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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLARK SULLIVAN, ADAM)	Case No. 3:17-cv-06051-WHA
BREDENBERG, and BENJAMIN)	
ROYER, and all others similarly)	SECOND AMENDED COMPLAINT
situated,)	FOR INJUNCTIVE AND
)	DECLARATORY RELIEF AND
Plaintiffs,)	DAMAGES
)	
vs.)	(Class Action - Civil Rights)
)	
CITY OF BERKELEY,)	Demand for Jury Trial
)	
Defendant.)	

INTRODUCTION

1. Berkeley is home to nearly 1,000 homeless residents.

2. The 2017 Point in Time ("PIT") count, conducted once every two years as required by the U.S. Department of Housing and Urban Development, showed a 23 percent increase in homelessness from the 2009 count. Of those currently homeless, two thirds live without shelter.¹

¹ http://everyonehome.org/wp-content/uploads/2016/02/BERKELEY_5-Final-1.pdf

1 3. Between 2015 and 2017, the chronically homeless population in Berkeley
2 increased 29 percent, according to the PIT count.

3 4. The City of Berkeley has consistently failed to offer enough shelter beds
4 for its homeless residents.

5 5. **According to the City of Berkeley, there are only 146 shelter**
6 **beds available and 115** transitional housing beds.

7 6. Berkeley created a homeless coordinated entry program, known as the
8 “HUB,” in January 2016, which centralized the referral to services and housing for
9 homeless Berkeley residents. Between its launch on January 5, 2016 and the 2017 PIT
10 count at the end of January 2017, the HUB was able to house only 46 individuals and
11 place 59 high-needs individuals in shelters and transitional housing, despite screening
12 1, 823 people in need of services.

13 7. During the rise of Berkeley’s homelessness crisis, the Berkeley City
14 Council passed ordinances that sought to criminalize the condition of being homeless.
15 Combined with the lack of available shelter beds, homeless residents of Berkeley risk
16 arrest **daily** simply for being homeless.

17 8. **The Berkeley City Council has** acknowledged its shelter bed shortage. In
18 light of the abysmal growth rate of Berkeley’s homeless population, the Berkeley City
19 Council declared a Homeless Shelter Crisis on January 19, 2016, pursuant to California
20 Government Code Section 8698, *et seq.* This allows the city to designate “public
21 facilities” including parks, schools, and vacant lots for occupation by persons needing
22 shelter. It also relaxes the city’s exposure to liability in the designated areas and relaxes
23 regulations prescribing standards of housing, health and safety.

24 9. The City has yet to designate any public facilities for **use by homeless**
25 **residents.**

26 10. On November 15, 2016, Berkeley City Council renewed the state of
27 emergency for another year.

1 11. On October 13, 2017, California Governor Edmund G. Brown Jr. declared
2 a state-wide State of Emergency due to an outbreak of Hepatitis A in California
3 homeless encampments.²

4 12. **Hundreds of homeless Berkeley residents live in encampments**
5 **all around the City. Encampment residents exist under constant threat of**
6 **arrest for sleeping outdoors.**

7 13. The First They Came for the Homeless (“FTCftH”) encampment is an
8 intentional community of homeless Berkeley residents that was formed in 2015. It
9 publicly opposes Berkeley’s increasing efforts since 2015 to criminalize the condition of
10 homelessness.

11 14. Members of FTCftH have been cited, arrested, and jailed for sleeping in
12 public.

13 15. Members of FTCftH have been evicted from many locations throughout
14 Berkeley.

15 16. **The City of Berkeley performs evictions in largely the same**
16 **manner each time. Police and public works employees** come before dawn,
17 hurry residents out of the encampment allowing them to take only what they can carry,
18 with no regard to physical or mental disability, and dispose of everything that is left
19 over, including any unattended tents.

20 17. The City makes no efforts to give residents receipts for what is taken,
21 inventory what is collected, or store property in a manner that protects it from the
22 elements.

23 18. Residents are given no information on where they can go to find shelter,
24 beyond contacting the HUB, and are given no direction on where they may be able to
25 lawfully camp.

26 _____
27 ² [http://abcnews.go.com/Health/hepatitis-california-outbreak-triggers-state-](http://abcnews.go.com/Health/hepatitis-california-outbreak-triggers-state-emergency/story?id=50513882)
28 [emergency/story?id=50513882](http://abcnews.go.com/Health/hepatitis-california-outbreak-triggers-state-emergency/story?id=50513882)

1 19. The City of Berkeley knows that the HUB does not have sufficient
2 resources to house Berkeley's homeless residents.

3 20. **After an eviction, residents of FTCftH and of other homeless**
4 **encampments** have no place to go for shelter and **are** forced to find another parcel of
5 land **on which** to reside.

6 21. **The land that the FTCftH encampment currently occupies is**
7 **City of Berkeley land, and plaintiffs live in constant fear of eviction.**

8 **JURISDICTION AND VENUE**

9 22. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §
10 1331 (claims arising under the U.S. Constitution) and § 1343(a)(3) (claims brought to
11 address deprivations, under color of state authority, of rights, privileges, and
12 immunities secured by the U.S. Constitution), and 42 U.S.C. § 1983.

13 23. The state law claims in this action are so related to claims in the action
14 within original jurisdiction that they form part of the same case or controversy under
15 Article III of the United States Constitution. The Court's jurisdiction over these claims is
16 invoked under 28 U.S.C. § 1367.

17 24. Venue is proper in the United State District Court for the Northern
18 District of California pursuant to 28 U.S.C. § 1391(b)(1) because the defendants are
19 located in the Northern District of California and § 1391(b)(2) because all of the acts
20 and/or omissions complained of herein occurred within the Northern District of
21 California.

22 **PARTIES**

23 **Plaintiffs**

24 25. At all times relevant hereto, plaintiff Clark Sullivan was a homeless
25 resident of Alameda County and member of the First They Came for the Homeless
26 encampment.

27 26. At all times relevant hereto, plaintiff Adam Bredenberg was a homeless
28

Defendants

FACTUAL ALLEGATIONS

30. **Some encampments endeavor to form intentional communities where the residents live by certain principles. Some simply collectively camp.**

32. No matter how a homeless person shelters themselves in Berkeley, they risk arrest and the taking of their belongings, including essential items needed for protection from the elements.

34. The encampment established **itself** in prominent places near City

1 administration buildings and the provider of the City's coordinated homeless services
2 to demand respite in the form of a City-sanctioned encampment.

3 35. Members of the encampment regularly attend City Council meetings and
4 write op-eds criticizing the City for its mismanagement of the homelessness crisis.

5 36. Meanwhile, FTCftH established a set of rules that residents in the
6 encampment must follow in order to stay in the encampment. This includes remaining
7 hard drug and alcohol free and participating in consensus decision making and non-
8 violent conflict resolution.

9 37. On January 5, 2016, the City of Berkeley established a Homeless
10 Coordinated Entry System known as the "HUB" that was meant to centralize services
11 for the homeless and encourage greater success in housing homeless Berkeley
12 residents.

13 38. The City poured millions of dollars into the HUB, which after a year had
14 performed intakes for 1,823 people yet housed only 46.

15 39. Despite that abysmal service rate, **the only housing services that**
16 **homeless individuals in Berkeley are referred to is the HUB.**

17 40. **The City of Berkeley does not permit homeless residents to**
18 **camp and will clear out encampments by threatening to arrest residents if**
19 **they do not move.**

20 41. **Each time an eviction occurs, police arrive round 5 a.m. They**
21 **tell residents that they must move or will be arrested under California**
22 **Penal Code § 674(e) for unlawful lodging.**

23 42. **The City often cites complaints by neighbors as justification for**
24 **moving a particular camping person or encampment. However, homeless**
25 **residents are not given a copy of the complaint or provided an opportunity**
26 **to defend themselves against the accusation of offending conduct or fix the**
27 **offending conduct.**
28

1 43. **As people begin to pack and move, the police and department of**
2 **public works begin taking items that appear unattended.**

3 44. **Items taken are disposed of or constructively disposed of by**
4 **being stored in a manner that does not protect them from comingling with**
5 **garbage or protection from rain.**

6 45. **Plaintiffs Clark Sullivan, Adam Bredenberg, and Benjamin**
7 **Royer have all been evicted from an encampment under these conditions**
8 **and threat of arrest.**

9 46. **Evictions sometimes occur after verbal or written notice from**
10 **police. When there is notice, it includes the threat to arrest encampment**
11 **residents. Sometimes, evictions occur with no notice at all.**

12 47. **When there is notice, it is sometimes less than 24 hours.**

13 48. For three winter months **in 2016**, and in response to **FTCftH**
14 **members'** stinging criticisms of Berkeley's handling of the homelessness crisis,
15 Berkeley began an aggressive campaign of evictions.

16 49. During those months, the City of Berkeley evicted the FTCftH
17 encampment at least 12 times. They were evicted on or about the following dates from
18 approximately the following locations:

- 19 a. Friday, October 7, 2016, from the sidewalk in front of the HUB at
20 1901 Fairview Avenue.
 - 21 b. Tuesday, October 18, 2016, from the median strip at Adeline Street
22 and Ward Street.
 - 23 c. Wednesday, October 19, 2016, from the Adeline Street and **the**
24 Shattuck "triangle."
 - 25 d. Friday, November 4, 2016, from Fairview Street and Adeline Street
26 near the HUB.
 - 27 e. Monday, November 7, 2016, from the steps of Berkeley City Hall.
- 28

- f. Thursday, November 17, 2016, from the lawn South of Berkeley City Hall.
- g. Friday November 18, 2016, from Civic Center Park at Milvia Street and Allston Street.
- h. Friday, December 2, 2016, from the North lawn of Berkeley City Hall.
- i. Wednesday, December 21, 2016, from Adeline Street and Oregon Street.
- j. Wednesday, December 21, 2016, from the lawn near Berkeley's former City Hall building on Martin Luther King Jr. Way and Allston Street.
- k. Thursday December 22, 2016, from University Street and West Street near the Ohlone path.
- l. Friday, January 6, 2017, from the median on Shattuck between Vine Street and Rose Street.

50. Prior to some evictions, **FTCftH** residents were provided posted notice of the date by which they needed to move, but they were provided no opportunity to be heard and advocate for their right to remain in place. Other times they were provided no notice at all.

51. The winter of 2016 **was characterized by** many rain storms and cold weather.

52. Each eviction was brutal due to these weather conditions.

53. **Many Berkeley Police Department officers were present during each eviction. They told encampment members that if they did not move, they would be arrested for violating California Penal Code section 647(e).**

54. During the winter 2016 evictions, some FTCftH residents and allies were arrested. One former resident, Mike Zint, was arrested on November 17, 2016, for not

1 packing his belongings fast enough. He has **chronic obstructive pulmonary**
2 **disease, a chronic inflammation of the lungs**, and emphysema and suffered a
3 respiratory attack at 5 a.m. when he was awoken by the police. He was given 10 minutes
4 to pack his belongings, and when he demanded more time because of his respiratory
5 attack, he was arrested.

6 55. **During evictions, Berkeley police do not evaluate or**
7 **accommodate** disabilities, despite some residents having known or visible
8 disabilities.

9 56. Plaintiff Clark Sullivan is **mobility impaired and uses a wheelchair**.
10 He was never offered assistance from the City of Berkeley to move his property **during**
11 **evictions**. He was never provided assistance in getting his property back.

12 57. During each eviction, Berkeley Police would section off the block with
13 caution tape and not **allow** community members into the encampment to assist
14 residents with packing or carrying items away.

15 58. **Community members are threatened with arrest for attempting**
16 **to help the encampment residents move.**

17 59. The City of Berkeley **takes** anything that appears unattended, including
18 tents and clothing. They also dispose of anything that evicted residents cannot carry.
19 They put these items in a dumpster and do not properly store them so that they can be
20 collected and used when retrieved.

21 60. **Plaintiff Benjamin Royer's belongings were taken in this**
22 **manner on one occasion. Basic survival items such as his tent, sleeping**
23 **bag, sleeping pad, clothes, and tarps were confiscated by the City. In**
24 **addition, the City took his bike pump that he uses to keep the wheels on his**
25 **wheelchair pumped and a therapy tool that he uses to manage his bi-polar**
26 **disorder.**

27 61. City employees **regularly** dispose of disability appliances. One former
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1 encampment resident, Brett Schnaper, who is physically disabled, had his brace boot,
2 osteo-shoes, ankle assist, and cane disposed of after one of the evictions that occurred
3 on December 21, 2016, with no regard to his medical need for those devices. He was not
4 able to retrieve the devices and suffered from pain and mobility issues as a result.

5 62. After the November 17, 2016, eviction, the City of Berkeley collected
6 residents' belongings and stored them in a dumpster, outside, at the Transfer Station in
7 Berkeley. When residents went to retrieve their items, they found them **mixed** in with
8 other people's items and with garbage. The items had also been soaked through due to
9 heavy rain. The items in the dumpster included identification cards and medications.

10 63. Plaintiffs Sullivan **and Royer** lost personal property during evictions,
11 and plaintiffs Sullivan, **Royer and** Bredenberg lost shared property during evictions.

12 64. As the property that Berkeley discards or stores improperly included
13 tents, sleeping bags, winter coats, and tarps, residents spent nights that winter exposed
14 to the elements until community members could donate **new** items. This put them at
15 severe risk of weather-induced illnesses.

16 65. The **retaliatory evictions only ended once the FTCfth**
17 **encampment moved to San Francisco Bay Area Rapid Transit ("BART")-**
18 **owned land.**

19 66. **They resided on that land until November 2017. While there,**
20 **they** garnered support from their housed neighbors.

21 67. Community groups such as Friends of Adeline purchased necessary items
22 for the encampment from time to time.

23 68. In the height of a state-wide Hepatitis A outbreak, Friends of Adeline
24 purchased a port-a-potty and hand-washing station for the encampment when the City
25 refused to do so. This is a life-saving measure that helps stabilize the encampment.

26 69. **Encampments provide stability and safety for homeless**
27 **residents while they attempt to find jobs, housing, and survive.**
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1 70. At the **FTCftH** encampment, members have to abide by a set of rules.
2 They are invited to perform chores around the encampment to ensure it is **clean**,
3 **orderly**, and accessible, with able-bodied members taking on more responsibility for
4 camp upkeep. Decisions about camp rules and camp members are made by graduated
5 consensus, and residents are subject to a three-strikes and you're out policy.

6 71. In the unfortunate event of an **FTCftH** encampment member having to
7 be removed, the remaining encampment members help the individual pack up all of
8 their belongings and help them move, in the most supportive way that they are able.

9 72. The encampment is violence and serious crime-free.

10 73. At the **FTCftH** camp, each **plaintiff** is able to contribute to a community
11 that provides meaning in their lives, enjoys the safety of a well-self-policed community,
12 and enjoys the support of a housed community that provides life-saving services such
13 as port-a-potties and hand-washing stations.

14 74. **Although FTCftH has suffered retaliatory evictions, all**
15 **homeless residents in Berkeley have either been subject to eviction under**
16 **these circumstances or risk being evicted under these circumstances,**
17 **under threat of arrest.**

18 75. **On February 8, 2018, three encampments suffered an eviction**
19 **under these same conditions and under the threat of arrest. The**
20 **encampments were given less than 24 hours notice. The notice threatened**
21 **arrest under penal code 647(e). Plaintiff Royer was evicted under threat of**
22 **arrest.**

23 76. **With such little notice, plaintiff Royer could not get access to**
24 **the wagon he uses to pull his belongings behind his wheelchair. As a result,**
25 **he had to pack his belongings in his wheelchair.**

26 77. There is a substantial risk of irreparable harm including risk of injury,
27 illness, and permanent loss of property **whenever homeless people are evicted. It**
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1 **is clear that the City of Berkeley intends to continue evictions under threat**
2 **of arrest.**

3 **CLASS ALLEGATIONS**

4 78. The named individual Plaintiffs bring this action on behalf of themselves
5 and on behalf of a class of all those similarly situated pursuant to Rule 23(a) and (b)(2)
6 of the Federal Rules of Civil Procedure.

7 **Definition**

8 79. Plaintiffs seek to represent a class of all **presently homeless**
9 **individuals in Berkeley who camp as a means of sheltering themselves,**
10 **under threat of arrest, despite the failure of the City to provide adequate**
11 **shelter beds.**

12 80. **Plaintiffs also seek to represent a subclass of past,** present and
13 future residents of the encampment known as First They Came for the Homeless, an
14 intentional community of homeless individuals, **who suffer retaliatory evictions.**

15 **Numerosity**

16 81. The class is so numerous that joinder of all members is impractical.

17 82. Plaintiffs are informed and believe, and based thereon allege, that there
18 are **nearly 1000, and likely more, homeless residents in Berkeley.**

19 83. **Plaintiffs allege that there are** twenty to thirty members of First they
20 Came for the Homeless at any given time. Due to the nature of homelessness and the
21 rules of the intentional community, membership fluctuates such that joining all
22 potentially impacted individuals is impracticable. It is unknown how many additional
23 unsheltered homeless Berkeley residents and additional future homeless residents
24 would seek to join First They Came for the Homeless if the encampment were permitted
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1 to remain in place. Moreover, members of the class who may suffer future injury are not
2 capable of being identified at this time, as the class includes future members of the
3 encampment.

4 **Common Questions of Law and Fact**

5 84. Common questions of law and fact predominate, and include: (a) whether
6 defendant's policies, practices and conduct of seizing and destroying the personal
7 property of individuals who are homeless, without providing sufficient or any prior
8 notice or a meaningful opportunity to retrieve vital personal possessions before they are
9 destroyed violated and continue to violate the class members' constitutional rights
10 against unreasonable seizure; (b) whether these same policies, practices and conduct
11 violated and continue to violate the class members' constitutional rights to due process;
12 (c) whether the policies, practices and conduct of defendants violated and continue to
13 violate the class members' federal constitutional rights to be free from cruel and unusual
14 punishment; (d) whether the City of Berkeley targets the **proposed subclass** for
15 enforcement actions based on the content of their speech; **and** (f) whether injunctive
16 relief should issue to enjoin the policy, practice and conduct of the defendant's agents.

17 **Typicality**

18 85. The claims of the class representatives are typical of those of the class
19 members with respect to the constitutionality and legality of the defendants' policies,
20 practices and conduct at issue here. The prosecution of individual actions against the
21 defendants by individual class members would create a risk of inconsistent and varying
22 adjudications, which would result in variable standards of conduct for defendant.

23 **Adequacy of Representation**

24 86. The named plaintiffs are members of the proposed class and will fairly and
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adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire class. Counsel of record for plaintiffs are experienced in federal civil rights litigation and class actions.

**FIRST CLAIM FOR RELIEF -
DENIAL OF DUE PROCESS IN VIOLATION OF THE FOURTH
AMENDMENT**

(By plaintiffs against defendant **City of Berkeley**)
(42 U.S.C. § 1983)

87. Plaintiffs incorporate by reference paragraphs 1 through **86** above as though fully set forth herein.

88. By virtue of the foregoing, defendant punishes plaintiffs by destroying their property and forcing them to move in poor weather conditions based only on complaints from housed community members, without offering plaintiffs or the putative class an opportunity to be heard, depriving plaintiffs and the putative class their right under the Fourth Amendment to the United States Constitution to be free of punishment without due process.

**SECOND CLAIM FOR RELIEF -
UNLAWFUL SEIZURE IN OF PROPERTY IN VIOLATION OF THE FOURTH
AMENDMENT**

(By plaintiffs against all defendant **City of Berkeley**.)
(42 U.S.C. § 1983)

89. Plaintiffs incorporate by reference paragraphs 1 through **88** above as though fully set forth herein.

90. Defendant violated plaintiffs' Fourth Amendment rights to be free from unreasonable seizure of their property by confiscating and then destroying plaintiffs' property without sufficient warrant and at times under threat of arrest if plaintiffs reentered the cordoned off encampment. Defendant's unlawful actions, through the conduct of its employees from the Berkeley and BART police departments and other city departments was done with the specific intent to deprive plaintiffs of their constitutional rights to be secure in their property **or with reckless disregard of their rights.**

1 91. Plaintiffs are informed and believe that the acts of the defendant's
2 employees and agents were intentional in failing to protect and preserve their property
3 and that, at minimum, the defendants were deliberately indifferent to the likely
4 consequence that the property would be seized and destroyed unlawfully, based on the
5 past circumstances of similar constitutional and statutory violations of the law.

6 92. As a direct and proximate consequence of the acts of defendant's agents
7 and employees, plaintiffs have suffered and continue to suffer loss of their personal
8 property and are entitled to compensatory damages for their property and other injury
9 to their person.

10 **THIRD CLAIM FOR RELIEF -**
11 **RETALIATION AGAINST PROTECTED ACTIVITY IN VIOLATION**
12 **OF THE FIRST AMENDMENT**

13 (By plaintiffs against the defendants **City of Berkeley**)
14 (42 U.S.C. § 1983)

15 93. Plaintiffs incorporate by reference paragraphs 1 through **92** above as
16 though fully set forth herein.

17 94. By virtue of the foregoing, defendant targeted plaintiffs and the putative
18 class for evictions in harsh winter months based on the content of their speech and
19 their political engagement.

20 **DECLARATORY RELIEF ALLEGATIONS**

21 95. Plaintiffs incorporate paragraphs 1 through **94** as though fully set forth
22 herein.

23 96. A present and actual controversy exists between Plaintiffs and Defendant
24 concerning their rights and respective duties. Plaintiffs contend that Defendant violated
25 their rights and the rights of the Class under federal anti-discrimination law and
26 constitutional law. Plaintiffs are informed and believe and based thereon allege that
27 Defendant denies these allegations. Declaratory relief is therefore necessary and
28 appropriate.

INJUNCTIVE RELIEF ALLEGATIONS

97. Plaintiffs incorporate paragraphs 1 through **96** as though fully set forth herein.

98. No plain, adequate, or complete remedy at law is available to Plaintiffs and the Class to redress the wrongs addressed herein.

99. If this Court does not grant the injunctive relief sought herein, Plaintiffs and the Class will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray that this Court:

- (1) Certify the proposed Class;
- (2) Enter an order declaring that defendant has violated plaintiffs' constitutional and statutory rights;
- (3) Issue preliminary and permanent injunctions restraining defendant and their officers, agents, employees, successors, and any other persons acting in concert with them from violating plaintiffs' constitutional and statutory rights during interactions with plaintiffs and the class;
- (4) Issue preliminary and permanent injunctions requiring defendant to permit plaintiffs to remain housed in their current location;
- (5) Award reasonable attorneys' fees and costs, pursuant to 28 U.S.C. § 1988 and any other applicable provisions of federal law; and
- (6) Order such other and further relief as the Court deems appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal

1 Rules of Civil Procedure.

2 Dated: **March 30, 2018**

3 SIEGEL, YEE & BRUNNER

4
5 By: /s/*EmilyRose Johns*
EmilyRose Johns

6 Attorney for Plaintiffs
7 CLARK SULLIVAN,
8 ADAM BREDENBERG, **and**
9 **BENJAMIN ROYER**