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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9 ANTHONY LEHR; CONNIE HOPSON; FLOYD)
HOPWOOD; MICHAEL TINIUS; JACKI)
10 FITZGERALD; JEREMY MCENTYRE; TAMMY)
JONES; MICHAEL MOORE; LINDSEY ALESSO;)
11 VALERIE DUFOUR; RONALD HICKS; LOAVES)
& FISHERS, a California non-profit organization;)
12 SACRAMENTO HOMELESS ORGANIZING)
COMMITTEE "SHOC", an unincorporated)
13 association of homeless and formerly homeless)
persons; FRANCIS HOUSE, a California non-profit)
14 organization; and all others similarly situated,)

15 Plaintiffs,)

16 v.)

17 CITY OF SACRAMENTO; CITY OF)
SACRAMENTO POLICE CHIEF ALBERT)
NAJERA, in his individual and official capacity;)
18 CITY OF SACRAMENTO POLICE OFFICER)
MIKE COOPER, in his individual and official)
19 capacity; CITY OF SACRAMENTO POLICE)
OFFICER MARK ZOULAS, in his individual and)
20 official capacity; CITY OF SACRAMENTO)
POLICE OFFICERS DOES 1 THROUGH 20;)
21 SACRAMENTO COUNTY; SACRAMENTO)
COUNTY SHERIFF JOHN MCGINNESS, in his)
22 individual and official capacity; SACRAMENTO)
COUNTY PARK RANGER ANDERSON, in his)
23 individual and official capacity; SACRAMENTO)
COUNTY PARK RANGER MCELHENY, in his)
24 individual and official capacity; SACRAMENTO)
COUNTY PARK RANGER BENNETT, in his)
25 individual and official capacity; SACRAMENTO)
COUNTY PARK RANGERS DOES 21 THROUGH)
26 40; and ROES 1-20,)

27 Defendants.)
28

Case No.:

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF UNDER
THE FOURTH, EIGHTH AND
FOURTEENTH AMENDMENTS; 42
U.S.C. § 1983**

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 This is an action for preliminary and permanent injunctive relief and damages pursuant to
3 42 U.S.C. § 1983 based upon the ongoing violation by Defendants of the rights secured to the
4 homeless Plaintiffs by the Fourth, Eighth, and Fourteenth Amendments to the United States
5 Constitution, applicable to Defendants under the Fourteenth Amendment. Plaintiffs present two
6 claims on their own behalf and on behalf of the class they seek to represent.

7 With respect to the first claim, the individual Plaintiffs are homeless persons who cannot
8 find housing or adequate shelter in Sacramento County. They seek injunctive relief to stop
9 Defendants from enforcing the City and County ordinances which prohibit homeless persons
10 from sleeping outside in the City and County. Defendants have used the enforcement of these
11 ordinances and laws to cite Plaintiffs, and the class of homeless persons they seek to represent,
12 because they are sleeping outside. As applied to these homeless Plaintiffs and the class, the
13 enforcement of these laws violates the Eighth Amendment because it punishes them for the status
14 of being homeless.

15 With respect to their second claim, Plaintiffs seek injunctive relief to stop Defendants from
16 taking and destroying their personal property, without providing adequate notice and the
17 opportunity to retrieve or reclaim personal possessions before they are destroyed, in violation of
18 the Fourth and Fourteenth Amendments of the United States Constitution. As applied to these
19 Plaintiffs and the class, the policy and practice of taking and destroying personal property,
20 including necessary survival gear, as well as irreplaceable prescription medication, paperwork,
21 memorabilia, valuables, and tools, is unconstitutional.

22 **JURISDICTION**

23 1. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331
24 (in that it arises under the Constitution of the United States); section 1343(a)(3) (in that it is
25 brought to address deprivations, under color of state authority, of rights, privileges, and
26 immunities secured by the United States Constitution); and under § 1343(a)(4) (in that it seeks to
27 obtain equitable relief under an Act of Congress, specifically, under 42 U.S.C. § 1983, and the
28 Declaratory Judgment Act (28 U.S.C. §§ 2201(a) and 2202)).

1 5. Rental housing in Sacramento is beyond the means of homeless people with no
2 or minimum income below the poverty level, such as those on general assistance or supplemental
3 security income; the waiting time for persons on waiting lists for public housing or subsidized
4 housing is over two years, with thousands of persons waiting for housing. (Sacramento Self Help
5 Housing Report, July 2003, “Affordable Housing for People with Extremely Low Incomes in the
6 Sacramento Area”.) Shelters in Sacramento City and County cannot accommodate all homeless
7 people on any given night. Emergency shelters provide shelter on a first-come, first-served basis.
8 According to a recent presentation by Bruce Wagstaff, Director of the County Department of
9 Human Assistance, on a nightly basis there are 694 “emergency shelter” beds in Sacramento. (A
10 few hundred more beds are available during the winter from November to March.)

11 6. All emergency shelters limit stays to defined periods ranging from a few days to
12 a few weeks. (Sacramento Self Help Housing Website, 6/18/07) Most shelters limit eligibility to
13 defined classes of homeless people: the Salvation Army shelter, for example, has 100 beds, for
14 single persons only, and limits each stay to 30 days with frequency decided on a case by case
15 basis; Union Gospel Mission, with 60 beds, is available only to men, restricts stays to 7 days
16 (after 3 nights away), and requires attendance at chapel every night. Other shelters are limited to
17 families, to women escaping domestic violence, to under-age youth, or to women and children.
18 (id.)

19 7. “Transitional” shelter housing is typically reserved for those entering
20 drug/alcohol recovery, the mentally ill, or the severely disabled. In Sacramento, transitional
21 shelters have 1,092 beds, according to Bruce Wagstaff.

22 8. Transitional shelter is temporary housing, with stays limited, for example, to
23 periods of three to four months (Clean and Sober Living Program) or up to two years (for Bishop
24 Quinn Cottage Housing). Upon discharge, program participants “do not acquire a significantly
25 higher income that would provide them with new advantages in the housing market that they did
26 not have before their entry into transitional housing” and they return to emergency shelters if they
27 can. (Sacramento Self Help Housing Report, July 2003, “Affordable Housing for People with
28 Extremely Low Incomes in the Sacramento Area”.)

1 9. While both City and County officials have publicly decried the conditions in
2 which homeless people live, and supported various programs, at the same time it is the policy and
3 custom of both the City and County to address the problem by citing homeless people for
4 sleeping outside, in order to sweep homeless people from the areas along the American and
5 Sacramento rivers, and from public and private property in the City, where they attempt to sleep
6 without being disturbed during the night. Homeless people discovered sleeping, especially at
7 night, are cited even though there is no other place for them to go. The goal is simple: cite
8 homeless people to keep them on the move each night. The acts of Defendants alleged herein
9 were all performed in the furtherance of this policy and custom.

10 10. Further, pursuant to the policy and custom of the City and County of
11 Sacramento, the sweeps of the homeless are often accompanied by the wholesale and immediate
12 confiscation and destruction of their personal property, including sleeping gear, tents, cooking
13 gear, clothes, prescription medicines (in other words, necessary survival equipment), bicycles,
14 tools and papers and memorabilia which are difficult or impossible ever to replace. The acts of
15 Defendants alleged herein were all performed in furtherance of this policy and custom.

16 11. The Sacramento City and County Ten Year Plan recognizes that criminalization
17 of the homeless is both expensive and ineffective. “Chronically homeless individuals often cycle
18 in and out of the criminal justice system – often for misdemeanor offenses directly related to the
19 condition of homelessness. Utilization of law enforcement personnel and jails to provide housing
20 and treatment is an inappropriate and expensive use of public funds. . . Outstanding legal issues
21 present a significant barrier to homeless individuals who are attempting to re-enter society, seek
22 employment or secure permanent housing. It also puts an unnecessary burden on the criminal
23 justice system to address the mental illness and substance abuse that are core issues for many
24 homeless people.”

25 12. With respect to the plaintiffs and the class they represent, at the time of their
26 citations, and upon the confiscation of their personal property, they were not committing any
27 crime except “camping,” that is, sleeping outside with survival gear such as a sleeping bag or
28 tent, and other belongings. Plaintiffs were and are involuntarily homeless, with no available

1 shelter or lodging accommodations, and intend to and must sleep or lodge outside in public,
2 unsheltered, and have been and/or will be in the future cited. The ordinances and their
3 enforcement by Defendants as set forth herein is an attempt by Defendants to deter Plaintiffs and
4 the class they represent from performing the necessary life function of sleeping safely and at
5 peace.

6 13. Defendants' actions pose a dangerous health risk to Plaintiffs and the class, and,
7 as a result, to the general public. Sleep is a medical and physical necessity. Small amounts of
8 sleep loss (e.g. one hour per night over many nights) have subtle cognitive costs which appear to
9 go unrecognized by the individual experiencing the sleep loss. More severe restriction of sleep
10 for even a week leads to profound cognitive defects similar to those seen in some stroke patients
11 which also appear to go unrecognized by the individual. Confiscation of blankets and sleeping
12 bags increases risk of hypothermia and pneumonia.

13 14. Plaintiffs and the class members have been cited and will continue to be cited
14 for engaging in or attempting to engage in such activities. Defendants' actions are likely to
15 threaten the already precarious existence of Plaintiffs and the class by imposing or enforcing
16 upon them health and safety hazards as well as economic and social hardship.

17 **PARTIES**

18 15. Plaintiff ANTHONY LEHR has been homeless since 2001, when he exhausted
19 the money he had received from Workers' Compensation for injuries sustained on the job as a
20 carpenter. He is 45 years old. He must sleep outside on those nights he is not eligible for
21 emergency shelter housing, given the limitation on the number of consecutive nights a homeless
22 individual can use emergency housing in the County. While Plaintiff LEHR is currently
23 employed at plaintiff LOAVES & FISHES, his earnings are not enough for permanent housing.

24 16. On February, 2007, while Plaintiff LEHR was absent at his job, a COUNTY
25 work crew directed by defendant SACRAMENTO COUNTY PARK RANGERS DOES 21-40
26 confiscated and destroyed his tent, sleeping bag, winter coats and shirts, as well as food coupons
27 from MacDonald's. Plaintiff LEHR had stored these items on the American River Parkway. He
28 had nowhere else to keep them and could not transport them on his bicycle. Again, in April 2007,

1 at approximately 10:00 a.m., a work crew under the direction of Defendant PARK RANGER
2 DOES 21-40 confiscated and destroyed his tent while he was present at the American River
3 Parkway sites. They did not allow him to remove the tent and keep it. On both occasions,
4 Defendant COUNTY did not give notice or an opportunity for Plaintiff LEHR to reclaim his
5 property. It was thrown into a COUNTY garbage truck.

6 17. Plaintiff CONNIE HOPSON has been intermittently homeless since 1992. She
7 is 54 years old. She is unable to work because of health problems and receives \$940 per month
8 from SSI, which is not enough to rent permanent housing and have money for food, utilities, and
9 other expenses. She is currently homeless and disabled due to a degenerative spinal disease, and
10 she cannot stay very far from the homeless service provider plaintiff LOAVES & FISHES, which
11 she relies upon for a daily meal. On June 29, 2006 when Plaintiff HOPSON was sleeping on the
12 sidewalk on Ahern Street in the City of Sacramento near LOAVES & FISHES, she received a
13 criminal citation at 5:30 a.m. for camping which was issued by Defendant SACRAMENTO
14 POLICE OFFICERS DOES 1-20. In August 2006, she was again criminally cited by
15 SACRAMENTO POLICE OFFICER DOES 1-20 for illegal camping. She had been sleeping on
16 private property near LOAVES & FISHES, at 15th and C Streets in Sacramento. She had the
17 permission of the owners to stay on the property as long as she was gone before the business
18 opened for the day. The SACRAMENTO POLICE OFFICER DOES 1-20 also confiscated and
19 destroyed, without notice or opportunity to reclaim, her clothes, sleeping bag, personal papers,
20 bible, pictures, medication, and everything else, except two blankets. Her property was thrown
21 into a trailer along with that of other homeless people. Since April 10, 2007, Plaintiff HOPSON
22 has slept outside on a narrow strip of private property on North B Street near 12th Street, near the
23 Salvation Army shelter, along with about ten other homeless people. All leave the property by 7
24 a.m. She fears she will be cited and forced to move nightly because of the CITY'S policy of
25 enforcing the camping ordinance.

26 18. Plaintiff FLOYD HOPWOOD has been intermittently homeless since 2002. He
27 is 56 years old. He has a disabling injury to his knee, and needs surgery, but he has not been able
28 to arrange for surgery because he needs housing during the period of recuperation. He is only

1 intermittently able to find shelter in homeless shelters because of waiting lists and maximum stay
2 limitations. His only income is \$160 per month from General Assistance for a limited period –
3 no more than three (3) months per year, as well as \$155 a month in food stamps.

4 19. On March 20, 2007, at about 6:30 a.m., Plaintiff HOPWOOD was cited by
5 Defendant SACRAMENTO POLICE OFFICER MIKE COOPER for unlawful camping on
6 Ahern Street at North B Street in the CITY OF SACRAMENTO in an early morning raid. A
7 group of homeless people were cited at the time. Charges against Plaintiff HOPWOOD and
8 others, who were required to come to court on May 17, were dismissed.

9 20. Plaintiff MICHAEL TINIUS has been homeless since 1989. He is 47 years old.
10 He has a dog and will not apply to stay in shelters because of the restrictions, the religious
11 requirements, and because they do not accept pets. His dog is necessary for security and
12 companionship. He is not employed and has no income.

13 21. On September 14, 2006, at 10 a.m. in the morning, when Plaintiff TINIUS was
14 awakening after a night sleeping outside along the American River at North 10th Street,
15 Defendant SACRAMENOT COUNTY PARK RANGER DOES 21-40, and Defendant
16 SACRAMENTO COUNTY PARK RANGERS ANDERSON AND BENNETT, cited Plaintiff
17 TINIUS for illegal storage of his property on public property. A COUNTY white clean up truck
18 came behind the SACRAMENTO COUNTY PARK RANGERS DOES 21-40 with a COUNTY
19 crew. One of the SACRAMENTO COUNTY PARK RANGERS DOES 21-40 told TINIUS to
20 get out with what he could carry. He took his bicycle and trailer, his dog, dog food, and water,
21 which is all he could carry. He left behind two bicycles he was working on, his bike repair tools,
22 bed roll, sleeping bag, tent, tarps, a dual burner Coleman stove, a camp shovel, knives and forks,
23 clothes, boots, rain gear, a wheel chair, and food. All of this property was confiscated and
24 destroyed without notice or opportunity to reclaim his property. This has happened repeatedly to
25 Plaintiff TINIUS.

26 22. Plaintiff JACKI FITZGERALD is currently homeless, along with her husband.
27 She is 46 years old. She has been homeless, and impoverished, since the age of 23. She was
28 assaulted in a shelter as a young woman in Seattle and is afraid to stay in shelters. She also has a

1 dog as a watchdog and pets are not allowed in emergency shelters in Sacramento. Nor are there
2 adequate shelter spaces for married couples.

3 23. In or about January 2007, Defendant SACRAMENTO POLICE OFFICERS
4 DOES 1-20 cited Plaintiff FITZGERALD and her husband for illegal camping when she was
5 sleeping in an alley off North Tenth Street. She was required to do community service as a result
6 of the citation.

7 24. In or about October 2006, Defendant SACRAMENTO COUNTY PARK
8 RANGERS DOES 21-40 cited Plaintiff FITZGERALD for illegal camping and illegal storage of
9 personal property on the American River Parkway.

10 25. In or about late 2005, or early 2006, Defendant SACRAMENTO COUNTY
11 PARK RANGER DOES 21-40 cited Plaintiff FITZGERALD for camping because she and her
12 husband were sleeping under Interstate Highway 5 along the American River Parkway. The
13 COUNTY work crew confiscated and destroyed, without notice or opportunity to reclaim, the
14 tent, sleeping bags, backpacks, clothes, personal hygiene items, books, and everything else she
15 had. She and her husband found some of the property which had been thrown into a dumpster on
16 the parkway, along with the personal property of other homeless persons.

17 26. Plaintiff JEREMY MCENTYRE is currently homeless. He is 37 years old. He
18 first became homeless in 1991, when drug use led to losing his job and apartment. He is a
19 construction worker, but without a car it is difficult for him to obtain work. He has lived in
20 various shelters, including the Salvation Army, the Volunteers of America Shelter, and the Clean
21 and Sober New Start Shelter, but “timed out” of them in early 2007.

22 27. On March 17, 2007, before 7 a.m., Plaintiff MCENTYRE was awakened and
23 cited for illegal camping by Defendant SACRAMENTO POLICE OFFICERS COOPER and
24 ZOULAS when he was sleeping in an empty field near the Union Gospel Mission at 400 Bannon
25 Street in Sacramento. He was then taken into custody on pending warrants.

26 28. Plaintiff TAMMY JONES became intermittently homeless in July 2006, and is
27 currently renting an apartment. She is 36 years old. She and her husband have earned money by
28 waving street signs for various businesses. Currently, she has a job at the Salvation Army shelter

1 for \$7.50 per hour. Her paycheck goes to pay rent and she depends on LOAVES & FISHES for
2 food. She stayed in shelters from October 2005, until February 2006, but had to leave since she
3 exhausted the limits for staying.

4 29. On February 25, 2007, Plaintiff JONES was cited for illegal camping at Bannon
5 and North B Streets in Sacramento. At 5:30 a.m. that morning Defendants SACRAMENTO
6 POLICE OFFICERS COOPER and ZOULAS awakened Plaintiff and others who were sleeping
7 at that location and told them that they could not stay there. Plaintiff JONES asked where she
8 could stay. One of the officers told her, along with others, to move above the railway track at
9 Bannon Street. Plaintiff JONES moved to the area indicated but on March 5 Defendants
10 SACRAMENTO POLICE OFFICERS COOPER and ZOULAS returned and told her that she
11 would be arrested if she did not leave the place and that all her stuff would be taken.

12 30. Plaintiff MICHAEL MOORE is currently living in a residential drug and
13 alcohol program. He is 55 years old. He first became homeless in 1989, and has been homeless
14 about one third of the time since that year. He has stayed in various shelters in Sacramento, both
15 at the Salvation Army and the overflow shelter at Cal Expo. He was expelled from Clean & Sober
16 when he went off his medications and stayed out all night. Thereafter he camped out
17 occasionally in the American River Parkway and the rail yard near 7th and Ahern.

18 31. In or about June or July 2006, Plaintiff MOORE was cited for illegal camping
19 by Defendants SACRAMENTO POLICE OFFICERS COOPER and ZOULAS.

20 32. In April of 2006, when Plaintiff MOORE was sleeping in a tent at the American
21 River levee near 10th and Vine Streets in Sacramento, his property, including a large tent, a pup
22 tent, blankets, clothes, food, books and a battery were confiscated and destroyed by or under the
23 direction of Defendant SACRAMENTO COUNTY PARK RANGERS DOES 21-40 without
24 notice to Plaintiff MOORE or the opportunity to reclaim such property. His property was thrown
25 into the back of a COUNTY truck, mixed with the belongings of other homeless people, and
26 driven away.

27 33. Plaintiff LINDSEY ALESSO, who is 36 years old, is currently living at the
28 Bridges Transitional Housing for women recovering from drug addiction, although her eligibility

1 to stay there will soon expire and she will again be on the streets if she cannot find other housing.
2 She has been homeless 90% of the time since 2000, when her husband died and she had to leave
3 the home owned by his family. She has stayed in the Salvation Army shelter, which is Christian
4 based.

5 34. Plaintiff ALESSO has had all of her possessions seized and dumped by
6 Defendants without notice, on several occasions; the first time was in 2004, when she was
7 camping near the 16th Street bridge over the American River. She was awakened at 8:00 a.m. by
8 work project crew under the direction of Defendant SACRAMENTO COUNTY PARK
9 RANGERS DOES 21-40 who threw her stuff into a COUNTY truck and told her “not to
10 interfere” when she tried to recover her shoes, coats, basic hygiene necessities and clothes.

11 35. On September 12, 2006, she returned to her campsite on the American River at
12 a location known as “Gay Bay” (between North 7th and North 9th Streets) to find a COUNTY
13 work crew and Defendant SACRAMENTO COUNTY PARK RANGERS DOES 21-40 cleaning
14 up her campsite. She saw some of her belongings, including her feather comforter, in the back of
15 a COUNTY truck but was told she could not get it back – “It’s gone now.” Later that day, she
16 saw one of the COUNTY work crew wearing an orange vest with her walkman, carrying her
17 CD’s. He refused to return it when she asked for it.

18 36. Plaintiff VALERIE DUFOUR was homeless about 75% percent of the time
19 between September 2004 and April 2007. She is 52 years old. She has spina bifida which causes
20 numbness in her lower extremities, hearing loss, and hypothyroidism. She has a monthly income
21 of \$206 from General Assistance for a limited period of three (3) months per year, and \$150 in
22 food stamps. In the winter of 2006-2007 she stayed one night at the Salvation Army homeless
23 center, and one night at the winter shelter operated by Sacramento County at Cal Expo. She does
24 not feel safe in the shelters after her property was stolen while she slept.

25 37. In the summer of 2006, at 6 a.m., Plaintiff DUFOUR was cited by Defendant
26 SACRAMENTO POLICE OFFICERS DOES 1-20 for trespassing while sleeping in a business
27 parking lot where she, along with other homeless people, had permission to stay as long as they
28 were gone before the business opened. She had come to this location because on that night

1 Defendant SACRAMENTO POLICE OFFICER DOES 1-20 woke her up while sleeping on the
2 steps of St. John's Church at 17th and L Streets and told her to move, even though she had
3 permission from the church to spend the night at that location. This ticket was later dismissed.

4 38. Plaintiff RONALD HICKS has been homeless since March 2007. He is 56
5 years old. He is disabled and has been intermittently employed, but does not have enough income
6 to rent permanent housing. Plaintiff HICKS depends upon emergency shelters in Sacramento for
7 housing, but cannot avoid sleeping outside because of the time limitations on consecutive nights.
8 He has stayed at the Salvation Army Shelter, the winter shelter at Cal Expo, which only operates
9 until the end of March, and the Union Gospel Mission. He has been forced to sleep outside along
10 the American River when unable to qualify for emergency housing.

11 39. On March 22, 2007, at 9:30 a.m. Plaintiff HICKS was cited by the
12 SACRAMENTO COUNTY PARK RANGERS DOES 21-40 for unlawful camping along the
13 American River, on the South side approximately one mile from the confluence with the
14 Sacramento River. At the time, he was waiting for his sleeping bag to dry, because it had rained
15 the night before. He was sentenced to do fifteen (15) hours of community service.

16 40. With respect to the acts described above pertaining to each individual Plaintiff,
17 employees of the CITY and COUNTY, whose names and departments are unknown, were
18 involved and responsible in part for such acts. These individuals are sued herein as ROES 1-20.

19 41. Plaintiff LOAVES & FISHES is a non profit charity in Sacramento, California
20 whose stated mission is to feed the hungry and shelter the homeless. Open on a daily basis,
21 LOAVES & FISHES provides welcome, safety, and cleanliness for homeless men, women and
22 children seeking survival services, providing food alone for as many as 1,000 people each day.
23 These services provided by LOAVES & FISHES include providing clothing, blankets, and other
24 personal necessities for individuals who are homeless, its patrons.

25 42. Plaintiff LOAVES & FISHES is directly affected by the Defendants' current
26 practice of citing and/or arresting individuals for unlawful camping, as LOAVES & FISHES'
27 particular services such as Jail Visitation and/or the Tommy Clinkenbeard Legal Clinic are often
28 needed by such individuals as a result of this current practice. Further, LOAVES & FISHES is

1 directly affected by the confiscation and destruction of personal property of its patrons, as it is
2 continually a source of such crucial supplies as needed by its patrons. Therefore, LOAVES &
3 FISHES, as an organization, is immediately affected by the law enforcement practices challenged
4 in the instant lawsuit, and LOAVES & FISHES' patrons are also members of the class of
5 Plaintiffs named in this Complaint.

6 43. Plaintiff FRANCIS HOUSE, a non-profit organization in Sacramento,
7 California, supported by seventeen (17) churches and the community at large, provides resources
8 and counseling services to the poor from its facility at 1422 C Street, Sacramento. The
9 counseling and services vary from making referrals to a food closet, providing motel vouchers to
10 more complex services such as advocating for clients in the welfare system. Many of the patrons
11 of FRANCIS HOUSE are homeless.

12 44. Plaintiff FRANCIS HOUSE is directly affected by the current practice of citing
13 and/or arresting individuals for unlawful camping, as FRANCIS HOUSE's particular services of
14 counseling and advocacy are often needed by such individuals as a result of these current
15 practices. Further, FRANCIS HOUSE is directly affected by the confiscation and destruction of
16 personal property of its patrons, as it is continually a source of such crucial supplies when they
17 are needed. Therefore, FRANCIS HOUSE, as an organization, has been significantly impacted
18 by the law enforcement practices challenged in this lawsuit. Persons who receive services at
19 FRANCIS HOUSE are members of the class of plaintiffs identified in this Complaint.

20 45. Plaintiff SACRAMENTO HOMELESS ORGANIZING COMMITTEE
21 (SHOC) is an unincorporated association of homeless and formerly homeless people, and their
22 supporters, whose mission is to advocate for and defend the rights of homeless people. SHOC'S
23 members, and the homeless people it represents, are being impacted by the law enforcement
24 policies and customs alleged in this lawsuit, and the SHOC office is often visited by individuals
25 seeking help and advice because they have lost their belongings and/or been cited for sleeping
26 outside, using the time and services of its volunteer staff, and diverting it from pursuing its
27 advocacy functions, which include publication and distribution of the homeless newspaper,
28 "Homeward".

1 46. Defendant CITY OF SACRAMENTO is a Municipal Entity under the laws of
2 the state of California, with the capacity to sue and be sued. The CITY is the legal and political
3 governmental entity responsible for the actions of the Sacramento Police Department, its
4 officials, agents and employees. The CITY is sued in its own right and on the basis the acts of its
5 officials, agents and employees.

6 47. Defendant ALBERT NAJERA is the CHIEF OF POLICE OF THE
7 SACRAMENTO POLICE DEPARTMENT (hereinafter “SPD”). He is the official within the
8 SPD responsible for the administration and operation of the SPD. The policies complained of
9 herein are enforced pursuant to the direction of CHIEF NAJERA, and in accordance with its
10 custom and policy. He is sued in his individual and official capacity. All these acts were pursuant
11 to the custom and practice of the CITY and CITY POLICE CHIEF ALBERT NAJERA

12 48. Defendants CITY OF SACRAMENTO POLICE OFFICERS MIKE COOPER
13 and MARK ZOULAS are responsible for issuance of most of the CITY citations complained of
14 herein, who act singly, together and with other CITY POLICE OFFICERS whose names and
15 identities are not now known and are sued herein by these fictitious names, CITY POLICE
16 OFFICER DOES 1-20.

17 49. The COUNTY OF SACRAMENTO is, and at all material times referred to
18 herein, was a division of the state of California. Plaintiffs’ allegations against the COUNTY are
19 based on acts and omissions of the SACRAMENTO COUNTY PARK RANGERS and
20 SACRAMENTO COUNTY SHERIFF’S DEPARTMENT employees, including those whose
21 names and identities are not now known and are sued herein by these fictitious names,
22 SACRAMENTO COUNTY PARK RANGER DOES 21-40.

23 50. Defendant SHERIFF JOHN MCGINNESS is the SHERIFF of the COUNTY
24 OF SACRAMENTO. He is the official responsible for the administration and operation of the
25 COUNTY SHERIFF’S DEPARTMENT. The policies complained of herein are enforced
26 pursuant to the direction of SHERIFF JOHN MCGINNESS and in accordance with its custom
27 and policy. He is sued in his individual and official capacity. All these acts were pursuant to the
28 custom and practice of the COUNTY and SHERIFF JOHN MCGINNESS.

1 56. The class is so numerous that joinder of all members is impractical. Plaintiffs
2 believe that hundreds of people have been or will be subjected to Defendants’ unlawful policies,
3 practices and customs. There are questions of law and fact common to all members of the class.
4 The claims of the representative parties are typical of the claims of the class members. The
5 representative parties will fairly and adequately represent the interests of the class.

6 57. Defendants’ policies or practices will affect all members of the classes in the
7 same way, thereby making injunctive and declaratory relief appropriate to the class as a whole.
8 The common questions of law to be determined with respect to Class One are whether
9 Defendants’ policies, practices and customs of subjecting the homeless to citation for sleeping
10 outdoors, and/or for possessing the survival gear necessary for sleep during the night hours, when
11 there is no available alternative shelter, day or night, violates the rights of class members under
12 the Eighth and Fourteenth Amendments to the United States Constitution. These questions of
13 law are common to all members of the class and predominate over any question affecting
14 individual class members.

15 58. The common questions of law to be determined with respect to Class Two are
16 whether Defendants’ policies, practices and customs of confiscating and destroying the property
17 of the class without notice, or adequate notice, or opportunity to reclaim such property, violates
18 the rights of the class under the Fourth and Fourteenth Amendments of the U.S. Constitution.
19 These questions of law are common to all members of the class and predominate over any
20 question affecting individual class members.

21 59. The class representatives know of no conflict of interest among class members.
22 Plaintiffs are represented by the attorneys shown on the caption page of this complaint, Mark E.
23 Merin and Cathleen A. Williams, who are experienced civil rights attorneys who can vigorously
24 prosecute this action.

25 **FACTS CONCERNING DEFENDANTS’ POLICIES AND PRACTICES**

26 60. Under section 12.52 of the Sacramento Municipal Code, it is unlawful to
27 “camp” on any public or private property. As defined in 12.52.020, “camp” means to place,
28 pitch, or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp

1 paraphernalia, which includes sleeping gear, cooking facilities and similar equipment. Section
2 12.52.030 prohibits “all unlawful camping” with certain limited one-night exceptions as
3 permitted by the owner of the property for “not more than one consecutive night”. Additionally,
4 under Section 12.52.040 it is unlawful to store personal property, including camp paraphernalia,
5 on any public property or private property without the written consent of the owner. A violation
6 of these sections is an infraction or misdemeanor.

7 61. These sections, as well as California Penal Code 647 (j) (unlawful
8 lodging/camping) are being aggressively and selectively enforced by both the CITY and
9 COUNTY and the named individual Defendants, as well as the DOES 1-40 and ROES 1-20,
10 against Plaintiffs, as described herein, leading to their citation, and arrest or threatened arrest for
11 sleeping outside, even though they cannot find housing and shelter, and to the confiscation of
12 their property without notice or opportunity to reclaim, even though they must use and keep their
13 possessions to survive and to live outside.

14 62. Pursuant to the policy and practices of Defendants, and each of them, homeless
15 people cited for Code violations are punished with fines and community service and, if not paid
16 or served, become subject to arrest for failure to appear in Court, which leads to time in jail.

17 63. The above described actions by Defendants, and each of them, have caused and
18 unless preliminarily and permanently enjoined will continue to cause great humiliation,
19 psychological, physical and emotional suffering, degradation, pain, and injury, financial loss, and
20 loss of liberty and privacy to Plaintiffs and the class they represent.

21 **FIRST CLAIM**

22 (Cruel and Unusual Punishment in Violation of the Eighth Amendment to the U.S.
23 Constitution on Behalf of Plaintiffs and the Members of the Class)

24 64. Plaintiffs realleges and incorporate the allegations of the preceding paragraphs
25 of this complaint, to the extent relevant, as if fully set forth.

26 65. Forces beyond Plaintiffs’ control, such as unemployment, poverty, and the
27 failure of Defendants to provide alternatives, including but not limited to those which may be
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1 mandated by law, have compelled Plaintiffs and others to live and sleep outside in public on
2 public property.

3 66. Sleeping is necessary to the maintenance of life. It constitutes an involuntary
4 manifestation of the Plaintiffs' status as homeless. Plaintiffs and the members of the class may
5 not avoid or do without sleep.

6 67. The Defendants' pattern of citing and threatening to arrest involuntarily
7 homeless individuals such as Plaintiffs for illegal camping and other offenses when they are
8 sleeping outdoors, is performed under color of state law by the Defendants, who are state actors,
9 and constitutes punishment of Plaintiffs based on their status as homeless persons, and as such, is
10 cruel and unusual punishment in violation of the Eighth Amendment to the United States
11 Constitution.

12 WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
13 situated, as hereunder appears.

14 **SECOND CLAIM**

15 (Denial of Constitutional Right Against Unreasonable Search and Seizure in
16 Violation of The Fourth and Fourteenth Amendment to the U.S. Constitution on
17 Behalf of Plaintiffs and the Members of the Class)

18 68. Plaintiffs realleges and incorporate the allegations of the preceding paragraphs
19 of this complaint, to the extent relevant, as if fully set forth.

20 69. Defendants above described policies, practices and conduct of confiscating
21 Plaintiffs' property without notice violates Plaintiffs' right to due process of law under the
22 Fourteenth Amendment, and to privacy and liberty under the Fourth Amendment, of the United
23 States Constitution and 42 U.S.C. § 1983.

24 WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
25 situated, as hereunder appears.

1 **THIRD CLAIM**

2 (Denial of Constitutional Right to Equal Protection of the Laws in Violation of The
3 Fourteenth Amendment to the U.S. Constitution on Behalf of Plaintiffs and the
4 Members of the Class)

5 70. Plaintiffs realleges and incorporate the allegations of the preceding paragraphs
6 of this complaint, to the extent relevant, as if fully set forth.

7 71. Defendants’ above-described policies, practices and conduct are intended and
8 designed to single out homeless people and has the purpose and effect of depriving homeless
9 people of their property in the CITY and COUNTY Of SACRAMENTO. These policies and
10 actions are based on Defendants’ animus towards this disfavored group and lacks a rational
11 relationship to any legitimate state interest. In adopting and implementing these policies and
12 practices with intent to harm and disadvantage homeless persons in the CITY and COUNTY OF
13 SACRAMENTO, the Defendants have violated the equal protection clause of the U.S.
14 Constitution and 42 U.S.C. § 1983.

15 WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
16 situated, as hereunder appears.

17 **PRAYER**

18 WHEREFORE, Plaintiffs seek relief from this Court as follows:

- 19 1. For an order certifying the proposed Plaintiff classes together with any necessary
20 and appropriate sub-classes under Federal Rule of Civil Procedure 23;
- 21 2. For a temporary restraining order and/or preliminary injunction and permanent
22 injunction enjoining and restraining Defendants from continuing or repeating the unlawful
23 policies, practices and conduct complained of herein;
- 24 3. For declaratory judgment that Defendants’ policies, practices and conduct as
25 alleged herein were/are in violation of Plaintiffs’ rights under the United States Constitution;
- 26 4. For the return of Plaintiffs’ property;
- 27 5. For damages in an amount according to proof, but in no event less than \$4,000 per
28 incident under California Civil Code § 52.1 and California Government Code § 815.6;

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- 6. For punitive and exemplary damages to be determined in accordance with proof;
- 7. For attorney's fees as provided by law;
- 8. For costs of suit; and
- 9. For such other and further relief as the Court may deem just and proper.

DATED: August 1, 2007

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN

/s/ - "Mark E. Merin"

BY:
Mark E. Merin
Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

A JURY TRIAL IS DEMANDED on behalf of Plaintiff, and all those he seeks to represent.

DATED: 8/1/2007

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN

/s/ - "Mark E. Merin"

BY:
Mark E. Merin
Attorney for Plaintiffs