

1 HANS K. ASHBAUCHER  
2 c/o Kimberly Starr  
3 P.O. BOX 5692  
4 EUREKA, CA 95502  
5 *Pro Se*

KIMBERLY L. STARR  
P.O. BOX 5692  
EUREKA, CA 95502  
(707) 618-9185  
*Pro Se*

4 JOHNIE C. MILLER  
5 c/o ARCATA ENDEAVOR  
6 501 9<sup>th</sup> STREET  
7 ARCATA, CA 95521  
8 *Pro Se*

MICHELLE HERNANDEZ  
980 13<sup>th</sup> STREET  
ARCATA, CA 95521  
*Pro Se*

8 KRISTOFER JOHNSON  
9 980 13<sup>th</sup> STREET  
10 ARCATA, CA 95521  
11 *Pro Se*

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

15 HANS K. ASHBAUCHER ,  
16 KIMBERLY L. STARR  
17 JOHNIE C. MILLER,  
18 MICHELLE HERNANDEZ,  
19 KRISTOFER JOHNSON

Case No. CV 08 2480 MHP

18 Plaintiffs,

19 v.

20  
21 CITY OF ARCATA; MICHAEL HACKETT,  
22 individually and as Arcata City Manager;  
23 ARCATA POLICE DEPARTMENT;  
24 CHIEF RANDY MENDOZA, individually and  
25 as Chief of the Arcata Police Department;  
26 CAPTAIN TOM CHAPMAN,  
27 OFFICER MARTINEZ,  
28 OFFICER DRAKE GOODALE, individually  
and in their capacity as Officers of the Arcata  
Police Department; COUNTY OF  
HUMBOLDT, a political subdivision of the  
State of California; HUMBOLDT COUNTY  
SHERIFF’S DEPT.; Sheriff Gary Philp,

**FIRST AMENDED COMPLAINT  
FOR DAMAGES AND  
DECLARATORY AND  
INJUNCTIVE RELIEF  
FOR VIOLATIONS OF CIVIL  
RIGHTS (and commission of other  
wrongs)**

**JURY TRIAL DEMANDED**

1 individually and as Humboldt County Sheriff;  
2 SGT. BUIHNER, DEPUTY CHANDLER,  
3 individually and as members of the Humboldt  
4 County Sheriff's Department;  
5 HUMBOLDT COUNTY CORRECTIONAL  
6 FACILITY; HUMBOLDT STATE  
7 UNIVERSITY POLICE DEPARTMENT;  
8 CHIEF THOMAS DEWEY, LIEUTENANT  
9 LYNNE SODERBERG, OFFICER RODNEY  
10 DICKERSON, individually and as Officers of the HSU  
11 Police Department;  
12 CALIFORNIA HIGHWAY PATROL;  
13 CITY OF EUREKA;  
14 EUREKA POLICE DEPARTMENT;  
15 CITY OF FORTUNA;  
16 FORTUNA POLICE DEPARTMENT;  
17 HUMBOLDT COUNTY OFFICE OF THE  
18 DISTRICT ATTORNEY; PAUL GALLEGOS,  
19 individually and as Humboldt County District  
20 Attorney; and DOES 1-198, inclusive.

21  
22 Defendants.

---

23  
24  
25  
26  
27  
28  
A. INTRODUCTION

1. Plaintiffs are comprised of people who are homeless, temporarily sheltered, disabled, and low-income. Plaintiffs seek declaratory and injunctive relief, as well as compensatory and punitive damages, against the Defendant officers, government entities, and other officials and policymakers for violating their civil and Constitutional rights by discriminating against them for their homeless status, or perceived homeless status, treating them like criminals for carrying out basic functions (primarily sleep) while homeless, unfairly targeting their participation in a demonstration, stealing and depriving them of life-sustaining medications and other property, intentionally and/or negligently depriving them of medical attention, assaulting and battering during wrongful arrest, and subjecting them to intolerable custodial conditions.

1 2. Plaintiffs, through a “People Project” encampment demonstration, aimed at exposing and  
2 discussing with the public the ongoing and total lack of sleeping space available for homeless  
3 people in the City of Arcata and surrounding areas, the criminalization of homelessness, and  
4 the overall climate of hostility and harassment that continues to be both created and  
5 perpetuated by local government agencies and police departments.

6 3. Plaintiffs and other encampment participants also intended to both model and provide a  
7 safe, albeit temporary, sleeping space on public land.

8 4. People Project is an unincorporated association of Humboldt County residents, sheltered  
9 and unsheltered, who work for the rights of poor and homeless people, and focus on building  
10 self-determined dignified community through dialogue and action. People Project began as a  
11 result of public forums on homelessness.

12 5. The City of Arcata provides no shelter or safe place for homeless people to rest or  
13 perform other life-sustaining activities. People Project sought, through the temporary  
14 encampment demonstration, to connect with and raise awareness of caring community  
15 members and generate dialogue, energy, and support for establishing a people-run, eco-friendly  
16 campground.

17 6. On April 25, 2007, Defendants disrupted and dismantled the People Project encampment  
18 demonstration (that action by Defendants hereto referred to as “the raid”), falsely arresting  
19 Plaintiffs and chilling the First Amendment rights of Plaintiffs and other demonstration  
20 participants.

21 7. Defendants deprived and continue to deprive Plaintiffs (and others) of sleep and of  
22 freedom from fear of harassment.

23 8. Defendants seized and obstinately refused to return Plaintiffs’ demonstration signs and  
24 their survival gear and personal belongings, including tarps, blankets, clothing, food, and  
25 medication, leaving them without any protection from the cold, rainy weather and without  
26 other property for survival.

27 9. Because Arcata (and other Defendant Humboldt County law enforcement and  
28 government) has proven itself to be deaf to all urgings by community to respect homeless

1 peoples' human rights and to cease from day and night harassment, intimidation, and  
2 punishment of homeless people for performing or needing to perform life-sustaining activities,  
3 and whereas the Defendants exhibit no intention of voluntarily changing such unconstitutional  
4 pattern and practice, and Plaintiffs can exhaust no other options, Plaintiffs appeal to this court  
5 to provide declaratory and injunctive relief regarding such discriminatory and inhumane  
6 actions by Defendants.

7  
8 JURISDICTION AND VENUE

9 10. This Complaint is brought pursuant to 42 U.S.C. §§ 1983 and 1988 to vindicate rights  
10 protected by the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution  
11 and by the analogous provisions of the California Constitution. Jurisdiction is founded on 42 U.S.C.  
12 §§ 1331 and 1343(1), (2), (3) and (4), and the aforementioned statutory and constitutional provisions.  
13 This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §1331 (in that it arises under  
14 the Constitution of the United States); §1343(a)(3) (in that it is brought to redress deprivations, under  
15 color of state authority, of rights, privileges and immunities secured by the United States  
16 Constitution); and under (a)(4) (in that it seeks to secure equitable relief under an Act of Congress,  
17 specifically under 42 U.S.C. §1983) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and  
2202.

18 11. Venue is proper in that Plaintiffs reside within this district in Humboldt County, California,  
19 and all of the acts and/or omissions giving rise to this action occurred or will occur in this District.

20 12. This lawsuit should be assigned to the San Francisco Division of this Court because the events  
21 or omissions giving rise to this lawsuit occurred or will occur in Humboldt County, California.

22  
23 PARTIES

24 Plaintiffs

25 13. Plaintiff HANS K. ASHBAUCHER ("ASHBAUCHER") is, and at all times relevant hereto  
26 was, a citizen of the United States and an unsheltered homeless person residing in Humboldt County,  
27 California.

28 14. Plaintiff, KIMBERLY L. STARR ("STARR") is, and at all times relevant hereto was, a citizen  
of the United States and an unsheltered homeless person residing in Humboldt County, California.

1 15. Plaintiff JOHNIE C. MILLER (“MILLER”) is, and at all times relevant hereto was, a citizen of  
2 the United States and an unsheltered homeless person residing in Humboldt County, California.

3 16. Plaintiff MICHELLE HERNANDEZ (“HERNANDEZ”) is, and at all times relevant hereto  
4 was, a citizen of the United States residing in Humboldt County, California. Plaintiff Hernandez  
5 vacillates between housed and homeless status; when she’s able to find housing, it’s temporary at best.

6 17. Plaintiff KRISTOFER JOHNSON (“JOHNSON”) is, and at all times relevant hereto was, a  
7 citizen of the United States residing in Humboldt County, California.

8 Defendants

9 18. Defendant CITY OF ARCATA is, and at all times relevant hereto was, a political subdivision  
10 of the State of California. The City of Arcata is a distinct political entity that has its own budget.

11 Plaintiffs are informed and believe and thereon allege that Defendant City of Arcata coordinated the  
12 raid and ongoing harassment and deprivations which give rise to this Complaint, and that Defendant  
13 City of Arcata, at all relevant times, did and continues to engage in a pattern and practice that violates  
14 the rights of homeless people and creates and perpetuates a hostile environment to deprive homeless  
15 people of dignity and biological, life-sustaining necessities. Defendant City, its police department,  
16 policy makers, supervisory personnel and employees responsible for making and/or carrying out the  
17 acts giving rise to this Complaint, including the Defendants named in paragraphs 6 through 12,  
18 inclusive, are sometimes hereafter collectively referred to as “Defendant City of Arcata.”

19 19. Defendant MICHAEL HACKETT (“HACKETT”) is, and at all times relevant hereto was, the  
20 Arcata City Manager.

21 20. Defendant ARCATA POLICE DEPARTMENT (“APD”) is, and at all times relevant hereto  
22 was, a division of the City of Arcata.

23 21. Defendant RANDY MENDOZA (“MENDOZA”) is, and at all times relevant hereto was,  
24 the Chief of the Arcata Police Department, responsible for directing the operations and  
25 establishing the practices and policies of the Arcata Police Department and working under the  
26 supervision and direction of Defendant City of Arcata.

1 22. Defendant TOM CHAPMAN ("CHAPMAN") is, and at all times relevant hereto was, a  
2 captain employed by the Arcata Police Department and working under the supervision and  
3 direction of Defendant City of Arcata.

4 23. Defendant ROBERT MARTINEZ ("MARTINEZ") is, and at all times relevant hereto  
5 was, an officer employed by the Arcata Police Department and working under the supervision  
6 and direction of Defendant City of Arcata.

7 24. Defendant DRAKE GOODALE ("GOODALE") hereto was, at all times relevant, an  
8 officer employed by the Arcata Police Department and working under the supervision and  
9 direction of Defendant City of Arcata. Upon Plaintiffs' information and belief, GOODALE is  
10 now an officer employed by Eureka Police Department.

11 25. Defendant COUNTY OF HUMBOLDT ("Defendant County") is, and at all times  
12 relevant hereto was, a political subdivision of the State of California. Humboldt County is a  
13 distinct political entity that has its own budget. Plaintiffs are informed and believe and thereon  
14 allege that Defendant County did and continues to engage in a pattern and practice that violates  
15 the rights of homeless people and creates and perpetuates a hostile environment to deprive  
16 homeless people of dignity and biological, life-sustaining necessities. Defendant County, its  
17 Sheriff's Department, policy makers, supervisory personnel and employees who are responsible  
18 for Sheriff's officers' participation in the raid and for transport and jail custody conditions  
19 imposed on Plaintiff arrested as a result of the raid, including the Defendants named in  
20 paragraphs 21 through 26, inclusive, are sometimes hereafter collectively referred to as  
21 "Defendant County."

22 26. Defendant HUMBOLDT COUNTY SHERIFF'S DEPARTMENT ("HCSD") at all times  
23 relevant hereto was, a division of Humboldt County.

24 27. Defendant GARY PHILP ("Philp") is, and at all times relevant hereto was, the Sheriff of  
25 Humboldt County, responsible for directing the operations and establishing the practices and  
26 policies of the Humboldt County Sheriff's Department and the Humboldt County Correctional  
27 Facility.

28

1 28. Defendant PHIL BUIHNER ("BUIHNER ") is, and at all times relevant hereto was, a  
2 sergeant employed by the Humboldt County Sheriff's Department and working under the  
3 supervision and direction of Defendant County.

4 29. Defendant DEPUTY CHANDLER ("CHANDLER") is, and at all times relevant hereto  
5 was, a deputy employed by the Humboldt County Sheriff's Department and working under the  
6 supervision and direction of Defendant County.

7 30. Defendant HUMBOLDT COUNTY CORRECTIONAL FACILITY ("JAIL") is, and at  
8 all times relevant hereto was, under the supervision and direction of the Defendant Humboldt  
9 County Sheriff's Department's Custody Services Bureau (upon Plaintiff's information and  
10 belief).

11 31. Defendant HUMBOLDT STATE UNIVERSITY POLICE DEPARTMENT  
12 ("HSUPD") is, and at all times relevant hereto was, a division of the State of California.  
13 Defendant HSUPD participated in the raid and continuing other harassment and deprivations  
14 which give rise to this Complaint, and Plaintiffs are informed and believe and thereon allege that  
15 Defendant HSUPD, at all relevant times, did and continues to engage in a pattern and practice  
16 that violates the rights of homeless people and creates and perpetuates a hostile environment to  
17 deprive homeless people of dignity and biological, life-sustaining necessities. Humboldt State  
18 University Police Department, its policy makers, supervisory personnel and employees  
19 responsible for making and/or carrying out acts giving rise to this Complaint, including the  
20 Defendants named in paragraphs 27 through 30, inclusive, are sometimes hereafter collectively  
21 referred to as "Defendant HSUPD" or "Humboldt State PD."

22 32. Defendant CHIEF THOMAS DEWEY ("DEWEY") is, and at all times relevant hereto  
23 was, the Chief of the HSU Police Department, responsible for directing the operations and  
24 establishing the practices and policies of the HSU Police Department, a division of the State of  
25 California.

26 33. Defendant LIEUTENANT LYNNE SODERBERG ("SODERBERG") is, and at all times  
27 relevant hereto was, a lieutenant employed by the HSU Police Department, and working under  
28 the supervision and direction of the State of California.

1 34. Defendant OFFICER RODNEY DICKERSON (“DICKERSON”) is, and at all times  
2 relevant hereto was, an officer employed by the HSU Police Department, and working under the  
3 supervision and direction of the State of California.

4 35. Defendant CALIFORNIA HIGHWAY PATROL (“CHP”) is, and at all times relevant  
5 hereto was, a division of the State of California.

6 36. Defendant CITY OF EUREKA is, and at all times relevant hereto was, a political  
7 subdivision of the State of California. The City of Eureka is a distinct political entity that has its  
8 own budget. Plaintiffs are informed and believe and thereon allege that Defendant City of  
9 Eureka participated in the raid and continuing harassment and deprivations which give rise to  
10 this Complaint, and that Defendant City of Eureka, at all relevant times, did and continues to  
11 engage in a pattern and practice that violates the rights of homeless people and creates and  
12 perpetuates a hostile environment to deprive homeless people of dignity and biological, life-  
13 sustaining necessities. Defendant City of Eureka, its police department, policy makers,  
14 supervisory personnel and employees responsible for making and/or carrying out the acts giving  
15 rise to this Complaint, including the Defendants named in paragraphs 32 through 33, inclusive,  
16 are sometimes hereafter collectively referred to as "Defendant City of Eureka."

17 37. Defendant EUREKA POLICE DEPARTMENT (“EPD”) is, and at all times relevant  
18 hereto was, a division of the City of Eureka.

19 38. Defendant CITY OF FORTUNA is, and at all times relevant hereto was, a political  
20 subdivision of the State of California. The City of Fortuna is a distinct political entity that has its  
21 own budget. Plaintiff is informed and believes and thereon alleges that Defendant City of  
22 Fortuna participated in the raid which gives rise to this Complaint. Defendant City of Fortuna,  
23 its police department, policy makers, supervisory personnel and employees responsible for  
24 making and/or carrying out acts giving rise to this Complaint are sometimes hereafter  
25 collectively referred to as "Defendant City of Fortuna."

26 39. Defendant FORTUNA POLICE DEPARTMENT (“FPD”) is, and at all times relevant  
27 hereto was, a division of the City of Fortuna.

28



1 40. Defendant HUMBOLDT COUNTY OFFICE OF DISTRICT ATTORNEY ("HCDA") is,  
2 and at all times relevant hereto was, a political subdivision of the State of California. Humboldt  
3 County Office of District Attorney is a distinct political entity that has its own budget. Plaintiffs  
4 are informed and believe and thereon allege that Defendant District Attorney did and continues  
5 to engage in a pattern and practice that violates the rights of homeless people and creates and  
6 perpetuates a hostile environment to deprive homeless people of dignity, liberty, and biological,  
7 life-sustaining necessities. Defendant District Attorney Paul Gallegos, supervisory personnel  
8 and employees who are responsible for participation in the raid by the Humboldt County Office  
9 of District Attorney are sometimes hereafter collectively referred to as "Defendant DA."

10 41. Does 1 through 198, inclusive, are city or state police officers (whether line officers or  
11 supervisors), Sheriff's deputies, or other city, county, or state officials or policymakers, whose  
12 identities are unknown at the present time. All references within to "Defendants," collectively,  
13 include these Doe defendants. Plaintiffs will move to substitute their true names after they  
14 become known.

15 42. The individual Defendants, including all individual Doe defendants, carried out the  
16 actions complained of in their individual capacities, under color of law, in the course and scope  
17 of their employment as city, county, and/or state employees.

18 43. The Defendants are all jointly and severally liable for any damages awards.

19  
20 CLAIMS REQUIREMENT

21 44. Prior to invoking this Court's pendent jurisdiction over causes of action made pursuant to  
22 State law, Plaintiff complied with administrative claim requirements under California law.

23  
24 FACTUAL BACKGROUND

25 45. The City of Arcata, a university town in Northern Humboldt County, is a somewhat  
26 rural town in an economically depressed area. For a number of reasons, the main industries  
27 (i.e. fishing and logging) and therefore the traditional primary employment opportunities in  
28 the area have almost come to a complete halt. Unemployment levels have risen to

1 astronomical heights; there is no rent control program; there is a huge disparity of low-income  
2 housing throughout Humboldt County; many people live on Social Security or disability  
3 benefits; and homelessness has hit crisis levels. Despite this, and although Arcata  
4 encompasses parks, forest, a marsh, and huge open spaces, homeless people in Arcata and  
5 surrounding areas have been systematically prohibited from sleeping anywhere outside; there  
6 are almost no places for a person to sleep without paying money.

7 46. The two shelter programs that *do* exist in Arcata, both independent of and unsupported  
8 by the City, are unavailable to most homeless people in Arcata. One, operated by the All-  
9 Faith Partnership, is sporadically open due to lack of finances, yet even when it is in full  
10 swing houses a maximum 12 people who must sign up in the morning and report in the  
11 afternoon to the shuttle van which takes them far out of town to the shelter for the rest of the  
12 day and night. There are no walk-ins, and the shelter list is commonly known to be full early  
13 in the day. The other program, ‘Arcata House’ is a transitional residence that is unavailable to  
14 most single homeless individuals. Though in the past it transitioned people into more  
15 permanent housing after 3 months, in recent times it has housed the same residents  
16 continuously for over a year, leaving no openings for others. Even with quicker turnover,  
17 Arcata House would only accommodate a fraction of the homeless population.

18 47. Though the Defendant City of Arcata fails to offer *any* “legal” housing facilities for  
19 people who have no house of their own and presumably relies upon the two privately-run  
20 shelters, the Defendant City of Arcata persists in criminalizing homeless people who attempt  
21 to sleep anywhere outside or even in their own vehicles, and no free campground safe zone  
22 exists for the 300 plus homeless people who reside in Arcata (population 17, 000) at any given  
23 time. The Defendant City of Arcata forbade churches from allowing people to sleep in cars in  
24 their parking lots. The Defendant City of Arcata has not only failed to provide any shelter or  
25 safe space for homeless people to rest, but has been heavy-handed in discouraging and  
26 punishing any groups or individuals who attempt to provide or create such spaces.

27 48. Continuous harassment by police and police enforcement of unconstitutional city  
28 municipal codes attempt to prohibit *particular* people (wearing a backpack, appearing

1 homeless) from resting on public lands, from sitting in public places, and even from stopping  
2 on the sidewalk if they are accompanied by a dog.

3 49. People Project, of which Plaintiffs are members, has found and continues to find local  
4 government unwilling to cease its inhumane and deliberate oppression of homeless people.  
5 Defendant City of Arcata ignores years of articulated creative ideas from homeless people and  
6 other community members, instead increasingly funding police and rangers to hunt down  
7 homeless people *sleeping* in the extensive wooded parks, harass homeless people on the  
8 streets and other public places, repeatedly destroy and/ or confiscate their meager yet  
9 necessary survival gear and personal possessions, and even bulldoze an open field in which  
10 veterans are (were) known to sleep. In addition, Defendant City of Arcata has solicited  
11 federal tax dollars under the guise of assessing and meeting the needs of homeless people, yet  
12 has done nothing of the sort. In light of said observations and experience in Arcata by People  
13 Project members (and others), People Project sought, through the temporary encampment  
14 demonstration, to connect with and raise awareness of caring community members about the  
15 current conditions and policies inflicted against people without conventional shelter and to  
16 generate energy to establish a people-run, eco-friendly campground.

17 50. Through many years of commissions, federally funded task forces, and non-profit and  
18 grass-roots efforts, the idea of a campground has repeatedly been one feasible and effective  
19 solution to the lack of sleeping places for homeless people. There are homeless people in  
20 Arcata, including many war veterans, who find that their mental health cannot be maintained  
21 sleeping indoors, especially in crowded situations. *In Arcata, where it rains for several*  
22 *months of the year, people must be able to put up tarps or tents to stay dry.* In addition to more  
23 affordable housing, and emergency and year-round shelters, a campground, with sleep-vehicle  
24 parking, is an obvious solution for the lack of sleeping places.

25 51. The City of Arcata has shown increasing hostility and discrimination toward homeless  
26 adults, youth and families, through policy (written and unwritten), highly publicized rhetoric  
27 blaming homeless people for every social ill, through a persistent campaign to shut down the  
28 only food bank and place where people can receive minimal public services, and by refusing

1 to provide any public bathrooms. The City of Arcata has waged an overt campaign to so  
2 criminalize homeless people (including homeless students at the Humboldt State University),  
3 that they [homeless residents] would either disappear, die of exposure, or become a regular  
4 part of the jail/prison system. The ‘new’ jail in sister city Eureka, 7 miles away, is the largest  
5 building in the area, and is often referred to as “the homeless shelter.” Recently, there was an  
6 announced boycott of travel to Arcata, by people from out-of-town, due to its treatment of  
7 homeless people.

### 8 9 FACTUAL ALLEGATIONS

10 52. Plaintiffs and other homeless people and their allies in Arcata have, for many years,  
11 consistently addressed the Arcata City government at public meetings, in writing, and through  
12 peaceful demonstrations. They have eloquently and persistently argued to City government  
13 that a policy, custom, and practice which does not allow a person to sleep anywhere, and often  
14 prohibits the presence of a homeless person *anywhere* in town, is illegal and violates basic  
15 tenets of human rights.

16  
17 53. Through court rulings and documents, and through community members, *including*  
18 *Plaintiffs*, communicating with the Arcata government, the Arcata City Attorney, Defendant  
19 City Manager, and Defendant Police Chief Mendoza are well aware of several times since  
20 2005 that courts have determined (in failed criminal cases against homeless people) that there  
21 is no adequate legal place for the vast majority of homeless people to sleep in Arcata or  
22 surrounding areas.

23  
24 54. Arcata’s homeless population turns out regularly and in extraordinary numbers at  
25 weekly city council meetings, (former) homelessness task force meetings, and other  
26 government meetings that are required to provide a forum for public comment/participation.  
27 Arcata’s City Council and City Manager have heard many creative and cooperative  
28 suggestions from homeless people and other members of the public, that they have apparently

1 chosen to ignore and/or explicitly reject, even the simple pleading by the homeless people that  
2 they be free of harassment so that they could collectively improve their situation and the  
3 health of the community.

4  
5 55. The Defendant City of Arcata, in the last couple of years, was receiving so much  
6 public comment regarding the oppressive climate and policies against homeless people, that it  
7 moved the public comment period to the end of the weekday evening meetings. Homeless  
8 people (and other members of the public), including Plaintiffs, wishing to address the Arcata  
9 Council and staff, have waited as late as 1am at meetings to speak; the timing change  
10 effectively made it impossible for some homeless people, including Plaintiffs, needing to find  
11 a resting place in the dark and be up early before police encounter, to bring their concerns to  
12 the local government and public.

13  
14 56. On April 21, 2007, People Project began an organized encampment demonstration  
15 located well outside of the vicinity of the Business District of the City of Arcata on a large  
16 public yard adjacent to an underused city building, formerly a community center.

17  
18 57. It was common knowledge throughout the homeless community, and to Plaintiffs, that  
19 the only shelter, established by the All-Faith Partnership, was full and even had a daily  
20 waiting list. In May of 2007, the shelter was closed, as it has done periodically and  
21 unpredictably.

22  
23 58. People Project was explicit with the public and all encampment participants and  
24 visitors, and publicized before and during the encampment demonstration through contact  
25 with media, a city council member, hundreds of fliers, and word of mouth, that the  
26 encampment would be temporary, organized for a specific length of time; not an attempt to set  
27 up anything permanent.

28

1 59. Because there are no public bathrooms in Arcata, a port-a-potty had been rented and  
2 paid for by a People Project participant to be on-site at the encampment. As People Project  
3 participants began arriving on a rainy April 21, 2007, holding demonstration signs, they  
4 witnessed the port-a-potty being removed from the site under the apparent order of the  
5 Defendant City of Arcata and the supervision of a Ranger employed by said Defendant City.

6  
7 60. Encampment participants gained enough community support for their demonstration  
8 that they were able to use the bathrooms of supportive community members for the duration  
9 of their stay on the public lawn.

10  
11 61. People Project participants hung tarps and tents for shelter and set up a kitchen to  
12 provide food for anyone who showed up and wished to eat.

13  
14 62. Local residents began arriving to ask questions as well as to offer donations and  
15 support.

16  
17 63. During their short stay on the public lawn, numerous people, including youth, families  
18 with small children, and veterans arrived at the encampment and gratefully took advantage of  
19 the only available safe and convivial place to sleep, eat, and even leave their belongings when  
20 they needed to take a load off to go about their daily business, including gathering food and  
21 seeking work and resources toward acquire a permanent place of residence. Participants made  
22 and held signs to educate passers-by about the intentions and purpose encampment. They also  
23 were handing out fliers, engaging community members in respectful dialogue, sharing  
24 perspectives on the root causes and injustices associated with homelessness, and using the  
25 opportunity to brainstorm more permanent, creative ways to address solutions to the everyday  
26 problems faced by the homeless community.

27  
28

1 64. During the late evening and morning of April 24, 2007 and April 25, 2007  
2 respectively, there were heavy rains, and Plaintiffs and other People Project encampment  
3 participants present on the public lawn at that time totaled about 55 people of all ages.  
4

5 65. During the late evening and morning of April 24, 2007 and April 25, 2007 Plaintiffs  
6 and almost all other People Project encampment participants present on the public lawn at that  
7 time were sleeping under tarps or tents, or both.  
8

9 66. In the early morning darkness of April 25, 2007, after a night of heavy rain, Defendant  
10 Police Agencies and Defendant DA came, in large number, under the tarps and told Plaintiffs  
11 and other encampment participants to wake up, startling them with their presence.  
12

13 67. Over 30 encampment participants, including Plaintiffs, peacefully complied with  
14 police order, and sat in a circle on a tarp. Other participants woke up and either joined the  
15 circle or left, intimidated by the police presence.  
16

17 68. Defendant APD officers called people to the circle.  
18

19 69. Defendant Police Agencies arrived in greater numbers, filling the street with police  
20 and Sheriff vehicles and lining up in the small street adjacent to the public lawn.  
21

22 70. Community supporters arrived and were across the street from the encampment, kept  
23 away from the public lawn by Defendant Officers.  
24

25 71. Defendant Chapman continued to call people to the circle.  
26

27 72. Through intimidation, Defendant Officers prevented onlookers and supporters from  
28 joining the circle in solidarity.

1 73. Plaintiffs, not wanting to leave the demonstration, stayed in the circle, and were  
2 intimidated to stand up or move at all by the enormous presence of Defendant Officers’.

3  
4 74. Defendant Police Agencies and Defendant City of Arcata employees loaded the  
5 property of the entire encampment, that was not on anyone’s person, into boarded-up trucks,  
6 garbage bins, and garbage bags.

7  
8 75. Defendant Police Agencies never told Plaintiffs or the encampment participants still on  
9 the public lawn as a group, that Defendant Police Agencies had a warrant, nor did they  
10 produce a warrant.

11  
12 76. Defendant DA never told Plaintiffs or the encampment participants still on the public  
13 lawn as a group, that Defendant DA had a warrant, nor did they produce a warrant.

14  
15 77. Defendant Police Agencies never told Plaintiffs or the encampment participants still  
16 on the public lawn as a group, that Plaintiffs or other encampment demonstration participants  
17 were violating any laws.

18  
19 78. Defendant DA never told Plaintiffs or the encampment participants still on the public  
20 lawn as a group, that Plaintiffs or other encampment demonstration participants were violating  
21 any laws.

22  
23 79. After everything was loaded up in trucks, Defendant Police Agencies asked Plaintiff  
24 Miller for his identification. As he was pulling it out of his pocket, Defendant Officers  
25 grabbed Plaintiff Starr, sitting next to Plaintiff Miller in the circle, and arrested her.

26  
27 80. Plaintiff Starr’s skirt and pants had fallen down below her pelvis, having been  
28 aggressively yanked to her feet by the Defendant Officers, and multiple Defendant Officers,



1 mostly men and one woman, stood over her with her ‘private parts’ exposed, and failed to  
2 cover her up before parading her before the crowd of Defendant officer, District Attorney  
3 employees, media, other demonstrators, public supporters, and passers-by. Plaintiffs and other  
4 arrested encampment participants had body parts exposed during and due to Defendant  
5 Officers’ handling of their bodies, which was humiliating and degrading.

6  
7 81. Defendant Officers, after arresting Plaintiff Starr, proceeded to arrest Plaintiff Miller,  
8 then the rest of the encampment participants in the circle.

9  
10 82. Defendant Officers inflicted pain using torture techniques (under the guise of ‘pain  
11 compliance) on Plaintiffs and others sitting peacefully in the circle.

12  
13 83. Plaintiffs suffer ongoing injuries due to the tortuous acts of Defendant Officers.

14  
15 84. Defendant Officers used both metal and plastic handcuffs on Plaintiffs and other  
16 encampment participants so tight that it caused nerve damage, laceration, crying, severe pain,  
17 cutting off of circulation, and ongoing injury.

18  
19 85. Defendant Agencies and Officers erected a road-block barricade across the street  
20 where stood supportive community members and encampment participants who had been  
21 pushed away from the demonstration. At no time did Defendant Agencies or Officers show  
22 paperwork or permit for said barricade.

23  
24 86. The barricade kept the public and supporters from observing police activity on the  
25 public lawn, and isolated Plaintiffs (and other encampment participants in the circle).

1 87. The barricade and other obstructive measures by Defendant Agencies and Officers  
2 prevented supportive community members from participating in a demonstration on the public  
3 lawn.

4  
5 88. Plaintiff Ashbaucher had a seizure on the asphalt, in Defendant Officers' custody.  
6 Defendant Officers failed to call an ambulance for Mr. Ashbaucher.

7  
8 89. Defendant Officers watched Plaintiff Ashbaucher convulsing on the asphalt, in tight  
9 handcuffs, his head hitting the ground, and did nothing to protect him.

10  
11 90. Defendant Officer Dickerson kneed Plaintiff Ashbaucher's neck.

12  
13 91. Plaintiff Ashbaucher was transported to the hospital via ambulance after a People  
14 Project supporter on the sidewalk across the street called 911.

15  
16 92. Plaintiff Ashbaucher was later that day, in poor condition, incarcerated in the jail,  
17 mostly naked, cold, wet, and in otherwise inhumane and intolerable conditions; and Plaintiff  
18 Ashbaucher was denied telephone access. Plaintiff Ashbaucher was held in the jail many  
19 hours longer than other arrested Plaintiffs, and released at night in Eureka, CA.

20  
21 93. Defendant Officers seized Plaintiff Ashbaucher's anti-viral medications, anti-  
22 depressant medications, anti-anxiety medications, and his prescribed medical marijuana. All  
23 of these medications were on his person when arrested. None of these medications were  
24 returned to Plaintiff Ashbaucher.

25  
26 94. Plaintiff Ashbaucher's physical and mental health suffered horribly without his  
27 medications. He presented himself and lists of his medications multiple times to Defendant  
28

1 APD, including Defendant Mendoza, and Plaintiff Ashbaucher visibly thinner and sick was  
2 never returned his medications.

3  
4 95. Defendants seized and held Plaintiffs' and other encampment participants and  
5 supporters' property, despite numerous written and verbal pleas, and complying with requests  
6 for detailed and signed lists. Some of Plaintiffs' property was returned and some given to the  
7 'wrong' people, some destroyed. Property that *was* returned, 12 days later, had not been  
8 inventoried or organized by Defendant APD.

9  
10 96. Defendants' seizure of Plaintiffs' property rendered Plaintiffs without survival gear,  
11 medications, clothes absent of urine, and other necessary personal and collective property,  
12 including reading glasses and food.

13  
14 97. Every Plaintiff, having been awakened by police presence and unable to leave the  
15 circle without fear of police intervention and could not go use the community support  
16 bathrooms, either involuntary urinated in their clothes on the tarp in the circle, or in the  
17 vehicle they were placed in after arrest, or both. One encampment participant defecated in her  
18 pants. This humiliating and unsanitary experience happened in the presence of other people.

19  
20 98. People Project encampment participants, including Plaintiffs after being released from  
21 jail in Eureka, having little to no gear, set up on Arcata City Hall lawn in the late afternoon,  
22 April 25, 2007. (Plaintiff Ashbaucher was still incarcerated). Plaintiffs and other  
23 encampment participants were at City Hall to plead for their survival gear and other supplies  
24 seized that community supporters had loaned or donated.

25  
26 99. Plaintiffs and other People Project encampment participants stayed at Arcata City Hall  
27 until Friday, April 27, 2007, having not been returned their property.

28

1 100. From April 27, 2007 through to the morning of May 2, 2007, Plaintiffs and other  
2 People Project encampment participants continued their encampment demonstration, albeit  
3 with scant supplies, on another public lawn well out of the vicinity of the downtown Business  
4 District at the base of Redwood Park.

5  
6 101. From April 27, 2007 through to the morning of May 2, 2007, Defendant APD and  
7 Defendant HSUPD routinely harassed, awakened, and intimidated Plaintiffs and other People  
8 Project encampment participants throughout the nights and early hours of the morning. Said  
9 Defendants used multiple car police presence and bright lights, at varying and unpredictable  
10 times, during sleeping hours.

11  
12 102. Defendants' (APD and HSUPD) deprivation and intimidation tactics between April 27,  
13 2007 and May 2, 2007 (the last day of the encampment) caused nervousness, anxiety, and  
14 some participants to leave the encampment and hide to find rest.

15  
16 103. Defendant Police Agencies not only chilled First Amendment expression of the  
17 encampment participants, they also increased their regular harassment of homeless people  
18 who were not participating in the encampment demonstration in order to pit non-participants  
19 against participants, to scare, threaten, and to chill instant and future First Amendment  
20 expression regarding human rights for homeless people and against ongoing civil rights  
21 violations.

22  
23 104. Plaintiffs voluntarily dismantled, with other participants, the demonstrative  
24 encampment on May 2, 2007, as originally planned.

25  
26  
27  
28

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**Violation of Federal Civil Rights**  
**42 U.S.C. § 1983**

**(By All Plaintiffs Against All Defendants)**

- 1  
2  
3  
4  
5 105. As a direct and proximate cause of Defendants' acts and omissions, Plaintiffs were  
6 deprived of their rights and privileges under the First, Fourth, Fifth, Eighth, and  
7 Fourteenth Amendments to the United States Constitutions and the laws of the State of  
8 California.
- 9 106. All Defendants, and in particular the City of Arcata, as a matter of policy, practice, and  
10 custom, have with deliberate indifference failed to adequately train, supervise or  
11 otherwise direct police officers and employees thereby causing Defendants to engage  
12 in the unlawful conduct described above.
- 13 107. All Defendants, and in particular the City of Arcata, as a matter of policy, practice, and  
14 custom, has with deliberate indifference failed to properly sanction or discipline police  
15 officers and employees, thereby causing Defendants to engage in the unlawful conduct  
16 described above.
- 17 108. All Defendants, and in particular the City of Arcata, as a matter of policy, practice, and  
18 custom, has with deliberate indifference failed to use adequate hiring procedures,  
19 thereby resulting in negligent and reckless hiring of individual Defendants.
- 20 109. All Defendants, and in particular the City of Arcata, make it governmental policy,  
21 practice, and custom to deprive homeless people of the Constitutional rights described  
22 above.
- 23 110. The acts of Defendants described above were conducted under color of law and  
24 deprived plaintiffs of their rights and privileges secured by the Constitution of the  
25 United States.

**SECOND CAUSE OF ACTION**

**(Denial of Constitutional Right to Equal Protection**

**(By All Plaintiffs Against All Defendants)**

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

111. Defendants’ above-described policies, practices and conduct are intended and designed to single out homeless people and have the purpose and effect of depriving homeless people of their liberty and property, and of attempting to drive homeless people from the City of Arcata. These policies and actions are based on defendants’ animus towards this disfavored group and lacks a rational relationship to any legitimate governmental interest. In adopting and implementing these policies and practices with the intent to harm and disadvantage homeless persons in the City of Arcata, the Defendants have violated the Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983.

**THIRD CAUSE OF ACTION**

**(Excessive Detention in Violation of the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983)**

**(By All Plaintiffs Against All Defendants)**

112. Defendants’ conduct pursuant to the Excessive Detention Policy constitutes the excessive and unreasonable detention for the purpose of preventing Plaintiffs from, and punishing Plaintiffs for, the exercise of their First Amendment Rights. The Excessive Detention policy therefore violates the prohibition against unreasonable seizure of the Fourth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

**FOURTH CAUSE OF ACTION**

**Deprivation of Rights to Free Speech**

**(By All Plaintiffs Against All Defendants)**

113. Plaintiffs are informed and believe, and thereon allege, that Defendants, above-described policies, practices and conduct constitute interference, and attempted interference, by threats, intimidation and coercion, and that Defendants have engaged in a pattern and practice of unreasonable, unnecessary and excessive force, detention, abuse and intimidation with the intent to prevent or discourage People Project and its members from engaging in expression of their beliefs. Plaintiffs allege on information and belief that such conduct is intended by defendants to chill the rights of th Plaintiffs

1 and to punish Plaintiffs for their political views in violation of their right to freedom of  
2 expression and association under the First and Fourteenth Amendments to the  
3 Constitution.

4 **FIFTH CAUSE OF ACTION**

5 **Trespass to Chattels; Conversion; Deprivation of Due Process**

6 **(By All Plaintiffs Against All Defendants)**

7 114. Based on the conduct alleged above, Defendants, and each of them, are liable to  
8 Plaintiffs for committing a trespass against her chattels by unlawfully seizing their  
9 property in the first place. The City of Arcata and the Arcata Police Department is  
10 further liable refusing to return it to her except after great effort on their part. For the  
11 same conduct, they are also liable to Plaintiffs for depriving them of due process, and  
12 for conversion (given the fact that they still have not returned all the property that was  
13 seized).

14 **SIXTH CAUSE OF ACTION**

15 **(Denial of Constitutional Right Against Unreasonable Search and Seizure)**

16 **(By All Plaintiffs Against All Defendants)**

17  
18 115. Defendants' above-described policies, practices and conduct violated plaintiff's right  
19 to be free from unreasonable searches and seizures under Article 1, § 13 of the  
20 California Constitution.

21  
22 **SEVENTH CAUSE OF ACTION**

23 **Discrimination, Harrassment, Deliberate Indifference to Medical Needs**

24 **(By Hans Ashbaucher Against All Defendants)**

25 116. Mr. Ashbaucher suffered discrimination and harassment at the hands of the above-  
26 named Defendants when he was assaulted, unlawfully arrested, denied medical  
27 treatment, and deprived of life-sustaining prescription medication both while  
28 incarcerated and after he was released (when, despite numerous written and verbal

1 requests, the Arcata Police refused to return his medication) to his sexual orientation  
2 and medical status. Mr. Ashbaucher has still not been able to receive the seized  
3 medication and was forced to purchase more of the expensive anti-retroviral  
4 medicines, thereby proximately and foreseeably causing him damage, injury, and loss.

5 **EIGHTH CAUSE OF ACTION**

6 **Intentional and Negligent Infliction of Emotional Distress**

7 **(By All Plaintiffs Against All Defendants)**

- 8 117. Defendants are liable for the emotional distress they caused Plaintiffs by their  
9 shocking and outrageous actions, including without limitation the ongoing  
10 governmental custom of harassment and criminalization of homeless individuals and  
11 the false arrest and imprisonment of clearly non-violent demonstrators.  
12 118. All Defendant public entities (cities, state, and county) are liable in *respondeat*  
13 *superior* for intentional infliction of emotional distress committed by the individual  
14 Defendant officers in the course and scope of their employment.

15 **NINTH CAUSE OF ACTION**

16 **Intimidation, Harassment, Deprivation of Human Necessities and Basic Dignity**

17 **(By All Plaintiffs Against All Defendants)**

- 18 119. As seems to be the Plaintiffs' policy, custom, and practice, waking up homeless  
19 people, stealing and/or destroying their property, harassing them, falsely arresting  
20 them, and seemingly trying to force them out of town.

21  
22 ***Pro Se Plaintiffs also make these claims against all Defendants:***

23  
24 **TENTH CAUSE OF ACTION**

25 **Interference With and Retaliation for Exercise of Free Speech, Freedom of Assembly,**  
26 **and Freedom to Petition the Government for Redress of Grievances; Abuse of Process;**  
27 **and Violation of Due Process**



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

**ELEVENTH CAUSE OF ACTION**

**Unlawful Arrest**

**TWELFTH CAUSE OF ACTION**

**(Use of Excessive Force in Violation of the Fourth and Fourteenth  
Amendments to the United States Constitution and 42 U.S.C. §1983)  
(By All Plaintiffs Against All Defendants)**

**THIRTEENTH CAUSE OF ACTION**

**Deprivation of Sleep and other Life-Sustaining Conduct**

**FOURTEENTH CAUSE OF ACTION**

**Intolerable Custodian Conditions and Failure to Allow Plaintiffs phone Access in HCCF**

**FIFTEENTH CAUSE OF ACTION**

**Improper Use of Handcuffs Causing Severe Pain and Injury**

**SIXTEENTH CAUSE OF ACTION**

**Class discrimination, Discrimination for being poor**

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

- I. Declare that the Defendants’ pattern, practice and/or policy violates plaintiffs’ Fourth, Fifth, Eighth and Fourteenth Amendment rights and internationally recognized treatise rights;
- II. Issue preliminary and permanent injunctive relief enjoining the Defendants’ conducting any sweeps of homeless persons’ sleeping places or seizing any homeless person’s property until adequate shelter facilities or safe spaces and policies are promulgated to protect and safeguard Plaintiffs’ Fourth, Fifth, Eighth, and Fourteenth Amendment Rights;

1 III Issue preliminary and permanent injunctive relief enjoining the Defendants, its  
2 officials, officers, employees, agents, assigns, and those acting in concert with it from  
3 depriving homeless persons from and punishing homeless people for sleeping and performing  
4 other life-sustaining conduct.

5  
6 IV. Award Plaintiffs reasonable damages, as may be proved at trial;

7  
8 V. Award Plaintiffs punitive (exemplary) damages against the individual defendants, in  
9 amounts to be determined by a jury;

10  
11 VI. Award Plaintiffs three times the actual damages awarded, and for a civil penalty of  
12 \$25,000 for each violation which occurred, pursuant to Cal. Civil Code §§ 52.1 and 52(a), (b);

13  
14 VII. Award Plaintiffs their reasonable attorney’s fees and costs and expenses of litigation,  
15 pursuant to 42 U.S.C. § 1988, Cal. CCP § 1021.5, Gov’t Code § 800, and Civil Code § 52(b)(3);

16  
17 VIII. Grant such other relief as the Court deems just and proper.

18  
19 **DEMAND FOR JURY TRIAL**

20 116. Plaintiffs hereby demand a jury trial on all issues

21 DATED: May 13, 2009

22 Respectfully Submitted,

23  
24 \_\_\_\_\_/s/  
25 Hans K. Ashbaucher

\_\_\_\_\_/s/  
Johnie C. Miller

26 \_\_\_\_\_/s/  
27 Kimberly L. Starr

\_\_\_\_\_/s/  
Michelle Hernandez

28 \_\_\_\_\_/s/  
Kristofer Johnson