

Allen Gardner, # 456723 (DC)
Scott Jones, # 986308 (DC)
Daniel Levy, # 1001692 (DC)
Krysta Copeland, # 1009698 (DC)
Katherine Cheng, # 87391 (VA)
Greer Donley, # 66925 (MO)
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004-1304
Phone: (202) 637-2200
Fax: (202) 637-2201
Email: Allen.Gardner@lw.com
Email: Scott.Jones@lw.com
Email: Daniel.Levy@lw.com
Email: Krysta.Copeland@lw.com
Email: Katherine.Cheng@lw.com
Email: Greer.Donley@lw.com

Howard A. Belodoff, ISB # 2290
Idaho Legal Aid Services, Inc.
310 N. 5th Street
Boise, ID 83702
Phone: (208) 336-8980
Fax: (208) 342-2561
Email: howardbelodoff@idaholegalaid.org

Eric Tars # 94857 (PA)
National Law Center on Homelessness &
Poverty
2000 M St., N.W., Suite 210
Washington, DC 20036
Phone: (202) 638-2535
Fax (202) 628-2737
Email: etars@nlchp.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

JANET F. BELL, et al.,	)	Case No. 1:09-cv-00540-REB
	)	
Plaintiffs,	)	
	)	
v.	)	PLAINTIFFS' MOTION FOR
	)	SUMMARY JUDGMENT
	)	
CITY OF BOISE, et al.,	)	
	)	
Defendants.	)	
_____	)	

COME NOW Plaintiffs Robert Anderson and Robert Martin, by and through their counsel of record, hereby file this Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. Filed in support and contemporaneously herewith are the *Statement of Undisputed Material Facts*, the *Memorandum in Support of Plaintiffs' Motion for Summary Judgment*, and the *April 30, 2015 Declaration of Counsel Scott Jones* and accompanying

exhibits. Based on the record before this Court, there is no dispute of material fact and Plaintiffs are entitled to judgment as a matter of law. Plaintiffs request oral argument on this motion.

Submitted this 30th day of April, 2015

/s/ Marguerite Sullivan
Marguerite Sullivan
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the persons listed below.

Howard A. Belodoff
IDAHO LEGAL AID SERVICES, INC.
Email: howardbelodoff@idaholegalaid.org

Krysta C. Copeland
LATHAM & WATKINS LLP
Email: krysta.copeland@lw.com

Allen Gardner
LATHAM & WATKINS LLP
Email: allen.gardner@lw.com

Brady J. Hall
MOORE & ELIA, LLP
Email: brady@mbelaw.net

Kelley K. Fleming
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Daniel I. Levy
LATHAM & WATKINS LLP
Email: daniel.levy@lw.com

Michael W. Moore
MOORE & ELIA, LLP
Email: mike@mbelaw.net

Scott B. Muir
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Eric S. Tars
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Email: etars@nlchp.org

Katherine Cheng
LATHAM & WATKINS LLP
Email: katherine.cheng@lw.com

Greer Donley
LATHAM & WATKINS LLP
Email: greer.donley@lw.com

Scott Jones
LATHAM & WATKINS LLP
Email: scott.jones@lw.com

/s/ Marguerite Sullivan

Allen Gardner, # 456723 (DC)
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 Latham & Watkins LLP
 555 Eleventh Street, N.W., Suite 1000
 Washington, DC 20004-1304
 Phone: (202) 637-2200
 Fax: (202) 637-2201
 Email: Allen.Gardner@lw.com
 Email: Scott.Jones@lw.com
 Email: Daniel.Levy@lw.com
 Email: Krysta.Copeland@lw.com
 Email: Katherine.Cheng@lw.com
 Email: Greer.Donley@lw.com

Howard A. Belodoff, ISB # 2290
 Idaho Legal Aid Services, Inc.
 1447 South Tyrell Dr.
 Boise, ID 83706
 Phone: (208) 336-8980, Ext. 1106
 Fax: (208) 342-2561
 Email: howardbelodoff@idaholegalaid.org

Eric Tars # 94857 (PA)
 National Law Center on Homelessness &
 Poverty
 2000 M St., N.W., Suite 210
 Washington, DC 20036
 Phone: (202) 638-2535
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 FOR THE DISTRICT OF IDAHO**

JANET F. BELL, et al.,

Plaintiffs,

v.

CITY OF BOISE, et al.,

Defendants.

) Case No. 1:09-cv-00540-REB
)
) **STATEMENT OF**
) **UNDISPUTED MATERIAL**
) **FACTS IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR**
) **SUMMARY JUDGMENT**
)
)
)

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS'
 MOTION FOR SUMMARY JUDGMENT**

Pursuant to Dist. Idaho Loc. Civ. R. 7.1(b)(1), Plaintiffs submit their Statement of Undisputed Material Facts Supporting Plaintiffs' Motion for Summary Judgment filed contemporaneously herewith.

I. PLAINTIFFS AND THE NATURE OF HOMELESSNESS

(1) Plaintiffs' expert Dr. David Kent concluded that homelessness is often an involuntary status beyond an individual's control because of poverty, mental illness and physical disability, and the inability to access medical benefits and social services. Exh. 1 at 4. At least 75% of homeless individuals in Boise suffer from physical or mental disabilities. Exh. 1 at 2; *see also* Exh. 2 at 75:9-20. Mental illness makes it particularly difficult for homeless people to stay in shelters or access services. Exh. 1 at 3-4; Exh. 3 at 91:16-92:1.

(2) Plaintiffs Robert Anderson and Robert Martin are both homeless. Exh. 4 at 66:12-21; Exh. 5 at 108:15-21. Plaintiff Anderson has been cited under the camping ordinance, Boise City Code §9-10-02 ("Camping Ordinance"). Exh. 7. Plaintiff Martin has been cited under the disorderly conduct ordinance, Boise City Code § 6-01-05(A) ("Disorderly Conduct Ordinance"), and the Camping Ordinance. Exh. 8.

(3) **REDACTED**

REDACTED

REDACTED

REDACTED

(4) Plaintiffs Anderson and Martin, and other cited individuals have asserted religious objections to staying at Boise Rescue Mission ("BRM") shelters. Exhs. 9-12, 95.

(5) Plaintiff Anderson testified that at BRM “[f]reedom of choice, I feel that’s taken away....” Exh. 4 at 73:19-20. He said, “they force religion on you,” Exh. 4 at 76:3-4, and that he was asked for his religious beliefs at River of Life (BRM’s men’s shelter or “RoL”). Exh. 4 at 112:17-19. Plaintiff Martin testified he does not “like to have other people’s beliefs ... ‘rammed down my throat.’ If I choose to attend somebody else’s religious service...that’s my choice. I want to be able to have the free choice to do that.” Exh. 5 at 128:7-12. He felt that there was an unspoken “expectation” about going to chapel. Exh. 5 at 123:15-17, 123:25-124:8; *see also* Exh. 6 at 28:2-7.

II. BOISE HAS MORE HOMELESS INDIVIDUALS THAN EMERGENCY SHELTER BEDS

A. Point-in-Time Survey (“PIT Survey”)

(6) The annual PIT Survey is a count of the number of homeless individuals. Exh. 15 at 11; Exh. 16 at 43:4-12; Exh. 17 at 3. It includes: (1) an unsheltered survey, which counts homeless people who stayed in places not meant for habitation on the night of the count; and (2) a sheltered survey, which counts homeless who stayed in shelter on the night of the count. Exh. 17 at 3-4.

(7) The City of Boise (“the City”) has acknowledged that the PIT Survey is the best, and essentially only, way it counts homeless individuals. Exh. 18 at 32:13:-33:3, 52:7-11; *see also* Exh. 16 at 54:6-10; Exh. 19 at 118:18-24. The PIT Survey is relied on for many purposes: measuring homelessness, awarding funds, and system planning. Exh. 15 at 3; Exh. 20 at 119:16-120:18.

(8) The City has contracted with Beth Geagan to coordinate the PIT Survey for Region 7, which comprises all of Ada County. Exh. 19 at 38:9-11. Ms. Geagan conducts the unsheltered survey

by identifying known locations where homeless individuals may be found, and recruiting and training volunteers to interview homeless individuals in those locations about where they stayed the night of the count. Exh. 19 at 46:4-15, 52:12-53:3, 75:1-9, 76:10-14; Exh. 15 at 37-39. Homeless service providers conduct the sheltered count. Exh. 19 at 97:17-24; Exh. 21.

(9) All the locations Ms. Geagan suggested and that volunteers signed up to search were in Boise, except three locations in Meridian. Exh. 22. Every completed unsheltered individual survey for the 2012-2014 PIT Surveys was taken in Boise.¹ Exh. 23. There is no evidence that volunteers searched elsewhere.

B. Number of Beds in Emergency Shelters in Boise

(10) There are two sources for the number of beds for homeless individuals in Boise: affidavits from shelter providers and the Housing Inventory Chart (“HIC”) survey. Three shelters provide emergency beds to homeless individuals in Boise: Interfaith Sanctuary (“Sanctuary”), and the BRM shelters: RoL (men) and City Light (women and children). Exh. 24 ¶¶ 4, 6-7; Exh. 25 ¶ 6.

(11) Sanctuary’s self-reported capacity is 96 beds for men and women, plus 12 overflow mats. Exh. 25 ¶¶ 6. RoL’s self-reported capacity is 148 beds, plus 40 overflow mats. Exh. 24 ¶ 6. City Light’s self-reported capacity is 110 beds, plus 40 overflow mats. Exh. 24 ¶ 7. The total self-reported capacity is 354 beds plus 92 overflow mats, or 446 total.

(12) There are legal limits to using overflow mats at BRM. A fire inspector allowed RoL to use overflow mats during inclement weather, but not regularly. Exh. 27 at 32:20-33:3, 74:8-13, 149:22-150:11; Exh. 26 at 136:24-137:3; *see also* Exh. 18 at 104:18-22. No inspector has given

¹ During that same time period, only three surveys of any type – two of which were precariously housed – were taken outside of Boise. *Declaration of Counsel Scott Jones* ¶ 25, (Apr. 30, 2015) (“*Jones Decl.*”).

that approval to City Light. Exh. 3 at 28:10-24; 51:23-52:2. Only a surprise inspection would reveal a violation, but such inspection is unlikely to occur. Exh. 28 at 213:10-16; Exh. 27 at 48:21-49:5.

(13) The annual HIC survey measures housing inventory, including emergency shelter beds. Exh. 29 at 4; Exh. 30 at 5. The three emergency shelters report the number of beds they have available on a year-round basis, even if they are not in use at the time of the survey, as well as any overflow mats in use at that time. Exh. 30 at 4, 12. Overflow beds are beds provided on an ad-hoc basis in response to demand. *Id.* at 12; Exh. 20 at 98:24-100:9. Overflow beds are not reported if they are not in use at the time. *See* Exh. 31.

(14) Table 1 of Dr. Burt's report shows the number of regularly-available beds for individuals and families, and vouchers in use for 2008-2014. Exh. 29 at 6. Seasonal beds are beds available for planned periods of high demand, Exh. 20 at 98:17-23, but the Boise shelters have not had seasonal beds since 2011. Exh. 32. Vouchers to stay at a hotel or motel are only available for families with children. Exh. 18 at 86:7-13; Exh. 33.

(15) The publicly available 2008-2014 HIC Reports show that there were no more than 410 emergency beds and overflow mats available and in use for any year at the three shelters. *Jones Decl.* ¶ 34; *see also* Exh. 32.

C. The PIT Survey Undercounts the Number of Homeless Individuals in Boise

(16) Dr. Burt concluded that the PIT Survey undercounted homeless individuals in Boise. Exh. 29 at 10-11.

(17) Various factors can lead to an undercount. Exh. 34 at 4; Exh. 20 at 34:11-18. Factors include the number of volunteers, the adequacy of training, the difficulty of locating homeless individuals, weather, police involvement, and method and timing used for the count. Exh. 20 at 34:11-18, 66:12-23, 138:11-139:13; Exh. 34 at 4; Exh. 15 at 37, 55; *Declaration of Beth Geagan* at ¶ 17, Mar. 5, 2015 [Dkt. 216] (“*Geagan Decl.*”). The Idaho Housing and Finance Association (“IHFA”) produces Idaho’s PIT Survey Report and stated “It is widely recognized that a one-night point in time count will undercount the homeless population.” Exh. 34 at 4; *see also* Exh. 35 at 2; Exh. 20 at 33:17-19, 34:7-10. The City may be unable to find individuals who do not want to be found. Exh. 18 at 43:9-10; 51:18-52:8. The BPD stated that homeless people can be good at hiding. Exh. 28 at 239:22.

(18) Record evidence² supports the conclusion that the homeless in Boise were undercounted:

- (a) A volunteer located a homeless person and was not able to fill out an unsheltered form for that individual. Exh. 36.
- (b) Ms. Geagan uses a known locations count, Exh. 19 at 42:12-13, 82:13-20, which results in an undercount to the extent that the list of known locations misses areas where homeless people are located. Exh. 15 at 55. The City has admitted there are campsites in Camelsback Park, Exh. 18 at 44:16-18; Exh. 19 at 89:18-20; *see also* Exh. 37 at 58:12-15, but volunteers do not sign up to search that location every year. *Compare* Exh. 22 at 6 *with* Exh. 22 at 19 *and* Exh. 22 at 36.

² Ms. Geagan did not affirmatively keep any documents related to the PIT Survey until January 27, 2015, and while some pre-2015 documents were located and produced in March 2015, *Geagan Decl.* ¶¶ 11, 14, Plaintiffs are unable to point to documents for the prior time period that were never found.

- (c) The City has struggled to find enough volunteers, *see, e.g.*, Exh. 38, and Ms. Geagan has admitted that “the more [volunteers] we have the better the coverage.” Exh. 39. Some volunteers were unable to attend trainings. Exh. 40. Volunteers can also cancel at the last minute. *See, e.g.*, Exh. 41.
- (d) Ms. Geagan and her employees have had to correct miscommunications regarding how to conduct the PIT Survey, Exh. 42, and have fielded questions after training from volunteers who remained uncertain of how to conduct the PIT Survey in a group setting because people might feel awkward about being asked if they were homeless. Exh. 43.
- (e) The BPD was instructed to conduct extra patrols during the PIT survey, and some officers appear to have participated in the unsheltered survey. Exhs. 44-46. Police participation can lead to an undercount. Exh. 15 at 33; Exh. 47 at 27. When police are involved, they must clarify that they are only to assist the count, Exh. 15 at 33, but there is no evidence that the BPD did so.

(19) Homeless individuals in jail the night of the PIT Survey are not counted in the sheltered or unsheltered count. Exh. 20 at 88:19-25, 91:23-92:1; Exh. 15 at 30, 53. In January, 2013, 77 people in jail were homeless – a 250% increase in the jail’s homeless population for January. Exh. 48 at 3. In 2014, that number rose to 113. Exh. 49 at 5. In 2012, 2013, and 2014 respectively, IHFA counted 52, 49, and 72 precariously housed individuals in jail on the night of the PIT Survey. *Jones Decl.* ¶ 52.

D. There Are Not Enough Emergency Shelter Beds Available to Homeless Individuals in Boise

(20) Dr. Burt concluded that since 2011, there were fewer emergency shelter beds than homeless individuals in Boise, even without assuming an undercount. Exh. 29 at 8, Table 4.

(21) Sanctuary has reported that its emergency shelter program is generally at capacity, *see* Exhs. 50-51 and has turned homeless individuals away. *See, e.g.*, Exh. 51 at 21, 28, 54.

(22) BRM shelters have reported they are at or near capacity. Exh. 52; *see also* Exh. 53 at 4 (noting shelters at capacity). RoL has reported that “12-15 [individuals were] on the floor every night....” Exh. 54 at 4.

(23) Based on the evidence that the PIT Survey undercounts homeless individuals and the fact that homeless people in jails should be counted as part of the system need for emergency housing, the number of homeless individuals in Boise exceeds the available bed space by any measure.

III. THE CITY’S ENFORCEMENT OF THE MUNICIPAL ORDINANCES

(24) The Disorderly Conduct Ordinance and the Camping Ordinance (“Municipal Ordinances”) prohibit sleeping on public property. Exh. 55. Since 2010, the BPD has had a Special Order prohibiting officers from issuing citations under the Municipal Ordinances if shelter space is unavailable, the individual has exceeded the maximum stay at a shelter, or it does not meet disability needs. Exh. 56 at 2; Exh. 57 at 73. In September 2014, the City amended the Municipal Ordinances to prohibit enforcement when “there is no available shelter.” Exh. 58 at 5.

(25) The BPD has cited homeless individuals who are merely sleeping, *see, e.g.* Exhs. 59-61, and without determining why they did not stay at a shelter. *See, e.g.*, Exh. 62.

A. Emergency Shelter Bed Capacity

(26) The BPD relies on shelters to report when they are full. Exh. 63 at 104:9, 105:12-17; Exh. 64 at 18:2-8; Exh. 28 at 220:4-11, 224:7-12; Exh. 65 at 29:1-9; Exh. 66. Shelters determine when they are full and the City admitted it does not know what the shelters' capacities are. Exh. 18 at 151:23-152:2; 81:15-18, 82:4-5, 82:17-21, 110:4-5; *see also* Exh. 28 at 177:15-20, 199:14-16, 206:12-15.

(27) Before issuing a citation, officers do not always check for the notification that shelters are full. Exh. 28 at 105:20-22; Exh. 63 at 106:7-107:13; Exh. 67 at 81:13-19; Exh. 68. Nor are officers required to be familiar with shelter policies or contact the shelter directly. Exh. 28 at 168:19-22, 169:4-6; Exh. 65 at 66:15-20.

(28) RoL and City Light's stated policy is to never turn anyone away and thus does not call in full. Exh. 69; Exh. 70 at 47:16-18, 60:24-25, yet the BPD has issued citations when Sanctuary has called in full. *See, e.g.* Exhs. 71-74, 92, 96-100; *see also* Exhs. 93-94.

B. Disability

(29) There is no requirement to check whether a shelter can accommodate a disability, even though the Chief of Police stated that would should be part of an officer's determination. Exh. 75 at 79:4-9; Exh. 2 at 108:18-22. BPD officers' testimony shows that they do not understand what disabilities may prevent homeless individuals from staying in shelters, Exh. 37 at 96:2-6; 97:6-10, 101:23-102:15; Exh. 2 at 133:5-17, 134:11-17; Exh. 75 at 78:9-23, 79:14-16; Exh. 28 at 148:23-149:3, 150:22-151:2, and supervisors do not provide guidance. Exh. 37 at 102:25-103:6.

(30) The City recognizes that some people are beyond the level of care that shelters can provide. Exh. 18 at 126:9-19; *see* Exh. 76. The BPD has cited at least one individual, Stewart Beckman,

believed to suffer from mental illness. Mr. Beckman, who is barred from Sanctuary, Exh. 77, was cited after the officer noted only periodic lucidity, an oft-repeated claim that Mr. Beckman is a government informant, and claims that the shelters take his medicine and force illegal drugs on him. Exh. 78; Exh. 79 (inability to stay at RoL uncontested by the officer); *see also* Exh. 80.

C. Other Restrictions on Shelter Availability

(31) Homeless men at RoL may only stay in emergency shelter for 17 days in a row, and then must leave for 30 days or enter one of its formal programs, such as its drug and alcohol recovery program. Exh. 81 at 26:16-18; Exh. 28 at 201:5-13. Homeless women and children may stay at City Light for 30 days in a row before facing the same choice. Exh. 82 at 4; Exh. 28 at 201:5-13. BRM suspends these rules in the winter. Exh. 3 at 61:13-62:1; Exh. 70 at 43:18-20. Plaintiff Anderson stated he was not allowed to stay at RoL after reaching the time limit. Exh. 9 at 9. The BPD does not know which individuals have reached the limit, Exh. 28 at 202:7-9 and has issued at least one citation to a homeless individual who had reached the limit. Exh. 83.

(32) Individuals may be barred from shelters for various reasons, including physical violence and being beyond the level of care a shelter can provide. Exhs. 76-77, 84. The BPD does not regularly receive copies of the banned lists, and officers are not required to call shelters to inquire. Exh. 28 at 47:15-19, 48:12-17, 236:4-15. The BPD has cited at least one individual who was barred from one shelter even when the other shelter called in full. *See, e.g.*, Exh. 72.

D. The BPD's Pilot Enforcement Program

(33) In late September 2014, the BPD began a pilot program where if Sanctuary called in full, they would not enforce the Municipal Ordinances in Rhodes Park (the "Pilot Program"). Exh. 28 at 80:3-11, 102:24-103:8, 211:22-24; Exh. 37 at 76:1-77:15. A BPD officer testified that this

practice was likely to end at some point, Exh. 37, 83:15-23, and it appears to have done so based on recent citations issued when Sanctuary called in full, *see, e.g.*, Exhs. 73-74, 85-87.

IV. BOISE RESCUE MISSION IS A RELIGIOUS INSTITUTION

(34) BRM is a religious organization whose primary purpose is to spread its religious beliefs.

Exh. 24 ¶ 3; Exh. 24 at 11, 21. Every day, BRM conducts numerous religious activities, including worship services, bible studies and morning prayer. Exh. 24 at 22, 26. BRM offers Christian spiritual guidance, counseling, and religious services as part of its emergency shelter bed program. *Id.*

(35) Homeless individuals seeking to stay in BRM's emergency shelter beds must read and sign the intake form and the rules. *Id.* at 22-23. The rules are headed by a Bible quotation and state: "Welcome to River of Life Rescue Mission, where our first objective is to introduce everyone to our Lord and Savior Jesus Christ," and the intake form inquires about the individual's religion and whether s/he would be interested in learning more about Jesus. Exh. 89 at 2; Exh. 88 at 2. The rules set out no-smoking times, which include "during chapel time between 6 pm and 7 pm." Exh. 89 at 5. Also, individuals who do not attend the evening chapel service in the dining room at 6 pm must stay in their dorms until 7 pm. *Id.* Homeless individuals who participate in religious services are given preferences such as going to the front of the line for food and beds. *Intermountain Fair Housing Council v. Boise Rescue Mission Ministries*, 657 F.3d 988, 996-97 (9th Cir. 2011).

Submitted this 30th day of April, 2015

/s/ Marguerite Sullivan
Marguerite Sullivan
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

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Howard A. Belodoff
IDAHO LEGAL AID SERVICES, INC.
Email: howardbelodoff@idaholegalaid.org

Krysta C. Copeland
LATHAM & WATKINS LLP
Email: krysta.copeland@lw.com

Allen Gardner
LATHAM & WATKINS LLP
Email: allen.gardner@lw.com

Brady J. Hall
MOORE & ELIA, LLP
Email: brady@mbelaw.net

Kelley K. Fleming
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Daniel I. Levy
LATHAM & WATKINS LLP
Email: daniel.levy@lw.com

Michael W. Moore
MOORE & ELIA, LLP
Email: mike@mbelaw.net

Scott B. Muir
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Eric S. Tars
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Email: etars@nlchp.org

Katherine Cheng
LATHAM & WATKINS LLP
Email: katherine.cheng@lw.com

Greer Donley
LATHAM & WATKINS LLP
Email: greer.donley@lw.com

Scott Jones
LATHAM & WATKINS LLP
Email: scott.jones@lw.com

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Email: Krysta.Copeland@lw.com
Email: Katherine.Cheng@lw.com
Email: Greer.Donley@lw.com

Howard A. Belodoff, ISB # 2290
Idaho Legal Aid Services, Inc.
1447 South Tyrell Dr.
Boise, ID 83706
Phone: (208) 336-8980, Ext. 1106
Fax: (208) 342-2561
Email: howardbelodoff@idaholegalaid.org

Eric Tars # 94857 (PA)
National Law Center on Homelessness &
Poverty
2000 M St., N.W., Suite 210
Washington, DC 20036
Phone: (202) 638-2535
Fax (202) 628-2737
Email: etars@nlchp.org

Attorneys for Plaintiffs

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) Case No. 1:09-cv-00540-REB
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) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN**
) **SUPPORT OF PLAINTIFFS'**
) **MOTION FOR SUMMARY**
) **JUDGMENT**
)
)
)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In Boise, Idaho, homeless individuals may receive criminal citations for sleeping outside at night, even when there are no beds available for them at the city's homeless shelters. In 2006, the Ninth Circuit concluded that the Eighth Amendment prohibited the City of Los Angeles from issuing citations to homeless persons under circumstances materially no different from here. *Jones v. City of Los Angeles*. 444 F.3d 1118, 1138 (9th Cir. 2006). While *Jones* was later vacated by settlement, 505 F.3d 1006 (9th Cir. 2007), its reasoning remains persuasive and is directly applicable in this case.¹ The threat of further violations of homeless individuals' Eighth Amendment rights in Boise persists because Defendants have neither written their laws sufficiently narrowly to comport with *Jones*, nor have they adopted enforcement mechanisms that would prevent certain city ordinances from being unconstitutionally applied.

Defendants recognize the problem. Plaintiffs are men suffering from chronic homelessness, [REDACTED], who have received misdemeanor citations and threats of fines and imprisonment for sleeping outside in Boise, where there are not enough emergency shelter beds for them and other similarly situated homeless individuals. *See infra* Section IV.

In September 2014, in response to concerns Plaintiffs have raised, the City of Boise ("the City") changed its laws to prohibit enforcement of the two city ordinances at issue here – one prohibiting camping, § 9-10-02 ("Camping Ordinance") and the other prohibiting disorderly

¹ The Ninth Circuit is not the only court to have decided that these types of laws are unconstitutional. *See, e.g. Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992) (holding "[a]s long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something which they may not be convicted under the Eighth Amendment – sleeping, eating and other innocent conduct.").

conduct, § 6-01-05(A) (“Disorderly Conduct Ordinance”), *see* Exhs. 55, 58 (together, the “Municipal Ordinances”) – when Boise’s emergency shelters are “full.”² This amendment was based in part on a Special Order that the Boise Police Department (“BPD”) adopted in 2010. Exh. 58 at 4. The Special Order also prohibited enforcement of the Municipal Ordinances when shelters were “full,” and clarified that emergency shelter beds should be treated as unavailable if they do not meet an individual’s disability needs or if the individual exceeded the maximum allowable stay.³ Exh. 56 at 2; Exh. 57 at 73. The City’s September 2014 amendment did not include these conditions. *See* Exh. 58 at 4-5.

These changes are superficial. Plaintiffs’ constitutional rights remain in jeopardy. Plaintiffs still face citations, fines, and imprisonment for sleeping outside because two of the three emergency shelters in Boise (those identified with Boise Rescue Mission (“BRM”))⁴ simply refuse to report themselves as such. And since the carve out for mental illness and disability has not been codified and because the BPD has provided insufficient training on the application of the Special Order, homeless individuals suffering from mental illness and disability still need relief from this Court. Consequently, Plaintiffs and other homeless

² “Law enforcement officers shall not enforce [the Municipal Ordinances] when the individual is on public property and there is no available overnight shelter. The term ‘available overnight shelter’ is a public or private shelter, with an available overnight space, open to an individual or family unit experiencing homelessness, at no charge. If the individual cannot utilize the overnight shelter space due to voluntary actions such as intoxication, drug use, unruly behavior, or violation of shelter rules, the overnight shelter space shall still be considered available.” Boise City Code §§ 6-01-05(D), 9-10-02; Exh. 55 at 4, 10-11; Exh. 58 at 5.

³ “To qualify as available, the space must take into account sex, marital and familial status, and disabilities....If an individual cannot utilize space because the space does not allow for or is not suitable to meet the individual’s disability needs, or the individual has exceeded the maximum allowable stay, then the space cannot be considered available for that individual.” Exh. 56 at 2; Exh. 57 at 73.

⁴ As discussed in Section III.B.2, *infra*, these shelter beds are associated with a religious shelter and therefore should be excluded from the BPD’s consideration regardless.

individuals in Boise remain in jeopardy of being criminally cited in violation of the Eighth Amendment.

As a result, Plaintiffs, homeless individuals in Boise, must persist in their challenge to the constitutionality of the Municipal Ordinances. Sleeping outside is unavoidable for Boise's homeless population.⁵ *See Jones*, 444 F.3d at 1137 (Whatever past volitional acts led them to sleep on sidewalks were "not sufficiently proximate to the conduct at issue here for the imposition of penal sanctions to be permissible.") And, as Plaintiffs' unrebutted expert report concluded, the number of homeless individuals is greater than the number of shelter beds available to them. And the problem is exacerbated for individuals with disabilities and illnesses that prevent them from making use of shelter beds.

On the material facts in this case, over which there is no genuine dispute⁶, this Court should find as a matter of law and provide declaratory and appropriate injunctive relief on the conclusion that Defendants' Municipal Ordinances are unconstitutional under the Eighth Amendment to the extent they apply to and are enforced against individuals for whom shelter beds are unavailable whether because (1) there are fewer emergency shelter beds than there are homeless individuals or (2) mental illness or physical disability.

STANDARD OF REVIEW

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.

⁵ As Plaintiffs' expert Dr. Kent concluded, "[h]omelessness is almost always the result of factors beyond an individual's control..." Exh. 1 at 4.

⁶ Although Plaintiffs maintain that there are no undisputed material facts with respect to the arguments presented in this Motion, Plaintiffs make no assertions regarding the existence of other disputed facts.

R. Civ P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit.... Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Deference to the nonmoving party has limits, and the “mere scintilla of evidence in support of the [nonmoving party’s] position [is] insufficient.” *Anderson*, 477 U.S. at 252. The Court may not “make credibility determinations,” *T.W. Elec. Serv., Inc. v.* 809 F.2d at 630, nor may it “disregard direct evidence on the ground that no reasonable jury would believe it.” (citation omitted). *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999). In addition, “the burden of the moving party may be discharged by ‘showing’... that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp.*, 477 U.S. at 325.

LEGAL BACKGROUND

I. THE EIGHTH AMENDMENT PROHIBITION ON LAWS THAT CRIMINALIZE STATUS NECESSARILY EXTENDS TO LAWS THAT CRIMINALIZE STATUS MERELY REPHRASED AS CONDUCT

Just as the Eighth Amendment prohibits the criminalization of status, it prohibits the criminalization of conduct that is “integral to and an unavoidable result of that status.” *Jones*, 444 F.3d at 1132. This was the conclusion of the Ninth Circuit in *Jones*, which recognized – based on the Supreme Court’s reasoning in *Robinson* and in *Powell* – that “conduct integral to and the unavoidable result of that status” is essentially status merely rephrased as conduct, when concluding that a Los Angeles ordinance criminalizing sleeping outside could not be enforced as to homeless persons when no shelter beds were available. *Id.* at 1132-36.

In *Robinson v. California*, the Supreme Court ruled that a California law violated the Eighth Amendment because it criminalized the status of *being addicted to* the use of narcotics, rather than criminalizing the conduct itself, *i.e.* using narcotics. 370 U.S. 660, 666 (1962). There has been some dispute, though, over whether *Robinson* extends merely to pure status or to some conduct inextricably related to status (and if so, how that conduct should be defined). On the one hand, if *Robinson* only applies to the criminalization of pure status, then its protections may be evaded by merely rephrasing status as conduct or simply adding an innocent, unavoidable act to an ordinance that otherwise is designed to prohibit a status.⁷ On the other hand, an extension of *Robinson* to conduct without a rule of limitation could invite challenges to conduct *Robinson* was not intended to reach.

This issue is most challenging where criminalized conduct is closely related to status. The Supreme Court reached a fractured decision on such an issue in *Powell v. Texas*, 392 U.S. 514 (1968). *Powell* concerned the enforcement of a law prohibiting public intoxication. *Id.* at 516-17 (plurality opinion). The law in question concerned the status of being a chronic alcoholic and two alleged acts: (1) becoming intoxicated and (2) being in public.

Four Justices joined in a plurality opinion that questioned the involuntariness of the appellee's conduct and expressed concern about extending *Robinson* to conduct without an appropriate limiting principle. 392 U.S. at 535 (plurality opinion). These Justices did not command a majority of the Court; however, the law was upheld because Justice White, concurring but not joining in the opinion, concluded that the record was insufficient to show that

⁷ For example, one could evade *Robinson* by rephrasing "being addicted" to "the act of possessing a symptom or symptoms of addiction" or by rephrasing "being addicted" to "being addicted while engaging in the act of breathing."

the appellee was unable to avoid *being in public* while intoxicated. *Id.* at 550, 553-54 (White, J., concurring in the result). Consequently, the conduct was not unavoidable and would not be protected even if *Robinson* applied to conduct that was the unavoidable result of status. While the statute was upheld, the four Justices in the minority and Justice White agreed – making a majority of the Court – that voluntariness was the decisive issue in the case. *Id.* at 534, 554.

The *Jones* court recognized the five Justice agreement in *Powell* about voluntariness, but also provided the limiting principle the plurality in *Powell* sought by establishing the first of two necessary criteria conduct must share to obtain protection under *Robinson*. First, under *Jones*, the Eighth Amendment only protects conduct that is “integral to” status and, second, that conduct must also be “unavoidable.” *Jones*, 444 F.3d at 1132. The first prong – that conduct must be “integral to” status – provides the necessary limitation to ensure that *Robinson* is not endlessly extended to unrelated, but unavoidable conduct. The dissent in *Jones* largely ignores this aspect of the test, and in so doing fails to confront the compelling need to develop a test that prevents *Robinson* from being rendered toothless by permitting the drafter of legislation to evade *Robinson*’s protection by merely rephrasing status as conduct.

In *Jones*, the Court considered “whether the Eighth Amendment right to be free from cruel and unusual punishment prohibits enforcement of [a] law as applied to homeless individuals involuntarily sitting, lying, or sleeping on the street due to the unavailability of shelter in Los Angeles.” *Jones*, 444 F.3d at 1120. Applying the two part test, the *Jones* court concluded that “so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, the City may not enforce [the law] at all times and places throughout the City against homeless individuals involuntarily sitting, lying, and sleeping in

public,” *id.* at 1138, because it would criminalize their status as homeless individuals, *id.* at 1132, 1137.

The operative acts under consideration in *Jones* – (1) sleeping, sitting, and lying and (2) being in public – were integral to status and unavoidable results of it. With respect to sleeping, the *Jones* court concluded that “they are *universal* and *unavoidable consequences* of being human,” (emphasis added) at least here where the prospect of “avoid[ing] sitting, lying, and sleeping for days, weeks, or months at a time to comply with the City’s ordinance, as if human beings could remain in perpetual motion” is “an impossibility....” *Id.* at 1136-37.⁸

Likewise, being without a home to go to is integral to the status of homelessness⁹ and, as the evidence showed, was an unavoidable result for the plaintiffs in *Jones*, as there was a “strong evidentiary showing of a substantial shortage of shelter” which made being outside unavoidable.¹⁰ *Id.* at 1132. Consequently, as applied, the ordinance was unconstitutional under

⁸ Rather than characterize sleeping as itself conduct integral to and the unavoidable result of being human, the United States District Court for the District of Oregon in *Anderson. v. City of Portland*, allowed an attack on the constitutionality of the enforcement of an anti-camping provision in a materially similar context to here and *Jones*, by drawing from the plurality in *Powell* and calling such conduct “involuntary and *innocent*” and not “conduct that society has an interest in preventing.” Civ. No. 08-1447-AA, 2009 U.S. Dist. LEXIS 67519, at **19-20 (July 31, 2009) (emphasis added) (internal quotation marks omitted). *See also Pottinger* 810 F. Supp. at 1565 (holding “[a]s long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something which they may not be convicted under the Eighth Amendment – sleeping, eating and other innocent conduct”).

⁹ The *Jones* court cites to the Stewart B. McKinney Homeless Assistance Act of 1987 § 103(a), 42 U.S.C. § 11302(a) (2000), which defines homelessness as “an individual who lacks a fixed, regular, and adequate nighttime residence....”

¹⁰ The dissent in *Jones* decried the “unavoidable results” prong, suggesting that it operated to preclude the city from criminalizing sleeping outside unless it provided shelter space to the homeless. To the contrary, it is the “integral to” prong that accomplishes the prohibition, by generally concluding that sleeping outside is essentially the same as two statuses – being human

the Eighth Amendment for criminalizing conduct “integral to and the unavoidable result of” status.¹¹

II. UNDER THE “VOLUNTARINESS” PRONG OF THE EIGHTH AMENDMENT TEST, EMERGENCY SHELTER BEDS OFFERED AT RELIGIOUS SHELTERS MUST NOT BE TREATED AS “AVAILABLE”

The Eighth Amendment test under *Jones* requires a determination of whether conduct is unavoidable and, in applying that test to whether homeless individuals can avoid sleeping outside by making use of emergency shelter beds, emergency shelter beds that are offered at religious shelters must be excluded. The application of the Eighth Amendment to the Municipal Ordinances cannot be read in a way that pits two constitutional rights against each other. *See Simmons v. United States*, 390 U.S. 377, 393-94 (holding “it [is] intolerable that one constitutional right should have to be surrendered in order to assert another” in the context of the government’s argument that Simmons had waived his Fifth Amendment right against self-

and being homeless. However, the “unavoidable results” prong narrows the class of potentially protected status-conduct and permits criminal sanction in the event that the status-conduct is not unavoidable at the time. In this respect, a whole swath of otherwise protected status-conduct may be criminalized because it is not unavoidable (*e.g.* sleeping in certain prohibited locations outside, even as to homeless persons, when other outside locations are available).

¹¹ This reading also brings constitutional law into consonance with international law. The Supreme Court has implicitly recognized the relevance of international standards and U.S. treaty obligations by invoking such authorities in *Roper v. Simmons*, 543 U.S. 551, 576-77 (2005) and *Lawrence v. Texas*, 539 U.S. 558, 572-73 (2003). Domestic law also should be interpreted whenever possible to not conflict with ratified treaties. *See Roper*, 543 U.S. at 575; *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804). The U.S. Interagency Council on Homeless has concluded that criminalization of the homeless may “violate international human rights law, specifically the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).” UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS. The U.N. Human Rights Committee has also raised concerns that criminalization of the homeless may violate Article 7 of the ICCPR regarding “cruel, inhuman, and degrading treatment.” U.N. Human Rights Committee, Concluding observations on the fourth report of the United States of America, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014).

incrimination when he testified to vindicate his Fourth Amendment rights at a hearing on a motion to suppress evidence); *Fowle v. United States*, 410 F.2d 48, 54-55 (9th Cir. 1969) (rejecting the government's position because it would place the criminal defendant "on the horns of the dilemma, compelling him, impermissibly to choose between constitutional rights and suffer prejudice from any choice which he has and exercises.") Yet if emergency shelter beds offered at religious shelters are treated as "available" under the *Jones* test, it creates a conflict between the Eighth Amendment right against criminalization of status and the prohibition against religious coercion as established in Establishment Clause jurisprudence.

The Supreme Court set forth the test for Establishment Clause violations in *Lemon v. Kurtzman*, holding that government acts must have a "secular legislative purpose," and may not have a "principal or primary effect" which either "advances [or] inhibits religion," or causes "an excessive government entanglement" with religion. 403 U.S. 602, 612-13 (1971), *aff'd*, 411 U.S. 192 (1973). And in *Inouye v. Kemna*, the Ninth Circuit held that a state act that coerced involvement in a religiously-affiliated program by threatening criminal punishment violated that test. 504 F.3d 705, 712 (9th Cir. 2007).

In *Inouye*, the defendant was required to attend a religion-based substance abuse program (Alcoholics Anonymous / Narcotics Anonymous or "AA/NA") as part of his parole, and when the defendant objected on religious grounds, his parole officer recommended revoking parole. *Id.* at 710. The Ninth Circuit adopted a three-part test in determining that the parole officer's action violated the Establishment Clause: (1) the parole officer's actions constituted *state action* because the action was performed in the officer's official state capacity; (2) the actions were *coercive* in that Inouye would be subject to penalty for his refusal; and (3) the object of the coercion (AA/NA) was *religious rather than secular* as the program was based in a "higher

power.” *Id.* at 713-14. The court, while sympathetic to AA/NA and its benevolent mission, nevertheless concluded that the state could not coerce someone to attend its functions.¹² Likewise, for the purposes of determining whether being outside is an avoidable consequence under the Eighth Amendment test, religious shelter beds must be excluded or else the law would operate to condition one’s enjoyment of his Eighth Amendment protections on the waiving of his First Amendment rights. Either he would be subject to citation, or he would be forced to associate with religious messages and activities.

ARGUMENT

III. THE MUNICIPAL ORDINANCES CRIMINALIZE STATUS IN VIOLATION OF THE EIGHTH AMENDMENT BY CITING PERSONS WHO ARE HOMELESS AND SUFFERING FROM MENTAL OR PHYSICAL DISABILITIES FOR SLEEPING OUTSIDE

Like in *Jones*, the Municipal Ordinances criminalize homelessness in violation of the Eighth Amendment because they are applied to homeless individuals (1) doing nothing more than resting, lying down, or sleeping and (2) for whom shelter beds are unavailable.

A. The Municipal Ordinances Have Been and May be Applied Against Individuals Merely for Resting, Lying Down, or Sleeping

Under the Municipal Ordinances, a homeless individual may receive a citation for merely resting, lying down, or sleeping outside. *See, e.g.*, Exhs. 59, 60, 61.

These Eighth Amendment violations continue because officers are unaware of the constitutional limits to enforcing the Municipal Ordinances against individuals for merely resting, lying down, or sleeping outside. Diana Lachiondo, Director of Community Partnerships

¹² Indeed, the court wrote specifically, “While we in no way denigrate the fine work of AA/NA, attendance in their programs may not be coerced by the state.” *Inouye*, 504 F.3d at 714.

and the City's 30(b)(6) witness, testified when asked about how a person sleeping with just a blanket over himself would be treated under the Municipal Ordinances: "I couldn't say for sure how our bike officers view blankets, if they are considered indicia of camping" and "[t]o be perfectly honest, I am not that familiar with the Disorderly Conduct Ordinance." Exh. 18 at 143:22-24; 144:3-4.

In determining whether to issue a citation, the best guidance the BPD could offer is to rely on the "totality of the circumstances," which did not exclude conduct protected under *Jones*. Exh. 63 at 96:13-14. Officer Shuler was unable to say whether a person lying on the ground with no other possessions could be cited for camping. Exh. 91 at 44:10-14. Officer Walker, a supervisor, admitted that he did not provide guidance as to how many camping indicia were required under the Camping Ordinance. Exh. 63 at 96:10-14. He stated that merely having a sleeping bag or even covering oneself with tree branches could count, and that just being concealed could be an indication of camping. Exh. 63 at 50:13-20, 54:25-55:4, 55:25-56:5. Another officer agreed that sleeping in a sleeping bag could be enough, based on a number of factors including "kind of going along with how things are done." Exh. 65 at 37:12-24; *see also* Exh. 63 at 48:23-49:4.

B. Emergency Shelter Beds are Often and May Be Unavailable to Homeless Individuals in Boise

On any given night, it is likely that for some portion of Boise's homeless individuals, emergency shelter beds will be unavailable. Emergency shelter beds may be unavailable for any number of reasons. First and foremost, there are more homeless individuals in Boise than emergency shelter beds, but beds can also be unavailable to homeless individuals due to religious objections and mental and physical disabilities.

1. There Is a Shortage of Emergency Shelter Beds in Boise

Plaintiffs' expert, Martha R. Burt, Ph.D., produced an un rebutted report ("Expert Report" or "Report") comparing the number of homeless individuals in Boise (measured by annual Point-in-Time Surveys conducted in Boise (the "PIT Surveys")) to the number of emergency shelter beds (reported in the Housing and Urban Development Housing Inventory Charts ("HIC Reports")). Exh. 29 at 6-8. PIT Surveys are the only basis Defendants use for estimating the number of homeless individuals in the city, and they have no alternative to it. Exh. 18 at 32:13-33:3, 52:7-11; Exh. 19 at 118:18-24; Exh. 16 at 54:6-10. In her Report, Dr. Burt concluded that in 2011, homeless individuals outnumbered emergency shelter beds by 48%. In 2012, homeless individuals outnumbered emergency shelter beds by 43%. In 2013, homeless individuals outnumbered emergency shelter beds by 29%. And in 2014, homeless individuals outnumbered emergency shelter beds by 29% as well. Exh. 29 at 8, Table 4.

These comparisons underestimate the delta between the number of homeless individuals and the number of shelter beds. Indeed, Dr. Burt concluded that the Boise PIT Surveys likely underestimated the number of homeless individuals in Boise. Defendants did not rebut the Expert Report, nor have they presented evidence to contradict the volumes of corroborating evidence found throughout the record that establish that the PIT Surveys undercounted the number of homeless, including: (1) email documents involving Beth Geagan and her employees from 2015 demonstrating that volunteers canceled at the last minute, Exh. 41, that volunteers who wanted to participate could not attend training because of when the trainings were held,

Exh. 40, and noting safety concerns for volunteers, Exh. 44;¹³ (2) hard copy documents from the 2014 PIT Survey noting miscommunication and confusion, and seeking additional guidance on how to conduct the PIT Survey, Exhs. 42, 43; (3) testimony that the police increased patrols during the PIT Survey, likely thwarting participation, Exh. 44; (4) evidence that there was an inadequate number of volunteers prior to 2015, Exhs. 38, 39; and (5) evidence that certain locations where homeless individuals frequent were not checked. Statement of Undisputed Material Facts (“SUMF”) ¶ 18(b).

The real number of homeless individuals on each of the nights of the PIT Survey is likely significantly greater than the reported count. In addition, some homeless individuals are simply not included in the PIT Survey because they are in jail that night. Exh. 20 at 88:19-25, 91:23-92:1; Exh. 15 at 30, 53. Not only has the Ada County Jail in Boise noted an increase in the jail’s homeless population in January – up to 113 homeless individuals in January 2014, Exh. 49 at 5 - but counts taken at the jail on the night of the PIT Survey 2014 also show that there 72 homeless people were in jail on that night that would not be reflected on the PIT Survey. SUMF ¶ 19. The homeless shelters simply cannot accommodate these individuals, as they are regularly full. Yet to exclude homeless people in jail when evaluating the need for emergency shelter beds in Boise essentially allows the City to skirt the Constitution and effectively eviscerate Eighth Amendment protection for homeless individuals.

The discrepancies between the PIT Survey and the HIC count are borne out on a daily basis year-round. Interfaith Sanctuary and BRM regularly report that their emergency shelter

¹³ Defendants failed to preserve Beth Geagan’s emails prior to January 27, 2015; plaintiffs are therefore unable to point to email documents from that time period further corroborating the undercount.

services are at-or-near full utilization for the year every year. *See* Exhs. 50, 52. Interfaith Sanctuary has reported at a number of Continuum of Care meetings throughout the year every year that it is at, or near, capacity and has turned homeless individuals away. Exh. 51. Even though RoL has reported that it may have over a dozen homeless men had to sleep on the floor every night, Exh. 54 at 4, BRM refuses to self-report as full. Exh. 69; Exh. 70 at 60:24-25.

2. Nearly Two-Thirds of the Shelter Beds in Boise Are Offered at Religious Shelters and Must Be Excluded from the Eighth Amendment Analysis

For Eighth Amendment purposes, the shortage of emergency shelter beds is overwhelmingly more pronounced than indicated above because a significant majority of the emergency shelter beds counted above must be excluded since they are offered at religious shelters. The only non-religious shelter in Boise is Interfaith Sanctuary, and it has only 96 emergency shelter beds for adult individuals. *See* Exh. 25 ¶¶ 2, 6.

During the pendency of this litigation, Boise Rescue Mission argued – successfully – in a separate case before the Ninth Circuit that it was a religious organization that qualified for an exemption from the Fair Housing Act’s prohibitions on religious discrimination and could therefore discriminate against those using its shelter beds on religious grounds. *Intermountain Fair House. Council v. Boise Rescue Mission Ministries*, 657 F.3d 988, 996-97 (9th Cir. 2011) (finding that because BRM qualified as a religious organization, its preferential practices for emergency beds were exempt from the Fair Housing Act). The same facts that allowed the Ninth Circuit to conclude that BRM preferred people of its own religion at the homeless shelter and that BRM qualified as an exempt religious organization in *Intermountain*, unequivocally demonstrate that BRM is a “religious” rather than “secular” object under the *Inouye*

Establishment Clause test, which means state actors are precluded from coercing attendance at BRM as a matter of law.

BRM was incorporated ““for the worship of God, the teaching and preaching of the Word of God, the winning of people to a personal faith in the Lord Jesus Christ and in the spiritual improvement of mankind....”” Exh. 24-1 ¶ 3. Its religiously-based mission is made known to every homeless individual who comes through its doors. Indeed, even the BRM intake form states, “Welcome to the River of Life Rescue Mission where our first object is to introduce everyone to our Lord and Savior Jesus Christ.” Exh. 89 at 2. A Bible quotation headlines the shelter rules given to every homeless person using the facilities. Exh. 88 at 4. The BRM shelters “offer[] a variety of religious services, such as chapel services, pre-meal prayers and morning devotions,” Exh. 88 at 4, and religion figures extensively into BRM’s operations, from messages and symbols on the walls, Exh. 90, to various rules for residents tied to chapel services scheduled during designated non-smoking time, Exh. 89 at 5; Exh. 88 at 4.¹⁴

It follows that BRM’s shelter beds must be excluded from the voluntariness prong of the Eighth Amendment analysis, because homeless individuals cannot be forced to choose between receiving a criminal citation or subjecting themselves to BRM’s religious mission. In other words, BRM’s shelter beds are not available and cannot be used as the “option” that renders a homeless person’s lack of sleeping quarters on a given night “voluntary” under the *Jones* framework. Just as the state could not revoke Inouye’s parole for his refusal to attend a religiously-based AA/NA program, it cannot criminally cite homeless individuals for refusing to

¹⁴ Because of this rule, some homeless individuals cannot escape the chapel services because they are assigned to mats on the floor in the dining room – the same location as where the religious services take place. See Exh. 89 at 5; Exh. 27 at 150:4-11.

subject himself to the religiously-based messages and activities at religious shelters. *See Inouye*, 504 F.3d at 712. In so doing, it would pit homeless individuals' First Amendment and Eighth Amendment rights against each other, a constitutionally unconscionable result. *Simmons*, 390 U.S. at 393-94.

3. **Shelter Beds Are Often and May Be Unavailable to Individuals Due to Mental Illness or Physical Disability**

Plaintiffs also produced the unrebutted expert report of David Kent, M.D. who believes “conservatively” that “seventy-five percent of the homeless population in Boise suffer from physical or mental disabilities and/or coexisting alcohol and polysubstance abuse disorders, which may be a form of self-medication.” Exh. 1 at 2. These physical and mental issues prevent some homeless individuals from accessing emergency shelter beds. In fact, “[t]he very nature of a homeless person’s mental illness make it extremely difficult for them to live in shelters for limited or sustained periods of time.” Exh. 1 at 3. Accordingly, Dr. Kent concluded that mental and physical disabilities make it so that “homeless persons cannot access... temporary shelter beds” that otherwise might be available. *Id.* For these individuals, sleeping outside while homeless may be unavoidable even though emergency shelter beds are available for others.¹⁵

C. **The Municipal Ordinances Have Been and May Be Enforced against Homeless Individuals when Emergency Shelter Beds Are Unavailable**

The record contains numerous instances in which individuals were cited under the Municipal Ordinances the morning after Interfaith Sanctuary reported that it was full. *See, e.g.,*

¹⁵ Indeed, beds may be unavailable to certain homeless individuals while available to others for a variety of reasons in addition to mental and physical disabilities: the only beds available are for persons of the other sex; the individual reached the time limit for staying at a shelter; a shelter does not allow an individual to stay there, even simply because they are unable to care for that person; or the individual has legal restrictions limiting them from being near someone who is in the shelter. *See* SUMF ¶¶ 31, 32; Exh. 8 at 7.

Exhs. 71-74, 86, 92, 96-100. Many of these citations reflect the views of police officers that the citation was nevertheless permissible because BRM had not reported that its shelters were full. *See, e.g.*, Exhs. 71-74 (explicitly noting that Sanctuary was full but BRM had space); *see also* Exhs. 93-94 (noting BRM had space). Of course, BRM's failure to report that its emergency shelter beds as full is meaningless because BRM *refuses* to do so. Further, it also crystallizes the constitutional conflict raised *supra* pp. 8-10, that for the individuals cited on these days, the Eighth Amendment is being interpreted and applied in a way that pits it against the Establishment Clause (discussed in Legal Background, II, *supra* pp. 8-10).

Likewise, citations in the record have been given to homeless individuals the police officers recognize as having mental illnesses. *See, e.g.*, Exhs. 78-80. This occurs in part because officers have scant if any instruction on how to apply this concern in the field, even if they were inclined to apply the limitation. Officers have received inadequate training on recognizing mental illnesses and disabilities and identifying when those disabilities might prevent homeless individuals from staying in shelters, Exh. 37 at 102:25-103:6, which results in inconsistent enforcement entirely subject to each officer's often uninformed, subjective understanding. Moreover, while the BPD has recognized that its disability policy should require officers to contact the shelters to determine if they can accommodate a particular individual's disability, Exh. 75 at 79:4-9, there is actually no requirement to do so. Exh. 2 at 108:18-22.

IV. DECLARATORY AND INJUNCTIVE RELIEF IS APPROPRIATE BECAUSE AS A MATTER OF LAW AND UNDISPUTED FACT PLAINTIFFS HAVE A LEGITIMATE THREAT OF HAVING THEIR EIGHTH AMENDMENT RIGHTS VIOLATED

Plaintiffs Anderson and Martin are homeless individuals who have been cited under the Municipal Ordinances. SUMF ¶ 2. The fact that Boise has a shortage of available shelter beds

places them at significant risk of being cited in the future under the same ordinances. Both Plaintiffs have voiced objections to BRM's efforts to convert residents to their religious beliefs and claim to have been required to listen to and attend religious services at BRM, or else be forced to leave the shelter. SUMF ¶¶ 4-5; Exh. 9 at 10-11, 25-26.

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Declaratory relief is appropriate “(1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.” *McGraw-Edison Co. v. Preformed Line Prods. Co.*, 362 F.2d 339, 342 (9th Cir. 1966), *cert. denied*, 385 U.S. 919 (1966) (quoting Edwin Borchard, *Declaratory Judgments* 299 (2d ed. 1941)). *Bilbrey v. Brown*, 738 F.2d 1462, 1470 (9th Cir. 1984). Plaintiffs’ request for declaratory relief would undoubtedly serve the useful purpose of clarifying that Plaintiffs’ Eighth Amendment rights to not be subject to criminal citation for sleeping outside when shelter beds are unavailable is guaranteed and enforceable, and that the existence of ill-defined, non-functional ordinances and policies does not adequately safeguard those rights.

Moreover, according to well-established principles of equity, Plaintiffs require a permanent injunction because “[p]ermanent injunctive relief is warranted where, as here, defendant's past and present misconduct indicates a strong likelihood of future violations.” *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 564 (9th Cir. 1990). The ordinances and policies may have changed, but the results are the same. Injunctive relief is necessary to prevent further violations of Plaintiffs’ Eighth Amendment rights.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’ Motion for Summary Judgment and issue injunctive relief against Defendants.

Submitted this 30th day of April, 2015

/s/ Marguerite Sullivan
Marguerite Sullivan
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the persons listed below.

Howard A. Belodoff
IDAHO LEGAL AID SERVICES, INC.
Email: howardbelodoff@idaholegalaid.org

Krysta C. Copeland
LATHAM & WATKINS LLP
Email: krysta.copeland@lw.com

Allen Gardner
LATHAM & WATKINS LLP
Email: allen.gardner@lw.com

Brady J. Hall
MOORE & ELIA, LLP
Email: brady@mbelaw.net

Kelley K. Fleming
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Daniel I. Levy
LATHAM & WATKINS LLP
Email: daniel.levy@lw.com

Michael W. Moore
MOORE & ELIA, LLP
Email: mike@mbelaw.net

Scott B. Muir
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Eric S. Tars
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Email: etars@nlchp.org

Katherine Cheng
LATHAM & WATKINS LLP
Email: katherine.cheng@lw.com

Greer Donley
LATHAM & WATKINS LLP
Email: greer.donley@lw.com

Scott Jones
LATHAM & WATKINS LLP
Email: scott.jones@lw.com

/s/ Marguerite Sullivan

Allen Gardner, # 456723 (DC)
Scott Jones, # 986308 (DC)
Daniel Levy, # 1001692 (DC)
Krysta Copeland, # 1009698 (DC)
Katherine Cheng, # 87391 (VA)
Greer Donley, # 66925 (MO)
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004-1304
Phone: (202) 637-2200
Fax: (202) 637-2201
Email: Allen.Gardner@lw.com
Email: Scott.Jones@lw.com
Email: Daniel.Levy@lw.com
Email: Krysta.Copeland@lw.com
Email: Katherine.Cheng@lw.com
Email: Greer.Donley@lw.com

Howard A. Belodoff, ISB # 2290
Idaho Legal Aid Services, Inc.
1447 South Tyrell Dr.
Boise, ID 83706
Phone: (208) 336-8980, Ext. 1106
Fax: (208) 342-2561
Email: howardbelodoff@idaholegalaid.org

Eric Tars # 94857 (PA)
National Law Center on Homelessness &
Poverty
2000 M St., N.W., Suite 210
Washington, DC 20036
Phone: (202) 638-2535
Fax (202) 628-2737
Email: etars@nlchp.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

JANET F. BELL, et al.,	)	Case No. 1:09-cv-00540-REB
	)	
Plaintiffs,	)	APRIL 30, 2015
	)	DECLARATION OF COUNSEL
v.	)	SCOTT JONES
	)	
CITY OF BOISE, et al.,	)	
	)	
Defendants.	)	
_____	)	

DECLARATION OF COUNSEL SCOTT JONES

I, Scott Jones, declare under penalty of perjury that the foregoing is true and correct:

1. I have personal knowledge of the testimony set forth herein and I am competent to testify as follows.

2. I am one of the attorneys of record in this lawsuit for the named Plaintiffs, and I have access to and am familiar with the pleadings and discovery taken in this matter.
3. Attached hereto as **Exhibit 1** is a true and correct copy of the expert report of Dr. David Kent, which was produced as BELL-II-00609 through BELL-II-000615.
4. Attached hereto as **Exhibit 2** is a true and correct copy of portions of the August 27, 2010 deposition of Captain Peter Ritter, the former division commander of the patrol division in the Boise Police Department and former bike patrol officer.
5. Attached hereto as **Exhibit 3** is a true and correct copy of portions of the August 31, 2010 deposition of Rosie K. Dice, a director at City Light.
6. Attached hereto as **Exhibit 4** is a true and correct copy of portions of the December 18, 2014 deposition of Plaintiff Robert Anderson.
7. Attached hereto as **Exhibit 5** is a true and correct copy of portions of the December 19, 2014 deposition of Plaintiff Robert Martin.
8. Attached hereto as **Exhibit 6** is a true and correct copy of portions of the June 30, 2010 deposition of Plaintiff Robert Martin.
9. Attached hereto as **Exhibit 7** is a true and correct copy of the September 1, 2007 camping citation issued to Plaintiff Robert Anderson, which was produced as BC000023-BC000024.
10. Attached hereto as **Exhibit 8** are true and correct copies of the camping citations issued to Plaintiff Robert Martin on March 4, 2009 and September 9, 2009, and the

disorderly conduct citation issued on April 24, 2009, which were produced as BC000025-BC000026 and BC016372-BC016377.

11. Attached hereto as **Exhibit 9** are true and correct copies of the April 16, 2010 responses to Defendants' Interrogatories for Plaintiffs Robert Anderson and Robert Martin.
12. Attached hereto as **Exhibit 10** are true and correct copies of portions of the responses to Interrogatories for former plaintiffs Janet Bell, Pamela Hawkes, Lawrence Smith, dated April 16, 2010, and former plaintiffs James Godfrey and Basil Humphrey, dated August 20, 2010.
13. Attached hereto as **Exhibit 11** is a true and correct copy of the camping citation issued to Karen Shay on March 17, 2015, which was produced as BC044415-BC044416
14. Attached hereto as **Exhibit 12** is a true and correct copy of the March 9, 2015 camping citation issued to Mary Hone and others, which was produced as BC044487-BC044495.
15. Attached hereto as **Exhibit 13** are true and correct copies of portions of Plaintiff Robert Anderson's medical records, which were produced as BELL000607, BELL000616-BELL000621, BELL000629-BELL000631, BELL000643-BELL000645, BELL000653-BELL000655, BELL000670-BELL000673, BELL001614, BELL001621-BELL001622, BELL001636-BELL001646.

16. Attached hereto as **Exhibit 14** are true and correct copies of portions of Plaintiff Robert Martin's medical records, which were produced as BELL000588-BELL000589, BELL001424, BELL001433, BELL001437-BELL001438, BELL001923, and BELL-II-000616 through BELL-II-000623.
17. Attached hereto as **Exhibit 15** is a true and correct copy of the 2014 PIT Count Methodology Guide, which was produced as BC039343-BC039421.
18. Attached hereto as **Exhibit 16** is a true and correct copy of portions of the January 7, 2015 deposition of AnaMarie Guiles, a senior manager for the Housing & Community Development Division for the City of Boise.
19. Attached hereto as **Exhibit 17** is a true and correct copy of the official 2014 Point-In-Time Count Report, which was produced as BC029252-BC029285.
20. Attached hereto as **Exhibit 18** is a true and correct copy of portions of the 30(b)(6) deposition of Diana Lachiondo, the Director of Community Partnerships for the City of Boise, taken on December 4, 2014.
21. Attached hereto as **Exhibit 19** is a true and correct copy of portions of the January 8, 2015 deposition of Beth Geagan, the City of Boise's contractor for the Point-In-Time-Survey.
22. Attached hereto as **Exhibit 20** is a true and correct copy of portions of the April 24, 2015 deposition of Jennifer Otto, the HMIS System Administrator for the Idaho Housing and Finance Association ("IHFA").

23. Attached hereto as **Exhibit 21** is a true and correct copy of the 2014 Sheltered Homeless Survey Form, which was produced as BC039425-BC039426.
24. Attached hereto as **Exhibit 22** are true and correct copies of Beth Geagan's printed and handwritten volunteer list and location sign-up sheets for 2012, 2013, and 2014, which were produced as BC038955-BC038962 (2012, printed); BC038963-BC038969 (2013, printed); BC044497-BC044498 (2013, printed volunteer attendance); BC044149-BC044163 (2013, handwritten); BC038972-BC038978 (2014, printed); and BC044190-BC044205 (2014, handwritten).
25. Attached hereto as **Exhibit 23** is a demonstrative exhibit demonstrating the locations where unsheltered individual PIT surveys were taken during the 2012, 2013 and 2014 PIT Surveys. IHFA produced the underlying documents to both parties on January 26, 2015. Plaintiffs' review of those documents revealed only three surveys identified as having been taken outside of Boise during that time. Two of those surveys related to people who were precariously housed. The underlying documents can be made available to the Court on request.
26. Attached hereto as **Exhibit 24** is a true and correct copy of the January 14, 2015 affidavit of Rev. William J. Roscoe, the CEO of Boise Rescue Mission, Inc.
27. Attached hereto as **Exhibit 25** is a true and correct copy of the March 23, 2015 affidavit of Jayne Sorrels, the Executive Director of Interfaith Sanctuary.

28. Attached hereto as **Exhibit 26** is a true and correct copy of portions of the 30(b)(6) deposition of Jason C. Blais, a Building Department Official for the City of Boise, taken on August 16, 2010.
29. Attached hereto as **Exhibit 27** is a true and correct copy of portions of the 30(b)(6) deposition of Gordon T. Goldsmith, a fire inspector for the City of Boise, taken on August 16, 2010 and September 2, 2010.
30. Attached hereto as **Exhibit 28** is a true and correct copy of portions of the 30(b)(6) deposition of Boise Police Department Officer Tom Shuler, taken on December 3, 2014.
31. Attached hereto as **Exhibit 29** is a true and correct copy of the expert report of Dr. Martha R. Burt, which was produced as BELL-II-000577 through BELL-II-000608.
32. Attached hereto as **Exhibit 30** is a true and correct copy of the November 27, 2013 HIC/PIT Data Collection Notice CPD-13-011, which IHFA produced to both parties on January 26, 2015.
33. Attached hereto as **Exhibit 31** is a true and correct copy of the 2014 Housing Inventory Chart Instructions, which IHFA produced to both parties on January 26, 2015.
34. Attached hereto as **Exhibit 32** are true and correct copies of the official Housing Inventory Chart Reports for the Boise/Ada County CoC for 2008-2014, which are publicly available through the Department of Housing and Urban Development's ("HUD") website. Plaintiffs calculated the number of adult individual emergency

beds available and overflow mats in use for each year and concluded that the maximum number was 410 emergency beds and overflow mats in 2012.

35. Attached hereto as **Exhibit 33** is a true and correct copy of a February 2014 email chain sent to Beth Geagan and AnaMarie Guiles regarding the availability of a motel voucher for a single woman, which was produced as BC039519-BC039523.
36. Attached hereto as **Exhibit 34** is a true and correct copy of the official 2013 Point-In-Time Count Report, which was produced as BC029220-BC029251.
37. Attached hereto as **Exhibit 35** is a true and correct copy of the 2014 Point-In-Time Count Report IHCC Summary, which IHFA Produced to both parties on January 26, 2015.
38. Attached hereto as **Exhibit 36** is a true and correct copy of an email sent by one of Beth Geagan's employees to Jennifer Otto regarding a potentially uncouneted unsheltered homeless individual, which IHFA produced to both parties on February 13, 2015.
39. Attached hereto as **Exhibit 37** is a true and correct copy of portions of the January 9, 2015 deposition of Sergeant Todd Ducharme, current supervisor of the bike patrol unit of the Boise Police Department.
40. Attached hereto as **Exhibit 38** are true and correct copies of January 2014 emails from Diana Lachiondo seeking additional volunteers because the City was "struggling to fill spots," which were produced as BC046186-BC046187, BC045177-BC045178; *see also infra* Exhibit 39.

41. Attached hereto as **Exhibit 39** is a true and correct copy of a January 23, 2014 email chain from Beth Geagan to Diana Lachiondo noting that more volunteers would provide better coverage for the PIT Survey, which was produced as BC045909-BC045912.
42. Attached hereto as **Exhibit 40** is a true and correct copy of a January 20, 2015 email chain regarding the inability of volunteers to attend Point-In-Time Survey, which were produced as BC045122-BC045124.
43. Attached hereto as **Exhibit 41** is a true and correct copy of a January 30, 2015 email from a volunteer withdrawing his participation the morning he was supposed to participate, which was produced as BC046088-BC046090.
44. Attached hereto as **Exhibit 42** is a true and correct copy of a January 29, 2014 email from an employee of Beth Geagan noting miscommunication and confusion regarding the PIT Survey, which was produced as BC045615-BC045619.
45. Attached hereto as **Exhibit 43** is a true and correct copy of a January 29, 2014 email chain between a PIT Survey volunteer and Beth Geagan's employee asking how to conduct the PIT Survey and noting concerns that interviewees might feel awkward, which was produced as BC044393-BC044395.
46. Attached hereto as **Exhibit 44** is a true and correct copy of January 2015 emails between City of Boise officials describing safety concerns for Point-In-Time Survey volunteers and extra patrols by the Boise Police Department, which was produced as BC046238-BC046239.

47. Attached hereto as **Exhibit 45** is a true and correct copy of the 2014 volunteer release waiver signed by Officer Blake Slater, which was produced as BC044185.
48. Attached hereto as **Exhibit 46** is a true and correct copy of an 2013 email to Point-In-Time Survey volunteers, including Boise Police Department officer Lt. Alan Cavener, which IHFA produced to both parties on February 13, 2015.
49. Attached hereto as **Exhibit 47** is a true and correct copy of HUD's Guide to Counting Unsheltered Homeless People, which IHFA produced to both parties on January 26, 2015.
50. Attached hereto as **Exhibit 48** is a true and correct copy of notes from the January 31, 2013 Continuum of Care ("CoC") meeting, which was produced as BC043526-BC043528
51. Attached hereto as **Exhibit 49** is a true and correct copy of notes from the February 27, 2014 CoC meeting, which was produced as BC043666-BC043672.
52. Plaintiffs calculated the numbers of precariously housed individuals who were in jail on the night of the PIT Survey based on the surveys and Excel spreadsheet containing survey information that IHFA produced to both parties on January 26, 2015. IHFA denoted which surveys were precariously housed, and the survey data includes where the survey was taken. The underlying surveys and Excel spreadsheet can be made available to the Court on request.
53. Attached hereto as **Exhibit 50** is a true and correct copy of the Boise CoC AHAR Point-In-Time Count – All Programs annual and quarterly utilization of shelter space

for 10/1/2012 to 9/3/2013. IHFA produced this document to both parties on February 13, 2015 as an Excel attachment to an email.

54. Attached hereto as **Exhibit 51** are true and correct copies of notes from CoC meetings when Sanctuary reports that it is near or at capacity: July 28, 2011; August 25, 2011; September 28, 2011; February 23, 2012; March 29, 2012; May 31, 2012; September 27, 2012; March 28, 2013; May 30, 2013; August 29, 2013; April 24, 2014; December 18, 2014. These were produced as BC043359-BC043362; BC043373-BC043379; BC043381-BC043382; BC043404-BC043407; BC043409-BC043415; BC043420-BC043421; BC043452-BC043456; BC043549-BC043552; BC043599-BC043602; BC043611-BC043619; BC043766-BC043772; and BC043902-BC043909 (documents attached to notes not included). Sanctuary reported it had to turn homeless individuals away on September 28, 2011; March 29, 2012; September 27, 2012; May 30, 2013; and April 24, 2014.

55. Attached hereto as **Exhibit 52** are true and correct copies of the Housing Inventory Chart spreadsheets for Ada County homeless providers for 2012-2014, which were produced as BC039422-BC039424.

56. Attached hereto as **Exhibit 53** is a true and correct copy of notes from the August 22, 2012 Housing Working Group meeting where Beth Geagan reported that the shelters were at capacity, which were produced as BC044013-BC044021.

57. Attached hereto as **Exhibit 54** is a true and correct copy of notes from a March 29, 2012 CoC meeting where River of Life reported that 12-15 individuals had to stay on

the floor of the emergency shelter space every night, which were produced as BC043409-BC043415.

58. Attached hereto as **Exhibit 55** are true and correct copies of the Disorderly Conduct Ordinance, Boise City Code § 6-01-01(A), the Camping Ordinance Boise City Code § 9-10-02.
59. Attached hereto as **Exhibit 56** is a true and correct copy of Boise Police Department Special Order 10-03 regarding enforcement of the Municipal Ordinances, which was produced as BC002649-BC002658.
60. Attached hereto as **Exhibit 57** is a true and correct copy of the 2009 Boise Police Department Manual, which was produced as BC011360-BC011434.
61. Attached hereto as **Exhibit 58** is a true and correct copy of Ordinance 38-14 which amended the Municipal Ordinances on September 3, 2014.
62. Attached hereto as **Exhibit 59** is a true and correct copy of the July 10, 2013 camping citation issued to Brian McCusker, produced as BC016391-BC016396.
63. Attached hereto as **Exhibit 60** is a true and correct copy of the April 3, 2013 camping citation issued to Jacob Lancey, which was produced as BC016350-BC016351.
64. Attached hereto as **Exhibit 61** is a true and correct copy of the October 13, 2014 disorderly conduct citation issued to Hamid Behrazfar, which was produced as BC035104-BC035108.

65. Attached hereto as **Exhibit 62** is a true and correct copy of the November 17, 2014 camping citation given to Stephen Todd, which was produced as BC038814-BC038817.
66. Attached hereto as **Exhibit 63** is a true and correct copy of portions of the August 11, 2010 deposition of Sergeant Clair Walker, former supervisor of the bike patrol unit of the Boise Police Department.
67. Attached hereto as **Exhibit 64** is a true and correct copy of portions of the January 8, 2015 deposition of Melissa Roper, a civilian employee of the Boise Police Department at the Boise State University substation.
68. Attached hereto as **Exhibit 65** is a true and correct copy of portions of the August 10, 2010 deposition of Officer Andrew Johnson, an officer in the bike patrol unit of the Boise Police Department.
69. Attached hereto as **Exhibit 66** are true and correct copies of the Memoranda of Agreement signed by Sanctuary, River of Life, and City Light with City of Boise, which were produced as BC035098-BC035103; and copies of emails regarding the Memoranda of Agreement, which were produced as BC039179-BC039195.
70. Attached hereto as **Exhibit 67** is a true and correct copy of portions of the August 12, 2010 deposition of Officer Kevin O'Rourke, a member of the bike patrol unit of the Boise Police Department.
71. Attached hereto as **Exhibit 68** is a true and correct copy of the July 2, 2014 camping citation issued to Robert Newman, which was produced as BC016301-BC016303.

72. Attached hereto as **Exhibit 69** are true and correct copies of pages from the Boise Rescue Mission website, printed on April 17, 2015
73. Attached hereto as **Exhibit 70** is a true and correct copy of portions of the August 31, 2010 deposition of Stuart Sampson, the guest services director for River of Life.
74. Attached hereto as **Exhibit 71** are true and correct copies of the March 2, 2015 camping citations issued to Justin Davis, Stewart Beckman, and others, which were produced as BC044298-BC044309.
75. Attached hereto as **Exhibit 72** is a true and correct copy of the March 17, 2015 camping citation issued to Steven Cash, which was produced as BC044377-BC044378.
76. Attached hereto as **Exhibit 73** is a true and correct copy of the March 18, 2015 camping citation issued to Glenn Smith, which was produced as BC044385-BC044386.
77. Attached hereto as **Exhibit 74** is a true and correct copy of the March 18, 2015 camping citation issued to Sonny Hiltzman, produced as BC044387-BC044388.
78. Attached hereto as **Exhibit 75** is a true and correct copy of portions of the August 12, 2010 deposition of former Boise Police Department Chief Michael F. Masterson.
79. Attached hereto as **Exhibit 76** is a true and correct copy of River of Life's barred list, which was produced as BC039237-BC039238.

80. Attached hereto as **Exhibit 77** is a true and correct copy of Sanctuary's barred list, which was produced as BC040359-BC040360.
81. Attached hereto as **Exhibit 78** is a true and correct copy of the October 14, 2014 camping citation issued to Stewart Beckman, which was produced as BC038202-BC038206.
82. Attached hereto as **Exhibit 79** is a true and correct copy of the March 17, 2015 camping citation issued to Stewart Beckman, which was produced as BC044381-BC044382.
83. Attached hereto as **Exhibit 80** is a true and correct copy of the citation report for Ronald Siefke, which was produced as BC016244. No cover page was attached to this citation, but the original document received from Defendants was labeled with Ronald Siefke's name.
84. Attached hereto as **Exhibit 81** is a true and correct copy of portions of the August 31, 2010 deposition of Rev. William J. Roscoe, executive director of Boise Rescue Mission.
85. Attached hereto as **Exhibit 82** is a true and correct copy of the intake packet City Light gives to all homeless individuals who stay at the shelter, which was produced as BC038983-BC038988.
86. Attached hereto as **Exhibit 83** is a true and correct copy of the July 28, 2007 camping citation given to Keith Bukant, which was produced as BC09867-BC009868.

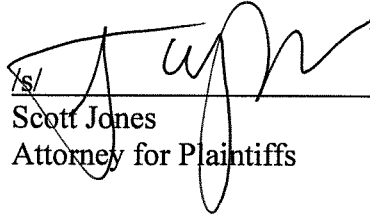
87. Attached hereto as **Exhibit 84** is a true and correct copy of an October 28, 2014 email from Jayne Sorrels to Diana Lachiondo describing reasons why homeless individuals may not stay at Sanctuary, which was produced as BC039288-BC039290.
88. Attached hereto as **Exhibit 85** is a true and correct copy of the March 15, 2015 camping citation issued to Glenn Smith, which was produced as BC044401-BC044402.
89. Attached hereto as **Exhibit 86** are true and correct copies of the March 3, 2015 camping citations issued to Stewart Beckman, Sonny Hilzman and others, produced as BC044310-BC0443321.
90. Attached hereto as **Exhibit 87** are true and correct copies of the February 11, 2015 camping citations issued to Wesley Bryant and others, produced as BC044215-BC044224.
91. Attached hereto as **Exhibit 88** is a true and correct copy of River of Life's guest intake form, which was produced as BC038950-BC038955.
92. Attached hereto as **Exhibit 89** is a true and correct copy of River of Life's House Rules/Orientation, which was produced as BC039198-BC039201
93. Attached hereto as **Exhibit 90** are true and correct copies of pictures that Plaintiffs' counsel took at the BRM shelters in December 2014.
94. Attached hereto as **Exhibit 91** is a true and correct copy of portions of the August 10, 2010 deposition of Boise Police Department Officer Tom Shuler.

95. Attached hereto as **Exhibit 92** is a true and correct copy of the July 17, 2013 camping citation issued to Harold Lewis, which was produced as BC016315-BC016316.
96. Attached hereto as **Exhibit 93** is a true and correct copy of the October 9, 2012 camping citation issued to Damon McCoy, which was produced as BC016378-BC016384.
97. Attached hereto as **Exhibit 94** is a true and correct copy of the July 2, 2014 camping citation issued to Robert Gardner, which was produced as BC016295-BC016297.
98. Attached hereto as **Exhibit 95** is a true and correct copy of the May 19, 2014 camping citations issued to Jessica Ward and others, which was produced as BC016403-BC016409.
99. Attached hereto as **Exhibit 96** is a true and correct copy of the July 17, 2013 camping citation issued to Charles Webster, which was produced as BC016317-BC016318.
100. Attached hereto as **Exhibit 97** is a true and correct copy of the July 17, 2013 camping citation issued to Timothy Whitaker, which was produced as BC016319-BC019320.
101. Attached hereto as **Exhibit 98** is a true and correct copy of the July 17, 2013 camping citation issued to Joshua Wright, which was produced as BC016321-BC016322.

102. Attached hereto as **Exhibit 99** is a true and correct copy of the July 17, 2013 camping citation issued to Michael Sanders, which was produced as BC016327-BC016328.

103. Attached hereto as **Exhibit 100** is a true and correct copy of the notification sent to the Boise Police Department that Sanctuary reached capacity for men on the night of July 16, 2013, which was produced as BC042384-BC042386.

DATED this 30th day of April, 2015.


/s/
Scott Jones
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the persons listed below.

Howard A. Belodoff
IDAHO LEGAL AID SERVICES, INC.
Email: howardbelodoff@idaholegalaid.org

Krysta C. Copeland
LATHAM & WATKINS LLP
Email: krysta.copeland@lw.com

Allen Gardner
LATHAM & WATKINS LLP
Email: allen.gardner@lw.com

Brady J. Hall
MOORE & ELIA, LLP
Email: brady@mbelaw.net

Kelley K. Fleming
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Daniel I. Levy
LATHAM & WATKINS LLP
Email: daniel.levy@lw.com

Michael W. Moore
MOORE & ELIA, LLP
Email: mike@mbelaw.net

Scott B. Muir
BOISE CITY ATTORNEY'S OFFICE
Email: boisecityattorney@cityofboise.org

Eric S. Tars
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Email: etars@nlchp.org

Katherine Cheng
LATHAM & WATKINS LLP
Email: katherine.cheng@lw.com

Greer Donley
LATHAM & WATKINS LLP
Email: greer.donley@lw.com

Scott Jones
LATHAM & WATKINS LLP
Email: scott.jones@lw.com

/s/ Marguerite Sullivan