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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

13 HANS K. ASHBAUCHER,
14 KIMBERLY L. STARR,
15 JOHNIE C. MILLER,
16 Plaintiffs,

17 v.

17 CITY OF ARCATA, COUNTY OF
18 HUMBOLDT,
19 Defendants.

Case No. CV 08 2840 MHP (NJV)

**SECOND AMENDED
COMPLAINT FOR DAMAGES
AND DECLARATORY AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF CIVIL RIGHTS**

JURY TRIAL DEMANDED

20
21 Plaintiffs Hans K. Ashbaucher, Kimberly L. Starr, and Johnie C. Miller bring this action
22 to obtain redress for the deprivation of their federally protected rights, as hereinafter alleged.

23 **INTRODUCTION**

24 1. The status of homelessness has been criminalized in the City of Arcata. The
25 Plaintiffs are three individuals who are homeless. This is an action for preliminary and
26 permanent injunctive relief, declaratory relief, and damages pursuant to 42 U.S.C. §§ 1983, and
27 1988 and 28 U.S.C. §§ 1343, 2201 and 2202 based upon Defendant’s ongoing violations of the
28 Fourth, Eighth, and Fourteenth Amendment rights of the Plaintiffs.

1 2. The City of Arcata and the County of Humboldt have implemented policies and
2 practices that criminalize homelessness. The City of Arcata has enacted ordinances that prohibit
3 homeless people from sleeping outside in Arcata, or living on public property. In the case of
4 Plaintiffs, sleeping outside is not voluntary conduct. They have nowhere else to go. The
5 Defendants have enforced these ordinances, punishing the Plaintiffs because of their homeless
6 status. Furthermore, these ordinances, namely Arcata Municipal Code Sections 10004, 10006,
7 and 4560, are vague and do not give clear guidance to the law enforcement officers charged with
8 enforcing them. The Defendants have also selectively enforced ordinances against the Plaintiffs
9 in order to discourage their presence in Arcata. Finally, the Defendants have destroyed or
10 confiscated the property of the Plaintiffs in violation of the Fourth and Fourteenth Amendments
11 to the United States Constitution.

JURISDICTION AND VENUE

12 3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §
13 1331 (in that this case arises under the Constitution of the United States), § 1343(a)(3) (in that it
14 is brought to redress deprivations, under color of state authority, of rights, privileges and
15 immunities secured by the United States Constitution), § 1343(a)(4) (in that it seeks to secure
16 equitable relief under an Act of Congress, specifically under 42 U.S.C. §§ 1983 and 1988), and
17 the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

18 4. Venue is proper in the Northern District of California, under 28 U.S.C. § 1391(b),
19 in that all Defendants reside in this State and district, and a substantial part of the events or
20 omissions giving rise to Plaintiff's claims occurred in this district.

PARTIES

Plaintiffs

21 5. Plaintiff Hans K. Ashbaucher is a citizen of the United States residing in
22 Humboldt, California. He is homeless within the federal definition provided by 42 U.S.C.
23 §11302.

24 6. Plaintiff Kimberly L. Starr is a citizen of the United States residing in Humboldt
25 County, California. She is homeless within the federal definition provided by 42 U.S.C. §11302.

1 individuals. None of the Plaintiffs are homeless with their families. Arcata House also has a
2 range of requirements that exclude many homeless. The Arcata House restrictions exclude Ms.
3 Starr because she does not receive Social Security Income. The transitional housing program
4 houses less than forty people. Furthermore, those applying for placement with Arcata House who
5 are selected often wait three to four months before they are able to move in.

6 14. The Extreme Weather Shelter provides emergency shelter to some homeless when
7 temperatures drop to near freezing levels. The cold weather requirement means that the shelter is
8 open, on average, twelve days a year.

9 15. These shelters are inadequate to serve the needs of the homeless population in
10 Arcata. According to the 2009 Point in Time survey conducted by the Humboldt Housing and
11 Homeless Coalition there were approximately 300 homeless people in Arcata in January of
12 2009.

13 16. There is nowhere where homeless people can legally sleep outside in Arcata.

14 17. The City of Arcata has enacted ordinances that effectively outlaw the status of
15 homelessness. Arcata Municipal Code Section 10006 states in part that “No individual or group
16 may use public buildings or grounds without first obtaining a permit from the City Manager or
17 her/his designee, except for normal leisure and recreational use of City grounds.” Municipal
18 Code Section 10004 states that “there is to be no camping on public grounds nor overnight use of
19 public grounds or public buildings unless specifically authorized by the City manager or her/his
20 designee.” The Section defines “camping” as “temporarily living or occupying an area in the
21 outdoors.” Homeless people cannot avoid “temporarily living or occupying an area” outdoors.
22 These ordinances make it illegal for a person to sleep on public grounds anywhere in Arcata.

23 18. The terms “temporarily,” “living,” “occupying,” “normal leisure and recreational
24 use,” and “large group activities” as used in Municipal Sections 10004 and 10006 are not defined.
25 The definition of “large group activities” is left to the determination of “the City Manager or
26 her/his designee.” “Normal leisure and recreational use” is only permitted “when such use does
27 not preclude or discourage similar use by others.” No further guidance on how to comply with
28 the ordinances is provided.

1 19. Arcata Municipal Code Section 4560 prohibits sitting or lying down upon a public
2 sidewalk, curb or street in the downtown business district of Arcata. Homeless people, including
3 Plaintiffs, are asked by law enforcement officers to “move along” when they are in the Arcata
4 business district but people who do not appear homeless are not. The ordinance leaves so much
5 discretion to law enforcement that law enforcement officers selectively enforce the ordinance
6 against those that are seen as undesirable.

7 20. The Sheriff’s Department has conducted sweeps targeting homeless people, asking
8 them to relocate, citing them, or arresting them.

9 21. The Sheriff’s Department and the Arcata Police actively discourage the presence
10 of homeless people in the business district of Arcata.

11 22. Mr. Ashbaucher has slept outside in the residential areas of Arcata because they
12 are close to the Open Door Clinic where he receives medical care for his HIV, and because he had
13 heard stories about police harassing homeless veterans in the marsh within Arcata.

14 23. Mr. Ashbaucher has been told by Arcata Police officers that he could not sleep
15 outside in Arcata *because* he was homeless.

16 24. Mr. Ashbaucher owned a shopping cart to hold his personal effects, however the
17 Arcata Police Officers routinely questioned him about the contents and origin of the cart, and
18 instructed him to leave parts of the city because he had a cart. Owning a shopping cart is not
19 illegal in Arcata. Mr. Ashbaucher was singled out for exclusion from certain parts of Arcata
20 because he carried his possessions in a shopping cart. Mr. Ashbaucher had nowhere else to put
21 his things.

22 25. Ms. Starr was repeatedly awoken by Arcata Police Officers while she was sleeping
23 in her vehicle in Arcata. She was told that she would have to stay awake while in her parked
24 vehicle or that she would have to keep moving. She has also been told by Arcata Police Officers
25 that she had to “move along” when she was in Arcata.

26 26. Mr. Miller would sleep in the wooded areas within Arcata. He avoided populated
27 areas because he was afraid the police would find him. One day he returned to his tent to find
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1 that it had been slashed open, and all of his possessions had been destroyed by rain. A business
2 card of Arcata Police Ranger Bob Murphy had been left at the scene.

3 27. Mr. Miller has also been awoken by Arcata Police Officers multiple times in
4 Arcata and told that he had to move to a new location.

5 28. On information and belief, employees of the City of Arcata have on four occasions
6 attempted to confiscate Mr. Miller's property when it was lying outdoors. At least once this
7 happened in the presence of an Arcata Police officer. On all four occasions Mr. Miller saw that
8 his property was being taken away, ran after the city employee, and pleaded for the return of his
9 property.

10 29. All three Plaintiffs are afraid of local law enforcement and fear future citations or
11 arrests. All three Plaintiffs suffer from extreme anxiety in Arcata because they know that they
12 may be awoken and displaced by law enforcement officials.

13 30. The Plaintiff's have made numerous complaints to the City of Arcata about their
14 situation but have been ignored. Many members of the homeless population, including Plaintiffs,
15 appeared at public meetings of the city council where they explained the burden the City's
16 policies place upon them. They also offered various solutions including designating an area
17 within the City where homeless would be allowed to sleep at night legally. Ms. Starr joined a
18 homelessness task force with the City in order to address the issue of homelessness, but the
19 meetings were unsuccessful and the task force was disbanded. The City is fully aware of the
20 harm its policies, practices and customs place upon homeless people.

21 31. Dissatisfied with the response of local officials, the Plaintiffs became affiliated
22 with "People Project," a grassroots organization with the goal of advocating for the rights of
23 homeless and the poor. "People Project" organized an encampment for homeless in a public park
24 on the corner of D and 11th streets, adjacent to Highway 101. This park is located on a lawn that
25 culminates in a city community center. The encampment was approximately 100 yards from the
26 community center. The encampment was scheduled to be in place from April 21, 2007 to May 2,
27 2007

1 32. Plaintiffs were informed and believed that The All-Faith Partnership Night Shelter
2 was closed in May, 2007.

3 33. The encampment was intended to (1) raise awareness about issues facing the
4 homeless, and (2) provide a safe place for homeless people to sleep.

5 34. The encampment was governed by a code of conduct that required that all
6 participants respect one another, act in a civil manner, and keep the park clean. At all times the
7 encampment was kept in a sanitary condition. The camp organizers ordered a portable toilet but
8 the Arcata Police Department ordered its removal immediately. Local community members
9 allowed encampment members to use their bathrooms.

10 35. Mr. Ashbaucher and Ms. Starr joined the encampment on April 21, 2007. Mr.
11 Miller joined the encampment on April 22, 2007.

12 36. The Arcata Police, Humboldt County Sheriff's Department, and Humboldt State
13 University Police Department arrived to disperse the encampment early on the morning of April
14 25, 2007. The Plaintiffs were all asleep when the law enforcement agencies arrived. Some of the
15 homeless people left voluntarily, while others remained in the park.

16 37. The law enforcement officers confiscated all of the personal property of the
17 remaining encampment members, including tents, sleeping bags, blankets, clothing, food,
18 toiletries, and medications. These items were loaded into trucks and taken away.

19 38. The Plaintiffs where among those that did not leave the park. Instead they sat in a
20 circle with other members of the encampment. Mr. Ashbaucher brought his bag of medications,
21 including two antiviral medications he uses to combat his HIV, with him to the circle

22 39. The police then began requesting that the encampment members produce
23 identification and sign a citation for violating Arcata Municipal Code Section 10006.

24 40. Mr. Miller attempted to produce identification and sign a citation but would not
25 stand up because he was afraid the law enforcement officers would force him out of the park
26 through violent means. He believed if he signed the citation he would be allowed to remain in the
27 park.

28 41. Ms. Starr and Mr. Ashbaucher did not have identification with them.

1 42. Ms. Starr and Mr. Miller were then arrested. Members of the Sheriff's
2 Department, the Arcata Police Department, and Humboldt State University (HSU) Police
3 Department forcefully removed them from the circle, handcuffed them, and took them to a
4 Sheriff's Department van.

5 43. Ms. Starr's skirt was partially pulled down during her arrest, exposing her pubic
6 region. She was taken to the Sheriff's Department van in plain sight of law enforcement officers,
7 encampment participants, and gathered community members, while partially exposed.

8 44. Shortly thereafter the police arrested Mr. Ashbaucher. At this time Mr.
9 Ashbaucher was pulled out of the circle and forced to the ground by members of the Arcata
10 Police and HSU Police Department. At this time one of the HSU Police Department officers put
11 his knee on Mr. Ashbaucher's neck. Mr. Ashbaucher began having a convulsions caused by the
12 physical and emotional distress caused by the arrest. As a result he had to be rushed to the
13 hospital for treatment. He was separated from his bag of medication, which was taken by the
14 police and never returned to him.

15 45. Sixteen members of the encampment, including the Plaintiffs, were arrested.

16 46. All of the Plaintiffs where booked into the county correctional facility in Eureka
17 and were released later that day.

18 47. At all times the responding law enforcement agencies were acting in accordance
19 with a policy, practice and custom of excluding homeless people from public areas.

20 48. After their release the Plaintiffs travelled from Eureka to the D St. park in Arcata,
21 and then to the Arcata police station to reclaim their possessions. This property included the
22 Plaintiff's clothing, shelter, medications, toiletries, and other basic survival gear.

23 49. The Plaintiffs and other encampment participants who had lost all of their
24 possessions at the encampment waited on the lawn in front of the Arcata police station until April
25 27. They complied with all of the procedures that the Arcata Police Department required, but
26 they did not receive all of their property. Some small personal items were returned to some
27 encampment participants, but the overwhelming majority of the seized property was retained by
28 the police. The Plaintiffs were told by representatives of the Arcata Police Department that the

1 property had to be carefully inventoried before it could be returned. All three Plaintiffs relocated
2 on April 27 because they feared that they might be arrested again.

3 50. From April 27, 2007 through the morning of May 2, 2007 Plaintiffs and other
4 encampment participants slept on another public lawn well out of the vicinity of the downtown
5 Business District at the base of Redwood Park.

6 51. From April 27, 2007 to the morning of May 2, 2007, the Arcata Police Department
7 routinely awakened Plaintiffs and other encampment participants at night and in the early
8 morning with bright lights.

9 52. Mr. Miller received some of his property on April 27, 2007. Mr. Ashbaucher
10 received some of his property on April 30, 2007. Ms. Starr received some of her property on May
11 7, 2007. Much of their property was never returned. Mr. Ashbaucher was given only a large tarp
12 and a cellular phone, despite the fact that at the time of his arrest he had his shopping cart full of
13 belongings including extra clothes, shoes, a walkman, notebooks, tarps, and other personal items.
14 He was told the rest of his property had been sent to the dump. The medications that are
15 necessary to his survival were never returned. Mr. Miller never received his tent or his tarps,
16 which he needs to stay dry while living outside in wet and cold of coastal Northern California.
17 Some of the property that was returned was not returned to the rightful owner of the property.
18 The property that was returned had not been carefully inventoried as the Police Department
19 representative had described.

20 53. Homeless individuals such as the Plaintiffs own very little personal property. The
21 deprivation of basic necessities such as medication, clothes, and the tarps that are used as
22 protection from the elements constitutes a tremendous injury.

23 54. Plaintiffs and other encampment participants voluntarily dispersed on May 2,
24 2007.

25 55. The Plaintiffs have been even more afraid of being arrested or harassed by Arcata
26 Police officers and Humboldt County Sheriff's officers since the time of their arrest. They also
27 fear that their property will be taken away from them. Mr. Miller and Ms. Starr have most
28 recently slept outside of Arcata in order to avoid harassment and possible citation or arrest.

1 Ashbaucher has also been issued a citation. All three Plaintiffs' suffer from extreme anxiety and
2 humiliation. The Plaintiffs' fear that they will continue to suffer these injuries in the future.

3 **SECOND CAUSE OF ACTION**

4 **Against all Defendants by all Plaintiffs**
5 **Violation of the Fourteenth Amendment of the United States Constitution,**
6 **Actionable Pursuant to 42 U.S.C. §1983**
7 **(Equal protection, selective enforcement)**

8 64. Plaintiffs reallege and incorporate herein by reference each and every allegation
9 contained in paragraphs 1 through 61 of this Second Amended Complaint.

10 65. Defendants' above-described policies, practices and conduct are intended and
11 designed to single out homeless people. These policies and actions are based on Defendants'
12 animus towards this disfavored group and lack a rational relationship to any legitimate state
13 interest. In adopting and implementing these policies and practices with the intent to harm and
14 disadvantage homeless persons in the City of Arcata, the Defendants have violated the Equal
15 Protection Clause of the United States Constitution.

16 66. As a result of Defendants' acts and omissions all three Plaintiffs have suffered
17 injuries. They have been singled out for enforcement of laws that are not enforced against people
18 who do not appear homeless. They have been displaced by law enforcement and excluded from
19 public places that are open to people who do not appear homeless. This experience has caused
20 them extreme and ongoing anxiety and humiliation. The Plaintiffs fear that they will continue to
21 suffer these injuries in the future.

22 **THIRD CAUSE OF ACTION**

23 **Against all Defendants by all Plaintiffs**
24 **Violation of the Fourteenth Amendment of the United States Constitution,**
25 **Actionable Pursuant to 42 U.S.C. §1983**
26 **(Void for Vagueness)**

27 67. Plaintiffs reallege and incorporate herein by reference each and every allegation
28 contained in paragraphs 1 through 61 of this Second Amended Complaint.

68. Arcata Municipal Code Sections 10004, 10006, and 4560 are unconstitutionally
vague. The ordinances do not clearly indicate what conduct is prohibited or what punishment

1 may be imposed. The ordinances are overbroad, as applied to the Plaintiffs, because they reach
2 conduct beyond the City's police power. The ordinances grant excessive discretion to law
3 enforcement, allowing for selective enforcement against homeless people including the Plaintiffs.

4 69. As a result of Defendants' enforcement of these ordinances all three Plaintiff's
5 have suffered injuries. These ordinances have been enforced against each of the Plaintiffs so as to
6 deprive them of sleep and displace them from public places. The Plaintiffs fear that they will
7 continue to suffer these injuries in the future.

8 **FOURTH CAUSE OF ACTION**

9 **Against all Defendants by all Plaintiffs**
10 **Violation of the Fourth and Fourteenth Amendments to the United States Constitution,**
11 **Actionable Pursuant to 42 U.S.C. §1983**
(Confiscation and destruction of property)

12 70. Plaintiffs reallege and incorporate herein by reference each and every allegation
13 contained in paragraphs 1 through 62 of this Second Amended Complaint.

14 71. Defendants' above-described policies, practices and custom of confiscating and/or
15 destroying Plaintiff's property violated Plaintiffs'; right to be free from unreasonable searches
16 and seizures and right to due process of law.

17 72. As a result of Defendants' acts and omissions all three Plaintiffs have been injured.
18 Their personal property has been seized and not returned. In some cases their property has been
19 destroyed. The Plaintiffs also suffer from an ongoing fear that their property will be taken by the
20 Defendants' employees, agents, or assigns in the future.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

23 1. A preliminary and permanent injunction enjoining the Defendants, their officials,
24 officers, and employees from enforcing Municipal Code Sections 10006, and 10004 against
25 Plaintiffs, who have no practical way to comply with them;

26 2. A preliminary and permanent injunction enjoining the Defendants, their officials,
27 officers, employees, agents, assigns, and those acting in concert with them from awakening
28 Plaintiffs when they sleep outside or seizing any Plaintiffs' property until adequate shelter

1 facilities or safe spaces are provided and policies that safeguard Plaintiffs' Fourth, Eighth, and
2 Fourteenth Amendment Rights are promulgated;

3 3. A preliminary and permanent injunction enjoining the Defendants, their officials,
4 officers, employees, agents, assigns, and those acting in concert with them from punishing
5 Plaintiffs for sleeping and engaging in other life-sustaining conduct that poses no harm to the
6 public;

7 4. A declaration that Defendants' past, present, and threatened future enforcement of
8 the policies described herein violate Plaintiffs' right to be free from cruel and unusual punishment
9 under the Constitution of the United States;

10 5. A declaration that Defendants' past, present, and threatened future enforcement of
11 the policies described herein violate Plaintiffs' rights to be free from equal protection violations
12 under the Constitution of the United States;

13 6. A declaration that Defendants' past, present, and threatened enforcement of the
14 policies described herein violate the Due Process rights of the Plaintiffs under the Constitution of
15 the United States;

16 7. A declaration that Defendants' past, present, and threatened future enforcement of
17 the policies described herein violate Plaintiffs' rights to be free from illegal search and seizure
18 under the Constitution of the United States;

19 8. A declaration that Arcata Municipal Code Sections 10006, 10004 and 4560 are
20 void for vagueness and/or overbroad as applied to Plaintiffs';

21 9. Reasonable damages, as may be proved at trial;

22 10. Attorney fees pursuant to 42 U.S.C. § 1988;

23 11. Such other relief as the Court deems just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs hereby demand a jury trial on all issues.
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Dated: March 17, 2010

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