

UNITED STATES DISTRICT COURT

for the

Northern District of California

Katherine Cody, et al

Plaintiff

v.

City of Albany; Albany Police Department; and Mike McQuiston, in his official capacity as Chief of Police

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Albany Police Department
1000 San Pablo Avenue
Albany, CA 94706

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Maureen A. Sheehy (SBN 129859)
Kilpatrick, Townsend and Stockton LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111
(415) 576-0200

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

WELCOME TO THE U.S. DISTRICT COURT
SAN FRANCISCO OFFICE HOURS:
9:00 A.M. TO 4:00 P.M.
415.522.2000
www.cand.uscourts.gov

In addition to the local rules, the following guidelines have been provided to ensure that the filing process is accomplished with ease and accuracy. For additional information or assistance, please call the above number during office hours.

1. Documents are to be filed in the Clerk's Office at the location of the chambers of the judge to whom the action has been assigned. We do not accept filings for cases assigned to judges or magistrate judges in the Oakland or San Jose division, per Civil L.R. 3-2(b).
2. This office will retain the original plus one copy of most documents submitted. We will conform as many copies as you bring for your use. Related cases require an extra copy for **each** related action designated.
3. The copy retained goes directly to the assigned Judge. Courtesy copies, or instructions for couriers to deliver a copy directly to chambers are inappropriate, unless you have been instructed to do so by court order.
4. In order to facilitate the file stamping process, each original document should be submitted on top of its copies. In other words, group like documents together (as opposed to a set of originals and separate sets of copies).
5. The case number must indicate whether it is a civil or criminal matter by the inclusion of **C** or **CR** at the beginning of the number. Miscellaneous and foreign judgment matters should also be indicated with initials **MISC** at the end of the case number.
6. The document caption should include the appropriate judge or magistrate judge involved in a particular matter or before whom an appearance is being made. This is especially important when submitting Settlement Conference Statements.
7. Documents are to be stapled or acco-fastened at the top. Backings, bindings and covers are not required. Two holes punched at the top of the original document will facilitate processing.
8. Appropriately sized, stamped, self-addressed return envelopes are to be included with proposed orders or when filing documents by mail.
9. Proofs of service should be attached to the back of documents. If submitted

separately, you must attach a pleading page to the front of the document showing case number and case caption.

10. There are no filing fees once a case has been opened except for a Notice of Appeal.
11. New cases must be accompanied by a completed and signed Civil Cover Sheet, the filing fee or fee waiver request form and an original plus **two** copies of the complaint and any other documents. For Intellectual Property cases, please provide an original plus **three** (3) copies of the complaint. Please present new cases for filing before 3:30 p.m., as they take a considerable amount of time to process.
12. Copies of forms may be obtained at no charge. Forms and local rules are available at our website: www.cand.uscourts.gov for a no-cost download. They may also be picked up in person from the Clerk's Office forms cabinet or with a written request accompanied by an appropriate sized, stamped, self-addressed envelope for return. In addition, copies of the Local Rules may be obtained, free of charge, in the Clerk's Office or by sending a written request, along with a self-addressed, 10" x 14" return envelope, stamped with \$ 7.50 postage to: Clerk, U.S. District Court, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102.
13. Two computer terminals which allow public access to case dockets and one terminal with information regarding files at the Federal Records Center (FRC) are located in the reception area of the Clerk's Office. Written instructions are posted by the terminals. Outside of the Clerk's Office, electronic access to dockets is available through PACER. To obtain information or to register call 1-800-676-6851.
14. A file viewing room is located adjacent to the reception area. Files may be viewed in this area after signing the log sheet and presenting identification. Files are to be returned by 1:00 pm. Under no circumstances are files to be removed from the viewing room.
15. The Clerk's Office can only accept payment by exact change, check made payable to Clerk, U.S. District Court, or credit card if paying in person.
16. Two pay copy machines are located in the file viewing room for public use, at twenty-five cents (\$.25) per page or by purchasing a copy card. Orders for copy work may be placed through Colour Drop by phoning 415-353-5720. Arrangements may be made to bring in a personal copier by calling the Clerk's Office in advance.
17. Drop boxes for filing when the Clerk's Office is closed are available. Please visit our website for further details: <http://www.cand.uscourts.gov/dropbox>

United States District Court Northern District of California

ECF Registration Information Handout

Electronic Case Filing (ECF or “e-filing”) is mandatory for all civil cases in this court. Please refer to Civil Local Rule 5-1 for the Court’s rules pertaining to electronic filing. Special procedures apply to initiating documents (complaints; notices of removal); after that, attorneys must e-file in this case.

Parties who are representing themselves pro se (without attorney representation) are not required to e-file and, in fact, may e-file only with the permission of the assigned judge.

Please review and attend to the following important notes and tasks:

- Serve this ECF Registration Information Handout on all parties in the case along with the complaint or removal notice and the other documents generated by the court upon filing.
- Email (DO NOT E-FILE) the complaint or removal notice and all attachments, in PDF format, within ten (10) business days, to the assigned judge’s PDF email address. Find the judge’s email address at cand.uscourts.gov/judges; find more information on this step at cand.uscourts.gov/ECF. Include in the subject line of the email:
 - o Case number
 - o Judge’s initials
 - o Type of document(s) you are sending (e.g. “Complaint & TRO”)

Do not separately e-file these documents; court staff will perform this task. All other documents from this point forward in the case must be e-filed, including the returned summons.

- If not already registered, each attorney in the case must register to become an e-filer at cand.uscourts.gov/ECF. Your ECF registration is valid for life in this district; please do not register more than once.

IMPORTANT NOTICE: by signing and submitting to the court a request for an ECF user id and password, you consent to entry of your email address into the court’s electronic service registry for electronic service on you of all e-filed papers, pursuant to rules 77 and 5(b)(2)(d) of the Federal Rules of Civil Procedure.

- If you are a party and do not have an attorney and would like to e-file in the case, please visit cand.uscourts.gov/ECF/proseregistration for instructions and information. Unless and until the assigned judge has given you permission to e-file, you are required to file and serve papers in hard copy (paper) form.
- Access dockets and documents using your PACER (Public Access to Court Electronic Records) account. If your firm already has a PACER account, please use that account. It is not necessary to have individual PACER accounts for each user in your office. To set up an account, visit: pacer.gov or call (800) 676-6856.

ECF interactive tutorials, instructions for e-filing and other information are available at:
<http://cand.uscourts.gov/ECF>"cand.uscourts.gov/ECF.

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that a United States magistrate judge of this district is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the Form for the "Consent to Exercise of Jurisdiction by a United States Magistrate Judge" are available from the clerk of court.

The plaintiff or removing party shall serve a copy of this notice upon all other parties to this action pursuant to Federal Rules of Civil Procedure 4 and 5.

FOR THE COURT,
RICHARD W. WIEKING, CLERK

Richard W. Wieking

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

NOV 13 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

KATHERINE CODY,

Plaintiff (s),

v.

CITY OF ALBANY,

Defendant(s).

No. C 13-05270 CRB

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Charles R. Breyer. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at www.adr.cand.uscourts.gov. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District Of California," additional copies of which can be downloaded from the following Internet site: <http://www.cand.uscourts.gov>.

CASE SCHEDULE -ADR MULTI-OPTION PROGRAM

Date	Event	Governing Rule
11/13/2013	Complaint filed	
1/24/2014	*Last day to: <ul style="list-style-type: none">• meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan• file ADR Certification signed by Parties and Counsel (form available at http://www.cand.uscourts.gov)• file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference (form available at http://www.cand.uscourts.gov)	<u>FRCivP 26(f) & ADR L.R.3-5</u> <u>Civil L.R. 16-8 (b) & ADR L.R. 3-5(b)</u> <u>Civil L.R. 16-8 (c) & ADR L.R. 3-5(b) & (c)</u>

2/7/2014	Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per attached Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov)	<u>FRCivP 26(a) (1)</u> <u>Civil_L.R. 16-9</u>
2/14/2014	INITIAL CASE MANAGEMENT CONFERENCE (CMC) in Ctrm. 6, 17th Fl,SF at 8:30 AM	<u>Civil_L.R. 16-10</u>

*If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

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SUPPLEMENTAL TO INITIAL CASE MANAGEMENT STATEMENT

1. At the initial case management conference, the parties or at least one attorney of record for each party must appear in person. See FRCP 26(f) ; Civil LR 16-10(a).
2. The case management statement may not exceed ten pages. It should briefly describe the parties' controversy. Any party seeking damages must set forth in the statement the amount sought and the basis for its calculation.
3. If the case was removed from a state court, and the applicable state law has not required the parties to make an express demand for a jury trial at the time of removal, any party claiming right to a jury trial must make the request therefor within fourteen (14) days after service of the notice of removal. FRCP 81 (c).
4. NOTICE TO PRO SE LITIGANTS IN NON-PRISONER ACTIONS:

If you are proceeding in this lawsuit without an attorney, then the following directives apply to you in the prosecution of your case.

The court hereby ORDERS you to comply with the service requirements of Rule 4 of the Federal Rules of Civil Procedure as set forth below. Failure to follow the procedures set forth in this order may result, under Rule 4 (m), in dismissal of your case.

It is your responsibility to obtain a valid summons from the clerk and to effect service of the summons and complaint on all defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. If you have named the United States government, a federal agency, a federal official or a federal employee as a defendant, you must comply with the special requirements of Rule 4 (i).

Service may be effected by any person who is not a party and who is at least 18 years of age, which means that you, as a party, may not effect service. If service of the summons and complaint is not made upon a defendant within 120 days after

1 the filing of the complaint, your action will, under Rule 4 (m), be dismissed as to that
2 defendant.

3 Within 125 days after the filing of the complaint, you must file proof
4 of service indicating which defendants were served within the 120 days allowed
5 under Rule 4 (m) and showing, in accordance with Rule 4 (l), how each of those
6 defendants was served (for example, by attaching appropriate certificates of
7 service). You must also show cause why a defendant not served within the 120
8 days allowed under Rule 4 (m) should not be dismissed without prejudice. Failure
9 to do these things within the designated time will result in the dismissal of your case
10 under Rule 4 (m) and Rule 41 (b).

11 5. NOTICE FOR AMERICANS WITH DISABILITIES ACT LITIGATION:

12 If this action seeks accommodation or other relief, including attorney fees,
13 pursuant to Title III of the Americans with Disabilities Act, 42 USC § 12191-
14 89, the court ORDERS, pursuant to FRCP 16, the following:

- 15 a. Each plaintiff shall, pursuant to FRCP 4 (m), forthwith complete
16 service on any unserved defendant;
- 17 b. Discovery, except for initial disclosures required by FRCP 26 (a), and
18 all other proceedings are until further order STAYED;
- 19 c. If not previously done, each plaintiff shall forthwith serve upon each
20 defendant a demand for accommodation and statement of attorney fees
21 incurred to date (42 USC § 12205; Hensly v Eckerhart, 461 US 424,
22 429-30, 433-37 (1983));
- 23 d. Each defendant shall, no later than the date for the conference of the
24 parties specified above, serve a response to the demand for
25 accommodation;
- 26 e. The joint case management statement shall contain, in addition to the
27 information called for by FRCP 26 (f), the information set forth in
28 paragraphs c and d.

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Sanctions. FAILURE TO COMPLY WITH THIS ORDER may be deemed sufficient grounds for dismissal of this cause, default or other appropriate sanctions. See Federal Rules of Civil Procedure 16(f), 41 (b); Civ LR 1-4.

IT IS SO ORDERED.

Dated: April 8, 2013



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

STANDING ORDERS
(revised April 2013)

1. Counsel shall consult and comply with all provisions of the Local Rules relating to continuance, motions, briefs, and all other matters, unless superseded by these Standing Orders.

2. Scheduling Days:

a. Criminal Calendar is conducted on Wednesdays at **10:00 a.m. for sentencing and 2:00 p.m. for all other matters. ORDER OF CALL IS DETERMINED BY THE COURT.**

b. Civil Law and Motion Calendar is conducted on Fridays at **10:00 a.m. ORDER OF CALL IS DETERMINED BY THE COURT.**

c. Case Management Conferences are conducted on Fridays at **8:30 a.m. ORDER OF CALL IS DETERMINED BY THE COURT.**

d. Pretrial conferences are generally conducted at **2:30 p.m.** on days determined by the Court.

e. Counsel need not reserve a hearing date for motions, however, counsel are advised to check the court's website for unavailable dates. Noticed dates may be reset as the Court's calendar requires.

3. Motions to compel discovery are referred to a Magistrate Judge for assignment and shall be noticed for hearing before the assigned Magistrate Judge.

4. No changes in the Court's schedule shall be made ***except by signed order of the Court and only upon a showing of good cause.*** Parties seeking to continue hearings, request special status conferences, modify briefing schedules, or make other procedural changes shall submit a signed stipulation and proposed order, or, if stipulation is not possible, an *ex parte* application in writing.

5. Briefs or Memoranda of Points and Authorities in support of, or in opposition to, any motions filed in this action must be typed on 28-line, double-spaced pleading paper and, except for summary judgment motions, may not exceed **FIFTEEN (15)** pages in length, exclusive of title pages, indexes of cases, table of contents, exhibits, affidavits, and summaries of argument, if required. Briefs exceeding ten (10) pages in length must contain an **additional** summary of argument, including reference to any important cases cited. Summary judgment memoranda may not exceed 25 pages. Counsel shall submit a proposed form of order with all motion and opposition papers.

6. All chambers copies should be three-hole punched along the left side of the page, and should bear the ECF filing "stamp" (case number, docket number, date, and ECF page number) along the top of the page. All exhibits shall be clearly delineated with tabs along the right side (e.g., "1," "2," "3"). If the filing includes exhibits over three inches thick, the parties shall place the chambers copy in a binder.

7. To the extent that filings include under seal materials, chambers copies should include all material — both redacted and unredacted — so that the chambers staff does not have to re-assemble the whole brief or declaration, although chambers copies

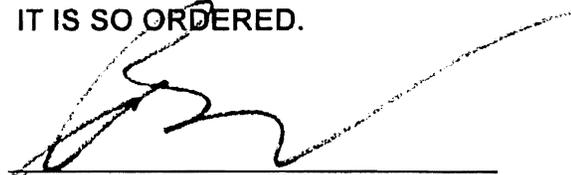
should clearly delineate which portions are confidential (via highlighting).

8. Courtesy copies of all motions, oppositions and replies must be delivered to the Clerk's Office no later than noon on the court day following the day that the brief was electronically filed. **Note:** these deadlines differ from those in Civil Local Rule 5-1(e)(7)(A).

9. Counsel in civil matters shall comply with the Court's Guidelines for trial and pre-trial conference.

PLAINTIFF IS DIRECTED TO SERVE COPIES OF THIS ORDER AT ONCE UPON ALL PARTIES TO THIS ACTION AND UPON THOSE SUBSEQUENTLY JOINED IN ACCORDANCE WITH THE PROVISIONS OF RULES 4 AND 5, FEDERAL RULES OF CIVIL PROCEDURE, AND TO FILE WITH THE CLERK OF THE COURT A CERTIFICATE REFLECTING SUCH SERVICE.

IT IS SO ORDERED.



Dated: April 29, 2013

CHARLES R. BREYER.
UNITED STATES DISTRICT JUDGE

**STANDING ORDER FOR ALL JUDGES
OF THE NORTHERN DISTRICT OF CALIFORNIA**

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

Commencing July 1, 2011, all judges of the Northern District of California will require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. Motions: All prior and pending motions, their current status, and any anticipated motions.
5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. Evidence Preservation: A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See* ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.
7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. Class Actions: If a class action, a proposal for how and when the class will be certified.
10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.

11. Relief: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.
12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ___ Yes ___ No
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.
20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

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ORIGINAL
FILED

NOV 13 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 KATHERINE CODY; PATRICIA MOORE;
18 ROBERT WHARTON; APRIL ANTHONY;
19 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
RICHARD WILSON, TAMARA ROBINSON,
20 PHILIP WILLIAM LEWIS and ALBANY
HOUSING ADVOCATES, a California non-
21 profit public benefit corporation,

22 Plaintiffs,

23 v.

24 CITY OF ALBANY; ALBANY POLICE
DEPARTMENT; and MIKE MCQUISTON, in
25 his official capacity as Chief of Police;

26 Defendants.

CASE NO.

013-5270

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

CRB

1 Plaintiffs Katherine Cody, Patricia Moore, Robert Wharton, April Anthony, Larry Cabrera,
2 Joseph Rose, Stephanie Ringstad, Alexander Wilson, Tamara Robinson and Phillip Lewis, and
3 Albany Housing Advocates (collectively, “Plaintiffs”) for their complaint against defendants the
4 City of Albany, Albany Police Department, and Mike McQuiston, in his official capacity as Chief
5 of Police (collectively, “Defendants”), hereby allege as follows:

6 NATURE OF THE ACTION

7 1. The City of Albany (“the City”) — which does not have a single permanent shelter
8 bed, transitional house, or available unit of subsidized housing — is set to evict roughly 60
9 homeless people who are currently living on the 40 acre tip of a former landfill. The landfill
10 forms a peninsular that juts out into the San Francisco Bay. Its tip, where people live, is known as
11 “the Bulb.” The City plans to evict Bulb residents, just as the rainy season begins and winter
12 approaches.

13 2. The people whom the City plans to evict have lived on the Bulb for many years
14 with, at a minimum, the tacit—and often explicit—permission of the City and the Albany Police
15 Department. A number of the Bulb’s residents were directed to the Bulb by police officers from
16 the City and surrounding jurisdictions.¹ Based on the understanding that the City and its police
17 force approved of their presence on the Bulb, residents erected tents and other structures to shelter
18 themselves from the elements and created an area of privacy for themselves. In reasonable
19 reliance on the permission of the City residents have brought personal property to the Bulb, which
20 they use in their daily life. These activities have been well-known to the City for many years.

21 3. In meetings in May and September, the Albany City Council voted to instruct the
22 police to begin enforcing Chapter 8-4 of the Albany Municipal Code, the City’s “anti-camping”
23 ordinance, in October 2013. As a result of such enforcement, residents of the Bulb (including
24 Plaintiffs) will be evicted, not only from the Bulb, but from the City in its entirety, as the anti-
25 camping ordinance, (1) applies to all "open space" in Albany—including parks, recreational areas,

26
27 ¹ In addition to directing Albany’s homeless to the Bulb, Albany police officers have, for a
28 number of years, routinely visited the Bulb and greeted the homeless people living there. The City
of Albany’s Chief of Police also previously publicly stated that the police were directed by the
City not to enforce the “anti-camping” ordinance at issue in this Complaint.



1 and the waterfront—and (2) prohibits not only “camping”, but also “lodging” (both undefined in
2 the ordinance). The “anti-camping” ordinance has not been enforced for many years. The
3 Council’s May vote represented a highly prejudicial and untimely shift from the City’s prior
4 policy of at least allowing—and in some instances, encouraging—the presence of the Bulb
5 community within the City. At a City Council meeting on October 21, the City voted to
6 appropriate \$570,000 to be spent on removing people from the Bulb. \$171,000 of this would be
7 spent on cleanup of their campsites with the remainder to be spent on setting up two portable
8 trailers with bunk beds to serve as a “transitional shelter” for six months as well as the staffing for
9 such a shelter; only \$35,000 was allocated for rental subsidies to assist the homeless to move into
10 traditional permanent housing.

11 4. The City’s imminent enforcement will remove all people currently living on the
12 Bulb from their homes, deprive them of their shelter, and ultimately drive them out of the City.
13 Given the broad sweep of the ordinance it will enforce, and the City’s plan to provide temporary
14 shelter for only 30 people, many current Bulb residents will have no choice but to relocate to
15 neighboring jurisdictions to avoid citation or arrest—jurisdictions which do not have enough
16 housing and shelter for their own homeless residents.

17 5. The effects of driving the people now living on the Bulb from their homes and
18 shelters at the beginning of the rainy season—without providing those people any viable
19 alternative—will be devastating. Many of the Bulb’s residents, including Plaintiffs, have physical
20 and/or mental disabilities, some of which are severe. Some are terminally ill. Some have severe
21 limitations on their mobility. Many will suffer traumatic emotional distress if evicted. Many will
22 be forced into situations which threaten their health and safety.

23 6. The City of Albany is, or should be, aware that many of the Bulb residents have
24 disabilities. The City was given notice in writing that there were serious concerns about
25 temporary shelter in trailers not being accessible for people with disabilities. Despite this notice,
26 the City Council chose not to consider this issue in any depth at its October 21 meeting. At
27 Council meetings, the City Council acknowledged that there were people with disabilities living
28 on the Bulb and one Council member noted that there were potential ADA issues. Others noted



1 that many Bulb residents were medically or mentally vulnerable. But the City Council failed to
2 provide solutions, or instruct staff to address ADA access issues at all when approving its current
3 plan. Many of the people living on the Bulb have experienced crime and harassment living on the
4 streets. The Bulb has been the only place they have felt safe, and the only place where they have
5 had a community that supports them.

6 7. The City's contemplated timeline for evicting residents of the Bulb does not afford
7 them a realistic prospect of finding appropriate alternative housing. Some have no income at all;
8 others lack sufficient income to secure housing in the Bay Area without a subsidy of other
9 financial support. Some lack any form of legal identification. Many have no rental history. For
10 six months, the City will install two portables equipped with 30 bunk beds that will be sufficient to
11 shelter, at best, half of the current residents of the Bulb. For the many Bulb residents with
12 disabilities, they will not be accessible. Those who can access them, will only be able to do so if
13 they give up the right to privacy they have been able to enjoy in their homes on the Bulb.

14 8. The City has not provided any alternative place for the remaining Bulb residents to
15 go. If they try and sleep in some other open space in Albany, they will be in violation of the anti-
16 camping ordinance. If they try and sleep on the sidewalk, they will be threatened with arrest if
17 they don't get up and move.

18 9. Even those select Bulb residents "lucky" enough to avoid citation or arrest over the
19 next six months by securing a bunk in one of the communal trailers offered by the City may, in
20 addition to enduring continued infringement of their constitutional right to privacy, suffer
21 psychological harm and aggravation of their mental disabilities.

22 10. For those Bulb residents who are unable to secure a bunk due to the limited space,
23 the City, by unreasonably taking away their only shelter during the winter season and forcing them
24 onto the streets, will be exposing them to dangers that they would not otherwise face.

25 11. The City has not provided—and has not committed to provide—adequate resources
26 to find long term alternative housing for even a small number of Bulb residents, much less the
27 roughly 60 people currently living at the Bulb.

28 12. This is an action brought by and on behalf of people who reside at the Bulb, who



1 face eviction from the homes in which they have lived for many years with the permission, or at
2 least acquiescence, of the City of Albany, and where they have enjoyed a reasonable expectation
3 of privacy. All that they now have, will be taken away from them. Their property will be seized,
4 their homes destroyed. They will have three choices: If they are willing to give up their privacy,
5 and if their disabilities do not prevent them, *and* if there is room, they can go into a portable,
6 where they will have a bunk bed in a shelter for six months. If they are unable to go into on the
7 portable, they can either risk almost certain arrest by staying in Albany, or get out of town. A
8 fourth choice, to find affordable long term alternative housing is foreclosed because of the
9 imminence of the eviction. Finally, after six months, there will be *no* place where a homeless
10 person can legally sleep or shelter from the elements within the City. The City of Albany's plan to
11 enforce the anti-camping ordinance against the homeless individuals who shelter at the Bulb
12 violates rights afforded Plaintiffs under the United States Constitution, the Constitution of the
13 State of California, and federal and state law.

14 13. Plaintiffs bring this action for declaratory and injunctive relief pursuant to 42
15 U.S.C. § 1983. Defendants, under color of state law, intend, on an ongoing basis, to violate
16 Plaintiffs' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States
17 Constitution and Article I, §§ 1 and 7 of the California Constitution as well as Title II of the ADA
18 and accompany state law. Plaintiffs seek this relief to enjoin Defendants from proceeding with
19 their plan to effect the mass eviction of the City's homeless population through enforcement of
20 Albany Municipal Code § 8-4.

21 **PARTIES**

22 14. Plaintiff Katherine Cody is a citizen of the United States residing in Albany,
23 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms. Cody
24 is terminally ill and suffers from debilitating physical and mental conditions that limit her ability
25 to work. Ms. Cody was the victim of a violent crime in the 1990s in which she lost a spleen, and
26 many of her conditions stem from that incident and the poor medical treatment she received
27 afterwards. Because she is medically vulnerable, and as a result of her mental condition, Ms.
28 Cody would not be able to stay in the portables or receive the benefits provided to those who stay



1 there, and would be at risk if she required to a shelter during the day. Ms. Cody first came to The
2 Bulb in 2007. She left for a time in 2009 to live first in a housing cooperative and then out of a
3 van. Eventually, while still living in her van, Ms. Cody was instructed by Albany police to return
4 to the Bulb. Ms. Cody returned to the Bulb and has resided there since 2010. She has sought and
5 continues to seek assistance to locate housing other than at the Bulb, but all such efforts remain
6 unsuccessful to date.

7 15. Plaintiff Patricia Moore is a citizen of the United States residing in Albany,
8 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.
9 Moore is 56 years old and worked for many years as a physical therapist. Illness and injury now
10 limit her ability to continue that work. Ms. Moore has a long history of trauma related to
11 institutional settings, and is still medically weak from her recent hospitalization. Her disabilities
12 would make it very difficult and dangerous for her to be in the close quarters of the portable
13 shelter and she would need an accommodation to access the City's homeless program. Ms. Moore
14 has resided at the Bulb since 2010 except for a two month period in 2013 when she was in a
15 hospital and nursing facility. Ms. Moore's has made her home in a shelter with tarp covered
16 wooden walls, a tarp roof, and rugs on the floor. She has sought and continues to seek assistance
17 to locate housing other than at the Bulb, but all such efforts remain unsuccessful to date.

18 16. Plaintiff Robert Wharton is a citizen of the United States residing in Albany,
19 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.
20 Wharton suffers from debilitating physical and mental conditions that limit his ability to work.
21 Mr. Wharton could not live in the close quarters of the portable shelter and would need an
22 accommodation as a result of his PTSD, depression, and psychosis. Mr. Wharton has lived at the
23 Bulb, on and off, since 1993. Mr. Wharton was first directed to the Bulb by Albany police in 1993
24 and was directed back to the Bulb by Albany police again in 2012. Mr. Wharton has sought and
25 continues to seek assistance to locate alternative housing that he can afford on his limited Social
26 Security Income, but all such efforts remain unsuccessful to date.

27 17. Plaintiff April Anthony is a citizen of the United States residing in Albany,
28 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.



1 Anthony has resided at the Bulb since 2009. Ms. Anthony's family moved to the City of Albany
2 in 1969; she has been unable to find a place to live in Albany or any of the surrounding cities. Ms.
3 Anthony suffers from bipolar disorder, anxiety and depression, as well as physical ailments that
4 make it difficult for her to walk. She would not be able to access the shelter in the portables or
5 avail herself of any of the benefits provided to those who stay there because of her disabilities.
6 Ms. Anthony does not have a regular source of income. She has sought and continues to seek
7 assistance to locate housing other than at the Bulb, but all such efforts remain unsuccessful to date.

8 18. Plaintiff Larry Cabrera is a citizen of the United States residing in Albany,
9 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.
10 Cabrera has resided at the Bulb since 2010. Mr. Cabrera worked for many years as a journeyman
11 contractor and asbestos abatement supervisor but was unable to continue working due to a
12 physical disability, the result of permanent lung damage from asbestos. As a result of his
13 condition, Mr. Cabrera is medically vulnerable and particularly at risk of damage of airborne
14 diseases. He could not safely stay in the portable shelter or avail himself of the benefits provided
15 to those who do. Mr. Cabrera has sought and continues to seek assistance to locate housing other
16 than at the Bulb, but all such efforts remain unsuccessful to date. One organization under contract
17 with the City offered to buy Mr. Cabrera a one-way bus ticket out of Albany if he was willing to
18 leave. Mr. Cabrera has nowhere else to go.

19 19. Plaintiff Joseph Rose is a citizen of the United States residing in Albany,
20 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr. Rose
21 has resided at the Bulb since February 2008. He became homeless after losing his home to
22 foreclosure. Mr. Rose receives disability benefits because of a physical injury to his hip, which
23 has severely limited his mobility. He has to lie down during much of the day and night. Since the
24 City's planned shelter will be closed during the day, Mr. Rose will need an accommodation that
25 allows him to shelter 24 hours a day. He has been on the waiting list of Section 8 housing for
26 three years. Mr. Rose has sought and continues to seek assistance to locate housing other than at
27 the Bulb, but all such efforts remain unsuccessful to date.

28 20. Plaintiff Stephanie Ringstad is a citizen of the United States residing in Albany,



1 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.
2 Ringstad has resided at the Bulb since approximately 2008. Her home, a large tent, has provided
3 her with shelter and privacy for many years. Ms. Ringstad has a history of trauma, including
4 sexual assault, and as a result, could not feel safe or be mentally healthy if sleeping in the close
5 quarters of the portables. Ms. Ringstad became homeless after losing her home to foreclosure.
6 Ms. Ringstad has sought and continues to seek assistance to locate housing other than at the Bulb,
7 but all such efforts remain unsuccessful to date.

8 21. Plaintiff Alexander Wilson is a citizen of the United States residing in Albany,
9 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.
10 Wilson has resided at the Bulb since approximately 2001. With the full knowledge and implicit
11 permission of Albany officials, Mr. Wilson created his home at the Bulb using rocks, mud, wood,
12 and glass and has lived there for five years. He did so with the knowledge and implicit permission
13 of Albany officials. Mr. Wilson suffers from debilitating physical conditions that limit his ability
14 to work. He is claustrophobic and manic, among other mental disabilities. Mr. Wilson also has a
15 seizure disorder, and needs his service dog with him to both prevent seizures and alert him if a
16 seizure is coming. He would not be able to access the portables. Mr. Wilson has sought and
17 continues to seek assistance to locate housing other than at the Bulb, but all such efforts remain
18 unsuccessful to date.

19 22. Plaintiff Tamara Robinson is a citizen of the United States residing in Albany,
20 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.
21 Robinson has resided at the Bulb since approximately 2001. With the full knowledge and implicit
22 permission of Albany officials, Ms. Robinson has lived at the Bulb for the past three years. Ms.
23 Robinson suffers from serious, life-threatening disabilities. She is HIV positive and has Hepatitis
24 C. Because she is immuno-suppressed, she is particularly medically vulnerable to airborne
25 diseases, and at risk if she stays in a closed space with many other people. Ms. Robinson would
26 not be able to stay in the portables without placing her health at risk, and so would not be able to
27 avail herself of any of the benefits provided to those who utilize the shelter. She has been
28 threatened with citation by the Albany police for sleeping on a city sidewalks.

1 23. Plaintiff Phillip Lewis is a citizen of the United States residing in Albany,
2 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.
3 Lewis is a military veteran who has resided at the Bulb since approximately 2005. With the full
4 knowledge and implicit permission of Albany officials, Mr. Lewis created a home for himself and
5 his partner at the Bulb using materials he found or scavenged, including rocks, boulders and tree
6 branches. Mr. Lewis suffers from substantial mental disabilities, including major depression,
7 schizoid personality disorder, and effects of a significant trauma history. His disabilities preclude
8 him from utilizing the shelter in the portables or receiving the benefits provided to those who stay
9 there.

10 24. Plaintiff Albany Housing Advocates (“AHA”) is a non-profit public benefit
11 organization that advocates for, *inter alia*, the development and implementation of services that
12 ensure the welfare of Albany’s homeless population, such as adequate shelter and housing
13 opportunities. AHA’s members include Amber Whitson, a disabled resident of the Bulb who
14 faces imminent eviction as a result of the City’s planned enforcement of Albany Municipal Code
15 §8-4. AHA has a strong interest in preventing the imminent eviction of Ms. Whitson from the
16 Bulb, as well as the Bulb’s other residents, consistent with its organizational purpose.

17 25. Upon information and belief, Defendant City of Albany is a municipal corporation,
18 organized under the laws of the State of California, with the capacity to sue and be sued. Upon
19 information and belief, the City is the legal and political governmental entity responsible for the
20 actions of the Albany Police Department, its officials, agents, and employees.

21 26. Defendant Albany Police Department (hereinafter “Department”) is the municipal
22 agency responsible for policing the City and for enforcement of the Albany Municipal Code
23 (hereinafter “Code”), including § 8-4 and California Penal Code § 647(e). Upon information and
24 belief, the Department, through its officials, agents, and employees, has taken steps towards the
25 enforcement of and will enforce Code § 8-4.

26 27. Defendant Mike McQuiston has been the Chief of Police since July 1, 2006. In his
27 official capacity as Chief of Police, he directs the administration and operation of the Department
28 pursuant to the Code and guidelines set by the City. As such, he is responsible for the



1 enforcement of Code § 8-4. Upon information and belief, under his direction, officials, agents,
2 and employees of the Department have threatened Plaintiffs with camping and obstruction of
3 public way citations. Chief McQuiston is being sued in his official capacity.

4 JURISDICTION

5 28. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1343(a)(3)
6 and (4) and 1367. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate rights
7 established by the Fourth, Eighth and Fourteenth Amendments of the United States Constitution as
8 well as federal law. Plaintiffs also seek relief under the Declaratory Judgment Act, 28 U.S.C.
9 §§2201 and 2202. Plaintiffs' state constitutional and state law claims arise from the same
10 occurrences as their federal constitutional claims and are within the Court's supplemental
11 jurisdiction pursuant to 28 U.S.C. § 1367.

12 VENUE

13 29. Venue in this action is proper in the Northern District of California under 28 U.S.C.
14 § 1391(b), as the Defendants are located in the Northern District of California and all the events,
15 acts, and/or omissions giving rise to the claims complained of herein have occurred or will occur
16 in this District.

17 FACTUAL ALLEGATIONS

18 Albany's Anti-Camping Ordinance

19 30. Albany Municipal Code section 8-4 provides, in relevant part, that:

20 8-4.3 Hours of Operation.

21 a. No person shall use, remain in or enter upon any waterfront and Albany Hill area
22 between 10:00 p.m. and 5:30 a.m., other than duly authorized City employees,
23 persons participating in City sponsored activities or other activities which the City
24 has provided prior written permission to utilize the waterfront area beyond the
25 closing time. The hours of operation of specific facilities within any waterfront area
26 may also be specified by the Director of the Recreation and Community Services
27 Department.

26 8-4.4 Camping.

27 No person shall loiter, camp or lodge in any park, recreation, open space, waterfront
28 or Albany Hill area. No person shall set up tents, shacks, sleeping bags or any other
shelter within any park, recreation, open space, waterfront or Albany Hill area for the



1 purpose of overnight camping. No person shall leave any tents, shacks, sleeping
2 bags or any other shelter, structure or specialty vehicle to be used or could be used
3 for overnight camping, . . . in any park, recreation, open space, waterfront or
4 Albany Hill area. The restrictions contained within this section shall not apply to
5 programs sponsored or co-sponsored by the City.

6 **8-4.7 Unauthorized Activities.**

7 Unless authorized by permit, it is unlawful to do the following in any park,
8 recreation, open space, waterfront or Albany Hill area:

- 9 b. Construct or erect any building of any kind, whether permanent or temporary,
- 10 g. Store personal property.

11 Subsections 8-4.4 and 8-4.7(b) and (g) apply to all open spaces in Albany.

12 **Prior Enforcement and Non-Enforcement of the Ordinance**

13 31. People have been living on the Albany landfill for close to 20 years. In 1999,
14 there were approximately as many people living on the landfill as there are now.² Upon
15 information and belief, Albany Municipal Code 8-4 was drafted by staff and passed by the
16 Council with the explicit intention that it be used as a tool to remove “individuals occupying
17 public lands on the Albany Landfill.” In 1999, as now, the City’s plans to evict homeless
18 people living on the landfill did not include provisions sufficient to ensure that those who
19 were evicted would be able to find shelter or housing in Albany, or in any other jurisdiction.
20 When the mass evictions in 1999 took place, the vast majority of homeless people who had
21 been living on the landfill were forced out of Albany.

22 32. In most cases, the people who were evicted in 1999 lost all of their property.
23 Shelters were bulldozed and personal property was thrown in a dumpster. One man whose
24 right leg had been amputated lost, among other things, his wheelchair, crutches, and arm
25 braces.

26 33. In the only instance in which a person who was issued a citation under the
27 anti-camping ordinance in 1999 sought relief from the courts, Bulb resident Michael Smith

28 ² In 1999, people were living on the entirety of the landfill not just the tip known as the Bulb.
Since then, the entirety of the landfill except for the Bulb has been transferred state and is
managed by the East Bay Regional Park District. The Bulb still belongs to the City.



1 was found not guilty on the grounds that he had a defense of necessity, in that, as a person
2 who is homeless, he had no choice but to break a law, that criminalized fulfilling the basic
3 human need for sleep and shelter.

4 34. After the 1999 eviction homeless people returned to the Bulb, sometimes at
5 the suggestion of the City's police officers. Enforcement of the ordinance ceased altogether
6 except for a brief flurry in 2008.

7 **The Lack of Housing Alternatives in Albany and in Alameda County Generally**

8 35. For at least five years before the 1999 eviction, homeless people had been
9 residing on the landfill and they have been residing there ever since. At no time in that
10 period has the City taken any steps toward providing housing or alternative places for
11 landfill residents to sleep or seek shelter. In fact, even though the City is required by state
12 law to make a plan for affordable housing and zone for a homeless shelter in at least one part
13 of the City, it has not. Albany has been out of compliance with state affordable housing law
14 since at least 1997.

15 36. As a result, homeless people who wish to sleep and shelter in Albany, have
16 no option than to go to the Bulb. If they lie in a sleeping bag or set up a tent, in any other
17 open space in Albany they will be in violation of Albany Municipal Code section 8-4. If
18 they lie on the sidewalk, they are at the risk of being cited and arrested for lodging or
19 obstructing the sidewalk.

20 **The City's Current Plan for Eviction of the Homeless**

21 37. In 2012, the Albany City Council ("Council") created a Homeless Task Force
22 ("Task Force") to "consider homelessness throughout the City including consideration of the
23 unique issues associated with homeless on the Albany waterfront" and develop a solution
24 with the goal that Albany's homeless would be "supportively and permanently housed."

25 38. At an Albany City Council meeting on May 6, 2013, the Task Force
26 presented findings from its ongoing study. Those findings listed a series of options for
27 "Ending Homelessness in Albany." At that same meeting, the Council instructed the police
28 to begin enforcing the anti-camping ordinance in October 2013. The Task Force report had



1 listed as the “cons” of this approach that it “would/could ‘push’ persons who are homeless to
2 other parts of Albany communities.” The Council voted to allocate \$30,000 to contract with
3 an agency to do “outreach and support” to homeless people on the Bulb.

4 39. On September 3, 2013, the Albany City Council again put on its agenda the
5 proposed October enforcement of the anti-camping ordinance. Despite numerous speakers
6 who made the case for more time to plan alternatives and urged the Council to reconsider,
7 the Council reaffirmed its decision to begin enforcement in October. The speakers stressed
8 that a delay in the evictions need not be permanent, but that Albany had not allocated
9 sufficient time and economic resources to find shelter for the roughly 60 residents of the
10 Bulb. Berkeley Food and Housing Project which had received a contract from the City
11 reported that it had been able to secure housing for only one resident of the Bulb, despite the
12 passage of nearly five months since the City decided to evict its homeless citizens from the
13 Bulb. The Council nevertheless voted to extend its contract through December for another
14 \$30,000.

15 40. At its October 21, 2013 meeting, the Albany City Council voted on a budget
16 and a plan pertaining to its eviction of people from the Bulb. It voted to appropriate a total
17 of \$570,675. \$171,465 would be for cleaning up campsites. The remainder would go to
18 purchase to portables (that would be sold after use), staffing of the shelter that would be
19 housed in the portables, various incidentals, and \$35,000 for a housing subsidy to be
20 administered by Berkeley Food and Housing Project.

21 **Current Bulb Residents Who Will Be Affected by the Eviction**

22 41. Neither the City of Albany nor Berkeley Food and Housing Project has
23 conducted a formal census of all people living on the Bulb or made a comprehensive attempt
24 to document the needs and resources of all Bulb residents. Between April and September
25 13, 2013, Amber Whitson, an Albany Bulb resident, conducted an informal survey of the
26 people living on the Bulb at the time. She found that sixty-four people (62 of whom
27 participated in Ms. Whitson’s survey: 39 men and 23 women) were living on the Bulb. Of
28 the 62 people participating in the survey:



- 35 reported suffering from at least one disability.
- 36 have no income, 21 of whom desire employment.
- 8 are on General Assistance, unemployment, have a job or receive money from other sources.
- 18 (6 women and 12 men) are receiving either Supplemental Security Income (SSI) or Social Security Disability Income (SSDI).
- 48 were interested in finding housing.
- One person reported living on the Bulb 22 years; two people said they had lived there for 20 years; people reported having lived there 8, 9, 10, 14, 15, and 16 years.
- 56 of the current residents of the Bulb have been living there for more than a year.

42. Many people living on the Bulb have moderate to severe physical and mental disabilities, including bipolar disorder, paranoia, HIV, chronic alcoholism, diabetes and complications thereof, anxiety disorders, and post-traumatic stress disorder. Many are immuno-suppressed and/or medically vulnerable as a result of poor nutrition in combination with their other conditions. Many cannot work as a result of their disabilities. Others have difficulty finding work and survive on government assistance, food stamps, scrapping metal, recycling, or doing odd jobs.

43. According to the definition provided by the United States Department of Housing and Urban Development (HUD), the overwhelming majority of people living on the Bulb are “chronically homeless.” Under the definition employed by HUD, people are considered chronically homeless if they have been homeless for more than a year, or have had at least four episodes of homelessness in the last three years, and can be diagnosed with a substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability.

44. The City has not made, or at least made public, any plan to accommodate people with physical or mental disabilities. There is no indication that the City is considering the particular physical disabilities of Bulb residents, designing the portable trailers, or their program as a whole, to accommodate those disabilities. Some disabled Bulb residents will have trouble getting in and out of bunks, or onto sleeping mats. Some will need to sleep with, and remain with, their service animals to prevent the deterioration of their conditions. Some will need to lie down during the day. Some medically vulnerable



1 people will need adequate ventilation so that they do not catch airborne diseases that could
2 be life-threatening for someone in their condition. There is no known plan to make
3 reasonable accommodations or modifications for people with physical disabilities.

4 45. Nor is there any indication that the City has made a plan to accommodate
5 people with mental disabilities. People with paranoia need a private space, or limited contact
6 with other people, or they will suffer severe anxiety. People with histories of trauma, who
7 have post-traumatic stress disorder, also need private space to avoid triggering major mental
8 health setbacks. People with cognitive disorders will need flexibility in enforcement of
9 shelter rules, because they do not have the capacity to understand, remember, and follow
10 them. The shelter should be operated by staff who are trained in de-escalation and have
11 enough clinical training and experience to work well with people with mental disabilities.

12 **Effect of Planned Eviction on Current Bulb Residents**

13 46. The effect of the eviction on Bulb residents will be devastating. The structures that
14 they call home will be seized and likely destroyed. Even if their possessions are not thrown away as
15 trash in the course of eviction, they will likely be lost, because the residents will not have any place
16 to keep them. For many, the Bulb represented the only community they have known. It is where
17 they have felt supported, accepted, and safe. On the Bulb they knew from experience that the police
18 would leave them alone. Given that Albany has offered them neither permanent housing nor
19 allowed them the time and resources necessary to find housing, many will have no choice if they are
20 evicted, but to returning to the streets, and a life lived with the constant threat of criminalization.

21 47. The effect of criminalization on homeless people is severe. The penalty for an
22 infraction is a fine. If they miss a court date, a civil assessment of \$300 will be added onto their
23 fine. For homeless people who cannot afford to pay, these fines turn quickly into arrest warrants.
24 Armed with a warrant, the police can arrest a homeless person at any time. The constant threat of
25 arrest is particularly detrimental to homeless people who are ill or suffer from physical or mental
26 disabilities. Additionally, active warrants can impair the ability of a homeless person to get
27 employment, housing, and other benefits. A warrant for failure to appear can result in the
28 termination of Social Security benefits. Homeless individuals must disclose criminal convictions on



1 applications for public housing. These convictions become a matter of public record. As a result,
2 the convictions may cause a person who is homeless to lose the opportunity to obtain public and
3 private housing. Additionally, an individual may lose a housing placement if he or she is
4 incarcerated. Conviction and incarceration can also interfere with the ability to obtain and maintain
5 Social Security disability benefits. Recipients may not receive benefits for any period in which they
6 are incarcerated.

7 48. If current Bulb residents, including Plaintiffs, are forced to leave their homes and
8 live on the street in unfamiliar areas, and without the support of the community, they will be
9 vulnerable to assault, theft, and harassment. Women will be particularly at risk of victimization and
10 physical violence. If people are forced to leave the living spaces they have created for themselves
11 on the Bulb, they are likely to find themselves with no alternative but to live on the street which can
12 result in or exacerbate a variety of physical and mental impairments. Living on the street,
13 especially during the rainy winter season, causes health problems related to exposure and neglect.
14 The fact that the majority of people living on the Bulb suffer from a variety of mental and physical
15 disabilities increases the likelihood that they will have great difficulty coping with the consequences
16 of eviction from a stable community.

17 49. In short, evicting people currently living on the Bulb, without providing a safe,
18 affordable, appropriate long-term alternative place for them to live poses a serious risk to their
19 health and well-being. Successfully transitioning Bulb residents to another location, without
20 causing harmful consequences, requires a sustained effort and enough resources and time to find
21 solutions that reasonably accommodate each resident's physical, emotional, and mental health
22 needs.

23 **FIRST CLAIM FOR RELIEF**

24 **Violation of Prohibition Against Cruel and Unusual Punishment**
25 **(Eighth Amendment; 42 U.S.C. § 1983)**

26 50. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

27 51. Defendants have stated they will begin enforcing the camping ordinance in October
28 2013. Implementation is now due to occur in mid- November 2013. For the first six months after
enforcement the City has stated it will set up to portables that have room for 30 people to sleep in



1 bunk beds. After those six months, Albany will have no shelter beds at all, no transitional housing,
2 and no affordable subsidized housing for the people it plans to evict. It will, however, have laws on
3 the books that make it essentially impossible for a homeless person to live in Albany and perform
4 the functions necessary for his or her survival without breaking the law. That will be the situation
5 immediately for all those who find all the bunk beds in the portables taken, or who have a disability
6 that makes it impossible for them to go into shelters in the first place, they enjoyed and reasonably
7 expected to enjoy in their dwellings on the Bulb.

8 52. Albany Municipal Code § 8-4 prohibits life-sustaining activities that people who are
9 homeless must engage in, such as lying down at night, seeking shelter from the elements, using
10 bedding to keep warm, or simply remaining in one place for a length of time. Under Defendants'
11 plan for the evictions of people from the Bulb, Plaintiffs' and other homeless Bulb residents who
12 attempt to engage in these life-sustaining activities in Albany will be subject to arrest and
13 punishment for violating section 8-4 or other related laws forbidding lodging on private or public
14 property. The actions for which they will be punished are involuntary and necessary for survival—
15 going to sleep at night, covering oneself from the cold, seeking shelter from the rain, will become
16 crimes because they are homeless in Albany. Punishment for involuntary acts arising out of the
17 status of homelessness constitutes cruel and unusual punishment under the Eighth Amendment of
18 the United States Constitution, as incorporated in and applied to the states through the Fourteenth
19 Amendment. Plaintiffs seek redress for Defendants' violation of their right to be free from cruel
20 and unusual punishment.

21 **SECOND CLAIM FOR RELIEF**

22 **Violation of Americans with Disabilities Act and Related State Statutes**
23 **(42 U.S.C. § 1983; 42 U.S.C. § 12132; Cal. Gov't Code § 11135 *et seq.*)**

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

25 54. Title II of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12132,
26 provides that:

27 [N]o qualified individual with a disability shall, by reason of such disability, be
28 excluded from participation in or be denied the benefits of the services, programs,
or activities of a public entity, or be subjected to discrimination by any such
entity.



1 California incorporates all of these federal protections into state law, such that violations of the
2 ADA are also state law violations and also contains a broad and independent disability civil rights
3 mandate. (Cal. Gov't Code § 11135 *et seq.*)

4 55. The term “disability” includes persons with mental or physical impairments that
5 limit one or more major life activities. Cal. Gov't Code § 12926 (i) (medical condition), 12926 (j)
6 (mental disability), 12926 (l) (physical disability). A number of the plaintiffs and a majority of the
7 residents of the Bulb are qualified individuals with disabilities within the meaning of 42 U.S.C. §
8 12102; 42 U.S.C. § 12131, 28 C.F.R. § 35.104 and Cal. Gov't Code § 12926.

9 56. The ADA and associated state laws obligate public entities to operate each service,
10 program, or activity so that the service, program, or activity, when viewed in its entirety, is readily
11 accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150. The operation of a
12 transitional shelter in portable trailers by the City is a “program” or “activity” that must comply
13 with the ADA requirements of accessibility. In order to comply with the ADA, the City must
14 operate the temporary trailers so as to provide disabled persons with “meaningful access” or
15 provide shelter and services in a manner and place that is accessible. Many residents of the Bulb have
16 disabilities that will render the portables inaccessible to them. These disabilities particularly include
17 mental disabilities like claustrophobia, Posttraumatic Stress Disorder, and schizophrenia. For people
18 with these disabilities it will be as impossible for them to enter the shelter as it would be for a person
19 in a wheelchair required to climb up a flight of steps. The City has made no provision in its planning
20 to provide a reasonable accommodation for people with disabilities that will prevent them from
21 accessing the shelter. The City plans to operate the temporary shelter under policies, practices, and
22 procedures which systematically fail to reasonably accommodate the needs of individuals with
23 disabilities, so that these programs are not readily accessible to and usable by individuals with
24 disabilities in violation of 28 C.F.R. § 35.150 and Cal Gov't Code § 11135.

25 57. The City's failure to adopt policies or procedures that provide reasonable
26 accommodations for homeless people with disabilities denies Plaintiffs with disabilities meaningful
27 access to the trailers in violation of Title II of the American's with Disabilities Act and 28 C.F.R. §
28 35.150 and accompanying state law.



1 and claustrophobia, as well as physical disabilities, such as weakened immune systems due to
2 incurable, infectious diseases like Hepatitis C. The individuals suffering from such disabilities
3 who seek, and are able to access, the temporary communal shelters provided by the City, face
4 further significant dangers resulting from their pre-existing physical and mental conditions
5 including psychological harm and physical illness. For these individuals in particular, the threat of
6 harm stemming from the City's planned enforcement program is severe: either face the risk of
7 aggravating their already vulnerable mental and physical health by utilizing the temporary shelter
8 offered by the City or live on the streets without any shelter, exposed to the elements during the
9 cold winter months. The City has been informed of these dangers and has, with deliberate
10 indifference, chosen to proceed with its enforcement plan.

11 **FOURTH CLAIM FOR RELIEF**
12 **Violation of Right to Be Secure from Unreasonable Seizures**
13 **(Fourth Amendment; 42 U.S.C. § 1983)**

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

15 66. In or around early October, the City issued guidelines providing that property and
16 structures stored on the Bulb will be subject to seizure and/or destruction. The City's
17 Administrative Procedures provide that personal property seized during their sweep of the Bulb
18 will be stored for one hundred twenty (120) days. Property not claimed after 120 days presumably
19 will be destroyed. The City plans to "abate" buildings and structures, which, given the absence of
20 any procedure for "abatement," and past experience, will result in the destruction of Bulb
21 residents' dwellings.

22 67. The Plaintiffs have property rights in their possessions and dwellings on the Bulb.
23 These dwellings are not abandoned, they are not an immediate threat to public health and safety,
24 nor are they contraband or evidence of a crime. The City's plan to destroy dwellings and
25 dispossess Plaintiffs and other Bulb residents of their homes after many years of allowing and
26 encouraging Plaintiffs to establish dwellings on the Bulb will result in the unreasonable seizure
27 and destruction of Plaintiffs' property in violation of their Fourth Amendment rights.

28 68. Plaintiffs seek redress for Defendants' violation of their right to be secure from
unreasonable seizure.



1 **FIFTH CLAIM FOR RELIEF**
2 **Violation of Right to Procedural Due Process of Law**
3 **(Fourteenth Amendment; 42 U.S.C. § 1983; Art. I, §7 Calif. Constitution)**

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

5 70. Due process requires a minimum notice and an opportunity to be heard if the
6 government intends to deprive a person of his or her property. Defendants' "Administrative
7 Procedures for the Removal of Temporary Shelters, Personal Property and Refuse" provide for
8 neither a pre-deprivation or post-deprivation hearing for people whose personal property the
9 Defendants intend to take, and whose buildings and structures it intends to "abate." The
10 Administrative procedures provide no guidance as to the process that will be followed in abating
11 the buildings and structures, which have been people's homes. Because the property of people
12 who are homeless often appears to be valueless to those in charge of its removal, the risk that it
13 will be mistaken for trash, and destroyed is great. Due process protections, and particularly the
14 right to a hearing are therefore especially important when the property of people who are homeless
15 is going to be taken. The absence of provision for a hearing in Defendants' Administrative
16 Procedures will result in a violation of Plaintiff's rights to due process.

17 71. Plaintiffs seek redress for Defendants' violation of their right to due process of law.

18 **SIXTH CLAIM FOR RELIEF**
19 **Violation of Due Process—Vagueness**
20 **(Fourteenth Amendment; 42 U.S.C. §1983)**

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

22 73. Albany Municipal Code § 8-4.4 as written, forbids loitering, lodging, and camping.
23 It provides no definition of these terms. It provides no guidance to what constitutes "lodging," and
24 "camping." These are offenses so lacking in definition that Plaintiffs, who are homeless, cannot
25 reasonably know what conduct is forbidden. They are an invitation to selective enforcement.³
26 Municipal Code § 8-4 is unconstitutionally vague on its face and as applied to people who are
27 homeless in violation of the Fourteenth Amendment to the United States Constitution. Plaintiffs

28 ³ In recognition of the constitutional infirmity of § 8.4.4, the Albany City Council voted at its
October 2, 2013 meeting to delete the reference to loitering from this code provision. The bans on
"camping" and "lodging" however remain.



1 seek redress for Defendants' violation of their due process rights under the Fourteenth
2 Amendment.

3 **SEVENTH CLAIM FOR RELIEF**
4 **Violation of Right to Privacy**
5 **(Art. I, § 1 Calif. Constitution; U.S. Bill of Rights)**

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

7 75. Plaintiffs, like all other Californians, enjoy the protections of both Article I, § 1 of
8 the California Constitution and the penumbra of rights created by the First, Third, Fourth, Fifth,
9 Ninth Amendments of the U.S. Constitution, including the right to privacy. Privacy is a
10 fundamental right.

11 76. The right to privacy protects the right to make intimate personal decisions and
12 conduct personal activity without observation, intrusion, or interference. For example, choosing
13 who one lives with and excluding others from one's home are exercises of the right to privacy.

14 77. With the knowledge of the City, and sometimes at the City's direction, Plaintiffs
15 created homes and private dwellings on the Bulb. They have lived in these homes for many years
16 and have exercised their rights to privacy in these habitations.

17 78. Defendants' planned eviction of Plaintiffs from their homes and the threatened
18 destruction of these structures will leave Plaintiffs without any shelter or other place they may
19 exercise their rights to privacy. All other venues within Albany in which Plaintiffs may attempt to
20 exercise their privacy rights — rights they have enjoyed in their homes on the Bulb — will be
21 criminally off-limits to them.

22 79. Plaintiffs will face criminal sanction if they seek to remain in their homes. They
23 will be similarly criminally sanctioned if they establish new shelters in any other areas in Albany.
24 A limited amount of "shelter space" will be available: night-only access to bunk beds in
25 communal trailers for six months. There are insufficient beds for all Bulb residents and many
26 residents, including Plaintiffs, have disabilities that preclude them from accessing the shelter and
27 medical conditions that would make it dangerous for them to do so.

28 80. Bulb residents who are not precluded by medical condition or disability from
utilizing the shelter, will not be able to do so without giving up the right to privacy they currently



1 enjoy. They will have to give up the right to make intimate personal decisions and conduct
2 personal activity without observation, intrusion or interference. If they refuse to give up this right
3 and wish to sleep the night in Albany, they will have no choice but to violate Albany Municipal
4 Code 8-4.4 or risk arrest for sleeping on the sidewalk.

5 81. Public entities in California cannot condition the receipt of a public benefit on the
6 waiver of Constitutional rights except under certain extreme circumstances. This, however, is
7 exactly what Albany is doing when the “benefit,” of obtaining shelter, meals and participating in
8 the City’s housing subsidy program is conditioned on Plaintiffs giving up the right to privacy they
9 currently enjoy. Defendants cannot satisfy the heavy burden of demonstrating the practical
10 necessity for this condition. The public accrues no benefit from this impairment of Plaintiffs’
11 right to privacy, and, although they are not required to do so, Plaintiffs have identified to Albany
12 available alternative means that could maintain the integrity of Albany’s temporary shelter
13 program without severely restricting a constitutional right. Defendants, however, have insisted on
14 their current scheme.

15 82. Defendants’ plan to seize or destroy Plaintiffs limited shelter against the elements
16 during the winter months, expel them from their home on the Bulb, cite or arrest them if they fall
17 asleep in public and condition the provision of shelter on the waiver of Plaintiffs’ right to privacy
18 under the U.S. and California Constitution is a violation of their Plaintiffs’ Constitutional rights to
19 privacy.

20 83. Plaintiffs seek redress for the City’s violation of their Constitutional right to
21 privacy.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, based on the allegations asserted herein, Plaintiffs respectfully request
24 relief as follows:

- 25 1. A temporary restraining order and/or preliminary and permanent injunction,
26 enjoining Defendants, their officers, employees, assignees, successors, and agents
27 from enforcing Albany Municipal Code §8-4, against persons who are homeless
28 and currently living on the Bulb so long as there is not a location available in



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Albany where they can find shelter that protects those persons' right to privacy and reasonably accommodates their disabilities.

2. A temporary restraining order and/or preliminary and permanent injunction, enjoining Defendants, their officers, employees, assignees, successors, and agents from enforcing Albany Municipal Code §8-4, against persons who are homeless and currently living on the Bulb without providing them with an adequate hearing before depriving them of their property interest in their personal property and/or dwelling.
3. A declaration that Defendants' past, present, and threatened future enforcement of § 8-4 violates Plaintiffs' rights to be free from cruel and unusual punishment under the United States Constitution;
4. A declaration that Defendants' past, present, and threatened future enforcement of § 8-4 violates Plaintiffs' rights to be secure from unreasonable seizure under the United States Constitution;
5. A declaration that Defendants' past, present, and threatened future enforcement of § 8-4 violates Plaintiffs' rights to due process of law under the United States and California Constitutions;
6. A declaration that the City's plan to operate a temporary transitional shelter that is not readily accessible to individuals with disabilities violates the ADA and California State law;
7. A declaration that Albany Municipal Code Section § 8-4.4 is void for vagueness under the United States Constitution;
8. A declaration that Defendants' past, present and threatened future enforcement of § 8.4 under the circumstances here violates Plaintiffs' right, the right to privacy guaranteed under the California and U.S. Constitutions;
9. Plaintiffs' costs incurred in this lawsuit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, as well as any appropriate provisions of California law;
10. Plaintiffs reasonable attorney's fees, pursuant to 42 U.S.C. § 1988, and analogous



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provisions of California law; and

11. All such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all issues triable to a jury.

DATED: November 13, 2013

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: Maureen A. Sheehy
MAUREEN A. SHEEHY

DATED: November 13, 2013

EAST BAY COMMUNITY LAW CENTER

By: Asha Neumann /MS
ASHA NEUMANN

DATED: November 13, 2013

HOMELESS ACTION CENTER

By: Patricia E. Wall, MS
PATRICIA E. WALL

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ORIGINAL
FILED

NOV 13 2013

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT

15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police,

25 Defendants.

CASE NO. 013-5270

PLAINTIFFS' CERTIFICATION OF
INTERESTED ENTITIES AND PARTIES

CRB



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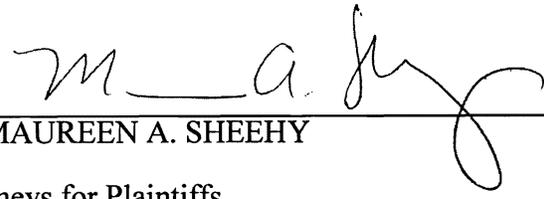
Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities either (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Other than the parties, none.

DATED: November 12, 2013

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: 
MAUREEN A. SHEEHY

Attorneys for Plaintiffs

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Attorneys for Plaintiffs

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

C13-5270 CRB

17 KATHERINE CODY; PATRICIA MOORE;
18 ROBERT WHARTON; APRIL ANTHONY;
LARRY CABRERA; JOSEPH ROSE;
19 STEPHANIE RINGSTAD; ALEXANDER
RICHARD WILSON, TAMURA ROBINSON,
20 PHILIP WILLIAM LEWIS and ALBANY
HOUSING ADVOCATES, a California non-
profit public benefit corporation,

CASE NO. **C13-5270**
DECLARATION OF APRIL ANTHONY

Plaintiffs,

v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

Defendants.

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DECLARATION OF APRIL ANTHONY

I, April Anthony, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at the Bulb in Albany, California. I have resided at the Bulb since May 2009.

3. As a resident of the Bulb, I was asked to serve on the Homelessness Task Force. I served on the Task Force for a year until it was dissolved by the City Council on May 6, 2013.

4. My family moved to Albany in 1969. However, everyone, except my brothers, has since passed away. One of my brothers is also homeless and lives on the Bulb. My other brother lives with his family in Richmond. Their house is so small and overcrowded that even if they wanted to take me in, they could not do it.

5. I live in a tent that I got from a salvage store. I can close my tent and have some privacy and personal space. It is where I keep all of my important papers and property. I have a sleeping area with a futon mattress, a storage trunk, a dresser, large pillows, a mirror, and a small workspace where I make mobiles and jewelry that I sell to local merchants. If I lost these things I would be less able to support myself and feed myself. I have a second tent that I use for storage. I also have cooking supplies and dishes that I use to prepare food. I could not fit all the possessions that I have into the garbage bags that the City is providing. I also fear that where the City plans to store these things is unsafe and I will end up losing them. The photographs of me in my tent attached as Exhibit A, shows me with some of my jewelry making supplies, and some of my possessions.

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2 6. If it became necessary to leave the Bulb, I would want to bring my shelter
3 and property with me so I could survive. Even if I had to stay in the trailers, I would not
4 be abandoning my property on the Bulb.

5 7. There is a community of people out there that look out for me and I look
6 out for them. I always wanted to be part of a community, although I never thought it would
7 be out there. We share food, socialize, and work together on projects. There are not too
8 many places like it.

9 8. I am bipolar and have anxiety and depression. I also experience back
10 pain, which makes it difficult to walk. Unfortunately, I rarely get to see a doctor. In the
11 past, there was a medical van that came out to the Bulb. They stopped coming around the
12 time the City decided to evict everyone. I can't see well and I need eyeglass but I don't
13 have an eye doctor. I am also missing my bottom row of teeth and the bones have
14 atrophied so it cannot be fixed.

15 9. I applied for Social Security disability benefits about three years ago. I
16 was denied but I am working with the Homeless Action Center to appeal that decision. I
17 am told that due to the backlog, I will not find out about the appeal until February 2014 at
18 the earliest.

19 10. I am a survivor of domestic violence. This makes it really important that I
20 have some control over my surroundings, so that I can relax and not worry constantly
21 about my safety. I fear that living in a shelter or a trailer would be dangerous, and I don't
22 think I could relax. One of the things about living at the Bulb is that I have been able to
23 feel safe. Away from my tent and my cats I would feel nervous. I would rather sleep
24 outside on the streets than in an enclosed space with people who I don't necessarily know
25 well. I am afraid of being harassed by the police if I live on the street, in addition to being

1 afraid of assault and thefts. I have two cats. They are my blessing in disguise. They have
2 helped to keep me from feeling lonely and depressed. I depend on them a lot.

3 11. I told Berkeley Food and Housing Project in August that I wanted to find
4 housing. Unfortunately, they have not helped me find anything.

5 12. At first, they were promising six to eighteen months of subsidized
6 housing, whether or not you had an income. I was told this by Jo, who I believe is a
7 supervisor. Now, I am being told they have only three months of subsidy available and you
8 must have verifiable proof of income. I don't have a stable source of income, so they will
9 not help me find any housing.

10 13. I go by the Berkeley Food and Housing Project site almost every day they
11 are supposed to be at the Bulb, to see if they have anything. They are not always there
12 when they say they will be.

13 14. A friend of mine from high school told me through Facebook that he was
14 renting a trailer for \$300.00 per month. When I told Berkeley Food and Housing Project
15 about it, they told me I would still need proof of income.

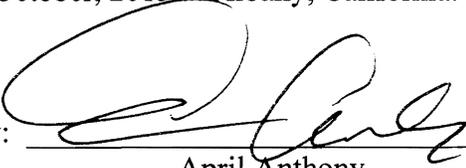
16 15. I am scared to death of being evicted because I have no place to go and
17 there are no shelters available. I do not want to sleep in a storefront. I am afraid of going
18 to jail for sleeping on the sidewalk.

19 20 16. When I stress out, I can't function. I get nauseous, freeze up, and cannot
21 think clearly. I also get migraines and panic attacks, particularly when I am around large
22 groups of people. After the City Council Meeting in September when they voted to evict
23 everyone, I vomited that night and again in the morning. I have been trying to get things
24 together but there is just not enough time. I can already feel myself losing the ability to
25 function.

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 20th day of October, 2013 at Albany, California.

By:  _____
April Anthony





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RECEIVED
NOV 13 2013
RICHARD W. WEINING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

13 ATTORNEYS FOR PLAINTIFFS

14 UNITED STATES DISTRICT COURT

15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
17 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
18 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
19 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

CASE NO. **C13-5270**

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION**

Date:
Time:
Courtroom:
Judge:

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
DEPARTMENT; and MIKE MCQUISTON, in
24 his official capacity as Chief of Police,

25 Defendants.

CRB



1 On November 13, 2013, Plaintiffs Albany Housing Advocates, a California non-profit
2 public benefit corporation, and “Bulb Residents” Katherine Cody, Patricia Moore, Robert
3 Wharton, April Anthony, Larry Cabrera, Joseph Rose, Stephanie Ringstad, Alexander Wilson,
4 Tamara Robinson, and Phillip Lewis filed a Complaint against Defendants City of Albany;
5 Albany Police Department; and Mike McQuiston, in his official capacity as Chief of Police.

6 Plaintiffs allege that Defendants have already begun to implement their plan to evict Bulb
7 Residents and their community from the Albany Bulb. The path that Defendants have embarked
8 upon will result, according to Plaintiffs’ allegations, in infringement of Plaintiffs’ rights under the
9 Fourth, Eight, and Fourteenth amendments to the U.S. Constitution; Plaintiffs’ rights under Article
10 I, §§ 1 and 7 of the California Constitution; and Title II of the ADA.

11 In particular, Plaintiffs have alleged that Defendants’ plans to seize and in some cases
12 destroy Bulb Residents’ dwellings and personal property violates Bulb Residents’ rights to due
13 process, guaranteed by the Fourteenth Amendment and Section 7 of Article 1 of the California
14 Constitution, and Bulb Residents’ Fourth Amendment right to be secure from unreasonable
15 seizures. In addition, Plaintiffs allege that the eviction violates Bulb Residents’ fundamental
16 liberty interest in bodily security, guaranteed by the Fourteenth Amendment, and Bulb Residents’
17 Eight Amendment rights by effectively criminalizing the status of being homeless. Plaintiffs
18 further allege that Defendants’ proposed shelters violate the ADA (42 U.S.C. §§ 12132 *et seq.*)
19 and California disability rights law (Cal. Gov’t Code §§ 11135 *et seq.*) and unlawfully conditions
20 receipt of public benefits on waiver of constitutional rights. Finally, plaintiffs contend that Albany
21 Municipal Code § 8-4.4, on which Defendants base many of their actions, violates the Fourteenth
22 Amendment by being unconstitutionally vague.

23 On November 13, 2013, pursuant to Fed. Civ. P. 65, Civil L.R. 65-1 and Civil L.R. 7-10,
24 Plaintiffs moved ex parte for a Temporary Restraining Order (“TRO”) and an Order to Show
25 Cause why a preliminary injunction should not issue. In support of their motion, Plaintiffs
26 submitted: a Memorandum of Points and Authorities; the Declarations of Bob Anderson, April
27 Anthony, Glenn Bachelder, Thomas Barnett, Adam Hugh Barrett, Paul Boden, Don Bowen, Larry
28 Cabrera, Ruth Cashmere, Boona Cheema, Edward Choate III, Katherine Cody, Danielle Evans,



1 Dr. Lesleigh Franklin, Chester William Hill, David Justus, Philip William Lewis, Marc Gordon
2 Mattonen, Patricia Moore, Michael William Nelson, Stephanie Ringstad, Tamura Robinson,
3 Joseph Rose, Julie Sutton, Joseph Walter Jr., Robert Wharton, Amber Whitson, Alexander
4 Richard Wilson, Julie Ann Winkelstein, Dr. Barry Zevin; Request for Judicial Notice; a proposed
5 Temporary Restraining Order and Order to Show Cause; and a copy of their Complaint.

6 Following notice to Defendants, this matter was heard on November _____, 2013.

7 Having considered all the papers and arguments, the Court finds that Plaintiffs have shown
8 a likelihood of success on the merits on their claims for violations of the Fourth Amendment's
9 protections against seizure, the Eighth Amendment's prohibition of cruel and unusual punishment,
10 the Fourteenth Amendment's right to procedural due process, the Fourteenth Amendment's right
11 to bodily security, Federal and California constitutional rights to privacy, and Federal and
12 California disability rights law.

13 Plaintiffs have also demonstrated that Bulb Residents will suffer irreparable harm unless
14 Defendants are enjoined from enforcing Albany Municipal Code § 8-4 without putting in place
15 appropriate procedures and in the absence of suitable alternative housing plans.

16 A Temporary Restraining Order is necessary to prevent immediate and irreparable injury to
17 Bulb Residents before the hearing on the Order to Show Cause regarding the preliminary
18 injunction can take place, and to preserve the status quo.

19 The Court finds that the balance of equity and interests of justice support granting this
20 relief. Accordingly, this Court enters the following orders:

21 **Temporary Restraining Order**

22 IT IS HEREBY ORDERED that Defendants and their officers, employees, assignees,
23 successors, agents, attorneys, and representatives be immediately temporarily restrained from
24 enforcing Albany Municipal Code § 8-4 against persons who are homeless and currently living on
25 the Bulb so long as there is not a location available in Albany where they can find shelter that
26 protects those persons' right to privacy and reasonably accommodates their disabilities.

27 IT IS FURTHER ORDERED that Defendants and their officers, employees, assignees,
28 successors, agents, attorneys, and representatives be immediately temporarily restrained from



1 enforcing Albany Municipal Code § 8-4 against persons who are homeless and currently living on
2 the Bulb without providing them with an adequate hearing before depriving them of their property
3 interest in their dwelling.

4 IT IS FURTHER ORDERED that this Temporary Restraining Order remains in effect until
5 the date for the hearing on the Order to Show Cause set forth below, or until such further dates as
6 set by the Court or stipulated to by the parties.

7 **Security**

8 IT IS ORDERED that no bond shall be required as security for this Court's issuance of the
9 Temporary Restraining Order, set forth above.

10 **Order to Show Cause Regarding Preliminary Injunction**

11 IT IS ORDERED that Defendants shall show cause, unless Defendants waive the right to
12 do so, before the Honorable _____ of the United States District
13 Court for the Northern District of California, located at _____,
14 at _____ a.m./p.m. on November ___, 2013, why a preliminary injunction should not
15 issue restraining and enjoining Defendants and their officers, employees, assignees, successors,
16 agents, attorneys, and representatives from enforcing Albany Municipal Code § 8-4 against
17 persons who are homeless and currently living on the Bulb (1) so long as there is not a location
18 available in Albany where they can find shelter that protects those persons' right to privacy and
19 reasonably accommodates their disabilities and (2) without providing them with an adequate
20 hearing before depriving them of their property interest in their dwelling.

21 IT IS FURTHER ORDERED that Plaintiffs shall serve a copy of this Order on Defendants
22 on or before November ___, 2013. Any response or opposition to this Order to Show Cause must
23 be filed and personally served on Plaintiffs' counsel no later than noon, November ___, 2013, and
24 filed with the Court, along with proof of service, on November ___, 2013. Plaintiffs shall file and
25
26
27
28



1 serve any reply papers by November ____, 2013.

2 IT IS SO ORDERED.

3

4 DATED:

UNITED STATES DISTRICT JUDGE

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13 Attorneys for Plaintiffs

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26

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CASE NO.

013-5270

DECLARATION OF PAUL BODEN

CRB

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DECLARATION OF PAUL BODEN

I, Paul Boden, hereby declare that:

1. I am the Executive Director of the Western Regional Advocacy Project, an organization that works on national, regional, state, and local homeless policy. I have helped author several reports, including Without Housing: Decades of Federal Housing Cutbacks, Massive Homelessness and Policy Failures (2010), which describes the national trend to defund public housing, and increase homeowner subsidies that caused the level of homelessness we have in the United States today. I have worked on policy issues related to homelessness for over 30 years.
2. My connection to homelessness began early: I became homeless at the age of 16 after the death of my mother. I began volunteering at a drop-in shelter in San Francisco in 1983, eventually becoming a program director there. I then worked as a case manager in a supportive hotel program for mentally ill people. I co-founded and served as Executive Director of San Francisco's Coalition on Homelessness for 16 years. During that time, I also co-founded of the Community Housing Partnership (CHP), a nationally recognized permanent housing corporation with optional supportive services. I served as president of the CHP Board for 10 years. I have also served as a board member of the National Coalition for the Homeless and co-chair of its civil rights and grassroots organizing workgroup. I have received dozens of community awards during the last twenty-five years and recognition from the city and county of San Francisco, the State of California, and the United States Congress. I regularly write op-eds and articles about homelessness, particularly on the criminalization of homelessness, and I travel throughout the country giving talks and trainings.
3. I have been certified as an expert on homelessness in both state and federal court. I have testified as an expert witness in local criminal cases in state court approximately four times. I have given expert testimony in two California state court civil cases, one about common procedures in homeless shelters, and another about the effects of homelessness on individuals and families. Finally, I was certified as an expert on homelessness in federal court in a case related to direct action by homeless organizers in San Francisco.
4. I have been to the Albany Bulb and have met with the Bulb residents. I keep in touch with the residents there, and receive updates about developments in their community. I have observed that the residents have created a strong community over years spent living together on the Bulb. This is common in homeless encampments, that people establish a much-needed social structure to help them cope with the stresses of disability, illness, and poverty. I have also observed that the Bulb residents have been able to erect structures in which they can experience safety and privacy. This is very important for people who have been homeless, as privacy and safety are in short supply when you are living on the street. I am aware that Albany has permitted people who are homeless to live on the Bulb for many years, and that it is now is planning to enforce its anti-camping ordinance. I am aware that the only alternative housing in

1 Albany for the people who are evicted from the Bulb will be a temporary shelter in
2 some portables with room for 30 people.

3 5. As a result of the removal of crucial affordable housing funds by the federal
4 government (or, their transfer to benefit higher income Americans in the form of
5 homeowner subsidies), the State of California has long required regionally housing
6 planning to assist the state in its goal to ensure decent and affordable housing for
7 every Californian. The City of Albany is located in Alameda County which is part of
8 a region that includes nine Bay Area Counties.

9 6. I have reviewed the Association of Bay Area Governments' San Francisco Bay Area
10 Housing Needs Plan for 2007-2014.¹ In it, there is a specific allocation of affordable
11 housing needs for which Albany must use its land use and planning powers to
12 accommodate in order to meet its proportional share of regional housing needs. This
13 allocation includes 64 units for very low-income people, which is defined as
14 households with incomes below 50% of Area Median (Income (AMI). The City is
15 also supposed to accommodate 43 units of housing for people with incomes lower
16 than 80% of the AMI, and 52 units for people with incomes up to 120% of AMI.

17 7. These allocations are not large. Other cities of similar size to Albany have worked to
18 promote the development of affordable housing and have met their allocations as
19 required by state law. However, Albany has not. According to the available data I can
20 find, Albany has only 16 units of subsidized rental housing that is affordable to
21 lower-income households, and only 3 of those units are available to (and occupied by)
22 very low income people. Albany has been out of compliance with state law regarding
23 zoning for affordable housing since at least 1999. The regional housing needs
24 allocated to Albany for lower income households for the 1999-2006 planning period
25 was 176 units (64 for very low-income and 33 for low-income). It has no homeless
shelters, no transitional housing, and no supportive housing for persons with
disabilities. It is striking how little Albany has done to meet its obligation to provide
housing to its lowest income residents. During the same time period (1999-2006),
over 300 market-rate and moderate-income homes were constructed in Albany.

8. The lack of affordable housing in Albany, or any effort to plan for or attract such
housing, is now being coupled with a decision by the City to close what has become
its de facto homeless shelter. In the 14 years since the last time the City of Albany
evicted homeless people from the Bulb, the City could have created at least the 200
units of affordable housing for which it is responsible under the regional housing
plan. The City chose not to develop that housing.

9. I have particular expertise on the criminalization of homelessness, and the negative
impact on homeless people and communities of using criminal enforcement and
prosecutions as a response to homelessness. I have been witness to, and documented,
hundreds of "sweeps," or police enforcement actions against a group or encampment
of homeless people. I monitor these kinds of police actions, primarily in California,
but also in cities across the country.

¹ Available at <http://www.abag.ca.gov/planning/pdfs/SFHousingNeedsPlan.pdf>.

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10. The criminalization of homelessness has detrimental effects on homeless people, and it perpetuates homelessness. The overwhelming majority of homeless people incarcerated for sleeping, sitting, resting, or some variation on these behaviors, are cited for infraction violations. This level of criminal citation seems minor to most people. However, if you cannot afford to pay a citation, which, in California, is always at least \$200 with court fees, then usually, a warrant is issued for your arrest. Because the original infraction offense does not carry a jail penalty, homeless people cited are not entitled to the free representation provided by the Public Defender's office, and it is therefore difficult for the homeless person to present a defense to the citation.

11. As a result, the Bulb's homeless residents, if cited for violating the anti-camping ordinance or sleeping on the sidewalks of Albany under Penal Code Section 647, will be likely have active arrest warrants issued for their arrest, because of their failure to pay the citations. Having an outstanding warrant means they can be arrested at any time. Homeless people, by definition, live much of their lives in public spaces because they do not have private places in which to be. As I have learned in my 30 years of experience documenting interactions between homeless people and police, this presence in public means that many homeless people must interact with the police on a daily basis. Simply living with the vulnerability of an active arrest warrant takes a significant toll on homeless people, especially those with disabilities. Additionally, homeless individuals who have an active warrant, even for minor offenses such as camping in public, are often prevented from getting the services they need to exit homelessness. As a result of criminal warrants, Bulb residents may be denied public or other subsidized housing, lose public benefits, be ineligible for placement in a treatment program, and will lose or fail to get work. Infraction citations given to homeless people usually result in arrest, incarceration, and perpetuation of their homelessness.

12. Criminalization of homelessness is, unfortunately, not uncommon. However, most cities have somewhere that homeless people can be in public without risking criminal citation. I am aware of no such place in Albany. In fact, the Albany Bulb has been that place. My understanding is that the Albany police have sent people to the Bulb from other places in Albany. This is consistent with practices in almost every other city I have observed or studied: Police push people to the outskirts of town, away from businesses and out of sight. The Bulb is as far out of sight as is possible in Albany. There is nowhere else for homeless Albany residents to go and remain in Albany. Albany's planned enforcement of its camping ordinance will have the effect of evicting a number of current Bulb residents from the town altogether, given that the planned temporary shelter is insufficient to meet the need in Albany.

13. I am familiar with many different emergency shelters in different cities. I worked at a shelter. I have been on the Board of a shelter. I have advised cities and shelters about best practices and advocated for people living in shelters. In my work, I have seen many shelters established or operated with the primary goal of giving homeless people a safe place to sleep, and transitioning them into housing. I have also seen shelters established as part of a plan to move people from one place to another because their presence is undesirable. In these cases, the shelters are more like

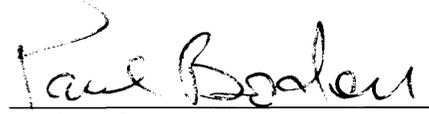
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holding cells than temporary housing. It appears that the City of Albany is using the latter model for the planned shelter. The trailers are temporary; they will only be available for six months. There are other, more sustainable uses for the funds Albany has committed, such as housing subsidies.

14. When this shelter is put in place, it will only house 30 people, and there are approximately 60 homeless people living on the bulb. In six months, there will be no shelter for Albany's homeless people and no available affordable housing. There will be no public place where homeless people can sleep without criminal sanction. This situation is reminiscent of discriminatory laws of last century, including the Anti-Okie law that California passed in 1937. The law criminalized "bringing or assisting in bringing" extremely poor people into the state. The United States Supreme Court struck down the law in 1941, when it declared that these laws are in violation of the Commerce Clause, and therefore unconstitutional. Similarly, there used to be "Sundown Town" laws, which were city policies and real estate covenants aimed at preventing people of color, homeless persons, and other persons considered to be socially undesirable from remaining within city limits after sunset. Thousands of these towns existed prior to the federal Civil Rights Act of 1968, which made these ordinances and covenants illegal. These outdated laws are the best corollary I can find to Albany's plan to cite or arrest homeless people when, by definition, many of them will have no legal place to be.

I swear under penalty of perjury that the foregoing is true and correct.

Signed under penalty of perjury this 5th day of November, 2013.


Paul Boden

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UNITED STATES DISTRICT COURT

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Defendants.

CASE NO.

013-5270

CRB

DECLARATION OF THOMAS BARNETT

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DECLARATION OF THOMAS BARNETT

I, Thomas Barnett, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I have lived at the Bulb for six years. Before that, I was living on and off in Berkeley and at the Bulb for about ten years. In total, I have been at the Bulb or in Berkeley for almost seventeen years.

3. Before the Bulb, I lived at People's Park in Berkeley. There were too many thefts at People's Park, so I moved to Albany in 2007 where I was safer.

4. That's when I was approached by Officer Willis. I was directed to come to the Bulb six years ago by Officer Willis of the Albany Police Department. I was sleeping out in Albany, and he woke me up. He told me I couldn't sleep in downtown Albany, and that there is a place for homeless people to stay out on the landfill, by which he meant the Bulb.

5. I live at the Bulb so I can live in one place, instead of carrying a backpack with all my things around. Living here, I can have a routine, and I have a productive purpose. I pick up trash around the Bulb, I walk the trails and I remove rocks and rebar from the trails. As an occupation, I recycle the iron that was deposited on the Bulb.

6. I live in a shelter that I built, which is my home. It has four wooden walls on top of which I placed a camper shell. It has a plywood floor. The entire structure is covered with a tarp. I built it four and a half years ago. Next to the place where I live is another structure I built, also covered by a camper shell that I hope to use as a winter workspace. I built a fence of old bicycles around my place. Photographs of the place where I live, surrounded by some of my possessions is attached as Exhibit A.

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7. As you can see from the photographs, I have numerous possessions. I buy bicycles, mopeds, scooters, and motorcycles, chainsaws, Briggs & Stratton motors and generators, and rebuild them. I sometimes do this for money, but mostly I barter for what I need. My possessions would not begin to fit in the garbage bags provided by the City.

8. Inside my home I keep my musical instruments including drums and a six string acoustic guitar. I have my clothing and what I need to cook with including a barbecue grill that is one half in and one half outside my home.

9. By living at the Bulb, I am more relieved from my anxiety and claustrophobia. I have privacy in my shelter and it protects me from the elements. I am actually able to keep possessions at the Bulb, unlike at some of the other place I have stayed before. I have taught myself how to repair bikes, and repair smaller engines, like lawnmowers, weed eaters, and generators in order to help support myself.

10. If it became necessary to leave the Bulb, and I had a place to put everything, I would want to bring the structures I have built and all my possessions with me. Even if I am evicted and forced to sleep somewhere else, I am not abandoning my shelter on the Bulb. I would want to bring these things with me.

11. I am very claustrophobic. Because of my claustrophobia, I would not be able to go into the trailers Albany is talking about setting up with bunk beds in them. When I am forced to live in closed spaces with other people, I have severe panic attacks. When I have an attack it becomes difficult for me to breathe. My heart starts pounding and I have to get up and run away. I feel I'm about to die. When I was in jail I had constant panic attacks, one after another. I could not even talk to my attorney in the interview room because it was too small.

1 12. I have hepatitis C. Because of my Hepatitis C, it would be dangerous to my health
2 to stay in the dormitory trailers. Packed into a small space with lots of people would make
3 me very susceptible to illness. Due to my Hepatitis C, it could be very difficult to recover
4 from even a simple cold or flu.

5 13. Because of my Hepatitis C, my diet has to be very specific. It requires that I have
6 as little iron as possible, no dairy, and very little meat. My immune system is weak, so I
7 have to buy my foods because I have to know what is in them by reading the label. When I
8 go to a soup kitchen, I am uneasy because I do not know what the ingredients are in the
9 food. If I stayed in the dormitories, I would have no access to a place to prepare food and,
10 because of my illness, I cannot eat at many other places.

11 14. In portable trailers I would have no personal space. Having a personal space and
12 privacy is very important for me. I couldn't do anything without someone watching me.
13 Also I would have great difficulty following the shelter rules. I usually sleep in the day and
14 work in the late afternoon, evening, at night. That would not be possible in the trailers.

15 15. If I only had a choice between going into the trailers and sleeping on the street I
16 don't know what I would do, because they are both terrible choices. When I lived on the
17 street in Berkeley near People's Park, I could never keep track of my possessions. If I
18 walked away, they were stolen.

19 20 16. I receive SSI benefits, because of my mental disabilities. I have been diagnosed
21 with schizophrenia. After paying my payee, I get \$850 a month. I sought food stamps
22 about ten years ago and received benefits. I had them for about a year and a half, until I got
23 SSI. I have been receiving SSI for the past nine years. In July 2013, I sought assistance to
24 find housing at the Public Housing Authority, but the woman who worked there never got
25 back to me.

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17. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 21st day of October, 21, 2013 at Albany, California.

By: 
THOMAS BARNETT



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13 Attorneys for Plaintiffs

ORIGINAL
FILED
NOV 13 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

14 UNITED STATES DISTRICT COURT

15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
26

CASE NO. **C13-5270**
DECLARATION OF GLENN BACHELDER

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DECLARATION OF GLENN BACHELDER

I, Glenn Bachelder declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at The Bulb in Albany California. I have resided at The Bulb since the summer of 2006, except for about six months in 2010 when I was living in a warehouse on Shattuck Avenue in Berkeley and working for a friend. Once my job ended, I moved back to The Bulb. Before I moved to The Bulb in 2006, I stayed at a friend's house in Berkeley but had to leave when my friend wanted more space. I wasn't working at the time and had trouble finding work, so I had nowhere else to go. I also lived at The Bulb for about a year, until the eviction in 1999. The city had people plow over all of our belongings. My camp, stove, and clothes were totally destroyed. They gave us some food and sleeping bags, and told us to leave. I started living on the street because I had nowhere else to go.

3. I live at the Bulb because I don't have a job and I can't afford housing. At The Bulb I can cook, eat, sleep and function. I have a place I can call home. This is a perfect place to try to get yourself together. A photograph of me is attached as Exhibit A.

4. I live in a tent which is my home. If I had to leave the Bulb, I would not be abandoning my shelter. I would want to take my shelter and belongings with me. Adjacent to my tent I also have a storage area. I keep in my tent and storage areas various possessions, including two futons, a generator, an Edison antique record player, a bicycle and three bicycle trailers, and medication for my high blood pressure, when I am able to get it. I also have about ten tents and some valuable jewelry. Many of my possessions would not fit in the garbage bags the city is offering.

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5. I have attempted suicide in the past, although I have felt mentally and emotionally stable while living out here. I am also dyslexic. I frequently have anxiety, which has been greatly compounded over the past several months due to the proposed eviction.

6. The biggest benefit I have experienced living at the Bulb is freedom. I am able to do what I want and I know that I have a place to come back to. Another benefit is that we can have pets here, and they wouldn't be allowed in a shelter. I want to move back to a house, but I've had trouble getting a job so I can't move anywhere else.

7. I have not received help from anyone, such as the government, community group/agency, or church, to find housing or short-term shelter.

8. I have no steady income and I do not receive any public benefits. I make some money recycling, but the amount varies between \$15 to \$10 a day. I have thirty-five years experience painting, and would like to work, but I have no vehicle to get to the sites where I can paint. I used to be able to get work without having a car, but in the last ten years it has become much more competitive. Now, employers always want you to have your own transportation.

9. I was getting General Assistance over seven years ago, but I am not receiving it anymore.

10. I have one dog, named Enoch. He is a Labrador mix. He is my best friend and the only living thing in this world that I care about. He also provides me emotional stability and companionship, which helps me cope with my suicidal tendencies, depression, and anxiety.

11. I received food from the Berkeley Food and Housing Project about four or five years ago. This summer, I met with them and told them that I did not have money to

1 pay for housing, because I have not yet been approved for SSI. They did give me a voucher
2 for a driver's license. My current license is expired and I have not yet been able to renew
3 it.

4 12. I would like housing, but I want to keep my dog and live in a place where
5 I feel safe and comfortable.

6 13. It would be very difficult for me to use the dormitory trailers. I have high
7 blood pressure and need to rest during the day. I also have past trauma from being in
8 enclosed areas, and sleeping in a dormitory trailer with so many people would stress me
9 out. I would feel like I was in jail.

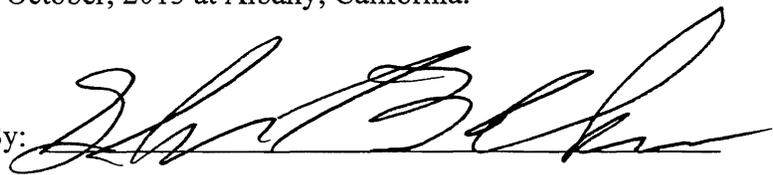
10 14. If I were evicted, I would have to look for another abandoned area where I
11 could live at. I would not be able to take most of my belongings with me, because I have
12 no vehicle or any way to store it. I would probably lose most of what I own – including my
13 clothes, cooking supplies, camping gear, generator, and my bed. I have very little income,
14 so it would be hard for me to replace what I have been able to get over the years.

15 15. Last month, I was returning home to the Bulb with my dog around 11pm.
16 An East Bay Parks Police officer yelled out to me about 200 to 300 yards away. He asked
17 me if I had a leash for my dog. I told him I was trying to get home, and then he said if my
18 dog came any closer, "too bad on your dog," implying that he would shoot my dog.

19
20 I declare under penalty of perjury under the laws of the State of California and the
21 United States of America that the foregoing is true and correct.

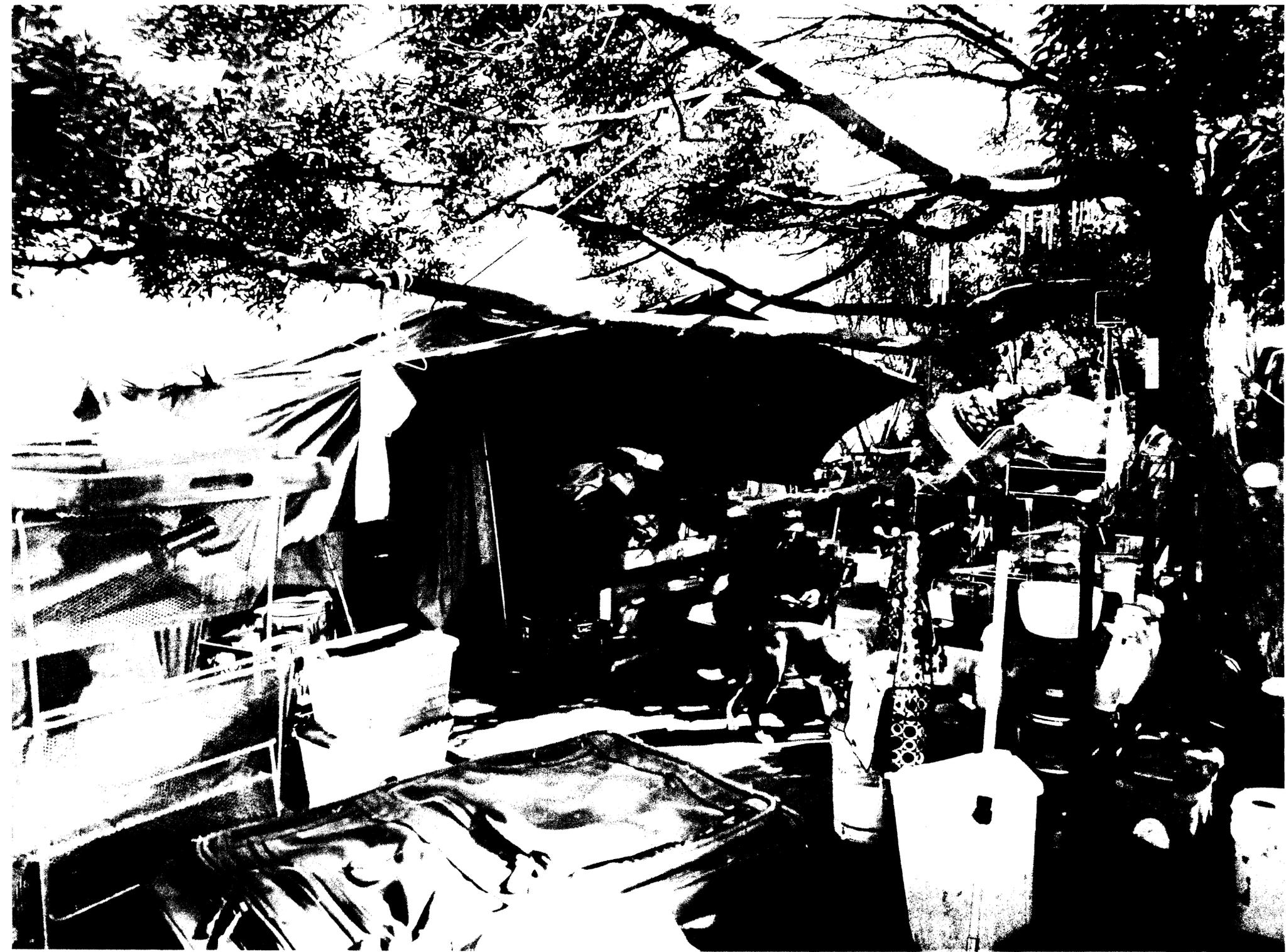
22 Executed this 21st day of October, 2013 at Albany, California.

23
24 By:



25 GLENN BACHELDER







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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
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25 Defendants.
26

27 CASE NO. **C13-5270**

28 DECLARATION OF DON BOWEN

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DECLARATION OF DONALD CLAYTON BOWEN

I, Donald Clayton Bowen declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at the Bulb in Albany California. I have resided at The Bulb since before August 2011.

3. I live here because it is the only place I can live in peace. People accept me here and we have created our own community. I can build a residence and work to improve it to make my life more comfortable. I can also keep my dogs and not experience harassment from police. I also am less exposed to theft and crime than when I am on the street. I have shelter at the Bulb and can keep my possessions with me.

4. I live in several tents combined together. It is my home. If forced to leave the Bulb, I would not be abandoning this structure. I would want to take my structure and possessions with me.

5. Inside my tents, I have a couch, fridge, chair, dresser, generator, an entertainment center, a queen-size bed, a TV, and a shower. I also have a large selection of tools, including chop saws, a sledgehammer, and a pickaxe. Many of my possessions would not fit in the garbage bags that the city of Albany is providing.

6. Before moving to the Bulb, I lived in a rental house in El Cerrito. After being kicked out of that place, I spent a few weeks on the streets of Richmond, Berkeley, and El Cerrito and on the couches of friends. While sleeping on the street, I was told multiple times by both the Berkeley Police and El Cerrito Police to leave where I was and go to the Bulb.

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2 7. I have looked for apartments in the area but rent is prohibitively expensive
3 and many places do not allow dogs. I would like to find housing but I don't have any
4 housing options yet. I need more time to get my social security card and to look for
5 housing.

6 8. I do not want to give up my two dogs because they are like my family.
7 They provide me comfort, companionship, and emotional support. They also rely on me
8 and taking care of them gives me a sense of purpose. Taking care of them helps me take
9 care of myself.

10 9. I experience fatigue and disorientation as a result of Hepatitis C induced
11 terminal liver disease. I also experience chronic pain from a broken back and multiple
12 gunshot wounds. I am blind in one eye. I may also have liver cancer, and am waiting for
13 confirmation from my doctor.

14 10. My only source of income is Social Security disability benefits (SSI).
15 Because of my chronic pain and terminal illness, I cannot work.

16 11. In 1999, I came to visit some friends at the Bulb and I saw the trailers. As
17 far as I know, no one received housing, they just lost their possessions and pets, and then
18 moved back to the Bulb or to other places.

19 12. Because I have Hepatitis C, staying in the shelters would be dangerous to
20 my health. If I am staying in close quarters with other people and someone has a cold, I
21 will get it. My immune system is very weak because of the Hepatitis C, and even a cold or
22 flu could turn into pneumonia or something worse. I also experience a lot of fatigue and
23 body pain, and need to lie down during the day, when the trailers would be closed. I am
24 afraid that, with my terminal illness, I may not recover from the stress that will put on my
25 body. I am also concerned that I will lose all of my possessions and my pets.

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13. It is also difficult for me to be around a lot of people. I need a private space to be alone and relax. Otherwise I get irritable and uncomfortable. When I have been in dormitory-like situations in the past, it has had a severe impact on my mental health.

14. During the week of September 8, 2013, I spoke to the Berkeley Food and Housing Project. I told them I would go anywhere as long as I could keep my dogs. First they told me they could pay my rent for eighteen months; they later reduced it to three months. They said they could not help me unless I had a Social Security card. I did not have one but explained that I received SSI. The representative told me to get a new card from the social security office, but after inquiring there, I learned that it would take three weeks to receive it.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 22nd day of October, 2013 at Albany, California.

By: 
Donald Clayton Bowen

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26
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28

CASE NO.

C13-5270

CRB

DECLARATION OF LARRY CABRERA

DECLARATION OF LARRY M. CABRERA

I, Larry M Cabrera, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at The Bulb in Albany California. I have resided at the Bulb since 2010. Photographs of me in my shelter that I live in are attached as Exhibit A.

3. I have been homeless for 5 years. Before that, I was living with and taking care of my grandmother until her death in 2008. When she died, my uncles inherited the house, kicked me out, and sold it.

4. When I became homeless, I lived on the street, in city parks, under overpasses, and other temporary places during that time. I eventually settled in at Tom Bates Park, near the Racetrack in Albany. When the East Bay Regional Park police saw me there, they instructed me to go to the Bulb.

5. Before moving to the Albany Bulb, I exchanged my skills and labor in the renovation of a house for housing in that location. I lived there from December 2009 to about June 2010. After completion of the job, I had no alternatives but to come to the Bulb.

6. In the 1980's and early 1990's, I worked as a journeyman insulator and asbestos abatement supervisor. However, I was forced to quit in 1991 because of painful scarring of my lungs caused by the asbestos I was exposed to. Sometimes I have coughing attacks and it is hard to breathe. In order to calm down, I need to go outside and breathe the air and rest.. I am easily winded from physical activity.

7. I have not received any monetary compensation from past employers or the union I was a member of for over 6 years. I am still making attempts to gain my union compensation from the illness but do not expect this situation to be resolved soon.

DECLARATION OF LARRY M. CABRERA

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2 8. For nearly 20 years, I have lived with the pain from the scarring of my
3 lungs and have had very few opportunities to work. I get some income by collecting metal
4 scraps and recycling. I also receive food stamps. The income I receive from food stamps is
5 not adequate to cover my food needs for the entire month and the money I make from
6 collecting recycling does not cover anything past basic necessities. I have no other source
7 of income.

8 9. Although the situation at the Bulb is not ideal, I feel proud of the work I
9 have done to live here. Unlike other places I tried to find shelter, I can sleep a full night at
10 the Bulb.

11 10. I consider the shelter I have built at the Bulb to be my home. The shelter,
12 which I constructed myself, is made from a tent, several tarps, and poles. I have lived there
13 for two and a half years. Pictures of the shelter and my possessions are attached as Exhibit
14 A.

15 11. My shelter is where I keep my things, including my bed, clothes, cooking
16 items, and small camping stove. Next to my tent I have another tent that I use for storage.
17 In the storage tent, I have seven canopy-style tents, a wooden entertainment center case
18 that brand new, carpets and area rugs, a couch, two queen-size beds and a twin-size bed.
19 These are things that I have collected from dumpsters. I sell them and that is how I earn
20 money. These things are my personal property. Many of these things will not fit in the
21 garbage bags that the City has provided. Photographs are attached as Exhibit A.

22 12. My shelter is where I have privacy and my own personal space. I can close
23 off my shelter and be by myself. I have no other place where I can have such privacy. I
24 have no other shelter available to me, other than my home on the Bulb. I would like to find
25

DECLARATION OF LARRY M. CABRERA

1 housing. I have tried to search for housing, but since I have no job, all of my time is
2 consumed by daily survival to earn enough money to eat and take care of my basic needs.

3 13. My shelter is not abandoned. Even if I am evicted from the Bulb and
4 forced to sleep in one of the temporary shelters at night, I would not be abandoning my
5 shelter on the Bulb. If it became necessary to leave the Bulb, I would want to bring my
6 shelter and possessions with me.

7 14. I first spoke with Berkeley Food and Housing Project about housing a
8 month ago. They told me they had found me housing and they would pay the rent for the
9 first three months. However, before I could go look at the place, they told me it had was no
10 longer available. This happened about 2 weeks ago and I have been checking with them
11 twice a week to see if they have found anything else. They keep telling me they have not.

12 15. Berkeley Food and Housing Project recently told me that they would pay
13 for a bus or plane ticket if I have relatives or friends who could put me up somewhere else,
14 but I have nowhere to go. I have no family I can live with and have no other place I can go
15 that provides me with the shelter I have now. I have no idea where I would go if I had to
16 leave the Bulb.

17 16. I understand the City of Albany may be offering shelter in a communal
18 trailer. Because of my lung problem, I am often winded and need to lie down during the
19 day. The trailers would be closed during the day and so I would have no shelter to rest in.
20 If I cannot sleep, I will not be able to function or try to make plans to move into housing or
21 find a job in another place.

22 17. My income is gained from collecting things in the dumpsters that are left
23 at night. If I am living in the trailers, I would not be able to keep working because I would
24

DECLARATION OF LARRY M. CABRERA

1 have nowhere to keep what I collected. I do not know how I would be able to eat because I
2 would have nowhere to keep or use my cooking supplies and food.

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4 18. Sometime around 11pm on the night of October 14, 2013, I was in my tent
5 when someone announcing himself as an Albany police officer called me out of my tent by
6 name. When I came out of my tent, I saw that it was Officer Willis and one other officer.
7 They handed me a letter, and the other officer began reading from a notepad he was
8 holding. He said that I was in violation of a curfew, and said that they were giving me my
9 last verbal warning. He said that the next time I was in violation of the curfew, I would be
10 cited, and that after some number of citations, I would be taken to jail.

11 19. Since the Albany and Parks police have started enforcing a curfew, I have
12 not been able to collect things at night, which is the only time I can work.

13 20. If I lived in the trailers, I would have no privacy and no private space like
14 I do now. I also worry that I would not have access to my personal property. I would not be
15 able to keep or sell the things I have gathered and therefore would have no way to make
16 money to eat.

17 21. Because I have no place to go, after the trailers are taken away, I would
18 have to live on the streets of Albany. I am afraid the police will harass and cite me if I am
19 sleeping outside. My lung condition would also worsen. I would lose all of my
20 possessions. Every day would be a struggle for survival to eat and housing, and I would
21 not be able to plan for the future.

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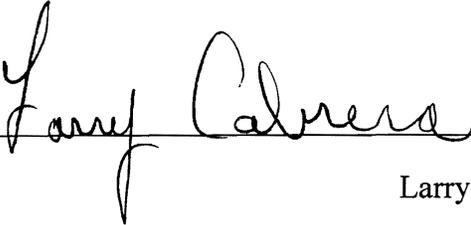
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DECLARATION OF LARRY M. CABRERA

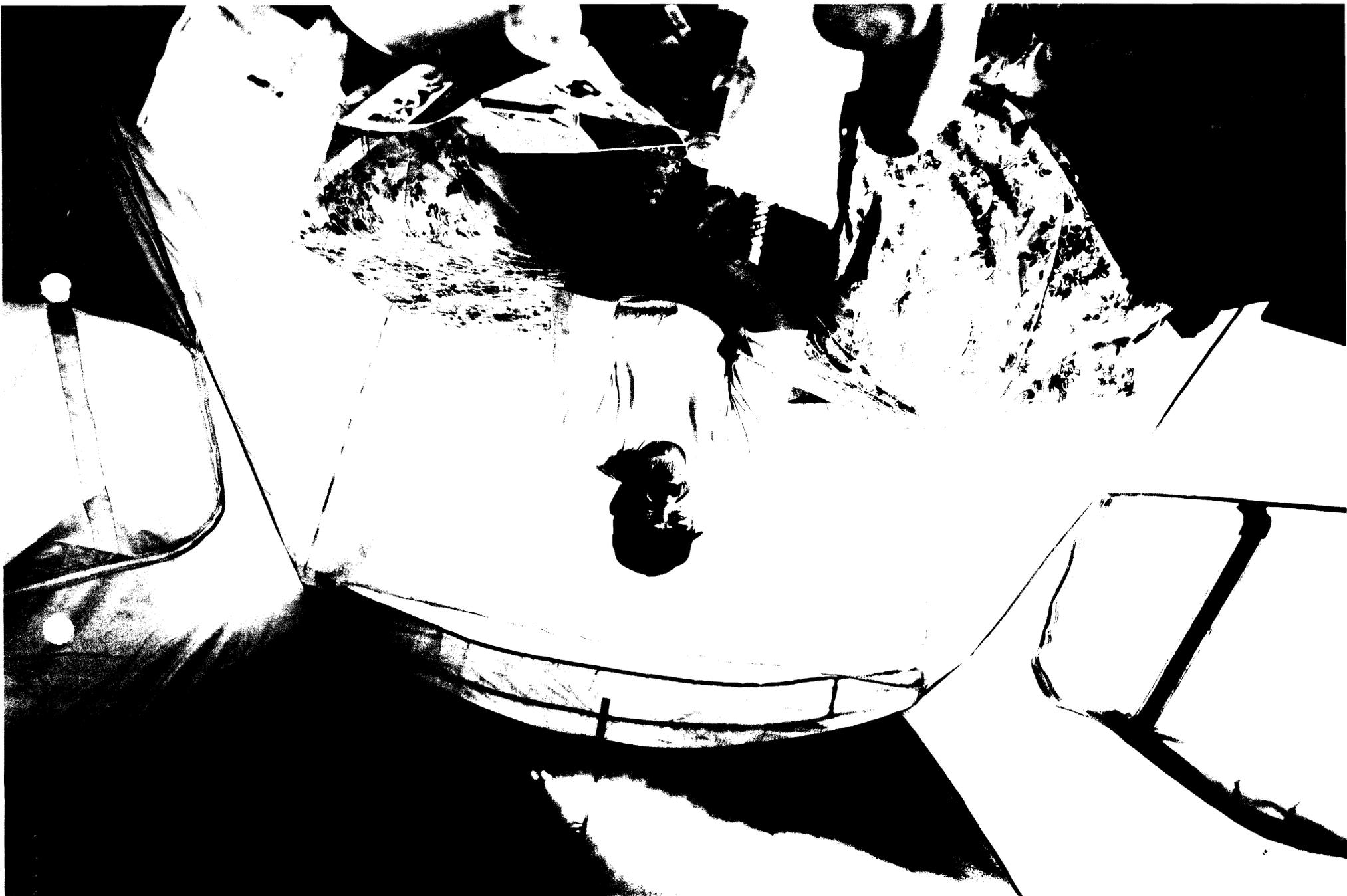
I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 29th day of October, 2013 at Albany, California.

By:  _____
Larry M. Cabrera

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ORIGINAL FILED

NOV 13 2013

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Attorneys for Plaintiffs

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

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

Plaintiffs,

v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

Defendants.

CASE NO.

013-5270

CRB

DECLARATION OF BOONA CHEEMA

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DECLARATION OF BOONA CHEEMA

1. My name is boona cheema. I live in Berkeley, CA.
2. I have been involved in homeless services and with homeless persons in the East Bay for 42 years. I was the Executive Director at Building Opportunities for Self-Sufficiency (BOSS) for 38 years until I retired earlier this year.
3. I also know the Albany Bulb well. I walk there three times a week. I took my kids and now my grandkids there. I have known many Bulb residents over the years, and have had personal knowledge of the sweeps that have happened there, particularly the 1999 eviction of homeless residents. The peaceful coexistence of homeless residents and recreationalists is one of the best parts in the park. Since 1978 I have known some of the residents at the Bulb. I have found the residents to be self-organized and many are hard workers who have created their homes by hand in this lovely location.
4. BOSS is the largest social services program in Alameda County. It provides shelter, housing, counseling, mental health treatment, street outreach, and employment training to homeless and very low-income people in 14 separate programs county-wide.
5. I was BOSS' first outreach worker in 1971 and became Executive Director in 1978. In each of those professional capacities since 1971, I have worked closely with the homeless population of Alameda County, including homeless people who are in programs, shelters, under our bridges, in our parks and streets. I have served on many homelessness-related Boards, Commissions, and Task Forces at the City, County, State and Federal levels. These included work with the Alameda County Continuum of Care, Everyone Home—Alameda County's roadmap for ending homelessness—and the East Bay Housing Organization. I have worked closely with several City Councils, including the City of Albany, and with the Alameda County Board of Supervisors, advocating for more affordable housing.
6. There is not enough shelter in Alameda County. At the height of shelter capacity, there are approximately 1018 shelter beds for over 6200 homeless people. There is no shelter in Albany. In Berkeley, the City nearest Albany, there are 110 shelter beds year-round, and 30 for youth in winter. There is a rainy night shelter generally open 20-30 days depending on rain and temperature (under 40 degrees). There are approximately 700 homeless people in Berkeley; again, the need is far greater than the resources available.
7. Not all shelters are open year-round. Not all shelters accept everyone; some beds are designated for youth, or for men who are working, or for women who are victims of domestic violence. It is particularly hard to find shelter as a woman, because there are very few beds open to women. There also are only a few beds available for couples in the whole county. As a practical matter, hardly any shelters accept people with dogs, even if they are service animals for people with disabilities. All shelters of which I am aware have time limits on the length of time a person is allowed to stay.

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8. Especially during the winter, it is very difficult to find an empty shelter bed, let alone multiple empty beds. I am not aware of any night in the past five years that the shelters in Alameda County could have accommodated 64 additional people—or anywhere close to that number—at once.

9. The difference between need for shelter and availability will be particularly stark this winter. For many years, the City of Berkeley, the County of Alameda, and the City of Oakland have hosted a winter shelter at the Oakland Army base. This shelter is closed now, for the first time in 10 years. It used to have 150 beds during the winter months for homeless men and women. This winter, the East Bay will have 150 fewer shelter beds than it has had for over 10 years. Evicting people from the Albany Bulb onto the streets during this season will result in people living on the streets in Albany and surrounding areas.

10. It is even more difficult to get affordable housing than it is get temporary shelter in Alameda County. The waiting lists for the few available subsidized housing programs, including Section 8 and Shelter Plus Care, are 8-10 years long. The cost of market rate rental housing in the East Bay continues to be impossibly high. According to the Out of Reach 2013 report from the National Low Income Housing Coalition, in the East Bay a low income household (earning \$26,760, 30% of the Area Median Income of \$89,200) can afford monthly rent of no more than \$669, but the Fair Market Rent for a two bedroom unit is \$1,361.

11. To get into what little affordable housing exists is nearly impossible for a chronically homeless person to do alone; there must be a knowledgeable caseworker or advocate involved.

12. To get housing, the person must have a demonstrable income. To get SSI disability benefits for people without a recent work history can take as little as three months and as long as 3 years. SSI decisions are based on medical evidence of disability. If someone has not been in consistent care over the years, establishing disability can be challenging. Almost all of the chronically homeless people who apply for benefits are eventually approved if they have access to an attorney or advocate to help them with the process. But, it still takes at least one year on average for SSI claims to be approved.

13. Every other Bay Area city of which I am aware has done more to work to solving this housing crisis than Albany has. In the 42 years that I have worked in homeless services, the City of Albany has not participated in any of the activities that would result in housing for low-income and homeless people in Albany. These activities include attending continuum of care meetings, submitting proposals for funding to HUD through the annual process, or other funders for shelter or housing, contracting agreements with service providers to assist homeless people, or planning or zoning for affordable housing in Albany.

14. For the past twenty or more years, there have been homeless people living at the Albany Bulb and on the streets of Albany. I know this firsthand, because BOSS served them and because I have often visited the Albany Bulb.

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15. After the 1999 eviction, Albany did nothing to improve housing opportunities for very low-income people in the City. Over time, people moved to the Albany Bulb again. Albany police and Berkeley police have actually sent people there when there were no shelter beds available.

16. The current allocation of \$30,000 for the Berkeley Food and Housing Project is not enough money to ensure that any homeless person at the Albany Bulb gets into housing. The Berkeley Emergency Food and Housing Project is consistently successful in getting people into housing when there are adequate resources to do so. I do not know of anyone who is familiar with homeless services who would say that \$30,000 is enough to provide even shelter for 64 homeless people.

17. Each year for the past several years, the County of Alameda has received over \$20 million in funding from HUD for housing and homeless services. The vast majority of this money is allocated for continued funding for existing programs and services. A small amount actually increases the housing for homeless people. HUD asks jurisdictions to prioritize a housing project during each funding cycle. In the last funding cycle, the priority project resulted in an increase of 14 housing subsidies, 4 of which are intended for people in Berkeley. The pace of adding subsidies and housing is very slow.

18. BOSS provides shallow and temporary rental subsidies to clients for a set period so that they can afford market rate rent on apartments. These subsidies work only when there is a chance that the client could actually afford to pay market rent after the subsidy is terminated. Because most of the Albany Bulb residents are disabled and or have no income, these shallow and temporary subsidies are not effective long-term.

19. If the City of Albany is serious about relocating Albany Bulb residents, they need to give the process of finding housing for people at least one year.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of September, 2013.


boona cheema

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CASE NO.

013-5270

DECLARATION OF EDWARD CHOATE III

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DECLARATION OF EDWARD HOWE CHOATE III

I, Edward Howe Choate III, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless, and I reside at the Albany Bulb in Albany, California. I have staying at the Bulb for about five or six years.

3. Before the Bulb, I was living on the streets in Berkeley. I left military service in 1996, but I had trouble finding a job and ended up living on the streets in 1999.

4. I have serious mental illness. I suffer from post-traumatic stress disorder (PTSD) and was diagnosed in 2000. I experience trouble focusing which prevents me from working. I also experience mood swings, and have trouble dealing with changes and instability. I also suffer from major depression.

5. I do not receive any government benefits. I earn approximately \$100 a month from recycling.

6. To successfully manage my PTSD and avoid triggers, I need to live in a therapeutic and loving community. I feel secure and safe at the Bulb, and I have a sense of privacy. I have a place to keep personal items, rather than having to worry about someone taking them.

7. If I had to leave the Bulb, I would lose the sense of security that I have here and this would likely exacerbate my PTSD and depression.

8. I have been stopped by the Albany Police approximately five times when I was trying to return to the Bulb after 10 p.m. About six months ago, I was walking near Buchanan Street on my way back to the Bulb at night, and the Albany Police stopped me.

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When I told them that I was staying at the Bulb, they told me that I should go back to the Bulb.

9. Because I have PTSD, I cannot be around people that I do not know. I get very nervous and uncomfortable. I would not be able to stay in the dormitory trailers because it would give me too much anxiety.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 22nd day of October, 2013 at Albany, California.

By: Edward Howe Choate III

Edward Howe Choate III

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25 Defendants.
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CASE NO. 013-5270

DECLARATION OF DANIELLE EVANS

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DECLARATION OF DANIELLE LANEÉ EVANS

I, Danielle Laneé Evans, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at The Bulb in Albany California. I have resided at The Bulb for the past fifteen months. The Bulb is my home; when I am at The Bulb I want to stay at “home” and when I am away from The Bulb I want to go “home.”

3. I am from Santa Rosa and lived in Berkeley prior to coming to The Bulb. I lived with my partner and his mother. When his mother had a hip replacement and moved into a new home, however, we had to leave the home. We could not afford housing and had very little income, so we had no choice but to live at the Bulb.

4. Our place in The Bulb began as a “tent” but very soon grew into a “home.” At first, I was not accustomed to the new living situation. I was used to indoor plumbing and the amenities of living indoors. We made a little kitchen and slowly began creating a habitable home, insulating it for the winter, making it as rainproof as possible, and adding rooms to make it comfortable and warm. Now, my partner and I – along with our cat, Sugar Ray – have a spacious, warm home that not only meets our daily needs but provides us with security, peace of mind, and a degree of wellness and happiness that I never expected.

5. I live in structure made of wood and cement slabs. It is my home. If forced to leave the Bulb, I would not want to abandon my shelter. In my shelter I have two

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2 generators, two solar panels, electrical equipment, a couch, table and chairs, two futons, a
3 queen-size bed, and tools.

4 6. Two years ago I stayed in a women's shelter for thirty days. Based on that
5 experience, I know that I would not be able to stay in the dormitory trailers. I cannot be
6 around lots of people all the time because it gives me anxiety. I sweat, shake, pace, and
7 breathe hard. It gives me panic attacks. I had panic attacks when I lived in the shelters.

8 7. In my home I am able to have privacy and my own space, which helps me
9 cope with my anxiety. In the trailers I would have no private space. I know from last time I
10 stayed in a dormitory-style shelter that I would not be able to function.

11 8. To make ends meet, my partner and I receive food from churches three
12 days a week. I also receive \$147 from the Alameda General Assistance fund and \$200 in
13 food stamps per month. I have applied for SSI, though it has taken years. I applied a long
14 time ago, but I was denied because I was told I needed a second doctor to verify my health
15 issues. I finally worked with an attorney at HAC to get all the necessary paperwork in. My
16 application is pending.

17 9. The home we have created at The Bulb enables me to be healthy. I am
18 bipolar and have been diagnosed with depression. I also have anxiety. It is and has been
19 difficult for me to interact with the outside world, which fills me with all sorts of anxieties
20 and stress. I feel like others are judging me negatively when I am outside in the
21 surrounding communities. I am much more secure, stable, and healthy now that I live at
22 The Bulb. The fact that I have not just a home but a sanctuary gives me the strength to
23 function well when I do need to leave the Bulb. Knowing I can come back here makes me
24 okay.
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2 10. I feel myself growing as a person because of that stability. I have found art
3 and have begun to express myself through painting. I do not take life for granted, I am less
4 quick to judge others around me, and I have come to more greatly appreciate the living
5 world around me. I have fallen in love with the sound of water and the sights of sunsets
6 and know and wonder at the various sounds of life around me. Those sounds get me to
7 sleep every night. In this place I am able to better express my emotional life.

8 11. Living at The Bulb has also improved my relationship with my partner.
9 He, too, is more appreciative of the little things, and we have been brought together by
10 creating this sacred space for each other.

11 12. The others at The Bulb – the community of people living here – are also a
12 wonderful gift. We are like family out here. We support each other. We protect each other.
13 We fix the things that need fixing for each other and help out in whatever ways we can.

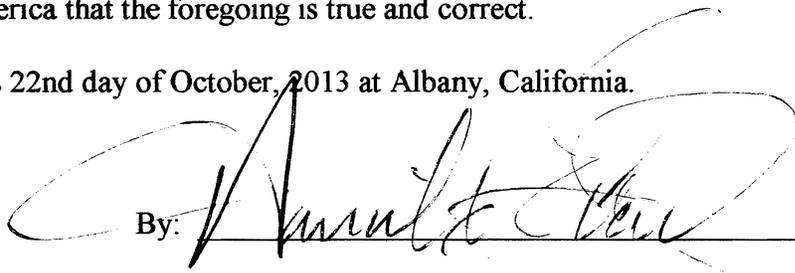
14 13. The past few months have been difficult at The Bulb. For one, the park
15 police are beginning to enforce a curfew, which is very stressful. If my partner and I are
16 out running errands, we are very careful and worried about making it back to The Bulb
17 before ten o'clock. Berkeley Food and Housing has been around lately, too, but they have
18 not done much of anything. Berkeley Food and Housing does not seem reliable. People
19 passed out flyers about housing but did not do much more than that. One person came by
20 our home to speak with my significant other and did not know who I was. I introduced
21 myself and the person said he would come back to take my information and give me
22 details about their work, but that person never came back. Another time, I saw Berkeley
23 Food and Housing people sitting in their truck, not doing much of anything. They have not
24 struck me as professional, and I have only seen them three times, even though I am almost
25 always around The Bulb.

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14. I have a hard time thinking about what would happen if we were kicked out of The Bulb. It makes me more depressed. I feel that I am living in a bad dream, hoping that I wake up able to continue living and thriving in the home we have created for ourselves.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 22nd day of October, 2013 at Albany, California.

By: 

Danielle Laneé Evans

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27 CASE NO. 013-5270
28

DECLARATION OF DR. LESLEIGH
FRANKLIN

DECLARATION OF DR. LESLEIGH FRANKLIN
CASE NO.

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DECLARATION OF LESLEIGH FRANKLIN, PH.D.

I, Dr. Lesleigh Franklin, declare that:

1. I make this declaration based on personal knowledge and if called as an expert witness could testify competently to the matters stated herein.

2. I have been a licensed clinical psychologist in the State of California since 2002. I was awarded a Ph.D. in Clinical Psychology from the California School of Professional Psychology in 1996.

3. I am an Associate Professor of Counseling Psychology at the American School of Professional Psychology where I teach in the Forensic Psychology Doctoral Program. I also work as a consultant and Expert Witness in the Bay area, along with directing the East Bay Family Institute.

4. I am the CEO of East Bay Family Institute, a private practice which I started in 2009. I am responsible for the supervision of 3 registered psychologists and one Marriage and Family Therapist. The practice is a multicultural, multilingual organization that specializes in working with disenfranchised populations, especially in terms of providing psychological and neuropsychological assessments. We also provide individual, group and family psychotherapy with an emphasis on complex trauma, mood disorders, substance abuse, domestic violence, immigration, play therapy, and family therapy. www.eastbayfamilyinstitute.com.

5. Three of my staff and I have been working with the homeless population in both Alameda and San Francisco County for the last 10 years. I have been providing psychological assessments for the Social Security, Worker's Compensation, San Francisco County Project Homelessness, and Alameda County ACCESS program. I have also provided both psychological and neuropsychological assessments and Expert Witness

1 Testimony for the Santa Clara, Sutter, San Francisco, and Alameda County Public
2 Defenders' offices, as well as the Placer County Indigent Program.

3
4 6. Attorneys and advocates from the Homeless Action Center refer clients to
5 my practice for evaluations to assess their eligibility for Social Security disability benefits
6 and Medicaid health insurance. The evaluations include a review of psychiatric medical
7 records, clinical interview and full battery of psychological testing.

8 7. In the last year, I have evaluated four current residents of the Albany Bulb:
9 Jermaine Coleman, Glen Bachelder, Danielle Evans, and Stephanie Ringstad.

10 8. A communal shelter-like environment would be inaccessible for Mr.
11 Coleman, Mr. Bachelder, Ms. Evans, and Ms. Ringstad due to their disabling
12 psychological conditions.

13 9. On September 4, 2013, I evaluated Mr. Coleman with the help of a
14 certified psychological examiner in my practice, Elizabeth Walser. Mr. Coleman is
15 suffering from Major Depressive Disorder and Antisocial Personality Traits. His
16 symptoms include sleep disturbance, irritability, aggressive outbursts, and paranoia. Mr.
17 Coleman's coping strategy is to isolate himself from nearly everyone. To facilitate this
18 strategy he has reversed his sleeping schedule essentially making himself nocturnal. Mr.
19 Coleman's sleeping habits and need to isolate himself would make it impossible for him to
20 stay in a shelter-like environment. A communal shelter environment where Mr. Coleman
21 would be forced to interact with others would cause him to decompensate. His
22 decompensation may lead to aggressive and violent outbursts as it has in the past.

23 10. On October 4, 2013, I evaluated Mr. Bachelder with the help of certified
24 psychological examiner Dionne Childs. Mr. Bachelder's diagnoses include Unspecified
25 Anxiety Disorder and Attention-Deficit Hyperactivity Disorder. I also concluded that

1 Major Depressive Disorder needed to be ruled out. His symptoms of anxiety include
2 apprehensiveness, hypervigilance, and anxiety attacks. These symptoms would likely be
3 exacerbated in a shelter-like environment making it difficult for Mr. Bachelder to remain
4 there for any more than minimal length of time. Mr. Bachelder also exhibits relational
5 problems sometimes making it difficult for him to interact with authority figures and
6 others. These relational problems may lead to difficulty interacting with other residents
7 and especially staff operating the shelter.
8

9 11. I evaluated Ms. Evans with the help of Ms. Walser on October 31, 2013.
10 Ms. Evans has a significant history of trauma. I diagnosed with Posttraumatic Stress
11 Disorder (PTSD) and Major Depressive Disorder. Ms. Evans' symptoms of PTSD include
12 recurrent and intrusive recollections of traumatic experiences, persistent avoidance of
13 stimuli reminding her of traumatic experiences, hypervigilance, and sleep disturbance. Her
14 symptoms of depression include irritability, sleep disturbance, and social isolation. It
15 would be impossible for Ms. Evans to stay in a group shelter, as it would cause her to
16 decompensate. Being around groups of people is just one of the stimuli that causes her to
17 reexperience past trauma. By way of example, Ms. Evans reported that while she was
18 briefly incarcerated at Santa Rita Jail, she needed to be heavily medicated with
19 psychotropic drugs to obtain any sleep.

20 12. Finally, I evaluated Stephanie Ringstad with the help of Ms. Walser on
21 November 1, 2013. Ms. Ringstad is suffering from Major Depressive Disorder. She has a
22 history of trauma and experiences symptoms of anxiety. One prominent anxiety symptoms
23 is severe and recurrent panic attacks. Ms. Ringstad would have significant difficulty
24 staying in a shelter-like environment due to her symptoms of depression and anxiety. Her
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need to isolate herself to cope with these symptoms would be impossible in a communal shelter environment.

13. Chronically homeless people, like Mr. Coleman, Mr. Bachelder, Ms. Evans, and Ms. Ringstad, are disabled at a higher rate than the general homeless population and at eight times the rate of the general population. The U.S. Department of Housing and Urban Development believes 75% of people who have been homeless for longer than one year to have one or more disabling conditions

14. Severe mental illness frequently leads to problems in homeless shelter environments. Individuals experiencing depression, anxiety, paranoia, delusions, perceptual disturbances, and personality disorders often have difficulty being in close proximity to others, enclosed environments, and complying with a rigid schedule. Communal shelters do not offer the stability necessary to prevent exacerbation of symptoms and often result in decompensation. Such environments frequently trigger individuals suffering from severe mental illness.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 4th day of November, 2013 at Oakland, California.

By:  _____
LESLEIGH FRANKLIN, PH.D.

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ORIGINAL
FILED
NOV 13 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 **C13-5270**

CRB

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

CASE NO. **DECLARATION OF PHILIP WILLIAM LEWIS**

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
26
27
28

DECLARATION OF PHILLIP WILLIAM LEWIS

1
2 1. I make this declaration based on personal knowledge and if called as a
3 witness could testify competently to the matters stated herein.

4 2. I am currently homeless and reside at The Bulb in Albany California. I
5 have resided at The Bulb since around 2005.

6 3. I am military veteran and served in the National Guard from 1987 to 1988.

7 4. Around 2005 a resident of the Bulb suggested myself and my girlfriend
8 move here.

9 5. We had been living at People's Park, but I was concerned for our safety
10 there and it is noisy there.

11 6. I feel like the people on the Bulb are my family. This is a safe place for me
12 to live and it's really important to me I live in a safe place. Hard to imagine somewhere
13 other than here where I have the space and time to do what I want. You have some privacy
14 here. I think of the Bulb as home.

15 7. I live with my partner, Amber Whitson, in a structure I put together with
16 materials that I found or scavenged. We keep all of my property there including important
17 documents, my computer, tools and clothing. I built walls from rocks and boulders as well
18 as tree branches. It has a roof as well. I consider it my home and I would want to take it
19 with me if I have to leave. It is the only place I have to live. Amber Whitson's declaration
20 contains a description of some of our possessions. Attached to her declaration is a
21 photograph of our home.

22 8. I have heard about the proposed portable trailers that the City wants to
23 bring here. I would sleep on the street with my dog and my partner before I would sleep in
24 a portable on bunk beds with people I don't necessarily know.

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9. I have some prior trauma that makes it hard for me to be around a lot of people I don't know in an enclosed space. I am nervous around people I don't know and living in a trailer with a bunch of people and security guard outside. I have been harassed by the police and I am paranoid about being watched and observed all the time.

10. I currently receive around \$150 in GA benefits and \$200 in food stamps I have recently been approved for SSI, and received a partial payment for last month. I should begin receiving regular payments in October.

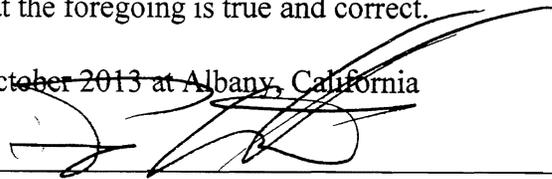
11. I have been diagnosed with schizoid personality disorder. I suffer from major depression. I have difficulties maintaining social functioning and need to have extremely limited participation in social situations. I have insomnia. I have left ankle and midfoot arthritis. My Global Assessment of Functioning Score has been tested at 35 and 40. I went to treatment for depression for a while and I have learned that I need to manage stressful situations if I want to remain stable.

12. I have a cat and a dog and I am concerned about having to give them up to find housing.

13. I have avoided Berkeley Found and Housing because I hear they put people in bad places. If they got me in to a place somewhere safe I would go. I need a housing subsidy to be able to afford housing long-term.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 22nd day of October 2013 at Albany, California

By: 

Philip William Lewis

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OAKLAND

13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
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21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
26

CASE NO. **013-5270**

**DECLARATION OF MARC GORDON
MATTONEN**

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DECLARATION of MARC GORDON MATTONEN

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at my shelter at The Bulb in Albany California. I have resided at the Bulb on and off since 1993.

3. I have resided at the Bulb for the majority of 20 years.

4. Albany police told me then that it was alright for me to live at the Bulb, so I started living here. When I came to the Bulb, I began improving the land and cleaning it up. I also removed rebar from the land at the Bulb. I choose to live at the Bulb because it is my home. I am not going to leave the Bulb unless I have a place to go. I do not want to live in a doorway on the streets.

5. I was directed to come to the Bulb by the Albany police a number of times. The first time was 18 years ago by Albany police. About 14 years ago in 1999, there were homeless evictions at the Bulb. I came back to the Bulb after that. I know many other homeless people who were told to come to the Bulb by the police of various police departments. These police officers told people outright to come to the Bulb.

6. Before I came to the Bulb, I lived on a sailboat in the North Basin in general anchorage. While living on my sailboat, I was told to leave by the police. The police took my boat to the marina. After that, the police gave me my boat back. Then I sailed it to the Bulb. My boat sank while I had it docked at the Bulb. I have been living at the Bulb since then.

7. I have received many benefits from residing at the Bulb. When I extracted metal rebar from the ground at the Bulb, I recycled it for money. While living at the Bulb, I learned about the animals that live at the Bulb and their relationships with the world. I

1 learned the differences between homeless people and the rest of society. I value the
2 freedom I have from certain responsibilities that distract people from other things that are
3 important. I also learned different psychological viewpoints of the world. My residing at
4 the Bulb has given me a place to live that I built myself. I have worked hard on my home
5 at the Bulb and made the land better. More than 95% of the rebar that was in the land at the
6 Bulb has been removed by me and other people who live at the Bulb.
7

8 8. The Albany police know that there are homeless people living at the Bulb..
9 While living at the Bulb, I built a cement castle on the land at the Bulb. I built the castle 16
10 years ago, and it took 8 years to finish it completely. My castle was built out of cement
11 slabs that were salvaged from damaged freeway cement pallets. I mixed the cement with
12 gravel from the beach. The castle was tested seismically, and it was sound. I maintain it
13 and repair it. The castle attracts a lot of attention.

14 9. I live on the Bulb in a tent. It is my home. I sleep on a futon mattress and I
15 also have a chair. I have a bicycle and a trailer. I have a sledge hammer and an axe that I
16 use to mine metal and rebar that is deposited on the Bulb and other locations. I recycle the
17 metal and that is how I earn money. I have made from \$200 to \$800 a month recycling. If I
18 lost these tools, I would have no other source of income. I have been searching for other
19 jobs on craigslist, but have not found anything yet.

20 10. I have never received help from anyone to find housing or short-term
21 shelter, but I would like help to find housing if I am going to be evicted from the Bulb.

22 11. I have a disability. I was involved in a bicycle accident and severely
23 injured my right clavicle. I need an operation to repair it, but I am afraid to get this
24 operation. I am afraid of going to Highland Hospital because I have had a bad experience
25 there. Also, the operation would cost about \$400 and I do not have the money to pay for it.

1 Because of my injury, when I use the sledgehammer or axe to work, it hurts a lot. I cannot
2 work for very long because it hurts so much.

3
4 12. I have had no public benefits or government assistance since I have been
5 living at the Bulb. Before I began living at the Bulb, I had General Assistance for about
6 four months. I have never received any assistance from the Berkeley Food and Housing
7 Project. I have been searching for housing but have not found anything. It is hard for me to
8 find a place because I do not have a job yet, and my income fluctuates from month to
9 month.

10 13. About a year ago, the Park and Recreational officials told me not to come
11 to the Bulb after 10pm once, but they let me pass. I was ticketed once 12 years ago for
12 riding my bicycle on the trail at the Bulb after 10pm, but I didn't have to pay the ticket.

13 14. On the night of October 14, 2013, just after 10pm, I was in Larry
14 Cabrera's tent when I saw flashlights outside. Someone called out to him, identified
15 himself as an Albany police officer, and told Larry to come out. Larry complied. The
16 officer then asked if anyone else was inside. I said that I was, and he told me to come out,
17 too. I also complied. When I came out, I saw Officer Willis and two other Albany Police
18 officers. They said they were "serving notice" that we were in violation of a 10pm-5am
19 curfew and that this would be our only warning. They handed out little pieces of paper
20 about the curfew and said that the next time they came out and saw us on the Bulb after
21 10pm, they would cite us. They said that after a couple of citations, they would take us to
22 jail.

23 15. I need solitude and privacy for my mental and emotional stability, which I
24 would not have in the dormitory trailers. It would feel to me like being in a concentration
25 camp or detention center, and I would feel very uncomfortable there. They have a curfew

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and it would be closed during the day, so I would have no home during the day and would not be able to leave at night if I wanted to go outside and be by myself for a while. I would rather sleep on the street or a warehouse somewhere than stay in the trailers. I also do not know what I would do once the trailers are no longer available. Ultimately, if I must leave the Bulb, I would like to find housing.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 29^h day of October, 2013 at Albany, California.

By: *Marc Mattonen*
Marc Gordon Mattonen

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ROBERT WHARTON; APRIL ANTHONY;
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STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
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21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
26
27
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CASE NO.

013-5270

DECLARATION OF PATRICIA MOORE

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DECLARATION OF PATRICIA MOORE

I, Patricia Moore, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am 56 years old. I am currently homeless and reside at the Bulb in Albany California. Photographs of me in my home are attached as Exhibit A.

3. In November of 2009, my husband and our seventeen-year old son were killed in a boat wreck. At the time, we were living on a sailboat in Half Moon Bay, and my husband was supporting our family through his disability payment from serving in Vietnam as a Marine. My husband and my son went to Santa Barbara to get a bigger boat. On their way home, the boat wrecked and both were killed. I could not afford the \$1175 cremation fee. After the wreck, I stayed with a friend who was able to support me temporarily, but because of limited space and resources, I had to move out to People's Park.

4. Before coming to the Bulb I was homeless in Berkeley, living around People's Park and sleeping on the sidewalk. Friends told me about the Bulb and suggested I come and live there. I have resided at the Bulb since June 28, 2010 except for two months when I was in the hospital and then a skilled nursing facility because of injuries sustained in a bicycle accident. I returned to the Bulb in September after being discharged from the skilled nursing facility.

5. When I arrived at the Bulb, the existing residents welcomed me into their community. I chose a spot to live, cleaned it up, and landscaped it with my own hands.

6. I built the place where I live. It is a shelter with walls that are made from pallets and lumber, covered with tarps and clear plastic. The roof is covered with a tarp.

1 The floor is the ground covered with rugs. I made it all myself except that I had help with
2 the four corner posts and the trusses. It is my home. In it I keep my possessions, including
3 my clothing, a bed and a couch, a metal shelf, and a chandelier which I place candles. I
4 have a propane stove with an oven. I also have tools I use to fix things including
5 wrenches, ratchets, sockets, and channel locks. I have a bicycle and bicycle trailer. I have
6 lived in my home since 2010. I know of nowhere else to go where I could find shelter.
7

8 7. Even if I am evicted from the Bulb, and forced to live somewhere else, I
9 will not abandon my personal possessions or the shelter I built. If I could, I would like to
10 take my shelter down and rebuild it somewhere else.

11 8. I feel my mental health and well-being are dependent on having my dogs,
12 Princess, Rotti-Bear, and Ebony with me. They sleep with me at night, one by each arm
13 and one by my legs. I got Rotti-Bear after my husband and son were killed, and that dog is
14 very important to me.

15 9. Having my privacy and my own personal space is very important to me. In
16 my home, I can close the door and be by myself.

17 10. I would not go into the portable shelters the City of Albany is talking
18 about bringing in even if I didn't have any other place to stay. It would be psychologically
19 impossible and harmful for me. I would feel like I was in jail and that I was on display.
20 Because of my physical disabilities I don't think I could survive in the portable shelters.
21 Also I would not be able to have my dogs with me. I would not put them in a kennel. I
22 need to be with them, and I don't think they would do well cooped up in a cage.

23 11. I have had very bad experiences of being institutionalized. I grew up in
24 institutions. When I was six, I was put into a foster home. When I was eight, I was placed
25 in a convent for a year, before I was expelled. Then I went to 5 Acres, a children's home in

1 Altadena for three years. When I was 13, I was put in a mental hospital for a year. They
2 gave me 1200 mg of Thorazine every day. It was an incredibly traumatic experience. After
3 that, I spent time in Juvenile Hall and a girls' ranch in Angora. It is because of these
4 experiences, that I cannot go into Albany's portable shelters.

5
6 12. I tried to get into housing, and put my name on waiting lists in many
7 places, but the waiting lists were much too long. I was told it would take 2 to 5 years
8 before my name came up, and was told not to expect a call for at least a year.

9 13. I currently receive SSDI (Social Security Disability Income) of \$1028.00;
10 \$100 is taken out of that for Medicare.

11 14. I worked for many years as a physical therapist until I got a shoulder
12 injury and then carpal tunnel. I had surgery for the carpal tunnel that didn't work out and
13 now I have limitations on the use of my hands. I have degenerative arthritis and my knees
14 are bad. The ligaments in my left knee are loose and cartilage is deteriorating. I was hit by
15 a car while riding my bike on July 8, 2013. My leg was impaled by the pedal on the bike
16 and I got an infection in the wound.

17 15. I would like to get help with housing.

18 16. If I were evicted this October, I would have nowhere to go. I would have
19 to sleep in the streets. At the Bulb I have a tent shelter that keeps me warm. Because of
20 my physical disabilities, it would be extremely difficult for me to live on the street or in a
21 communal shelter. I would have to be moving from place to place with all of my personal
22 belongings, and I already have serious difficulties walking on my own, when I am not
23 carrying anything with me. It would be difficult for me to continue receiving medical
24 services because my living situation would be so unstable. Because of my age and because
25 I am a woman, I would feel very vulnerable living on the street.

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

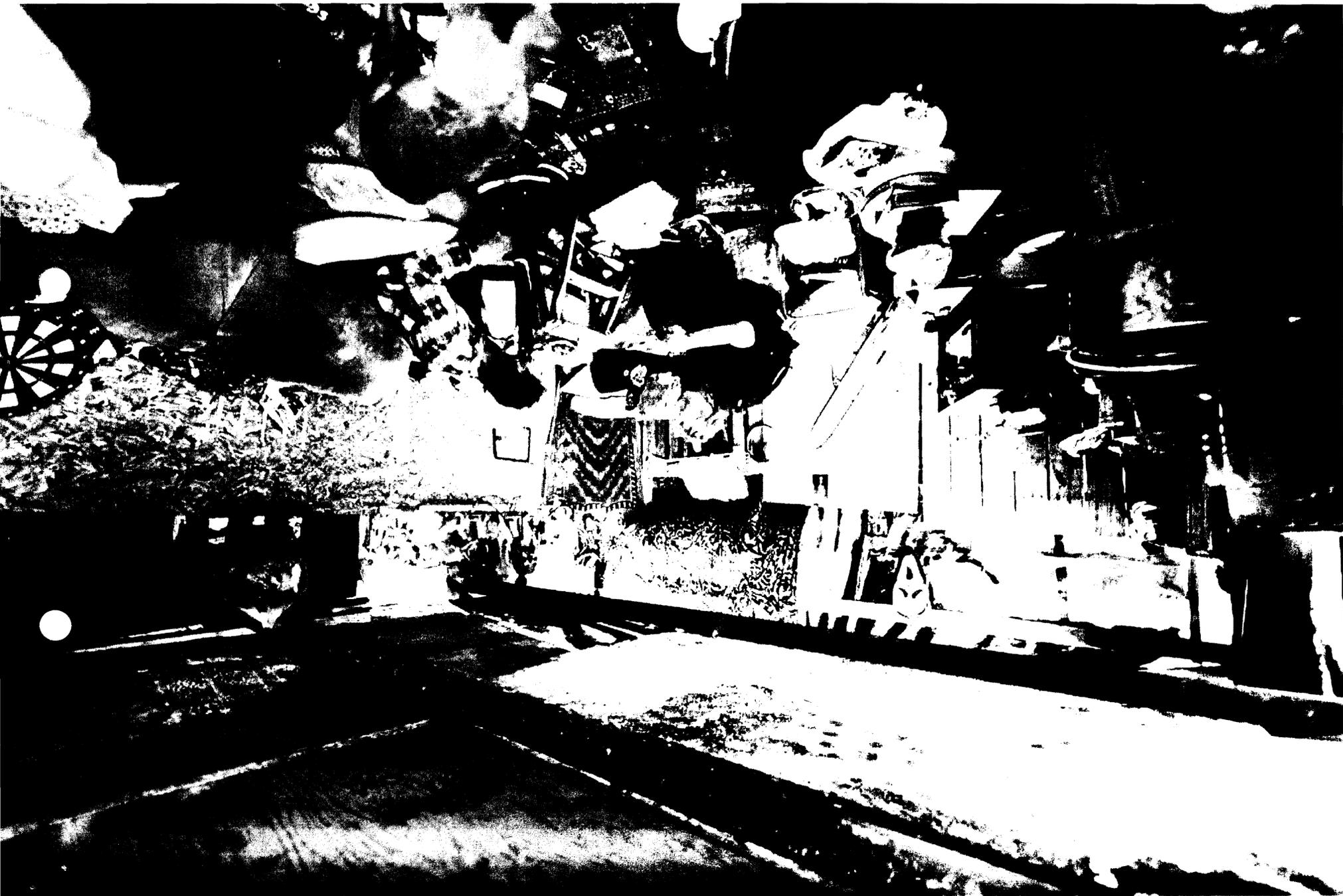
Executed this 21st day of October, 2013 at Albany, California.

By: Patricia Moore
Patricia Moore









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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
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CASE NO. **013-5270** CRB
DECLARATION OF OSHA NEUMANN

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DECLARATION OF OSHA NEUMANN

I, Osha Neumann, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am an attorney licensed to practice law in the state of California and in the United States District Court of the Northern District of California and the Ninth Circuit.

3. Attached hereto as Exhibit A is the text of a letter I sent on September 22, 2007, via fax and e-mail, to Albany Mayor, Robert S. Lieber; Beth Pollard, Albany City Administrator; Albany City Attorney; Robert Zweben, and Albany Police Chief Michael McQuiston. In the letter I state that on the previous day Albany city officials were out at the Bulb and announced that on Monday, the 24th, they would begin evicting people who had been living there. Police had previously passed out notices to some of the people warning that they were in violation of Albany's Municipal Code section 8-4.4 prohibiting "camping." I am informed and believe and thereon allege that what I stated in that letter was true.

4. I am informed and believe and thereon allege that upon the receipt of this letter, efforts to enforce the camping ordinance ceased.

5. Attached hereto as Exhibit B is the text of the letter sent on August 5, 2008, to Albany City Attorney, Robert Zweben, from the East Bay Community Law Center, the Homeless Action Center, and Disability Rights Advocates

6. Attached hereto as Exhibit C is a true copy of a letter dated October 27, 2008, sent by Albany Police Chief McQuiston to the clerk of the traffic division of the Alameda County Superior Court, asking the court to dismiss citations issued to people on the Bulb, "in the interest of justice." It shows that citations were issued to current Bulb

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residents Alexander Wilson (a plaintiff in this case), Glenn Bachelder, Chester Hill, and
Marc Mattionen.

I declare under penalty of perjury under the laws of the State of California and the
United States of America that the foregoing is true and correct.

Executed this 11th day of November, 2013 at Berkeley, California.



By: Osha Neumann