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SAN LUIS OBISPO SUPERIOR COURT
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7 **SUPERIOR COURT OF CALIFORNIA**
8 **SAN LUIS OBISPO COUNTY**

9 SLO Homeless Alliance; Phillip Dykeman;
10 David Douglas Moore,
11 Plaintiffs,

11 vs.

12 City Of San Luis Obispo; Stephen Gesell, in
13 his official capacity as Chief of Police for the
14 City of San Luis Obispo,
Defendants.

CASE NO.: CV 120204-111

COMPLAINT FOR DECLARATORY RELIEF,
PRELIMINARY INJUNCTION, AND
PERMANENT INJUNCTION

15 Plaintiffs bring this action on their behalf and in the public interest and, on information and
16 belief, hereby allege:

17 **INTRODUCTION**

18 1. This action concerns the City of San Luis Obispo's ("City of SLO" or "the City") arbitrary
19 and discriminatory enforcement of San Luis Obispo Municipal Code ("SLOMC") §17.16.015 to
20 illegally harass and criminalize a segment of its population for the simple condition of being homeless.

21 2. Besides being unconstitutional on its face and in the manner in which it is being applied,
22 SLOMC §17.16.015 is overbroad and a violation of State of California Statutes. The law is being
23 enforced with public funds and absent court intervention public funds will continue to be used in the
24 enforcement of this unlawful ordinance.

25 3. This action seeks injunctive and declaratory relief, and other relief that this Court may deem
26 appropriate to stop the continued enforcement of this unlawful ordinance.

27 **PARTIES**

28 4. Plaintiff SLO Homeless Alliance is an unincorporated association of people that have been
criminally charged by the City of SLO with violating SLOMC §17.16.015 for living and or sleeping

1 in their vehicles on City of SLO streets within the last three months. Some of its members have been
2 criminally charged under this code section for the simple act of talking on a cell phone when parked
3 while others have been ticketed more than four times in one month during the predawn hours for
4 simply sleeping. SLO Homeless Alliance has standing to bring this action under Code of Civil
5 Procedure (“C.C.P.”) §369.5.

6 5. Plaintiff Phillip Dykeman is a resident and taxpayer of the City of SLO who has been
7 criminally charged under SLOMC 17.16.015 on more than one occasion for living and or sleeping
8 in a recreational vehicle which he shares with his wife and two school aged children while
9 parked on the City’s streets. As both a taxpayer under C.C.P. §526a and a citizen of the State of
10 California and the City of SLO, he has standing to bring this action.

11 6. David Douglas Moore is a resident and taxpayer of the City of SLO who has been
12 criminally charged on more than one occasion under SLOMC 17.16.015 for living and or sleeping
13 in his 1981 Country Camper while parked on the City’s streets. As both a taxpayer under C.C.P.
14 §526a and a citizen of the State of California and the City of SLO, he has standing to bring this action.

15 7. Defendant City of San Luis Obispo has been a charter city in the State of California since
16 1876. As set forth in the City Charter, the City operates under the “Council-Mayor-Administrative
17 Officer” form of government. The City Council has the authority to make and enforce all laws and
18 regulations with respect to municipal affairs, subject only to the limitations of the City Charter and the
19 State & Federal Constitutions. The City Council appoints the City Manager and the City Attorney.
20 All other department heads are appointed by the City Manager.

21 8. Defendant Stephen Gesell is the Chief of Police for the City of San Luis Obispo and in
22 charge of the enforcement of the City’s Municipal Code of Ordinances. He is being sued in his
23 official capacity as Chief of Police for the City of San Luis Obispo.

24 **VENUE**

25 9. Venue is proper in this Court as all Plaintiffs reside in San Luis Obispo City and defendants
26 have their official offices in San Luis Obispo City.

27 **STATUTORY BACKGROUND**

28 10. City of San Luis Obispo Municipal Code of Ordinances (“SLOMC”) section
17.16.015 states:

1 No recreational vehicle, camper shell, automobile or similar device shall be used
2 for **living** or **sleeping** quarters except in a lawfully operated mobile home park,
3 travel trailer park, or campground, except as provided in Section 17.08.010(C)(4)
4 et seq. (Emphasis added.)¹

5 Section 17.08.010(C)(4) of the states:

6 A recreational vehicle may be parked in a residential parking space or driveway for
7 periods not to exceed seven days, for the purpose of housing guests of on-site residents
8 only. Such recreational vehicle shall not be parked so as to prevent residents of any
9 other dwellings on the site from using their assigned parking spaces, nor shall it
10 discharge waste or sewage into the city's sewage system. No hose, electrical cord,
11 pipe, wire, or other device extending from the vehicle may be permitted to encroach
12 on any access easement or sidewalk.

13 12. SLOMC section 17.72.010 states:

14 17.72.010 Delegation of authority. The director shall be responsible for
15 enforcing these regulations and shall issue no permit in conflict with them. Any
16 such permit issued shall be void.

17 And SLOMC section 17.72.020(A) states:

18 17.72.020 Violations. A. General Regulations and Requirements. The director
19 shall enforce these regulations in accordance with provisions of this code and any
20 other procedures as may be adopted by resolution of the council.

21 13. All of the above ordinance sections are found under Title 17 of the SLOMC which regulates
22 zoning within the City of San Luis Obispo and is officially referred to as the "zoning regulations
23 of the city."² Section 17.16.015 is found in Chapter 17.16 which is titled "Property Development
24 Standards" and this chapter regulates things such as creek setbacks, fences, hedges, and satellite
25 dishes. Sections 17.72.010 and 17.72.020 is found in Chapter 17.72 which is entitled
26 "Enforcement."

27 14. California Vehicle Code ("VC") section 22507, subdivision (a) states:

28 (a) **Local authorities may, by ordinance or resolution, prohibit or restrict the
stopping, parking, or standing of vehicles**, including, but not limited to,
vehicles that are six feet or more in height (including any load thereon) within 100
feet of any intersection, on certain streets or highways, or portions thereof, during

¹ Nowhere in the SLOMC is the terms "living" or "sleeping" used in section 17.16.015 defined.

² See SLOMC 17.02.010 that states: This division shall be known and cited as the "zoning regulations of the city."

1 all or certain hours of the day. The ordinance or resolution may include a
2 designation of certain streets upon which preferential parking privileges are given
3 to residents and merchants adjacent to the streets for their use and the use of their
4 guests, under which the residents and merchants may be issued a permit or
5 permits that exempt them from the prohibition or restriction of the ordinance or
6 resolution. With the exception of alleys, **the ordinance or resolution shall not
7 apply until signs or markings giving adequate notice thereof have been
8 placed.** A local ordinance or resolution adopted pursuant to this section may
9 contain provisions that are reasonable and necessary to ensure the effectiveness of
10 a preferential parking program. (Emphasis added.)

11 FACTUAL BACKGROUND

12 15. The City of San Luis Obispo includes several outlying areas where industrial and commercial
13 buildings and operations are predominant at the south end of the City. In this area lies Prado Road
14 which is found between the 101 Freeway and South Higuera Street. The area north of Prado Road
15 contains vacant lots, one of the State's last remaining drive-in theaters, industrial business structures, a
16 small trailer park, truck & trailer storage, an Elks Lodge with RV facilities, and two of the City's
17 graveyards. South of Prado Road the City maintains its extensive sewage treatment plant, its
18 corporate yard, and a building it leases to the "small bore rifle club" as an in-door shooting range for
19 \$1.00 a year. There is also a private commercial automated wholesale/retail fueling station on the
20 south side of Prado Road. Since 1997 the City has authorized one of its structures on the south side of
21 Prado Road to be used as the Prado Day Center which provides services to the City's homeless
22 citizenry. The center provides meals during the day, referrals to social services and job placement
23 agencies, a site at which homeless citizens can receive mail delivery, publicly available showers and
24 restrooms, and other daytime services.³ At the nearby Elks Lodge, the city's only publicly available
25 sewage pump-out station for recreational vehicles [RVs] and motor homes can be accessed for \$10.
26 At the corner of Prado Road and South Higuera Street sits the San Luis Obispo County Department of
27 Social Services, a convenience store, and within a block are offices for the Employment Development
28 Department, the Social Security office, and the DMV.

16. The City's only overnight shelter for the homeless, the Maxine Lewis Memorial Shelter ("the
Shelter") lies roughly 3 miles from the Prado Day Center and there is no direct bus route connecting

³ See <http://www.pradodaycenter.org/>.

1 the two. The Shelter provides 50 beds nightly year-round and an additional 25 to 35 beds are added
2 through the Interfaith Coalition for the homeless "overflow" shelter program operated in one host
3 church each month. The Shelter is generally filled nightly soon after opening at 5:30 p.m. and guests
4 must leave by 7:30 a.m.⁴

5 17. A 2011 San Luis Obispo County sponsored survey numbers the homeless population in the
6 county in excess of 4,000, with approximately one-quarter of those living in the City of San Luis
7 Obispo. Close to half of the SLO City homeless, except those few who can get into the Shelter, are
8 sleeping out in the open either under bridges or by the creeks. The other half of the homeless find
9 shelter in their motor homes, campers, RVs, vans, pickups, or cars (which also usually serve as their
10 only form of motorized transportation).

11 18. In 1982 the City of San Luis Obispo adopted what is Title 17 of its Municipal Code of
12 Ordinances, which it entitled as "zoning regulations of the city". In 1995, two years before the
13 Prado Day Center opened, the City adopted SLOMC §17.16.015. In 2005 the City amended
14 SLOMC §17.16.015 to add automobiles to the list of vehicles that could not be slept or lived in
15 outside of a mobile home park, travel trailer park, or campground. Taken together with SLOMC
16 §17.08.010(C)(4), to which it references, SLOMC §17.16.015's apparently applies to private
17 property, rather than to public streets. This may explain lack of any significant criminal
18 enforcement of SLOMC §17.16.015 against people on the City's streets prior to 2012.

19 19. At no time since adoption of ordinance SLOMC § 17.16.015 has the City posted any sign
20 on any street giving notice that sleeping or living is restricted or prohibited while parked on a public
21 street. At no time since the adoption of the ordinance has the City posted any sign on any of the
22 public streets where the homeless park that there exists a limit to the number of days that a vehicle
23 may stay parked, or the type of vehicle that can be parked on those streets.

24 20. Following the Prado Day Center's opening, police and public agencies assisting homeless
25 citizens encouraged the homeless to congregate during the day at the Prado Day Center, and
26 those lucky enough to have a vehicle in which to shelter to congregate at night primarily on
27 Prado Road, or nearby industrial/commercial streets such as Elks Lane, Hind Lane, Long Street,
28

⁴ See <http://www.capslo.org/programs/cat-homeless-services/menu-maxine-lewis> .

1 Short Street, and Suburban Road, as well as other out-of-the way streets.

2 21. Sometime in late January or early February of 2012, the City directed its Police Department to
3 begin targeting those homeless citizens sleeping and living in their various vehicles with night time
4 and day time sweeps to cite those homeless citizens for violation of SLOMC §17.16.015. The tactic
5 most often employed had organized police units showing up between 10 p.m. and 3 a.m. on Prado
6 Road to pound on the walls and doors of RVs, motor homes, and campers in an effort to frighten the
7 occupants into coming out. Once out of their vehicle they were ticketed and told to “get out of town.”
8 This harassment and ticketing also followed those who did move from Prado Road to other locations
9 in town whether they went there to sleep or simply travelled to a parking place to buy coffee, groceries
10 or other necessities. Again they would be ticketed under SLOMC §17.16.015 and told to “get out of
11 town.” Scores of these homeless citizens have now been cited with many of them on multiple
12 occasions. They are often subjected to notices setting bail at \$229 for a first “offense”, arraignments in
13 Superior Court, and if they admit to sleeping or living, fines up to \$500. Most of these people have no
14 more than a few hundred dollars a month on which to live.

15 22. In February of 2012, the local news media began publicizing accounts of the City’s cruel
16 enforcement methods detailing the police actions and resulting court proceedings with accompanying
17 fines. This resulted in public outrage.

18 23. On March 20, 2012, the City Council responded to the public’s outrage by receiving a report
19 and recommendation to temporarily suspend enforcement of SLOMC §17.16.015 on a City owned
20 parking lot at the Prado Day Center that would accommodate a total of 5 vehicles. This was termed a
21 “safe parking program.” The staff report providing recommendation in favor of this proposal
22 admitted that there were at least 60 vehicles according to the City’s calculations in need of “safe
23 parking”, but the report did not recommend suspending enforcement of SLOMC §17.16.016 on any
24 of the City’s streets. At least one letter and numerous statements of the public urged suspension
25 of the ordinance’s enforcement on public streets, pointing out that it is unconstitutional, violative
26 of California statute, and inhumane. The City Council ultimately voted to suspend enforcement
27 of SLOMC §17.16.016 on the 5 parking lot spaces for six months and approved the expenditure
28 of \$80,000 payable to a nonprofit corporation to develop criteria and conditions for the “safe

? actually staff time ?

1 parking program". It declined to suspend the SLOMC §17.16.016 on any public streets.

2 24. Public statements by at least one member of the City Council since the March 20, 2012,
3 Council meeting clearly show that the purpose of the City's §17.16.016 enforcement campaign is
4 to expel from the City its citizens with nowhere to sleep but their vehicles, and to discourage
5 other homeless individuals from traveling to the City of San Luis Obispo.

6
7 **NATURE OF DISPUTE**

8 25. Plaintiffs challenge the validity of SLOMC §17.16.015 the enforcement of which has, and
9 will continue to, result in the expenditure City of SLO funds. They specifically contend that this
10 section is being enforced in violation of V.C. section 22507, and is unconstitutionally vague and
11 overbroad on its face. Plaintiffs also contend that §17.16.015 has been and currently is being applied
12 in a constitutionally impermissible manner against themselves and others similarly situated.

13
14 **FIRST CAUSE OF ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF**
15 **(For Violating VC § 22507 By Failing To Post Signs)**

16 26. Plaintiffs reallege paragraph 1 through 25 above as if fully set forth herein.

17 27. Plaintiffs allege that the City of SLO can not enforce and or apply SLOMC §17.16.015 to
18 parked vehicles on its streets because it has not first posted any signs or markings on the public
19 streets in the Prado Road area, or any other area for that matter, giving adequate notice of the
20 ordinance's city wide parking ban on occupied recreational vehicles as required by V.C. §
21 22507.⁵ Although not labeled a parking ordinance, it is in effect a *de facto* parking ordinance on
22 public streets seeing how it restricts occupied recreational vehicles to mobile home parks, travel
23 trailer parks, campgrounds, and private residential parking spaces and driveways. By limiting
24 them to these areas, the City of SLO does not allow them to be parked anywhere else while
25 occupied. This is exactly the type of prohibition and restriction that V.C. § 22507 requires

26
27
28 ⁵ Seeing how SLOMC §17.16.015 is a blanket ban on living or sleeping in a vehicle on a city
street it must be interpreted to mean that anytime a vehicle is parked in the city with a person in
it, that person is then in violation of the ordinance seeing how they are "living."

1 postings prior to a city being authorized to enforce such restrictions on the public streets.⁶
2 Further, there is no language in V.C. § 22507 that requires a restriction or prohibition on parking
3 adopted by a city to be contained in an ordinance expressly labeled as a parking ordinance for the
4 statute's dictate of prior signage posting to apply. Remarkably, the City of SLO admits in a
5 3/20/2012 Council Agenda Report that it should develop a signage and information program that
6 provides adequate notice from a due process standpoint when it adopts a better ordinance to
7 regulate parking of RVs on city streets.⁷ For a case on point on this very same issue one does not
8 have to look beyond our own appellate court. In *Homes On Wheels v City of Santa Barbara*
9 (2004) 119 Cal.App.4th 1173, that court reversed a trial court's denial of a preliminary
10 injunction seeking to enjoin the City of Santa Barbara and its Chief of Police from enforcing an
11 ordinance that banned the parking of recreational vehicles on city streets for more than two
12 hours. Even though the City of Santa Barbara had posted 33 signs about the parking restrictions,
13 there was held to be a lack of adequate posting as required under V.C. section 22507 where the
14 homeless stayed. In the City of SLO there are no postings.

15 28. In spite of admitting that they do not give adequate due process notice, the Defendants
16 continue to issue criminal citations and to prosecute those citations against these uniquely
17 vulnerable homeless citizens.

18
19 **SECOND CAUSE OF ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF**
20 **(Denial of Due Process)**

21 29. Plaintiffs reallege paragraph 1 through 28 above as if fully set forth herein.

22 30. Plaintiffs allege that SLOMC §17.16.015 is unconstitutional because it is vague on its face,
23 because it lends itself to arbitrary enforcement, and because it fails to give adequate guidance to
24

25 ⁶ V.C. §587 defines "stop or stopping" as any cessation of movement of a vehicle, **whether**
26 **occupied or not**, and V.C. § 463 defines "park or parking" as the standing of a vehicle, **whether**
27 **occupied or not**, otherwise than temporarily for the purpose of and while actually engaged in
loading or unloading merchandise or passengers. (Emphasis added.)

28 ⁷ See pages 14-14 of the 3/20/12 Council Agenda Report that can be found at
<http://www.slocity.org/cityclerk/agendas/2012/032012/b1safeparkingpradodaycenterpublicparking.pdf>.

See PP
Ex 5
B1-15
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1 potential violators of the nature of the offense with which they could be charged. For all three of
2 these reasons, either individually or combined, the ordinances violates the Due Process Clause of
3 the Fifth and Fourteenth Amendment and Article I, § 7 (a) of the California Constitution.⁸

4 31. **A. Facially Vague.** SLOMC §17.16.015 is facially vague because it fails to give a
5 person of ordinary intelligence adequate notice of the exact conduct it prohibits.⁹ The words
6 “sleeping” and “living” which are found in SLOMC §17.16.015 can be defined and interpreted in
7 many different ways and the SLOMC does not define them. The ordinance section is also silent as to
8 when or for how long one is prohibited from living or sleeping in a vehicle in areas and it is also silent
9 as to whether or not it applies only to moving vehicles or to parked vehicles or to both. See *Horn v.*
10 *City of Montgomery* (Ala.Crim.App.1993) 619 So.2d 949 (holding portion of ordinance prohibiting
11 people from sleeping "in or on a motor vehicle" was void for vagueness); *City of Pompano Beach*
12 (Fla.Dist.Ct.App. 1984) 455 So.2d at 468, 469 (striking ordinance which declared that it was
13 "unlawful for any person to lodge or sleep in, on, or about any automobile" on public property as
14 "both unconstitutionally vague and overbroad").

15 32. **B. Arbitrary Enforcement.** SLOMC §17.16.015 is also void for vagueness because it
16 leaves the City of SLO police the unbridled discretion as to whether or not to cite or arrest one who is
17 sleeping or living in a recreational vehicle. In *Kolender v. Lawson* (1983) 461 U.S. 352, the United
18 States Supreme Court stated that a statute that lends itself to arbitrary enforcement can be void
19 for vagueness even if it gives fair notice of what conduct it prohibits. A wide range of persons
20 may violate SLOMC §17.16.015, from a young child asleep in his car-seat while a parent drives or
21 while the vehicle is parked, to the tourist visiting the City of SLO asleep in the bed of a moving or
22

23 ⁸ “The constitutional interest implicated in questions of statutory vagueness is that no person be
24 deprived of ‘life, liberty, or property without due process of law,’ as assured by both the federal
25 Constitution (U.S. Const., Amends. V, XIV) and the California Constitution (Cal. Const., art. I, §
26 7).” *Williams v. Garcetti* (1993) 5 Cal.4th 561, 567.) The California Constitution, art. I, §1 gives
27 additional protection to the people’s interests in “acquiring, possessing, and protecting property”
28 such as one’s last refuge in a motor home, “and pursuing and obtaining safety, happiness, and
privacy” such as by sleeping without harassment, housing and educating one’s children, or
staying out of the rain, wind and cold in one’s last remaining refuge.

⁹ See *Colautti v. Franklin* (1979) 439 U.S. 379, 390-91, for how the United States Supreme Court
summed up the void-for-vagueness doctrine.

1 parked recreational vehicle or eating a sandwich it, to the tired driver who has taken widely
2 disseminated good counsel and chosen to go to sleep in his parked vehicle for thirty minutes on a SLO
3 City street rather than take his life or others' lives in his hands, to the impoverished family with
4 children enrolled in school that have only their camper for a home. The officer encountering these
5 varied situations is left free to decide for him or herself whether to enforce the ordinance given that the
6 statute itself is void of any such guidelines that would limit arbitrary enforcement. Plaintiffs contend
7 that the City of SLO is only enforcing SLOMC §17.16.015 as a crime against them and other
8 homeless people similarly situated, and has never done so against apartment renters or
9 homeowners parking a recreation vehicle on a public street or against tourists who stop or park
10 their recreational vehicle on City streets, denying plaintiffs equal protection as well.

11 33. **C. Failure To Give Clear Notice Of Nature of Offense.** SLOMC §17.16.015 is also void
12 for vagueness because the City of SLO makes it virtually impossible for the average citizen to
13 determine what kind of penalty he or she can expect for living or sleeping in a recreational vehicle on
14 a city street.

15 34. SLOMC 17.72.010 and SLOMC 17.72.020 both state that the director of the Community
16 Development Department is responsible for enforcing the zoning regulations. In fact, the City of
17 SLO's own website for the Community Development Department states that the Planning and
18 Building division of the Community Development Department is charged with code enforcement. It
19 also states as follows:

20 "City of San Luis Obispo Code Enforcement staff members are part of the
21 Community Development Department. Code Enforcement Officers and
22 Neighborhood Services Specialists are responsible for enforcing Building Codes and
23 **Zoning Regulations** to provide for the health, safety, and general welfare of all City
24 residents. (Emphasis added.)

25 Remarkably, a brochure put out by the City of SLO entitled "Are You A Good Neighbor" informs the
26 public that if you have a problem with "RVs used as residence" you should call City Bldg. & Safety
27 781-7180. The City of SLO's own website for the Community Development Department states the
28 following takes place when a zoning ordinance violation takes place:

In most cases, if a code violation is observed by City staff, you will be given a
Notice to Correct. This will give a specific time period, depending on the
violation, in which you are required to bring your property into compliance. If the

1 violation is not corrected within the time given, you will be subject to fees and/or
2 citations until compliance is achieved. You can view a Code Enforcement
3 Process flow chart on our website for more details.¹⁰

4 However, SLOMC §1.12.020 makes the blanket statement that a violation of any provision of
5 the SLOMC by any person is unlawful and is punishable either by fine as an infraction, or by fine or
6 imprisonment, or both, as a misdemeanor. Further adding to the confusion is SLOMC § 1.12.095
7 which states that any person who violates any provision of this code of ordinances may be liable to the
8 city for a civil penalty not to exceed two hundred fifty dollars for each day or part thereof that said
9 violation occurs. Basically, the City of SLO is informing the public that something as mundane as a
10 thirty minute nap in your vehicle is a zoning ordinance violation that will most likely be addressed
11 with a Notice to Correct but that it can also be criminally prosecuted as a misdemeanor with up to a
12 year in jail if the City of SLO, or one of its police officers, should so choose to prosecute it as such.
13 This wide disparity in punishment standards and the difficulty in understanding them renders SLOMC
14 §17.16.015 unconstitutionally vague.

15 35. Because SLOMC §17.16.015 denies due process protection requirements it is thus
16 unconstitutional and SLO City funds cannot be used to administer and enforce it.

17 **THIRD CAUSE OF ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF**
18 **(SLOMC §17.16.015 Is Impermissibly Overbroad)**

19 36. Plaintiffs reallege paragraph 1 through 35 above as if fully set forth herein.

20 37. Plaintiffs further allege that SLOMC §17.16.015 is also unconstitutionally overbroad
21 because it prohibits more protected First Amendment and Fourth Amendment rights associated
22 with living and sleeping than is necessary to achieve a compelling interest. Living and sleeping
23 are among the fundamental privileges and immunities guaranteed to the people by the Fourteenth
24 Amendment. Living and sleeping are among the interests protected against unwarranted
25 infringement by Cal. Constitution art. I, § 1. Basically, the ordinance criminalizes innocent
26 conduct, sleeping and/or living when either is associated with a recreational vehicle. The City of
27 SLO has not prohibited, limited, or regulated the parking of recreational vehicles, motor homes
28

¹⁰ See <http://www.slocity.org/communitydevelopment/enforcefaq.asp#FAQ 6> .

1 or campers on the City's public streets, and cannot take the position that it is in fact only
2 regulating the parking of the vehicles through SLOMC §17.16.015. This is because the City
3 admits in a 3/20/2012 Council Agenda Report that to regulate such vehicles it needs a new
4 ordinance to regulate the parking of recreational vehicles on city streets. Thus, through
5 enforcement of the ordinance the City of SLO is bringing within its sweep conduct, sleeping
6 and/or living, which cannot conceivably be criminal in purpose. For cases which have struck
7 down as overbroad laws prohibiting sleeping in a vehicle parked in a public place see *City of*
8 *Pompano Beach v. Capalbo* (Fla. Dist.Ct.App. 1984) 455 So.2d 468, 471, and *State v. Penley*
9 (Fla.Dist.Ct.App. 1973) 276 So.2d 180.

10 38. Because SLOMC §17.16.015 is unconstitutionally overbroad, SLO City funds cannot be
11 used to administer and enforce it.

12
13 **FOURTH CAUSE OF ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF**
14 **(SLOMC §17.16.015 Is Unconstitutional As Applied)**

15 39. Plaintiffs reallege paragraph 1 through 38 above as if fully set forth herein.

16 40. Plaintiffs further allege that SLOMC §17.16.015 is also unconstitutional as applied because
17 the application of it to plaintiffs and others similarly situated homeless people living and sleeping
18 in their vehicles in the Prado Road area has deprived them of some basic rights.

19 41. **A. Violation of Eighth Amendment.** The City of SLO's use of SLOMC §17.16.015 to
20 charge plaintiffs for engaging in the essential and life-sustaining activity of sleeping is being
21 applied by the City of SLO to punish homeless persons, based on their involuntary homeless
22 status, in violation of the protection against cruel and unusual punishment found in the Eighth
23 Amendment to the United States Constitution and Article 1 Section 17 of the California
24 Constitution. "A law which made a criminal offense of ... a disease would doubtless be
25 universally thought to be an infliction of cruel and unusual punishment." See *Ingram v Wright*
26 (1977) 430 U.S. 651, 664, 66, 97 U.S. 1401, 51 L.Ed. 711. Penalizing the conditions of living
27 and of sleeping when poverty drives a person to take shelter in their vehicle is cruel and unusual
28 punishment.

1 42. **B. Violation of Due Process & Equal Protection.** The City of SLO's use of SLOMC
2 §17.16.015 to charge plaintiffs violates the Due Process Clause of the Fifth and Fourteenth
3 Amendment and Article 1, § 7 (a) of the California Constitution because as applied the law is
4 vague and overbroad and is being enforced criminally only to target the poor & dispossessed.

5 43. **C. Violation of Right to Travel.** City of SLO's use of SLOMC §17.16.015 to charge
6 plaintiffs violates their right to *intra* state travel by denying them the basic necessity of sleeping.

7 44. **D. Violation of Right of Acquiring, Possessing, and Protecting Property, and**
8 **Pursuing and Obtaining Safety, Happiness, and Privacy.** City of SLO's use of SLOMC
9 SLOMC §17.16.015 to charge plaintiffs violates their right to possess and protect the vehicles
10 that are their only shelter, and deprives them of the safety and privacy afforded by that last
11 vestige of shelter, guaranteed by California Constitution, art. I, §1.

12 45. Because SLOMC §17.16.015 is unconstitutional as applied to plaintiffs and houseless
13 citizens similarly situated, City of SLO funds cannot be used to administer and enforce it.

14
15 **PRAYER**

16 WHEREFORE, plaintiff prays for judgment against respondents as follows:

17 1. For preliminary injunction and a permanent injunction, each enjoining the defendants,
18 and each of them, and their agents, servants, and employees, and all persons acting under, in
19 concert with, or for them, from expending public funds in administering and enforcing SLOMC
20 §17.16.015;

21 2. For a preliminary injunction and a permanent injunction, each enjoining the
22 defendants, and each of them, and their agents, servants, and employees, and all persons acting
23 under, in concert with, or for them, from expending public funds for administering or enforcing
24 SLOMC §17.16.015 as applied to people living or sleeping in their vehicles on City of SLO streets;

25 3. For a declaration that SLOMC §17.16.015 is unconstitutional and void on its face;

26 4. For a declaration that SLOMC §17.16.015 is unconstitutional and void as applied;

27 5. For costs of suit herein incurred;

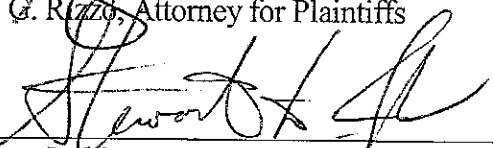
28 6. For attorney fees under the private attorney general doctrine in California Civil Procedure
Code section 1021.5, and

1 7. For such other and further relief as the court deems proper.

2
3 Dated: 3-6-12


Saro G. Rizzo, Attorney for Plaintiffs

4
5 Dated: 3-6-12


Stewart Jenkins, Attorney for Plaintiffs


6
7 **VERIFICATION OF COMPLAINT**

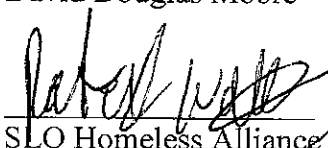
8 State of California, County of San Luis Obispo

9 I have read the foregoing COMPLAINT FOR DECLARATORY RELIEF, PRELIMINARY
10 INJUNCTION, AND PERMANENT INJUNCTION and know its contents. I am a Plaintiff in
11 this action. The matters stated in it are true of my own knowledge except as to those matters
12 which are stated on information and belief, and as to those matters, I believe them to be true.

13 Executed this April 5, 2012, in the City of San Luis Obispo, California. I declare under
14 penalty of perjury under the laws of the State of California that the foregoing is true and correct.

15
16 BY: 
17 Phillip Dykeman

18
19 BY: 
20 David Douglas Moore

21 BY:  SLO Homeless Alliance
22 SLO Homeless Alliance