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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Case No.: 2:18-CV-07670-CAS-PLA

REX SCHELLENBERG, an individual

Plaintiff,

v.

The CITY OF LOS ANGELES, a municipal
entity; DOES 1-10,

Defendant.

FIRST AMENDED COMPLAINT

42 U.S.C. § 1983: Fourth, Fifth, and
Fourteenth Amendments; ADA
Cal. Const. Article 1, §§ 7, 13, 19;
Cal. Civ. Code § 51
Cal. Civ. Code § 52.1
Cal. Civ. Code § 2080 et seq.

ACTION FILED: SEPTEMBER 3, 2018

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1 at the mobile park either. Mr. Schellenberg eventually lost his vehicle and began
2 living on the streets.

3 8. In 2005, Mr. Schellenberg was violently assaulted by an individual
4 and suffered a severe spinal injury. As a result of his injuries, he began receiving
5 SSDI benefits.

6 9. Mr. Schellenberger lives in the San Fernando Valley near the
7 intersection of Balboa and Nordhoff Boulevards. On or about July 14, 2017,
8 Defendants confiscated and summarily destroyed Mr. Schellenberg's property that
9 was neatly stored on a public sidewalk.

10 **DEFENDANTS:**

11 10. Defendant **CITY OF LOS ANGELES** is a municipal entity
12 organized under the laws of the State of California with the capacity to sue and be
13 sued. Liability under California law for Defendant City of Los Angeles is based in
14 whole or in part upon California Government Code §§ 815.2 and § 920, and/or
15 Civil Code §§ 43, 51, 51.7, and/ or 52.1. Liability under federal law for all
16 government-entity employees is based upon 42 U.S.C. § 1983. The departments of
17 the City of Los Angeles include, among others, the Los Angeles Police Department
18 and the Department of Public Works, Bureau of Sanitation, employees of which
19 committed the acts complained of herein.

20 11. The Defendant City, its employees and agents, participated personally
21 in the unlawful conduct challenged herein and, to the extent that they did not
22 personally participate, authorized, acquiesced, set in motion, or otherwise failed to
23 take necessary steps to prevent the acts that resulted in the unlawful conduct and
24 the harm suffered by Plaintiff. Each acted in concert with each other. The
25 challenged acts caused the violation of Plaintiff's² rights.

26 12. The identities and capacities of Defendants **DOES 1 through 10** are
27 presently unknown to Plaintiff, and on this basis, Plaintiff sues these Defendants
28 by fictitious names. Plaintiff will amend the Complaint to substitute the true

1 names and capacities of the DOE Defendants when ascertained. Plaintiff is
2 informed, believes, and thereon alleges that DOES 1 through 10 are, and were at
3 all times relevant to this complaint, employees and/or agents of the Defendant
4 CITY OF LOS ANGELES and are responsible for the acts and omissions
5 complained of herein. Defendants DOES 1 through 10 are sued in both their
6 official and individual capacities.

7 **FACTS**

8 13. On or about July 14, 2017, Mr. Schellenberg was on a public sidewalk
9 at the intersection of Balboa and Nordhoff in the Northridge neighborhood of the
10 City of Los Angeles. He had his personal property with him as he had slept there
11 the previous night, pursuant to the settlement in *Jones v. City of Los Angeles*, 444
12 F.3d 1118 (9th Cir. 2006). That morning, Mr. Schellenberg packed his belongings,
13 including his tent and suitcases, and neatly stored them on the sidewalk, directly
14 adjacent to a clothing donation receptacle located on the same sidewalk.

15 14. Mr. Schellenberg loaded a stroller with his most valuable belongings
16 and began walking toward a nearby convenience store while pushing the stroller.
17 As he walked in that direction and away from his other belongings, two LAPD
18 officers (DOE 1 and DOE 2) stopped him and instructed him to return to the
19 sidewalk with his stroller and the rest of his belongings.

20 15. On information and belief, the LAPD officers called for a vehicle
21 from the Los Angeles Department of Public Works, Bureau of Sanitation. When
22 Public Works employees arrived, the LAPD officers instructed the City employees
23 to take all of Mr. Schellenberg's property, including the essential property he had
24 placed in the stroller. At the same time, City employees gave Mr. Schellenberg
25 one, 60-gallon trash bag and told him that he could only keep those belongings that
26 fit in the bag.

27 16. While Mr. Schellenberg attempted to salvage some of his property,
28 City employees simultaneously began seizing his property. Mr. Schellenberg

1 objected to the City employees taking his property and repeatedly told them his
2 property was not trash. Still, City employees arbitrarily and capriciously decided
3 which property would be seized.

4 17. On information and belief, most of the property was thrown in the
5 back of a green trash truck and immediately crushed by the garbage compressor.
6 Some of his seized property was stored in the cab of the green truck.

7 18. Mr. Schellenberg was left with was three torn suitcases filled with
8 women's clothes that were donated to him and which he intended to distribute to
9 unhoused women in need. He had no opportunity to preserve different property
10 more essential to his existence on the streets.

11 19. Among the property that the Defendant City seized was Mr.
12 Schellenberg's new Schwinn bicycle, a stroller that he used to transport his clothes
13 and essential property, a laptop, and important personal papers such as his Section
14 8 Housing Voucher. The Schwinn bicycle was Mr. Schellenberg's only mode of
15 transportation and accommodated his disability.

16 20. At the time of this incident, Mr. Schellenberg's property was
17 maintained in a manner that objectively indicated it was not trash nor abandoned.
18 At the time that the bicycle was seized, Mr. Schellenberg had removed one wheel
19 and chained the wheel and bicycle to the stroller. This is common practice of
20 bicycle riders in public places in order to prevent bicycle thefts. The bicycle was
21 fully operational when the wheel was attached.

22 21. After City employees seized his property, Mr. Schellenberg asked the
23 two LAPD officers where his property would be taken. The LAPD officers did not
24 tell him where he could retrieve his belongings. Instead, the officers handed him
25 paperwork related to the LAPD "H.O.P.E." Team.

26 22. Following this event, Mr. Schellenberg searched online and
27 discovered a phone number for the Department of Public Works, Bureau of
28 Sanitation "unattended property" line. He was informed that if any property was

1 stored by Public Works, it would be held at a storage facility located on Towne
2 Avenue in Downtown Los Angeles. The Towne Avenue facility is located almost
3 30 miles from the location at which Mr. Schellenberg's property was seized.
4 Traveling on public transportation from the west Valley to the Towne Avenue
5 facility would take hours, a daunting task for an able-bodied person and an
6 impossibility for Mr. Schellenberg with his mobility impairments. No
7 accommodation was available or offered by the Defendants to help him retrieve his
8 personal property, if any, stored at the distant storage facility.

9 23. Mr. Schellenberg made every effort to recover his property. He
10 telephoned the number he found online multiple times and was eventually able to
11 speak by phone with a supervisor at the storage facility. Mr. Schellenberg
12 identified when and where his property was seized, but was informed him that no
13 vehicle from that area brought in property on the day in question.

14 24. On information and belief, Mr. Schellenberg believes that nearly all of
15 his property seized in this incident was immediately and completely destroyed by
16 City workers and that none of it was stored. Approximately a month after he was
17 told that none of his property was stored, City employees called Mr. Schellenberg
18 and informed him that they found property that was mislabeled and asked him to
19 describe the belongings that were taken. After he identified some of the property
20 as his own, City employees returned the property to him in the parking lot of a
21 local Goodwill. The only items returned to him were a tent, a blanket, and some
22 clothing, but not his bicycle, laptop, personal documents including his Section 8
23 Voucher, or clothing and bedding seized on July 14, 2017.

24 25. The loss of his personal papers is a significant hardship. To obtain
25 new paperwork for his Section 8 Housing eligibility, Mr. Schellenberg must travel
26 downtown to the Housing Authority office. If he does so, he risks leaving his
27 property behind and having it seized and destroyed by the City once again. This
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1 cycle is prolonging and interfering with his efforts to obtain permanent supportive
2 housing.

3 26. This was not the first or the last time Mr. Schellenberg's property was
4 seized. Each time, his essential property such as tent, blankets, clothing, and
5 canned food was taken and destroyed.

6 27. On or about July 10, 2018, Mr. Schellenberg was residing on a public
7 sidewalk near the intersection of Platt and Victory in the West Hills neighborhood
8 of the City of Los Angeles. His property was neatly stored on the sidewalk against
9 the fence of a nearby drainage channel, adjacent to a Carl's Jr restaurant.

10 28. A Department of Public Works trash truck and LAPD officers
11 approached Mr. Schellenberg who was at the nearby Carl's Jr. parking lot. Under
12 the direction of LAPD "H.O.P.E. Team" Officer Garza, City employees seized Mr.
13 Schellenberg's personal property that was stored near the fence and destroyed it in
14 a garbage compressor. In response to Mr. Schellenberg's protest that his property
15 was not trash, Officer Garza told him that he would decide which property Mr.
16 Schellenberg could keep.

17 29. Once again, Mr. Schellenberg's essential property was unalterably
18 destroyed. Defendants seized his laptop, clothes, blankets and non-perishable
19 food. A small cart that Mr. Schellenberg used to transport his property was also
20 seized and destroyed.

21 30. By August 28, 2018, Mr. Schellenberg had only small amount of
22 essential items that he neatly packed into a cart, as shown in the photograph below,
23 Exhibit 1. At the time, he was residing on the sidewalk at the intersection of
24 Topanga Canyon Boulevard and Burbank Boulevard in the Woodland Hills
25 neighborhood of the City of Los Angeles. He kept this cart with him at all times,
26 never leaving it unattended, to avoid another property confiscation.

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Exhibit 1.

31. On or about September 6, 2018, Mr. Schellenberg was still on the sidewalk at Topanga Canyon Boulevard and Burbank Boulevard. Previously, Senior Lead Officer Denci of the LAPD Community Relations Division had informed Mr. Schellenberg that he could maintain his personal property on the sidewalk, so long as he did not obstruct pedestrian traffic. Officer Denci confirmed that if Mr. Schellenberg kept some property under a bus bench and his push cart up against the fence, he would not be obstructing the sidewalk. The image shown below at Exhibit 2 accurately depicts the sidewalk and bus bench located at the intersection of Topanga Canyon and Burbank.¹

¹ Accessible at: <https://www.google.com/maps/@34.1716939,-118.6059561,3a,75y,285.02h,84.39t/data=!3m6!1e1!3m4!1sg2YvazvoR2HyPvmk96pTXA!2e0!7i16384!8i8192>

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Image capture: Feb 2018 © 2019 Google

Exhibit 2.

32. Mr. Schellenberg complied with the direction of Officer Denci. Exhibit 3 is a true and correct depiction of Mr. Schellenberg's property on September 6, 2018, located where Officer Denci stated it would be allowed.

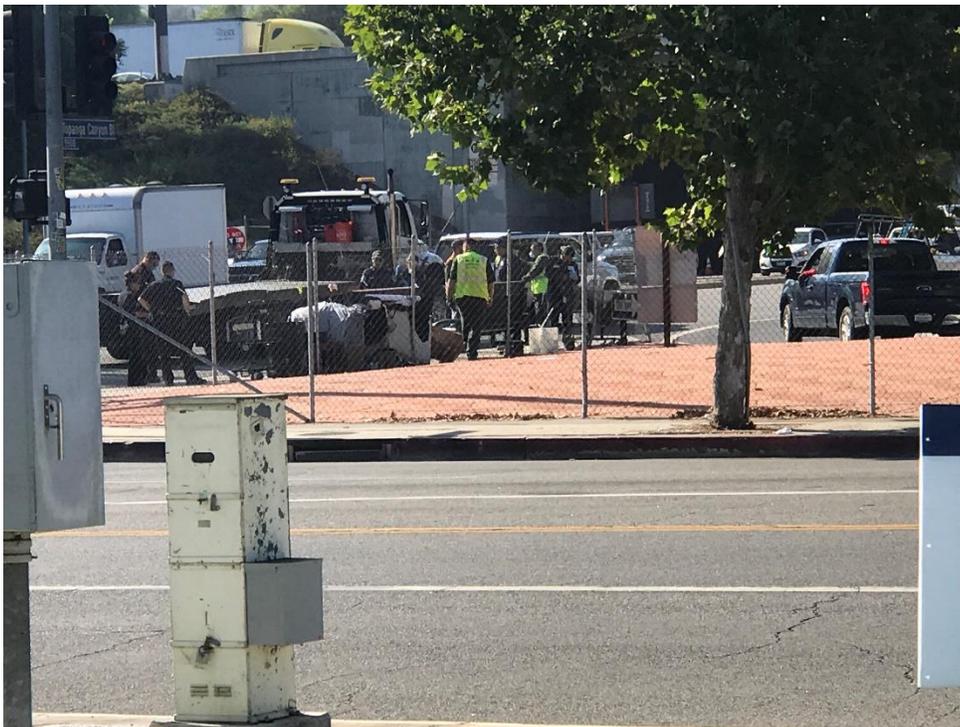


Exhibit 3.

1 33. On the morning of September 6, 2018, Officer Garza, together with
2 five additional LAPD Officers, and Public Works employees, arrived at the
3 intersection with a trash truck and a flatbed truck. City employees confiscated Mr.
4 Schellenberg's property from the location Officer Denci had directed it be placed
5 and immediately destroyed it in the trash truck. City employees did not place any
6 of Mr. Schellenberg's property on the flatbed truck for storage. Mr. Schellenberg
7 was left with only a handful of items, all chosen at the discretion of City officials,
8 and lost his essential property again. Exhibit 4 is true and correct depiction of this
9 incident.



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23 Exhibit 4.

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25 34. On or about September 19, 2018 and October 23, 2018, City
26 employees again seized Mr. Schellenberg's personal property while he was staying
27 near the intersection of Ventura and Don Pio Drive in the Woodland Hills
28 neighborhood of the City of Los Angeles. He was once again stripped of his

1 essential property such as clothing, blankets, and food. On information and belief,
2 LAPD Officer Garza was involved in both of these incidents.

3 35. Mr. Schellenberg is forced to move constantly around the San
4 Fernando Valley to avoid further harassment by Defendants. He uses a portion of
5 his disability income to pay for a personal storage unit but cannot find a safe place
6 to sleep that is near this storage unit. As a result, he must keep some personal
7 property with him to avoid multiple trips to his storage unit that is miles away from
8 the nearest sidewalk he can sleep on. Because the Defendant City continues to
9 seize and summarily destroy his property, no matter how much he has or where it
10 is, Mr. Schellenberg lives in constant fear of losing his essential items.

11 **MONELL ALLEGATIONS**

12 36. Based upon the principles set forth in *Monell v. New York City*
13 *Department of Social Services*, 436 U.S. 658 (1978), Defendant City of Los
14 Angeles is liable for all injuries sustained by Plaintiff as set forth herein.
15 Defendant City bears liability because its policies, practices and/or customs caused
16 Plaintiff's injuries. The City of Los Angeles and its officials maintained or
17 permitted one or more of the following policies, customs, or practices:

- 18 a. Seizure and destruction of personal property without adequate pre- or
19 post-deprivation notice and no accessible storage location;
20 b. Failure to provide adequate training and supervision to its employees
21 with respect to constitutional rights involving seizure of personal
22 property and due process of law; and

23 37. Moreover, the Defendant City was on notice of the unlawfulness of
24 their actions based on previous legal actions brought against the City for nearly
25 identical operations. In fact, just one year prior to the events giving rise to this
26 action, the Defendant City was enjoined by the District Court from engaging in the
27 very conduct that is complained of herein.

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1 **EXHAUSTION OF ADMINSTRATIVE REMEDIES**

2 38. On January 11, 2018, Plaintiff filed a Government Tort Claim with
3 the City of Los Angeles for the July 14, 2017 property seizure. The Defendant
4 City denied the claim in a letter dated March 5, 2018. Plaintiff filed the instant
5 action on September 3, 2018.

6 39. From July 2018 to October 2018, the Defendant City engaged in at
7 least four other property seizures, alleged at Paragraphs 27 through 37 of this First
8 Amended Complaint. Plaintiff filed a supplemental tort claim for these subsequent
9 seizures on November 7, 2018. The City has not made a final disposition of this
10 claim; Plaintiff’s claim has therefore been constructively denied pursuant to Cal.
11 Gov’t Code § 810 *et seq.*

12
13 **FIRST CAUSE OF ACTION**
14 **Right to Be Secure From Unreasonable Seizures**
15 **Fourth and Fourteenth Amendments (42 U.S.C. § 1983)**
16 **California Constitution, Art. 1, § 13**

17 40. Plaintiff realleges and incorporates the allegations set forth in the
18 proceeding paragraphs as though fully set forth herein.

19 41. Defendant and its employees and agents violated Plaintiff’s Fourth
20 Amendment right to be free from unreasonable seizure of his property by
21 confiscating and then destroying Plaintiff’s property without a warrant.

22 42. These unlawful actions were done with the specific intent to deprive
23 Plaintiff of his constitutional right to be secure in his property.

24 43. Plaintiff is informed and believes that the acts of the Defendant and its
25 employees and agents were intentional in failing to protect and preserve Plaintiff’s
26 property and that, at a minimum, were deliberately indifferent to the likely
27 consequence that the property would be seized and destroyed unlawfully, even
28 though the right at issue was well-established at the time.

1 44. As a direct and proximate consequence of these unlawful acts,
2 Plaintiff has suffered and continues to suffer loss of his personal property and is
3 entitled to compensatory damages for his property and personal injury.

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5 **SECOND CAUSE OF ACTION**
6 **Violation of the Takings Clause**
7 **Fifth and Fourteenth Amendment (42 U.S.C. § 1983)**
8 **California Constitution, Art. 1 § 19**

9 45. Plaintiff realleges and incorporates the allegations set forth in the
10 proceeding paragraphs as though fully set forth herein.

11 46. Defendant and its employees and agents seized and destroyed
12 Plaintiff's property without offer or opportunity for compensation, in violation of
13 the Takings Clause of the Fifth Amendment.

14 47. As a direct and proximate consequence of these unlawful acts,
15 Plaintiff has suffered and continues to suffer loss of his personal property and is
16 entitled to just compensation for his property and personal injury.

17 **THIRD CAUSE OF ACTION**
18 **Right to Due Process of Law**
19 **Fourteenth Amendment (42 U.S.C. § 1983)**
20 **California Constitution, Art. 1, § 7**

21 48. Plaintiff realleges and incorporates the allegations set forth in the
22 proceeding paragraphs as though fully set forth herein.

23 49. Defendant and its employees and agents owed a duty to Plaintiff
24 under the due process clause of the Fourteenth Amendment to provide Plaintiff
25 with adequate notice that his property was at risk of being seized and/or destroyed,
26 and to preserve that property or provide adequate means of reclaiming it in a
27 timely manner.

28 50. These unlawful actions were done with the specific intent to deprive
Plaintiff of his constitutional right to due process of law.

1 51. Plaintiff is informed and believes that the acts of the Defendant and its
2 employees and agents were intentional in failing to protect and preserve Plaintiff's
3 property and that, at a minimum, were deliberately indifferent to the likely
4 consequence that the property would be seized and destroyed unlawfully, even
5 though the right at issue was well-established at the time.

6 52. As a direct and proximate consequence of these unlawful acts,
7 Plaintiff has suffered and continues to suffer loss of his personal property and is
8 entitled to compensatory damages for his property and personal injury.

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10 **FOURTH CAUSE OF ACTION**
11 **Violation of 42 U.S.C. § 12101 et seq.**
12 **Title II - Americans with Disabilities Act**

13 53. Plaintiff realleges and incorporates the allegations set forth in the
14 preceding paragraphs as though fully set forth hereat.

15 54. Title II of the ADA provides in pertinent part: “[N]o qualified
16 individual with a disability shall, by reason of such disability, be ... denied the
17 benefits of the services, programs, or activities of a public entity, or be subjected to
18 discrimination by any such entity.” 42 U.S.C. § 12132.

19 55. At all times relevant to this action, Defendant, its employees and
20 agents, were public entities within the meaning of Title II of the ADA and
21 provided programs, services, or activity to the general public.

22 56. At all times relevant to this action, Plaintiff was a qualified individual
23 with one or more disabilities within the meaning of Title II of the ADA and met
24 the essential eligibility requirements under Title II.

25 57. Defendant's policies and practices in seizing and destroying Plaintiff's
26 essential papers, mode of transportation and other important items have utilized
27 methods of administration that violate Plaintiff's rights on the basis of his
28 disabilities. 28 C.F.R. § 35.130(b)(3).

1 58. The acts and omissions of the Defendant, its agents and employees,
2 subjected the Plaintiff to discrimination on the basis of his disabilities in violation
3 of Title II of the ADA by destroying his property, including a bicycle he uses for
4 transportation because of his disability.

5 59. Plaintiffs knew, or should have known, that the incidence of
6 disabilities for people who are homeless is extremely high, with estimates as high
7 as more than one in two homeless individuals suffering from some significant
8 mental, medical or physical disability, and many, like Plaintiff, suffering from
9 compound disabilities. On information and belief, Plaintiff alleges that Defendant
10 could have reasonably retained Plaintiff's bicycle, critical personal papers, and
11 other property in a location that was accessible to an individual with disabilities.
12 As a public entity, Defendants are required to "make reasonable modifications in
13 policies practices, or procedures when the modifications are necessary to avoid
14 discrimination on the basis of disability" where, as here, modifications to would
15 not "fundamentally alter the nature of the service, program or activity." 28 C.F.R.
16 § 35.130(b)(7). This includes the need to make reasonable accommodations to
17 protect the essential life-protecting and mobility assistive property of persons who
18 are homeless, as well as provide prompt and reasonable access to ensure that
19 individuals are able to recover seized property. The policies, practices and
20 procedures challenged in this action, even if otherwise facially neutral, unduly
21 burden disabled persons who are without shelter and within the federal definition
22 of homeless.

23 60. Defendant, its employees and agents, committed the acts and
24 omissions alleged herein with intent and/or reckless disregard for the rights of
25 Plaintiff.

26 61. Plaintiff is informed and believes that Defendant and its agents and
27 employees have failed and continue to fail to adopt and enforce adequate policies
28 and procedures for interacting with homeless individuals with disabilities.

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FIFTH CAUSE OF ACTION
Violation of Unruh Civil Rights Act
Cal. Civ. Code § 51

62. Plaintiff realleges and incorporates the allegations set forth in the proceeding paragraphs as though fully set forth herein.

63. California Civil Code 51 et seq. provides in pertinent part that: “All persons within the jurisdiction of this state are free and equal, and no matter what their ... disability ... are entitled to the full and equal ... privileges, or services in all business establishments of every kind whatsoever.”

64. Defendant, through its agents and employees in the LAPD and Department of Public Works, is a “business establishment” within the meaning of § 51.

65. The acts and omissions complained of herein denied Plaintiff his right to be free from discrimination on the basis of his disability, and were done with intent or reckless disregard for Plaintiff’s rights as a disabled individual.

66. As a direct and proximate consequence of these unlawful acts, Plaintiff has suffered and continues to suffer loss of his statutory rights and is entitled to statutory damages pursuant to California Civil Code §§ 52 and 52.1. Plaintiff is also entitled to an injunction pursuant to Cal. Civ. Code § 52.1.

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SIXTH CAUSE OF ACTION
Violation of Bane Civil Rights Act
Cal. Civ. Code § 52.1

67. Plaintiff realleges and incorporates the allegations set forth in the proceeding paragraphs as though fully set forth herein.

68. Defendant’s agents and employees have used arrests, threats of arrest and intimidation to interfere with Plaintiff’s rights to maintain their personal possessions in the exercise of Plaintiffs’ rights secured by the Constitution of the

1 United States, the Constitution of the State of California, and the statutory laws of
2 the State of California.

3 69. As a direct and proximate consequence of these unlawful acts,
4 Plaintiff has suffered and continues to suffer loss of his statutory rights and is
5 entitled to statutory damages pursuant to California Civil Code §§ 52 and 52.1.
6 Plaintiff is also entitled to an injunction pursuant to Cal. Civ. Code § 52.1.

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8 **SEVENTH CAUSE OF ACTION**
9 **Violation of Cal. Civ. Code § 2080 et seq.**

10 70. Plaintiff realleges and incorporates the allegations set forth in the
11 proceeding paragraphs as though fully set forth herein.

12 71. Defendant's policies, practices, and conduct challenged herein
13 violated California Civil Code § 2080 et seq., in that Defendant's agents and
14 employees failed to protect and preserve Plaintiff's personal property when the
15 property was on the public sidewalk, failed to provide written notice that the
16 property would be taken, and failed to provide post-deprivation notice so that
17 Plaintiff would have the opportunity to reclaim it within a reasonable time.

18 72. Cal. Civ. Code § 2080 et seq. imposes a mandatory duty to maintain
19 property that is not abandoned.

20 **INJUNCTIVE RELIEF**

21 73. Plaintiff realleges and incorporates the allegations set forth in the
22 preceding paragraphs as though fully set forth herein.

23 74. A real and immediate difference exists between Plaintiff and
24 Defendant regarding Plaintiff's rights and Defendant's duty owed to Plaintiff to
25 protect Plaintiff's personal property present on the public sidewalks and streets of
26 the City of Los Angeles. Defendant's policies and actions have resulted and will
27 result in irreparable injury to Plaintiff.

28 75. There is no plain, adequate, or complete remedy at law to address the
wrongs described herein. The Defendant City has made it clear that it intends to

1 continue these practices of confiscating and immediately destroying the property of
2 homeless individuals from the public streets and sidewalks without a warrant,
3 without pre- and post- deprivation notice, and without just compensation. Unless
4 restrained by this Court, Defendant will continue to implement this policy and
5 practice.

6 76. As a direct and proximate consequence of the acts of Defendant's
7 Plaintiff has and will continue to suffer damages through injury to his person and
8 the loss of his personal property, including bedding, clothing, medication, tents,
9 tarts, personal papers, and other personal possessions. Plaintiff claims that these
10 acts are contrary to law and seeks a declaration of his rights with regard to this
11 controversy.

12 **PRAYER FOR RELIEF**

13 77. Plaintiff realleges and incorporates the allegations set forth in the
14 preceding paragraphs as though fully set forth herein.

15 **WHEREFORE**, Plaintiff prays as follows:

16 1. For a declaratory judgment that Defendant's policies, practices and
17 conduct as alleged herein violate Plaintiff's rights under the United States and
18 California Constitutions and the laws of California;

19 2. For an order enjoining and restraining Defendant from engaging in the
20 policies, practices, and conduct complained of herein;

21 3. For damages according to proof and on the basis of minimum
22 statutory amounts recoverable under California law for the loss of Plaintiff's
23 property, the violation of his constitutional rights, and for pain and suffering
24 resulting from the unlawful conduct of Defendant;

25 4. For costs of suit and attorney fees as provided by law;

26 5. For such other relief as the Court deems just and proper.
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