

1 Ognian Gavrilov (CA Bar No. 258583)
Michael Coleman (CA Bar No. 295462)
2 Gavrilov & Brooks
3 2315 Capitol Avenue
Sacramento, CA 95816
4 Telephone: (916) 504-0259
ognian@gavrilovlaw.com
5 mcoleman@gavrilovlaw.com

6 Ilan Wurman (CA Bar No. 295520)
Stephen W. Tully (Pro hac vice forthcoming)
7 Tully Bailey LLP
8 5230 East Shea Blvd., Ste 230
Scottsdale, AZ 85254
9 Telephone: (480) 744-5037
iwurman@tullybailey.com
10 stully@tullybailey.com

11 Attorneys for Plaintiffs

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15 ACME SCENERY COMPANY, INC.;
16 BAVARIAN PROFESSIONALS; CHAIM,
17 LLC d/b/a COVENANT WINERY; KATHY
DENNISON; FAR WEST BREWING LLC
18 d/b/a FIELDWORK BREWING; JEFFREY
GEIER; KJD INVESTMENTS LLC; RIO
19 MOBILITY LLC; and EMILY WINSTON,

20 Plaintiffs,

21 v.

22 CITY OF BERKELEY, a municipal entity,

23 Defendant.

Case No.:

COMPLAINT FOR:

1. **Enjoinder of Public Nuisance**
(Cal. Civ. Code §§ 3490 *et seq.*)
2. **Enjoinder of Private Nuisance**
(Cal. Civ. Code §§ 3501 *et seq.*)

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1 **COMPLAINT**

2 1. Plaintiffs Acme Scenery Company Inc., Bavarian Professionals, Chaim LLC d/b/a
3 Covenant Winery, Kathy Dennison, Far West Brewing LLC d/b/a Fieldwork Brewing, Jeffrey
4 Geier, KJD Investments LLC, Rio Mobility LLC, and Emily Winston, file this Complaint against
5 Defendant City of Berkeley (the “City”) for injunctive relief and allege as follows:

6 **INTRODUCTION**

7 2. This case is about whether the City of Berkeley, when acting as a landowner, must
8 follow the same nuisance laws that any private landowner must follow, and whether it owes an
9 obligation to its citizens, enforceable by mandamus and injunctive relief, to maintain its streets and
10 other rights of way free of obstructions so that the public may access and use these public rights for
11 which they pay taxes. The answer to both questions is yes.

12 3. For the past few years, the City has invited, permitted, and/or maintained a sprawling
13 public encampment of tents and RVs on Harrison Street between Fifth and Ninth streets, as well as
14 off of Harrison Street along Fifth, Sixth, Seventh, Eighth, and Ninth Streets (“Harrison
15 Encampment”).

16 4. The City has also invited, permitted, and/or maintained public encampments parallel
17 to Harrison Street just to the north, along Codornices Creek between the railroad tracks to the west
18 of Fourt Street and Eighth Streets (“Codornices Encampment”).

19 5. For the past few years, the City has invited, permitted, and/or maintained a sprawling
20 public encampment of tents and RVs in the Lower Dwight neighborhood, on Dwight Way between
21 Fourth and Sixth streets (“Lower Dwight Encampment”).

22 6. Upon information and belief, the City of Berkeley initially allowed these
23 encampments because of its erroneous interpretation of a decision from the U.S. Court of Appeals
24 for the Ninth Circuit, *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), amended on denial of
25 reh’g, 920 F.3d 584 (9th Cir. 2019), which decision was subsequently extended in *Johnson v. City*
26 *of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), amended on denial of reh’g, 72 F.4th 868 (9th Cir.
27 2023). Both those cases held that a City may not criminalize public camping only when there is no
28 alternative space available for those camping.

1 7. Even though the *Boise* and *Grants Pass* decisions did not allow, let alone require,
2 that the City permit encampments in such a way that they constitute a public nuisance, the City
3 permitted and even invited the encampments on Harrison and Lower Dwight knowing they would
4 be public nuisances.

5 8. The City allowed encampments to remain even though shelter was available and
6 often refused by the individuals camping. Indeed, the 2023 annual point-in-time count demonstrated
7 that there were 877 more beds in emergency shelters and supportive housing units than there were
8 people experiencing homelessness in the Alameda County Continuum of Care (“CoC”).

9 9. In 2024, the United States Supreme Court reversed the Ninth Circuit’s *Boise* and
10 *Grants Pass* decisions. *City of Grants Pass v. Johnson*, 603 U.S. __ (June 28, 2024). The Supreme
11 Court made clear that municipalities are permitted to remove public encampments whether or not
12 there is sufficient alternative space available for those camping.

13 10. Despite the Supreme Court’s decision, the City of Berkeley is continuing to maintain
14 and permit the encampments on Harrison, Codornices Creek, and Lower Dwight. The following
15 photograph illustrates just one section of the Harrison Street encampment taken after the Supreme
16 Court’s recent decision, and just after the City engaged in a “clean up,” from street to curb only, of
17 the encampment:



1 11. The Plaintiffs have tried for years to work with the City in good faith on these issues.
2 Despite these efforts, the City has failed to ameliorate the conditions in their neighborhoods.

3 12. Upon information and belief, the City of Berkeley refuses to act in part because it
4 fears litigation by advocates on behalf of the unsheltered and those living in RVs.

5 13. The conditions in these neighborhoods, however, constitute illegal public and private
6 nuisances for which the City is liable.

7 14. It is time for the residents, businesses, and property owners of the City of Berkeley
8 to be heard and for the City and the courts to enforce their rights.

9 15. Plaintiffs seek a court order requiring the City to follow the law and remove the
10 encampments so that their neighborhoods may be free of public and private nuisance conditions.

11 **JURISDICTION AND VENUE**

12 16. Venue is proper in this Court pursuant to California Code of Civil Procedure Section
13 394 because Defendant the City of Berkeley is situated in this district. Venue is further proper in
14 this Court because the omission or commission of acts and violations of law by Defendant as alleged
15 in this Complaint occurred within the City of Berkeley, County of Alameda, State of California.

16 17. Jurisdiction is proper in this Court because Defendants have contributed to the
17 creation of a public nuisance in California and Plaintiffs have the right and authority pursuant to
18 California Code of Civil Procedure Section 731 to seek abatement of that nuisance.

19 **PARTIES**

20 **Plaintiffs**

21 18. Acme Scenery Company Inc. is a business located at 2451 Fifth Street in Berkeley.

22 19. Bavarian Professionals is a business located at 1218 7th Street in Berkeley.

23 20. Chaim, LLC, owns and operates Covenant Winery, a business located at 1102 Sixth
24 Street in Berkeley.

25 21. Kathy Dennison own properties at 1218 and 1220 7th Street in Berkeley.

26 22. Far West Brewing LLC owns and operates Fieldwork Brewing, a business located at
27 1160 6th Street in Berkeley.

1 **The City has shelter to offer.**

2 33. The City has shelter to offer the residents of the Harrison Street encampments.

3 34. According to the City Manager, the City has offered shelter to individual residents
4 of this encampment on 230 individual occasions between September 2021 and February 2024.

5 35. In the 2023 annual point in time count, there were 8,949 people recorded as
6 experiencing homelessness, sheltered or unsheltered, in the Alameda County CoC. U.S. Department
7 of Housing and Urban Development, The 2023 Annual Homelessness Assessment Report (AHAR)
8 to Congress, at 35 (<https://www.huduser.gov/portal/sites/default/files/pdf/2023-ahar-part-1.Pdf>).

9 36. In the 2023 annual point in time count, there were 9,826 year-round beds in
10 emergency shelter and supportive housing units available. HUD 2023 Continuum of Care Homeless
11 Assistance Programs Housing Inventory Count Report,
12 https://files.hudexchange.info/reports/published/CoC_HIC_CoC_CA-502-2023_CA_2023.pdf.

13 37. There were more shelter beds and supportive housing units in the Alameda County
14 CoC in 2023 than there were people experiencing homelessness.

15 38. Despite the availability and offers of shelter, the individuals at the Harrison Street
16 encampments routinely refuse these offers.

17 39. Assistant to the City Manager Peter Radu wrote in an email in 2023, respecting the
18 Harrison Street encampment, that “[o]ur several efforts to clean and close it over the last year have
19 repeatedly demonstrated that unless we have non time-limited, noncongregate shelter resources (like
20 motel rooms) for the residents there, they either will not leave, or if they do, they will return within
21 days.”

22 40. There is no legal requirement for an unsheltered individual to be offered a non-time-
23 limited, noncongregate shelter before the City, as landowner, may demand the removal of persons
24 on its lands who create a public or private nuisance.

25 41. After the Supreme Court’s *Grants Pass* decision, there is no legal requirement that
26 any individual be provided any alternative housing before a municipality, as landowner, may
27 demand the removal of persons on its lands.

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1 42. Despite the availability of shelter for individuals in the Harrison Street encampments,
2 the City makes no effort to remove the encampments even when offers of shelter are refused.

3 43. At the end of 2023 and beginning of 2024, the City of Berkeley even offered
4 everyone in the encampment non-congregate shelter in a Super 8 motel.

5 44. Many encampment residents still refused to comply with the law and to decamp from
6 their illegal encampments.

7 45. Upon information and belief, encampment residents refuse shelter on the advice of
8 advocates, including from the Where Do We Go? organization in Berkeley.

9 46. Upon information and belief, the City is threatened with litigation by organizations
10 such as Where Do We Go? and/or the East Bay Community Law Center whenever the City wants
11 to clean up the encampments.

12 47. For example, the Berkeley City Manager wrote in a memorandum dated February
13 20, 2024, that even when the City has offered non-congregate shelter in a Super 8 motel, they were
14 threatened with litigation.

15 48. In that memorandum, the City Manager wrote, “[D]espite having non-congregate
16 shelter beds dedicated to this encampment, nearly every effort that the City has made to resolve
17 portions of the encampment have been met with significant opposition and/or legal challenges.”

18 49. In other words, even when the City does offer non-congregate shelters, the
19 encampment residents are either coached to decline them, or the City is threatened with frivolous
20 litigation.

21 50. The City also sought “summary abatement” of the “imminent . . . public health and
22 safety hazards on Harrison St between 7th St and 8th St” on September 6, 2023, but the East Bay
23 Community Law Center and an organization called Disability Rights Advocates sued the City.

24 51. On September 27, 2023, U.S. District Judge Edward M. Chen denied the plaintiffs
25 in that case a preliminary injunction. *Prado v. City of Berkeley*, 23-cv-04537-EMC (N.D. Cal. Sept.
26 27, 2023).

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1 52. As another example, pro se plaintiffs filed another lawsuit on December 11, 2023,
2 and Judge Edward Chen initially issued a TRO but then dissolved it. *Parnell v. City of Berkeley*, 23-
3 cv-06379-EMC (N.D. Cal. Dec. 22, 2023).

4 53. Even after the U.S Supreme Court’s *Grants Pass* decision, it has become clear that
5 the City does not intend to take enforcement actions against residents of the encampment because
6 of (1) threats of litigation and (2) true belief among some members of the Berkeley City Council
7 that the encampment residents have a “right” to be there.

8 54. A court order is therefore necessary to confirm the right of Berkeley residents,
9 businesses, and property owners to be free of nuisance conditions on their streets and to have access
10 to the public rights of way adjoining their homes and businesses.

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12 **The Harrison/Codornices Encampments create a public nuisance.**

13 55. The encampments along the public rights of way on Harrison Street obstruct
14 sidewalk access on Harrison between Fifth Street and Ninth Street, as well as along Fifth, Sixth,
15 Seventh, Eighth, and Ninths Streets near their intersections with Harrison Street.

16 56. The encampments along the public rights of way on Harrison Street also routinely
17 obstruct street access and impede traffic on Harrison Street between Fifth Street and Ninth Street.

18 57. Drug use and drug paraphernalia are regularly seen and associated with the Harrison
19 Encampment.

20 58. In one email, City officials wrote that “individuals at that encampment struggle
21 significantly with mental health and substance use issues and need constant monitoring which the
22 City is simply unable to provide.”

23 59. Residents of the Harrison Encampment regularly urinate and defecate in public,
24 including on Plaintiffs’ properties.

25 60. In a memorandum dated February 20, 2024, the City Manager, Dee Williams-Ridley,
26 wrote, “The encampments in and around 8th and Harrison Streets in Northwest Berkeley have
27 persistently posed serious health and safety concerns to the residents of the encampments as well as
28 their neighbors, who include both residents and merchants. They have also contributed to public

1 infrastructure damage (damaged and inoperable street lights, damaged sidewalks and street tree
2 wells, dead or dying city trees, etc.) in the area.”

3 61. The City Manager added: “The encampments in this corridor of the city have, for
4 several years, posed both very dangerous living conditions for the people living in them, and serious
5 impacts to the neighboring businesses, residents, and general public.”

6 62. The City Manager added that “largely due to the presence of the encampment, the
7 corridor has seen significant damage to public infrastructure, (including inoperable city streetlights;
8 damaged city sidewalks; damaged tree wells and dead or dying city street trees) that have gone
9 unrepaired.”

10 63. Ms. Williams-Ridley’s memorandum effectively concedes that the Harrison Street
11 encampment creates a public nuisance.

12 64. The memorandum further specified that between September 2021 and February
13 2024, the City had removed approximately 200,000 pounds of debris from this encampment.

14 65. On August 31, 2023, the Assistant to the City Manager drafted a memorandum to the
15 City Manager recommending an immediate declaration of nuisance and summary abatement of the
16 Harrison Street encampment.

17 66. The Assistant to the City Manager wrote, “Nevertheless, and despite these numerous
18 efforts, for months (and at present) the [Homeless Response Team] continues to observe dead
19 animals, open food sources and spoiled food, used uncapped drug needles, combustible materials
20 like flammable gas containers inside unsafe wooden structures, bottles of urine, human feces, animal
21 feces, soiled clothing and sheltering material, and other unidentifiable liquid and waste products. In
22 addition, the large accumulation of debris and ad-hoc sheltering structures has completely blocked
23 the sidewalk and extended into the roadway, creating numerous concerning fire and traffic safety
24 hazards.”

25 67. The August 31, 2023, memorandum is a concession that nuisance conditions exist at
26 the Harrison Street encampment.

27 68. Dangerous fires routinely occur at the Harrison Encampment.
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1 69. According to an August 30, 2023, memorandum from the Fire Prevention Inspector
2 of the Berkeley Fire Department, between January 1, 2023, and August 28, 2023, there were 29 fire
3 incidents stemming from the Harrison Encampment.

4 70. On August 23, 2023, a joint inspection of the north side of Harrison Street between
5 Seventh and Eighth Streets by the Fire Prevention, Homeless Response Team, and Environmental
6 Health departments identified “multiple fire and building code violations,” including of Berkeley
7 Fire Code sections 112.1, 304.1, and 315.4, and the Berkeley Building Code section 602 and Chapter
8 23 of the code involving wood.

9 71. These violations include unlawfully “[c]onstructing and maintaining” structures, and
10 “[c]ombustible materials are being stored” too close to lot lines.

11 72. The Fire Prevention Inspector wrote, “The number and types of calls combined with
12 the observed code violations are sufficiently concerning for the Berkeley Fire Department to
13 recommend that the encampments on the north side of Harrison St. be abated summarily. This action
14 will significantly reduce the likelihood of severe injury or death from fire, as well as reduce the
15 likelihood of substantial damage to property and public infrastructure.”

16 73. The memorandum included the following photographs:



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1 74. These photographs are representative of conditions in the Harrison Encampment
2 today.

3 75. Also on August 30, 2023, Ron Torres, the Environmental Health Division Manager
4 drafted a memorandum to the Assistant to the City Manager Peter Radu in which he concluded that
5 the area posed “an imminent health hazard, particularly findings of used syringes, areas where raw
6 sewage was observed and the proliferation of rat burrows all along the Harrison St corridor.”

7 76. Mr. Torres included photographs of rodent burrows.

8 77. Mr. Torres included a photograph with the caption, “storm drain with birdseeds and
9 odors indicative of human waste.”

10 78. Another photo was captioned “putrid waste.”

11 79. Another set of photos depicted “the presence of . . . used hypodermic needles”:

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Imminent Health Hazard

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Note: the presence of the used hypodermic needles are of utmost concern in this area of the Harrison St corridor

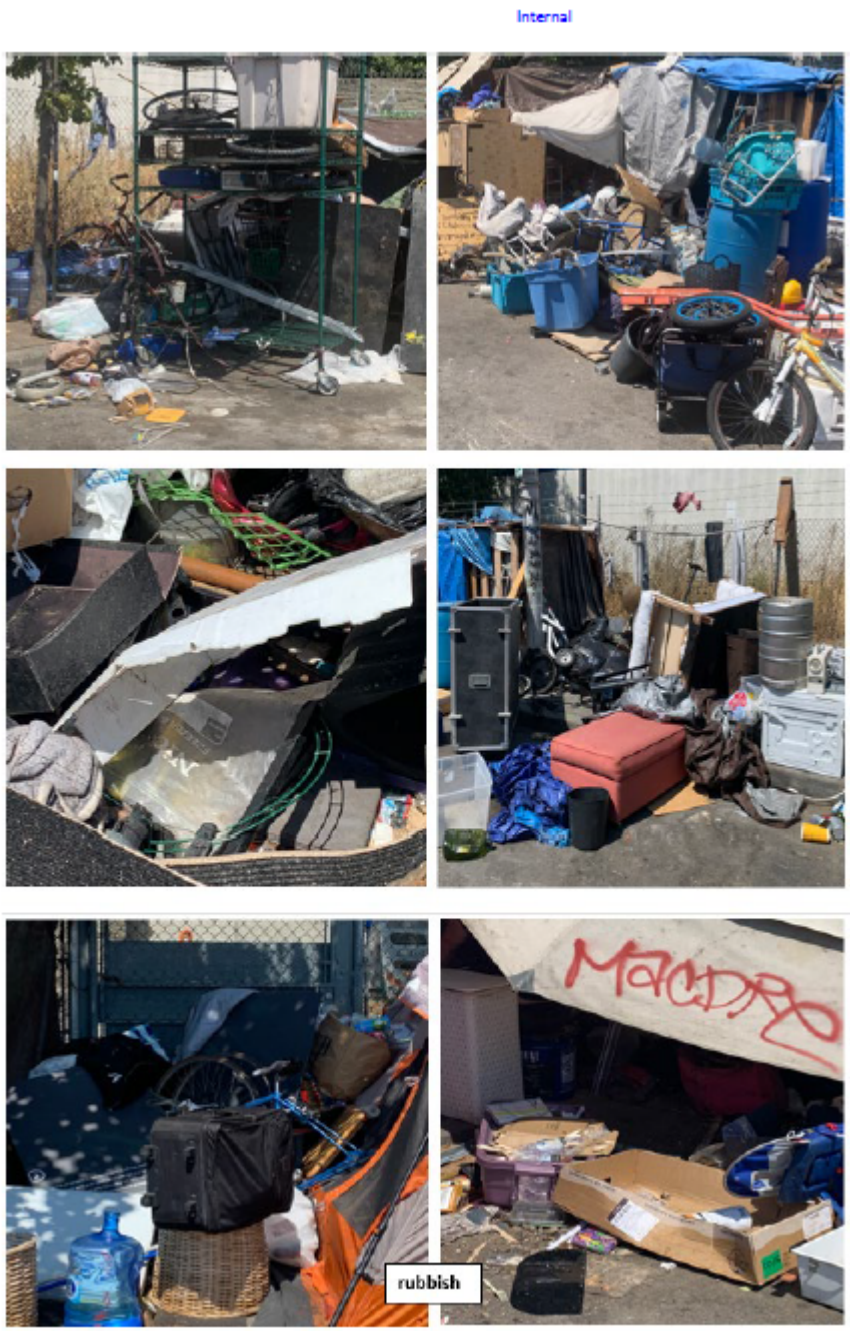
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80. Another photograph was captioned “flies with strong odors indicative of dead rodents.”

81. Additional photographs of the encampment were provided:



1 82. Another photograph depicted dog feces.

2 83. The memorandum listed violations of Berkeley Municipal Code §§ 11.32.050
3 (“Rodent harborage—Maintenance prohibited.”), 11.32.070 (“Accumulations creating rodent
4 harborage prohibited.”), 36.030 (“Imminent health hazards designated.”); 11.20.30 (“No matter
5 other than stormwater may be discharged into the storm drain system.”), and 17.20.050
6 (“Affirmative duty to prevent contamination of stormwater by pollutants.”).

7 84. The memorandum listed other violations of the fire code.

8 85. On July 20, 2023, Assistant to the City Manager Peter Radu wrote a memorandum
9 about the Harrison Street encampments in which he wrote, “[F]or months the HRT [Homeless
10 Response Team] has repeatedly observed dead animals, open food sources and spoiled food, used
11 uncapped drug needles, bottles of urine, human feces, animal feces, soiled clothing and sheltering
12 material, and other unidentifiable liquid and waste products. In addition, the large accumulation of
13 debris and ad-hoc sheltering structures has completely blocked the sidewalk and extended into the
14 roadway, creating numerous concerning fire and traffic safety hazards.”

15 86. After the Supreme Court’s *Grants Pass* decision in June 2024, the City of Berkeley
16 “cleaned” the Harrison Street encampment the first week of August 2024.

17 87. The following photographs were taken just days after the cleaning:



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88. The Harrison Street Plaintiffs have experienced routine acts of physical threats and violence as a direct result of the Harrison Street encampments.

89. The Harrison Street Plaintiffs have experienced increased criminal activity as a direct result of the Harrison Street encampments.

90. Between August 1, 2023, and July 31, 2024, there were 252 calls for service related to the Harrison Street encampments, including 60 fire-related responses and 18 emergency medical services responses.

1 91. The Harrison Street Plaintiffs have suffered financially as a result of the Harrison
2 Street encampments.

3 92. The Harriston Street Plaintiffs have engaged in numerous discussions with the City
4 of Berkeley over the past few years, but the City has not removed the Harrison Street encampments.

5 93. Encampments also proliferate along the south side of Codornices Creek, which runs
6 parallel to Harrison Street just to the north, between the railroad tracks to the west of Fourth Street
7 to Eighth Street, of which the following photographs are illustrative:

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94. The University of California at Berkeley controls the north side of the creek, and there are no encampments on that side.

1 **The Harrison/Codornices Plaintiffs.**

2 95. Barry Braden is the owner of Far West Brewing LLC, which owns and operates
3 Fieldwork Brewing on Sixth Street and Harrison.

4 96. The accumulation of trash, unsanitary conditions, and safety concerns have greatly
5 impacted Mr. Braden’s business.

6 97. Despite his and his business partners’ numerous efforts to address these issues
7 through dialogue and collaboration with local authorities, the situation has not improved.

8 98. Mr. Braden and his employees routinely find used drug needles from the
9 encampment population on their outdoor patio.

10 99. The following photograph is an illustration of one such incident in which drug
11 needles and other items from unsheltered individuals were left on the patio:



23 100. Mr. Braden’s employees have to clean up these biohazardous conditions with no
24 support from the City.

25 101. Mr. Braden no longer allows employees to close at night on their own; they are
26 required to walk to their cars in pairs.
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1 102. In one recent incident, a woman came into the brewery asking for free food. When
2 the manager on duty offered help, she left only to return two minutes later with a 10-foot metal pole
3 swinging it at customers and employees; she was chased out of the building by customers and
4 ultimately arrested by police.

5 103. In another incident, a man locked himself in the bathroom. After fifteen minutes, a
6 member of Mr. Braden's staff knocked on the door and asked if everything was all right. Hearing
7 no response, and fearing an overdose or other medical emergency, the employee unlocked the door
8 and found the man naked. The man aggressively closed the door and began a profanity-laced tirade.

9 104. The on-duty manager asked the Berkeley Police Department to dispatch an officer,
10 but the man quickly left. He then returned approximately 20 minutes later looking to start a fight
11 with Mr. Braden's staff.

12 105. The encampment has adversely affected Mr. Braden's business operations. As a
13 result of the encampments, there is reduced foot traffic, increased security concerns, and a decline
14 in the overall aesthetic of the area, all of which have led to significant financial losses.

15 106. Between 2014 and 2018, Mr. Braden's business location was safe, walkable, and
16 bike friendly. Since 2018, with the arrival of RVs and encampments, that is no longer true.

17 107. One customer emailed the business in 2023 with the following observation:

18 Date: Wed, May 17, 2023 at 5:19 PM
19 Subject: Re: Head Over for Fresh Heady Money! Available Now!
20 To: <info@fieldworkbrewing.com>

21 Hi there!

22 I tried to walk down to have a beer the other day and got super
23 uncomfortable with the walk down Harrison. I hope the city is able to figure
24 out some more housing options so that you're still in a location that's walk
25 and bike-friendly. We ended up turning around and going home. Maybe
26 Fieldwork has some influence over the situation down there?

27 Thank you from a loyal Fieldwork fan,

28 108. The conditions have therefore resulted in a direct loss of customers and business.

29 109. The visual blight and associated challenges have undermined the community's sense
30 of safety and well-being.

1 110. Fieldwork Brewing has made numerous attempts to resolve the situation through
2 non-litigious means. They have consistently engaged with city officials and departments to
3 communicate their concerns and seek solutions. Despite these efforts, the response and actions taken
4 have been insufficient to address the ongoing issues.

5 111. Jeffrey DeMartini is a managing member of KJD Investments LLC, which owns
6 properties on Fifth and Sixth Streets and on Harrison right alongside the encampments.

7 112. Mr. DeMartini has taken several photographs of the out-of-control encampments
8 over the past few years.

9 113. Mr. DeMartini has been told numerous times by the Berkeley Police Department that
10 they are not allowed to enforce anti-camping laws because of directives they have received from
11 City Hall; in other words, the City consents to the presence of the encampments.

12 114. Mr. DeMartini has observed how the Harrison Street encampments block the
13 sidewalks on Harrison Street often on both sides.

14 115. The encampments spill into the streets, often turning Harrison into a one-way street,
15 and sometimes even that is hard to navigate.

16 116. Mr. DeMartini has observed trash and garbage spewed everywhere.

17 117. Parking is unavailable between Sixth Street and San Pablo Avenue due to the
18 encampment, hurting Mr. DeMartini's tenants.

19 118. One of Mr. DeMartini's tenants, also a plaintiff in this action, renewed a lease at a
20 far lower rate than previously as a direct result of the encampments and dangerous situation in the
21 area.

22 119. Mr. DeMartini has had to install security cameras at significant cost as a result of the
23 crime that occurs on and near his properties stemming from the Harrison Encampment.

24 120. Kathy and Michael Dennison are owners and managers of Bavarian Professionals, a
25 small business on 7th Street at Harrison in Berkeley, and have been the owners of two properties on
26 7th Street at Harrison for over forty years.

27 121. In 2022, their long-term tenant vacated one of the properties because of the horrific
28 conditions created by the encampments.

1 122. Except immediately after the City cleans the encampment from the street to the curb,
2 the encampment not only takes over the entirety of the sidewalks, but also the entire parking lane
3 and part of the street where oncoming traffic would otherwise go.

4 123. Mr. and Mrs. Dennison have observed that rats have infested the area from the food
5 and human waste that have accumulated.

6 124. Mr. and Mrs. Dennison have observed fires in the encampments on several
7 occasions.

8 125. Mr. and Mrs. Dennison have smelled the odor of leaking oil and gas from the
9 encampment, including from abandoned cars and motorhomes.

10 126. Mr. and Mrs. Dennison have observed some men from the encampments chasing
11 their female tenants at night.

12 127. Encampment residents have stolen and damaged equipment from Mr. and Mrs.
13 Dennison's property.

14 128. Mr. and Mrs. Dennison have installed security cameras and alarm systems on the
15 properties to deter theft, but it has had negligible effect.

16 129. For the past two years, Mr. and Mrs. Dennison have been unable to find a tenant.

17 130. Mr. and Mrs. Dennison have suffered significant financial loss as a result.

18 131. Mr. and Mrs. Dennison have repeatedly emailed the Berkeley City Council and other
19 City officials, including Assistant to the City Manager Peter Radu, with no results.

20 132. Ms. Dennison described that "[t]he rat infestation has gotten out of control."

21 133. She has described the area as having a "war zone appearance" that has "deterred
22 tenants and customers from this area."

23 134. Ms. Dennison has written to City officials that she has "shown our vacant office
24 space to numerous prospective tenants and EVERY single one has declined to rent saying they were
25 horrified by the horrific mess on Harrison and that there was no parking available because the
26 encampments have taken over all parking on the surrounding streets."

27 135. Jeffrey and Jodie Morgan are the founders and owners of Chaim, LLC, which owns
28 and operates Covenant Winery, a local winery.

1 136. Covenant Winery has been located at 1102 Sixth Street since 2014. They have nine
2 full-time employees.

3 137. In the last 5 years, Mr. and Mrs. Morgan have observed that the Harrison Street
4 corridor has expanded significantly.

5 138. They regularly observe garbage, feces, dirty needles, and mentally ill individuals at
6 the encampments along Harrison Street.

7 139. The encampments routinely block parts or all of the street and have created a danger
8 zone for anyone wishing to walk on by.

9 140. To go shopping at the local Whole Foods, the Morgans can no longer walk safely the
10 five blocks from the winery on this route.

11 141. The Morgans and their employees feel at risk when they come to work.

12 142. Covenant Winery also adjoins the south side of Codornices Creek, which is owned
13 and controlled by the City of Berkeley.

14 143. Prior to 2018, certain individuals would intermittently camp out—sometimes for
15 months—behind the winery and at the edge of Codornices Creek, a protected and environmentally
16 sensitive waterway.

17 144. Today there are regular encampments along the creek.

18 145. The individual camping along the creek use the creek as a personal toilet and sewer.

19 146. These individuals also occasionally threaten passersby.

20 147. Employees could also hear sexual and other physical abuse occurring at times in this
21 wooded area.

22 148. On occasion, the creek area has been cleaned up, only to be resettled shortly
23 thereafter.

24 149. Emily Winston owns and operates Boichik Bagels in Berkeley.

25 150. Ms. Winston opened her bagel factory and store on Sixth Street in March 2023.

26 151. Many of her customers are families with children.

27 152. Since March 2023, the Harrison Street encampments have grown closer and closer
28 to the location of Boichik Bagels.

1 153. RVs regularly park directly in front of Boichik Bagels, sometimes for several days
2 at a time.

3 154. Unsheltered individuals have climbed into the business’s dumpsters; one refused to
4 leave when asked.

5 155. Unsheltered individuals from the encampment regularly come into the business
6 without authorization to use the bathroom.

7 156. Unsheltered individuals have trampled the business’s landscaping.

8 157. Unsheltered individuals have stolen water and power from Boichik Bagels.

9 158. In one incident, an unsheltered man was using a drug pipe on the business’s patio.

10 159. In another incident, an unsheltered individual closed the water shut off to the
11 business, halting production at the business.

12 160. Ms. Winston and her employees regularly find urine and feces on their property that
13 requires their cleaning efforts.

14 161. The following is a photo of feces and toilet paper Ms. Winston recently found on her
15 property:



26 162. On several occasions, Ms. Winston has observed while driving on Harrison that it
27 was reduced to barely one passable lane.

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1 163. Ms. Winston has observed several fires, one sufficiently concerning that she called
2 911.

3 **The Lower Dwight Encampment creates a public nuisance.**

4 164. The RVs and encampments along the public rights of way on Dwight Way regularly
5 obstruct sidewalk access on both sides of Dwight Way between Fourth and Sixth Streets.

6 165. Even after the City of Berkeley “cleans” the encampment, the RVs and encampments
7 often obstruct sidewalk access on at least one side of Dwight Way between Fourth and Sixth Streets.

8 166. The RVs and encampments along the public rights of way on Dwight Way make
9 street access more difficult.

10 167. The RVs and encampments along the public rights of way on Dwight Way often
11 obstruct views when turning onto Dwight Way, creating a driving hazard.

12 168. Drug use and drug paraphernalia are regularly seen and associated with the Lower
13 Dwight tent and RV encampments.

14 169. Residents of the Lower Dwight tent and RV encampments urinate and defecate in
15 public.

16 170. Residents of the Lower Dwight tent and RV encampments dump their urine and fecal
17 matter into the storm drains.

18 171. The Lower Dwight Plaintiffs have experienced physical threats as a direct result of
19 the tent and RV encampments.

20 172. The Lower Dwight Plaintiffs have experienced increased criminal activity as a direct
21 result of the tent and RV encampments.

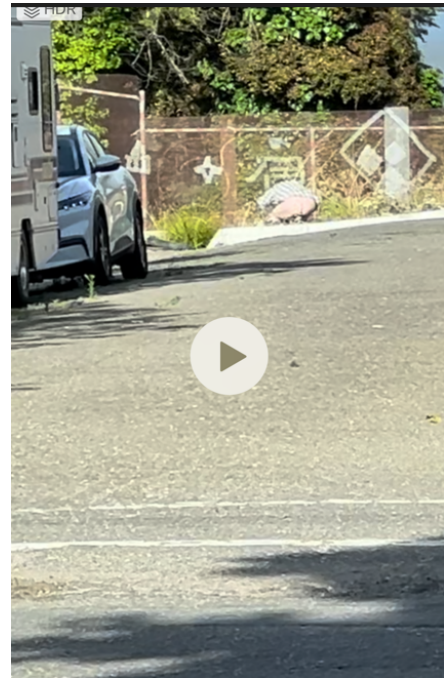
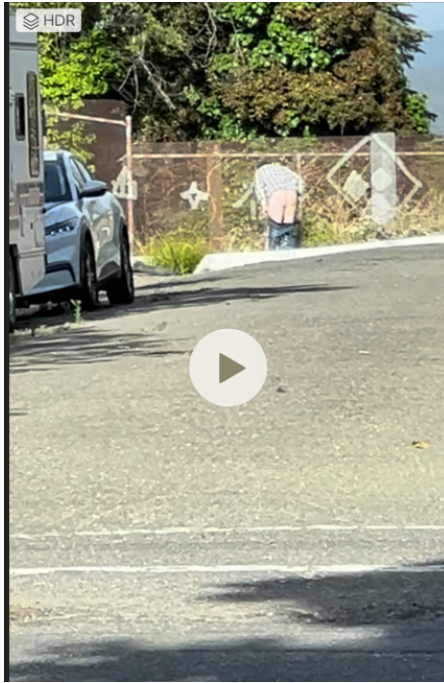
22 173. The Lower Dwight Plaintiffs have suffered financially as a result of the tent and RV
23 encampments.

24 174. The Lower Dwight Plaintiffs have engaged in numerous discussions with the City of
25 Berkeley over the past few years, but the City has not removed the tent and RV encampments.

26 175. The following photographs are snapshot of a video that depicts one of the Lower
27 Dwight encampment residents defecating in public:

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176. The following photographs represent the neighborhood at its cleanest, immediately after a “cleaning” by the City of Berkeley:



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12 **The Lower Dwight Plaintiffs.**

13 177. Jeffrey Geier owns and operates Aarvaks Heating and Air Conditioning, Inc., a small
14 business at 723 Dwight Way, where he has been since July 1995.

15 178. Mr. Geier observes of recent months that this is the “worst it has ever been with the
16 homeless issue” in this neighborhood.

17 179. Mr. Geier is 62 years old and on several occasions has not felt safe in and around his
18 place of work.

19 180. Mr. Geier recalls one time recently where a man and a woman, both of whom
20 appeared to be on drugs, were fighting. The male was attacking the young female. Mr. Geier called
21 the police, and they told him he probably saved the young woman’s life.

22 181. One of Mr. Geier’s former neighbors in the area once got into an altercation with an
23 unsheltered individual and had to retrieve a firearm in self-defense. The police arrested the
24 unsheltered individual but he was back on the streets within a few hours.

25 182. That same individual trespassed on Mr. Geier’s business where his service vehicles
26 are parked.

27 183. Mr. Geier has witnessed illegal drug use and drug dealing, all out in the open.
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1 184. One encampment resident who appears to be mentally ill has threatened Mr. Geier's
2 life. This individual has trespassed into his shop and started screaming.

3 185. Mr. Geier has observed constant litter, defecation, and urination.

4 186. Mr. Geier has personally witnessed on several occasions the same mentally ill
5 individual drop his drawers and defecate at the end of the street.

6 187. Mr. Geier has seen sewage dumps from RVs on the street.

7 188. One of the contractors working on the building in which Mr. Geier operates his
8 business was once attacked by a dog from the encampment.

9 189. The police have told Mr. Geier that "their bosses have tied their hands."

10 190. Alex Hunt owns Rio Mobility, a small business located at 731 Dwight Way.

11 191. Mr. Hunt's business manufactures wheelchair attachments for disabled individuals
12 who rely on wheelchairs.

13 192. Many of Mr. Hunt's customers have had trauma in their lives and encampments near
14 his business have affected them.

15 193. In one incident, a homeless individual wearing a mask jumped the fence into an alley
16 adjacent to Mr. Hunt's business and tried to break in through the side door.

17 194. In another, a homeless individual was trying to steal a package through the gate of
18 the property.

19 195. Mr. Hunt's three dogs have all caught the disease giardia because of the dog feces
20 surrounding the neighborhood.

21 196. In one incident, a loose German Shepherd belonging to a homeless individual
22 attacked Mr. Hunt's cat.

23 197. There is a homeless individual who lives at the Lower Dwight encampment who
24 rides his bike every day past Mr. Hunt's office and blares gibberish from a megaphone. This
25 individual rides past Mr. Hunt's building between four and ten times a day up until about 10:30 pm
26 every night.

27 198. Aaron Shores owns and operates Acme Scenery Co., a small business founded in
28 1989.

1 200. Acme moved into its new space at Fifth Street and Dwight in October of 2019.

2 201. Mr. Shores recalls that, at that time, there were RVs occasionally parked along
3 Dwight, but they would typically move along after 72 hours.

4 202. Mr. Shores also recalls the City of Berkeley being fairly responsive at this time to
5 their concerns.

6 203. Around the time of the pandemic, however, the entire character of the neighborhood
7 changed.

8 204. Dwight Way now had dozens of RVs and tents along the side of Mr. Shores' building,
9 and the number seemed to increase every week.

10 205. At this point, the City was no longer responsive and informed Mr. Shores that they
11 would not be removing any encampments.

12 206. After the pandemic ended, the City shut down a lot that had been established at
13 Grayson Street where a number of RVs had been allowed to park.

14 207. With the closure of that lot, more RVs migrated to the Lower Dwight neighborhood.

15 208. From that point on, to this day, Mr. Shores observes that Dwight Way "is entirely
16 filled with RVs and associated vehicles and tent encampments from Sixth Street all the way to the
17 railroad tracks."

18 209. Mr. Shores has witnessed and experienced the dumping of raw sewage from RV
19 black water tanks, and from five-gallon buckets containing feces, into storm drains and landscaping.

20 210. Mr. Shores has witnessed and experienced garbage, food waste, and animal waste
21 piled up on sidewalks and on private property.

22 211. Mr. Shores has witnessed and experienced a major rodent problem arising from food
23 waste being left on the street and sidewalk.

24 212. Mr. Shores has witnessed oil, antifreeze, and other hazardous wastes being dumped
25 into the storm drains and into the street by the encampment residents making vehicle repairs on the
26 street.

27 213. Mr. Shores has witnessed and experienced the theft of water from his hose bibs and
28 fire hydrants adjoining his property.

1 213. Mr. Shores has witnessed illegal dumping of trash into private dumpsters and trash
2 cans, resulting in missed pickups because the garbage collectors will not collect overfilled dumpsters
3 or when there is garbage in recycling bins.

4 214. Mr. Shores has witnessed and experienced off-leash and sometimes aggressive dogs
5 wandering the streets of the neighborhood.

6 215. The dogs often defecate on private property.

7 216. Mr. Shores has witnessed and experienced the complete loss of street parking along
8 Dwight Way, which reduces parking on all surrounding streets.

9 217. Mr. Shores has witnessed and experienced that Dwight Way narrows into one lane
10 due to large RVs being parked on both sides of the street, making it difficult to maneuver large
11 trucks in what is a mixed-use industrial area.

12 218. Mr. Shores has witnessed and experienced many near accidents as a result of the
13 reduced sightline.

14 219. Mr. Shores has witnessed and experienced regular street blockages and obstructions
15 resulting from the parking and moving of RVs.

16 220. Mr. Shores has witnessed and experienced harassment by mentally ill individuals,
17 including one who rides up and down the street daily yelling through a bullhorn.

18 221. Mr. Shores has witnessed and experienced constant noise and odor from generators
19 that run almost 24 hours a day.

20 222. One of Mr. Shores' employees had his van stolen when parked on the street.

21 223. Mr. Shores and his employees are wary of parking their work trucks on the street for
22 even a short time.

23 224. Mr. Shores has witnessed and experienced an increase in property crime more
24 generally, including graffiti and the theft of catalytic converters.

25 225. Since San Francisco and other nearby cities have begun to enforce anti-camping
26 laws, Mr. Shores has noticed an uptick of encampments and RVs on Lower Dwight.

27 226. Mr. Shores spoke to homeless outreach staff from the City of Berkeley and was told
28 that the City has chosen to allow the encampment on Dwight.

1 227. About one year ago, Mr. Shores asked the City if they would at least provide
2 dumpsters and portable toilets for the encampment, but was told that the portable toilets would be
3 destroyed.

4 228. As a business owner who pays taxes and license fees to the City of Berkeley, Mr.
5 Shores feels betrayed. Mr. Shores was excited to move to the new location in Berkeley because it
6 was a vibrant and diverse city with progressive values, good food, and a central location. But the
7 City of Berkeley has ended that excitement by imposing the cost and burden of the homeless crisis
8 on private individuals and businesses.

9 **COUNT I – ENJOINER OF PUBLIC NUISANCE**

10 229. Plaintiffs restate the above allegations as though set forth fully here.

11 230. The California Civil Code defines nuisance as follows:

12 Anything which is injurious to health, including, but not limited to, the illegal sale of
13 controlled substances, or is indecent or offensive to the senses, or an obstruction to
14 the free use of property, so as to interfere with the comfortable enjoyment of life or
property, or unlawfully obstructs the free passage or use, in the customary manner,
of . . . any public park, square, street, or highway.

15 Cal. Civ. Code § 3479.

16 231. A public nuisance is “one which affects at the same time an entire community or
17 neighborhood, or any considerable number of persons, although the extent of the annoyance or
18 damage inflicted upon individuals may be unequal.” *Id.* § 3480.

19 232. In California, “[b]locking a public sidewalk constitutes a public nuisance per se.”
20 *Kempton v. City of Los Angeles*, 165 Cal. App. 4th 1344, 1348, 81 Cal. Rptr. 3d 852, 855 (2008).

21 233. Obstructing any other part of a road or street or part of a public park or square is also
22 a public nuisance under the plain language of California Civil Code § 3479.

23 234. Under California law, “[e]very building or *place* used for the purpose of unlawfully
24 selling, serving, storing, *keeping*, manufacturing, or giving away any controlled substance,
25 precursor, or analog” constitutes “a nuisance which shall be enjoined, abated, and prevented, and
26 for which damages may be recovered” Cal. Health & Safety Code § 11570 (emphasis added).

27 235. Moreover, California courts have recognized the following as public nuisances: (1)
28 “[i]nterference with the ingress and egress to and from a public street . . . ,” *Kempton*, 165 Cal. App.

1 4th at 1349; (2) public urination, *People v. McDonald*, 137 Cal. App. 4th 521, 40 Cal. Rptr. 3d 422
2 (2006); (3) gang activity, *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 929 P.2d 596 (1997); and
3 (4) fire hazards, *San Diego Cnty. v. Carlstrom*, 196 Cal. App. 2d 485, 491, 16 Cal. Rptr. 667 (Ct.
4 App. 1961).

5 236. As a municipality, Defendant has an affirmative “duty to keep sidewalks in safe
6 condition [and] is directly liable to pedestrians for failing to correct a dangerous condition of which
7 it had notice. . . .” *Peters v. City & Cnty. of San Francisco*, 41 Cal. 2d 419, 429 (1953) *superseded*
8 *on other grounds by statute as noted by DiCampli-Mintz v. Cnty. of Santa Clara*, 55 Cal. 4th 983,
9 997 n.11 (2012). *See also City of Chicago v. Robbins*, 67 U.S. 418, 422, 17 L. Ed. 298 (1862) (“It
10 is well settled that a municipal corporation having the exclusive care and control of the streets, is
11 obliged to see that they are kept safe for the passage of persons and property, and to abate all
12 nuisances that might prove dangerous; and if this plain duty is neglected, and any one is injured, it
13 is liable for the damages sustained.”).

14 237. The City “is not relieved of its responsibility in this regard merely because the
15 condition was created or maintained” by a third party who may also be liable. *Peters*, 41 Cal. 2d at
16 429.

17 238. Further, as possessor of Berkeley’s public land, the City has a duty to abate and not
18 contribute to nuisances found thereon. The California Civil Code provides that “[e]very successive
19 owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property,
20 created by a former owner, is liable therefor in the same manner as the one who first created it.”
21 Cal. Civ. Code § 3483; *see also* Cal. Penal Code § 372 (“Every person who maintains or commits
22 any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits
23 to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.”).

24 239. The California Penal Code prohibits individuals from lodging “in any building,
25 structure, *vehicle*, or *place*, whether public or private, without the permission of the owner or person
26 entitled to the possession or in control of it.” Cal. Penal Code § 647(e) (emphases added).

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1 240. California follows the Restatement (Second) of Tort’s approach to nuisance law.
2 *Benetatos v. City of Los Angeles*, 235 Cal. App. 4th 1270, 1283 (2015); *City of Los Angeles v. San*
3 *Pedro Boat Works*, 635 F.3d 440, 452 (9th Cir. 2011).

4 241. The Restatement provides that violations of state law or City ordinances may be
5 evidence of nuisance. Restatement (Second) of Torts § 821B(2)(b).

6 242. As described above, the Harrison Street and Lower Dwight encampments include
7 numerous violations of city ordinances, including of the building and fire codes.

8 243. The encampments also violate Chapter 16.18 of the Berkeley Municipal Code,
9 prohibiting encroachments on the public rights of way.

10 244. The Restatement further provides that “[a] possessor of land upon which a third
11 person carries on an activity that causes a nuisance is subject to liability for the nuisance if it is
12 otherwise actionable,” and if the possessor “knows or has reason to know that the activity is being
13 carried on and that it is causing or will involve an unreasonable risk of causing the nuisance,” and
14 further if the possessor either “consents to the activity or fails to exercise reasonable care to prevent
15 the nuisance.” Restatement (Second) of Torts § 838 (1979).

16 245. California courts have recognized that “under the common law, a landowner’s
17 liability for a public nuisance could result from the failure to act as well as from affirmative
18 conduct.” *City of Modesto Redevelopment Agency v. Superior Ct.*, 119 Cal. App. 4th 28, 37, 13 Cal.
19 Rptr. 3d 865, 871 (2004), *as modified on denial of reh’g* (June 28, 2004).

20 246. The existence of the nuisance is obvious and known to Defendant through its own
21 inspections and citizen reports.

22 247. The Defendant has further consented to the nuisance activities on its lands.

23 248. Alternatively, the Defendant has failed to take reasonable steps to prevent the
24 nuisance.

25 249. Defendant has acted unlawfully by permitting public encampments on rights of way
26 within its control on Harrison Street between Sixth and Ninth Streets.

27 250. Defendant has acted unlawfully by permitting public tent and RV encampments on
28 the rights of way within its control on Dwight Way between Fourth and Sixth Streets.

1 251. Defendant has acted unlawfully by failing to satisfy its affirmative duty to maintain
2 the safe condition of Berkeley's public rights-of-way as described herein.

3 252. And under the theories of liability offered by the Restatement (Second) of Torts,
4 Defendant has also broken the law by abdicating its responsibility to prevent nuisances on the public
5 land it possesses.

6 253. A person may bring an action for public nuisance if the nuisance "is specially
7 injurious to himself" Cal. Civ. Code § 3493.

8 254. Each plaintiff has endured substantial and unreasonable disruptions in the enjoyment
9 of their property as a result of the public nuisance. Plaintiffs have suffered threats to their physical
10 safety; have suffered trespasses; have suffered pecuniary harm; or have suffered a loss of customers.

11 255. Because of their proximity to the nuisance, all Plaintiffs have been damaged in a way
12 specially injurious to themselves.

13 256. Plaintiffs seek injunctive relief to order Defendant to abate the nuisance.

14 **COUNT II – ENJOINER OF PRIVATE NUISANCE**

15 257. Plaintiffs restate the above allegations as though set forth fully here.

16 258. Each Plaintiff owns, leases, occupies, or otherwise controls all or a portion of the
17 home or business in Berkeley identified herein.

18 259. Defendant's actions and inactions have created or permitted a condition to exist that
19 is harmful to Plaintiffs' health; indecent and offensive to the senses; drives customers away from
20 Plaintiffs' businesses; exposes Plaintiffs to the threat of crime; and decreases property values, as
21 alleged above.

22 260. Defendant's conduct has been and is intentional and unreasonable, or unintentional
23 but negligent or reckless.

24 261. No Plaintiff consented to Defendant's conduct; each was harmed. Defendant's
25 conduct was a substantial factor in causing the harm, and the seriousness of the harm outweighs any
26 public benefit of such conduct (which is none).

27 262. Plaintiffs seek injunctive relief ordering Defendant to abate the nuisance.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following:

- A. That judgment be rendered in favor of Plaintiffs and against Defendant on all counts alleged in this complaint.
- B. That judgment be entered declaring the public rights-of-way on Harrison Street between Fifth and Ninth Streets, and on Fifth through Ninth Streets just off of Harrison, to be a public and private nuisance.
- C. That judgment be entered declaring the public rights-of-way along Codornices Creek parallel to Harrison just to the north, between the railroad tracks west of Fourth Street and Eighth Street, to be a public and private nuisance.
- C. That judgment be entered declaring the public rights-of-way on Dwight Way between Fourth and Sixth Streets to be a public and private nuisance.
- D. That a permanent injunction be entered requiring Defendant to undertake remedial measures to mitigate the effects of the Defendant’s past and ongoing violations of law in permitting public and private nuisances on its property on Harrison Street between Fifth and Ninth Streets, on Fifth through Ninth Streets near Harrison Street, along Codornices Creek parallel to Harrison to the north between the railroad tracks west of Fourth Street and Eighth Street, and on Dwight Way between Fourth and Sixth Streets. At a minimum, an injunction must ensure that the Defendant remediates, maintains, and clears these public rights of way of tents and RVs.
- E. Reasonable attorneys’ fees, expert expenses, and costs, as provided by law.
- F. Such other relief as the Court finds just and proper.

Dated: September 10, 2024

GAVRILOV & BROOKS



Ognian Gavrilov
Michael Coleman
Attorneys for Plaintiffs