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

11 **REX SCHELLENBERG**, an individual
 12 Plaintiff,

v.

13 **The CITY OF LOS ANGELES**, a municipal
 14 entity; DOES 1-10,
 15 Defendant.

Case No.:
 Civil Rights Complaint

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

DEMAND FOR JURY TRIAL

1 **JURISDICTION AND VENUE**

2 1. This is an action for injunctive relief, declaratory relief, and damages
3 pursuant to 42 U.S.C. § 1983 based upon the continuing violations of Plaintiff’s
4 rights under Fourth, Fifth, and Fourteenth Amendments to the United States
5 Constitution and California law. Jurisdiction exists pursuant to 28 U.S.C. § 1331
6 and 1343 based on questions of federal constitutional law and 42 U.S.C. § 1983.
7 Jurisdiction also exists under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a)
8 and 2202. This Court has supplemental jurisdiction over Plaintiff’s state law
9 claims pursuant to 28 U.S.C. § 1367, as it arises from the same case or controversy
10 as Plaintiff’s federal claims.

11 2. Venue is proper in the Central District of California pursuant to 28
12 U.S.C. §1391(b) as all parties reside in the Central District and the events and
13 conduct complained of herein all occurred in the Central District.

14 **PRELIMINARY STATEMENT**

15 3. In 2012, the Ninth Circuit upheld a preliminary injunction in *Lavan v.*
16 *City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012), 133 S.Ct. 2855 (2013) cert
17 denied. *Lavan* challenged the enforcement of an earlier version of LAMC § 56.11,
18 proscribing the placement of any personal property on public property. *Lavan v.*
19 *City of Los Angeles*, 797 F.Supp.2d 1005 (C.D. Cal. 2011). In *Lavan*, the district
20 court enjoined the City from seizing property of unhoused individuals which is not
21 abandoned, evidence of a crime or creates an immediate public hazard without
22 complying with due process notice requirements. The injunction also barred the
23 City from summarily destroying seized property and ordered the City to store the
24 property for 90 days, consistent with state law. In affirming the rights of the
25 plaintiffs in *Lavan*, the Ninth Circuit underscored that the “simple rule [i.e. notice
26 and an opportunity to be heard by an impartial tribunal] holds whether the property
27 in question is an Escalade or a [tent], a Cadillac or a cart.” 693 F.3d at 1032.

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

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

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

10 **DEFENDANTS:**

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

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

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

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

7 **FACTS**

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

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

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

26 16. While Mr. Schellenberg attempted to salvage some of his property,
27 City employees simultaneously began seizing his property. Mr. Schellenberg
28 objected to the City employees taking his property and repeatedly told them his

1 property was not trash. Still, City employees arbitrarily and capriciously decided
2 which property would be seized.

3 17. On information and belief, most of the property was thrown in the
4 back of a green trash truck and destroyed in the garbage compactor. Some
5 property appeared to be seized and stored in the cab of the green truck.

6 18. The only property Mr. Schellenberg was left with was three torn
7 suitcases filled with women's clothes that were donated to him and which he
8 intended to distribute to unhoused women in need.

9 19. Among the property that the Defendant City seized was Mr.
10 Schellenberg's new Schwinn bicycle, a stroller that he used to transport his clothes
11 and essential property, a laptop, and important personal papers such as his Section
12 8 Housing Voucher.

13 20. All of Mr. Schellenberg's property was stored together in a manner
14 that clearly indicated it was not trash nor abandoned. At the time that the bicycle
15 was seized, Mr. Schellenberg had removed one wheel and chained the wheel and
16 bicycle to the stroller. This is common practice of bicycle riders in public places
17 when a bicycle is briefly left unattended and is done in order to prevent bicycle
18 thefts. The bicycle was fully operational when the wheel was attached.

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

23 22. Following this event, Mr. Schellenberg searched online and
24 discovered a phone number for the Department of Public Works, Bureau of
25 Sanitation "unattended property" line. He was informed that if any property was
26 stored by Public Works, it would be held at a storage facility located on Towne
27 Avenue in Downtown Los Angeles. The Towne Avenue facility is located almost
28 30 miles from the location at which Mr. Schellenberg's property was seized.

1 Traveling on public transportation from the west Valley to the Towne Avenue
2 facility would take hours. Mr. Schellenberg could not travel to the facility
3 because of his disability. No accommodation was available or offered to help him
4 retrieve his personal property, if any, stored at the distant storage facility.

5 23. Mr. Schellenberg made every effort to recover his property. He was
6 eventually able to speak by phone with a supervisor at the storage facility. Mr.
7 Schellenberg identified when and where his property was seized, but was informed
8 him that no vehicle from that area brought in property on the day in question.

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

19 25. This was not the first or the last time Mr. Schellenberg's was seized.
20 Each time, his essential property such as tent, blankets, clothing, and canned food
21 was taken and destroyed.

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

27 27. Mr. Schellenberg must regularly migrate between different areas of
28 the San Fernando Valley to avoid further harassment by City officials. On

1 information and belief, the Defendant City has engaged in this practice at least six
2 different times, stripping Mr. Schellenberg of his essential belongings each time.

3 **MONELL ALLEGATIONS**

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

- 10 a. Seizure and destruction of personal property without adequate pre- or
11 post-deprivation notice and no accessible storage location;
12 b. Failure to provide adequate training and supervision to its employees
13 with respect to constitutional rights involving seizure of personal
14 property and due process of law; and

15 29. Moreover, the Defendant City was on notice of the unlawfulness of
16 their actions based on previous legal actions brought against the City for nearly
17 identical operations. In fact, just one year prior to the events giving rise to this
18 action, the Defendant City was enjoined by the District Court from engaging in the
19 very conduct that is complained of herein.

20 **FIRST CAUSE OF ACTION**

21 **Right to Be Secure From Unreasonable Seizures**
22 **Fourth and Fourteenth Amendments (42 U.S.C. § 1983)**
23 **California Constitution, Art. 1, § 13**

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

26 31. Defendant and its employees and agents violated Plaintiff's Fourth
27 Amendment right to be free from unreasonable seizure of his property by
28 confiscating and then destroying Plaintiff's property without a warrant.

1 32. These unlawful actions were done with the specific intent to deprive
2 Plaintiff of his constitutional right to be secure in his property.

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

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

11
12 **SECOND CAUSE OF ACTION**
13 **Violation of the Takings Clause**
14 **Fifth and Fourteenth Amendment (42 U.S.C. § 1983)**
15 **California Constitution, Art. 1 § 19**

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

18 36. Defendant and its employees and agents seized and destroyed
19 Plaintiff's property without offer or opportunity for compensation, in violation of
20 the Takings Clause of the Fifth Amendment.

21 37. As a direct and proximate consequence of these unlawful acts,
22 Plaintiff has suffered and continues to suffer loss of his personal property and is
23 entitled to just compensation for his property and personal injury.

24 **THIRD CAUSE OF ACTION**
25 **Right to Due Process of Law**
26 **Fourteenth Amendment (42 U.S.C. § 1983)**
27 **California Constitution, Art. 1, § 7**

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

1 39. Defendant and its employees and agents owed a duty to Plaintiff
2 under the due process clause of the Fourteenth Amendment to provide Plaintiff
3 with adequate notice that his property was at risk of being seized and/or destroyed,
4 and to preserve that property or provide adequate means of reclaiming it in a
5 timely manner.

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

8 41. Plaintiff is informed and believes that the acts of the Defendant and its
9 employees and agents were intentional in failing to protect and preserve Plaintiff's
10 property and that, at a minimum, were deliberately indifferent to the likely
11 consequence that the property would be seized and destroyed unlawfully, even
12 though the right at issue was well-established at the time.

13 42. As a direct and proximate consequence of these unlawful acts,
14 Plaintiff has suffered and continues to suffer loss of his personal property and is
15 entitled to compensatory damages for his property and personal injury.

16
17 **FOURTH CAUSE OF ACTION**
18 **Violation of 42 U.S.C. § 12101 et seq.: Title II - Americans with**
19 **Disabilities Act**

20 43. Plaintiff realleges and incorporates the allegations set forth in the
21 preceding paragraphs as though fully set forth hereat.

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

26 45. At all times relevant to this action, Defendant, its employees and
27 agents, were public entities within the meaning of Title II of the ADA and
28 provided programs, services, or activity to the general public.

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

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

8 48. The acts and omissions of the Defendant, its agents and employees,
9 subjected the Plaintiff to discrimination on the basis of his disabilities in violation
10 of Title II of the ADA by destroying his property, including a bicycle he uses for
11 transportation because of his disability.

12 49. Plaintiffs knew, or should have known, that the incidence of
13 disabilities for people who are homeless is extremely high, with estimates as high
14 as more than one in two homeless individuals suffering from some significant
15 mental, medical or physical disability, and many, like Plaintiff, suffering from
16 compound disabilities. On information and belief, Plaintiff alleges that Defendant
17 could have reasonably retained Plaintiff's bicycle, critical personal papers, and
18 other property in a location that was accessible to an individual with disabilities.
19 As a public entity, Defendants are required to "make reasonable modifications in
20 policies practices, or procedures when the modifications are necessary to avoid
21 discrimination on the basis of disability" where, as here, modifications to would
22 not "fundamentally alter the nature of the service, program or activity." 28 C.F.R.
23 § 35.130(b)(7). This includes the need to make reasonable accommodations to
24 protect the essential life-protecting and mobility assistive property of persons who
25 are homeless, as well as provide prompt and reasonable access to ensure that
26 individuals are able to recover seized property. The policies, practices and
27 procedures challenged in this action, even if otherwise facially neutral, unduly
28

1 burden disabled persons who are without shelter and within the federal definition
2 of homeless.

3 50. Defendant, its employees and agents, committed the acts and
4 omissions alleged herein with intent and/or reckless disregard for the rights of
5 Plaintiff.

6 51. Plaintiff is informed and believes that Defendant and its agents and
7 employees have failed and continue to fail to adopt and enforce adequate policies
8 and procedures for interacting with homeless individuals with disabilities.

9
10 **FIFTH CAUSE OF ACTION**
11 **Violation of Unruh Civil Rights Act**
12 **Cal. Civ. Code § 51**

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

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

19 54. Defendant, through its agents and employees in the LAPD and
20 Department of Public Works, is a “business establishment” within the meaning of
21 § 51.

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

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

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

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

6 58. Defendant's agents and employees have used arrests, threats of arrest
7 and intimidation to interfere with Plaintiff's rights to maintain their personal
8 possessions in the exercise of Plaintiffs' rights secured by the Constitution of the
9 United States, the Constitution of the State of California, and the statutory laws of
10 the State of California.

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

15 **SEVENTH CAUSE OF ACTION**
16 **Violation of Cal. Civ. Code § 2080 et seq.**

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

19 61. Defendant's policies, practices, and conduct challenged herein
20 violated California Civil Code § 2080 et seq., in that Defendant's agents and
21 employees failed to protect and preserve Plaintiff's personal property when the
22 property was on the public sidewalk, failed to provide written notice that the
23 property would be taken, and failed to provide post-deprivation notice so that
24 Plaintiff would have the opportunity to reclaim it within a reasonable time.

25 62. Cal. Civ. Code § 2080 et seq. imposes a mandatory duty to maintain
26 property that is not abandoned.

27 **INJUNCTIVE RELIEF**

28 63. Plaintiff realleges and incorporates the allegations set forth in the
preceding paragraphs as though fully set forth herein.

1 64. A real and immediate difference exists between Plaintiff and
2 Defendant regarding Plaintiff's rights and Defendant's duty owed to Plaintiff to
3 protect Plaintiff's personal property present on the public sidewalks and streets of
4 the City of Los Angeles. Defendant's policies and actions have resulted and will
5 result in irreparable injury to Plaintiff.

6 65. There is no plain, adequate, or complete remedy at law to address the
7 wrongs described herein. The Defendant City has made it clear that it intends to
8 continue these practices of confiscating and immediately destroying the property of
9 homeless individuals from the public streets and sidewalks without a warrant,
10 without pre- and post- deprivation notice, and without just compensation. Unless
11 restrained by this Court, Defendant will continue to implement this policy and
12 practice.

13 66. As a direct and proximate consequence of the acts of Defendant's
14 Plaintiff has and will continue to suffer damages through injury to his person and
15 the loss of his personal property, including bedding, clothing, medication, tents,
16 tarps, personal papers, and other personal possessions. Plaintiff claims that these
17 acts are contrary to law and seeks a declaration of his rights with regard to this
18 controversy.
19

20 **PRAYER FOR RELIEF**

21 67. Plaintiff realleges and incorporates the allegations set forth in the
22 preceding paragraphs as though fully set forth herein.
23

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

25 1. For a declaratory judgment that Defendant's policies, practices and
26 conduct as alleged herein violate Plaintiff's rights under the United States and
27 California Constitutions and the laws of California;
28

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

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

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

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

9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby respectfully demands that a trial by jury be conducted with
12 respect to all issues presented herein.

13
14
15 Dated: September 3, 2018

Respectfully submitted,

LAW OFFICE OF CAROL A. SOBEL

18 /s/ Carol A. Sobel

19 By: Carol A. Sobel

20 Attorneys for Plaintiffs