

USDC SCAN INDEX SHEET



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3:04-CV-02314 SPENCER V. SAN DIEGO CITY OF

1

CMP.

1 **SAN DIEGO VOLUNTEER LAWYER PROGRAM**

FILED

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04 NOV 18 PM 3: 14

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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12 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**

15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 GREG SPENCER; RANDALL FRENCH;)
17 MARGARET ARMSTRONG; JIMMY WARD;)
18 JEFFREY MILES; SYLVIA LIEVANOS;)
19 JUAN ALEJO; STEVEN GREER; and)
20 ROBERT YBARRA, individually and on behalf)
of themselves and all others similarly situated,)

Civil Case No.:

'04 CV 2314

BEN (WMC)

CLASS ACTION COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, AND DECLARATORY RELIEF UNDER THE UNITED STATES CIVIL RIGHTS ACT (42 U.S.C. § 1983).

Plaintiffs,

vs.

Jury Trial Demanded.

23 The CITY OF SAN DIEGO; CITY OF SAN)
24 DIEGO POLICE DEPARTMENT; and CHIEF)
25 OF POLICE WILLIAM LANSDOWNE, in his)
official capacity only,)

Defendants.

INTRODUCTION

1
2 1. The City of San Diego issues misdemeanor criminal citations for “sleeping in public”
3 to hundreds of people who have nowhere else to sleep. These citations, issued pursuant to California
4 Penal Code § 647(j), are a cruel violation of the Eighth Amendment to the United States
5 Constitution, and present the homeless with a true Hobson’s Choice: don’t sleep in public, or don’t
6 sleep at all. Sleep is a necessity, not a choice. Unless the City provides an alternative safe-zone
7 where homeless people can sleep without fear of an “illegal lodging” citation, its police force should
8 not be allowed to issue the citations.
9
10

11 2. “It was the best of times, it was the worst of times.” The contrasts of life as perceived
12 by people in different stations of society are as vivid today as when Charles Dickens penned these
13 words nearly one hundred fifty years ago. Order, we believe, is better than chaos – predictability is
14 more comfortable than the unknown. In a society that prizes beauty, youth, vigor, and success that is
15 measured by accumulation of precious things; the disheveled, the aged, the weary; those whose
16 accumulated wealth is carried in a tattered blanket, present themselves in some quarters as a
17 distraction to a desired representation of how the “best of times” should appear. They are extremely
18 bright; they suffer from mental illnesses. They are capable of causing serious physical injury or
19 death; their gentleness permits them to share their meager substance with birds that find a safe
20 harbor at their feet. In making their claim to the American Dream, they participate in publicly-
21 sponsored, government-supported celebrations from distant bridges rather than penthouses, knowing
22 that their rights that Thomas Jefferson proclaimed inviolate, being life, liberty and the pursuit of
23 happiness, are no less guaranteed to them than to those not so vulnerable because they carry
24 evidence of their station in life in their wallets rather than in a bag or worn blanket. The homeless
25 present many diverse faces. Gaining a better understanding of the daily life issues they face is
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1 necessary to judge whether relief is indicated in this case, considering at the same time the
2 requirements law enforcement officials face in performing their lawful duties.¹

3
4 3. This is an action for injunctive and declaratory relief under 42 U.S.C. § 1983, asking
5 the Court to order the city of San Diego to stop issuing illegal-lodging citations under color of Penal
6 Code §647(j) to homeless people who sleep in public, unless and until it provides an alternative
7 sleep area.

8 JURISDICTION

9
10 4. This Court has jurisdiction over this cause of action pursuant to 28 U.S.C. § 1343(a)(3)
11 and 42 U.S.C. § 1983. Venue is proper in the Southern District of California because all Defendants
12 reside in the District and all events giving rise to Plaintiffs' claims occurred in the District. The relief
13 Plaintiffs seek is within this Court's power to grant.

14 CLASS ACTION ALLEGATIONS

15
16 5. Plaintiffs bring this action against Defendants on their own behalf and on behalf of all
17 other persons similarly situated. The classes of people that Plaintiffs represent consist of all those
18 persons in the City of San Diego who are homeless and have no place to sleep other than in public,
19 who face the prospect of receiving an illegal lodging ticket, and those who are homeless and have no
20 place to sleep who have already been issued one or more citations for illegal lodging, pursuant to
21 Penal Code § 647(j).

22
23 6. The class is comprised of approximately 4,500 individuals who are homeless and living in
24 the City of San Diego, who have nowhere to sleep and who therefore have received an illegal-
25 lodging citation per Penal Code §647(j), and who face the prospect of arrest and citation under Penal
26 Code §647(j). Joining all these individuals in this lawsuit is impractical and unnecessary, but the
27

28 ¹ From *Opinion and Order, Johnson v. Board of Police Commissioners, et al.*, U.S. Dist. Court, Eastern Dist. of Missouri,
Eastern Div., Case No. 4:04CV01266 ERW, Hon. E. Richard Webber, October 14, 2004.

1 disposition of their claims in a class action will benefit the parties, this Court, the Defendants and
2 citizens of this City.

3
4 7. There is a well-defined community of interest in the questions of law and fact involved
5 affecting the parties to be represented. The class is united in its interests with respect to proof of
6 Defendants' conduct, and the alleged effects caused by Defendants' actions. The questions of law
7 and fact common to the class predominate over questions which may affect individual class
8 members, including but not limited to whether Defendants have violated 42 U.S.C. § 1983 by
9 infringing upon Plaintiffs' constitutional freedom from cruel and unusual punishment by arresting
10 them and issuing them citations for illegal lodging.
11

12 8. Plaintiffs are asserting a claim that is typical of the claims of the entire class of affected
13 persons who have no place to sleep in the City, and thus are subject to arrest and citation, and the
14 entire class of affected person who have already been arrested and received illegal lodging citations.
15 Class treatment will permit the adjudication of claims by many Class members who could not afford
16 to individually litigate their claims or vindicate their rights against the government. There are no
17 difficulties likely to be encountered in the management of this case which might preclude its
18 maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication
19 of this matter.
20

21
22 9. Plaintiffs will fairly and adequately represent the interests of the class, and they have no
23 interests antagonistic to those of the class. Indeed, Plaintiffs' interests are aligned with those of the
24 class members. Plaintiffs have retained lawyers who are competent and experienced in class action
25 litigation.
26

27 10. The class of people whom Plaintiffs represent is in need of the relief sought herein, as its
28 members have been or will be damaged and adversely affected by the issuance of illegal lodging

1 citations by Defendants in light of Defendants' failure to provide or identify alternatives. In
2 addition, Defendants' practice of issuing misdemeanor criminal citations for "sleeping in public" to
3 people who have nowhere else to sleep wastes valuable and precious tax dollars, diverts the Police's
4 and City's attentions from other more serious issues, steals precious money from the homeless in the
5 form of meaningless fines which they cannot afford, and by incarcerating the homeless takes-up
6 valuable jail space which could be used to house truly dangerous criminals.
7

8 IDENTIFICATION OF PARTIES

9
10 11. Plaintiff GREG SPENCER is a resident of San Diego, California. He is a homeless
11 individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C.
12 §11301 et seq., inasmuch as he lacks a fixed, regular and adequate nighttime residence. On October
13 11, 2004 and November 9, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for
14 "illegal lodging" in the area of 1200 K Street, San Diego. He was honorably discharged from the
15 Navy in 1989. On the dates he received these citations, he had nowhere to sleep but in a public
16 place, inasmuch as local homeless shelters were reported "full."
17

18 12. Plaintiff RANDALL FRENCH is a resident of San Diego, California. He is a homeless
19 individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C.
20 §11301 et seq., inasmuch as he lacks a fixed, regular and adequate nighttime residence. On
21 September 28, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for "illegal
22 lodging" in the area of 1400 Island Avenue, San Diego. He was honorably discharged from the
23 Marines in 1993. On the date he received this citation, he had nowhere to sleep but in a public place,
24 inasmuch as local homeless shelters were reported "full."
25

26
27 13. Plaintiff MARGARET ARMSTRONG is a resident of San Diego, California. She is a
28 homeless individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42

1 U.S.C. §11301 et seq., inasmuch as she lacks a fixed, regular and adequate nighttime residence. On
2 October 17, 2004; October 20, 2004; October 27, 2004; and November 8, 2004 the Defendants cited
3 her pursuant to Penal Code Section 647(j) for "illegal lodging" in the area of 1800 Commercial
4 Street, San Diego. On the dates she received these citations, she had nowhere to sleep but in a public
5 place, inasmuch as local homeless shelters were reported "full."
6

7 14. Plaintiff JIMMY WARD is a resident of San Diego, California. He was at all relevant
8 times a homeless individual as the term is defined in the Stewart B. McKinney Homeless Assistance
9 Act, 42 U.S.C. §11301 et seq., inasmuch as he lacked a fixed, regular and adequate nighttime
10 residence. In September, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for
11 "illegal lodging" in the area of 13TH and L Streets, San Diego. On the date he received this citation,
12 he had nowhere to sleep but in a public place, inasmuch as local homeless shelters were reported
13 "full" and he was on the waiting list at St. Vincent de Paul.
14

15 15. Plaintiff JEFFREY MILES is a resident of San Diego, California. He is a homeless
16 individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C.
17 §11301 et seq., inasmuch as he lacks a fixed, regular and adequate nighttime residence. On October
18 17, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for "illegal lodging" in the
19 area of I-5 and 17th Street, San Diego. He was honorably discharged from the Navy in 1989. On the
20 date he received this citation, he had nowhere to sleep but in a public place, inasmuch as local
21 homeless shelters were reported "full."
22

23 16. Plaintiff SYLVIA LIEVANOS is a resident of San Diego, California. She is a
24 homeless individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42
25 U.S.C. §11301 et seq., inasmuch as she lacks a fixed, regular and adequate nighttime residence. On
26 July 14, 2004 the Defendants cited her pursuant to Penal Code Section 647(j) for "illegal lodging" in
27
28

1 the area of 1500 Commercial Avenue, San Diego. On the date she received this citation, she had
2 nowhere to sleep but in a public place, inasmuch as local homeless shelters were reported "full."

3
4 17. Plaintiff JUAN ALEJO is a resident of San Diego, California. He is a homeless
5 individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C.
6 §11301 et seq., inasmuch as he lacks a fixed, regular and adequate nighttime residence. On October
7 27, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for "illegal lodging" in the
8 area of 1800 Commercial Avenue, San Diego. On the date he received this citation, he had nowhere
9 to sleep but in a public place, inasmuch as local homeless shelters were reported "full."
10

11 18. Plaintiff STEVEN GREER is a resident of San Diego, California. He is a homeless
12 individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C.
13 §11301 et seq., inasmuch as he lacks a fixed, regular and adequate nighttime residence. On October
14 1, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for "illegal lodging" in the
15 area of 2100 Morley Field, San Diego. On the date he received this citations, he had nowhere to
16 sleep but in a public place, inasmuch as local homeless shelters were reported "full."
17

18 19. Plaintiff ROBERT YBARRA is a resident of San Diego, California. He is a homeless
19 individual as the term is defined in the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C.
20 §11301 et seq., inasmuch as he lacks a fixed, regular and adequate nighttime residence. On October
21 27, 2004 the Defendants cited him pursuant to Penal Code Section 647(j) for "illegal lodging" in the
22 area of 1800 Imperial Avenue, San Diego. On the date he received this citation, he had nowhere to
23 sleep but in a public place, inasmuch as local homeless shelters were reported "full."
24

25 20. Defendant CITY OF SAN DIEGO is now, and at all times mentioned in this complaint
26 was, a local governmental agency and subdivision of the State of California. Defendant CITY OF
27 SAN DIEGO, through its agents the City Council, City Attorney, City Manager, Police Department,
28

1 and Police Chief, undertakes to arrest and cite people pursuant to Section 647(j) of the California
2 Penal Code within its territorial boundaries.

3
4 21. Defendant CITY OF SAN DIEGO POLICE DEPARTMENT is the city's law-
5 enforcement department, and WILLIAM LANSDOWNE is the CITY's Chief of Police. Article V,
6 Section 57 of the City Charter of the CITY OF SAN DIEGO provides for the establishment of the
7 CITY's Police Department, led by a Chief of Police appointed by the City Manager and confirmed
8 by a majority of the City Council. The City Charter mandates that the CHIEF OF POLICE shall
9 appoint, direct and supervise the personnel of the department and exercise all powers and duties
10 provide by general laws or by ordinance of the City Council. These laws include, but are not limited
11 to, Penal Code §647(j). The DEPARTMENT's Mission Statement is "maintain peace and order by
12 providing the highest quality police services in response to community needs by
13 Apprehending Criminals, Developing Partnerships, and Respecting Individuals." Mr.
14 LANSDOWNE is sued only in his official capacity.

15 16 17 FACTUAL ALLEGATIONS

18 22. According to the July 2004 RTFH Regional Homeless Profile, the City of San Diego has
19 only about 2,019 year-round homeless beds, while the number of "homeless people" in the City of
20 San Diego is about 4,458. With the construction of the new Baseball park and the attendant
21 designation of its immediate and neighboring area (commonly known as "East Village") as
22 "redevelopment zones," the Defendants have adopted a custom, practice and policy of citing,
23 arresting, and otherwise interfering with homeless people for sitting or sleeping, two essential daily
24 activities of life, in public within the City, where these individuals are forced to live. Beginning in
25 2001, Defendants' "illegal lodging" citations doubled in number over the prior year. From May,
26 2002 to April 2003 alone Defendants issued 773 illegal-lodging tickets pursuant to Penal Code
27
28

1 §647(j). Plaintiff and the class have been, and continue to be, cited, arrested, and charged with
2 illegal lodging pursuant to California Penal Code § 647(j). At the same time, the local homeless
3 shelters (i.e., St. Vincent De Paul, Rachel's Women's Center, VOA, Rescue Mission) have been
4 filled to the brim, turning away Plaintiffs and the class members. Plaintiffs and the class have been
5 and will be arrested and cited by the Defendants solely because they sit or sleep in public places.
6

7 23. From June 2001 – July 2002, nearly 4200 people contacted the Info Line of San Diego
8 County seeking nighttime shelter. Of those individuals, 3,798 were turned away because the shelters
9 were full. The following year, 3,884 were turned away, while 3,758 were referred to shelters.
10

11 24. In the same year, 2,641 individuals were arrested and/or cited pursuant to § 647(j) in the
12 City's Downtown Central Division alone. Thus, almost half of the people turned-away from the
13 shelters were arrested and/or cited for illegal lodging (the arrest figures, however, do not include any
14 area other than the Central Division).
15

16 25. At the time of their arrests for "illegal lodging," Plaintiffs and the class members were
17 not posing a safety hazard to themselves or others. Plaintiffs were and are involuntarily homeless,
18 with no available shelter or lodging accommodations, and intend to and must sleep or lodge outside,
19 in public, unsheltered, and have been and/or will be in the future arrested and cited therefor. The
20 statute and its enforcement by Defendants as set forth herein is an attempt by Defendant to deter
21 Plaintiffs and the class from performing the necessary life function of sleeping, which deterrence is
22 impossible. Plaintiffs and the class members have been prosecuted and will continue to be
23 prosecuted for engaging in, or attempting to engage in, such activity. Defendants' actions are likely
24 to threaten the already precarious existence of Plaintiffs and the class, by imposing or forcing upon
25 them health and safety hazards as well as economic and social hardship.
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1 26. The above-mentioned actions by Defendants have caused and will continue to cause great
2 humiliation, psychological, physical and emotional suffering, degradation, pain and injury, financial
3 loss, and loss of liberty and freedom to Plaintiffs and the class they represent. Defendants' actions
4 pose a dangerous health risk to Plaintiffs and the class, and, as a result, to the general public. Sleep
5 is a medical and physical necessity. Studies in individuals deprived of sleep have shown that after
6 just 24 hours of sustained wakefulness, the metabolic activity of the brain decreases significantly (up
7 to 6% for the whole brain and up to 11% for specific cortical and basal ganglionic areas). In
8 humans, sleep deprivation also results in a decrease in core body temperature, a decrease in immune
9 system function (as measured by white cell count and activity), and a decrease in the release of
10 growth hormone. Sleep deprivation also has been implicated as a cause of increased heart-rate
11 variability. With decreased sleep, higher-order cognitive tasks are affected early and
12 disproportionately. Tests requiring both speed and accuracy demonstrate considerably-slowed speed
13 before accuracy begins to fail. Total sleep duration of 7 hours per night over 1 week has resulted in
14 decreased speed in tasks of both simple reaction time and more demanding computer-generated
15 mathematical problem solving. Total sleep duration of 5 hours per night over 1 week shows both
16 decrease in speed and the beginning of accuracy failure. Total sleep duration of 7 hours per night
17 over 1 week leads to impairment of cognitive work requiring simultaneous focus on several tasks. In
18 driving simulations, for example, accidents increase progressively as total sleep duration is
19 decreased to 7, 5, and 3 hours per night over 1 week. In the same simulations, 3 hours total sleep
20 duration was associated with loss of ability to simultaneously appreciate peripheral and centrally-
21 presented visual stimuli. In tasks requiring judgment, increasingly risky behaviors emerge as the
22 total sleep duration is limited to 5 hours per night. The high cost of an action seemingly is ignored
23 as the sleep-deprived individual focuses on limited benefit. Glucose-PET studies show that
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1 individuals deprived of sleep for 24 hours have a decrease in metabolism in the prefrontal and
2 parietal associational areas. The areas most important for judgment, impulse control, attention, and
3 visual association are disproportionately hypometabolic compared to the primary sensory and motor
4 areas necessary for receiving and acting upon the environmental inputs. This indicates that the areas
5 of the brain most responsible for higher-order cognition are to some degree less functional during
6 sleep-deprived waking activity. Sleep deprivation is a relative concept. Small amounts of sleep loss
7 (eg, 1 hour per night over many nights) have subtle cognitive costs, which appear to go unrecognized
8 by the individual experiencing the sleep loss. More severe restriction of sleep for even a week leads
9 to profound cognitive deficits similar to those seen in some stroke patients, which also appear to go
10 unrecognized by the individual.

11
12
13 27. On October 25, 2004 Defendants received a Freedom of Information Act request
14 seeking the following information: With the shelters full, where in the City of San Diego tonight can
15 a homeless person go and sleep without fear of receiving an illegal lodging ticket? The City has
16 been unable to answer this question.

17
18 **FIRST CAUSE OF ACTION**
19 ***Cruel & Unusual Punishment***
20 ***In Violation of the 8TH Amendment To***
21 ***The Constitution of the United States***

22 28. Plaintiffs incorporate the allegations of ¶¶ 1 through 27.

23 29. Forces beyond the Plaintiffs' control, such as unemployment, poverty, and the wanton
24 failure of the Defendant to provide alternatives, including but not limited to those which may be
25 mandated by law, have compelled the Plaintiffs and others to live and sleep in public.

26 30. Sleeping is necessary to the maintenance of life. It constitutes an involuntary
27 manifestation of the Plaintiffs' status as homeless.

1 31. The Defendants' pattern of citing, arresting, and fining or incarcerating (or both)
2 involuntarily homeless individuals for sleeping in public, performed under color of state law by the
3 Defendant, constitutes punishment of Plaintiffs based on their status as homeless persons, and as
4 such, is cruel and unusual punishment in violation of the Eighth Amendment to the United States
5 Constitution.
6

7 **SECOND CAUSE OF ACTION**
8 **Declaratory Relief (CCP §1060)**

9 32. Plaintiffs incorporate the allegations of ¶¶1 through 31.

10 33. An actual controversy exists between Plaintiffs and the class members on the one
11 hand, and Defendants on the other, as to whether Defendants have violated 42 U.S.C. § 1983 by
12 inflicting cruel and unusual punishment upon Plaintiffs by punishing status by issuing illegal lodging
13 citations.
14

15 34. Section 1060 of the Code of Civil Procedure provides that any person who desires a
16 declaration of his rights or duties with respect to another may seek a declaration of those rights or
17 duties.
18

19 35. Plaintiff is and represents persons desiring a declaration of their rights and duties with
20 respect to Defendants, within the meaning of Section 1060 of the Code of Civil Procedure because,
21 among other reasons, Plaintiffs are, and represent the interests of, homeless residents and taxpayers
22 in the defendant CITY OF SAN DIEGO directly affected by Defendants' actions and failures to act.
23

24 36. Plaintiffs desire a judicial determination of the rights and duties of Defendants, and of
25 their compliance or non-compliance with 42 U.S.C § 1983. Such declaration is necessary and
26 appropriate at this time in order that Defendants can comply with their duties, and so that the rights,
27 health and safety of Plaintiffs, class members and the public can be protected.
28

THIRD CAUSE OF ACTION
Injunctive Relief (CCP §§526(a) & 527)

37. Plaintiffs incorporate the allegations of ¶¶1 through 36.

38. As class members, injunctive relief is available to Plaintiffs pursuant to Code of Civil Procedure section 526(a), and 527 prior to class certification.

39. Unless and until Defendants are enjoined by order of this Court from failing to comply with their obligations under the law, and enjoined from issuing citations pursuant to Penal Code §647(j) in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, and until Defendants are commanded to comply with their obligations to refrain from issuing such citations unless and until an alternative is available to Plaintiffs and class members as set forth above, Plaintiffs and class members are suffering and will suffer great and irreparable injury will Plaintiffs and the general public in that, among other things:

- a. Plaintiff and the class members will be deprived of rights under Federal law;
- b. Plaintiffs will suffer injury which cannot adequately be remedied by pecuniary compensation;
- c. Plaintiffs will suffer injuries which will be extremely difficult if not impossible to quantify; and,
- d. The important rights protected by the eighth amendment may be forever compromised and lost because continued actions as set forth herein will deprive Defendant of the ability to identify constitutionally prohibited punishment based on an individual's status.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a declaration that Defendants have violated Plaintiffs' rights and the rights of the class members by inflicting cruel and unusual punishment upon them by issuing illegal lodging citations under Penal Code §647(j) in violation of 42 U.S.C. § 1983;

1 2. For a preliminary and permanent injunction enjoining Defendants and their agents,
2 servants and employees and all other persons acting under and concert with or for them from issuing
3 illegal lodging citations and thereby violating 42 U.S.C. §1983;
4

5 3. For Plaintiffs' attorneys fees and costs of suit incurred in this matter as provided by
6 Government Code §800 and Code of Civil Procedure §1021.5 and as otherwise provided by law;
7 and,
8

9 4. For such other relief as the Court deems just and proper.

10 Respectfully Submitted,

11 **SAN DIEGO VOLUNTEER LAWYER**
12 **PROGRAM**

13 **COHELAN & KHOURY**
14 Timothy D. Cohelan

15 - and -

16 **DREHER LAW FIRM**
17 Robert Scott Dreher

18
19 Dated: November 18, 2004

20 By:

21 
22 _____
23 Attorneys for Plaintiffs

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JS44

(Rev. 07/99)

CIVIL COVER SHEET

04 CV 2314 BEN (M/C)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Greg Spencer; Randall French;
Margaret Armstrong; Jimmy Ward;
Jeffrey Miles; et al.

DEFENDANTS

The City of San Diego; City of San Diego Police Dept.;
Chief of Police [unclear] [unclear]

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY CALIFORNIA)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED BY: DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Scott Dreher
DREHER LAW FIRM, 835 Fifth Ave., Ste.
202, San Diego, CA 92101
(619) 230-8828

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

SEE ATTACHMENT

28:1331ev GP

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veterans Benefits 160 Stockholders Suits 190 Other Contract 195 Contract Product Liability 	<p>PERSONAL INJURY</p> <ul style="list-style-type: none"> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury <p>PERSONAL INJURY</p> <ul style="list-style-type: none"> 362 Personal Injury-Medical Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <ul style="list-style-type: none"> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability 	<ul style="list-style-type: none"> 610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC881 630 Liquor Laws 640 RR & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other <p>LABOR</p> <ul style="list-style-type: none"> 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act 	<ul style="list-style-type: none"> 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <ul style="list-style-type: none"> 820 Copyrights 830 Patent 840 Trademark <p>SOCIAL SECURITY</p> <ul style="list-style-type: none"> 861 HIA (13958) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(e)) <p>FEDERAL TAX SUITS</p> <ul style="list-style-type: none"> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609 	<ul style="list-style-type: none"> 400 State Reappointment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 810 Selective Service 850 Securities/Commodities Exchange 875 Customer Challenge, 12 USC 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State 890 Other Statutory Actions
<p>REAL PROPERTY</p> <ul style="list-style-type: none"> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Tort to Land 245 Tort Product Liability 290 All Other Real Property 	<p>CIVIL RIGHTS</p> <ul style="list-style-type: none"> 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 440 Other Civil Rights 	<p>PRISONER PETITIONS</p> <ul style="list-style-type: none"> 510 Motions to Vacate Sentence Habeas Corpus 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prisoner Conditions 		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$ injunctive relief

Check YES only if demanded in complaint; JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 11/18/04

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

11/18/04 \$150,000 [Signature]

Greg Spencer, et al. v. The City of San Diego, et al.
United States District Court, Southern District of California

ATTACHMENT TO CIVIL COVER SHEET

The City of San Diego issues misdemeanor criminal citations for “sleeping in public” to hundreds of people who have nowhere else to sleep. These citations, issued pursuant to California Penal Code § 647(j), are a cruel violation of the Eighth Amendment to the United States Constitution, and present the homeless with a true Hobson’s Choice: don’t sleep in public, or don’t sleep at all.