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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ORANGE

Assigned for All Purposes
16 Judge Linda Marks

17 HARRY LANGENBACHER; FREDERICK
CLAYTON MOON; JACQUELINE
18 DANIS; JEANETTE HODGE; and
HOUSING IS A HUMAN RIGHT
19 ORANGE COUNTY, an unincorporated
association,

20 Plaintiffs,

21 v.

22 CITY OF FULLERTON; FULLERTON
23 POLICE DEPARTMENT; and DOES 1-10,

24 Defendants.
25

Case No. 30-2022-01296035-CU-CR-CJC

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

1. California Civil Code § 526a
2. Article I, § 7 of the California Constitution
3. Article I, § 17 of the California Constitution
4. Article I, §§ 7(a) and 24 of the California Constitution; and
5. California Government Code § 11135

1 **INTRODUCTION**

2 1. During this time of desperation for so many, and a desire by all communities to assist
3 and house the unhoused, the City of Fullerton (the “City” or “Fullerton”) has instead taken steps to
4 treat its most vulnerable residents as disposable—excluding those without conventional homes from
5 the community, and disproportionately affecting many with disabilities.

6 2. Fullerton’s most recent step is the adoption of Chapter 8.46 of the Fullerton Municipal
7 Code (“Chapter 8.46”), which ostensibly prohibits the stopping or parking of any recreational vehicle
8 (“RV”) on city streets without a valid City-issued permit. Without offering any reasonable alternatives
9 to those affected, the new law broadly criminalizes any person who “park[s], stop[s], or leave[s]
10 standing” any vehicle that is designed for “human habitation” or “travel use,” anywhere in Fullerton
11 at any time and for any length of time; subjecting them to immediate tow and/or fines based on a single
12 violation.

13 3. While Chapter 8.46 is allegedly purposed to “mitigate the public health and safety
14 concerns,” its overbroad and vague language has resulted in the arbitrary and discriminatory expulsion
15 of Orange County’s most vulnerable residents—the vehicularly housed—a population who needs to
16 rely on their vehicles for safety, storage, transportation, and more. This ordinance has upended lives
17 and caused undue additional trauma to persons who already bear the great weight of homelessness.
18 Far from mitigating public health and safety concerns, it has exacerbated those concerns by forcing
19 people out of their (vehicular) homes and onto the streets, and denying them access to necessary
20 services and provisions that every other Fullerton resident (and non-resident) enjoys simply because
21 of the vehicle they choose as their mode of transportation. In short, Chapter 8.46 sends a clear message:
22 people who live in their vehicles are not welcome in Fullerton and must leave or face losing their
23 home, possessions, and the dangers of living unsheltered and exposed to the elements.

24 4. For the reasons set forth below, Chapter 8.46 violates the California Constitution’s due
25 process and equal protection clauses, excessive fines clause, and the right to travel. Chapter 8.46 also
26 violates California Government Code § 11135. In this action, Plaintiffs seek declaratory, preliminary,
27 and permanent injunctive relief, and restitution for fines paid to date.

1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction over this action because Plaintiffs’ claims arise under
3 California law.

4 6. Venue is proper in this Court because all the underlying acts, omissions, unlawful
5 conduct, injuries, circumstances and related facts upon which the current lawsuit is based occurred in
6 the City of Fullerton, County of Orange, State of California, and within the judicial boundaries of the
7 Superior Court.

8 **PARTIES**

9 7. Plaintiff HARRY LANGENBACHER has been a resident and homeowner in Fullerton
10 for 22 years. For the past six years, Mr. Langenbacher has been a volunteer for Housing is a Human
11 Right Orange County (“HHROC”). He actively participates in HHROC as he remains concerned over
12 Orange County’s homelessness crisis. Within the past year, Mr. Langenbacher has paid a tax within
13 and to the City of Fullerton.

14 8. Plaintiff FREDERICK CLAYTON MOON is a 67-year-old man and has been a
15 Fullerton resident for approximately 27 years. Mr. Moon was a property manager for 22 years in
16 Fullerton and lived at the property with his longtime girlfriend, Roseanne Bartoli. Mr. Moon lives with
17 disabilities that cause severe pain and substantially limit his ability to perform manual tasks, walk,
18 stand, lift, bend, and work. Mr. Moon is a person with a disability as defined by California law. After
19 the passing of Ms. Bartoli, Mr. Moon was unable to afford rent and moved into a RV to stay off the
20 streets. He continues to intermittently reside in Fullerton to provide care for his 72-year-old brother,
21 Steven Moon. Mr. Moon is on a fixed income and receives approximately \$900 per month from Social
22 Security. Mr. Moon has been cited and fined for violating Chapter 8.46.

23 9. Plaintiff JACQUELINE DANIS is a 75-year-old single woman who has lived in the
24 city of Fullerton for 17 years. She lives in a van and commutes to Fullerton for two jobs. Ms. Danis
25 has a significant medical condition that requires the use of a pacemaker and is a person with a disability
26 as defined by California law. Ms. Danis has been cited for violating Chapter 8.46.

27 10. Plaintiff JEANETTE HODGE is a 61-year-old woman who has lived in Fullerton for
28 approximately 55 years. Ms. Hodge raised her children and still has family living in Fullerton. Ms.

1 Hodge has been diagnosed with multiple medical and mental health conditions that substantially limit
2 her ability to communicate, think, and work. Ms. Hodge is a person with a disability as defined by
3 California law. When Ms. Hodge became disabled, she was no longer able to work or afford her
4 housing. To avoid sleeping on the streets, she moved into her RV. Since the enforcement of Chapter
5 8.46, Ms. Hodge has been forced to relocate to Long Beach to avoid the towing of her home and
6 resulting fines. She cannot visit her family living in Fullerton for fear of being cited and/or towed for
7 violating Chapter 8.46, as she cannot afford the cost of obtaining a permit every time she enters the
8 City. Ms. Hodge is on a fixed income and receives approximately \$1,160 per month from state and
9 federal benefits. Ms. Hodge has been cited for violating Chapter 8.46.

10 11. Plaintiff HOUSING IS A HUMAN RIGHT ORANGE COUNTY (“HHROC”) is an
11 unincorporated association of volunteers whose mission is to achieve supportive, affordable, and
12 permanent housing for homeless individuals in Orange County. Chapter 8.46 has frustrated HHROC’s
13 mission because the law targets a population they aim to serve and has restricted their ability to
14 disseminate resources that are based in the city of Fullerton. Chapter 8.46 directly harms HHROC by
15 banning from the City of Fullerton a population they are designed to serve: homeless people in Orange
16 County, certain of whom live in their vehicles. Similarly, members of HHROC must redirect their
17 time and resources to assist those impacted by Chapter 8.46 by petitioning against the enactment of
18 Chapter 8.46, providing financial support to pay for fines and fees associated with towing under
19 Chapter 8.46, and assisting individuals in finding emergency shelter after towing instead of permanent
20 housing solutions. In addition, HHROC represents volunteers who are residents of Fullerton, including
21 Mr. Langenbacher. Within the past year, these volunteers have paid a tax within and to the City of
22 Fullerton.

23 12. Defendant CITY OF FULLERTON is a municipal entity with the capacity to sue and
24 to be sued. The City receives State of California financial assistance for programs and activities related
25 to the acts and omissions alleged. Fullerton is responsible for passing and enforcing Chapter 8.46
26 through its agents and employees, including, but not limited to the Mayor, City Council, City Attorney,
27 Police Chief, Parking Enforcement, and Police Department.

28 13. Defendant FULLERTON POLICE DEPARTMENT is a department of the City of

1 Fullerton. Upon information and belief, the Fullerton Police Department through its agents and
2 employees is responsible for enforcing Chapter 8.46.

3 14. Defendants DOES 1 through 10 are agents, individual officers, and employees of the
4 City of Fullerton and the Fullerton Police Department who have violated and continue to violate
5 Plaintiffs’ rights, but whose identities are unknown at this time.

6 **FACTUAL ALLEGATIONS**

7 **Fullerton’s Hostility Towards the Vehicularly Housed Community**

8 **A. Fullerton’s Safe Parking Program**

9 15. In recent years, the City of Fullerton has undergone a dramatic rise in housing costs,
10 which has made it more difficult to find and afford housing. For example, between 2000 and 2018,
11 median home sales prices in Fullerton increased 172%.¹ From April 2020 to June 2022 the median
12 sales price for a single-family home in Fullerton went from \$670,000 to \$1,135,000—an increase of
13 nearly 70%.²

14 16. Renters in Fullerton fared no better; approximately 85% of renters in Fullerton spend
15 30 percent or more of their gross income on housing costs, which exceeds both federal and state
16 definitions of what is considered “affordable.”³

17 17. Due to the skyrocketing costs of housing, many Fullerton residents, such as Plaintiffs
18 Moon, Danis, and Hodge, have been forced to live in their vehicles.

19 18. As Fullerton’s housing costs were rising, in 2019, the City launched the Safe Parking
20 Program to address the needs of its vehicularly housed population. This program was designed to
21 provide a safe overnight parking lot, case management, and other resources.

22 19. The City’s assistance was brief, however, since the program was ultimately terminated
23

24 ¹ Housing Game Plan, Appendix H, 2021-2029 Housing Element, November 2021 Draft, [https://housing-game-plan-
fullertoncagis.hub.arcgis.com/documents/fullerton-draft-2021-2029-housing-element-1/explore](https://housing-game-plan-fullertoncagis.hub.arcgis.com/documents/fullerton-draft-2021-2029-housing-element-1/explore) (last visited
25 November 29, 2022).

26 ² Fullerton Housing Market, Redfin, <https://www.redfin.com/city/7158/CA/Fullerton/housing-market> (last visited
December 7, 2022).

27 ³ Housing Game Plan, Appendix H, 2021-2029 Housing Element, November 2021 Draft, [https://housing-game-plan-
fullertoncagis.hub.arcgis.com/documents/fullerton-draft-2021-2029-housing-element-1/explore](https://housing-game-plan-fullertoncagis.hub.arcgis.com/documents/fullerton-draft-2021-2029-housing-element-1/explore) (last visited
28 November 29, 2022).

1 by the end of 2020.⁴

2 **B. The Valencia Drive Resolution**

3 20. In addition to eliminating the Safe Parking Program, the City has enacted ordinances
4 specifically targeting the areas where vehicularly housed persons normally congregate.

5 21. For example, on March 2, 2021, the Fullerton City Council proposed a resolution
6 (known as “the Valencia Drive Resolution”), establishing various parking regulations on Valencia
7 Drive between Raymond Avenue and State College Boulevard. The City’s attempts to restrict parking
8 on Valencia Drive were met with strong resistance from the public, including members of the RV
9 community and Plaintiff HHROC.⁵

10 22. In response to public comment expressing concern over the City’s policies to displace
11 the vehicularly housed, including those whose disabilities or income status make them more likely to
12 require vehicular housing, Mayor Pro Tem Nick Dunlap called the presence of Fullerton’s RV
13 community “an eyesore” and reminded them “roads and streets are for driving, for parking. They’re
14 not a place of residence.”⁶

15 23. The City Council unanimously approved the Valencia Drive Resolution on April 20,
16 2021.⁷

17 **C. The Enactment of Chapter 8.46**

18 24. On November 17, 2020, following elimination of the Safe Parking Program, Fullerton
19 banned all vehicularly housed residents from city limits by adopting Chapter 8.46.⁸

20 25. On December 15, 2020, the City received a letter from the Elder Law & Disability
21

22 ⁴ Jesse La Tour, *Those Living in RVs Face Precarious Situation*, Fullerton Observer, Mar. 1, 2021,
23 <https://fullertonobserver.com/2021/03/01/those-living-in-rvs-face-precarious-situation/>.

24 ⁵ City of Fullerton, Fullerton City Council Meeting, Item 11 (Mar. 2, 2021),
25 https://fullerton.granicus.com/player/clip/1259?view_id=2&redirect=true&h=f24cb1c173b5368017cd0f69f6fb561f

26 ⁶ *Id.*

27 ⁷ City of Fullerton, Legislative Information Center, Parking Regulations–Valencia Drive (April 20, 2021)
28 <https://fullerton.legistar.com/LegislationDetail.aspx?ID=4915251&GUID=F6A1A748-1287-46F6-AB5D-D4726E2F9936>

⁸ Jesse La Tour, *Fullerton Bans RV Street Parking: Is This Criminalizing Homelessness*, Fullerton Observer, Nov. 28, 2020, <https://fullertonobserver.com/2020/11/28/fullerton-bans-rv-street-parking-is-this-criminalizing-homelessness/>.

1 Rights Center (“Elder Law Center”) indicating that Chapter 8.46 was unconstitutional.⁹

2 26. In apparent response to the concerns outline by the Elder Law Center, the City did not
3 enforce Chapter 8.46 between November 2020 and July 2021.

4 27. In July 2021, the City Council amended Chapter 8.46, which provides that:

5 “No person shall park, stop or leave standing *any recreational vehicle*
6 on any public or private street, highway or alley or public property
7 within the city at any time, except pursuant to a temporary RV parking
8 permit issued by the Chief of Police or his/her designee.”¹⁰

9 28. Chapter 8.46 limits the people who can secure a parking permit to residents or “out-of-
10 town” visitors who can identify a “residence that they are visiting,” and one must pay a fee to obtain
11 said permit.¹¹ Parking of RVs “shall only be permitted in residential zones of the city.”¹²

12 29. The amended Chapter 8.46 defined recreational vehicle as:

13 “any vehicle or trailer which designed or equipped for human habitation
14 or designed or used for recreational camping or travel use, whether self-
15 propelled or mounted on or drawn by another vehicle or any structure
16 inspected, approved and designated as a recreational vehicle by, and
17 bearing the insignia of, the State of California or any other state or federal
18 agency having the authority to approve recreational vehicles...”¹³

19 30. Under Chapter 8.46, failure to comply is punishable by citation, fines, and towing of
20 vehicles, including those used as homes.¹⁴

21 31. Chapter 8.46 provides no limitation on the number of times someone can be towed
22 and/or fined. Nor does it provide for any warning for first-time offenders.

23
24 ⁹ Jesse La Tour, *Fullerton’s RV Parking Ban May be Unconstitutional*, *Fullerton Observer*, Dec. 18, 2020,
<https://fullertonobserver.com/2020/12/18/fullertons-rv-parking-ban-may-be-unconstitutional/>

25 ¹⁰ FMC § 8.46.030 (emphasis added)

26 ¹¹ FMC § 8.46.040(B) and (D)

27 ¹² FMC § 8.46.050(A)

28 ¹³ FMC § 8.46.020(A)

¹⁴ FMC § 8.46.070

1 32. Several vehicularly housed residents, such as Plaintiffs Moon, Hodge, and Danis, are
2 life-long residents of Fullerton, but cannot obtain a permit under Chapter 8.46 as they do not meet the
3 City’s definition of a “resident” due to their housing status, nor can they afford the cost of the permit.¹⁵

4 33. Further, there are no exceptions for vehicles used as homes and the special care needed
5 for the residents who rely on them for safety and shelter from the elements. Nor are there exceptions
6 for individuals who use an RV to travel to Fullerton to receive necessary medical care and services.

7 34. Plaintiffs are informed and believe that Defendants began enforcement of Chapter 8.46
8 on or about August 23, 2021.

9 35. Since the enforcement of Chapter 8.46, Plaintiffs are informed and believe that
10 Defendants and its agents have used city resources to issue warnings, citations, and even tow vehicles.

11 **D. Chapter 8.46 is Discriminatory Towards People with Disabilities**

12 36. By targeting the vehicularly housed, the Chapter 8.46 disproportionately impacts people
13 with disabilities. Many individuals cannot work due to their disabilities and rely on fixed monthly
14 income of approximately \$1,040.21 or less from federal and state social security programs,¹⁶ well
15 below the minimum needed for even basic housing in Fullerton. As a result, many people with
16 disabilities are unable to maintain stable housing and are forced to settle in temporary abodes, such as
17 RVs.

18 37. The City knows, or should know, of the strong link between homelessness and
19 disability. According to Orange County’s latest Point-In-Time Summary, 945 individuals with a
20 physical disability, 867 individuals with mental health issues, and 419 individuals with a
21 developmental disability, have reported experiencing “unsheltered” homelessness in Orange
22 County.¹⁷ With the enactment and enforcement¹⁷ of Chapter 8.46, the City is strengthening the
23 correlation between lack of housing and disability.

24 38. By prohibiting RVs from stopping or parking on city streets, the City has also made it
25

26 ¹⁵ FMC § 8.46.020(B)

27 ¹⁶ California Disability Benefits 101, https://ca.db101.org/glossary.htm#_q3601 (last visited November 29, 2022).

28 ¹⁷ County of Orange, *2022 Point in Time Summary*, (May 2022) <http://ochmis.org/wp-content/uploads/2022/05/2022-Pit-Data-Infographic-5.10.2022-Final.pdf>.

1 illegal for people with disabilities who are vehicularly housed or drive an RV to access medical
2 services, goods, social supports, programs, and other resources offered within the City. For example,
3 Chapter 8.46 has precluded Plaintiff Moon from obtaining medical treatment in the City because he
4 can be cited and/or towed while parked.

5 39. Chapter 8.46 disproportionately affects those with disabilities as the great pressures of
6 being potentially fined, or having one's home towed, exacerbates one's existing health conditions.

7 40. For people with a disability and who are also vehicularly housed, their vehicles are
8 their lifeline. If towed under Chapter 8.46, one faces the real-life detrimental consequences of losing
9 their home, food, medication, and necessary services; and exposing them to the elements. These harms
10 are compounded by the ongoing global pandemic. As of August 16, 2022, Orange County has reported
11 at least 2,158 COVID-19 related cases among people experiencing homelessness.¹⁸

12 **FIRST CAUSE OF ACTION**

13 **Unlawful Expenditure of Public Funds**

14 **(Cal. Civ. Proc. Code § 526a)**

15 **On Behalf of Plaintiffs Harry Langenbacher and HHROC**

16 41. Plaintiffs Harry Langenbacher and HHROC hereby incorporate each and every
17 allegation contained in the foregoing and subsequent paragraphs as if fully set forth herein.

18 42. Plaintiffs Mr. Langenbacher and certain members of HHROC are Fullerton residents
19 who within the past year have paid a tax within and to the City.

20 43. Defendants and their respective agents are illegally expending public funds by
21 enforcing and executing an ordinance, Chapter 8.46, that violates California law.

22 44. As a result of Defendants' actions, Plaintiffs are entitled to injunctive and declaratory
23 relief.

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27 _____
28 ¹⁸ OC Health Care Agency, <https://ocovid19.ochealthinfo.com/coronavirus-in-oc> (last visited November 29, 2022).

1 **SECOND CAUSE OF ACTION**

2 **Void for Vagueness**

3 **(Article I, § 7 of the California Constitution)**

4 **On Behalf of all Plaintiffs**

5 45. Plaintiffs hereby incorporate each and every allegation contained in the foregoing and
6 subsequent paragraphs as if fully set forth herein.

7 46. A statute is unconstitutionally vague under the Due Process Clause of the California
8 Constitution if it fails to provide a person of ordinary intelligence fair notice of what is prohibited or
9 if it encourages arbitrary or discriminatory enforcement. Here, Chapter 8.46 fails on both counts and
10 must be struck down.

11 47. *First*, Chapter 8.46 is vague because the City has failed to provide a clear definition of
12 what constitutes a recreational vehicle (“RV”), making it impossible for the public to know what
13 conduct is prohibited.

14 48. Chapter 8.46 makes it unlawful for any person to park, stop, or leave standing any
15 recreational vehicle on any public or private street, highway or alley or public property within the City
16 at any time and for any length of time. The Chapter, however, fails to clearly define what constitutes
17 a “recreational vehicle.”

18 49. In relevant part, FMC § 8.46.020(A) defines a recreational vehicle as “any vehicle. . .
19 equipped for human habitation. . .or used for. . . travel.” But the ordinance is unconstitutionally vague
20 insofar as it fails to provide a person of reasonable intelligence with fair notice as to which vehicles
21 are considered to be equipped for human habitation and which vehicles are considered to be used for
22 travel. The Chapter’s laundry list of non-exclusive examples of what constitutes an RV, which
23 themselves cross-reference multiple other ordinances, does little to narrow the Chapter’s overbroad
24 and vague definition of “recreational vehicle.”¹⁹ Based on the language of the ordinance, seemingly
25 all standard automobiles would be subject to Chapter 8.46.

26 50. Standard automobiles can be *used for travel*. Moreover, a car with a sleeping bag or

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28 ¹⁹ See FMC § 8.46.020(A) (stating “Recreational Vehicle” or “RV” “shall include, *without limitation*, any of the following: [lists examples]”) (emphases added).

1 snacks could be characterized as a vehicle *equipped for human habitation*. Thus, Plaintiffs and the
2 public are left guessing on which modes of transportation would subject them to being penalized under
3 Chapter 8.46, in violation of their due process rights.

4 51. The City’s definition of a “recreational vehicle” is so broad and without limitation in
5 its interpretation that it fails to draw any clear lines for residents, non-residents, law enforcement,
6 judges, or juries to understand what is prohibited under Chapter 8.46.

7 52. *Second*, Chapter 8.46 is unconstitutionally vague because it promotes arbitrary and
8 discriminatory enforcement. Based on its ambiguous language, Chapter 8.46 is broad enough to cover
9 almost every driver in Orange County who dares to enter Fullerton. The Chapter prohibits any person
10 who “stop[s], park[s], or leave[s] standing any recreational vehicle on any public or private street.”
11 Thus, any person who stops an RV at a stop sign, parking light, or in traffic on City streets would
12 technically be violating the ordinance and subject to fines and/or towing. Yet, Plaintiffs are informed
13 and believe that the City primarily enforces the Chapter against vehicularly housed people, including
14 people with disabilities.

15 53. As a result of Defendants’ actions, Plaintiffs are entitled to injunctive and declaratory
16 relief.

17 **THIRD CAUSE OF ACTION**

18 **Excessive Fines**

19 **(Article I, § 17 of the California Constitution)**

20 **On Behalf of Plaintiffs Moon, Danis, and Hodge**

21 54. Plaintiffs Moon, Danis, and Hodge hereby incorporate each and every allegation
22 contained in the foregoing and subsequent paragraphs as if fully set forth herein.

23 55. Under Article I, § 17 of the California Constitution, “Cruel or unusual punishment may
24 not be inflicted or excessive fines imposed.”

25 56. Here, the impoundment and fines associated with Chapter 8.46 are punitive in nature,
26 and thus must constitute a “fine” under the Excessive Fines Clause of the California Constitution.

27 57. The towing and fines associated with Chapter 8.46 are excessive because Plaintiffs
28 Moon, Danis, and Hodge have limited resources and are often relying on fixed incomes to meet their

1 most basic needs, and therefore do not have the ability to pay fines and costs for violating Chapter
2 8.46.

3 58. As a result of enforcement of Chapter 8.46, Plaintiffs Moon, Danis, and Hodge have
4 incurred fines and continue to risk the towing and impoundment of their vehicular homes and fines
5 they cannot afford to pay.

6 59. For example, Plaintiff Moon has incurred \$529 in parking tickets, including \$216 in
7 tickets for violating Chapter 8.46. Plaintiff Moon's only source of income is Social Security Disability
8 Income of approximately \$900 a month, making it impossible for him to pay the fines assessed by the
9 City.

10 60. Similarly, Plaintiff Danis, who works two jobs to support herself, received two tickets
11 for violating Chapter 8.46 and was assessed fines that were a hardship.

12 61. Plaintiff Hodge has received a warning citation and been threatened to be fined and
13 towed if she continued to park in the City. As a recipient of Social Security Disability Income, if
14 Plaintiff Hodge were fined under Chapter 8.46, she would be forced to use her federal benefits to pay
15 these fines to avoid losing her home.

16 62. Plaintiffs are informed and believe that Defendants did not assess, in any way, whether
17 Plaintiffs and those similarly situated could afford to pay the fine for violating Chapter 8.46 when they
18 were cited.

19 63. As a result of Defendants' actions, Plaintiffs are entitled to injunctive and declaratory
20 relief.

21 **FOURTH CAUSE OF ACTION**

22 **Right to Travel**

23 **(Article I, §§ 7(a) and 24 of the California Constitution)**

24 **On Behalf of Plaintiffs Moon, Danis, and Hodge**

25 64. Plaintiffs Moon, Danis, and Hodge hereby incorporate each and every allegation
26 contained in the foregoing and subsequent paragraphs as if fully set forth herein.

27 65. The California Constitution, Article I, §§ 7(a) and 24, protects the right to travel and
28 freedom of movement. "[T]he right to intrastate travel (which includes intramunicipal travel) is a basic

1 human right.” *In re White*, 97 Cal. App. 3d 141, 148 (1979) (internal citations omitted). “This personal
2 liberty consists in the power of locomotion, of changing situation or moving one's person to whatever
3 place one's inclination may direct; without imprisonment or restraint[.]” *Id.* at 149.

4 66. Plaintiffs Moon, Danis, and Hodge are prevented from going anywhere in the City
5 because Chapter 8.46 criminalizes stopping or parking their vehicles at any time, and would subject
6 them to fines, towing, or both. Plaintiffs Moon, Danis, and Hodge are thus prevented from attending
7 medical appointments in the City, getting groceries, visiting their families, getting to work, or stopping
8 or parking anywhere in the City as a result of Chapter 8.46.

9 67. Chapter 8.46 serves no compelling governmental interest. Even if these interests are
10 considered as such, the City failed to narrowly tailor Chapter 8.46 to serve these interests. Plaintiffs
11 are informed, believe, and based thereon allege that alternative means exist that are less violative of
12 Plaintiffs’ constitutional rights, and can be narrowly drawn so as to correlate more closely with the
13 City’s purposes.

14 68. As a result of Defendants’ actions, Plaintiffs are entitled to injunctive and declaratory
15 relief.

16 **FIFTH CAUSE OF ACTION**

17 **California Government Code § 11135**

18 **On Behalf of Plaintiffs Moon, Danis, and Hodge**

19 69. Plaintiffs Moon, Danis, and Hodge hereby incorporate each and every allegation
20 contained in the foregoing and subsequent paragraphs as if fully set forth herein.

21 70. California Government Code § 11135 and the regulations promulgated thereunder
22 prohibit discrimination against persons with disabilities by recipients of state funding. The statute
23 provides in pertinent part that no person in the State of California shall, on the basis of disability, be
24 unlawfully denied the benefits of, or be unlawfully subjected to discrimination under any program or
25 activity that is funded directly by the State or receives any financial assistance from the State. Cal.
26 Gov’t Code § 11135(a).

27 71. At all times relevant to this action, Plaintiffs Moon, Danis, and Hodge have been people
28 with disabilities within the meaning of the California Government Code § 12926(l), (m) and meet the

1 essential requirements for the receipt of the services, programs, or activities of the Defendants. Cal.
2 Gov't Code § 11135.

3 72. Plaintiffs are informed and believe, and based thereon allege that Defendants receive
4 funding and financial assistance from the State of California to conduct, operate, and administer their
5 programs. As such, Defendants are subject to the anti-discrimination provisions of California
6 Government Code § 11135.

7 73. Defendants' acts and omissions as herein alleged have violated and continue to violate
8 California Government Code § 11135 by excluding and denying people with disabilities the benefits
9 of their programs, services, and activities in Fullerton.

10 74. Defendants' policies and practices in administering their parking program through
11 threatened and actual ticketing and towing of the vehicularly housed and those who use RVs for travel
12 prevents them from parking anywhere in the City. This practice has the intent of discriminating
13 against, and imposing disproportional burdens on, people with disabilities, as it screens out such
14 persons from the benefit of the City's parking program and denies them meaningful access to City
15 amenities enjoyed by and available to people without disabilities.

16 75. Similarly, in fear of the City enforcing Chapter 8.46, people with disabilities, including
17 Plaintiffs, have moved out of the City, away from their home community, including longstanding
18 and/or specialized medical and mental health care.

19 76. For example, Plaintiff Moon has been unable to access and obtain medical care in the
20 City because he is fearful that he will be towed pursuant to Chapter 8.46 while seeking care. While
21 attempting to obtain care for a severely injured foot in December 2021, Mr. Moon was harassed by
22 Fullerton police officers for parking near an emergency room. During this encounter, Mr. Moon parked
23 his vehicle near the hospital and used crutches to ambulate towards the entrance. As he neared the
24 entrance, Mr. Moon saw several Fullerton police officers surround his vehicle, forcing him to turn
25 back. When Mr. Moon returned to his vehicle, officers demanded he move it or it would be towed.
26 Mr. Moon tried to explain to the officers that he was trying to seek medical attention, but the officers
27 continued to demand he move the vehicle. Only after a lieutenant showed up and told the other officers
28 to stop harassing Mr. Moon did the harassment stop. Mr. Moon did not receive treatment on this day

1 because of the officers' harassment and his fear that they would tow his vehicle.

2 77. Similarly, Plaintiff Hodge has difficulty obtaining medical care in Fullerton because of
3 Chapter 8.46. She has held off on necessary care due to fear of being towed, which resulted in a blood
4 infection and emergency carpal tunnel surgery in September 2021. After her release, Plaintiff Hodge
5 was fearful of attending follow-up care appointments in Fullerton for fear of being towed. Plaintiff
6 Hodge has also been prevented from attending optometry appointments in the City for fear of her
7 vehicle being towed.

8 78. Chapter 8.46 denies people with disabilities meaningful access to the City's services,
9 programs, and activities while such services, programs, and activities remain open and easily
10 accessible by others.

11 79. Defendants have acted knowingly and with deliberate indifference to the harm
12 substantially likely to occur. As a direct and proximate result of the Defendants' acts and omissions,
13 people with disabilities have suffered and will continue to suffer injuries.

14 80. As a direct and proximate result of Defendants' violation of California Government
15 Code § 11135, people with disabilities have been injured as set forth herein. Because Defendants'
16 discriminatory conduct is ongoing, both declaratory and injunctive relief are appropriate.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray that this Court:

19 1. Grant declaratory relief that Chapter 8.46 violates:

- 20 a. Article I, § 7 of the California Constitution as the ordinance is vague;
21 b. Article I, § 17 of the California Constitution as the ordinance imposes excessive
22 fines;
23 c. Article I, §§ 7(a) and 24 of the California Constitution as the ordinance infringes
24 on the right to travel; and
25 d. California Government Code § 11135 as the ordinance discriminates on the
26 basis of disability

27 2. Issue preliminary and permanent injunctions enjoining the enforcement of Chapter 8.46
28 and expenditure of funds to enforce Chapter 8.46;

- 1 3. Award restitution for fines and penalties that the City has collected pursuant to Chapter
2 8.46;
3 4. Award to Plaintiffs' reasonable attorneys' fees and costs; and
4 5. Any other order and further relief that the Court deems just and proper.
5
6
7

8 DATED: December 8, 2022

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