

1 BRADLEY S. PHILLIPS (SBN 85263)
 brad.phillips@mto.com
 2 MUNGER, TOLLES & OLSON LLP
 355 South Grand Avenue, 35th Floor
 3 Los Angeles, California 90071-1560
 Telephone: (213) 683-9100
 4 Facsimile: (213) 687-3702

5 MARK D. ROSENBAUM (SBN 59940)
 mrosenbaum@publiccounsel.org
 6 GARY BLASI (SBN 70190)
 gblasi@publiccounsel.org
 7 CHRISTINA GIORGIO (SBN 203061)
 cgiorgio@publiccounsel.org
 8 ALISA HARTZ (SBN 285141)
 ahartz@publiccounsel.org
 9 AZADEH M. HOSSEINIAN (SBN 306141)
 ahosseinian@publiccounsel.org
 10 PUBLIC COUNSEL LAW CENTER
 610 S. Ardmore Avenue
 11 Los Angeles, California 90005
 Telephone: (213) 385-2977
 12 Facsimile: (213) 385-9089

13 JOHN B. MAJOR (SBN 306416)
 john.major@mto.com
 14 MUNGER, TOLLES & OLSON LLP
 560 Mission Street, 27th Floor
 15 San Francisco, California 94105-2907
 Telephone: (415) 512-4000
 16 Facsimile: (415) 512-4077

17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
 20

21 KELLY ANN ALLEN, ROBERT
 22 BELL, JR., SETH CROY, VERONICA
 DELGADO, JANE DOE,* JAMES
 23 MORGAN, CARMEN NUNEZ,
 STEVEN WAYNE O'DONNELL,
 24 ROBERT RICO, JOHN ROE,
 TOMMY SINGLETON, JAMES
 25 SPRY, KELLEY WILCOX, JULIE
 WILLIAMS, & NORTH TOWNE
 26 CHRISTIAN CHURCH,

Case No. 16-cv-01859

CLASS ACTION

**COMPLAINT: CIVIL RIGHTS
 42 U.S.C. § 1983**

**UNITED STATES CONSTITUTION,
 FOURTH, FIFTH & FOURTEENTH
 AMENDMENTS**

27 _____
 * Two Plaintiffs, Jane Doe and John Roe, are referred to under pseudonyms to
 28 protect their privacy.

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

Plaintiffs,
vs.
CITY OF POMONA,
Defendant.

**CALIFORNIA CONSTITUTION
ARTICLE I, §§ 7, 13 & 17**
**CALIFORNIA CIVIL CODE §§ 52,
52.1 & 2080**
CONVERSION
TRESPASS TO CHATTELS
DEMAND FOR JURY TRIAL

1 Plaintiffs Kelly Ann Allen, Robert Bell, Jr., Seth Croy, Veronica Delgado,
2 Jane Doe, James Morgan, Carmen Nunez, Steven Wayne O'Donnell, Robert Rico,
3 John Roe, Tommy Singleton, James Spry, Kelley Wilcox, and Julie Williams
4 ("Plaintiffs"), on behalf of themselves and all others similarly situated, along with
5 North Towne Christian Church, bring this action against the City of Pomona ("the
6 City" or "Defendant").

7 **INTRODUCTION**

8 1. This lawsuit challenges the City's policy and practice of seizing and
9 destroying homeless persons' property, without notice and over the objections of the
10 property owner. By undertaking this practice, the City has permanently deprived
11 Plaintiffs of many of their most essential belongings, including Electronic Benefits
12 Transfer ("EBT") cards, which contain food stamps and General Relief funds;
13 medication to control active symptoms of Human Immunodeficiency Virus ("HIV"),
14 high blood pressure, and other serious medical conditions; tents, tarps, and blankets;
15 state-issued identification cards, birth certificates, and Social Security cards;
16 precious photographs of family members; and even, in two cases, the ashes of
17 deceased parents.

18 2. By confiscating and destroying the property of homeless people, the
19 City leaves an already vulnerable group in grave and immediate danger. The City
20 deprives homeless individuals of the few precious and critical possessions they own
21 and forces them to live for days or weeks after the confiscations without medication,
22 tents, sufficient food, and essential hygiene items. The City's practice has exposed
23 Plaintiffs to cold nights, hunger, increased pain and suffering, severe mental
24 distress, and loss of dignity. After each confiscation, a homeless person must
25 expend her miniscule income and her emotional resources, which are already taxed
26 by life on the streets, on getting back to where she was before the City took and
27 destroyed her property. Far from assisting homeless individuals in escaping the
28

1 cycle of homelessness, the City all but guarantees a vicious circle that can only be
2 broken against the steepest of odds.

3 3. The possessions being seized pose no health or safety risks to the
4 community. On information and belief, the confiscations appear to be part of a
5 deliberate strategy to expel homeless residents from Pomona, given their frequency,
6 the nature of the items seized, and the openness and hostility with which they are
7 conducted.

8 4. This practice is not only inhumane and bad social policy; it is also a
9 blatant violation of Plaintiffs’ well-established constitutional and statutory rights. In
10 *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1033 (9th Cir. 2012), the Ninth Circuit
11 made clear that the government may not “seize and destroy with impunity the
12 worldly possessions of a vulnerable group in our society.” The City’s policy and
13 practice of noticeless seizure and destruction of property leads to just that result.
14 Plaintiffs here sue on behalf of themselves and all similarly situated homeless
15 residents of the City of Pomona. They ask the Court to stop the City from
16 confiscating and destroying their property and to force the City to treat their
17 property with the respect that the Constitution and laws of California require. “If
18 the constitutional conception of ‘equal protection of the laws’ means anything, it
19 must at the very least mean that a bare . . . desire to harm a politically unpopular
20 group cannot constitute a legitimate governmental interest.” *U. S. Dep’t of Agric. v.*
21 *Moreno*, 413 U.S. 528, 534 (1973).

22 **JURISDICTION**

23 5. This Court has subject matter jurisdiction over this case pursuant to
24 28 U.S.C. §§ 1331 and 1343 because it arises under the Constitution and laws of the
25 United States and because it is brought pursuant to 42 U.S.C. § 1983. The Court has
26 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C.
27 § 1367.

28

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

VENUE AND INTRADISTRICT ASSIGNMENT

6. Venue is proper in the Central District because all of the events and conduct complained of in this action occurred in the Central District. 28 U.S.C. § 1391(b)(2).

7. This lawsuit should be assigned to the Western Division of this Court because the events and conduct complained of in this action occurred in Los Angeles County, all Plaintiffs reside or are located in Los Angeles County, and Defendant City of Pomona is located in Los Angeles County.

PARTIES

Plaintiffs:

8. Plaintiffs are fourteen homeless individuals living in the City of Pomona who have had their personal possessions confiscated and destroyed by City employees. Plaintiffs seek to represent a class of similarly situated homeless individuals who have suffered and will continue to suffer the same type of loss as a result of the same unlawful practice and policy.

9. Plaintiff Kelly Ann Allen is a homeless resident of the City of Pomona. She has had her property seized and destroyed by Pomona police officers and Code Enforcement officials on three separate occasions, without notice and without the opportunity to retrieve her possessions. On all three occasions, she was with her property and protested in vain that police not take her things. On at least one occasion, she was told that she would be arrested and brought to jail if she tried to save more than she could carry in her arms. On another occasion, officers searched her, removed objects including a flashlight and a lighter from her pockets, and then destroyed those items. The items she has had confiscated include court papers, her birth certificate, personal letters from her grandmother, blankets, food, and clothing.

10. Plaintiff Robert Bell, Jr., is a homeless resident of the City of Pomona. He has had nearly all of his belongings confiscated and destroyed by the

1 City of Pomona, without notice or an opportunity retrieve them. Mr. Bell returned
2 to Pomona after he was released from a two-week incarceration. He went to check
3 on his mother, who is also homeless, and to collect the possessions he had left in her
4 care. Shortly after he arrived in Pomona, Code Enforcement, City police, and
5 sanitation workers rolled up and informed him and his mother that they could only
6 keep what they could carry; the rest of their property would be thrown into a
7 garbage truck. He did not have sufficient time to sort through his belongings and
8 save the most essential items. Among other important possessions, he lost essential
9 court papers, a cell phone, blankets, clothes, shoes, jewelry, toiletries, and tools to
10 practice his trade as a barber. The confiscation and destruction of his property
11 stripped him of the items he needs to survive. Further, the property destruction has
12 jeopardized his ability to comply with his parole obligations because he must spend
13 time replacing essential items such as clothing and blankets, which interferes with
14 his ability to arrive on time to his parole meetings. Also, he cannot leave Pomona
15 without this parole officer's permission, but the City's confiscations place pressure
16 on him to leave Pomona.

17 11. Plaintiff Seth Croy is a homeless resident of the City of Pomona. He
18 suffers from depression, attention-deficit disorder, and hyperactivity disorder. His
19 property has been confiscated by City officials on three separate occasions without
20 notice or an opportunity to retrieve his property. On one occasion, he was ordered
21 out from under his tarp in the pouring rain, and, despite the weather, the City
22 confiscated all that he owned, including his tarp, blankets, clothing, food, albums
23 containing photographs of his daughters, and his birth certificate.

24 12. Plaintiff Veronica Delgado is a homeless resident of the City of
25 Pomona who is diabetic and has high blood pressure. On three separate occasions
26 without notice or an opportunity for her to reclaim her possessions, City officials
27 have seized and destroyed her property. On one occasion, when Ms. Delgado asked
28 a friend to watch over her belongings, the City confiscated everything she owned,

1 including her insulin, blood pressure medication, and prescription eyeglasses. Ms.
2 Delgado could not easily replace her medication and, as a result, experienced
3 constant dizziness and vomiting. On two other occasions, the City confiscated her
4 California identification card and Social Security card, which delayed her ability to
5 apply for employment and receive General Relief payments. The City has also
6 seized and destroyed her clothes, blankets, hygiene products, and other basic
7 necessities. Despite Ms. Delgado's best efforts to improve her life, the City's
8 practices have "set her back" and put her in a position where she is "always trying to
9 catch up."

10 13. Plaintiff Jane Doe is a homeless resident of the City of Pomona. Her
11 property was seized and destroyed by City police officers without notice or an
12 opportunity to reclaim her property. City officials seized her HIV medication and
13 her inhalers, which she has been unable to replace, leaving her health in jeopardy.
14 City officials also confiscated her clothes, food, and blankets, among other
15 possessions. She is afraid to seek work because she fears that her possessions will
16 be confiscated again while she is away from them. She is referred to under a
17 pseudonym to avoid publicly revealing her HIV status.

18 14. Plaintiff James Morgan is a resident of the City of Pomona. He
19 suffers from a number of serious mental disabilities, including schizophrenia and
20 bipolar disorder. He currently lives in transitional housing but will likely be back
21 on the streets on April 5, 2016, when his housing program ends. Mr. Morgan has
22 had his property confiscated multiple times, including once in his presence and once
23 when he had stepped away to use the restroom. Among the property confiscated
24 was his medication for his schizophrenia. Being deprived of this medication caused
25 him to hear voices and have severe anxiety attacks. His California identification
26 card and his Social Security card were also confiscated, which delayed his receipt of
27 Social Security benefits. He has also had his clothing, blankets, and medical
28 paperwork confiscated, among other possessions.

1 15. Plaintiff Carmen Nunez is a homeless resident of the City of
2 Pomona. She has had her belongings confiscated and destroyed by the City police,
3 Code Enforcement officers, and sanitation workers on multiple occasions, left each
4 time with little more than the clothes on her back. Officers referred to both her and
5 her belongings as “trash.” Officers seized and destroyed Ms. Nunez’s tarp, bedding,
6 and food recently purchased with food stamps, among other important possessions.
7 Ms. Nunez’s bicycle, her sole means of transportation, was also confiscated. On
8 one occasion, she pleaded with a City police officer not to throw away the ashes of
9 her deceased mother, which she had been carrying with her for five years. Despite
10 her pleas and clear knowledge of the irreplaceable and sacred nature of the
11 possession, the City police officer tossed Ms. Nunez’s mother’s remains into a dump
12 truck, much to Ms. Nunez’s horror and heart-break.

13 16. Plaintiff Steven Wayne O’Donnell is a homeless resident of the City
14 of Pomona. During the course of 2015 and 2016, his property was confiscated on
15 three separate occasions without notice or an opportunity to retrieve his property.
16 On one occasion, Code Enforcement and police officers refused to allow Mr.
17 O’Donnell to pack and move his property, despite his request. Instead, Mr.
18 O’Donnell was arrested and, despite assurance from a police officer that his
19 property would not be confiscated, his possessions were hauled into a dump truck
20 and crushed with a trash compactor. Upon his release from custody, Mr. O’Donnell
21 did not have enough basic necessities to make it through a night on the streets. The
22 City has also confiscated Mr. O’Donnell’s clothes, bedding, hygiene products, and
23 other basic necessities.

24 17. Plaintiff Robert Rico is a homeless resident of the City of Pomona.
25 During 2015, he had his belongings confiscated in his presence by City police and
26 Code Enforcement officers without notice or an opportunity to reclaim his property.
27 The City seized and destroyed his food, personal identification, cellphone, and
28 photos of his daughter when she was born, among other vital belongings. Mr. Rico

1 also witnessed the City destroy his bicycle in its garbage truck. Police officers told
2 him that if he tried to save his belongings, they would give him a ticket and take him
3 to jail.

4 18. Plaintiff John Roe is a homeless resident of the City of Pomona who
5 suffers from post-traumatic stress disorder. He has serious injuries to his back and
6 eye, and he takes pain pills for those conditions. Mr. Roe also suffers from HIV,
7 which is symptomatic and requires medications to control. City officials confiscated
8 his belongings in his presence without notice or opportunity to retrieve them.
9 Among those belongings were his pain medications and the HIV medication,
10 causing his symptoms to worsen. Officers also confiscated his tent, clothes, blood-
11 pressure pump, medical records, and a cane. He has been unable to replace his vital
12 medications for fear that if he leaves his property unattended, the City will again
13 confiscate it. He is concerned about his physical condition from the lack of
14 medications and the effect of the stress on his blood pressure. He is referred to
15 under a pseudonym to avoid publicly revealing his HIV status.

16 19. Plaintiff Tommy Singleton is a homeless resident of the City of
17 Pomona. City police officers confiscated his belongings in his presence after
18 providing him with less than ten minutes to gather his property. He gathered as
19 much as he could, but officers still threw away many of his belongings, including
20 blood-pressure medication, pain medication, clothes, and blankets. Although he told
21 the officers that he was watching over the property of a friend, the officers seized all
22 of that property as well. Mr. Singleton was not provided an opportunity to retrieve
23 his property.

24 20. Plaintiff James Spry is a homeless resident of the City of Pomona.
25 During 2015, he had his belongings confiscated by City officials on three separate
26 occasions, always without notice and with no opportunity to retrieve his property.
27 The property confiscated included his inhaler for his asthma and the tools he uses to
28 work as a handyman, along with bedding, food, and hygiene items. In one case,

1 City officials threatened to confiscate all of his possessions unless he helped carry
2 most of his possessions to a dump truck.

3 21. Plaintiff Kelley Wilcox is a homeless resident of the City of Pomona.
4 On three occasions, her property has been confiscated by City officials without
5 notice and without opportunity to retrieve her property, twice in her presence. City
6 officials confiscated, among other things, food she had just purchased with food
7 stamps, her birth certificate, clothes, and a tent. Most devastating, officials threw
8 her mother's ashes into a dump truck with a trash compactor.

9 22. Plaintiff Julie Williams is a homeless resident of the City of Pomona.
10 Her property has been confiscated by City officials on three separate occasions
11 without notice or an opportunity to retrieve that property, twice in her presence.
12 Among the belongings confiscated were several blankets, photos of her
13 grandchildren, a tent, and her birth certificate. She was told on at least one occasion
14 that, if she tried to take anything more than what she could carry, she would be
15 arrested.

16 23. Plaintiff North Towne Christian Church is a Christian ministry
17 located in Pomona, California. As part of its ministry, it provides a number of
18 services for homeless individuals in Pomona. It provides meals to homeless persons
19 twice per week; serves as a food bank for homeless persons, collecting and
20 distributing food to homeless individuals; and serves as a blanket and clothing
21 distribution center. The seizures and confiscations of homeless persons' property
22 have affected the church's operations in a number of ways. First, the church has had
23 more homeless individuals attend its meal services, putting additional wear and tear
24 on the church's facilities. Second, the church has had to seek additional donations
25 to keep up with increased demand for blankets and clothing from the homeless
26 community. Third, the church's mission of tending to the spiritual needs of those
27 attending the church has been impaired because of the increased efforts that it has
28 been forced to expend in helping homeless individuals replace the property

1 confiscated by the City. It has been forced to divert resources from other spiritual
2 programs to serve the increased physical needs of the City of Pomona's homeless
3 population.

4 Defendant:

5 24. Defendant City of Pomona is a charter city and a municipal
6 corporation organized under the laws of the State of California. The City is a legal
7 entity with the capacity to sue and be sued. The departments of the City of Pomona
8 include the Pomona Police Department and the Pomona Department of Public
9 Works. Members of both of these departments have repeatedly seized and
10 confiscated Plaintiffs' possessions.

11 **FACTUAL ALLEGATIONS**

12 **a. Pomona's Homelessness Crisis**

13 25. The County of Los Angeles recognizes that it is in the midst of a
14 "homeless crisis."¹ Particularly in light of the El Niño weather pattern that has
15 threatened and continues to threaten significant storms this winter and spring, cities
16 in the County were encouraged to provide for their homeless population and, at a
17 minimum, take steps to assure that unsheltered people have tents, tarps, and clothing
18 to protect them from the rains and from hypothermia.²

19 26. The City of Pomona, located within Los Angeles County, has not
20 been immune to that crisis. Indeed, as of 2015, the City concluded that it has nearly
21 one thousand homeless residents, and nearly six hundred of those residents sleep on
22 the streets on a given night.

23
24 _____
25 ¹ County of Los Angeles Homeless Initiative, Draft Recommended Strategies to
26 Combat Homelessness, at 1 (January 2016), *available at* <http://goo.gl/TcoEZI>. The
segment of the County's homeless population living in tents, makeshift shelters, and
vehicles increased by 85% from 2013 to 2015. *Id.*

27 ² Inadequate El Niño Planning for County Homeless Population: An Interim Report
28 by the 2015–2016 Los Angeles County Civil Grand Jury, at 1–2, *available at*
<http://goo.gl/d7iUKn>.

1 27. Rather than provide adequate shelter and homeless services, the City
2 continues to take actions that make the homeless crisis dramatically worse. Instead
3 of taking substantive steps to address the real problem of homelessness in the City,
4 the City instead, on information and belief, has targeted the homeless community
5 with seizures of property. Despite a significant shortage of emergency shelter and
6 affordable housing, the City has made it extremely difficult for homeless service
7 providers to set up shelters.

8 28. Even more directly, instead of providing assistance to its homeless
9 residents who are often subsisting on General Relief benefits, which are a maximum
10 of \$221 per month, on food stamps, or on no public benefits, the City seizes and
11 destroys the little that they do have. The City police, Code Enforcement officers
12 (uniformed officials charged with enforcing the City's municipal code) and city
13 sanitation workers carry out the confiscations. On information and belief, the City
14 uses these confiscations to push homeless people out of the City. Indeed, the police
15 have falsely assured homeless residents that police officers would leave them and
16 their belongings alone if they moved to City's edge.

17 29. Members of the City's homeless population are vulnerable to having
18 their property confiscated because they are often forced to sleep on the street or in
19 other outdoor locations. Because they have no homes in which to store their
20 belongings, they must either carry those belongings with them or keep them
21 temporarily on City property.

22 **b. Pomona's Confiscation Practices**

23 30. Despite *Lavan*'s clear admonition that "the government may not take
24 property like a thief in the night," 693 F.3d at 1032, the City provides homeless
25 persons no prior notice that it intends to confiscate and destroy their belongings.
26 Police or Code Enforcement officers arrive on the scene and inform homeless
27 individuals that their belongings will be confiscated immediately or within a few
28 minutes. The police, Code Enforcement, and sanitation workers often arrive with

1 trailers and dump trucks, ready to confiscate and demolish the homeless persons’
2 possessions on the spot.

3 31. As was the case in *Lavan*, Plaintiffs have not abandoned the property
4 the City confiscates. In fact, here, the property owner is frequently present and
5 objects to the confiscation. At times, property owners, like the plaintiffs in *Lavan*,
6 have merely “stepped away from their personal property . . . to perform necessary
7 tasks such as showering, eating, using restrooms, or attending court.” 693 F.3d at
8 1025. Some Plaintiffs have temporarily left their property in order to use a
9 restroom, eat a warm meal at a charitable organization, or go to a pharmacy or a
10 doctor. Even when they step away from their property, they routinely ask other
11 persons to watch over it, or they leave it in a neat and orderly pile, carefully covered
12 in a tarp and hidden away, to indicate that they will be back to retrieve it later.

13 32. During the confiscations, officers will often tell homeless persons
14 that they can keep only what they can carry in their arms. Sometimes, officers do
15 not even let them keep that much. Even if the person has another means of
16 transporting the possessions, such as a bike with a basket, the police will deny that
17 person the opportunity to utilize it. If homeless persons attempt to keep more
18 property than a City officer deems permissible, the officer threatens them with arrest
19 or citation.

20 33. Given the lack of notice before confiscations, homeless individuals
21 often struggle to gather or carry away their property. This leads to extremely
22 important items being destroyed, because the City fails to give homeless persons
23 enough time to pick out their most essential property.

24 34. After police and Code Enforcement officers seize the property of
25 homeless persons, Code Enforcement typically loads some of that property into
26 pick-up trucks. Sanitation workers throw the balance of the property directly into a
27 dump truck and crush it on the spot. There is no opportunity whatsoever to retrieve
28 the property after confiscation. When homeless persons ask how they can retrieve

1 their property, the police or Code Enforcement tell them it is not an option. In one
2 case, Plaintiff Kelly Ann Allen was told by an officer that she could “go to the
3 landfill.” Another individual, William Kelly, did in fact go to the landfill to dig
4 through mounds of trash in an attempt to find a backpack containing his half-
5 completed application for Social Security Income benefits and the accompanying
6 medical paperwork. He was not able to recover it, and as a result, his benefits were
7 delayed by several months.

8 **c. The Effect of the Property Confiscations**

9 35. The property that the City of Pomona takes and destroys includes
10 some of the most valuable possessions that any person could own. For instance:

- 11 a. The City confiscated and never returned two Plaintiffs’ HIV
12 medications, leaving them at risk of increased symptoms. The
13 City also seized Plaintiff Tommy Singleton’s blood-pressure
14 medication, as well as his pain medication for a pinched nerve.
- 15 b. The City confiscated and never returned numerous Plaintiffs’
16 EBT cards, which give them access to any General Relief funds
17 and food stamps.
- 18 c. The City confiscated and never returned every Plaintiff’s vital
19 papers, including SSI applications and court papers.
- 20 d. The City took blankets and clothing from every Plaintiff.
- 21 e. The City trashed sacred possessions like the remains of the
22 deceased mothers of Plaintiffs Carmen Nunez and Kelley
23 Wilcox.
- 24 f. The City destroyed three Plaintiffs’ precious family photographs
25 of children and grandchildren.
- 26 g. Plaintiff James Spry works as a handyman and Plaintiff Robert
27 Bell, Jr., works as a barber. The City took their work tools,
28

1 leaving them unable to earn even the small amount of money that
2 they had previously made from such work.

3 h. The City has destroyed bicycles owned by nearly all Plaintiffs.
4 Those bicycles are typically their only form of transportation.

5 36. The possessions lost by Plaintiffs are all valuable. Many of the
6 possessions, such as medications, food, tents, and blankets, are essential to the
7 health and welfare of their owners. Others, such as identification and official
8 documents, are essential to obtaining government benefits and are difficult to
9 replace, particularly for people with, at best, a bike for transportation. Plaintiffs are
10 also understandably hesitant to leave their remaining property in order to replace the
11 lost property for fear that it will be seized and destroyed if they leave for any period.

12 37. Other possessions are priceless and irreplaceable because of their
13 sentimental value. The loss of those possessions causes extreme emotional distress,
14 compounding the stress inherent in living on the streets and adding deep insult to the
15 severe injury of the confiscation of essential property.

16 38. Even beyond the immediate harm of the loss of these possessions,
17 the property seizures have other devastating and longer-term effects. First, such
18 seizures make it much more difficult for homeless persons to break out of the cycle
19 of homelessness. After each seizure, instead of seeking housing or employment,
20 they must focus on recreating their lives: obtaining a new tent and blankets,
21 replacing lost medication, obtaining new copies of critical court papers, purchasing
22 new hygiene products, and finding a way to eat. This reconstruction takes time—
23 from days to weeks or even months—and resources that many homeless people
24 simply do not have. The process is hampered by homeless persons' fear of leaving
25 possessions unattended while they are attempting to replace their essential supplies
26 and documents.

27 39. These confiscations also exact a mental toll on homeless persons.
28 They cause homeless individuals extreme anxiety because they must live in fear of

1 their most vital possessions being seized without notice. The confiscations are also
2 demeaning and dehumanizing to homeless persons. Homeless individuals must
3 watch their belongings being thrown away and destroyed before their eyes. As
4 Plaintiff Kelly Ann Allen put it, “Having the police destroy all that you own is also
5 an extremely humiliating and emotionally crushing experience.” Plaintiffs Carmen
6 Nunez and Kelley Wilcox remain emotionally traumatized from the loss of their
7 mother’s ashes at the hand of the City. The inherent humiliation of such
8 confiscations is compounded by the disrespectful behavior of police and Code
9 Enforcement officers. Plaintiff Seth Croy heard the officers laughing as they seized
10 his property. Officials confiscating the property of Plaintiff Carmen Nunez referred
11 to both her and her possessions as “trash.”

12 40. The City’s property confiscations are particularly egregious because
13 homeless persons in Pomona often have no other choice but to sleep on the street.
14 The City of Pomona has a 588 bed deficit with respect to sheltering its homeless
15 population, and the City makes it extremely difficult for new homeless service
16 providers to establish themselves. Further, even when shelter beds are available,
17 they may be functionally inaccessible to homeless people. Many shelters place
18 strict limits on how many personal possessions an individual can have, so, to stay in
19 a shelter, an individual would need to risk losing her personal property—a very real
20 risk in light of the City’s intense confiscation scheme. Even when shelter beds are
21 unoccupied and a person is willing to risk confiscation of their property, the beds are
22 often “unavailable” for other reasons. For example, certain shelter beds are
23 available only to seniors. Moreover, the City’s winter shelter, the Armory, poses a
24 serious risk to those who stay there given that it is highly contaminated with lead.

25 41. The seizure and destruction of property has a particularly damaging
26 effect on mentally disabled homeless individuals. As the City well knows, many
27 homeless individuals in Pomona suffer from mental disability. As such, the City is
28 certainly aware that many of the individuals whose property it is destroying suffer

1 from mental disability. Depriving mentally disabled individuals of their few
2 belongings places them at substantially increased risk of deterioration and creates a
3 suicide risk. That is because a mentally disabled homeless persons' few belongings
4 often provide an important anchor to reality and provide essential emotional support.

5 **d. Pomona's Criminalization of Homelessness Runs Contrary to the Practices**
6 **Recommended by the Federal Government**

7 42. The City also has a number of City Code provisions that reinforce its
8 grim treatment of its homeless population. Those provisions include:

- 9 • Section 46-603 of the City Code, which prohibits camping or using
10 camping paraphernalia on public property, including public parks,
11 streets, or sidewalks. Pomona City Code, Article XII, Section 46-603.
- 12 • Section 46-604 of the City Code, which prohibits leaving or storing
13 personal property on public property, which, again, includes public
14 parks, streets, and sidewalks. Pomona City Code, Article XII, Section
15 46-604.
- 16 • Section 46-605 of the City Code, which prohibits occupying vehicles
17 for the purpose of living or sleeping in them, including any stay within
18 a vehicle not directly related to driving the vehicle. Pomona City Code,
19 Article XII, Section 46-605.
- 20 • Section 46-606(1) of the City Code, which prohibits sleeping on public
21 streets or sidewalks, and Section 46-606(2), which prohibits sleeping
22 on the grounds of other improved city property.

23 43. Violation of any of these code sections constitutes a misdemeanor.

24 44. The City's treatment of its homeless population starkly contrasts
25 with the best practices and recommendations provided by the United States
26 government. The United States Interagency Council on Homelessness ("USICH"),
27 which has thoroughly examined this issue, has flatly condemned the sort of practices
28 that the City has implemented. The USICH has stated that law enforcement

1 measures targeting the homeless “do not solve the underlying causes of the
2 problem” and often “actually exacerbate the problem by adding additional obstacles
3 to overcoming homelessness.”³ More bluntly, “[i]ndividuals experiencing
4 homelessness need responses that go beyond criminalization.”⁴

5 45. The USICH encourages municipalities to focus on providing housing
6 for their homeless residents rather than criminalizing homelessness.⁵ The USICH
7 has indicated that municipalities should focus on developing housing to
8 accommodate their homeless populations, rather than wasting money on
9 enforcement efforts that do nothing to help homeless individuals.⁶

10 **GENERAL ALLEGATIONS**

11 46. The various seizures and confiscations of property discussed above
12 were conducted, and each violation of Plaintiffs’ rights occurred, pursuant to the
13 policies, practices, and customs of the City, as executed by one or more of its
14 employees or agents.

15 47. In committing each of the constitutional violations complained of
16 herein, the City, and its officials, agents, and employees, were acting under color of
17 law.

18 48. Plaintiffs are informed and believe and on such basis allege that at all
19 times relevant to this action, each of the individuals who seized and destroyed their
20 property were the agents, servants, or employees of the City and were acting at all
21 times within the scope of their agency and employment and with the knowledge and
22 consent of their principal and employer, the City.

23
24 _____
25 ³ United States Interagency Council on Homelessness, *Searching Out Solutions:
26 Constructive Alternatives to the Criminalization of Homelessness*, at 7 (2012),
available at <https://goo.gl/FxS7cv>.

27 ⁴ *Id.* at 8.

28 ⁵ *Id.* at 3–4.

⁶ *Id.* at 3–4, 8.

1 49. Each Individual Plaintiff has filed a claim for damages with the City,
2 pursuant to California Government Code § 910, *et. seq.* Plaintiffs will amend this
3 action once they have exhausted any applicable administrative remedies.

4 50. Plaintiffs are informed and believe that the acts complained of herein
5 were done in furtherance of the policies, practices, and customs of authorized
6 policymakers of the City and were joined in and implemented by the City’s agents
7 and employees who seized and destroyed Plaintiffs’ property. The City and its
8 agents and employees caused a violation of Plaintiffs’ constitutional and statutory
9 rights by, among other things, participating personally in the unlawful conduct;
10 authorizing, acquiescing, or setting in motion the policies, plans, and actions that led
11 to the unlawful conduct; failing to take action to prevent the unlawful conduct;
12 demonstrating deliberate indifference to the need to maintain adequate training and
13 supervision; and failing to take remedial and disciplinary action.

14 51. The City’s practice of seizing and destroying homeless individuals’
15 property is so persistent and widespread that it constitutes a policy, practice, or
16 custom of the City. The seizure and confiscation of homeless individuals’ property
17 has been ongoing for a number of years and has occurred on numerous occasions.
18 As such, constructive knowledge of that policy can be implied on the part of City
19 policymakers.

20 **CLASS ALLEGATIONS**

21 52. Each of the Plaintiffs is a homeless or temporarily sheltered
22 individual living in the City of Pomona. They bring this action against the City both
23 as individuals and as representatives of a class of all homeless individuals in
24 Pomona who have had property seized and destroyed by the City and who face a
25 continuing risk that their property will be seized and destroyed again.

26 53. Plaintiffs bring this action pursuant to Federal Rule of Civil
27 Procedure 23(b)(2) to certify a class of individuals who have had their property
28

1 seized and destroyed by the City and who are at risk of such seizure and
2 confiscation going forward. The class is defined as:

3 All homeless individuals residing in the City of Pomona
4 whose personal belongings have been or are at risk of
5 being seized or confiscated by the agents and employees
of the City without adequate notice or an opportunity to
retrieve the property.

6 54. The members of the class are so numerous that joinder of all
7 members is impracticable. The class consists of approximately 600 homeless
8 persons who reside in the City of Pomona but who have no location at which to
9 store their property while they attend to the basics of life, including showering,
10 eating, and obtaining services at various government offices and private facilities.

11 55. There are questions of law or fact common to the class, including:

12 a. Whether the City has violated and continues to violate class
13 members' state and federal constitutional rights against
14 unreasonable seizures by implementing policies, practices, and
15 conduct that result in the seizure and confiscation of homeless
16 persons' personal property without adequate notice, an
17 opportunity to have a meaningful pre- or post-deprivation
18 hearing, or an opportunity to retrieve vital personal possessions
19 before their seizure or destruction;

20 b. Whether the City has violated and continues to violate class
21 members' state and federal constitutional rights to due process
22 by implementing the above-mentioned policies, practices, and
23 conduct;

24 c. Whether the City has violated and continues to violate class
25 members' rights pursuant to California Civil Code sections 52
26 and 52.1 by implementing the above-mentioned policies,
27 practices, and conduct;

28

- 1 d. Whether the City should be enjoined from seizing the
2 unabandoned property of homeless individuals without adequate
3 prior notice;
- 4 e. Whether the City should be enjoined from immediately
5 destroying the unabandoned property of homeless individuals in
6 the City of Pomona.

7 56. Plaintiffs' claims are typical of those of the class because the
8 policies, practices, and conduct that have violated Plaintiffs' rights are the same as
9 those that are applied generally to homeless individuals throughout the City of
10 Pomona. All Plaintiffs are members of the class that they seek to represent.

11 57. The class representatives will fairly and adequately protect the
12 interests of the class members and are unaware of any conflict among or between
13 the class members that would preclude their fair and adequate representation. Class
14 counsel have the legal knowledge and resources to fairly and adequately represent
15 the interests of all class members in this action.

16 58. The City has acted on grounds generally applicable to the class, in
17 that their policies, practices, and conduct have affected all homeless individuals
18 throughout the City of Pomona.

19 **FIRST CAUSE OF ACTION**
20 **Protection from Unreasonable Seizures**
21 **42 U.S.C. § 1983, Fourth Amendment, and Article 1, § 13 of California**
22 **Constitution**

23 59. Plaintiffs re-allege and incorporate the allegations set forth in the
24 foregoing paragraphs as though fully set forth herein.

25 60. The City has violated Plaintiffs' Fourth Amendment rights to be free
26 from unreasonable seizure of their property by seizing, confiscating, and destroying
27 Plaintiffs' property without a warrant or sufficient justification.
28

1 61. The City's unlawful actions, through the conduct of its employees
2 and agents, were done with the specific intent to deprive Plaintiffs of their
3 constitutional rights to be secure in their property.

4 62. Plaintiffs are informed and believe that the actions of the City's
5 employees and agents were intentional in failing to protect and preserve their
6 property and that, at a minimum, the City was deliberately indifferent to the likely
7 consequence that their property would be seized and destroyed unlawfully, based on
8 the past circumstances of similar conduct.

9 63. As a direct and proximate consequence of the acts of the City's
10 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
11 personal property and are entitled to compensatory damages for their property and
12 other injury to their person.

13 **SECOND CAUSE OF ACTION**
14 **Right to Due Process of Law: Procedural Due Process**
15 **42 U.S.C. § 1983, Fifth and Fourteenth Amendments, and Article 1, § 7 of the**
16 **California Constitution**

17 64. Plaintiffs re-allege and incorporate the allegations set forth in the
18 foregoing paragraphs as though fully set forth herein.

19 65. The City owed Plaintiffs a duty, under the due process clause of the
20 Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, section 7
21 of the California Constitution, to provide Plaintiffs with due process before seizing
22 and destroying their personal property.

23 66. Plaintiffs have a protected interest in their property. Further, many
24 of the items that the City has seized and confiscated were of the utmost importance
25 to Plaintiffs, as discussed above. By seizing and destroying Plaintiffs' property, the
26 City permanently deprives them of their property and completely extinguishes their
27 protected property interest.

28 67. The City provided Plaintiffs with no notice or insufficient notice that
their property was at risk of being seized and confiscated. The City also did not

1 preserve the property or provide any means of reclaiming it. The City seized and
2 destroyed Plaintiffs' property even when Plaintiffs or other individuals objected to
3 the seizure and indicated that the property was not abandoned. And the City
4 provided Plaintiffs no pre- or post-deprivation opportunity to contest the seizure and
5 confiscation of their property. The costs and burdens of additional process to
6 protect Plaintiffs' property rights more adequately would be minimal.

7 68. Plaintiffs are informed and believe that the acts of the City's
8 employees and agents were intentional in failing to protect and preserve their
9 property and that, at a minimum, the City was deliberately indifferent to the
10 likelihood that the property would be seized and destroyed without due process
11 based on the past occurrences of these same constitutional and statutory violations
12 of the law.

13 69. As a direct and proximate consequence of the acts of Defendant's
14 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
15 personal property and are entitled to compensatory damages for their property and
16 other injury to their person.

17 **THIRD CAUSE OF ACTION**
18 **Right to Due Process of Law: Danger Creation**
19 **42 U.S.C. § 1983, Fifth and Fourteenth Amendments, and Article 1, § 7 of the**
20 **California Constitution**

21 70. Plaintiffs re-allege and incorporate the allegations set forth in the
22 foregoing paragraphs as though fully set forth herein.

23 71. The City, through the actions of its officers and employees, has
24 engaged in affirmative conduct that has placed Plaintiffs in danger. By seizing and
25 destroying Plaintiffs' property—including medication, blankets, sleeping bags,
26 clothing, food, and other essentials—the City places Plaintiffs' lives in danger.
27 Plaintiffs live on the street and by seizing and destroying their property, the City
28 exposes them to the elements and leaves them without essential medications,

1 sufficient food, and vital documents. These actions violate Plaintiffs' rights to due
2 process as protected by the federal and state constitutions.

3 72. As a direct and proximate consequence of the acts of the City's
4 agents and employees, Plaintiffs have been and will continued to be harmed and are
5 entitled to compensatory damages for their property and other injury to their person.

6 **FOURTH CAUSE OF ACTION**
7 **Right to Equal Protection**
8 **42 U.S.C. § 1983, Fourteenth Amendment, and Article I, § 7 of the California**
9 **Constitution**

10 73. Plaintiffs re-allege and incorporate the allegations set forth in the
11 foregoing paragraphs as though fully set forth herein.

12 74. The City, by disposing of Plaintiffs' belongings and preventing them
13 from attending to the daily necessities of life, has denied Plaintiffs equal protection
14 of the laws. The City's policy of seizing and destroying homeless persons' property
15 without notice is designed and intended to target homeless persons. And the
16 enforcement of these policies and practices interferes with Plaintiffs' rights to travel
17 freely, as guaranteed by the equal protection clause.

18 75. As a direct and proximate consequence of the acts of the City's
19 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
20 personal property and are entitled to compensatory damages for their property and
21 other injury to their person.

22 **FIFTH CAUSE OF ACTION**
23 **Violation of Civil Rights: Interference By Threat, Intimidation or Coercion**
24 **California Civil Code §§ 52, 52.1**

25 76. Plaintiffs re-allege and incorporate the allegations set forth in the
26 foregoing paragraphs as though fully set forth herein.

27 77. Defendant's agents and employees have used threats of arrest and
28 intimidation to interfere with Plaintiffs' rights to maintain their personal
possessions. These threats have interfered with Plaintiffs' rights as secured by the
Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, as well

1 as sections 7 and 13 of the California Constitution. City officials have placed
2 Plaintiffs in fear of violence, arrest, or additional destruction of property if they
3 attempted to protect their constitutional rights.

4 78. As a direct and proximate consequence of the acts of the City's
5 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
6 personal property and are entitled to compensatory damages for their property and
7 other injury to their person.

8 79. Plaintiffs are entitled to an injunction pursuant to California Civil
9 Code section 52.1 and to damages pursuant to Civil Code sections 52 and 52.1. As
10 alleged above, Plaintiffs have filed administrative claims with the City for these
11 claims, and Plaintiffs will amend this action to include damages under this provision
12 once they have exhausted any applicable administrative remedies.

13 **SIXTH CAUSE OF ACTION**
14 **California Civil Code § 2080 *et seq.***

15 80. Plaintiffs re-allege and incorporate the allegations set forth in the
16 foregoing paragraphs as though fully set forth herein.

17 81. The City's policies, practices, and conduct challenged herein have
18 violated California Civil Code § 2080 *et seq.*, in that the City's agents and
19 employees have failed to protect and preserve Plaintiffs' personal property by
20 seizing and confiscating it. The City took the property from public sidewalks,
21 streets, and other public property; failed to provide notice that the property had been
22 taken; and failed to provide an opportunity for the owners of the property to reclaim
23 it within a reasonable time. California Code of Civil Procedure § 2080, *et seq.*
24 imposes a mandatory duty to maintain property that is not abandoned once an
25 individual takes possession of it.

26 82. As a direct and proximate consequence of the acts of the City's
27 agents and employees, Plaintiffs have suffered and continue to suffer loss of their
28

1 personal property and are entitled to compensatory damages for the loss of their
2 property and other injury to their person.

3 **SEVENTH CAUSE OF ACTION**
4 **Conversion**

5 83. Plaintiffs re-allege and incorporate the allegations set forth in the
6 foregoing paragraphs as though fully set forth herein.

7 84. Plaintiffs were in possession of their personal property at the time
8 that the City's agents and employees seized and destroyed their property without
9 notice. Plaintiffs were the owners of the property that the City seized and destroyed
10 and that property was not abandoned. By seizing and destroying Plaintiffs'
11 property, the City intentionally and substantially interfered with Plaintiffs' interests
12 in that property. They confiscated and refused to return such property, and in doing
13 so, wrongfully exercised control over it. Plaintiffs did not consent to this treatment
14 of their property, and the permanent deprivation of their property caused them harm.
15 They had to re-acquire similar items and they faced hardship after their property was
16 destroyed. The City and its agents and employees directly caused these
17 confiscations to occur.

18 85. The City had no legitimate governmental interest that gave its agents
19 and employees the legal right or justification for confiscating Plaintiffs' property
20 without prior notice to Plaintiffs, without a procedure to recover their property, and
21 without fair compensation to Plaintiffs.

22 86. As a direct and proximate consequence of the acts of Defendant's
23 agents and employees, Plaintiffs have and will suffer loss of their personal property
24 and are entitled to compensatory damages for their property and other injury to their
25 person.

26 **EIGHTH CAUSE OF ACTION**
27 **Trespass to Chattels**

28 87. Plaintiffs re-allege and incorporate the allegations set forth in the
foregoing paragraphs as though fully set forth herein.

1 the conduct of its agents and employees in seizing and destroying Plaintiffs'
2 property was lawful.

3 94. As a direct and proximate consequence of the acts of Defendant's
4 agents and employees, Plaintiffs have and will continue to suffer damages through
5 injury to their person and the loss of their essential personal property, including
6 bedding, clothing, medication, tents, personal papers, and other possessions.

7 **WHEREFORE**, Plaintiffs pray as follows:

8 1. For a preliminary injunction and permanent injunction enjoining and
9 restraining defendants from engaging in the policies, practices and conduct
10 complained of herein;

11 2. For an order certifying a class pursuant to F.R.Civ.P. 23(b)(2);

12 3. For declaratory judgment that Defendant's policies, practices, and
13 conduct as alleged herein violate Plaintiffs' rights under the United States and
14 California constitutions and the laws of California;

15 4. For damages in an amount to be determined according to proof but in
16 no event less than \$4,000 per incident pursuant to California Civil Code sections 52
17 and 52.1 and to California Government Code section 815.6;

18 5. For costs of suit and attorney fees as provided by law;

19 6. For such other relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs
22 demand trial by jury in this action of all issues so triable.

23
24
25
26
27
28

1 DATED: March 18, 2016

MUNGER, TOLLES & OLSON LLP

2 BRADLEY S. PHILLIPS
3 JOHN B. MAJOR

4
5 By: /s/ John B. Major
6 JOHN B. MAJOR
7 Attorneys for Plaintiffs

8 PUBLIC COUNSEL
9 MARK ROSENBAUM
10 GARY BLASI
11 CHRISTINA GIORGIO
12 ALISA HARTZ
13 AZADEH M. HOSSEINIAN

14 By: /s/ Mark Rosenbaum
15 MARK ROSENBAUM
16 Attorneys for Plaintiffs

17 **FILER’S ATTESTATION**

18 I, John B. Major, am the ECF user whose identification and password
19 are being used to file this COMPLAINT. I hereby attest that the other above-named
20 signatories concur in this filing.

21
22
23
24
25
26
27
28