2024, Mr. White requested assistance with cleaning the area around
19 his tent and asked the City to allow him to keep his furniture outside the tent for mobility support
20 during the deep cleaning scheduled for July 30, 2024. Ultimately, the City directed Mr. White to
21 seek assistance from Plaintiff WDWG, which was attempting to assist residents with clean-up in
22 advance of the cleaning. In this way, the City ignored its own duty to respond to accommodation
23 requests and engage in the interactive process, and forced WDWG to further deplete its
24 resources.

25 88. Other residents have physical disabilities which, even if not immediately visible,
26 are known to the City. For example, the City is aware that Plaintiff Spencer has a shoulder injury
27 which prevents him from being able to lift large or heavy objects without being in extreme pain.
28

1 Plaintiff Spencer has submitted multiple request for reasonable accommodations in moving and
2 storing items, all of which were either denied or ignored by the City.

3 89. In the case of residents with obvious or known disabilities, like Mr. White and
4 Mr. Spencer, the City has an affirmative obligation to provide reasonable accommodations
5 during encampment cleanings. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001).

6 90. The City also regularly denies or does not respond to reasonable accommodation
7 requests during encampment clean-ups. On July 24, 2024, the Berkeley Homeless Union
8 requested various reasonable accommodations on behalf of Plaintiff Spencer and Berkeley
9 resident Rufus White Jr., who was unhoused at the time, as well as other Class members in
10 connection with a planned July 30, 2024 cleaning, including assistance with moving items due to
11 physical disabilities, on-site mental health services for people with mental health disabilities who
12 were likely to suffer increased anxiety and stress or exacerbation of other symptoms during the
13 action, and for clear communication in formats that could be understood by people with a variety
14 of mental health and cognitive disabilities. The City refused each of these requests.

15 91. Plaintiff Spencer submitted a request for reasonable accommodations on
16 November 13, 2023, asking for additional time to move his shelter and belongings before the
17 City of Berkeley closed his encampment on November 14, 2023 due to his physical disabilities
18 and limited mobility. The City responded by stating: “[w]e are unable to offer Mr. Spencer an
19 accommodation of more time...given the competing demands on staff resources, we do not have
20 the ability to reschedule it at this time.”

21 92. Again, on January 16, 2024, Plaintiff Spencer submitted a reasonable
22 accommodation request asking for 72 hours, instead of the 24 hours, to relocate belongings due
23 to his physical disability in response to the Public Notice of Encampment Deep Cleaning
24 scheduled for January 17, 2024. Neither the City nor Counsel for Defendant responded to this
25 request.

26 93. As a result of the City’s refusal to provide such obviously necessary
27 accommodations in connection with cleanings and other enforcement actions, people with mental
28 health or cognitive disabilities are denied their right to effective communication regarding what

1 the City will do, how to retain their possessions, and how to avoid arrest (among other essential
2 information); people with physical disabilities are denied a meaningful opportunity to safeguard
3 essential supplies (and often, subjected to increased risk of injury or harm as a result—whether
4 from trying to move things they cannot independently move, or because essential survival gear
5 that they could not move is ultimately destroyed); and people with mental health disabilities are
6 subjected to unnecessary extra stress, anxiety, and exacerbation of symptoms because of the
7 City’s failure to offer trained staff and basic mental health supports in preparation for and in
8 conjunction with enforcement actions.

9 94. The above, of course, is only a partial list of the consequences of the City's
10 pervasive and systemic failure to evaluate, consider, or accommodate the needs of people with
11 disabilities (the vast majority of which are known to the City) in connection with its enforcement
12 actions.

13 *c. Berkeley violates disabled unhoused residents rights when it*
14 *enforces particular code sections.*

15 **i. Berkeley violates disabled unhoused residents’ rights**
16 **when it fails to provide reasonable accommodations to**
17 **the 72-hour parking policy.**

18 95. Berkeley Municipal Code authorizes “[a]ny regularly employed and salaried
19 employee of the City of Berkeley Police Department designated by the Chief of Police” to
20 “remove or cause to be removed: (A)Any vehicle that has been parked or left standing upon a
21 street or highway for 72 or more consecutive hours.” B.M.C. § 14.08.090.

22 96. Moving vehicles every three days to comply with the 72-hour ordinance is not
23 possible for those, like Plaintiff Whitson, whose disabilities that make doing so exceedingly
24 difficult.

25 97. Ms. Whitson cannot move her vehicles every 72 hours because of her disabilities.
26 In order to live in her RV, it must be level (which it will generally not be when simply parked on
27 the street). To level the RV, Ms. Whitson has to bend down close to the ground and put the
28 vehicle on blocks, often making repeated adjustments. Her sciatica makes it extremely painful to
bend down and level her RV. Moving her vehicles every 72 hours would require her to level the

1 vehicles every 72 hours, which would significantly worsen her sciatica. In addition, moving her
2 RV necessarily involves moving and securing the RV's contents, each time, which can be
3 difficult as a result of her disabilities. Her dysmenorrhea also prevents her from doing almost
4 anything for five to seven days each month, including moving her vehicles. She has received
5 numerous tickets because she is not able to move her RVs every 72 hours due to her disabilities.

6 98. The City has known or should have known that Plaintiff Whitson needs an
7 accommodation from the City's enforcement of the 72-hour parking restriction. Ms. Whitson has
8 made accommodation requests to the City, including by asking for an accommodation while
9 living in a city-run safe parking lot known as the SPARK program. The City also deposed Ms.
10 Whitson in this action on May 24, 2024. Whitson Dep. Tr. at 1:15. At that deposition, Ms.
11 Whitson testified at length regarding the disabilities that she has that are relevant to this
12 litigation. *Id.* at 58:23-61:2, 64:11-88:13.

13 99. During her deposition, Plaintiff Whitson testified that her disabilities prevent her
14 from complying with the City's 72-hour parking restriction. Ms. Whitson testified that she is
15 "frequently" unable to move one of her RVs due to "health problems." Whitson Tr. 26:16.
16 Plaintiff Whitson explained that her sciatica causes her pain starting from her buttocks and
17 radiating down the back of her legs to the back of her knees. *Id.* at 59:9-59:13. She explained
18 the process that she must follow to move and relevel her RV and that her sciatica makes
19 removing and repositioning the blocks under her RV to level the vehicle "painful." *Id.* at 28:8 –
20 30:17; *see also Id.* at 56:14-56:15 (explaining that process of moving and releveling her RV
21 "exacerbates [her] disabilities"). In particular, she explained that, due to her sciatica, "having to
22 get down on the ground to move the blocks and ramps behind and underneath my wheels of my
23 RV," which she must do to relocate and relevel her vehicle, "is a problem for me if I
24 have to do it on a frequent basis." *Id.* at 59-16-59:19.

25 100. Plaintiff Whitson also testified that she has other disabilities that prevent her from
26 complying with the 72-hour parking restriction. She testified that she has lymphedema that
27 causes swelling in her hands and thereby make it difficult to grasp the blocks that she must move
28 when relocating her RV. *Id.* at 60:20-61:2. She also testified that she has dysmenorrhea, which

1 “makes it very hard to function” for “at least a quarter of a month every month.” *Id.* at 59:25-
2 60:8. Furthermore, she explained that the stress that she experiences due to fear that the City
3 will tow her vehicles, and the intestinal distress and acid reflux that accompanies that stress, add
4 to the difficulty of moving her vehicles. *Id.* at 30:10-30:17.

5 101. Furthermore, aside from Plaintiff Whitson’s deposition testimony, in an email to
6 City officials including Peter Radu and Deputy City Attorneys Marc Shapp and Ashley Carter
7 dated May 20, 2024, Plaintiffs’ counsel Osha Neumann informed the City that Ms. Whitson “is a
8 qualified individual[] with disabilities under the Americans with Disabilities Act” and that she
9 needed “a reasonable accommodation including extended time” to relocate personal property to
10 the extent that doing so was necessary to comply with other City ordinances. PLTFS000139.
11 While this accommodations request did not concern the 72-hour parking restriction, it also
12 placed the City on notice that Ms. Whitson has a disability and that she may need a disability-
13 related reasonable accommodation of additional time to comply with requirements to relocate her
14 property.

15 102. For residents with obvious or known disabilities that impair their ability to
16 relocate their vehicles, like Ms. Whitson, the City has an affirmative obligation to provide
17 reasonable accommodations to its 72-hour parking restriction, and related enforcement. *See*
18 *Duvall*, 260 F.3d at 1139.

19 103. Plaintiff Whitson used to reside in the Safe Parking and Respite Kickstart
20 (SPARK) parking lot, a program funded by the City of Berkeley. For Ms. Whitson, the SPARK
21 parking lot was “paradise” and parking on the street is “hell.” The SPARK lot was safe and
22 secure. She did not have to worry about having her belongings stolen. SPARK provided a hose
23 so she could wash her vehicle and her dishes. She had access to a port-a-potty, filtered drinking
24 water, a charging station for her cell phone, and a refrigerator with a freezer. She felt like she
25 was part of a community in which people got along well. During her time at the SPARK
26 program, she asked for an accommodation to park her work vehicle in the lot so she could access
27 it even during times when her chronic pain made it difficult for her to walk long distances.
28

1 practice, police interpret this policy as disallowing any objects on the sidewalk larger than a 3' x
2 3' footprint per person, including tents, mobility aids, and any other survival gear.¹²

3 109. People with mobility aids, such as wheelchairs or walkers, are
4 disproportionately affected by the sidewalk ordinance requiring downsizing to 9 square feet. This
5 is because their mobility aids, along with other essential items needed for their daily life and
6 independence, occupy more space. The ordinance does not account for the additional space
7 required for these necessary items, making it difficult for individuals using mobility aids to
8 comply without sacrifice. As a result, they face greater challenges in meeting the ordinance's
9 requirements while maintaining their essential equipment.

10 110. The City is aware that unhoused Berkeley residents with disabilities need
11 additional space for belongings because of their disabilities, but it has repeatedly failed and
12 refused to provide them with this necessary accommodation, instead insisting that all
13 encampment residents—including those who rely upon mobility devices—fit their belongings
14 into the same small space.

15 4. Berkeley Violates the Rights of its Disabled Unhoused Residents by
16 Failing to Provide Disability Accommodations in its Temporary Homeless
17 Shelters

18 a. *Berkeley fails to accommodate the mental health or cognitive*
19 *disabilities of unhoused residents in shelter offers and intake*
20 *appointments*

21 111. The City does not provide offers of shelter to Plaintiffs and Class members in an
22 accessible way, especially for residents with mental health disabilities. As previously alleged, the
23 City fails to accommodate unhoused residents with mental health disabilities when it fails to
24 provide effective communication when offering shelter.

25 112. Plaintiffs and Class Members are excluded from shelter programming from the
26 very start of the process. The manner in which the shelter rules are presented to residents during
27 intake is not accessible. When Plaintiff Monique Williams sat down to do her intake for Campus

28 ¹² In August 2024, Assistant to the City Manager and Neighborhood Services Manager Peter Radu admitted at a public meeting that it is impossible for someone to even maintain a sleeping bag in a designated 9 square foot space. *See supra* ¶ 8.

1 Motel program, the shelter employee put a huge stack of paper in front of her and started talking
2 rapidly and for a long time about how the program works. Ms. Williams could not process what
3 the worker was saying, and later could not remember what she had heard because of her memory
4 problems. She has a hip injury that makes it difficult for me to sit for long periods of time
5 without intense pain, which made it even harder to focus during the intake.

6 113. When arriving at intake, Plaintiffs and Class members are swamped with
7 information and staff do not provide written copies of the information that they are receiving
8 verbally or copies of the documentation they are being asked to sign. In 2023, when Plaintiff
9 Prado attended her intake meeting for a room in Berkeley's temporary motel shelters, she
10 requested accommodations to receive the paperwork before her intake appointment. Her request
11 was denied. Additionally, during the intake meeting when Ms. Prado requested to review the
12 paperwork herself to process it, staff would not let her see it and instead offered to just read it
13 verbally to her which was difficult for her to process. Ms. Prado also requested to be allowed to
14 record the intake meeting and have someone with her to assist her in understanding both what
15 she needed to do and all the rules of the shelter due to her ADHD. She was initially denied her
16 requested accommodations based on "privacy" grounds. It took the intervention of the City's
17 ADA coordinator and Plaintiffs' Counsel to allow her to have those necessary accommodations
18 for the intake meeting.

19 *b. Berkeley's temporary homeless shelters are not accessible to and*
20 *do not accommodate people with mobility disabilities.¹³*

21 114. Defendant is a local government entity with responsibility for providing
22 Plaintiffs with full and equal access to its public facilities. Defendant is responsible for
23 constructing, altering, maintaining, repairing, regulating, operating, and staffing the shelter
24 systems for its unhoused residents within the City of Berkeley.

25 115. Publicly available data, including from the City's own surveys, reveals that at
26 least 30% of unhoused people in Berkeley have a mobility disability.

27
28 ¹³ Plaintiffs do not assert standalone claims regarding physical access barriers at Berkeley shelters in this Third Amended Complaint.

1 116. Despite knowing of this need, and of its legal obligations to provide accessible
2 facilities and ensure program access, Berkeley’s temporary homeless shelters are rife with
3 architectural barriers for people with disabilities and do not comply with state and federal
4 architectural accessibility requirements.

5 117. On information and belief, there has been no consistent effort by the City of
6 Berkeley to ensure that the temporary shelter options it offers unhoused residents comply with
7 federal and state accessibility requirements. As a result, the number of shelter spaces available to
8 individuals with mobility disabilities is extremely limited.

9 118. One example of the City of Berkeley’s lack of accessible shelter options is
10 Pathways STAIR Navigation Center (“Pathways”), located at 1601 Second Street, built by the
11 City in 2017. Pathways was designed to be a transitional, low-barrier shelter that offered
12 residents mental health services, hygiene, drug/alcohol abuse services, job search assistance,
13 disability benefits, and ultimately a path to permanent housing. However, when the facility was
14 constructed in 2017, there was no effort to ensure that it complied with architectural accessibility
15 guidelines. As a result, a host of accessibility barriers at Pathways prevented unhoused people
16 with mobility disabilities from being physically able to access this shelter and its resources,
17 meaning that they were effectively excluded from its services.

18 119. After pressure from disability activists, in 2020, the City of Berkeley hired a firm
19 called Disability Access Consultants to prepare a detailed survey of Pathways’ compliance with
20 federal and state accessibility regulations. The report revealed that the ramps leading to the main
21 entrance to the shelter building, the restroom, and nearly all other parts of the facility, were too
22 narrow to comply with accessibility requirements. The report also detailed the lack of
23 accessibility of the shelter’s bathrooms and showers, the lack of accessible parking, the presence
24 of inaccessible doorways and heavy doors, and the lack of an accessible path of travel throughout
25 the facility, among other barriers. The report ultimately estimated that it would cost \$300,000 for
26 Pathways to fix its architectural violations. On information and belief, Pathways is still not
27 compliant with accessibility regulations.
28

1 120. In November 2022, Barbara Geib, who at the time was an unhoused person in
2 Berkeley, received an offer of shelter at Pathways. Ms. Geib is 74 years old and uses crutches or
3 a walker to get around. When she arrived at Pathways, Ms. Geib had to walk more than a city
4 block to reach the women’s section from the parking lot—a strenuous walk for Ms. Geib due to
5 her disabilities. Once she arrived at the women’s section, program staff informed her that the
6 only available accessible bathroom was a port-a-potty located half a block away from the
7 women’s section. Due to the inaccessibility of the existing bathrooms, the program had installed
8 a port-a-potty outside. Ms. Geib has health conditions that require her to use the restroom
9 frequently, sometimes three or four times during the night. She would not have been able to use
10 the inaccessible bathroom located within the shelter due to the lack of space to turn around and
11 the inadequacy of the grab bars. The accessible bathroom was so remote that she would have had
12 to spend hours getting to and from the restroom during the night. As a result of these
13 accessibility issues, Ms. Geib was not able to stay in this shelter and benefit from the other
14 resources present there, including housing navigation, benefits assistance, and mental health
15 services.

16 121. Other female-identified people with mobility disabilities would struggle with
17 issues similar to Ms. Geib in connection with the City’s Pathways shelter.

18 122. In addition to the newly-constructed Pathways shelter, the City of Berkeley leases
19 several pre-existing motels to provide temporary shelter programs for its unhoused residents.
20 However, these programs have very limited rooms and placements for people with mobility
21 disabilities who require accessible rooms.

22 123. The City routinely fails to ensure that accessible rooms in these leased motels are
23 available for people who need them, and has not taken any actions to make more rooms
24 accessible to meet this need.

25 124. As a result, many people with mobility disabilities are effectively excluded from
26 the City’s non-congregate “motel” shelters, and from its non-congregate shelter programs. For
27 example, in September 2023, Rufus White Jr., who was unhoused at the time, was verbally
28 offered shelter in one of the temporary shelter motel programs operated by the City. When Mr.

1 White followed up with the City through counsel regarding the offer, the City told him that it
2 could not provide him with shelter at that time because there were “no open ADA rooms” and he
3 would need to wait until one became available. As a wheelchair user, Mr. White cannot access
4 any non-accessible rooms. Because of the City’s failure and refusal to provide him with an
5 accessible room, Mr. White Jr. was deterred from entering the City’s non-congregate shelters.

6 125. Additionally, in January 2024, Mr. White Jr. faced severe health challenges due to
7 the extremely cold weather, prompting a request for accommodations to allow him access to a
8 temporary shelter, despite the unavailability of an ADA-accessible room. Due to his significant
9 disabilities, Mr. White is affected by the weather and his living situation on the street was
10 untenable and a serious cause for concern. After multiple back and forth exchanges with
11 unhoused advocates, the City agreed to provide Mr. White with a room due to his serious health
12 concerns. However, when an advocate suggested the need for a makeshift wheelchair ramp over
13 stairs leading up to his room, City staff dismissed the request as “too much.”

14 126. Similarly, in December 2023, Class member Lewanda Parnell, an unhoused
15 person with a disability, requested that the City install grab bars in a bathroom so that she could
16 access the shelter program at the Campus Motel. In response to a separate lawsuit filed by Ms.
17 Parnell and two other unhoused individuals, this Court issued a temporary restraining order
18 which prohibits the City from removing Ms. Parnell from her encampment unless and until the
19 City installs grab bars in the bathroom of a shelter room at the Campus Motel. *See Parnell et al.*
20 *v. City of Berkeley*, No. 3:23-cv-06379-EMC, ECF No. 28. On information and belief, the City
21 still has not installed grab bars over eight months later and that restraining order remains in
22 place.

23 127. Further, Plaintiffs and Class members could not access the City’s main winter
24 shelter at Old City Hall due to architectural barriers. On or around December 12, 2024, City staff
25 told Jeremy, a resident of 8th and Harrison with disabilities who uses a wheelchair, that he could
26 go seek shelter at Old City Hall. Despite this representation, shelter staff informed him that the
27 front entrance was not physically accessible. Staff then decided that he could enter through the
28 back of the building. He was able to use the shower, but when he tried to stay the night, shelter

1 staff told him to leave because the shelter bathrooms were not ADA accessible and the staff did
2 not want to get in trouble. Jeremy was exited from the shelter without being provided with any
3 other accessible shelter option and forced to return to living in his car. Jeremy spent the entire
4 winter living in his car, and still resides at 8th and Harrison.

5 *c. Berkeley's temporary homeless shelters do not accommodate the*
6 *needs of people with disabilities in their policies and rules*

7 128. The temporary shelters offered by the City, both congregate and non-
8 congregate, have policies and rules that make them effectively inaccessible to individuals with
9 mental health disabilities and intellectual disabilities. These include restrictions such as the “no
10 visitors policy” and challenges related to understanding and following shelter rules that can
11 subject an individual to be kicked out without any opportunity to contest that termination. The
12 rules of the City’s shelter programs disparately impact people with disabilities and create
13 inaccessible programs for many residents with mental health and intellectual disabilities.

14 129. Although the City refers to the motel programs as “resource rich” services, the
15 reality is that services are scarce, particularly for those with behavioral or medical issues that
16 require additional work or training to interact with successfully. This has the effect of making
17 those with the greatest need feel like they are being set up to fail by the programs’ behavioral
18 expectations. Many residents are wary of accepting a placement in the motel because they expect
19 that they will be unable to comply with these rules, and that there is a high likelihood that they
20 will be terminated from the shelter program after a short stay, only to end up back on the street
21 without the survival gear they had prior to going into the shelter.

22 130. Plaintiffs and class members are deterred from accepting spaces in the City’s
23 shelter program as a result of these restrictive rules and policies, to which they are informed and
24 believe that the City and its contractors will not make any accommodations.

25 131. For example, the Campus Motel program does not meet Ms. Williams’s
26 disability-related needs. Her mental health issues and short-term memory loss make it difficult
27 for her to understand and remember the program rules. She finds the rules unclear and constantly
28 changing, which causes her anxiety about accidentally violating a rule and being expelled from

1 the program. Given that the City destroyed her RV and she cannot live in a tent due to her
2 physical disabilities, Ms. Williams fears being left without shelter if she is ever removed from
3 the program, and requires reasonable accommodations to the shelter's immediate "kick out
4 policy," under which residents can be summarily terminated for any violation of the rules. On
5 information and belief, the Campus Motel makes no exceptions to this policy on account of
6 disability, and does not offer a hearing process or any other mechanism by which to contest
7 terminations. Based on this information and belief, Ms. Williams has not requested
8 accommodations to the kick out policies, because she reasonably believes such requests would
9 be futile. *Pickern v. Holiday Quality Foods Inc.*, 293 F.3d 1133, 1136-37 (9th Cir. 2002).

10 132. Plaintiff Williams' fear is escalated because the program staff at the Campus
11 Motel inconsistently enforce rules. The lack of clarity regarding behavioral expectations makes
12 residents feel that they may be terminated from the program at any time by the program staff.

13 133. Unhoused people with disabilities are regularly exited from Berkeley shelter
14 programs because they cannot independently complete the steps required to obtain permanent
15 housing. The shelter programs require residents to participate in the housing navigation process
16 which includes gathering proof of income, documentation of disability from medical providers, a
17 social security card, and other necessary documents.

18 134. On information and belief, the City routinely fails to provide residents with
19 mental health or cognitive disabilities that affect their ability to perform the requisite steps with
20 sufficient assistance. Residents with disabilities that affect their ability to gather this information
21 and otherwise complete the application process for permanent housing, which often requires
22 lengthy trips to government offices and medical providers, are summarily exited from the shelter
23 program.

24 135. On information and belief, shelter policies and practices at the Berkeley Inn are
25 similar to or the same as those at the Campus Motel.

26 136. Individuals with mental health conditions are even more at risk of being
27 terminated from the program due to disability-related behavior, or becoming subject to law
28 enforcement action. The programs do not have any on-site mental health workers, nor does the

1 City provide mental health support on request. The programs do not provide support to residents
2 who are having serious mental health issues.

3 137. Moreover, the city-wide “no visitor policy” in Berkeley shelters exacerbates many
4 residents’ mental health disabilities and other disabling conditions. As a result of this blanket
5 policy, people with disabilities who rely on physical assistance from friends and community
6 members to perform everyday tasks cannot receive it. People who need support from others to
7 take medications or manage other medical conditions similarly cannot receive such support.

8 138. Moreover, many people with mental health disabilities, including named
9 Plaintiffs, rely on friends and community members to help manage their mental health
10 conditions, and need to be able to connect with these sources of support and talk through issues
11 in some relatively private and safe space. By denying such individuals the ability to have visitors
12 in their homes (or indeed anywhere on the premises) at any time, the City makes it extremely
13 difficult or impossible for them to manage their mental health conditions while in shelter, and
14 deters many of them from accepting shelter at all.

15 139. On information and belief, neither the City nor the contractors operating its
16 various congregate and non-congregate will allow for disability-related accommodations to the
17 City’s “no visitor” policy.

18 140. Residents of the program at the Campus Motel are not allowed to have visitors in
19 their rooms or anywhere on the premises. They are required to be at the hotel every night. If a
20 resident is not at the hotel every night, the program can decide that the resident no longer needs
21 shelter and require them to forfeit their room.

22 141. Ms. Williams needs to spend time with safe and trusted individuals, including
23 family and friends, to manage her PTSD. However, she is not allowed to have friends visit her in
24 a Berkeley shelter. She rarely sees her family because most of her family is in Richmond, and
25 she fears being kicked out of the program if she visits them.

26 142. In addition, one of Ms. Williams’ family members performs a range of caregiving
27 duties, including essential tasks like cleaning and providing emotional support. Without having
28 her family member visit her in her shelter room, Ms. Williams cannot receive crucial caregiving

1 support that she cannot provide for herself due to her disabilities. Ms. Williams needs caregiving
2 support in order to manage her disability-related needs and maintain her overall well-being. The
3 City has not engaged in an interactive process to assess whether Ms. Williams's request for an
4 accommodation to the no-visitor policy is reasonable or to explore alternative accommodations.

5 143. Berkeley resident Lucien Jeffords relied on community and his neighbors to
6 provide them with emotional support. Isolation because of the rules preventing visitors could
7 have exacerbated his mental health and other disabilities. When he lived at the Campus Motel,
8 Mr. Jeffords experienced a significant decline in his mental health due to feelings of isolation
9 from his community at 8th and Harrison who he depended on to alleviate his fear that someone is
10 constantly out to get him. He was unable to enter shelter until he surrendered one of his two
11 emotional support animals, because the City would only allow him to bring one.

12 144. Berkeley resident Rufus White Jr. relied on community and his neighbors to
13 provide him with mobility-related support. Rufus White has significant physical disabilities and
14 requires assistance with tasks such as cleaning and caring for himself. He has relied on friends
15 and neighbors to help him with these tasks. Without visitors who could have assisted him with
16 these tasks, Mr. White would not have been able to comply with other program rules, which, at
17 the time, was a major barrier to living in Berkeley's shelters.

18 145. To receive additional care, Berkeley resident Rufus White Jr. intended to apply
19 for assistance from the Alameda County In-Home Supportive Services ("IHSS") program.
20 However, he could not have participated in the IHSS program without an address. To solve this
21 problem, in January 2024, Mr. White requested a space in the Campus Motel. While the City
22 agreed to allow an IHSS worker to provide him with care in the shelter, Mr. White needed care
23 during the interim period when he would have been in shelter but before he applied for and
24 received IHSS support. On information and belief, this process would have taken at least a
25 month if not more due to IHSS staffing shortages.

26 146. In January 2024, Mr. White requested an accommodation to the no-visitor policy
27 so that he could receive care from friends or neighbors, but the City refused his request.
28

1 147. Even if Rufus White had received accessible shelter and IHSS caregiving, he
2 required additional care beyond the maximum number of hours that IHSS provides. As a result,
3 Mr. White required an accommodation to the visitor policy to allow friends or neighbors to
4 provide care to him in shelter even after receiving IHSS support. As stated above, the City
5 denied Mr. White's request for an accommodation.

6 148. The rules and policies at the Berkeley Inn and Campus Motel and other shelters—
7 and the City of Berkeley's refusal to reasonably modify those rules and policies—make them
8 inaccessible to Ms. Williams and other people who have a disability related need to have visitors
9 to support their mental or physical health. Many unhoused people with mental health disabilities
10 rely on friends and community members to help manage their mental health conditions, and need
11 to be able to connect with these sources of support and talk through issues in some relatively
12 private and safe space. By denying such individuals the ability to have visitors in their room (or
13 indeed anywhere on the premises) at any time, the City makes it extremely difficult or
14 impossible for them to manage their disabilities while in shelter. The City's complete refusal to
15 reasonably modify this policy and other restrictive policies described below has deterred
16 unhoused people with disabilities from entering the shelter Program or harmed individuals like
17 Ms. Williams by denying her an accommodation.

18 149. The shelter programs do not provide residents with adequate privacy and
19 security. At the Berkeley Inn, residents cannot have keys to their own rooms and must rely on
20 program staff to let them in each time they return. At the Campus Motel, while residents have
21 magnetic cards, these cards frequently fail, and the deadbolts on the doors have been removed,
22 leaving residents unable to secure their rooms properly. They often have to wait for program
23 staff to let them in, which is particularly problematic for those experiencing mental health crises
24 who need to retreat to a private space to feel safe.

25 150. Additionally, program staff regularly enter residents' rooms to check on
26 their status, often without knocking or allowing enough time for a response. Multiple residents,
27 including Plaintiff Williams, have reported privacy violations, such as staff entering their rooms
28 while they are showering. The inability to lock doors and the lack of privacy trigger PTSD

1 symptoms and make residents feel unsafe. For Ms. Williams, the lack of privacy and security at
2 the Campus Motel exacerbates her fears, as she cannot deadbolt her door and is especially
3 anxious because her abuser is still pursuing her. She also worries about staff entering her room
4 without permission, moving her belongings, or taking her possessions, which further triggers her
5 PTSD.

6 151. On information and belief, the City will not make any accommodation to its
7 general policy of having doors that cannot be locked, and that staff can and do enter at any time.
8 This policy makes the City's shelters effectively inaccessible to many people with PTSD and
9 other mental health disabilities, including Plaintiffs.

10 C. **Berkeley violates unhoused residents' constitutional rights when it**
11 **unlawfully seizes and destroys property without adequate notice or an**
12 **opportunity to be heard.**

13 152. The City has a longstanding policy and practice of seizing houseless people's
14 possessions or vehicles without constitutionally-required notice, and without giving them an
15 opportunity to contest this deprivation. Very often, these possessions or vehicles—which
16 Plaintiffs and other houseless people rely on for shelter and survival—are summarily destroyed
17 during the City's enforcement actions (whether as part of encampment "sweeps," "abate-ments,"
18 or "cleanings"), leaving people with nothing but what they were able to wear or carry away with
19 them.

20 153. The City's unlawful seizure and notice policies and practices, described in detail
21 below, are ongoing.

22 154. Moreover, Plaintiffs, all of whom are either unsheltered or in temporary shelter
23 that they can lose access to at any time, remain at imminent risk of being subjected to these
24 unlawful policies and practices and having their vehicles and/or essential possessions taken and
25 destroyed by the City, without adequate notice and without any real opportunity to contest the
26 deprivation.
27
28

1 1. Inadequate notice

2 155. The City of Berkeley regularly posts inadequate notice prior to enforcement
3 actions. The notices are written and distributed only in English, and they are often lengthy,
4 complicated, and internally contradictory.

5 156. For example, the notices will state on one page that sleeping bags will be stored,
6 while on another page they say sleeping bags cannot be stored. Additionally, the notices often
7 fail to provide a specific time and date for when the City’s abatement action will take place, and
8 they do not clearly define the areas affected by the action.

9 157. The City sometimes posts notices only on street signs, or inconsistently in other
10 locations, making it unlikely that all residents in an affected area will actually see them.

11 158. Furthermore, the City does not provide notices with enough lead time to allow
12 residents to organize or move their belongings (or otherwise comply) before enforcement;
13 notices are often posted on a Friday for an action scheduled on Monday, making it particularly
14 hard for encampment residents to connect with various groups or organizations that might be
15 able to offer help, because many such groups and organizations do not operate over weekends.

16 159. This lack of clear and timely notice leads to unnecessary confusion and panic
17 among Plaintiffs and class members, who are left unsure of how to secure their belongings and
18 vehicles, and whether the City will actually store them.

19 160. These notices are not effectively and individually communicated to all residents.
20 Instead, the City of Berkeley’s current method of notifying abatements and closures intensifies
21 the trauma Plaintiffs and other residents are experiencing, and compounds the harm experienced
22 by Plaintiffs and other residents with disabilities.

23 2. Property destruction

24 161. During closures and cleanings, Defendant City of Berkeley has a pattern and
25 practice of destroying Plaintiffs and Class members’ property during abatements and closures,
26 even when faced with individuals making legitimate claims of possessory interest in the property
27 and protesting its seizure and destruction.
28

1 162. On some occasions, the City destroys medication and mobility devices like
2 wheelchairs, walkers, and crutches. For example, in October 2022, the City confiscated and
3 destroyed a wheelchair belonging to an unhoused resident named Street, leaving him with only
4 his walker for mobility support.

5 163. The City does not provide Class members subject to abatement or encampment
6 closures a meaningful opportunity to identify and preserve their property. The City's practice is
7 to arrive early in the morning with a backhoe to destroy encampment residents' possessions,
8 without first identifying in advance who is there, whether they have alternative shelter to go to,
9 what property they have, and where it will be stored.

10 164. For example, on September 7, 2023, during a regular clean up conducted by the
11 City of Berkeley, the City threw away, without Plaintiff Spencer's consent, a large number of his
12 belongings that were not garbage. These belongings included metal frames he intended to use to
13 replace wood pallets currently holding up his shelter. Additionally, during this clean-up, the City
14 threw away materials and trailers that he needed to move from his location at 8th and Harrison.

15 165. During the abatement on November 7, 2023, the City arrested Mr. Spencer for
16 unlawful lodging, even though he was actively attempting to move himself and his belongings
17 outside of the originally noticed "abatement" area. The City destroyed his shelter and all of his
18 belongings, save for a handful of items the City agreed to store after prompting from Plaintiffs'
19 counsel, and the few belongings his friends were able to set aside after Mr. Spencer was taken
20 away by the police.

21 166. The City has also taken and thrown away Berkeley resident Rufus White's
22 belongings on multiple occasions when they have come through Harrison Street to pick up trash
23 or perform encampment closures. On four separate occasions, the City has taken his tent with all
24 of the belongings that were inside it, including important personal documents that he needs to
25 access benefits and services. When his property is taken and thrown away, he endures a long
26 process of replacing documents such as his ID and SSI cards and locating replacement survival
27 gear, including tents, sleeping bags, blankets, clothes, and mobility devices. He is often forced to
28 make do with very little, or with nothing at all.

1 167. The City has taken and destroyed Plaintiff Jermaine White's belongings many
2 times. During one sweep, the City destroyed his four bikes, his guitar, and everything else in his
3 camp, all of which were destroyed by trash compactors. In another operation, the City came out
4 in riot formation to destroy people's belongings, and he was too traumatized to stay and watch
5 his belongings be destroyed. The City has never stored any of his belongings. During one of the
6 sweeps on Harrison Street, he voluntarily moved to the Berkeley Inn for an initial 14-day term
7 that was renewed once. After 28 days in this program, he was informed that because he had no
8 income they could not find housing for him and he would have to leave the program. He was
9 returned to the streets. But during the sweep, the City had taken and destroyed his camp, his tent,
10 and all of his other survival gear. He was given a two-person tent by the City to set up a new
11 camp but not provided with any of the other items the City destroyed and that he had gathered to
12 survive on the streets.

13 168. As recently as August 2024, the City has continued to engage in the practice of
14 destroying critical survival gear of class members during encampment sweeps. On August 7,
15 2024, at the encampment located at 2nd and Page streets, city workers threw away and destroyed
16 a tent and all its contents over the protests of the owner of the tent, who was standing right by his
17 shelter while the city destroyed it. The city destroyed a total of four tents on that day, none of
18 which were abandoned. On August 13, 2024, at a cleaning at the encampment at Grayson Street,
19 city workers took another resident's tent and emptied all its contents into a dump truck. The city
20 workers intended to throw away the tent too, but ultimately returned just the tent itself to the
21 resident.

22 3. Vehicle seizure and destruction

23 169. Defendant has a pattern and practice of towing and destroying residents' vehicles
24 without notice as part of abatement actions, even when those vehicles are not impeding traffic or
25 posing any threat to public safety.

26 170. During the proposed sweep that initiated this case, originally scheduled for
27 September 4, 2023, the City provided vague notice to residents in the area of 8th and Harrison
28 that the City would be sweeping and seizing their belongings. Despite the City's intent to seize

1 Berkeley resident Lucien Jeffords' RV, the city did not provide actual notice to Mr. Jeffords that
2 it would be doing so and did not place any notice on his vehicle that he was living in of any
3 violations of law or why his RV would be seized. Nor was Mr. Jeffords informed by the City in
4 person.

5 171. Plaintiff Whitson has also had her vehicles towed without notice. In April 2023
6 her van was towed, and the only notice she received was when it was in the process of being
7 seized—not before. In April or May of 2023, a second RV was towed without notice, which she
8 inherited from her deceased boyfriend.

9 172. During the sweep on October 3, 2022, Homeless Response Team staff asked 8th
10 and Harrison resident Clarence Galtney to step out of his RV for a moment to talk. Once he
11 stepped out, they refused to let him re-enter and, despite his protests, towed his RV with all his
12 belongings inside to an impound lot. The City claimed the RV was a health hazard due to a
13 rodent infestation, but provided no proof of the infestation and no assistance with cleaning it. Mr.
14 Galtney believed, based on the posted notice, that the sweep applied only to belongings on the
15 sidewalk, not to vehicles. He learned 15 days later that his RV had been destroyed.

16 173. In August of 2023, the City offered Plaintiff Williams a room in the temporary
17 shelter program at the Campus Motel. Based on conversations she had with the City, she
18 understood that if she accepted the motel option, her RV would be stored by the City. This made
19 sense to her because she knew that the motel stay being offered was temporary and she could be
20 kicked out at any time, so she believed she would to be able to hold onto her RV in case her
21 shelter at the motel ended. However, once Ms. Williams accepted her room at the motel, the City
22 took the keys and title to her RV, towed the RV away, and destroyed it, thereby destroying Ms.
23 Williams' only source of permanent, safe shelter. She cannot live in a tent because it gets too
24 cold and the metal pins in her arm cause her pain. Ms. Williams would also be much more
25 vulnerable to attacks from her abuser if she had to leave shelter and move into a tent.

26 174. Jasmine Black-Wheeler, who has lived in Berkeley for about two years,
27 experienced the seizure of her camper in order to receive a temporary hotel offer. In March 2023,
28 she relinquished her camper, which was not registered in her name, to gain admission into a

1 Super 8 hotel room offered by Peter Radu. However, Peter Radu did not provide Ms. Black-
2 Wheeler with adequate time to retrieve her possessions from the camper, which she had lived in
3 for seven months. Ms. Wheeler’s stay in the hotel program lasted for seven months before she
4 was kicked out of her room. After being kicked out of shelter, she relocated back on the street in
5 a tent on 2nd and Page. Ms. Wheeler’s disabilities, including anemia and nerve damage, are
6 exacerbated by cold weather. Without her camper, Ms. Wheeler does not have warmth or a
7 secure environment, and her mental health has gotten worse.

8 **D. Berkeley violates residents’ 14th Amendment rights by exposing them to**
9 **state-created danger.**

- 10 1. Berkeley places residents in state-created danger by destroying residents’
11 essential property, and by clearing encampments even when it is aware
that residents have no viable alternative shelter.

12 175. Berkeley has a pattern and practice of destroying encampment residents’ survival
13 gear, food, and other belongings even when it knows that no suitable alternative shelter is
14 available, thereby exposing them to state-created danger.

15 176. The U.S. Interagency Council on Homelessness advises municipalities to avoid
16 operations that destroy unhoused people’s belongings. In its “7 Principles for Addressing
17 Encampments,” it provides the following guidance: “Communities should take special care to
18 avoid destroying personal belongings when an encampment closes and provide storage for an
19 adequate period to allow a person the opportunity to collect their belongings. . . . When an
20 encampment is closing, or a person chooses to go into a shelter or treatment program that cannot
21 accommodate all of their belongings, providing secure, accessible storage options can ensure that
22 they do not lose personal items, including clothing and identification.”¹⁴

23 177. Studies have found that municipal operations that destroy unhoused people’s
24 belongings can lead to worse health outcomes, particularly for individuals with disabilities.¹⁵ The

26 ¹⁴ U.S. Interagency Council on Homelessness, 7 Principles for Addressing Encampments,
27 https://www.usich.gov/sites/default/files/document/Principles_for_Addresssing_Encampments_1.pdf
(last updated June 17, 2022).

28 ¹⁵ Diane Qi et al., Health Impact of Street Sweeps from the Perspective of Healthcare
Providers, 37 J. Gen. Internal Med. 14, 3707-14 (Nov. 2022).

1 loss of tents, clothes, and sleeping bags can make people who are already ill much sicker.
2 Repeated encounters with municipal crews that throw away people’s belongings can compound
3 existing trauma. The unnecessary suffering caused by these experiences can also decrease hope
4 for the future and motivation for self-care, further impairing a person’s capacity for managing
5 physical and mental health conditions.

6 178. Courts have also recognized the necessity of living in community for unhoused
7 individuals with mental health disabilities such as PTSD. *Boyd v. City of San Rafael*, No. 23-cv-
8 04085-EMC, 2023 WL 6960368, *14-15 (N.D. Cal. Oct. 19, 2023) (finding likelihood of
9 irreparable harm where City ordinance required camping in isolation and granting preliminary
10 injunction allowing camping in community).

11 179. The City has repeatedly taken Plaintiff Spencer’s belongings and destroyed his
12 shelter—sometimes as often as every two weeks—forcing him to start over gathering materials
13 for shelter and survival. Mr. Spencer has lost everything from essential shelter materials to his
14 DD-214 certificate, which is his record of military discharge that allows him to connect to
15 military services in these sweeps. During the November 7, 2023 abatement, the City arrested
16 Plaintiff Spencer and destroyed his shelter and all of his belongings. As a result of these
17 continuous evictions, Mr. Spencer has been left exposed to the elements, separated from his
18 support network, unable to access benefits, and mentally and physically depleted.

19 180. The City has destroyed Berkeley resident Rufus White Jr.’s tent on no less than
20 four separate occasions. In the October 2022 sweep, the City threw away his tent and nearly all
21 his belongings. They offered him a two-person tent, despite the fact that he cannot enter or use a
22 two-person tent because of his disabilities. As a result, he was left with nothing but his
23 wheelchair—he did not even have pants. He spent the next several nights without shelter, falling
24 asleep wherever he got tired. It was very difficult for him physically and mentally. After several
25 days of this exposure, LifeLong Medical donated a larger tent for him to live in.

26 181. Rufus White Jr. has been attacked multiple times while living on the streets.
27 Because he is in a wheelchair, he is defenseless against attackers. When he calls on the police for
28 help, he often receives no response. The police and the Berkeley city officials appear to have no

1 concern for his safety and wellbeing. Defenseless against attackers, he is unsafe living on the
2 streets without security, protection, or privacy, and when the City deprives him of his housing
3 and belongings and separates him from the community that supports and protects him, it
4 knowingly places him in extreme state-created danger.

5 182. The City has destroyed Plaintiff Jermaine “Cat” White’s belongings in a number
6 of evictions. During one of the sweeps on Harrison Street, Mr. Jermaine White voluntarily
7 moved to the Berkeley Inn for an initial 14-day term that was renewed once. After 28 days in this
8 program, he was informed that because he had no income that would allow him to obtain more
9 permanent housing, he would have to leave the program, and he was returned to the streets.
10 During the sweep, the City destroyed his camp, his tent, and all of his other survival gear. He
11 was given a two-person tent by the City to set up a new camp, but not provided with any of the
12 other items the City destroyed that he had gathered to survive on the streets, thus placing him in
13 a far more dangerous and difficult situation than the one in which the City had originally found
14 him.

15 183. The City of Berkeley lacks sufficient shelter space for its unhoused residents, and
16 there are no legal alternative places for them to move. By closing encampments even when it is
17 aware that suitable alternative shelter does not exist, destroying residents’ shelter and belongings,
18 and without providing adequate time for outreach workers to contact displaced individuals and
19 find them safe, accessible housing, the City forces people to move to more dangerous locations.
20 This jeopardizes their health and safety. In doing so, the City of Berkeley places those it evicts in
21 harm’s way.

22 184. These dangers are particularly acute for the many people who have been displaced
23 with no place to go who have serious mental and physical disabilities. Persons with disabilities
24 require more time, adequate and accessible notice, and more intensive assistance because of their
25 disabilities.

1 2. Despite knowing that its actions will leave Plaintiffs and other houseless
2 residents in increased danger, over the past several years Berkeley has
3 closed shelters, cleared encampments, and enacted or enforced a series of
4 restrictive ordinances that leave unhoused people with no place to go— all
 without doing anything to ensure that adequate alternative shelter is
 available.

5 185. Berkeley’s shelters do not have enough space for Berkeley’s unhoused residents.
6 There are very few shelter options available to Berkeley residents generally. In the past few
7 years, defendant City of Berkeley has closed many city-run, sanctioned shelters, including the
8 Grayson Street Shelter, the SPARK parking lot, and others, without ensuring that residents
9 transition into other shelter options or permanent housing. The predictable result is that many of
10 the shelter and safe RV park residents have been forced back to the streets.

11 186. The City itself has acknowledged on multiple occasions that there are not enough
12 shelter spaces available for all of Berkeley’s unsheltered residents. In a memo submitted to the
13 Berkeley City Council on September 21, 2023, assistant City Manager Peter Radu stated, “[o]n
14 any average day, the [Homeless Response Team] has fewer than 10 vacancies to work with
15 across the entire shelter system.”¹⁶

16 187. Similarly, a draft policy document circulated by Mr. Radu in 2024 acknowledges
17 that encampments are “born of necessity for basic human needs (like sleep, shelter, and
18 community) among residents who lack viable alternatives,” and that they will continue to exist
19 “so long as our State and region remain in an affordable housing and shelter crisis.”¹⁷

20 188. Nonetheless, over the past several years, the City and other agencies have closed
21 or participated in the closure of a large number of encampments, such as the Berkeley Marina,
22 Seabreeze (located at University Avenue and Interstate 80), the Gilman Underpass, Ashby
23 Shellmound (near the Ashby freeway exit off of I-80), People’s Park, Here/There, Shattuck
24 Avenue, and Second Street camps.

25
26 ¹⁶City Manager Dee Williams-Ridley, Memorandum to Honorable Mayor and Members of the
27 City Council re: Draft Encampment Policy and Good Neighbor Guidelines (Sept. 21, 2023),
28 <https://berkeleyca.gov/sites/default/files/documents/2023-09-21%20Encampment%20Policy%20Referral%20Response%20-%20Off%20Agenda%20Memo.pdf>.

¹⁷ *Id.*

1 189. Defendant City of Berkeley has also aggressively enforced parking regulations
2 such as 72-hour and 4-hour parking limits that target vehicularly housed residents, decreasing the
3 number of locations individuals who live in their vehicles can park, even in commercial areas.
4 These laws were rarely enforced in these areas previously.

5 190. As a result, unhoused Berkeley residents have very few locations where they can
6 gather as communities in the area for safety and mutual support. Many Class members, including
7 all of the Plaintiffs, moved to their current locations when defendant City of Berkeley and other
8 government agencies evicted them from other encampments in the area.

9 191. There is nowhere in the City where unsheltered residents can legally camp.
10 Berkeley has passed and enforces a series of ordinances and regulations that, taken together,
11 effectively make it impossible for a person experiencing homelessness to shelter in a public
12 space. They cannot legally erect a tent or structure on a sidewalk or in a park; they cannot park a
13 vehicle and live in it without violating city ordinances and/or the California vehicle code. An
14 incomplete list of Berkeley's ordinances and regulations includes:

- 15 a) Berkeley Municipal Code ("BMC") 14.48.020, which provides that "[i]t is unlawful
16 for any person to place or cause to be placed anywhere upon any Sidewalk, Parklet or
17 roadway, any object which obstructs, restricts, or prevents the use of any portion of
18 such Sidewalk, Parklet or roadway." Subsequent sections of the BMC contain a list of
19 exceptions.
- 20 b) BMC 14.48.120 contains the exception for what it calls "Temporary Noncommercial
21 Objects ('TNC Objects')." These it defines as "personal belongings." Homeless
22 people's property, including their tents and living quarters are personal belongings.
23 However, they only fall within this exception if they are "[i]n the immediate custody
24 and control of a person or persons at substantially all times." (BMC 14.48.120 A.1).
- 25 c) There are further limits on this exception. BMC 14.48.020 provides that the scope of
26 an exception can be limited by "a regulation promulgated by the City Manager and
27 adopted by the City Council." The City Council has adopted Administrative
28 Regulation 10.2, which describes the policies and procedures for enforcing BMC

1 14.48.120. It provides that all “TNC Objects are prohibited on Sidewalks in
2 Residential Districts, except Objects in Transit.” (AR 10.2 C. 1) They are absolutely
3 prohibited “in the Bart Access Corridor” defined as the “wide plaza area, on the same
4 side of the street as a BART Station entrance.” (AR 10.2 Definitions). In other areas,
5 AR 10.2 allows for “[b]lankets, cushions, mats, or other material providing
6 cushioning (“Cushioning Material”) while an individual is seated on such an item,
7 which does not expand beyond 2’ x 2’ in size and is outside of the Path of
8 Travel.”(AR 10.2 B.2). AR 10.2 states that “enforcement should be a ‘low priority’
9 except when ‘TNC Objects have been in the same approximate location for 24 hours
10 or more’ or ‘m]ore than two accumulations of TNC Objects occupy a single
11 blockface,’” AR 10.2 D. 2. Finally, it states that “[e]nforcement officers may:
12 Request that TNC Objects be reduced to a 9-square-foot footprint (measured as 3’ x
13 3’, 4’ x 2.25’, 9’ x 1’, etc.) and/or less than 5 feet in height).” AR. 10.2 D. 2. In
14 practice, this has been interpreted by police enforcing the regulation as disallowing
15 objects including tents larger than a 3’ x 3’ footprint.

16 d) The BMC contains particular restrictions pertaining to “commercial sidewalks.” BMC
17 13.36.015, titled “Creation of accessibility on commercial sidewalks—Related
18 restrictions,” provides that “[n]o person shall lie upon a commercial sidewalk or upon
19 any object on such sidewalk” between 7:00 a.m. and 10:00 p.m. Monday through
20 Saturday, and between 10:00 a.m. and 6:00 p.m. on Sundays and holidays, except in
21 the case of a medical emergency.

22 e) All city parks are closed at night. BMC 6.32.020. Overnight camping and sleeping is
23 prohibited at the marina, which is not closed at night. BMC 6.20.260.

24 f) BMC 14.40.120 prohibits parking any heavy-duty commercial vehicle on any street
25 between the hours of two a.m. and five a.m. for a greater length of time than one
26 hour. This section has been interpreted as applying to RVs that homeless people have
27 been using as habitation.
28

1 g) BMC 14.08.090 authorizes “[a]ny regularly employed and salaried employee of the
2 City of Berkeley Police Department designated by the Chief of Police” to “remove or
3 cause to be removed: (A)Any vehicle that has been parked or left standing upon a
4 street or highway for 72 or more consecutive hours.”

5 h) When the City proceeds with abatement notices, as opposed to notices of cleanings or
6 closures, a reference is made to public nuisance. Nuisance under BMC 23.414.040
7 includes “[a] violation of *any* City, state, or federal ordinance, law, or regulation” or
8 “*any other activity declared by the City to be a public nuisance.*” This definition is
9 so broad that, in the context of the municipal codes identified herein, it effectively
10 makes it impossible to exist as an unhoused resident without being potentially subject
11 to a nuisance abatement. Their very presence unsheltered on the streets is, by the
12 City’s Municipal Code definition, arguably a nuisance.

13 192. In addition to the above ordinances, certain Berkeley City council members have
14 recently introduced a resolution to allow sweeps to occur without offers of shelter being
15 extended in circumstances that include **any** violation of local law. This resolution is explicitly
16 intended to allow for immediate sweeping and displacement of residents at 8th and Harrison. The
17 City passed the resolution. In addition to the above, people attempting to live in their vehicles in
18 Berkeley are also at risk of having their vehicles towed or receiving numerous citations that they
19 cannot pay, because their vehicles are considered not “street legal,” lacking proper registration,
20 smog certificates, or being inoperable, as the people living in them often do not have the money
21 to make the necessary repairs or pay the fines and fees required.

22 193. Those who live in RVs or other vehicles must move them constantly to avoid
23 being cited and/or towed for violation of parking ordinances. There is nowhere in the city where
24 people dwelling in their vehicles can park for more than three days at a time. Many vehicles are
25 also unregistered, and residents are not able to get them registered due to financial or other
26 constraints, and so those vehicles are also subject to tow.

27 194. The City uses threat of arrest and arrest under these code sections to force
28 residents to comply with noticed actions, forcing residents to choose between arrest and

1 protecting their belongings and community. Residents sometimes abandon necessary survival
2 gear in order to avoid arrest.

3 195. When the City actually makes arrests based on its notices, residents are subject to
4 immense harm. Despite the City of Berkeley's abatement notices stating a preference for not
5 citing or arresting individuals who decline to vacate their shelters or to allow the removal of their
6 belongings, the City began a 2023 abatement action with an arrest. On the morning of November
7 7, 2023, at approximately 7:45 a.m., Plaintiff Erin Spencer was arrested by the Berkeley Police
8 Department less than two minutes after the start of the abatement process. At an encampment
9 closure at the Adeline median, one resident was threatened with arrest or involuntary
10 hospitalization if he did not voluntarily and immediately relocate to another location. Defendant
11 City of Berkeley also issues arrests and citations to individuals for engaging in behavior related
12 to their unhoused status and threatens arrest in lieu of providing accessible outreach.

13 **E. The following are descriptions of recent abatement and closure actions by the**
14 **City that exemplify the pattern and practices of violations described above.**¹⁸

15 1. 8th and Harrison – October 3, 2022

16 196. Berkeley has taken a number of actions to force out the unhoused from 8th and
17 Harrison Streets. On September 30, 2022, the city posted a "Notice of Imminent Health Hazard
18 and Emergency Abatement," near the intersection of 8th and Harrison Streets, stating that the
19 "abatement" would take place just three days later, on October 3, 2022. City officials attached
20 copies of the notice to fences, tents, and telephone poles with duct tape. Minimal effort was
21 made to communicate with residents regarding what this abatement action would entail, and
22 what residents could do to comply. The abatement was authorized for purposes of addressing
23 rodent harborage, although nothing in the notice indicated that residents were being asked to
24 leave, or what shelters would be removed.

25 197. At 6:20 a.m. on October 4, 2022, Defendant City of Berkeley moved in with
26 heavy machinery, a phalanx of Berkeley Police officers, and city officials, to destroy 29 tents,
27

28 ¹⁸ The examples listed here are not a complete recounting of all encampment sweeps performed
by the City relevant to this case.

1 three structures, and impound and then crush four vehicles that unhoused residents were relying
2 on for shelter.¹⁹ The City proceeded to destroy many residents' only source of shelter, offering
3 no alternative or replacement. Due to this abatement, two residents were hospitalized. One was
4 Alice Barbee, a resident of 8th and Harrison. During the sweep, Ms. Barbee began having heart
5 palpitations—a symptom that likely could have been mitigated if City mental health
6 professionals had been present to offer support. She refused to go to the hospital because she was
7 concerned that if she left her shelter unattended, the City would destroy it. She was finally
8 hospitalized the next day due to continuing complications. Another resident was arrested and put
9 in jail for three days. When he came back to 8th and Harrison after his release, he found his tent
10 and all his belongings had been thrown away.

11 198. Plaintiff Prado witnessed this sweep firsthand. She also had her belongings seized
12 and witnessed the seizure of other people's belongings the abatement action by the City on
13 October 4, 2022. She documented this action and published her account of it on the BerkeleySide
14 website, where she provides more information or shares her story in greater detail and is
15 incorporated into this complaint.²⁰ She also documented the apology by the assistant City
16 Manager, Peter Radu, where the City admitted to being “overhanded” in its methods, providing
17 vague and conflicting instructions to residents, and apologized for its tactics. Ms. Prado's
18 account of the City's apology has been published in San Francisco Public Press and is
19
20
21

22 ¹⁹ Yesica Prado, *'Everything is Gone, and you Become More Lost': 12 Hours of Chaos as*
23 *Berkeley Clears Encampment*, San Francisco Public Press (Dec. 22, 2022),
24 <https://www.sfpublicpress.org/everything-is-gone-and-you-become-more-lost-12-hours-of-chaos-as-berkeley-clears-encampment/>

25 ²⁰ Yesica Prado, *First Person: Berkeley Encampment Clearing Meant Chaos for Unhoused*
26 *People*, BERKELEYSIDE (Jan. 10, 2023), <https://www.berkeleyside.org/2023/01/10/berkeley-clears-encampment-sweep-harrison-eighth> (“[t]he morning after the encampment sweep, city
27 workers came while residents were still sleeping, and everything outside people's tents was
28 thrown into the garbage truck again, including working bikes, wagons, scooters and pet supplies.
'If you want to remain unsheltered, you are going to have to play by our rules,' Radu said to a
camp resident who was asking for his property back”); This account is also reprinted and
attached to Ms. Prado's declaration in support of Temporary Restraining order at Exhibit H.
(ECF No. 2-3 at 40-105).

1 incorporated herein.²¹ This experience and other experiences have traumatized Ms. Prado and
2 exacerbated her PTSD.

3 199. During this sweep, Ian Cordova Morales, President of Plaintiff Where Do We Go,
4 and an outreach specialist for the Homeless Action Center, repeatedly asked Peter Radu for
5 assistance storing belongings. Mr. Radu refused to get a truck to transport and store items. He
6 also said the City would not store “bulky items” but did not specify what this meant.

7 200. As a result of this sweep, WDWG was forced to expend resources buying tents
8 and supplies for people whose belongings were taken. Mr. Radu later publicly apologized for the
9 City’s actions, claiming defendant City of Berkeley would work with people as opposed to
10 against them moving forward.²²

11 2. 8th and Harrison – September 4, 2023 (Labor Day)

12 201. Around September 2023, approximately 50 individuals resided in the area around
13 8th and Harrison. During the summer, the City had held community meetings with Harrison
14 Street encampment residents, during which Mr. Radu had emphasized the importance of clear
15 communication.

16 202. During these community meetings, representatives of the City communicated with
17 encampment residents alluding to an approaching sweep, but provided no concrete information
18 regarding when this sweep would take place, and what actions the City was planning to take
19 during the eviction.

20 203. In spite of this professed commitment to clear communication between unhoused
21 residents and the City, in the late afternoon of September 1, 2023, the City, again, without any
22 warning to the community, posted notices for a planned abatement action at 8th and Harrison to
23

24 ²¹ Yesica Prado, *Berkeley Says It Was Aggressive in Homeless Encampment Sweeps, Promises*
25 *Reforms*, San Francisco Public Press, (Aug. 2, 2023), [https://www.sfpublicpress.org/berkeley-](https://www.sfpublicpress.org/berkeley-apologizes-for-aggressive-homeless-encampment-sweeps-promises-reforms/)
26 [apologizes-for-aggressive-homeless-encampment-sweeps-promises-reforms/](https://www.sfpublicpress.org/berkeley-apologizes-for-aggressive-homeless-encampment-sweeps-promises-reforms/) (“Peter Radu,
27 assistant to the city manager, said the city acknowledged that it had mishandled encampment
28 cleanings and used ‘overhanded’ measures that included the destruction of personal property and
giving vague, sometimes conflicting instructions to encampment residents”); This account has
been previously submitted to the Court and attached to Ms. Prado’s declaration in support of
Temporary Restraining Order at Exhibit I. (ECF No. 2-3 at 106-117).

²² *Id.*

1 take place on Labor Day, September 4, 2023. One notice was a “Notice of Imminent Health
2 Hazard and Emergency Abatement Beginning Sept. 4, 2023.” This notice claimed that conditions
3 of the area posed a health and safety hazard in violation of various provisions of the Berkeley
4 Municipal Code. It stated that by September 4, 2023, individuals must discard debris and reduce
5 their possessions to a 3x3 foot area. It stated that defendant City of Berkeley could store a limited
6 amount of property but that items left unattended would be discarded. It provided no guidance as
7 to how individuals should mark their 3x3 foot area or designate the items they need to have
8 stored. It provided a list of shelters, storage facilities, and other resources, the vast majority of
9 which were closed during the period between when the notice was posted on a Friday afternoon,
10 and Monday, a federal holiday.

11 204. At the same time, the “Notice of Imminent Health Hazard and Emergency
12 Abatement” was posted, defendant City of Berkeley also posted a Public Notice with the subject,
13 “Shared Sidewalk Policy – Notice of Violation.” This document was addressed to “Persons at
14 Harrison,” with no indication which residents on which portions of Harrison would be impacted.
15 It did not contain any reference to a date of enforcement.

16 205. Based on these notices, it was unclear what action the City would take place on
17 September 4, 2023, what laws it would enforced, and how residents could comply with Berkeley
18 Municipal Code.

19 206. When Plaintiff Prado saw the notices, she felt fear for herself and her community,
20 which was exacerbated by her PTSD from prior City encampment clean-ups.

21 207. The looming abatement action posed significant risk of imminent injury to
22 Plaintiffs and other residents of 8th and Harrison. If the abatement proceeded and individuals
23 were forced to move before adequate shelter options were available, Plaintiffs would have lost
24 not only their shelter and homes, but also the support of their community, placing them in
25 immense risk of harm. They also would have lost touch with other service providers who reliably
26 visit them at 8th and Harrison. Residents with disabilities would have been particularly harmed.
27 Therefore, Plaintiffs filed the first Complaint in this case and a Motion for Temporary
28 Restraining Order on September 3, 2023. (ECF Nos. 1 & 2). Defendant was enjoined from

1 closing the encampment until September 27, 2023, when a hearing date for a preliminary
2 injunction would occur. (ECF No. 15).

3 208. After the hearing on September 27, 2023, District Judge Edward M. Chen issued
4 an Order Dissolving the Temporary Restraining Order, permitting Defendant City of Berkeley to
5 move forward with the abatement action provided it meet certain criteria in order to ensure the
6 balance of hardships remained tipped in Defendant's favor. (ECF No. 26).

7 3. 8th and Harrison – November 7, 2023

8 209. At 7:30 a.m. on October 30, 2023, City officials posted Public Notices titled,
9 "Notice of Imminent Health Hazard and Emergency Abatement Beginning November 7, 2023, at
10 Harrison Street in Berkeley between 7th and 8th Streets. The notices were individually addressed
11 to the Named Plaintiffs and placed on their individual belongings. The notices state that the
12 location of the abatement operation would be "limited to the streets and sidewalks of Harrison St.
13 between 7th St and 8th St in Berkeley, CA."

14 210. These notices listed the shelter options available to the Named Plaintiffs for
15 purposes of abatement. For Berkeley resident Lucien Jeffords, the notice stated that there would
16 be a room reserved at the Super 8 Motel during the abatement, and that he would be permitted to
17 bring one "pet." Given that Mr. Jeffords informed the Court that he has two cats that serve as
18 emotional supports, and the City offered no accommodation, this meant he would need to
19 surrender one cat. The notice stated that his RV would be subject to a cleaning to treat a rat
20 infestation.

21 211. The notices also laid out a procedure for Plaintiffs and Defendant City of
22 Berkeley to demarcate Plaintiffs' belongings. The notice stated Defendant City of Berkeley
23 would come to 8th and Harrison on Thursday, November 2, 2023, and provide Plaintiffs with
24 caution tape to mark belongings they wished to have Defendant store and spray-paint to mark a 9
25 square feet area where they could place belongings they wished to store during the abatement.

26 212. Before November 2, 2023, no notices were posted directed to other residents of
27 Harrison Street between 7th and 8th Streets.
28

1 213. On November 2, 2023, representatives from Defendant City of Berkeley,
2 including Peter Radu, Okeya Vance, a representative from the Berkeley Fire Department, and
3 several Berkeley Police Officers, came to 8th and Harrison to meet with Plaintiff Prado, Plaintiff
4 Spencer, and Berkeley resident Lucien Jeffords. Plaintiff Spencer and Mr. Jeffords indicated
5 where they would like their 9 square foot areas to be located and received their tape. The square
6 placements are as depicted below:



14 214. During this time, Plaintiff Spencer requested clarification from Peter Radu
15 regarding which of his belongings the City would store. Mr. Radu repeatedly referred Mr.
16 Spencer to the City's storage policy, as stated in the notice. When pressed for clarification
17 regarding which items the City would store, Mr. Radu on his own discretion offered to store a
18 speaker in Mr. Spencer's shelter, but not a trailer Mr. Spencer had built to move his items. He
19 refused to provide any further clarification regarding how the City's storage policy would be
20 applied to specific items belonging to Mr. Spencer.

21 215. During the City site visit to demarcate Plaintiffs square footage, Mr. Radu
22 confirmed that there would be no mental health professionals present from the City during the
23 abatement action noticed to take place on Tuesday, November 7.

24 216. After this demarcation took place for Plaintiffs' items, at about 4 p.m. on of the
25 same day, city officials began posting new notices. These notices were titled, "Notice of
26 Imminent Health Hazard and Emergency Abatement Beginning November 7, 2023, at 7:30
27 AM." They were addressed to "[p]ersons who are encamped on the North side of Harrison Street
28 between 7th and 8th Street, Berkeley, CA, who are not named plaintiffs in *Prado v. City of*

1 *Berkeley* (Lucien Jeffords, Erin Spencer, Yesica Prado, or Angel Kennett).” The location of the
2 abatement is, “limited to the streets and sidewalks of Harrison St between 7th St and 8th St in
3 Berkeley, CA.” It states that, “[o]n the day of the abatement, the City will make every effort to
4 offer you either non-congregate or congregate shelter, based on availability.” It orders
5 individuals to reduce their belongings to a 9 square foot area but does not provide them guidance
6 about how to demarcate these belongings.

7 217. On November 7, 2023, at around 7:30 a.m., city officials, including around eight
8 police officers began gathering on 8th and Harrison to conduct their abatement procedure. By
9 7:45 a.m. Plaintiff Erin Spencer was cuffed and aggressively detained by police officers. On
10 information and belief, Mr. Spencer’s arrest was pre-cleared by the Chief of Police in advance of
11 the sweep.

12 218. Mr. Spencer was actively trying to leave the area of 8th and Harrison with a cart
13 containing many of his belongings when he was surrounded by at least five officers. They
14 grabbed him, forced him to sit on a curb while standing over him, put handcuffs on him despite
15 the fact that he was crying out in pain and telling them he had a shoulder disability and stating
16 that he would not resist. Mr. Spencer asked what he was being arrested for and received no
17 answer. Plaintiffs’ counsel repeatedly told the officers and city staff that Mr. Spencer has
18 disabilities and was in pain due to his shoulder injury. Plaintiffs’ counsel asked what Mr.
19 Spencer was being arrested for, and were told Penal Code Section 647(e), illegal lodging.



1 219. Police officers did not engage in any mental health support before resorting to
2 arresting Plaintiff Erin Spencer and detaining him on accusations of illegal lodging. Police
3 officers proceeded to drag Spencer by his shoulder, despite being informed that he has a shoulder
4 disability. By around 7:55 a.m., Erin Spencer was driven away in the back of a police car to be
5 booked and charged at Berkeley Jail. As soon as Erin Spencer was detained, Peter Radu
6 informed bulldozer operators and clean-up crews, identified as Public Works, to begin
7 demolishing Spencer's structure. At least one other encampment resident was arrested.

8 220. Mr. Spencer's neighbors advocated for the City to store Mr. Spencer's belongings
9 while he was detained, however City officials refused to store the majority of his items on the
10 cart, including solar panels, metal poles, and clothes. City officials then permitted the entire area
11 that had been Mr. Spencer's home to be bulldozed, making no effort to separate any items for
12 storage. Even the items located in the square designated by the City for Mr. Spencer were
13 crushed and thrown away. The picture below depicts the 3x3 foot square set aside for Mr.
14 Spencer, empty and now behind a fence.



23 221. This abatement scheduled at 8th and Harrison was originally expected to span
24 approximately three days for cleanup, according to the City's notices that were posted. Notably,
25 the entire encampment was cleared by 3 p.m. on the very same day. The speed of the clean-up
26 was largely due to the indiscriminate destruction of items leaving Class Members scrambling to
27 shift through their items as bulldozers were destroying them at the same time.
28

1 222. The City's rapid cleanup of encampments disproportionately impacts individuals
2 with disabilities, such as Thomas Barnett. Due to his limited physical mobility in his right arm
3 and hand, which prevents him from lifting heavy objects, Mr. Barnett was unable to move or
4 store many of his belongings, including tools and clothing, before his shelter was destroyed. The
5 indiscriminate speed of the cleanup did not allow him sufficient time to manage or protect his
6 essential items, exacerbating the difficulties he faces due to his disabilities.

7 223. Some unhoused class members did not even receive a tent to replace their lost
8 shelter. Notably, one class member, named Saree, was displaced when Mr. Spencer's shelter was
9 destroyed. She received no outreach from the City and she was left with no place to go and her
10 belongings destroyed.

11 224. Another class member, Mike Douglas, lost his shelter and nearly all his
12 belongings. Mr. Douglas has mental health disabilities and a severely injured foot that requires
13 him to use a mobility device. City officials made no attempt to speak with Mr. Douglas, who was
14 lying on the side of 7th Street because he was in immense pain, before a bulldozer moved in. The
15 City barely allowed Plaintiffs' counsel to grab his mobility device for him. After Plaintiffs'
16 counsel exited the structure, city workers immediately began bulldozing the structure, making no
17 effort to sort items for storage. Mr. Douglas lost his wallet as a result.

18 225. The City of Berkeley conducted this abatement similar to its pattern and practice
19 in other abatements, when it failed to engage in accessible outreach, especially to residents
20 requiring accommodations related to mental health disabilities and failed to engage in a process
21 that could entertain and accommodate disability related needs of encampment residents, and left
22 many residents in a position of greater danger when it destroyed their camps without extending
23 offers of shelter or replacing the shelter it had destroyed. The practice of posting unclear and
24 inconsistent notices just days before a planned abatement or closure also fails to allow residents
25 with disabilities time to prepare for such closures and makes it impossible for residents to discern
26 what will occur and what actions they need to take to protect their belongings and necessary
27 survival gear.
28

1 4. Adeline Median Closure – September 11, 2023

2 226. Late Friday afternoon on September 8, 2023, Berkeley police noticed another
3 encampment closure for Monday September 11, 2023. One of the notices directed the resident to
4 a shelter on Grayson Street that had been closed for some time. No other outreach workers were
5 present with them.

6 227. The camp was located on the large, partially paved, parklike median of Adeline
7 St., between Ashby Avenue and Russell Street (“the Adeline Median”). The median is wide, with
8 ample room for individuals to place tents and belongings without impinging on traffic.

9 228. All residents of the Adeline median encampment were individuals with
10 disabilities as defined by the ADA. One encampment resident is a disabled, senior citizen who
11 has a number of mental and physical disabilities and is immunocompromised. Plaintiff Jermaine
12 White, who resided at the encampment, suffers from PTSD and severe anxiety from trauma of
13 past encampment sweeps. Another resident, Mr. Lambert, is hearing-impaired, hears voices in
14 his head, and requires interpretation services for effective communication. Ms. Sides suffers
15 from the mental health impacts of past trauma and attempted to cut her wrist the last time she
16 was evicted from an encampment.

17 229. The City had not done meaningful outreach to the people residing on the Adeline
18 Median, nor had it offered residents any services or an opportunity to request accommodations
19 they may need due to their disabilities. It did not offer them shelter that met their disability-
20 related needs. The only interactions they had with City officials prior to the planned closure was
21 with Berkeley police warning them a closure was imminent and that residents should move.

22 230. Due to his disabilities, Mr. Lambert cannot read written notices, and spoken
23 communication is very challenging for him. Mr. Lambert would have been unable to understand
24 the content of the written notices and it is believed that no outreach was conducted in a manner
25 that would have been accessible to him prior to the planned closure. Council for Plaintiffs, Osha
26 Neumann, attempted to engage Mr. Lambert over the weekend prior to the encampment closure
27 to inform him of the planned closure, but communication proved to be too difficult without the
28 assistance of an interpreter.

1 231. Because of his mental health disabilities, Plaintiff Jermaine White has difficulty
2 meaningfully engaging City officials and police in relation to enforcement activities, is unable to
3 comply with notices related to encampment closures and enforcement activities, and requires
4 supports to accept shelter and housing. The only outreach provided to Mr. White prior to the
5 encampment closure was conducted by Berkeley Police. One of the police officers, Officer
6 Futch, asked him if he was interested in housing, and he said he wanted to talk to his Insight
7 worker first, as he believes he has a housing voucher and wanted to understand his options. On
8 the day of the closure, City officials made a vague offer to Mr. White for a motel room. They
9 gave him no details. Because of his disabilities, Mr. White could not engage City officials to
10 learn more about the offers, and ask for the accommodation he needed, which was to connect to
11 his caseworker. He did not have time to make a decision about the offer of shelter, before the
12 pressure to preserve his belongings required him to move across the street to a sidewalk.

13 232. The manner in which this encampment closure occurred is consistent with the
14 City's pattern and practice in other closures and enforcement actions against encampments
15 whereby no meaningful outreach is conducted that is accessible to disabled residents, especially
16 individuals with mental health disabilities. Further residents' disability related needs are not
17 addressed at the time of enforcement, nor are offers of shelter made that address residents'
18 disability related needs.

19 5. Adeline - Additional Enforcement October 2023

20 233. On Friday, October 20, 2023, Adeline residents who had just relocated to the
21 sidewalk on the west side of Adeline and south of Russell Street, were once again subjected to an
22 enforcement/abatement action, with notice posted on a Friday for a Monday eviction. Once
23 Plaintiff Jermaine White saw the notice, he was so traumatized he could only hole himself up in
24 his tent and was unable to take steps to separate out the belongings he wanted to keep.

25 234. When Mr. White heard the City vehicles coming, he felt depressed and hid in his
26 tent until the City left. He was at one point able to ask the City not to take his bicycle, but he was
27 unable to further engage with the City. When he emerged from his tent, all of the items that were
28 outside of his tent had been removed, except for his bicycle.

1 235. Mr. White lost most of his belongings, except for his tent, the belongings in his
2 tent, and his bicycle. He saw compactors there the day of the cleaning and believes his
3 belongings were destroyed by the compactors. He also observed that a neighboring camp
4 belonging to a resident, Charles Henson, was completely removed when another individual who
5 was watching the camp was not present.

6 236. Counsel has since confirmed with Peter Radu that no items from this action were
7 stored from any of the Adeline Street residents.

8 237. Prior to this sweep, the City did not engage residents in meaningful outreach and
9 Mr. White received no offer of shelter. The manner in which this encampment closure occurred
10 is consistent with the City's pattern and practice in other closures and enforcement actions
11 against encampments.

12 **V. CLASS ALLEGATIONS**

13 238. Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure,
14 Plaintiffs bring this action on behalf of themselves and all other persons similarly situated.

15 239. The proposed class is defined as: "All unhoused persons who have a 'disability'
16 as defined under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12102, who reside in
17 a vehicle or other shelter in public spaces in Berkeley, California, or who reside in temporary or
18 transitional shelters in Berkeley, California" (the "Class").

19 240. The proposed Class meets the Rule 23(a) requirements.

20 241. The Class is so numerous that joinder of its members is impracticable. The City of
21 Berkeley's latest survey of unhoused residents found a total of 1,057 unsheltered and sheltered
22 homeless Berkeley residents, with 254 residents living in temporary shelters and 803
23 unsheltered. Of these unsheltered residents, 426 residents were living in tents, 198 in cars or
24 vans, 69 in RVs, and 109 living "Street/Outside."²³ In general, a high percentage of homeless
25 people have disabilities. According to the United States Interagency Council on Homelessness,
26

27 _____
28 ²³ EveryOneHome, Berkeley 2022 Point In Time Count Unsheltered & Sheltered Report at 2,
available at <https://everyonehome.org/wp-content/uploads/2022/05/Berkeley-PIT-2022-Infographic-Report.pdf> (last accessed December 8, 2025).

1 an estimated 24% of people experiencing homelessness on any given day are people with
2 disabilities who meet the definition of chronically homeless.²⁴ These rates are higher for
3 unsheltered homelessness, the category that includes the vehicularly housed.²⁵

4 242. According to the City, in 2022, in Berkeley, 62.3% of unsheltered homeless
5 people reported having a “Mental Health Condition,” 18.3% reported having a Developmental
6 Health Condition, 33.1% reported having a Physical Health Condition, and 30.6% reported
7 having a Chronic Health Condition. For residents at the Harrison Street Encampments, where
8 many named Plaintiffs reside, these numbers are much higher, with 86.2% identifying as having
9 Mental Health Conditions, 51.7% having Developmental Health Conditions, 65.5% as having
10 Physical Health Conditions, and 82.8% as having Chronic Health Conditions. Of the 1,057
11 unhoused Berkeley residents counted in the 2022 Point In Time Count, 62.3% had at least one
12 disability; this means that the class likely includes at least 658 members.

13 243. The relief sought is common to all members of the Class, and common questions
14 of law and fact exist as to all members of the Class. Plaintiffs seek prospective relief from
15 abatement actions in Berkeley, California.

16 244. Questions of law and fact that are common to all members of the Class include,
17 but are not limited to, the following:

- 18 a) Whether the City has failed or refused to provide reasonable modifications of its
19 policies, practices or procedures in enforcing City ordinances in the abating or
20 sweeping of encampments and vehicles used for housing as required under the ADA,
21 42 U.S.C. § 12132 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §
22 794 and state laws by failing to modify enforcement of those laws to not have a
23 disproportionate burden on or otherwise accommodate Plaintiffs and class members
24
25

26 ²⁴ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *Homelessness in America: Focus on Chronic*
27 *Homelessness Among People With Disabilities* (Aug. 2018),
28 <https://www.usich.gov/sites/default/files/document/Homelessness-in-America-Focus-on-chronic.pdf>.

²⁵ *Id.*

- 1 disabilities or providing a process for individuals with disabilities to seek
2 accommodations to enforcement and abatement actions;
- 3 b) Whether the City has failed to provide outreach and other services to the houseless
4 community in a manner that is accessible to Plaintiffs and the members of the class.
5 I.e. whether the City has failed or refused to provide reasonable modifications to its
6 programs for Plaintiffs and members of the Subclass in order for them to
7 meaningfully access those programs and services;
- 8 c) Whether the City has failed to provide reasonable accommodations and/or
9 modifications to the policies, practices, rules, and regulations of its shelter programs
10 as required by state and federal laws;
- 11 d) Whether the City fails to make reasonable modifications to its encampment
12 management policies, practices, and procedures that are necessary to accommodate
13 Plaintiffs' and Class members' disabilities;
- 14 e) Whether the City fails to make reasonable modifications to the policies, practices and
15 procedures in place at its temporary shelters that are necessary to accommodate
16 Plaintiffs' and Class members disabilities while they are residing in the shelters;
- 17 f) Whether the City's policies, practices, and procedures in enforcing City ordinances in
18 the cleaning or clearing of encampments and vehicles puts Plaintiffs and class
19 members in greater danger than leaving them in place;
- 20 g) Whether the named Plaintiffs and other Class members are at risk that their shelter
21 and other personal belongings will be seized and impounded or destroyed by the City;
- 22 h) Whether the City's notices to Class members are sufficiently specific to provide
23 adequate constitutionally required notice prior to requiring them to vacate or seizing
24 property;
- 25 i) Whether the City's policies, practices, and procedures in enforcing City ordinances in
26 the abating or sweeping of encampments and vehicles despite the lack of available
27 shelter beds, violates the law by placing them in state created danger.
28

1 j) Whether the City’s policies, practices, and procedures in enforcing City ordinances in
2 the abating or sweeping of encampments and vehicles violates one or more of the
3 constitutional and statutory provisions enumerated herein;

4 k) Whether named Plaintiffs and the other Class members are entitled to equitable relief,
5 including system-wide policy and practice changes to address the constitutional and
6 statutory violations detailed in this Complaint.

7 245. Plaintiffs who have disabilities have claims that are typical of, and not
8 antagonistic to, the claims of other Class members. Plaintiffs and Class members have been
9 similarly harmed by the disproportionate burden imposed on people with disabilities by the
10 City’s policies, procedures and practices, and seek similar relief in the form of a process by
11 which Class members with disabilities can seek a reasonable modification from these policies,
12 practices and procedures in the form of an exemption from enforcement or an alternative such as
13 a managed encampment or safe parking program. Additionally all members of the Class seek
14 modifications to policies, practices and procedures to ensure that programs and services are
15 provided in a manner that is accessible to the members of the Class. The claims of named
16 plaintiffs with disabilities arise from the same practices and conduct that give rise to the claims
17 of all Class members and are based on the same legal theories.

18 246. Plaintiffs’ claims are appropriate for class treatment pursuant to Rule 23(b)(2)
19 because the City has acted to enforce its ordinances and abatement policies in a manner which
20 are generally applicable to the Class as a whole, thereby making appropriate final declaratory
21 and injunctive relief appropriate respecting the class as a whole.

22 247. Plaintiffs are adequate representatives of the Class defined herein, will fairly
23 protect the interests of the members of the Class, have no interests antagonistic to the members
24 of the Class, and will vigorously pursue this suit via attorneys who are competent, skilled, and
25 experienced in litigating matters of this type. Class counsel are competent and experienced in
26 litigating large class actions.

27 248. A class action is the appropriate and superior method for the fair and efficient
28 adjudication of this controversy. Prosecuting separate actions would create the risk of

1 inconsistent or varying adjudications, establishing incompatible standards of conduct for the City
2 of Berkeley. Allowing this lawsuit to proceed as a class action will permit the class of similarly
3 situated persons to prosecute their common claims in a single forum simultaneously and
4 efficiently, and without the unnecessary duplication of effort and expense that numerous
5 individual actions would entail.

6 249. To the extent that any member of the class could afford individual litigation, it
7 would be unduly burdensome to the judicial system. Concentrating this litigation in one forum
8 will promote judicial economy, consistency, and parity among the claims of individual members
9 of the Class.

10 250. Plaintiffs know of no difficulty that would be encountered in the management of
11 this litigation that would preclude its maintenance as a class action.

12 **VI. CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **(All Plaintiffs and the Class)**

15 **Discrimination Against Persons with Disabilities**

16 **Under the Americans With Disabilities Act (ADA), 42 U.S.C. § 12131 et seq.**

17 251. Plaintiffs re-allege and incorporate by reference all the above allegations as
18 though fully set forth herein.

19 252. Defendant is a public entity within the meaning of Title II of the Americans with
20 Disabilities Act. 42 U.S.C. § 12131.

21 253. All named Plaintiffs are qualified individuals with disabilities under the
22 Americans with Disabilities Act. 42 U.S.C. § 12132; 42 U.S.C. § 12131; 28 C.F.R. § 35.104.

23 254. Title II of the Americans with Disabilities Act (ADA) provides that “no qualified
24 individual with a disability shall, by reason of such disability, be excluded from participation in
25 or be denied the benefits of the services, programs, or activities of a public entity, or be subjected
26 to discrimination by any such entity.” 42 U.S.C. § 12132. Discrimination under Title II of the
27 ADA includes administration of programs in a way that has a discriminatory effect on people
28 with disabilities, or that has the “effect of defeating or substantially impairing the

1 accomplishment of the objectives of the service, program, or activity with respect to individuals
2 with disabilities.” 28 C.F.R. § 35.130 (b)(3)(ii).

3 255. Under the ADA, a “program, service, or activity” includes within its scope
4 “anything a public entity does.” *Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014)
5 (citation omitted); *see also Barden v. City of Sacramento*, 292 F.3d 1073, 1076-77 (9th Cir.
6 2002) (discussing rationale for broad construction).

7 256. Defendant’s enforcement of local ordinances, cleaning streets, removing homeless
8 individuals and their possessions from public property, providing outreach services to the
9 unhoused community, providing shelter and/or housing navigation services to the unhoused
10 community, as well as other services are all programs, services, and/or activities covered by Title
11 II of the ADA. *See Cohen, supra; Barden, supra; McGary v. City of Portland*, 386 F.3d 1259
12 (9th Cir. 2004) (enforcement of city ordinances subject to the ADA); *Crowder v. Kitagawa*,
13 81 F.3d 1480, 1482 (9th Cir. 1996) (same for state laws).

14 257. The ADA protects people with disabilities against facially neutral policies that
15 burden people with disabilities more than non-disabled people, by requiring the public entity
16 provide reasonable modifications to avoid discrimination unless the public entity can
17 demonstrate such modifications would result in a fundamental alteration of the program.
18 28 C.F.R. § 35.130(b)(7); *Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9th Cir. 1996).

19 258. Reasonable modifications can adjust for the financial limitations that arise from a
20 disability, not just the immediate manifestations of the impairment giving rise to the disability.
21 *Giebeler v. M & B Associates*, 343 F. 3d 1143, 1152 (9th Cir. 2003).

22 259. Title II regulations interpreting the ADA prohibit a public entity from utilizing
23 criteria or methods of administration that have the effect of subjecting qualified individuals with
24 disabilities to discrimination based on disability. 29 C.F.R. § 35.130(b)(3).

25 260. A public entity is also prohibited from imposing eligibility criteria that screen out
26 or tend to screen out individuals with disabilities from fully and equally enjoying any service,
27 program, or activity. 28 C.F.R. § 35.130(b)(8).

28

1 261. Failure to provide proper assistance, additional time, or other support to disabled
2 individuals when demanding that unhoused people remove themselves or their belongings or
3 their vehicles from public space is a violation of the ADA. *See Cooley v. City of Los Angeles*,
4 2019 WL 3766554, at *6 (C.D. Cal. Aug. 5, 2019) (“Cooley [...] told LAPD officers that she
5 needed help to carry her property because of her disability and that she lost most of her essential
6 property because her needs were not accommodated [...] the City’s practices, even if it facially
7 neutral, violate the ADA by unduly burdening people with disabilities such as Cooley”).

8 262. Failing to provide shelter options to unhoused people that meet their disability
9 related needs is also a violation of the ADA because it means that shelter is functionally
10 unavailable to them because of their disability. *See Bloom v. City of San Diego*, 2018 WL
11 9539238, at *3 (S.D. Cal. June 8, 2018) (“[B]ecause of plaintiffs’ disabilities, they cannot seek
12 housing in a homeless shelter because the shelters cannot accommodate their disabilities; . . . the
13 shelters are ‘functionally unavailable’ to them”). Failing to modify rules, policies and procedures
14 to accommodate people’s disabilities functionally makes the shelter unavailable to them.

15 263. Defendant’s policies and practices in administering their ordinances and parking
16 programs through threatened ticketing, towing, and removal of vehicles used by unhoused people
17 with disabilities has the effect of discriminating and imposing a disproportionate burden on
18 people with disabilities. Similarly, requiring them to surrender their vehicles or other property
19 necessary to accommodate their disabilities as a condition for accessing shelter has the effect of
20 imposing disproportionate burdens on people with disabilities who are more vulnerable to
21 otherwise camping in the elements, and has the effect of screening out people with disabilities or
22 otherwise discriminating against people with disabilities by preventing them from accessing
23 shelter programs.

24 264. Defendant City of Berkeley discriminates against unhoused individuals by failing
25 to provide accessible services, parking accommodations, adequate notice, time, and assistance to
26 unhoused people with disabilities who are forced to move themselves or their belongings from
27 public space in response to defendant City of Berkeley’s homeless sweeps.
28

1 265. Defendant City of Berkeley discriminates against unhoused individuals by failing
2 to reasonably modify rules, policies and procedures at its shelters to accommodate the needs of
3 Plaintiffs and other unhoused residents with disabilities.

4 266. Defendant’s policies and practices fail to provide services to unhoused individuals
5 in an accessible manner, including but not limited to outreach and housing navigation services,
6 without providing additional support in the form of mental health professionals to assist
7 unhoused residents to access those outreach services, or otherwise accommodating unhoused
8 residents with disabilities has the effect of screening out people with disabilities or otherwise
9 discriminating against people with disabilities from accessing those programs, services and
10 activities.

11 267. Forcibly removing unhoused residents without first identifying and offering
12 alternative shelter or services that meet the individualized needs of people with disabilities does
13 not serve any sufficiently compelling or bona fide and legitimate interest of defendant City of
14 Berkeley, and less discriminatory options are available to defendant City of Berkeley to achieve
15 any interests it claims it is trying to advance.

16 268. The City fails to modify its shelter rules, regulations, policies and practices to
17 accommodate Plaintiffs with mental or physical disabilities, both in response to requests and
18 where the need for the accommodation is obvious or previously known to the City. Plaintiffs
19 have been injured by Defendant City of Berkeley’s discriminatory response to unhoused
20 residents with disabilities.

21 269. The ADA also requires public entities like Defendant to ensure that
22 communications with people with disabilities are as effective as communications with others,
23 and to “furnish appropriate auxiliary aids and services where necessary to afford individuals with
24 disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service,
25 program, or activity of a public entity.” 28 C.F.R. § 35.160(a)(1), (b)(1).

26 270. The ADA regulations provide that “[i]n determining what types of auxiliary aids
27 and services are necessary, a public entity shall give primary consideration to the requests of
28 individuals with disabilities.” *Id.* § 35.160(b)(2).

1 277. Cal. Gov. Code § 11135 is intended to prohibit all forms of discrimination
2 prohibited under Title II of the Americans with Disabilities Act and, where possible, to be more
3 protective of people with disabilities. See Cal. Gov. Code § 11135(b).

4 278. Defendant, City of Berkeley, is a recipient of financial assistance from the State
5 of California.

6 279. It is a discriminatory practice for a recipient of state financial assistance, in
7 carrying out any program or activity, on the basis of disability, (1) to deny a person the
8 opportunity to participate in, or benefit from an aid, benefit or service; (2) to afford a person the
9 opportunity to participate in or benefit from an aid, benefit or service that is not equal to that
10 afforded others; (3) to provide a person with an aid, benefit or service that is not as effective in
11 affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the
12 same level of achievement as that provided to others, and (7) to otherwise limit a person in the
13 enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving any aid,
14 benefit or service resulting from the program or activity. Cal. Code Regs. tit. 2, §§ 14025,
15 14026(a)(1)-(3), (7).

16 280. It is also discrimination for a recipient of state financial assistance to utilize
17 criteria or methods of administration that: (A) “subject a person to discrimination on the basis of
18 membership in, perception of membership in, or association with someone in a protected class”
19 [i.e. disability]; (B) “defeat or substantially impair the accomplishment of the objectives of the
20 covered entity's program or activity with respect to membership in a protected class” [i.e.
21 disability]; or (D) “create, increase, reinforce, or perpetuate discrimination or segregation based
22 on membership in a protected class” [i.e. disability]. Id. §§ 14025, 14026(9).

23 281. Defendant City was, at all times relevant to this action, and is currently operating
24 or administering a program or activity that receives state financial assistance, within the meaning
25 of Section 11135.

26 282. Defendant City has violated the rights of Plaintiffs with disabilities secured by
27 Cal. Gov't Code § 11135 *et seq.*
28

1 *Glendale*, 518 F.3d 1090, 1094 (9th Cir. 2008) (explaining that imposition of the significant
2 costs and burdens of towing cannot be justified as means of deterring illegal parking).

3 288. The Fourth Amendment prohibits any warrantless seizure of property. To justify
4 an exception to the Fourth Amendment’s prohibition on warrantless seizures under the
5 “community caretaking exception,” the government has a “heavy burden” to show that the
6 exception applies. *United States v. Cervantes*, 703 F.3d 1135, 1142 & n.1 (9th Cir. 2012).

7 289. All of the City of Berkeley’s seizure and destruction of Plaintiffs’ and class
8 members’ property has been done without obtaining a warrant. The City of Berkeley has a policy
9 and practice of seizing and destroying Plaintiffs and class members property without first
10 obtaining a warrant.

11 290. Defendant City of Berkeley engages in a practice of providing vague and
12 inadequate notice prior to conducting abatements and sweeps. The language of the notices is
13 often confusing and contradictory, or vague. The notices are frequently posted on Friday
14 afternoon for actions that will commence the following Monday, meaning the majority of the
15 notice period falls outside the work week, greatly reducing residents’ ability to seek clarity about
16 the action or services.

17 291. City of Berkeley provided inadequate and confusing notice prior to the planned
18 abatement on September 4, 2023. The Notice of Abatement was posted, not delivered to
19 individuals as required by Berkeley Municipal Code. The notices did not provide individuals
20 with guidance related to how to define the property they wished to keep, have stored, or discard.
21 The Notice of Violation was also only posted and did not apply to a clearly defined area, and
22 does not include an enforcement date. Thus, the notices were vague and invalid.

23 292. City of Berkeley provided similarly inadequate notice before the Adeline
24 evictions on September 2023 and October 2023, and before the November 7, 2023 abatement on
25 Harrison Street.

26 293. The Defendant City of Berkeley has a policy, custom, or practice of inadequately
27 notifying unhoused vehicle residents that their vehicle will be towed, and/or towing such
28 vehicles without adequate lawful justification such as that the vehicles are blocking traffic or

1 otherwise justified under any community caretaking exception, as demonstrated by the City’s
2 unwarranted destruction of four RVs during the October 4, 2022 abatement of 8th and Harrison,
3 and the destruction of the RVs of Monique Williams.

4 294. Further, Defendant City of Berkeley has a policy, custom, and practice of seizing
5 and destroying unhoused people’s personal belongings. Defendant City of Berkeley seizes and
6 destroys such property even if that property poses no threat to public health and does not
7 constitute evidence of a crime and there is no other community caretaking exception to
8 Constitutional protections.

9 295. Defendant City of Berkeley policy, custom, and practice is to evict unhoused
10 residents and, in the process, to destroy their belongings. Witnesses who have worked in the
11 community for many years have observed city officials demolishing people’s shelters,
12 confiscating their tents, and leaving people exposed to the elements. This has been done both in
13 the pouring rain and in extreme heat. Witnesses have also observed employees of defendant City
14 of Berkeley destroying property even while the owners of that property have been telling them
15 that it belongs to them and that they want to keep it.

16 296. Defendant City of Berkeley’s unconstitutional policies and practices continue,
17 subjecting Plaintiffs to persistent and imminent threat of having their personal property seized
18 and destroyed in violation of the Fourth Amendment.

19 297. WHEREFORE, Plaintiffs pray for relief as set forth below.

20 **FOURTH CAUSE OF ACTION**

21 **(All Plaintiffs and the Class)**

22 **Property Destruction: Unreasonable Search and Seizure**
23 **Under Article I, § 13 of the California Constitution**

24 298. Plaintiffs re-allege and incorporate by reference all the above allegations as
25 though fully set forth herein.

26 299. The California Constitution involves even greater protections than the Fourth
27 Amendment with respect to property seizures. See Cal. Const., art. I, § 13; *In re Lance W.*, 37
28 Cal. 3d 873, 879 (1985).

1 300. Despite Defendant City of Berkeley’s written policies to the contrary, it has an
2 unwritten policy, custom, and practice of seizing and destroying unhoused people’s personal
3 belongings and/or towing their vehicles. Defendant City of Berkeley destroys such property even
4 if that property poses no threat to public health and does not constitute evidence of a crime and
5 there is no other community caretaking exception to Constitutional protections.

6 301. Defendant City of Berkeley’s unconstitutional policies and practices continue,
7 subjecting Plaintiffs to persistent and imminent threat of having their personal property seized
8 and destroyed in clear violation of the more expansive protections under Article I, Section 13 of
9 the California Constitution.

10 302. WHEREFORE, Plaintiffs pray for relief as set forth below.

11 **FIFTH CAUSE OF ACTION**

12 **(All Plaintiffs and the Class)**
13 **Violation of the Fair Housing Amendments Act**
14 **(42 U.S.C. 3601 et. seq)**

15 303. Plaintiffs re-allege and incorporate by reference all the above allegations as
16 though fully set forth herein.

17 304. The rooms in the Berkeley Inn, Campus Motel and spaces in other congregate
18 shelter offered by the City of Berkeley are dwelling units within the meaning of 42 U.S.C. §
19 3602(b). 24 C.F.R. § 100.20 (defining “Dwelling”); 24 C.F.R. §100.201 (defining “Dwelling
20 unit” to include “sleeping accommodations in shelters intended for occupancy as a residence for
21 homeless persons.”)

22 305. The Defendant provides funds to the owners and/or operators of these shelters in
23 consideration for the operators providing rooms or bed space for unhoused individuals in
24 Berkeley.

25 306. Plaintiffs are all people with disabilities, or “handicap”²⁶ within the meaning of
26 the Fair Housing Amendments Act because they each have “a physical or mental impairment

27 ²⁶ The Fair Housing Act uses the term “handicap” instead of “disability,” although it is well-
28 established that these terms are comparable. For example, the Senate Report for the Americans with
Disabilities Act of 1989 (“ADA”) notes that the ADA’s definition of “disability” is comparable to the

1 which substantially limits one or more of such person’s major life activities, [or] a record of
2 having such an impairment.” 42 U.S.C. § 3602(h).

3 307. Defendant is a “person” within the meaning of 42 U.S.C. § 3602(d). *Keith v.*
4 *Volpe*, 858 F.2d 467, 482 (9th Cir. 1988). The City of Berkeley is liable for its own
5 discriminatory action as well as those of its agents. 24 C.F.R. §100.7(b). Defendants are liable
6 for the acts of their employees and agents. *Id.*

7 308. The Fair Housing Act, 42 U.S.C. §3604(f) makes it unlawful to “discriminate in .
8 . . the provision of services or facilities in connection with such a dwelling, because of a
9 handicap of – [] that person.” 42 U.S.C. §3604(f)(2)(A); 24 C.F.R. §100.202(b). Discrimination
10 includes “a refusal” by “any person” “to make reasonable accommodations to rules, policies,
11 practices, or services when such accommodations may be necessary to afford such persons equal
12 opportunity to use and enjoy a dwelling,” or dwelling unit. 42 U.S.C. §3604(f)(3)(B); 24 U.S.C.
13 100.204(a).

14 309. Defendant has discriminated against Plaintiffs and other unhoused people with
15 disabilities by refusing to make accommodations to the rules, policies, practices and services of
16 its shelters that are necessary to afford Plaintiffs and other unhoused people with disabilities an
17 equal opportunity to fully use and enjoy the shelters.

18 310. Because Defendant’s discriminatory and wrongful conduct is ongoing,
19 declaratory and injunctive relief are appropriate remedies.

20 **SIXTH CAUSE OF ACTION**

21 **(all Plaintiffs and the Class)**

22 **Exposure to State-Created Danger**

23 **in Violation of the Fourteenth Amendment to the U.S. Constitution**

24 **Pursuant to 42 U.S.C. § 1983**

25
26
27 definition of the term ‘individual with handicaps’ in section 7(8)(B) of the Rehabilitation Act of 1973
28 and section 802(h) of the Fair Housing Act.” Sen. Rep. No. 101-116, at 20 (1989). This Complaint
uses “disability,” which is the more widely-accepted term unless directly quoting a section of the
statute. For purposes of this Complaint, “disability” and “handicap” or their derivatives are
interchangeable.

1 311. Plaintiffs re-allege and incorporate by reference all the above and subsequent
2 allegations as though fully set forth herein.

3 312. Governmental action that affirmatively places a person in a position of danger
4 deprives that person of substantive due process rights guaranteed by the Fourteenth Amendment
5 to the United States Constitution. *See* U.S. Const. Amend. XIV.

6 313. Local governments violate the substantive due process rights of unhoused people
7 when they place unhoused individuals in more vulnerable situations by seizing their essential
8 possessions used for shelter, warmth, survival, and protection from the elements. *See Santa Cruz*
9 *Homeless Union*, 514 F. Supp. 3d 1136 at 1144-1145; *Sanchez v. City of Fresno*, 914 F. Supp. 2d
10 1079, 1101-02 (E.D. Cal. 2012). Further, courts have recognized that disbanding unhoused
11 communities and separating unhoused individuals from community resources and support is a
12 threat to residents' health and safety likely to rise to the level of irreparable harm. (Order
13 Granting Plaintiffs' Motion for a Temporary Restraining Order, *Boyd et al v. City of San Rafael*
14 *et al*, No. 23-cv-04085, August 16, 2023, (N.D. Cal.), p. 7-8).

15 314. Defendant City of Berkeley's patterns, customs and practices knowingly and
16 affirmatively place Plaintiffs and Class members in danger in at least three ways. First, the City
17 of Berkeley deprives unhoused people living in public spaces of their shelter and survival
18 equipment without providing them with comparable replacements or alternative shelter that is
19 accessible to them, and it does so even when it knows that there is no appropriate alternative
20 shelter available for the individuals it is displacing or destroying the possessions of. Second,
21 when the City of Berkeley offers temporary shelter to unhoused people, including Plaintiffs and
22 Class members, it requires them to give up their survival gear and often the vehicles in which
23 they dwell, without providing them with any opportunity to store or preserve these items for
24 when the temporary shelter comes to an end. Third, the City of Berkeley conducts abatements
25 and closures without making adequate offers of shelter and refusing to designate any area where
26 unhoused residents can legally live in the City. This forces residents to leave the area where they
27 had been living in community and to disperse, and thus City of Berkeley is placing them in
28 danger by separating them from their communities, support systems, and service providers.

1 315. Defendant City of Berkeley has a pattern, custom, policy, and practice of
2 depriving unhoused people living in public spaces of their shelter and survival equipment
3 without providing them with comparable replacements or alternative shelter and/or housing
4 options that are accessible to Named Plaintiffs and Class Members with disabilities. In particular,
5 the City of Berkeley’s requirement that Plaintiffs and Class members dispose of all of their
6 belongings except those that fit in a “3 by 3 foot square” is arbitrary, and deprives them of
7 essential property necessary for them to survive living outside. Additionally, the City refuses to
8 provide unhoused individuals including Plaintiffs and Class members with a meaningful
9 opportunity to have their items stored by the City. The City in practice does not provide
10 unhoused individuals with sufficient time to work with the City to identify which items can be
11 stored, and the City’s practice of refusing to store any belongings of unhoused individuals during
12 cleanings and evictions that it deems to be “soiled” means that in effect, the City refuses to store
13 the possessions of Plaintiffs and Class members during City actions.

14 316. Depriving Plaintiffs and Class members of property essential to their survival,
15 including tents, blankets, waterproof materials, medications, eyeglasses, and mobility devices
16 such as wheelchairs, walkers and canes, places Plaintiffs and Class members in danger. In
17 particular, medications may be essential for the treatment of chronic and acute illnesses, such as
18 HIV, diabetes, and other behavioral medication. Once these possessions are destroyed by
19 Defendant City of Berkeley, unhoused people face extreme difficulties to replacing them, which
20 can lead to adverse health consequences.

21 317. Without any other available and accessible options for shelter and without their
22 tents, survival, or medical gear unhoused individuals are forced to live exposed to the elements,
23 without protection from heat, cold, wind, and rain. Individuals who are forced to leave
24 established encampments are also separated from community support, including food and water
25 donations, community safety networks, and access to service providers and their neighbors’
26 support and company. This severely jeopardizes their physical and mental health.

27 318. Defendant City of Berkeley, through its agents and employees, has a pattern,
28 custom and practice of proffering temporary shelter accommodations that do not properly

1 accommodate individuals with disabilities to Named Plaintiffs and Class members in exchange
2 for the confiscation of that individual's belongings, including their tents, RVs, and other vehicles
3 used for shelter.

4 319. Defendant City of Berkeley conducts some clearings without making any offers
5 of shelter. When Defendant City of Berkeley does make shelter offers, it knows these programs
6 severely limit the amount of property, including survival gear, that participants can bring to
7 programs, meaning unhoused residents will be forced to give up property to enter the programs.
8 Defendant City of Berkeley knows these programs do not allow for RV parking, meaning
9 residents will have to leave their RVs unattended on the streets, subject to break-ins and towing.
10 Defendant City of Berkeley has attempted to get residents to even sign documents permitting
11 Defendant to destroy their belongings if they enter shelter. Given the temporary nature of the
12 offer of shelter, Named Plaintiffs and Class members have exited the shelter program with less
13 than they entered the shelter program with.

14 320. Defendant City of Berkeley knows offers of shelter at programs like congregate
15 shelters and motels are temporary in nature, and participants can be terminated from the
16 programs at any time at the discretion of the operators. Defendant City of Berkeley knows that
17 there is a high rate of mental and physical health disabilities in the unhoused community in
18 Berkeley. Defendant City of Berkeley knows or should know that these programs do not
19 adequately accommodate individuals with physical and mental health disabilities, placing
20 residents with disabilities at heightened risk of being terminated from the programs.

21 321. Defendant City of Berkeley's practice of offering residents temporary shelter that
22 cannot accommodate their needs and that will force them to give up property, including survival
23 gear, shelters, and vehicles, places unhoused Berkeley residents in danger. Deprived of their
24 shelter, vehicles, and/or RVs, Plaintiffs and Class members find themselves involuntarily
25 exposed to the harsh outdoor elements, subject to the dangers described herein when forced to
26 live unsheltered on the streets. Moreover, Class members whose RVs are confiscated lose access
27 to various life necessities that were previously provided by their vehicles, including running
28 water, restroom facilities, showers, cooking and food storage capabilities, as well as temperature

1 control, and the safety of being able to lock the door. RVs and other vehicles serve as secure,
2 private sleeping accommodations and a place to safeguard vital personal belongings.
3 Consequently, the impoundment of the Plaintiffs' and Class members' vehicles has detrimental
4 impact on their physical and mental well-being.

5 322. Many unhoused residents, particularly unhoused residents with disabilities,
6 choose to live together in encampments because of safety concerns and because of the mutual aid
7 offered by the community. By breaking up these communities during cleanings and sweeps and
8 not offering adequate shelter, forcing individuals to scatter with what few belongings they can
9 grab, the City is placing them in danger.

10 323. It is known or should be obvious to Defendant City of Berkeley that its
11 affirmative conduct as described above places Plaintiffs and Class members at elevated risk of
12 serious harm to their health and safety. In the absence of Defendant's affirmative actions,
13 Plaintiffs and Class members would not face that elevated risk.

14 324. This practice by Defendant City of Berkeley impacts the rights and living
15 conditions of the unhoused and raises broader concerns about the city's approach to
16 homelessness.

17 325. The Defendant City of Berkeley's patterns, practices, and customs violate the
18 substantive Due Process Clause of the Fourteenth Amendment because they place their unhoused
19 residents in a situation of immediate and known danger with deliberate indifference to their
20 personal or physical safety.

21 326. WHEREFORE, Plaintiffs pray for relief as set forth below.

22 **VII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs respectfully request that the Court:

24 **Declaratory Relief:**

25 A. Declare that defendant City of Berkeley's ongoing removal of unhoused people
26 from public property and seizure of their necessary survival gear, shelters, and vehicles, in the
27 absence of adequate housing or shelter that accommodates their disability-related needs, violates
28

1 their right to be free from state-created dangers under the Fourteenth Amendment to the U.S.
2 Constitution and Article I, § 7(a) of the California Constitution;

3 B. Declare that defendant City of Berkeley’s ongoing warrantless seizure and
4 destruction of the personal property of unhoused people violates the Fourth and Fourteenth
5 Amendments to the U.S. Constitution; and Article I, §§ 7(a) and 13 of the California
6 Constitution;

7 C. Declare that defendant City of Berkeley’s ongoing enforcement and seizure
8 practices, parking enforcement, its outreach to unhoused people, and its shelter programs are
9 government programs that discriminate against people with disabilities in violation of 42 U.S.C.
10 § 12131 and Cal. Gov. Code § 11135;

11 **Injunctive Relief:**

12 A. Grant a permanent injunction requiring defendant City of Berkeley to a) establish
13 and maintain a meaningful process for reasonable accommodation requests relating to any of the
14 City’s services, programs, or activities that involve unhoused individuals to be submitted to the
15 City, investigated, and responded to in a timely manner; b) establish and maintain a process by
16 which the City will affirmatively ask unhoused individuals about any disabilities and disability-
17 related needs, in connection with its outreach, enforcement, and shelter programs or activities, as
18 well as any other programs or activities relating to the unhoused population; c) establish and
19 maintain a process to affirmatively engage in an “interactive process” regarding any
20 accommodations necessary to meet known or obvious disability-related needs of unhoused
21 individuals (such as, for example, the need of people with mobility disabilities to have physical
22 assistance with moving items), as soon as the disability and need is known, or should reasonably
23 be known, to the City and/or its employees or contractors; d) grant the specific reasonable
24 accommodation requests of Plaintiffs, discussed herein; and e) reasonably modify their standard
25 outreach, enforcement, and shelter policies and practices to avoid continued disparate impact
26 discrimination against unhoused people with disabilities by, for example, ensuring that **by**
27 **default:**
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1. Information about enforcement actions is presented in plain language, and communicated orally by people with appropriate training, as well as in writing;
2. People with appropriate mental health training participate in all outreach and enforcement actions, to help ensure effective communication and to mitigate the foreseeable consequences of enforcement actions on residents' mental health conditions;
3. Physical assistance with moving or sorting items, and with relocating, is provided to people with mobility disabilities or other disabilities that affect their ability to perform these tasks;
4. People who have a disability related need for more space to store belongings ahead of enforcement actions – such as those who use mobility devices – are given that additional space;
5. Communicate clear storage policies that allow for the storage and return of seized property;
6. People with a disability-related need to move their vehicles less frequently than every 72 hours can apply for and receive a permit allowing them to park in one location for longer periods of time;
7. People with appropriate training in communicating with people who have mental health and/or cognitive disabilities participate in communications regarding shelter whenever needed;
8. Shelter offers take into account people's disability-related needs; and
9. A sufficient number of spaces in both congregate and non-congregate shelter are accessible to people with mobility disabilities, including with access to accessible bathrooms within a short distance of sleeping quarters; and
10. That specific shelter policies and practices – including those around visitors, privacy and the locking of doors, and a limitation on the number of emotional support animals – are revised, such that foreseeable disability-related needs are accommodated as a matter of course;

1 B. Grant a permanent injunction enjoining and restraining defendant City of
2 Berkeley from seizing and disposing of homeless individuals' property in a manner that violates
3 the Fourth and Fourteenth Amendments to the U.S. Constitution and Article I, § 13 of the
4 California Constitution;

5 C. Grant a permanent injunction enjoining and restraining defendant City of
6 Berkeley from removing unhoused people from public property and seizing their property, in the
7 absence of adequate housing or shelter, in violation of the Fourteenth Amendment to the U.S.
8 Constitution;

9 D. Grant a permanent injunction requiring defendant City of Berkeley to adequately
10 train staff to stop enforcing ordinances against unhoused people and stop seizing their property
11 except in conformance with the Fourth and Fourteenth Amendments to the U.S. Constitution;
12 Article I, §§ 13 of the California Constitution; and

13 E. Appoint a monitor to oversee compliance with the Court's order and require City
14 of Berkeley to submit to regular monitoring and compliance checks by the Court at defendant
15 City of Berkeley's expense;

16 **Other Relief:**

17 A. Order defendant City of Berkeley to pay for Plaintiffs' attorneys' fees and costs;
18 and

19 B. Grant Plaintiffs such further relief as the Court deems just and proper.

20 Dated: January 8, 2026

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES

By: /s/ Michael Nunez

EAST BAY COMMUNITY LAW CENTER

By: /s/ Brigitte Nicoletti

LAW OFFICES OF OSHA NEUMANN

By: /s/ Osha Neumann

Attorneys for Plaintiffs