

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

**LADELLA WILLIAMS, SCOTT YELTON,  
SONJA GARCIA, ALONSO MAGALLANES,  
CHRISTINA GARCIA, RICKEY MAUK,  
SHERI GIBSON, and LANCE WILSON,**

**Plaintiffs,**

**v.**

**No.**

**CITY OF ALBUQUERQUE,**

**Defendant.**

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF CIVIL RIGHTS AND FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Unhoused people in Albuquerque make up the city's most vulnerable population. Subject to the harms and indignities of abject poverty, many unhoused people live outdoors, exposed to the extremes of Albuquerque's climate, to hunger, thirst, and to the constant fears and worries that accompany being unsheltered. Rather than protect this vulnerable population, the City of Albuquerque has initiated a campaign in which City personnel hound and harass unhoused people so they have no place to go; citing, arresting, or threatening to cite or arrest them simply for sleeping outdoors with their meager belongings, and then seizing and destroying the few belongings people who are unhoused do have. In doing so, the City of Albuquerque both ignores the call of human decency and violates the New Mexico Constitution.

COME NOW Plaintiffs, by and through their attorneys, IVES & FLORES, P.A. (Laura Schauer Ives, Adam C. Flores, Alyssa Quijano, Henry A. Jones, and Martha E. Mulvany), DAVIS LAW NEW MEXICO (Nicholas T. Davis), THE NEW MEXICO CENTER ON LAW AND POVERTY (Sovereign Hager and Maria Griego), and THE ACLU OF NEW MEXICO (María

Martinez Sánchez), and on behalf of themselves and others similarly situated, and bring this action to enforce their rights under the New Mexico Constitution, New Mexico Civil Rights Act, NMSA 1978, § 41-4A-1 through -13 (2021), and the Declaratory Judgment Act, NMSA 1978, § 44-6-1 through -15 (1975).

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction of the subject matter of this action pursuant to Article VI, Section 13 of the New Mexico Constitution, the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3(B) (2021), and the Declaratory Judgment Act, NMSA 1978, § 44-6-2 (1975). This Court has personal jurisdiction over Plaintiffs and Defendant.

2. Venue is proper in Bernalillo County, New Mexico, pursuant to NMSA 1978, § 38-3-1 (1988).

### **PARTIES**

3. Plaintiffs are unhoused individuals who reside within the City of Albuquerque.

4. Defendant City of Albuquerque (“City”) is a local government, and is a “public body” as defined in the New Mexico Civil Rights Act, NMSA 1978, Section 41-4A-2 (2021).

### **GENERAL ALLEGATIONS**

#### **Homelessness in the City of Albuquerque**

5. The problem of a lack of affordable, safe, stable residences in Albuquerque has been ongoing for years and has been caused in part by the City’s own policies and practices.

6. Residential permitting and development within the City have long focused on single-family, detached homes, which are generally less affordable than multifamily units, like apartment buildings, or smaller attached units, such as townhomes and duplexes.

7. Albuquerque Mayor Timothy Keller recently acknowledged that there is a housing crisis in the city, noting that the Albuquerque area needs between 13,000 and 33,000 new units to address the housing supply. *See* Matthew Narvaiz, “Mayor Tim Keller: ‘Housing supply is a crisis,’” *Albuquerque Journal*, Oct. 26, 2022, at <https://www.abqjournal.com/2543570/keller-housing-supply-is-a-crisis.html>.
8. In recent years, an upward shift in home prices nationally has put home ownership out of reach for many people, pushing them into the rental market and driving up rents.
9. In addition, there is an increasing trend of institutional investors, rather than homeowners, buying single-family homes that first-time home buyers might otherwise purchase, and renting them out at sky-high rates. *See* Ariana Figueroa, “Record Rent Increases, Low Wages Are Driving an Eviction Crisis, U.S. Senate Panel Told,” *Source NM*, Aug. 3, 2022, at <https://sourcenm.com/2022/08/03/record-rent-increases-low-wages-are-driving-an-eviction-crisis-u-s-senate-panel-told/>.
10. Since 2000, median rents have increased by 112% in the Midwest, 135% in the South, 189% in the Northeast, and 192% in the West. *Id.*
11. In 2021, rents increased by an average of 17% nationwide. *Id.*
12. Rents in Albuquerque increased between 10% and 19.9% in just the *first quarter* of 2022. *See* Sophia Wedeen, “Record-Breaking Rent Growth in Markets in the South and West,” *Harvard Joint Center for Housing Studies Blog*, Aug. 31, 2022, at <https://www.jchs.harvard.edu/blog/record-breaking-rent-growth-markets-south-and-west>.
13. Rent increases have outpaced income growth, decreasing the supply of rental units that are accessible to lower-income individuals and households.

14. The lack of affordable housing has an even greater impact on people with disabling conditions. A 2016 study showed that the national average rent for a modest one-bedroom unit exceeded 100% of monthly Social Security Supplemental Security Income (SSI) payments, and the national average rent for a studio or efficiency apartment was equivalent to 99% of monthly SSI payments. *See* Technical Assistance Collaborative *Priced Out: The Housing Crisis for People with Disabilities*, <https://www.tacinc.org/wp-content/uploads/2020/04/priced-out-in-2016.pdf>.
15. The unavailability of affordable housing is a primary cause of homelessness.
16. A second major factor is a lack of employment opportunities and jobs that don't pay an adequate living wage.
17. The National Low Income Housing Coalition estimates that a "housing wage," which is the hourly wage a full-time worker must make to afford an apartment without spending more than 30% of their income, is \$25.82 an hour in order to afford a modest two-bedroom residence. *Id.*
18. The current minimum wage in New Mexico is \$11.50.
19. Many unhoused people are employed, but still cannot afford housing.
20. Other common contributors to homelessness include: domestic violence against women and children; health issues; and mental health issues, including trauma; and addiction.
21. The percentage of adults with disabilities (including difficulties with hearing, vision, cognition, mental health, ambulation, self-care, and independent living) is higher among the unhoused than it is among the general population.
22. The percentage of adults with a substance abuse disorder is also higher among the unhoused than it is among the general population. In Albuquerque, 44% of surveyed unsheltered adults self-reported having a substance abuse disorder.
23. People with complex health needs, often require supportive services in addition to housing.

24. Although some individual characteristics, such as mental illness, disabilities, or substance abuse are contributing factors to some people's homelessness, the essential problem that many unhoused people face is a lack of affordable housing.

25. The lack of affordable housing and adequately paid employment in Albuquerque has not only caused precariously housed individuals and families to lose their housing, but it has also presented a barrier for currently unhoused people to exit homelessness.

26. The federal government requires states receiving certain federal funding to conduct an annual "point-in-time" count of people experiencing sheltered and unsheltered homelessness on a single night in January each year. Point-in-time counts are the best available data for determining the number of unhoused people, but they are known to provide gross undercounts because of the difficulties in finding all of a location's unhoused individuals on a single night. *See Martin v. Boise*, 920 F.3d 584, 604 (9th Cir. 2019) ("It is widely recognized that a one-night point in time count will undercount the homeless population, as many homeless individuals may have access to temporary housing on a given night, and as weather conditions may affect the number of available volunteers and the number of homeless people staying at shelters or accessing services on the night of the count.") (Internal quotation marks omitted.); *see also* Nat'l. L. Ctr. on Homelessness & Poverty, *Don't Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America* (2017), <https://homelesslaw.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf>. Point-in-time counts also do not include people without fixed residences who are couch surfing, staying with family or friends, or residing in substandard living conditions.

27. The 2022 point-in-time count report prepared by the New Mexico Coalition to End Homelessness reflected a total of 2,594 individuals who were in emergency shelters, transitional housing, or unsheltered in New Mexico.

28. The New Mexico Coalition to End Homelessness estimates that the actual number of New Mexicans experiencing homelessness is between 15,000 and 20,000—a number that captures residents who are temporarily living with others, living in unsafe housing conditions, sleeping in cars, or staying in motels, in addition to those staying in shelters or outdoors.

29. Of the 2,594 unhoused individuals counted in the 2022 point-in-time survey, over half of these—some 1,311—were in Albuquerque.

30. If the actual numbers of unhoused people estimated by the New Mexico Coalition to End Homelessness are correct, and if over half of the unhoused people in the state live in Albuquerque, the real number of unhoused people in the city would be between 7,500 and 11,000.

31. Of the 1,311 homeless individuals counted in Albuquerque during the 2022 point-in-time count, 270 of these were children under the age of 18.

32. However, the number of homeless youths is likely closer to 2,300. *See* Alicia Inez Guzmán, “New Data Says There Are 2,300 Homeless Youths in Albuquerque,” June 24, 2022, *The Paper*, at <https://abq.news/2022/06/new-data-says-there-2300-homeless-youths-in-albuquerque%ef%bf%bc/> (citing a study by the Pacific Institute for Research and Evaluation).

33. Statewide, between 2015 and 2020, 51,702 individuals were enrolled for services in the New Mexico Homeless Management Information System data system, which reflects data about people accessing emergency housing and other housing-related services, and does not capture data regarding the homeless population who did not access such services. *See* Univ. N. Mex. Homeless Research Taskforce, *Findings from a Study Conducted by the UNM Homelessness Research Taskforce*, Sept. 2022.

34. Homelessness affects all major population groups in Albuquerque. The 2022 point-in-time count indicated that of unsheltered individuals in Albuquerque: 66% were male, 31% were female,

0.5% were nonbinary, and 0.5% were transgender. Ages ran from children to people in their 80s. 45% were white, 21% were American Indian or Alaska Native, 10% were Black or African American, 3% were multiracial, and 1% were Native Hawaiian or other Pacific Islander. 40% were Hispanic or Latina/o/x, and 52% were non-Hispanic or non-Latina/o/x. In terms of tribal or pueblo affiliation, there were people who identified that they were affiliated with the Acoma, Isleta, Apache/Dine, Dine/Zuni, Jemez, San Felipe, Sandia, Zuni, Zuni/Choctaw, Laguna, and Navajo peoples. Demographics for the populations in Albuquerque’s emergency shelters and transitional housing were similarly broad.

**Inadequate Shelter Space**

35. Shelter space in Albuquerque is inadequate to provide beds for all of the city’s unhoused individuals.

36. A 2019 report prepared for the City reflected that between City-run shelters and private shelters, there were only 633 beds available, as follows:

<b>Provider</b>	<b>Facility</b>	<b>Beds in 2019</b>
Barrett Foundation	Barrett House	10
Good Shepherd Center	Good Shepherd Center	75
Heading Home	ABQ Opportunity Center	56
Heading Home	Veteran Shelter & Respite Care	30
Safe House	Domestic Violence Shelter	5
St. Martin’s Hospitality Center	Motel Vouchers	8
Steelbridge/Heading Home	Westside Shelter	449
<b>Total</b>		<b>633</b>

37. On information and belief, the number of shelter beds available in Albuquerque has not substantially changed since 2019.
38. Under the Eighth Amendment, “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Martin*, 920 F.3d at 617.
39. Of the available shelter beds, the greatest number is at the Westside Emergency Housing Center (“Westside shelter”), a facility housed in a former temporary jail that the City stopped using in 2003. The City variously represents the Westside shelter as being able to house between 300 and 450 people.
40. The Westside shelter is unsafe, unhealthy, and unfit for human habitation.
41. The building does not meet the essential fire safety and building codes of applicable local codes and state regulations and law, including state fire safety codes (which incorporate the 2015 edition of the International Code Council’s International Fire Code) and the City’s own building safety codes.
42. A recent report from the Albuquerque Fire Department indicates that there are no working fire hydrants on the property.
43. Federal funds have been used to finance the operation of the Westside shelter, but, on information and belief, the City’s assurances to federal authorities regarding the fitness of the facility have not been, and currently are not being, met.
44. The shelter is infested with black mold.
45. On information and belief, residents have been scalded in the showers at the Westside shelter due to defective mixing valves. At times as few as one shower in the building has been working, such that residents must bathe in mobile showers on trailers out back.



46. The shower doors in the women's pod cannot be closed, such that women do not have privacy while bathing.
47. On information and belief, showers have, at times, not been accessible for people who use wheelchairs.
48. The kitchen is not operable, and the facility cannot pass a health and safety inspection. There is no oven, stove top, or working refrigerator available for use by people residing there.
49. No certificate of occupancy has been issued to operate the building as a homeless shelter. The last such certificate was issued in 2006.
50. There is no washing machine or clothes dryer available for residents to clean and dry their clothing. They must wash their clothes in the bathroom sinks and hang them outdoors on the cyclone fencing.
51. There are bed bugs and parasites in the bedding, and there is no effective method in use to "sanitize" the sheets, blankets, mattresses, and bedding.
52. No secure storage space is available for people's belongings. There are lockers in the building, but residents cannot use them. Residents' personal property lies directly on the floor under the bunk beds on which they sleep.
53. Chronically overcrowded, there are not enough beds for everyone, so people sleep on plastic "boats" on the floor.
54. On information and belief, a complaint was filed with the City Inspector General in March 2022 due to problems with staff misbehavior, including allegations of extortion.
55. The Westside shelter is in a location that is on the outskirts of the City and is far from services, jobs, and support systems such as family and friends. People who sleep there are separated from case managers, social workers, treatment providers and employment support and

other social service programs, and often cannot obtain timely transportation to appointments in town that could help them obtain employment, housing and other supportive services.

56. In February 2019, the *Albuquerque Journal* reported that Ms. Lisa Huval, then-deputy director for housing and homelessness of Albuquerque's Family and Community Services Department, stated that the city's FY 2020 budgeting process included money to keep the shelter open year-round again, but that it was just an "intermediate" step as the city worked toward building a new, more centrally located replacement.

57. Huval said "We know [the Westside shelter is] just not a great long-term solution; obviously, the transportation is very expensive, and we'd rather spend that money on services and housing than transportation . . . And the location means some folks don't want to go out there. It feels too isolated; it's not really a place where folks can come and use as their home base and get to services."

58. Many residents have mental illness and behavioral health disabilities, but, on information and belief, mental health therapy is not provided there.

59. On information and belief, many unhoused people are banned from the shelter on a permanent basis; sometimes for possession or use of drugs, which are common causes for being banned.

60. Couples who are partnered or married cannot stay together if one member of the couple is a man and the other is a woman, since men and women must stay in separate parts of the shelter, causing these people to lose one of their primary forms of social and emotional support. This separation is particularly difficult for people who have disabilities and rely on their partner for help.

61. People living with minor children are not permitted to stay at the shelter.

62. Women and people whose gender presentation is nontraditional or nonbinary are often harassed at the shelter.

### *Coronado Park*

63. In part because of a lack of viable shelter space, for many years, the City permitted unhoused people to set up tents or other temporary living sites at Coronado Park.

64. A community of up to approximately 120 people was established there with a set of self-enforced rules and norms.

65. For example, it was understood that if a person needed to leave the park—to go to work, to access services, to get food, to visit family and friends, or to engage in any of the other normal activities of daily life—their belongings would be protected and no other resident would take or disturb them for a period of three days. If, after three days, the owner had not returned, it was understood that the belongings were considered to be abandoned and could be claimed by others in the park.

66. This system ensured that people had a stable home base where their few possessions would be preserved, such that they could safely leave in order to function within the larger society outside of the park.

67. The City maintained the park by cleaning it every other week. On cleaning days, residents had notice that they were required to leave the park between 7:00 a.m. and 4:00 p.m., while City personnel cleaned the park and removed any trash.

68. On July 25, 2022, Mayor Keller announced that the City of Albuquerque intended to close Coronado Park, but he did not provide a date for the closure.

69. Shockingly, Mayor Keller stated that there was no plan for where the residents of Coronado Park would go after the park was closed.

70. On August 16, 2022, City personnel made their customary bi-weekly walk through the park, informing residents that they would need to temporarily leave the park the next day for cleaning.

71. On information and belief, the City intentionally deceived park residents by stating that the next day would be a regular cleaning day.

72. But early the next morning, on August 17, 2022, City employees arrived and began throwing people's tents and other belongings into garbage trucks and destroying them in the compactor.

73. Residents tried to remove as many of their possessions as they could, but City employees were throwing items into the garbage trucks quickly and without giving residents the opportunity to collect their things.

74. The scene was chaotic. People were crying and attempting to get their belongings away from the City employees.

75. Some people who managed to get some of their possessions out onto the street had City employees follow them, take their things, and throw them into garbage trucks.

76. After everyone was out of the park, the City flooded the park with water, fenced it, and permanently closed it as an encampment.

77. Because the City lacks adequate shelter space and because even the available shelter space is not a viable option for some people, the people evicted from Coronado Park had nowhere to go.

78. People have looked for other locations, but the City continues to sweep unhoused people from wherever they land, making it impossible for people to settle anywhere.

79. Prior to the closure of Coronado Park, when City employees wanted unhoused people to move from where they had set up camp, the employees generally directed them to the park.

80. After the closure of the park, City employees have not told unhoused people where they should go when the City forces them to move along.

81. When the City closed the park without providing additional beds or available housing, unhoused people living in the park dispersed with their belongings and took shelter where they could: under bridges, in alleys, around cemeteries, and in unused public lots.

82. With the onset of winter and dropping temperatures, people sheltering outdoors are in immediate jeopardy of dying of hypothermia.

**Criminalizing the Status of Being Unhoused**

83. The City regularly enforces City ordinances and state laws against unhoused people in a manner that criminalizes their status as homeless.

84. Unhoused people who erect tents or makeshift shelters around the City are routinely cited and/or arrested for violations of:

- A. NMSA 1978, Section 30-14-1 (1995), defining criminal trespass on public and private property.
- B. NMSA 1978, Section 30-14-4 (1969), defining wrongful use of property used for a public purpose and owned by the state, its subdivisions, and any religious, charitable, educational, or recreational association.
- C. Albuquerque City Ordinance 12-2-3, defining criminal trespass on public and private property.
- D. Albuquerque City Ordinance 8-2-7-13, prohibiting the placement of items on a sidewalk so as to restrict its free use by pedestrians.
- E. Albuquerque City Ordinance 10-1-1-10, prohibiting being in a park at nighttime when it is closed to public use.
- F. Albuquerque City Ordinance 12-2-7, prohibiting hindering persons passing along any street, sidewalk, or public way.
- G. Albuquerque City Ordinance 5-8-6, prohibiting camping on open space lands and regional preserves.
- H. Albuquerque City Ordinance 10-1-1-3, prohibiting the erection of structures in city parks.

85. Violations of these statutes and ordinances are punished as misdemeanors.

86. As an illustration of the City’s ongoing practice of criminalizing the status of being unhoused, in the brief period between August 15, 2022, just before Coronado Park was closed, and October 2, 2022, two-and-a-half months later, the City enforced these provisions over 220 times—either by citation, summons, or arrest. On information and belief, most of these instances involved people who were unhoused.

87. Even when the City does not actually cite or arrest unhoused people for violations of these provisions, it enforces them by telling unhoused people that they must move or they will be cited or arrested for their violation.

88. Because unhoused people have no lawful place to relocate to, they are continually pushed from place to place, and their presence anywhere in Albuquerque with the belongings they need in order to be sheltered—such as tents and tarpaulins—and to survive—such as sleeping bags, clothing, toiletries, medicine, food, and water—is criminalized by the City.

89. When private property owners have permitted unhoused people to set up their tents or place their belongings on the owners’ property, the City has cited or threatened to cite such private property owners pursuant to Albuquerque City Ordinance Section 14-16-4-2, which prohibits camping in particular zoning districts, and Section 14-16-6-9(C)(5)(e), which imposes a civil fine of up to \$500 per day for violations. As a result of these threats and citations, the owners are forced to direct the unhoused people to pick up and leave.

90. Even when the owners themselves do not ask unhoused people to leave their property, City employees have a practice of ordering unhoused people off of private property where they have the owners’ permission to be.

### **The City's Destruction of Personal Property**

91. Although the City has had at least one written policy regarding the collection and safeguarding of personal property when the City removes an unhoused person's encampment, the City regularly fails to adhere to this policy.

92. The City regularly forces people to move from their encampment location without notice or without adequate notice, and in doing so, the City regularly takes their personal property and discards it.

93. When the City does give notice, it also regularly throws away or destroys the property of unhoused people who were unable to move their belongings within the time frame given by the notice.

94. The City also regularly discards or destroys personal property that is temporarily unattended, including when unhoused people leave their belongings in order to tend to life-sustaining activities, such as working, or obtaining food or water.

95. The City does not store property collected from unhoused people so that it may later be retrieved, and instead throws away unhoused people's property indiscriminately.

### **Consequences of the City's Policies**

96. In confiscating unhoused people's few meager possessions, the City deprives them of the means to survive: The destruction of people's tents, tarps, blankets, and sleeping bags leaves them completely exposed to the elements. The destruction of people's medicine, food, and water deprives them of some of the most essential conditions for life.

97. The City's actions in denying unhoused people any stable place to be causes the unhoused to live in an unremitting state of uncertainty and fear. The constant threat of being forced to relocate creates stress and can have significant negative health effects, causing individuals to lose sleep and

contributing to worsening mental and physical health conditions. See Nat'l L. Ctr. on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>, at 15.

98. The combination of being endlessly on the move and living under the threat of having all of one's worldly possessions seized and destroyed means that unhoused individuals must spend their time and energy transferring their things from place to place and guarding their belongings from seizure, rather than engaging in more productive pursuits such as going to work or securing employment, seeking treatment for mental and physical health conditions, or gaining access to permanent housing. See Nat'l L. Ctr. On Homelessness & Poverty, *Tent City, USA: The Growth of America's Homeless Encampments and How Communities Are Responding*, [https://homelesslaw.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf) at 9.

99. In addition, the criminalization of homelessness actually promotes the cycle of homelessness by making it harder for people to find housing or to keep jobs. Even misdemeanor convictions can make someone ineligible for subsidized housing, and criminal records are routinely used to exclude applicants from employment and housing. See Nat'l L. Ctr. On Homelessness & Poverty, *Fact Sheet: The Top Five Ways Criminalization of Homelessness Harms Communities*, <https://homelesslaw.org/wp-content/uploads/2018/10/criminalization-one-pager.pdf>. Arrests and jail time cause unhoused people who are employed to miss work.

## **ALLEGATIONS REGARDING PLAINTIFFS AND CLASS REPRESENTATIVES**

### **Plaintiff LaDella Williams**

100. LaDella Williams is an Albuquerque resident who is currently sleeping outdoors.

101. Ms. Williams experienced very serious traumas at age five, while living in Texas.



102. She became an Albuquerque resident at age 7 and has resided there since then.
103. She has been diagnosed with a number of mental health conditions, including PTSD, ADD, depression, and anxiety, for which she has been prescribed psychiatric medication. She has received mental health treatment on multiple occasions.
104. Ms. Williams has been homeless much of the time since 2015, after domestic discord made it untenable for her to remain with her ex-spouse.
105. At times, she has received housing vouchers arranged by a nonprofit agency serving people who are homeless that permitted her to stay in transitional housing.
106. But since the fall of 2021, she has been without housing.
107. Ms. Williams has stayed at the Joy Junction homeless shelter in the past, but found that being housed among numerous other people at a homeless shelter made her mental health conditions worse.
108. Due to her PTSD and anxiety being exacerbated when she stayed at a homeless shelter, she cannot safely stay at the Westside shelter.
109. Beginning in October 2021, Ms. Williams resided at Coronado Park, where she established relationships with a number of other unhoused people and felt safe as a consequence.
110. During 2022, City personnel established a pattern of coming to Coronado Park every other Wednesday and requiring the residents to move out of the park between 7:00 a.m. and 4:00 p.m., while City personnel cleaned the park.
111. On Wednesday August 17, 2022, Ms. Williams heard a voice over a bullhorn that appeared to be on a police car announce, "You are trespassing." The voice ordered the park's residents to leave.

112. Ms. Williams followed a line of people out of the park, where they tried to congregate with their things under a nearby bridge.

113. City workers instructed them to “go somewhere else.”

114. The Coronado Park residents tried to move to a nearby sidewalk, but were again told to leave.

115. When Ms. Williams asked what was happening, City workers kept saying: “All we know is that the park is closed.”

116. Ms. Williams received no notice that the City intended to shut down the park that day, and she lost her bicycle when City personnel led her to believe that residents would, as usual, be permitted to return to the park after it was cleaned.

117. Later that day, she tried to come back to the park, but the City had erected a fence around it.

118. Ms. Williams observed City personnel take people’s belongings and throw them into a trash truck and crush the belongings.

119. On information and belief, Ms. Williams’s belongings were also put into a trash truck by City personnel and destroyed.

120. Throughout that day, Ms. Williams and other residents of Coronado Park went to underpasses beneath Interstate 40 near Coronado Park and to other nearby vacant spaces between Edith and 6th street. Wherever they went, they were followed by police and other City personnel and told that they could not stay wherever they tried to go.

121. Ms. Williams has repeatedly asked the police where she is supposed to go, and has never gotten any specific answer.

122. Since that time, Ms. Williams has slept in a number of vacant lots, parks, the alley on the north side of Interstate 40 between Edith and Interstate 25, and other vacant spaces near Coronado Park.

123. The reason she has moved so often is because every time she set up camp, the police told her to move and threatened criminal punishment if she did not.

124. At this time, Ms. Williams has no safe place to sleep.

**Plaintiff Scott Yelton**

125. Scott Yelton is originally from North Carolina, but has been an Albuquerque resident since 2004.

126. Mr. Yelton became unhoused in September 2019, after he lost his job and separated from his wife.

127. Mr. Yelton remained unsheltered until November 2022, when he found housing after being granted a HUD housing voucher.

128. Although Mr. Yelton is looking for a job, he is unemployed and survives on food stamps and scavenging for things he can sell. He cannot afford housing in Albuquerque.

129. Mr. Yelton lived at the Westside shelter from September 2019 until the summer of 2020. His belongings were regularly stolen there, including items stored in areas that only staff had access to. It felt unsafe there because there were a lot of fights and drug use. In addition, it was far from services, and buses to and from the shelter only operated a few times a day.

130. Mr. Yelton left because he felt safer living with other people downtown and because downtown, he was closer to services.

131. Mr. Yelton lived at Coronado Park from the fall of 2020 until it was closed on August 17, 2022.

132. On August 17, 2022, Mr. Yelton left the park with his belongings, believing that the park was going to be cleaned as usual. He was outside of the park on First Street, pushing one of his shopping carts of belongings towards the bridge there. He temporarily left his second cart behind, which he planned to retrieve as soon as he had finished moving his first cart.

133. When he was about 100 yards away from the cart, a City employee disposed of Mr. Yelton's second cart by putting it in a garbage truck. The cart contained Mr. Yelton's Coleman stove for winter heat, his tent, sleeping bag, two suitcases, clothes, his identification, his birth certificate, irreplaceable family photos, a bicycle, and tools.

134. Mr. Yelton ran and asked the employee not to throw his things away, but the employee ignored him.

135. Mr. Yelton moved to a new site, but at his new camp, an Albuquerque Police Department officer told him he had to move or he would be cited for criminal trespass.

136. Although Mr. Yelton currently has housing through HUD, he is not self-supporting, and in the event that he is no longer provided a voucher, he will not be able to afford a place to live.

**Plaintiff Sonja Garcia**

137. Sonja Garcia was born and raised in New Mexico and has been unhoused in Albuquerque since approximately March 2020.

138. She suffers from multiple disabling conditions: She has paranoid schizophrenia, bipolar disorder, and intermittent explosive disorder. She suffered a head injury that cracked her skull. She has a heart condition that causes problems with her circulation such that her legs turn purple and it is difficult to walk. She also suffers from addiction.

139. Before becoming homeless in 2020, Ms. Garcia and her husband had subsidized housing through a local program under which they had to pay \$180 per month in rent. They lost their

housing after it was discovered that the housing coordinator had been stealing rent money, and the couple was told that they owed \$1,600.

140. When Ms. Garcia and her husband were unable to pay the \$1,600, they were evicted.

141. After their eviction, Ms. Garcia and her husband were unable to find housing that they could afford. Ms. Garcia's husband had Social Security disability income, and Ms. Garcia had income from a job working for her father as an independent contractor, delivering medications from pharmacies to people at their homes.

142. Their combined income was not enough to afford housing in Albuquerque.

143. Ms. Garcia applied for social security disability benefits but was denied.

144. After Ms. Garcia lost her housing, she continued to work. But the pandemic shut her father's business down, and her father subsequently passed away. Without a vehicle of her own or a stable place to stay, Ms. Garcia now cannot find regular employment.

145. Ms. Garcia cannot go to the Westside shelter because of her disabilities. The environment triggers her paranoid schizophrenia, and because men and women are separated, she cannot be with her husband, who helps her feel more stable and grounded. In addition, Ms. Garcia's husband has epilepsy and grand mal seizures. He needs their dog because the dog alerts when he is about to have a seizure, and he needs Ms. Garcia because she holds his head while he is having a seizure, and she helps him reorient and regain a sense of safety afterwards.

146. Since she has been homeless, Ms. Garcia, her husband, and her 20-year-old son have lived in temporary shelters made of tarps and shopping carts in various locations around Albuquerque.

147. A local business let them stay in its parking lot on weekdays, but City employees told them they had to leave, even though they had the owners' permission.

148. Sometime around August 2022, Ms. Garcia and her family were in Bel Air Park. City Parks and Recreation Department employees told them that the police would be there in fifteen minutes and that the family needed to remove all of their things and leave. The police arrived and City employees began throwing the family's things into a trailer attached to the back of a truck. The employees seized Ms. Garcia's suitcases, tools, food for the family dogs, water jugs, and a child-sized power four-wheeler that Ms. Garcia's husband had been fixing for a friend.

149. The City did not provide Ms. Garcia with more than fifteen minutes' notice prior to the seizure.

150. The City did not provide Ms. Garcia an opportunity to reclaim her belongings.

151. Upon vacating the park, Ms. Garcia went to an open lot nearby, but the police threatened to cite her if she wasn't gone when they returned later that day.

152. In September 2022, Ms. Garcia and her family were staying in an alleyway near a gas station when City police came and cited Ms. Garcia's husband for obstructing the alleyway. They arrested Ms. Garcia's husband on an outstanding warrant and took him to jail.

153. After Ms. Garcia's husband was arrested, Ms. Garcia and her son moved to another lot, but on October 13, 2022, the City cited Ms. Garcia for wrongful use of public property, a violation of NMSA 1978, Section 30-14-4(A) (1969), for having set up camp there.

154. The City has previously cited her for trespassing.

155. Since that time, Ms. Garcia has been forced to move several times by City employees, who threaten to cite her and take and destroy her belongings if she does not relocate immediately.

156. Ms. Garcia is concerned about being constantly forced to move from place to place, and worried about how she and her family will survive the winter. City employees have told her that she cannot erect a tent, and so she has been making do with just a tarp and blankets.

**Plaintiff Alonso Magallanes**

157. Alonso Magallanes currently lives in transitional housing in Albuquerque. Before he moved into transitional housing, he had been unhoused in Albuquerque for at least eight years.

158. Mr. Magallanes cannot afford housing in Albuquerque, and has been on a list for a housing voucher for seven years.

159. Mr. Magallanes suffers from PTSD, anxiety, paranoia, and addiction.

160. Mr. Magallanes lived in Coronado Park for most of the eight years between sometime in 2014 and August 17, 2022, when the City closed the park.

161. At some point during this period—in or around 2015—Mr. Magallanes stayed at the Westside shelter, but the staff stole from him and it was dirty and crowded. The conditions triggered his PTSD, and he could not remain there.

162. Mr. Magallanes was happy at the park and felt that the other people living there were like his family.

163. When Mr. Magallanes first lived at the park, the City had a practice of confiscating everything from a person's spot and raking the spot clean if the person was not there to claim the property. The City did so without providing notice or an opportunity to be heard. Residents adapted by having a system under which a person could ask another resident to claim the person's things if a City employee came around. But because this required the other resident to be present at all times, it was not a perfect system.

164. Once, when Mr. Magallanes was away from the park and had asked another resident to claim his things, a City worker came and seized Mr. Magallanes's possessions when the other resident was not there. Afterwards, Mr. Magallanes learned from other park residents that it was the City that had taken his belongings. Mr. Magallanes had no notice prior to the seizure and was

not given any post-deprivation opportunity to obtain the items that had been taken. As a result, he lost his clothes, sleeping bags, tents, bikes, and tools.

165. The City seized and destroyed Mr. Magallanes's things a second time during the Coronado Park closure, when, on August 17, 2022, the City began to throw away Mr. Magallanes's belongings while he was still asleep. Mr. Magallanes woke up and frantically moved his remaining things out of the park to prevent the City from destroying everything he owned.

166. When Mr. Magallanes reached the sidewalk outside of the park, City employees threatened to charge him with the crime of obstructing the sidewalk.

167. After being evicted from Coronado Park, Mr. Magallanes tried to find what he considered to be gray areas—places that were not owned by the city and weren't currently being used by a private owner.

168. Business owners wouldn't allow him to stay on their property and said that it was because the City had threatened to fine them if they did.

169. Mr. Magallanes started sleeping alone on a small dirt tract a few blocks away from the park. Since he was alone, he lacked many of the protections he had had in the community at the park.

170. One day, Mr. Magallanes left for about twenty minutes to get something to eat. When he returned, his belongings were gone, and his spot had been raked clean. In his experience, only City workers took every single thing and actually raked a spot clean with a rake—when property was stolen by someone else on the streets, the person would only scavenge a few items, and would certainly not rake the spot afterwards. The City took Mr. Magallanes's tent, tools, camping stove, blankets, birth certificate, identification, irreplaceable photographs that were important to him, and his bicycle.



171. Although Mr. Magallanes now has transitional housing, he is at risk of being forced out if he cannot meet all of the conditions of the program.

**Plaintiff Christina Garcia**

172. Christina Garcia is an Albuquerque resident who is currently sleeping outdoors.

173. Ms. Garcia spent much of her childhood in the custody of the New Mexico Children, Youth, and Families Department.

174. Ms. Garcia has been homeless much of the time since she reached the age of majority and “aged out” of state custody.

175. Ms. Garcia has been diagnosed with a number of mental health conditions for which she has been prescribed psychiatric medication, and she has been a resident of numerous residential mental health treatment centers.

176. Ms. Garcia has been in Albuquerque and without housing for most of 2021 and 2022.

177. She has stayed at the Westside shelter at times, but due to her mental health conditions, she experiences high anxiety there and has suffered from mistreatment. Accordingly, she cannot safely stay at the shelter.

178. During much of 2022, Ms. Garcia resided at Coronado Park, where she had established relationships with a number of other unhoused people.

179. Ms. Garcia received no notice that the City intended to shut down the park, and she lost most of her belongings on August 17, 2022, when city personnel misled her into believing that residents would be permitted to return to the park after it was cleaned.

180. On information and belief, Ms. Garcia’s belongings were put into a trash truck by City personnel and destroyed.

181. Since that time, Ms. Garcia has slept in a number of vacant lots, parks, and other public spaces near Coronado Park.

182. In November 2022, City police officers forced Ms. Garcia to move her tent from a parking lot, and she was cited in June 2022 for sleeping in a park.

183. At this time, Ms. Garcia has no safe place to sleep.

**Plaintiff Rickey Mauk**

184. Rickey Mauk is a resident of Albuquerque and a veteran of the United States Army.

185. Mr. Mauk lives on \$841 a month in SSI benefits and Social Security retirement. This is not enough to afford housing in Albuquerque and also be able to pay for food, bills, and other living expenses.

186. In addition, Mr. Mauk has a criminal conviction, which makes it difficult to obtain housing.

187. As of November 28, 2022, Mr. Mauk has been able to move into an apartment paid for by the Veterans Integration Center, a New Mexico nonprofit organization that provides emergency housing, transitional housing, and homeless prevention services to veterans.

188. Between sometime in 2005 and the day that he moved into his apartment in 2022, Mr. Mauk was unhoused in Albuquerque, living primarily in various locations outdoors.

189. Mr. Mauk lived at the Westside shelter for about a year between approximately November 2020 through November 2021.

190. It was difficult for him to live in the shelter because he has PTSD from abuse he suffered as a child and from his time in prison. The shelter was a former jail, and the staff was abusive, authoritarian, and treated residents in ways that failed to recognize their inherent dignity.

191. The shelter was uninhabitable and unsafe. It was dirty and infested with mice and cockroaches, and it smelled strongly of body odor, feces, and urine. In the group pod that Mr.

Mauk lived in, the showers didn't work, so residents had leave their belongings unattended to go to another pod to shower, subjecting themselves to theft. There were five toilets in the pod, but two of them didn't work.

192. Shelter staff refused to clean, and bribed residents with extra food to do the cleaning for them. As a result, in order to obtain adequate food, residents had to mop, clean toilets, and perform other work. Some days there was not enough food for all of the residents.

193. Staff stole from residents and treated them with contempt. In discussing his mother's death, staff members told Mr. Mauk that he hadn't deserved her, and this was so unbearable to Mr. Mauk that he did not reveal his father and sister's death a few weeks later in order to protect himself from the staff's abuse.

194. Mr. Mauk left the shelter at the end of November 2021 because he felt unsafe there and because of his PTSD.

195. Mr. Mauk began living at Coronado Park in December 2021, and he stayed there until the City closed the park on August 17, 2022.

196. After Mr. Mauk moved to a new location, a City police officer threatened him with a citation for criminal trespass if he did not leave.

197. Although Mr. Mauk now has housing, it is only due to the generosity of a local nonprofit organization, and he cannot be certain that the organization will continue to provide its support.

**Plaintiff Sheri Gibson**

198. Sheri Gibson is a resident of Albuquerque and currently lives outdoors on public property during the daytime and inside the Westside shelter at night.

199. Ms. Gibson was born in Illinois and moved to Arizona when she was ten.

200. She graduated from high school in Arizona, and attended Bryman College, where she became a certified dental assistant.

201. She worked as a dental assistant for approximately five years and then changed careers to become an executive assistant, working at an Arizona bank specializing in mortgages and bankruptcy.

202. Ms. Gibson's mother lived in Moriarty, New Mexico, and when she became gravely ill, Ms. Gibson left her job and moved into her mother's home to care for her.

203. When Ms. Gibson's mother passed away in early 2019, Ms. Gibson was evicted from her mother's home and found herself suddenly homeless.

204. After living on the streets for a few weeks, Ms. Gibson was able to secure housing for the next year and a half, until she was evicted on September 7, 2020, during the Covid-19 pandemic, in violation of rules forbidding pandemic evictions.

205. Ms. Gibson spent the next two months living on the streets until she found a house that she was able to rent with a friend.

206. In January 2021, the house burned down in an accident, and Ms. Gibson was once again homeless.

207. She had approximately \$500 in relief funds provided by the Red Cross, no job, and no place to live.

208. Ms. Gibson moved to Coronado Park, and she would either sleep there or take the bus to the Westside shelter at night.

209. But in the summer of 2022, Ms. Gibson started hearing rumors that the City was going to close the park down.

210. She was regularly sleeping with her dog in a tent at the park at that time, and she had some carts that she used to store her belongings, including her clothes, paperwork, a voucher that she planned to use to get identification, which had been lost, and all of her food.

211. Sometime in or around the end of July or beginning of August 2022, an organization called Heading Home started sending social workers to the park to try to organize housing for the people who were living there. The social workers seemed to suggest that housing would be sorted out for everyone before the park could be closed.

212. Ms. Gibson observed some people at the park being given housing vouchers, and others were shown renderings of outdoor homeless camps with electricity and showers that were supposedly being constructed for those who could not get a voucher.

213. Ms. Gibson had no reason to know that Coronado Park would be closed without notice and before any housing options were available to the unhoused people sheltering there.

214. On August 17, 2022, Ms. Gibson began moving her belongings out of the park for its regular cleaning as instructed by City employees.

215. But everywhere Ms. Gibson moved—to a nearby dog park, to the sidewalk, and to a nearby parking lot—City workers told her to move to another spot.

216. There was nowhere for Ms. Gibson to go.

217. Then uniformed City police arrived and started ordering all of the people who had moved their belongings to spots outside of the park to pick up their things and go somewhere else.

218. People—many of whom were disabled or trying to care for pets—were frantically moving their possessions from one spot to another while City workers and police shouted commands at them.

219. When the City employees determined that someone wasn't moving quickly enough, they started grabbing the person's belongings and throwing them into garbage trucks.

220. When Ms. Gibson moved to a nearby sidewalk, a garbage truck pulled up near her and police officers threw all of her things away.

221. Police threw away her clothes, her ID voucher, her food, and everything else she owned, except for her dog and her tent.

222. There was no process to contest the seizure or to retrieve her property, which was taken from her by force and thrown into the trash.

223. Since that time, Ms. Gibson has been living outdoors during the daytime and at the Westside shelter at night.

224. She would like to work and have housing, but it is difficult to get out of her current situation.

225. There is no apparent housing option for her, and she still hasn't been able to get her identification since the City threw away her ID voucher in August.

226. She has no home address that she can fill out on job applications, and she believes that writing down the address to the Westside shelter eliminates her from consideration by employers.

227. It is difficult for Ms. Gibson to be at the Westside shelter because she has undiagnosed PTSD, and staying in large crowds is almost unbearable.

228. Although it is traumatic for Ms. Gibson to stay at the shelter, she does so because she is being stalked by her former boyfriend, and she cannot sleep outside on the streets without protection from a community of the sort that was previously available to her at Coronado Park.

**Plaintiff Lance Wilson**

229. Lance Wilson has been an unhoused resident of Albuquerque for approximately five years.

230. At times, Mr. Wilson has stayed at the Westside shelter, but he is unable and unwilling to stay there now due to assaults upon him, harassment and abuse by staff, and theft of his property, including the taking of his prescription drugs by staff.

231. Mr. Wilson regularly stayed at Coronado Park in the six months prior to August 17, 2022, and was there on that day.

232. Mr. Wilson received no notice that the City would shut down Coronado Park on August 17, 2022, and lost most of his belongings when City personnel misled him into believing that the residents of the park would be permitted to return to the park after it was cleaned that day.

233. Upon information and belief, Mr. Wilson's belongings, including his tent, chair, clothes, medications, cellphone, and charger, were put in a trash truck by City personnel on August 17, 2022, and destroyed. The City workers were hostile toward those were staying there, openly laughing at those whose belongings they were destroying and saying derogatory things to them.

234. Since that time, Mr. Wilson was unable to attend a virtual court proceeding due to his electronics being confiscated, resulting in a warrant for his arrest.

235. Since that time Mr. Wilson has slept in a number of vacant lots, parks, and other available spaces near Coronado Park.

236. In November 2022, Albuquerque police officers forced Mr. Wilson to move his tent from a parking lot and issued him a citation.

237. At this time, Mr. Wilson has no safe place to sleep.

### **CLASS ACTION ALLEGATIONS**

238. Plaintiffs bring this class action pursuant to Rule 1-023 NMRA on behalf of themselves and on behalf of other similarly situated unhoused Albuquerque residents.

239. The proposed classes include the “Criminal Enforcement Class,” the “Personal Property Class,” and the “Coronado Park Class.”

240. As used in the class definitions, the term “unhoused” includes circumstances where a person: lacks a fixed, regular, and adequate nighttime residence; has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for people, including such places as a car, a park, an abandoned building, a public transportation station, or a camp ground; lives in a shelter providing temporary living arrangements, including emergency shelters, congregate shelters, hotels and motels paid for by charitable or government programs for low-income people, or transitional housing; and/or will imminently lose housing and has no subsequent residence identified and lacks the resources to obtain other permanent housing. *See* 42 U.S.C. § 11302 (2022) (providing a similarly comprehensive definition of homelessness for purposes of federal funding).

**Criminal Enforcement Class**

241. Plaintiffs bring this matter as a class action pursuant to Rule 1-023(B)(1) and Rule 1-023(B)(2) on behalf of themselves and as the class representatives of the “Criminal Enforcement Class” made up of the following persons: All current and future involuntarily unhoused people living in the City of Albuquerque.

242. The Criminal Enforcement Class satisfies the numerosity requirements of Rule 1-023(A)(1) because there are hundreds, if not thousands, of unhoused people cited, arrested, or threatened with citation or arrest for misdemeanors relating to their presence on public property within the class period.

243. The Criminal Enforcement Class satisfies the commonality requirement of Rule 1-023(A)(2) because questions of fact and law are common to the class. These include, without



limitation: Whether class members are unhoused; whether there is an adequate number of shelter beds to provide them a lawful place to live other than on the streets; and whether the City is unlawfully enforcing criminal laws against them based on their status as people who are unhoused.

244. The Criminal Enforcement Class satisfies the typicality requirement of Rule 1-023(A)(3) because the representatives are involuntarily unhoused and the City has cited, arrested, or threatened to cite or arrest them for being on public property when they have no other lawful place to be.

245. The Criminal Enforcement Class representatives satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the class and their interests do not conflict with the interests of the members of the class. The Criminal Enforcement Class will be fairly and adequately protected by the representatives and their counsel, who have extensive experience prosecuting civil rights cases and class-action litigation.

246. The Criminal Enforcement Class's claims are properly maintained under Rule 1-023(B)(1) because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the City, and because adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

247. The Criminal Enforcement Class's claims are properly maintained under Rule 1-23(B)(2) because the City has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

**Personal Property Class**

248. Plaintiffs bring this matter as a class action pursuant to Rule 1-023(B)(1) and Rule 1-023(B)(2) on behalf of themselves and as the class representatives of the “Personal Property Class” made up of the following persons: All current and future unhoused people living outdoors on public property in the City of Albuquerque who are subject to the City’s policies and practices of property collection, storage, and disposal.

249. The Personal Property Class satisfies the numerosity requirements of Rule 1-023(A)(1) because there are hundreds, if not thousands, of unhoused people whose property has been seized without prior notice and destroyed by the City.

250. The Personal Property Class satisfies the commonality requirement of Rule 1-023(A)(2) because questions of fact and law are common to the class. These include, without limitation: Whether the class members are unhoused; whether the City has a policy and practice of seizing the property of unhoused people without adequate notice; whether the City has a policy and practice of destroying the property of unhoused people without giving them an opportunity to reclaim their property; and whether the City’s conduct in these regards was lawful.

251. The Personal Property Class satisfies the typicality requirement of Rule 1-023(A)(3) because the representatives are unhoused and the City has confiscated and destroyed their property.

252. The Personal Property Class representatives satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the class and their interests do not conflict with the interests of the members of the class. The Personal Property Class will be fairly and adequately protected by the representatives and their counsel, who have extensive experience prosecuting civil rights cases and class-action litigation.

253. The Personal Property Class’s claims are properly maintained under Rule 1-023(B)(1) because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the City, and because adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

254. The Personal Property Class’s claims are properly maintained under Rule 1-23(B)(2) because the City has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

**Coronado Park Class**

255. Plaintiffs LaDella Williams, Scott Yelton, Alonso Magallanes, Christina Garcia, Sheri Gibson, and Lance Wilson bring this matter as a class action pursuant to Rule 1-023(B)(3) on behalf of themselves and as the class representatives of the “Coronado Park Class” made up of the following persons: All persons living at Coronado Park on August 17, 2022, whose property was seized by the City and not returned.

256. The Coronado Park Class satisfies the numerosity requirements of Rule 1-023(A)(1) because there were approximately 120 residents of the park on August 17, 2022, and many of them had property seized without prior notice and destroyed by the City.

257. The Coronado Park Class satisfies the commonality requirement of Rule 1-023(A)(2) because questions of fact and law are common to the class. These include, without limitation: Whether the class members were living at Coronado Park; whether the City seizing the property

of unhoused people at the park on August 17, 2022, without adequate notice; whether the City gave the people whose property was seized the opportunity to reclaim their property; and whether the City's conduct in these regards was lawful.

258. The Coronado Park Class satisfies the typicality requirement of Rule 1-023(A)(3) because the representatives were living in the park on August 17, 2022, and the City confiscated and destroyed their property.

259. The Coronado Park Class representatives satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the class and their interests do not conflict with the interests of the members of the class. The Coronado Park Class will be fairly and adequately protected by the representatives and their counsel, who have extensive experience prosecuting civil rights cases and class-action litigation.

260. The Coronado Park Class's claims are properly maintained under Rule 1-023(B)(3) because questions of law or fact common to the members of the class predominate over any questions affecting individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Common questions relate to the City's liability in unlawfully seizing class members' property, whereas the individual questions all relate to the amount of each class members' damages. *See Kincaid v. City of Fresno*, 244 F.R.D. 597 (E.D. Cal. 2007) (certifying a class of unhoused people whose property was seized by the city defendant pursuant to Rule 23(b)(3) because the common issue of the city's liability predominated, and the question of each class member's damages could be decided separately by a special master). And a class action is superior because damages for the destruction of each individual's tents, sleeping bags, clothing, and other personal items are likely to be small, and because individual

cases would result in duplicative discovery and require multiple courts to analyze the same evidence and legal issues regarding the City's conduct on a single day.

## CAUSES OF ACTION

### **Count I: Cruel and Unusual Punishment**

261. Plaintiffs incorporate by reference all preceding paragraphs.

262. Article II, Section 13 of the New Mexico Constitution protects individuals from cruel and unusual punishment.

263. The enforcement of criminal statutes prohibiting an unhoused person's presence with their belongings in public spaces violates the prohibition against cruel and unusual punishment when the person has no place that they can lawfully be. *Cf. Martin*, 920 F.3d at 616 (stating that the U.S. Constitution's "Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.")

264. Plaintiffs lack sufficient income to afford housing.

265. The number of shelter beds in Albuquerque is insufficient to accommodate all of the unhoused people currently living there.

266. People are banned from the Westside shelter due to behaviors that are manifestations of their disabilities and/or their chemical dependency disorders.

267. The Westside shelter, which comprises a majority of the shelter space, is unsafe for human habitation, and therefore its beds should not be counted among the available shelter beds.

268. With or without the Westside shelter space, there are more unhoused people than available shelter beds, such that a large portion of the City's homeless population has no choice but to live and sleep outdoors in the public parks, open spaces, streets, sidewalks, alleyways, and areas around public buildings.

269. In addition, the shelter spaces that are available are not a viable option for many individuals due to mental and physical disabilities.

270. Taken together, the ordinances and statutes that the City enforces against unhoused people apply on 100% of public property in the City other than city-owned shelters, 100% of the time. There simply is no place within the City for the unhoused to lawfully be.

271. The City's enforcement of City ordinances and state laws that prevent unhoused people from residing on public property punishes unhoused people for their involuntary status of being unhoused—effectively making it a crime for unhoused people to exist anywhere with the possessions they need in order to survive.

272. The City violated Plaintiffs' right to be free from cruel and unusual punishment when it cited or arrested Plaintiffs under these ordinances and statutes, or threatened to cite or arrest them if they did not relocate.

273. The City's continued enforcement of these ordinances and statutes places Plaintiffs at an imminent and substantial risk that they will continue to be subjected to enforcement actions.

274. The City's continued unconstitutional enforcement activities subject Plaintiffs to irreparable injury for which they have no adequate remedy at law.

### **Count II: Excessive Fines**

275. Plaintiffs incorporate by reference all preceding paragraphs.

276. Article II, Section 13 of the New Mexico Constitution protects individuals from the imposition of excessive fines.

277. Fines are excessive when they are imposed for conduct that cannot lawfully be punished.

278. The City has a policy of prosecuting unhoused people for simply existing on public property with their personal belongings.

279. The City enforces Albuquerque City Ordinance Sections 12-2-3, 8-2-7-13, 10-1-1-10, 12-2-7, 5-8-6, 10-1-1-3 through criminal prosecution and the imposition of fines of up to \$500. *See* Albuquerque City Ordinance § 1-1-99.

280. The City enforces NMSA 1978, Section 30-14-1, regarding criminal trespass, which is a misdemeanor, for which a person may be fined up to \$1,000. *See* NMSA 1978, § 31-19-1(A) (1984).

281. The city enforces NMSA 1978, Section 30-14-4, regarding wrongful use of public property, which is a petty misdemeanor, or, if the person has been asked to leave by any peace officer, a misdemeanor. A person convicted of a petty misdemeanor may be fined up to \$500. *See* NMSA 1978, § 31-19-1(B)

282. Plaintiffs are indigent and cannot afford basic necessities. Because they cannot afford these fines, they are subject to further prosecution and increased debt.

283. Unhoused people have been assessed these grossly disproportionate fines as punishment for simply existing in public spaces, when they have no other lawful place to be.

284. The City's continued enforcement of these ordinances against unhoused people places Plaintiffs at an imminent and substantial risk that they will continue to be subjected to enforcement actions and at risk of having excessive fines imposed.

285. The City's continued unconstitutional enforcement activities subject Plaintiffs to irreparable injury for which they have no adequate remedy at law.

### **Count III: Unlawful Seizure of Property**

286. Plaintiffs incorporate by reference all preceding paragraphs.

287. Article II, Section 10 of the New Mexico Constitution provides that the people shall be free from unreasonable searches and seizures.

288. Plaintiffs have a property interest in their possessions, including their papers, identification, shelters, cooking equipment, blankets, photographs, irreplaceable heirlooms, accessibility devices, assistive technology, and other items essential for their comfort and survival, including items that they temporarily leave unattended.

289. The City has a practice of seizing property belonging to unhoused individuals without a warrant or an exception to the warrant requirement and destroying it without notice.

290. The City has a practice of doing so even when it is clear to the City that the unhoused owners have not abandoned their property.

291. The City has a practice of seizing unhoused people's property without a warrant.

292. The seizures are not supported by exigency.

293. The seizures are not supported by overall reasonableness.

294. The City has a practice of destroying unhoused people's property without notice or an opportunity to be heard, resulting in a permanent deprivation of their personal property rights.

295. The City's continued seizure and destruction of unhoused people's property places Plaintiffs at an imminent and substantial risk of continued deprivations of their property interests.

296. The City's ongoing practice of seizing and destroying property belonging to unhoused individuals subjects Plaintiffs to irreparable injury for which they have no adequate remedy at law.

#### **Count IV: Procedural Due Process**

297. Plaintiffs incorporate by reference all preceding paragraphs.

298. Pursuant to Article II, Section 18 of the New Mexico Constitution, Plaintiffs cannot be deprived of their property without due process of law.

299. Plaintiffs have a property interest in their possessions, including their papers, identification, shelters, cooking equipment, blankets, photographs, irreplaceable heirlooms, accessibility devices,



assistive technology, and other items essential for their comfort and survival, including items that they temporarily leave unattended.

300. The City has a practice of taking such items from unhoused individuals without first affording adequate notice that property will be taken.

301. The City has a practice of taking such items without first affording a pre-deprivation process for challenging the seizure.

302. The City does not afford a post-deprivation process for challenging the seizure, and instead destroys property belonging to unhoused individuals without providing notice or an opportunity to be heard.

303. The City seizes and destroys unhoused people's property without affording unhoused people sufficient notice to remove their property from the area before it would be seized.

304. The City does not provide any pre- or post-deprivation process for unhoused people to challenge the seizures or prevent the destruction of their property, resulting in the erroneous and unconstitutional permanent deprivation of their personal property rights.

305. The City does not seize unhoused people's property in connection with the prosecution or investigation of any alleged crime.

306. The City's continued seizure and destruction of unhoused people's property places Plaintiffs at an imminent and substantial risk of continued deprivations of their property interests.

307. The City's ongoing practice of seizing and destroying property belonging to unhoused individuals without adequate notice or any opportunity to be heard subjects Plaintiffs to an irreparable injury for which they have no adequate remedy at law.

**Count V: Substantive Due Process**

308. Plaintiffs incorporate by reference all preceding paragraphs.

309. Plaintiffs have a liberty interest in bodily integrity and personal security that is protected by Article II, Section 18 of the New Mexico Constitution.

310. Plaintiffs have a right to seek and obtain safety that is protected by Article II, Section 4 of the New Mexico Constitution. *See Reed v. State ex rel. Ortiz*, 1997-NMSC-055, ¶ 105, 124 N.M. 129, 151, 947 P.2d 86, 108, *cert. granted, judgment rev'd on other grounds sub nom. New Mexico, ex rel. Ortiz v. Reed*, 524 U.S. 151, 118 S. Ct. 1860, 141 L. Ed. 2d 131 (1998).

311. Plaintiffs need their food, clothing, blankets, sleeping bags, stoves, drinking water, tents, and tarps to survive and stay physically safe from the elements.

312. The City's intentional conduct of depriving Plaintiffs of the means to feed, clothe, and shelter themselves by taking away possessions essential for sustaining life, constitutes an unlawful deprivation of their liberty interest, and the City acts knowingly and with deliberate indifference to Plaintiffs' rights in a manner that is conscience-shocking.

313. Plaintiffs need a place to rest, sleep, eat, bathe, toilet, and conduct other life-sustaining activities in order to survive and stay physically safe.

314. The City's intentional conduct of constantly displacing unhoused individuals without offering them an alternative place to stay constitutes an unlawful deprivation of their liberty interest, and the City acts knowingly and with deliberate indifference to Plaintiffs' rights in a manner that is conscience-shocking.

315. The City's continued confiscation of unhoused people's essential property and its continued displacement of unhoused people place Plaintiffs at an imminent and substantial risk of continued deprivations of their liberty interest in bodily integrity and personal security.

316. The City's continued unconstitutional enforcement activities subject Plaintiffs to irreparable injury for which they have no adequate remedy at law.

**Count VI: Equal Protection**

317. Plaintiffs incorporate by reference all preceding paragraphs.

318. Article II, Sections 4 and 18 provide that no person may be denied equal protection of the law.

319. The City discriminated against Plaintiffs and denied them the equal protection of the laws when it confiscated their property without notice or an opportunity to reclaim their property.

320. People with housing are similarly situated to Plaintiffs in that they have property interests in their possessions and liberty interests in the bodily integrity and personal security that comes from having possession of certain property.

321. The City regularly provides notice before seizing the property of people who have housing—as when it seizes a housed person’s vehicle, personal property, or home; it stores the property of people who have housing; and it provides people with housing the opportunity to reclaim their seized property.

322. The City’s policy of targeting unhoused individuals in order to destroy their property implicates fundamental rights.

323. The City’s policy of targeting unhoused individuals creates a suspect classification and therefore requires strict scrutiny, since unhoused people are “a discrete group, saddled with such disabilities, or subjected to such a history of unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Griego v. Oliver*, 2014-NMSC-003, ¶ 44, 316 P.3d 865 (internal quotation marks omitted) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973)).

324. In the alternative, the City’s policy creates a sensitive classification, requiring intermediate scrutiny, because the unhoused are “limited in [their] political power or ability to advocate within the political system.” *Griego*, 2014-NMSC-003, ¶ 53 (quoting *Breen v. Carlsbad Municipal Schools*, 2005-NMSC-028, ¶ 18, 138 N.M. 331, 120 P.3d 413).

325. The City’s practice of targeting the unhoused and seizing the belongings that they need in order to survive is not narrowly tailored to any compelling or important government interest.

326. Neither is the City’s practice rationally related to any governmental interest.

327. The City’s continued confiscation of unhoused people’s essential property places Plaintiffs at an imminent and substantial risk of continued violations of their right to equal protection.

328. The City’s continued unconstitutional enforcement activities subject Plaintiffs to irreparable injury for which they have no adequate remedy at law.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- A. Enter an order certifying the proposed classes, appointing Plaintiffs’ counsel to represent the classes, and allowing this matter to proceed as a class action;
- B. Declare that the City violated the New Mexico Constitution in multiple ways, including, but not limited to, the following:
  - a. Citing, arresting, or threatening to cite or arrest involuntarily unhoused individuals based upon their presence on public property when no housing is available.
  - b. Imposing fines as a punishment for involuntarily unhoused people’s presence on public property when no housing is available.

- c. Seizing the belongings of unhoused individuals without adequate prior notice and without the opportunity to be heard in order to contest lawfulness of the seizure.
  - d. Destroying the belongings of unhoused individuals without first providing them an opportunity to reclaim their property.
  - e. Placing unhoused individuals in danger by confiscating the belongings they need in order to survive and by displacing them from public property without providing a viable alternative place to stay.
  - f. Discriminating against unhoused people in the manner in which their property is treated as compared to people who have housing.
- C. Enjoin the City from future violations of the rights of the Criminal Enforcement Class and the Personal Property Class, pursuant to NMSA 1978, Section 41-4A-3 (2021);
- D. Award actual damages to the Coronado Park Class, pursuant to Section 41-4A-3;
- E. Award reasonable attorneys' fees and costs, pursuant to NMSA 1978, § 41-4A-5 (2021) and NMSA 1978, § 44-6-11 (1975); and
- F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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