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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **YELLOWSTONE WOMEN'S**)
15 **FIRST STEP HOUSE, INC.,**)
16 **SOBER LIVING NETWORK,**)
17 **INC., and CALIFORNIA**)
18 **WOMEN'S RECOVERY, INC.,**)
19 **Plaintiffs,**)
20 **vs.**)
CITY OF COSTA MESA,)
Defendant.)

No. SACV14-01852 JVS (JCGx)
THIRD AMENDED COMPLAINT;
DEMAND FOR TRIAL BY JURY

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I. INTRODUCTION

1. Plaintiffs – providers of sober living dwellings – sue the City of Costa Mesa claiming that the City engages in a pattern or practice of discrimination against them on the basis of disability in violation of the Fair Housing Act, Americans with Disabilities Act, Rehabilitation Act, Civil Rights Act of 1871, and related state laws. Plaintiffs allege that the City unlawfully interferes with their ownership, operation, and occupancy of dwellings for disabled persons in recovery and otherwise makes unavailable or denies housing because of disability.

II. JURISDICTION AND VENUE

10 2. This Court has subject matter jurisdiction over this action under 28
11 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 3613, 42 U.S.C. § 1983, and 42 U.S.C. §
12 12133. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction
13 over plaintiffs’ additional claims under state law because plaintiffs’ state law
14 claims relate to plaintiffs’ federal law claims, arise out of a common nucleus of
15 operative facts, and form part of the same case or controversy under Article III of
16 the United States Constitution.

17 3. Venue is proper because plaintiffs’ claims arise from unlawful
18 conduct occurring in Orange County, California, and because the properties that
19 are the subject of this action are located in Orange County, California.

III. PARTIES

20
21 4. Plaintiff Yellowstone Women’s First Step House (Yellowstone) is a
22 California nonprofit corporation. It operates four dwellings in Costa Mesa for
23 persons in recovery. Each is a “dwelling” under the Fair Housing Act (FHA), 42
24 U.S.C. § 3602(b), and a “housing accommodation” under Fair Employment and
25 Housing Act (FEHA), Government Code § 12927(d).

26 5. Plaintiff California Women’s Recovery, Inc. is a California nonprofit
27 corporation. It operates Lynn House, a sober living home in Costa Mesa serving
28 women in recovery. The Lynn House is a “dwelling” under the FHA, 42 U.S.C. §

1 3602(b), and a “housing accommodation” under FEHA, Government Code §
2 12927(d).

3 6. Plaintiff Sober Living Network is a California nonprofit corporation.
4 The Network operates chapters, including the Orange County Sober Living
5 Coalition. The Coalition is a membership organization consisting of sober living
6 operators in Orange County, including Costa Mesa. Its mission includes
7 promoting access to affordable, safe and sound sober living dwellings. Eleven
8 Coalition members own or operate 18 sober living homes in Costa Mesa. Each
9 home is a “dwelling” under the FHA, 42 U.S.C. § 3602(b), and a “housing
10 accommodation” under FEHA, Government Code § 12927(d).

11 7. Defendant City of Costa Mesa is a general law city, established and
12 organized under the laws of the State of California. It is a public entity under the
13 Americans with Disabilities Act, 42 U.S.C. § 12131, a program or activity
14 receiving federal financial assistance under the Rehabilitation Act, 29 U.S.C. §
15 794(a), and a person under 42 U.S.C. §§ 1983, 1985(3), 1986 and 3602(d).

16 **IV. FACTUAL ALLEGATIONS**

17 **A. City of Costa Mesa**

18 8. The City of Costa Mesa, home of the Orange County Fairgrounds and
19 South Coast Plaza, is located 40 miles south of Los Angeles and borders Santa
20 Ana, Newport Beach, Huntington Beach, Fountain Valley and Irvine. Since its
21 incorporation in 1953, Costa Mesa has grown rapidly from a small, semi-rural
22 farming community of 16,840 to a suburban community of 112,000. Of its 42,120
23 dwelling units, just under 10% are occupied by persons with disabilities and more
24 than 60% are rental units.

25 9. The City is established as a general law city; its policy-making
26 authority is vested in the city council and other city officers or employees as
27 provided by local law. Govt. Code § 36501. It is organized as a city manager
28 form of municipal government. Govt. Code §§ 34851-34859; Costa Mesa

1 Municipal Code (CMMC) § 2-97. The City’s municipal code confers broad
2 powers and duties on the city manager, CMMC 2-97, who is responsible for the
3 City’s compliance with state law and the enforcement of local laws, CMMC § 2-
4 114, and empowered to direct and control city officers and employees, CMMC §
5 2-115, including the dismissal of those officers and employees, except for the city
6 attorney or treasurer, CMMC § 2-116. Under the municipal code, the city
7 manager, also known as the chief executive officer, may delegate his powers and
8 responsibilities to other employees or officers. CMMC § 1-9.

9 10. Pursuant to 42 U.S.C. § 5304(b)(2), the City – as a recipient of
10 federal community development funds – certifies to the Secretary of the United
11 States Department of Housing and Urban Development that it “will affirmatively
12 further fair housing.” Pursuant to California Government Code § 11135, the City
13 – as a recipient of state funds – certifies that it will provide “full and equal access
14 to the benefits” of its programs or activities.

15 **B. The City’s Zoning Powers and Regulations**

16 11. The Zoning Code of the City of Costa Mesa, Title 13 of the Costa
17 Mesa Municipal Code, classifies and regulates land uses and structures within the
18 City. The Zoning Code establishes geographic districts including residential,
19 commercial, business and industrial districts and prescribes land uses and
20 structures that may lawfully locate within each district. CMMC §§ 13-20, 13-30.

21 **1. The City’s residential districts**

22 12. For dwellings, the Zoning Code establishes several types of
23 residential districts, including single-family (R-1), and multiple-family (R2-MD),
24 high density (R2-HD), and its highest density (R-3). CMMC §§ 13-20.

25 13. In every residential district, the Zoning Code regulates dwelling type
26 and dwelling lot size. For example, within single-family residential districts (R-
27 1), one detached, single-family dwelling may be built on one lot, with a minimum
28 lot size of 6,000 square feet, and a maximum density of 7.26 dwelling units per

1 gross acre. CMMC § 13-20(a). Within multifamily residential districts (R-3), one
2 apartment building may be built on one lot, with a minimum lot size of 12,000
3 square feet, and a maximum density of 20 dwelling units per gross acre. CMMC §
4 13-20(d).

5 14. Every dwelling in Costa Mesa is subject to the California State
6 Housing Law, Health & Safety Code § 17200 governing the number of persons
7 who may occupy any dwelling. Under California Health & Safety Code §§ 17922,
8 17950, and 17958, the City must adopt as local law the statutes and regulations of
9 the State Housing Law related to occupancy of dwellings, including the specific
10 standards of the Uniform Housing Code (UHC) § 503(b). 25 CCR 32. UHC §
11 503(b) allows occupancy of a dwelling by no more than two persons in each
12 habitable room with a minimum of 120 square feet of floor area, requiring an
13 additional 50 square feet for each occupant in excess of two. As required by
14 Health & Safety Code § 17961(a), the City must apply and enforce this uniform
15 occupancy standard to every dwelling in every zoning district within Costa Mesa.
16 It applies to each dwelling regardless of zoning district (R-1 to R-3), tenure of
17 household (owned or rented), or structure (house, condo or apartment).

18 15. In every residential district, the City also regulates the behavior of
19 residents. It imposes a citywide, uniform set of restrictions and prohibitions
20 governing the conduct and activities of any person located within any residential
21 district in Costa Mesa. The City regulates noise (CMMC § 13-280), public
22 drinking (CMMC § 20-4[g]), parking and storage of vehicles (CMMC § 20-6[c]),
23 parking inoperable vehicles in driveways (CMMC § 20-4[k]), storage of
24 construction materials (CMMC § 20-4[o]), rubbish in driveways (CMMC §
25 20-3[e]), weeds (CMMC § 20-3[d]), dead grass (20-13[f]), chipped paint (CMMC
26 § 20-7[e]), keeping a messy yard (CMMC § 20-12[aa]), big walls and small fences
27 (CMMC § 20-7[k]), barking and stray dogs (CMMC §§ 3-8, 3-9), noisy cats
28 (CMMC § 3-16), keeping livestock, including bees (CMMC §§ 3-13, 3-18),

1 "harboring" more than five pets of any kind in a dwelling (CMMC § 3-14), or
2 slaughtering any of them, except for rabbits and birds (CMMC § 3-170), riding an
3 "unlicensed" bicycle (CMMC § 4-3), having a dirty or torn canopy (CMMC §
4 20-9), or a bulging fireplace (CMMC § 20-12[b]), or even a barbeque on a rooftop
5 (CMMC § 20-12[p]).

6 16. The City exercises plenary power to abate every conceivable type of
7 nuisance and zoning code violation that arises in its residential districts. It
8 authorizes a wide variety of officials to issue notices of violation or citations for
9 every possible insult to municipal tranquility. The remedies at the disposal of the
10 City range from administrative procedures to criminal penalties, including
11 punishment by fine or imprisonment CMMC § 1-33.

12 **2. The City's single family dwelling districts**

13 17. Among its residential districts, the City's R-1 districts are the most
14 exclusive and privileged neighborhoods. To protect those neighborhoods from
15 infiltration by undesirable persons, the Zoning Code excludes or limits certain
16 households based on the disability of persons living in those households. Unlike
17 any other residential district, the City regulates a person's right to live in an R-1
18 district based, in part, on his or her disability status.

19 **3. The City's zoning classification system based on a** 20 **household's disability status**

21 18. To implement this discriminatory policy, the Zoning Code sorts each
22 household located in an R-1 district into one of three classifications.

23 19. If the household is comprised of nondisabled persons, then it may be
24 classified as a single housekeeping unit. CMMC § 13-6. As a single
25 housekeeping unit, a household is free to occupy a dwelling located in any R-1
26 district unmolested by the City. CMMC § 13-30. But if the household is
27 comprised of disabled persons, then the City imposes limitations, restrictions, and
28 requirements on that household.

1 20. The Zoning Code divides households comprised of disabled persons
2 into two subgroups. If the disabled household is state-licensed, then it is classified
3 as a Resident Care Facility (RCF). CMMC § 13-6. Once classified as an RCF,
4 the City subjects the RCF household to a discriminatory occupancy limitation –
5 not imposed on households of unrelated, nondisabled persons – capping the
6 number of disabled persons who may occupy a dwelling (regardless of dwelling
7 size or configuration) at a number far less than permitted in any other dwelling
8 (occupied by nondisabled persons) under the Uniform Housing Code. CMMC §
9 13-30.

10 21. If the disabled household is unlicensed, then it is classified as a
11 Group Home. CMMC § 13-6. Once deemed a Group Home, the City subjects the
12 Group Home household to a discriminatory occupancy limitation – not imposed on
13 households of unrelated, nondisabled persons – capping the number of disabled
14 persons who may occupy a dwelling (regardless of dwelling size or configuration)
15 at a number far less than permitted in any other dwelling (occupied by nondisabled
16 persons) under the Uniform Housing Code. CMMC § 13-30. The City also
17 imposes burdensome permitting requirements on Group Home households and
18 discriminatory abatement procedures. CMMC §§ 13-311, 13-312. The City does
19 not impose these procedures or requirements on similar households comprised of
20 nondisabled persons.

21 22. The Zoning Code further divides unlicensed housing for disabled
22 persons into two subgroups – households comprised of disabled persons in general
23 (group homes, discussed above) and households comprised of disabled persons in
24 recovery (sober living homes). If a disabled household is classified as a Sober
25 Living Home, CMMC § 13-6, then it is subject to the restrictions imposed on
26 RCFs and Group Homes and much more, including additional permitting
27 conditions and a separation requirement. CMMC §§ 13-30, 13-311, 13-312. The
28 City does not impose these procedures or requirements on similar households

1 comprised of nondisabled persons.

2 **C. The Official Policy of the City of Costa Mesa**

3 23. It is the official policy of the City of Costa Mesa to eradicate
4 households comprised of disabled persons in recovery from the City's R-1
5 districts. This official policy aims to evict disabled persons in recovery from
6 dwellings located in R-1 districts and to prohibit the infiltration of new disabled
7 persons in recovery into those districts. The objective of this official policy is the
8 displacement or disruption of the housing available to these disabled persons.

9 24. This policy of discrimination is legislated, directed, encouraged,
10 condoned and ratified by the City Council. The City Council charged the City
11 Manager Tom Hatch with the authority and responsibility for execution of this
12 official policy. In turn, Hatch delegated his authority to Rick Francis, Assistant
13 Chief Executive, and Jerry Guarracino, Assistant Development Service Director,
14 among others. Francis and Guarracino tasked City agencies and employees
15 pursuant to the City official policy of discrimination.

16 25. To advance its official policy of discrimination, the City engaged
17 every instrument of municipal power to target, harass, evict and exclude disabled
18 persons in recovery from its R-1 districts. Led by Mayor Jim Righeimer, the
19 City Council encouraged residents to engage in speech and conduct motivated by
20 discriminatory animus against disabled persons in recovery. The City Council
21 funded programs designed to eradicate households of disabled persons in
22 recovery. It also directs City officials and employees to target and harass disabled
23 persons in recovery. The City Council, working with other policy-makers,
24 conceived, created, enacted and enforced municipal legislation whose sole
25 objective is to drive households of disabled persons in recovery from Costa
26 Mesa's R-1 districts, including Ordinance 13-04, 14-13 and 15-06. This policy is
27 official – created, authorized, funded, and ratified by the City's policy-makers –
28 and it is deliberate – committed by them in knowing violation of the City's duties

1 to affirmatively further fair housing.

2 26. As a group, the City's policy-makers and employees acting under
3 their direction conspired for the purpose of depriving, either directly or indirectly,
4 a class of person, identified as disabled persons in recovery, of the equal
5 protection of the laws, as further described below. Each had knowledge of the
6 wrongs conspired to be done and had the power to aid in the prevention of those
7 wrongs but neglected or refused to act.

8 27. Each discriminatory or unconstitutional practice or action alleged in
9 this complaint was committed pursuant to and in conformity with the City's
10 official policy of discrimination against persons in recovery.

11 **D. Historical Background, 2009-2013**

12 28. For decades, households of persons in recovery existed in peace
13 throughout Costa Mesa. But local events in late 2009 eroded that tranquility as
14 the group home controversy in neighboring Newport Beach grew more heated.
15 Watching Newport Beach drive persons in recovery from its neighborhoods
16 inspired a small but vocal group of Costa Mesa residents to agitate for the
17 adoption of the same discriminatory policy in their city. Their protest grew more
18 insistent in the wake of the federal district court's rulings in *Pacific Shores v. City*
19 *of Newport Beach*, upholding Newport Beach's group home ordinance. That
20 ruling unleashed the forces underlying Costa Mesa's conduct in this case. Relying
21 on the district court's ruling, Newport Beach closed its borders to any new group
22 homes and evicted more than half of the existing sober living homes. Costa Mesa
23 residents feared that Newport Beach steered persons in recovery into their city.
24 Whether right or wrong, opinion grew in Costa Mesa that Newport Beach's win
25 was Costa Mesa's loss.

26 29. But while the Newport Beach controversy played out, the city
27 government of Costa Mesa confronted far more urgent problems. Faced with a
28 budget crisis in 2011, the City engaged in massive layoffs. The plight of Costa

1 Mesa became national news, featured prominently in *The New York Times* and
2 other media. The City reorganized and the budget stabilized in 2012, but the cuts
3 to jobs and services upset Costa Mesa residents and threatened the re-election
4 prospects of the City Council, especially Mayor Jim Righeimer, the City's most
5 powerful policy-maker. Lead by Righeimer, the City Council formulated its
6 official policy of discrimination in 2013 to redirect voters' angry over their
7 mismanagement toward disabled persons in recovery.

8 **E. The City Targets and Harasses Disabled Persons in Recovery**
9 **Pursuant to Official City Policy**

10 30. Although Lynn House and each SLN member have been injured by
11 the City's official policy of discrimination, Yellowstone experienced the most
12 outrageous misconduct by the City pursuant to that official policy.

13 31. Yellowstone operates four group homes in Costa Mesa for disabled
14 persons in recovery. Three of its homes are located among the City's R-1 districts,
15 a house on Boston Way and two homes located on East Bay Street. Each
16 Yellowstone house located in an R-1 district is licensed by the Department of
17 Health Care Services. Yellowstone had quietly and successfully provided recovery
18 services to the Costa Mesa community for more than a decade. That all changed,
19 however, as the City unfolded its official campaign against persons in recovery.
20 For the first time, Yellowstone experienced in Costa Mesa the kind of
21 discrimination it had long endured in Newport Beach.

22 **1. The City targets Yellowstone's Boston House for closure**

23 32. Boston House is an attractive house located on a residential street. It
24 is a large home, built on a 6,098 square foot lot. The house encompasses 2,500
25 square feet of living space and includes six bedrooms. For several years, the home
26 has been licensed and certified by the Department of Health Care Services for
27 occupancy by 15 persons, an occupancy cap below the uniform UHC standard.
28 Boston House residents live as a single housekeeping unit. They share meals,

1 chores, and living space, living like any other household occupying a house in one
2 of Costa Mesa's R-1 neighborhoods.

3 33. For Yellowstone, the City's harassment started in earnest in 2013.
4 One evening, when Yellowstone employee Joan Franco was driving away from
5 Boston House, City police officers intercepted her car. Officers ordered Franco
6 from the vehicle and onto the curb along a public street. For 30 minutes, officers
7 searched her car. They found nothing and released Franco without a ticket. The
8 stop and search of Franco and her vehicle were motivated by her association with
9 disabled persons in recovery and committed in conformity with the City's official
10 policy of discrimination.

11 34. The harassment escalated that summer. Costa Mesa police sergeant
12 Scott May, accompanied by three other City police officers, appeared in force
13 outside Boston House demanding entry. Franco allowed May and his officers to
14 enter the home without a warrant; she did not authorize them to search throughout
15 the home. Once inside, May ordered the eight residents to exit their dwelling and
16 line up in the front yard along the driveway. There, the residents were detained,
17 searched, and photographed by police for 45 minutes.

18 35. Meanwhile, inside the house, May ordered his officers to search every
19 room, a search that was not authorized or consented to. Then, turning to Franco,
20 May ordered Franco to follow him into a bedroom and closed the door behind
21 them. Once alone, May yelled at Franco, saying he did not want Boston House's
22 residents in his neighborhood. He threatened to keep returning to Boston House
23 until he drove Yellowstone from Boston House and out of the neighborhood. As
24 they exited the bedroom, May ordered Franco to return to a chair in the living
25 room. May's officers continued their unauthorized, room by room search, but
26 found nothing. Frustrated, May returned to Franco, sneered and said, "I'm sick of
27 you people. I don't want you people here. I'm going to do everything I can to get
28 you out." He then ordered his officers to move out; they had found no

1 contraband, effected no arrests, and issued no citations. May's conduct was
2 motivated by the disability status of persons who resided in Boston House and was
3 committed in conformity with the City's official policy of discrimination against
4 persons in recovery.

5 36. Starting in 2013, Boston House residents report other illegal searches,
6 trespasses and detentions by City police officers. In each incident, the harassment
7 followed a similar pattern: City police officers arrived without notice or a warrant
8 and demanded entry into Boston House. Residents allowed officers to enter the
9 home, but not to enter or search bedrooms. Once inside, however, officers
10 searched residents and their sleeping quarters. Sometimes police ordered residents
11 to take off their shirts to be photographed. Other times officers handcuffed a
12 resident at the beginning of the search, instilling the fear of arrest in the other
13 residents. But in each incident, the handcuffed resident was released and officers
14 departed, making no arrests, finding no contraband, and issuing no citations.
15 These searches and seizures by police officers in 2013-2014 were motivated by the
16 disability status of persons who resided in Boston House and were committed in
17 conformity with the City's official policy of discrimination against persons in
18 recovery.

19 **2. The City expands enforcement of its official policy of**
20 **discrimination against persons in recovery**

21 37. The City changed tactics after overhauling its nuisance ordinance in
22 late 2013. Although Ordinance 13-04 expanded the City's powers to criminally
23 prosecute a wide variety of behaviors, its express purpose was to target harsher
24 penalties on disabled households pursuant to the City's official policy of
25 discrimination. Armed with these new powers, code enforcement officer Mike
26 Tucker, guided by Francis and Guarracino, targeted sober living homes for steep
27 fines and criminal prosecution based on the disability status of those households.
28 The City launched a Newport Beach-style campaign of harassment against

1 disabled persons in recovery. Where police intimidation had failed, Tucker,
2 Guarracino, and Francis – acting in accordance with City’s official policy of
3 discrimination – were determined to succeed. This enforcement plan was
4 motivated by the disability status of persons residing in sober living homes and
5 executed pursuant to the City's official policy of discrimination against persons in
6 recovery.

7 38. By early 2014, however, households comprised of disabled persons
8 began resisting the illegal searches by City police officers; some refused to allow
9 City official to enter their home on demand. To squash this resistance, Francis and
10 Tucker devised a new tactic: Solicit probation or parole officers to join their
11 zoning enforcement team. By enlisting probation or parole officers to accompany
12 Tucker on his zoning raids, the City could gain access into any home at any time
13 under the pretext of conducting a probation or parole check. If a resident refused
14 entry or demanded to see a warrant, Tucker tapped an officer who announced that
15 the inspection was, in fact, a probation or parole check. If a resident objected that
16 nobody on probation or parole was present in the home, Tucker and his officers
17 disregarded the resident and entered the home in any event. This enforcement
18 plan aimed to advance the City’s official policy of discrimination against disabled
19 persons in recovery.

20 39. Tucker deployed this new strategy on March 12, 2014. That morning,
21 Tucker arrived at Boston House accompanied by several City police officers and
22 two Orange County probation officers. They swarmed the front of the house. The
23 officers came armed with weapons, but no warrant. They demanded and gained
24 entry into the home. When asked to leave by a resident, one police officer
25 announced that they were conducting a probation check. When a resident stated
26 that the only occupant on probation was not at home, an officer told him to “shut
27 up.” When the resident then asked officers to contact Honey Thames,
28 Yellowstone’s executive director, the police handcuffed him, dragged him outside,

1 and questioned him in front of neighbors for twenty minutes. After officers
2 searched the house, they released the handcuffed resident and departed. No
3 contraband was found and no arrests were effected. The March 12 raid was
4 motivated by the disability status of persons who resided in Boston House and
5 committed in conformity with the City's official policy of discrimination against
6 persons in recovery.

7 40. Two weeks later, however, Tucker cited Boston House for allowing
8 eight disabled persons to reside in the six-bedroom Boston House. That citation
9 was motivated by the disability status of persons who resided in Boston House and
10 committed in conformity with the City's official policy of discrimination against
11 persons in recovery.

12 3. The City Expands Its Harassment of Yellowstone

13 41. Throughout 2014, the City's harassment of Yellowstone increased,
14 ranging from the petty to the outrageous. For example, on September 23, 2014,
15 Tucker conducted an unannounced, warrantless inspection of the Yellowstone
16 home located on East Bay Street. He cited the home for a broken landscaping
17 light, a missing section of a rain gutter, and the presence of a city-approved
18 dumpster. For these violations, Tucker assessed a \$450 fine against Yellowstone.
19 Tucker's conduct on September 23 was motivated by the disability status of
20 persons residing in the East Bay House and was committed in conformity with the
21 City's official policy of discrimination against disabled persons in recovery.

22 42. Then, on October 11, the City Fire Department sent a letter citing
23 Thames's *personal* home for lack of fire extinguishers. The next day, October 12,
24 City police officers staked out Thames's home, photographing her vehicles and
25 home's exterior. This conduct was motivated by Thames's association with
26 persons in recovery and committed in conformity with the City's official policy of
27 discrimination against disabled persons in recovery.

28

1 43. Next, on October 15, Tucker returned to the East Bay House,
2 photographed the driveway, left and called for “backup.” City sanitation officials
3 appeared, complaining that the trash cans at the East Bay House were “too full,”
4 but left without issuing a citation. Tucker’s conduct on October 15 was motivated
5 by the disability status of persons residing in the East Bay House and committed in
6 conformity with the City’s official policy of discrimination against disabled
7 persons in recovery.

8 **4. The City denies Yellowstone’s request for accommodation**

9 44. In response to the City’s harassment, Yellowstone requested a
10 reasonable accommodation. It asked the City to treat Boston House as a “single
11 housekeeping unit” or, in the alternative, to lift the discriminatory occupancy cap
12 limiting the household to no more than six disabled persons. Either
13 accommodation was necessary to afford disabled persons an equal opportunity to
14 use and enjoy their dwelling in an R-1 district on an equal footing with
15 nondisabled persons. Without either accommodation, disabled persons occupying
16 Boston House are denied equal access to housing opportunities in the City’s R-1
17 districts. Yellowstone demonstrated the disability-related need for either
18 accommodation in a variety of ways. First, it showed that a household limited to
19 six disabled persons is insufficient to create and sustain a therapeutic environment
20 for persons in recovery. Second, Yellowstone showed that it cannot financially
21 sustain its operation of the Boston House with six or fewer residents. It explained
22 that the effect of capping occupancy at six persons would be to force the closure of
23 Boston House.

24 45. Yellowstone also requested that it be provided an equal opportunity
25 to qualify as a "single housekeeping unit" applying the same standards applied to
26 nondisabled households. Boston House met each written requirement to qualify
27 as a single housekeeping unit. Like any other single housekeeping unit, Boston
28 House operates on a nonprofit basis. Its occupants enjoy joint use of the common

1 areas. They share meals and household chores; they also share responsibility for
2 household expenses. Boston House residents entered the home through a common
3 entrance – the front door – and they do not maintain separate food storage. By
4 this request, Yellowstone asked the City to make an exception to the unwritten
5 prerequisite restricting single housekeeping status to households comprised of
6 nondisabled persons only. Pursuant to the City’s official policy of discrimination
7 against persons in recovery, the City denied Yellowstone’s requests in January
8 2015.

9 **5. The City’s harassment escalates as litigation progresses**

10 46. Following denial of Yellowstone’s request for accommodation, the
11 City escalated its harassment, growing more aggressive and threatening. On the
12 morning of July 27, 2015, the City again attempted to enter Boston House without
13 notice or a warrant. Tucker and Guarracino, accompanied by two uniformed,
14 armed police officers, arrived at the home, demanding entry. Surprised and
15 startled by the unannounced visit, Joe Elgin, a house manager, asked the officers
16 to wait while he called Honey Thames, Yellowstone's executive director. Elgin
17 spoke with Thames, then advised Tucker and Guarracino that Thames would
18 arrive shortly.

19 47. Thames rushed to Boston House, where she met Tucker and
20 Guarracino outside the home. Thames explained that the City’s repeated intrusion
21 into the home injured residents. To placate the City, Thames invited Guarracino to
22 enter and inspect the home, but insisted that armed police officers were not invited
23 into the house. Guarracino refused demanding entry with armed officers; he then
24 ordered Tucker and the police officers to leave the property. (Although gone from
25 Boston House, the City's harassment continued over the next 48 hours:
26 Yellowstone residents and staff observed a code enforcement vehicle circling their
27 Bay Street home, parking in front of the home, and even blocking the driveway to
28 the home so that one car could not get out.) The conduct of Tucker and

1 Guarracino on July 27 was motivated by the disability status of persons residing in
2 Boston House and committed in conformity with the City's official policy of
3 discrimination against persons in recovery.

4 48. The City's increasingly aggressive conduct worried Yellowstone staff.
5 As the City escalated its intimidation, the situation grew more threatening. On
6 July 30, 2015, Yellowstone wrote the City's attorney asking for advance notice if
7 and when the City wanted to conduct a zoning inspection, a common practice in
8 municipal zoning enforcement.

9 49. The City did not acknowledge that letter. Instead, the next day, July
10 31, 2015, the City petitioned the Orange County Superior Court for an inspection
11 warrant. The City's warrant application was unique in the context of municipal
12 zoning enforcement. It sought a no-notice, reasonable-force warrant for
13 unrestricted access into a private dwelling, even if no one was at home. Based on
14 the affidavit of Michael Do, an attorney with the law firm representing the City
15 here, the superior court issued the inspection warrant. The warrant authorized an
16 interior inspection of every room in Boston House, including bedrooms and
17 bathrooms. The superior court waived the routine 24-hour notice requirement,
18 authorized the use of "reasonable force," and allowed City officials to enter the
19 dwelling even if no one was home. The City petitioned for this warrant pursuant
20 to its official policy of discrimination against persons in recovery. The City's
21 request for a no-notice, reasonable-force warrant for unrestricted access into a
22 private dwelling was motivated by the disability status of persons residing in
23 Boston House and undertaken in conformity with the City's official policy of
24 discrimination against persons in recovery.

25 50. The City sat on the warrant for nearly two weeks. Then, on Tuesday
26 morning, August 11, 2015, it raided Boston House. This raid was conducted by
27 City officials and employees pursuant to the City's official policy of
28

1 discrimination against persons in recovery. The following actions by those City
2 employees and officials were committed in conformity with that policy:

3 51. For the residents of Boston House, the day started like a typical
4 Tuesday. Residents were making breakfast, showering, and dressing – getting
5 ready to go to work. At approximately 8:30 a.m., Jason Clark, a housing manager,
6 heard a loud banging on the front door, followed by a loud voice, "Costa Mesa
7 Police – open up." Residents huddled in the kitchen while Clark peered out the
8 side window. He saw several armed, uniformed police officers. Behind them
9 stood two uniformed City fire inspectors and three code enforcement officials,
10 including Tucker and Guarracino. On the street there was a line of city vehicles –
11 four police cruisers, a fire department van and a city code enforcement car. Clark
12 was scared. He froze for a moment, then telephoned Thames, then his supervisor
13 Ben Spencer, begging for help, saying over and over, "Come quick, come quick."
14 In the background, the voice at the door grew more menacing: "Police. Open the
15 door. We have a warrant." More banging, then: "We will use force unless you
16 open the door."

17 52. Clark opened the door. Seven uniformed police officers pushed past
18 Clark and rushed into the living room. One yelled, "Get everybody out of the
19 house now." Stunned and confused, Clark hesitated; the officer raised his voice
20 and repeated: "Get everyone out of the house now!" Officers encircled residents
21 – some partially undressed, showered hair still wet – herding them toward the
22 front door. Clark tried to reassure residents, "It's OK. Just head outside. C'mon,
23 let's go." Clark followed residents out of the house, where they were met by two
24 uniformed police officers who ordered them to sit on the curb in front of the
25 house. Some residents lacked shirts; others had no shoes. For 45 minutes, officers
26 interrogated residents, demanding to know their disability status ("What are you in
27 recovery for . . .") Two were handcuffed and put in police cars. Across the
28 street, neighbors gathered on their lawns and in their driveways, gawking at

1 Boston House residents lined up and squatting on the curb. One neighbor asked
2 the police to move their vehicles blocking her driveway; another asked an officer
3 what was happening on their usually tranquil street.

4 53. Meanwhile, back in the house, four officers drew their weapons,
5 extended their arms in a fire-ready position, and went room by room "clearing" the
6 dwelling. They entered each bedroom with weapons drawn. After "clearing" the
7 dwelling, three code enforcement officials, including Tucker and Guarracino,
8 followed by two fire officials, entered the home.

9 54. By 8:45 a.m., there were ten City officials moving in and out of
10 bedrooms and bathrooms in Boston House. They opened the refrigerator and
11 closets, rummaged throughout the garage and peered into the storage freezer there.
12 They stood around the pool in the backyard and then, as a group, decided to
13 inspect the pool filter system. Some took pictures, photographing residents'
14 private sleeping quarters. A police officer cornered and quizzed Clark: How long
15 have you been here? What's your name? How long have you worked for
16 Yellowstone? Clark demurred, asking the officer to wait for the arrival of Thames
17 before he answered any questions. The officer grew impatient. Nodding toward a
18 handcuffed resident being loaded into the back of a police cruiser, the officer
19 repeated his questions. The message was clear: Answer my questions or get
20 arrested. Clark relented, submitted to interrogation, interrupting only to ask,
21 "Where are you taking the residents? . . . Could you wait for Honey Thames?
22 She's on her way."
23
24
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1 55. By 9:20 a.m., Ben Spencer, Yellowstone's STOP program director¹,
2 arrived at Boston House. Frantically calling state officials, Spencer handed the
3 phone to a police officer. The officer spoke on the phone, then handed it back to
4 Spencer, saying, "Yeah, it's a clerical error – there's no outstanding 'locate' for
5 him," pointing to a resident handcuffed in the back of a police cruiser. (A "locate"
6 is a type of arrest warrant authorizing police to arrest a state parolee whose
7 whereabouts is reported as unknown.) "But now that he's arrested, it's easier just
8 to take him in; he won't be held long." Meanwhile, inside the house, one official
9 whispered to Clark, "There's nothing here; it's all minor stuff."

10 56. As the raid wrapped up, Clark stood on the front lawn and watched
11 City officials file out of Boston House. Residents were ordered to remain
12 crouched on the curb until City officials cleared the property, then released to
13 return to their home, as a parade of City vehicles drove away. Spencer joined
14 Clark, and they entered the home with residents. Spencer tried to calm and
15 reassure residents.

16 57. The next day, Wednesday, August 12, 2015, the City's attorney James
17 Touchstone acknowledged Yellowstone's July 30 letter requesting notice of
18 dwelling inspections by the City. The City refused to provide that notice,
19 Touchstone wrote.

20 **F. The City Legislates Its Official Policy of Discrimination Against**
21 **Persons in Recovery**

22 58. Against this backdrop, Ordinance 14-13, the City's new group home
23 ordinance, must be viewed as only one occurrence in a series of occurrences that

24
25 ¹Specialized Treatment for Optimized Programming (STOP) is a program
26 administered by CDCR to help parolees transition into their communities. It
27 ensures that parolees do not backslide into crime, which is usually preceded by
28 untreated drug or alcohol addiction. For Yellowstone, the program has been
highly successful.

1 form its pattern, practice, and policy of discrimination against persons in recovery.
2 On October 7 and again on October 21, 2014, the City approved Ordinance 14-13;
3 it became effective 30 days later, on November 20, 2014. The City heralded the
4 passage of the Ordinance as the final solution to its persons in recovery problem.

5 **1. Ordinance 14-13 classifies households based on occupants’**
6 **disability**

7 59. Each plaintiff – Lynn House, Yellowstone, and SLN members – is
8 subject to some part of Ordinance 14-13. Section 1 of Ordinance 14-13, adds or
9 amends definitions in the Zoning Code, creating three classifications of dwellings
10 in R-1 districts – single housekeeping units, residential care facilities, and group
11 homes, which includes sober living homes. Each plaintiff (or SLN member) is
12 subject to at least one of these new or amended classifications.

13 60. Under § 1, the Ordinance creates a new definition for “sober living
14 home.” The City classifies Lynn House as a Sober Living Home. Section 1 also
15 amends the definition of “residential care facility,” expanding that definition to
16 cover licensed sober homes, like Yellowstone’s Boston House, by adding the
17 following language: “Residential care facilities include . . . alcoholism and drug
18 abuse facilities (Health & Sat. Code §§ 11834:02-11834.30).” Under this
19 amended definition, the City classifies Boston House as a residential care facility.

20 61. Section 1 also amended the definition of “single housekeeping unit.”
21 This amendment affects each plaintiff, curtailing its ability to qualify as a single
22 housekeeping unit. Ordinance 14-13 reverse-engineered the definition of "single
23 housekeeping unit" to exclude group homes from its purview. It redefined “single
24 housekeeping unit” to exclude households with characteristics common to group
25 or sober living homes, adding this language to the definition:

26 There is a rebuttable presumption that integral facilities do not constitute
27 single housekeeping units. Additional indicia that a household is not
28 operating as a single housekeeping unit include but are not limited to: the

1 occupants do not share a lease agreement or ownership of the property;
2 members of the household have separate, private entrances from other
3 members; members of the household have locks on their bedroom doors;
4 members of the household have separate food storage facilities, such as
5 separate refrigerators.

6 The first attribute – "integral facilities do not constitute single housekeeping units"
7 – is aimed solely at housing for disabled persons in recovery. Integral facilities, a
8 new definition added by Ordinance 14-13, are "any combination of two or more
9 sober living facilities." The second attribute – "occupants do not share a lease
10 agreement or ownership of the property" – aims to exclude group homes since
11 operation of these households inherently involves occupancy other than ownership
12 and frequently requires separate rental agreements. Because individuals
13 recovering from addiction need to stay for varying lengths of time – some for a
14 few months, others for years – they do not typically execute lease agreements.

15 62. The City's definition of "single housekeeping unit" raises
16 constitutional concerns, a problem compounded by Ordinance 14-13. The City
17 allocates the right of a household to occupy a dwelling in an R-1 district based on
18 its "single housekeeping" status. Single housekeeping status depends on the
19 City's assessment of the nature of personal relationships among occupants and
20 their private activities within the confines of a dwelling. The City distributes
21 rights to occupy housing within certain neighborhoods based on its intrusion and
22 valuation of the intimate association and personal conduct of persons within the
23 confines of a private home.

24 **2. Ordinance 14-13 enacts discriminatory permitting**
25 **requirements and occupancy limitations that apply only to**
26 **households occupied by disabled persons**

27 63. Based on these classifications, § 2 of Ordinance 14-13 legislates
28 discriminatory conditions on households comprised of disabled persons pursuant

1 to the City's official policy of discrimination. Group homes located in an R-1
2 district must obtain a special use permit and reduce their occupancy to less than
3 seven disabled residents or face abatement. CMMC § 13-311(a) and (a)(2). The
4 conditions imposed on sober living homes located in R-1 districts are much more
5 harsh. Under § 2, households classified as sober living homes must obtain a
6 special use permit, meeting the requirements imposed on group homes, plus
7 additional restrictions governing their hiring, operations, procedures, reporting and
8 occupancy. Section 2 also imposes a separation requirement on the location of
9 existing sober living homes; specifically, no sober living home may be "located
10 within six hundred fifty (650) feet, as measured from the closest property lines, of
11 any other sober living home or a state licensed alcoholism or drug abuse recovery
12 or treatment facility." CMMC § 13-311(a)(10) and (a)(10)(i).

13 64. The City announced in November 2014 that it would apply its
14 650-foot requirements on a first come, first served basis (the "squatter's rule").
15 That announcement triggered a race to City Hall. Under the squatter's rule, an
16 existing, successful sober living home will be shutdown – even though it meets all
17 other requirements for permitting – solely on the basis that another sober home
18 beat it in the race to obtain a special use permit.

19 **3. Ordinance 14-13 enacts discriminatory abatement procedures**
20 **and rules that apply only to households occupied by disabled**
21 **persons**

22 65. Ordinance 14-13 also established discriminatory abatement rules that
23 apply only to households comprised of disabled persons. This provision advances
24 the City's official policy of discrimination against persons in recovery.

25 66. Under Ordinance 14-13, the City will abate any household classified
26 as a group home or sober living home unless the household reduces its occupancy
27 below the City's uniform, generally applied UHC standard and also applies for a
28 permit within 90 days of the effective date of Ordinance 14-13. CMMC § 13-312.

1 This rule applies only to households comprised of disabled persons. Any other
2 nonconforming residential use in an R-1 district is not required to obtain a permit
3 or reduce its occupancy below the City’s generally applied UHC standard.

4 CMMC § 13-204.

5 67. Under Ordinance 14-13, the City will abate any household classified
6 as a group home or sober living home unless the household fully complies with the
7 permitting requirements within one year of the effective date of Ordinance 14-13.

8 CMMC § 13-312. This rule applies only to households comprised of disabled
9 persons. Any other nonconforming residential use in an R-1 district may
10 continue operating indefinitely as a nonconforming use, without restriction or
11 interference by the City. CMMC § 13-204.

12 **G. Ordinance 14-13 Misplaces Its Land Use Matrix, the Key Provision**
13 **of the Ordinance**

14 68. Ordinance 14-13, like most zoning regulations, implements its
15 restrictions through a code provision commonly known as a “Land Use Matrix.”
16 A Land Use Matrix matches different types of housing (e.g., apartments, duplexes,
17 houses) to the zoning districts (e.g., R-1, R-2, R-3) in which a housing type may
18 be located as of right or conditionally. To implement Ordinance 14-13, the City
19 intended to include an amended Land Use Matrix, CMMC § 13-30 Table 13-30, as
20 part of the enactment. The City failed, however, to adopt the missing Land Use
21 Matrix until July 7, 2015, nine months after it enacted Ordinance 14-13.

22 69. Without the Land Use Matrix, Ordinance 14-13 cannot function. It
23 defines a variety of housing types, but lacks any linkage between housing types
24 and their assigned zoning districts and restrictions. The upshot is similar to
25 building a car, but forgetting to install the transmission. Even if the engine runs
26 and the wheels are fine, a car cannot function without a transmission, linking the
27 engine to the wheels. The Land Use Matrix performs the same function as a
28 transmission. It links zoning classifications and restrictions with zoning districts

1 just like a car transmission links the engine to the wheels.

2 70. In May 2015 plaintiffs advised the City that its Ordinance lacked an
3 amended Land Use Matrix. In June 2015 the City introduced Ordinance 15-06 to
4 adopt the missing Matrix. On July 7, 2015 – 259 days after the City enacted the
5 Ordinance and 229 days after the Ordinance’s effective date – the City finally
6 enacted the missing Land Use Matrix. On that same date, Lynn House sued the
7 City, pleading a timely challenge to Ordinance 15-06 for violation of Government
8 Code § 65008, a state statute that prohibits discriminatory zoning by a
9 municipality. (See ECF 36.) Accordingly, Lynn House's § 65008 claim
10 challenging the legality of Ordinance 15-06 is timely.

11 71. Since November 2014, the City has misrepresented that it had enacted
12 the missing amended Land Use Matrix as part of the Ordinance. During that
13 period, the City caused some sober living dwellings to close under the threat of
14 enforcement of this legal nullity. For others, it required them to expend thousands
15 of dollars and countless hours complying with an incomplete Ordinance.

16 **H. The City Tries to Hide Ordinance 14-13's Discriminatory Objective**

17 72. Pursuant to the City’s official policy of discrimination against persons
18 in recovery, the City sought to cover up its discriminatory objective by prefacing
19 the Ordinance with a list of false and misleading legislative findings; specifically:

- 20 a. Contrary to the Ordinance’s findings, the state and federal Supreme
21 Court bar the intrusive regulation of living arrangements within the privacy
22 of a person’s dwelling;
- 23 b. Contrary to the Ordinance’s findings, the Ordinance does not “strike a
24 balance between the City's and residents' interests of preserving the single
25 family characteristics of single-family neighborhoods and to provide
26 opportunities for the handicapped to reside in single-family R1 zones that
27 are enjoyed by the non-handicapped.” Instead, the Group Home Ordinance
28

1 was enacted to further the City’s pattern or practice of intentional
2 discrimination with clear disparate effect on disabled persons;

3 c. Contrary to the Ordinance’s findings, there is little reliable data to
4 support the assertion that “over the past several years the City, County and
5 State have seen a significant increase in the number of single-family homes
6 being utilized as alcohol and drug recovery facilities for large numbers of
7 individuals.” There is, however, reliable data to demonstrate that the
8 number of “sober beds” in Costa Mesa and Orange County is woefully
9 inadequate for the number of persons in recovery who need access to that
10 type of housing;

11 d. Contrary to the Ordinance’s findings, there is no credible evidence
12 that the presence of group or sober homes in Costa Mesa have created an
13 over-crowding problem;

14 e. Contrary to the Ordinance’s findings, there is no reliable evidence
15 that the presence of group or sober homes in Costa Mesa have created a
16 “second-hand smoke” problem;

17 f. Contrary to the Ordinance’s findings, there is no credible evidence
18 that the presence of group or sober homes in Costa Mesa have created a
19 “noise” problem;

20 g. Contrary to the Ordinance’s findings, the City estimate of the number
21 of “recovery beds” in the Costa Mesa is largely groundless; what is known
22 with certainty is that Costa Mesa has significantly fewer “recovery beds”
23 than is required to serve the needs of its residents;

24 h. Contrary to the Ordinance’s findings, there is no “over-concentration”
25 of group or sober homes in Costa Mesa and there is no reliable, empirical
26 evidence that, as a classification, group or sober homes are “deleterious to
27 the single-family character of the R1 neighborhoods.” There certainly is no
28

1 evidence whatever to support the City’s assertion that group or sober homes
2 “may also lead to the institutionalization of such neighborhoods”;

3 i. Contrary to the Ordinance’s findings, there is no reliable evidence
4 that existing group or sober homes in Costa Mesa represent a
5 “concentrations of sober living homes and/or the placement of inordinately
6 large numbers of recovering addicts in a single dwelling.” Nor is there any
7 credible evidence that group or sober homes “undermine the benefits of
8 home ownership in single-family neighborhoods for those residing nearby
9 and undermine the single-family characteristics of neighborhoods”;

10 j. Contrary to the Ordinance’s findings, the assertions of over-crowding
11 (one house with 15 beds) or over-concentration (five sober homes located
12 next to each other) is unfounded; even if true, these isolated examples do
13 not excuse the discriminatory purpose nor justify the discriminatory effect
14 of the Group Home Ordinance;

15 k. Contrary to the Ordinance’s findings, the creation of illegal additions
16 or room conversion is not unique to group or sober homes; moreover, there
17 is no evidence whatever that the occupancy of group or sober homes in
18 Costa Mesa exceeds the occupancy limits imposed on the City under the
19 State’s building or housing codes;

20 l. Contrary to the Ordinance’s findings, most group and sober home
21 residents and operators seek to become productive, contributing members of
22 Costa Mesa and take steps to anticipate and avoid concerns and protests by
23 the City or their neighbors;

24 m. Contrary to the Ordinance’s findings, the comparison between the
25 City’s treatment of group or sober homes for disabled persons and boarding
26 houses for nondisabled persons is skewed in favor of boarding houses
27 without disabled persons. Existing boarding houses are exempted from the
28

1 onerous regulation of the Group Home Ordinance; group and sober houses
2 are not;

3 n. Contrary to the Ordinance’s findings, there is no reliable evidence to
4 support the City’s assertions regarding the optimal benefits of six or fewer
5 residents in a home; there is no reliable evidence demonstrating a
6 correlation between six or fewer residents and a lower rate of relapse; there
7 is no credible evidence that a group of six or fewer residents is sufficient to
8 support a well-run, successful group or sober home; there is no credible
9 evidence that the limitations imposed by the Group Home Ordinance
10 benefits disabled persons, “enhanc[ing] the potential for their recovery”;

11 o. Contrary to the Ordinance’s findings, there is no reliable evidence
12 that a majority of the group or sober homes subject to the Group Home
13 Ordinance “do not function as a single-family unit”;

14 p. Contrary to the Ordinance’s findings, there is no credible or reliable
15 evidence that the presence of group or sober homes ‘creat[e] impacts on
16 water, sewer, roads, parking and other City services that are far greater than
17 the average household”;

18 q. Contrary to the Ordinance’s findings, the City is expressly required
19 under state law to plan infrastructure for group or sober homes; nor is there
20 any actual correlation between the City’s infrastructure capacity and census
21 data for Costa Mesa;

22 r. Contrary to the Ordinance’s findings, there is no credible evidence
23 that group or sober home residents create any greater externalities or care
24 less about their communities than non-group or non-sober home residents;

25 s. Contrary to the Ordinance’s findings, there is no reliable evidence
26 that group or sober home residents are “extremely transient”; on the
27 contrary, the City recognizes that these residents do not fit within its
28 definition of transient; and,

1 t. Contrary to the Ordinance’s findings, there is no reliable evidence to
2 support the City’s assertion that the 650-foot exclusion radius benefits
3 persons in recovery, preserves a neighborhood’s property values, or
4 mitigates the confiscatory effect of the exclusion on existing sober homes.
5 On the contrary, the evidence will show that the exclusion zone does just
6 that – excludes disabled persons from the City’s R1 neighborhoods; that
7 property values are unaffected by the presence of a sober home; and that the
8 Ordinance amounts to an unlawful taking of property.

9 73. Each of these “findings” is false, irrelevant, or a pretext for
10 intentional discrimination by the City pursuant to its official policy of
11 discrimination against disabled persons in recovery.

12 **I. Lynn House**

13 74. The experience of Lynn House also illustrates how the City’s conduct
14 injures or threatens to injure disabled persons in recovery. California Women’s
15 Recovery operates Lynn House, a single home located in one of Costa Mesa’s R-1
16 districts for women in recovery. The house is large, consisting of 2,222 square
17 feet, and includes two stories, five bedrooms, three bathrooms, a full kitchen,
18 living room, and attached garage. The residents – all women – are not transient;
19 they stay for as long as a year. As a nonprofit organization dedicated to helping
20 women in recovery, Lynn House provides many residents with partial
21 scholarships. Other residents contribute modest payments toward the costs of the
22 household. Regardless of their status, all residents live together as a single
23 housekeeping unit, sharing meals, expenses, chores, and living space. They are
24 helped by volunteers who support the residents. The house operates in accordance
25 with strict rules governing residents’ behavior. Unlike their neighbors, Lynn
26 House residents keep fewer than three cars at the property; the yard is
27 professionally maintained.

28 ///

1 **1. The City Warns Lynn House**

2 75. Lynn House operated in quiet, complaint-free, obscurity for a decade.
3 That changed in the wake of the City’s campaign to drive persons in recovery from
4 Costa Mesa. On December 1, 2014, Tucker appeared at Lynn House without
5 notice. He demanded to inspect the backyard of the home, stating that the City
6 had received a complaint of “excessive talking” by Lynn House residents as they
7 sat in their own private backyard. Tucker warned that he would document the
8 complaint in the form of an “incident report,” and left only after he extracted a
9 promise to restrict use of the backyard to one resident and one guest at a time.
10 Tucker’s conduct on December 1 was motivated by the disability status of persons
11 residing in Lynn House. His actions were undertaken in conformity with an
12 official City policy to discriminate against disabled persons in recovery.

13 **2. The City refuses to issue a permit to Lynn House**

14 76. The City classified Lynn House as a “sober living home,” subject to
15 Ordinance 14-13's permitting requirements. Lynn House applied on April 8, 2015
16 for a special use permit as required under Ordinance 14-13. The application for
17 the permit was much more burdensome than any other land use application ever
18 published or used by the City. It took days to complete the City’s application form
19 and compile the supporting documents; in fact, Lynn House needed to enlist the
20 help of an attorney to navigate the application process and assemble its
21 application. Despite these efforts, the City failed or refused to approve Lynn
22 House’s application. The City’s refusal was made in conformity with the City’s
23 official policy of discrimination against disabled persons in recovery.

24 **3. The City denies Lynn House’s request for accommodation**

25 77. On April 8, 2015, Lynn House also submitted a request for reasonable
26 accommodation, asking the City to treat Lynn House as a single housekeeping unit
27 or, in the alternative, to waive the City’s six-person occupancy cap under
28 Ordinance 14-13. The City denied that request on June 5, 2015.

1 78. Lynn House's request for accommodation was necessary to afford
2 disabled persons equal opportunity to use and enjoy a single family dwelling in
3 one of Costa Mesa's R-1 districts on an equal footing with nondisabled persons.
4 In other words, without either accommodation – lifting the six persons cap or
5 treatment as a single housekeeping unit – disabled persons are denied equal access
6 to housing opportunities in the City's R-1 district.

7 79. Lynn House demonstrated that lifting the six persons cap was a
8 reasonable accommodation. First, a household limited to six persons is
9 insufficient to create and sustain a therapeutic environment for persons in
10 recovery. Second, many Lynn House residents receive scholarships. Lynn House
11 cannot financially sustain its operation if capped at six residents contributing to
12 the expense and upkeep of the house.

13 80. Lynn House also requested that it be qualified as a "single
14 housekeeping unit" under the same standards applied to nondisabled households.
15 Lynn House meets each written requirement to qualify as a single housekeeping
16 unit. Like any other single housekeeping unit, Lynn House operates on a
17 nonprofit basis. Its occupants enjoy joint use of the common areas. They share
18 meals and household chores; they also share responsibility for household
19 expenses. Lynn House residents enter the home through a common entrance – the
20 front door – and they do not maintain separate food storage. By this request, Lynn
21 House asked the City to make an exception to the unwritten prerequisite restricting
22 single housekeeping status to households comprised of nondisabled persons only.
23 Pursuant to the City's official policy of discrimination against persons in recovery,
24 the City denied Lynn House's requests.

25 81. On September 28, 2015, the City cited Lynn House for failure to
26 obtain a special use permit. Under Ordinance 14-13, Lynn House is now subject
27 to abatement.

28 ///

1 **J. Orange County Sober Living Coalition**

2 82. The Orange County Sober Living Coalition is a chapter of the Sober
3 Living Network, a nonprofit group dedicated to promoting the availability of
4 affordable sober living homes managed in accordance with safe and sound
5 practices. The Coalition includes 11 members that own or operate sober homes in
6 Costa Mesa, including Yellowstone and Lynn House.

7 83. Like its umbrella group, the Coalition’s mission is to promote the
8 availability of affordable, well-operated and maintained sober living homes that
9 enhance their communities while supporting persons in recovery. To implement
10 that mission, the Coalition imposes strict requirements on its members. It inspects
11 the homes of each member, ensuring that the home’s operations, structure and
12 practices are safe and sound. It forbids members from accepting minors as
13 residents. It provides members with group insurance to protect against losses.

14 84. The Coalition also engages in education and advocacy regarding the
15 need for affordable, well-operated sober living housing. As part of that outreach,
16 it aims to promote understanding and compliance with the requirements of federal
17 and state fair housing laws. The Coalition furthered that aspect of its mission in
18 this case. Grant McNiff, the Coalition’s executive director, met with city
19 officials, gave testimony, and organized other outreach activities to educate the
20 City about the detrimental effects of its campaign against persons in recovery.

21 85. As the City stepped up its campaign against persons in recovery, the
22 Coalition diverted its scarce resources from its mission to counteract the City’s
23 discriminatory housing practices. It organized members to oppose adoption of the
24 Ordinance. It sponsored meetings between Coalition members and City officials,
25 including Tucker and Guarracino, to learn more about the City’s plans to
26 shutdown its members. It helped members navigate the City’s special use permit
27 process. Each of these activities diverted significant time, resources, and money
28 from the Coalition’s mission: Promoting and ensuring the existence of affordable,

1 high quality sober living homes for persons in recovery. Accordingly, the Sober
2 Living Network, through its Coalition chapter, has standing to sue on its own
3 behalf.

4 86. By this action, the Coalition seeks to vindicate interests that are
5 germane to its mission, specifically, promoting the availability of affordable sober
6 living homes. Its Costa Mesa members are injured by the City's conduct, as
7 demonstrated by the experiences of Yellowstone and Lynn House. Its claims for
8 relief under the Fair Housing Act and FEHA do not require the participation of
9 any individual member of the organization; however, at least two, Yellowstone
10 and Women's Recovery, are named here as plaintiffs. Accordingly, the Sober
11 Living Network, through its Coalition chapter, has standing to sue on behalf of its
12 members, seeking relief aligned with its mission and otherwise available to each
13 member who is subjected to the City's discrimination.

14 **K. The City's Policy of Discrimination Actually and Predictably**
15 **Results in a Disparate Impact on Disabled Persons in Recovery**

16 87. Ordinances 14-13 and 15-06 enacted land use policies or rules that
17 restrict, deny or otherwise make unavailable housing opportunities to persons
18 because of disability. Each ordinance actually or predicably results in a disparate
19 impact on a group of persons because of disability. These ordinances operate to
20 exclude disabled persons from certain neighborhoods without lawful justification.

21 88. The discriminatory impact of Ordinances 14-13 and 15-06 has been
22 profound and immediate. Since their passage, no new group home has opened in
23 Costa Mesa's R-1 districts. Instead, several sober living homes closed and a dozen
24 more are planning to close and relocate or cease operations.

25 89. Nearly one year after passage of Ordinance 14-13, the City had
26 tentatively granted approval of only five applications for group home permits.
27 (The City fails to disclose whether any of those "tentatively" granted permits were
28 issued to sober living homes.)

1 90. Meanwhile, in June 2015 alone, the City issued notices of violation to
2 28 households of disabled persons in recovery citing them for violation of
3 Ordinance 14-13. By operation of the ordinance's 650-foot separation
4 requirement, an additional twenty-six existing sober living homes are subject to
5 closure.

6 91. With the closure of those homes, a majority of disabled persons in the
7 City's R-1 districts will be rendered homeless, evicted from their dwellings by
8 municipal fiat. Once displaced, most residents will find no comparable dwellings
9 supporting their recovery. The Substance Abuse and Mental Health Services
10 Administration, an agency of the Department of Health and Human Services,
11 reports in its most recent National Survey on Drug Use (NSDU) that 7,407 Orange
12 County residents (8.2 percent of the county's total adult population) suffered from
13 dependence or abuse of narcotics (excluding marijuana) or alcohol. The NSDU
14 also reports that 2,319 Orange County residents (2.6 percent of the county's total
15 adult population) need but do not receive treatment for recovery from drug
16 addiction. The numbers for alcohol abuse are much higher: 5,891 Orange
17 County residents or 6.5 percent of the county's adult population need but do not
18 receive treatment for alcohol abuse.

19 92. Ordinances 14-13 and 15-06 also create or increase segregated
20 housing patterns in Costa Mesa. The ordinances apply only to the City's R-1
21 districts. The result is to steer and segregate sober living homes away from the
22 City's R-1 neighborhoods and relegate them to the City's multifamily districts,
23 depriving disabled persons housing choice and promoting greater isolation and
24 concentration of disabled persons in recovery.

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1 **L. The City's Policy of Discrimination Does Not Benefit Disabled**
2 **Persons**

3 **1. The objective, result and effect of the City's policy,**
4 **including its group home ordinances, do not benefit disabled**
5 **persons.**

6 93. The City acknowledges that the objective and effect of its official
7 policy of discrimination against persons in recovery is the "displacement or
8 disruption of the housing available to the handicapped." *Group Home Ordinance*
9 *14-13 - Implementation Update Report* (Item CC-4, 06-03-2015). The City
10 anticipates that Ordinance 14-13 will result in widespread displacement of
11 disabled persons. To camouflage its devastating effects, Ordinance 14-13
12 provides for cascading closure deadlines, subjecting group and sober living homes
13 to closure at three milestones (90 days, one year, or two years) based on a home's
14 rate of compliance with Ordinance 14-13 and legal obligations. "This strategy
15 was intended to avoid any sudden displacement or disruption to the housing
16 available to the handicapped." *Ibid.* An official policy with that objective and
17 effect does not benefit disabled persons.

18 94. The City's official policy of discrimination against persons in
19 recovery actually or predicably results in the eradication of most sober living
20 homes in the City's R-1 districts. An official policy with that objective and effect
21 does not benefit disabled persons.

22 95. By evicting disabled persons from their homes, the City renders them
23 homeless and displaced, forcing them to search for alternative housing in a market
24 that already underserves persons in recovery. An official policy with that
25 objective and effect does not benefit disabled persons.

26 100. The City has commenced criminal prosecution of owners or operators
27 of sober living homes. An official policy that subjects sober living providers to
28 criminal prosecution for operating a sober home does not benefit disabled persons.

1 101. Since this action was filed, the City has cited dozens of disabled
2 household for violation of provisions enacted or amended by Ordinance 14-13.
3 These citations threaten criminal prosecution or ruinous fines or both. An official
4 policy that threatens sober living providers with fines or jail does not benefit
5 disabled persons.

6 **2. The assertion of benefit depends on two demonstrably false**
7 **assumptions**

8 96. The assertion that the City’s zoning code favors housing for disabled
9 persons is untrue. That assertion depends on either of two false assumptions.

10 97. The first assumption is that the availability of dwellings for disabled
11 persons is better today than before enactment of Ordinance 14-13. That
12 assumption is empirically false: As alleged throughout this complaint, the City’s
13 official policy of discrimination results – and will continue to result – in
14 significantly fewer housing opportunities for disabled persons generally and
15 persons in recovery particularly.

16 98. The second assumption is that a district court may disregard
17 allegations of purposeful discrimination if the City can point to similar housing
18 that is treated less favorably than sober living homes under Ordinance 14-13. The
19 City points to “large boarding houses” as similar housing treated less favorably
20 under its Zoning Code. (ECF 52, pp. 9, 14-16, 25, 27, 28; ECF 56, pp. 2, 3, 6, 7.)

21 99. That comparison is invalid. It assumes that sober living homes are
22 similar to large boarding houses; they are not. Plaintiffs operate as single
23 housekeeping units.

24 100. The comparison is also illusory. It assumes that large boarding
25 houses existed in the City R-1 districts. But the City admits that it is unaware of
26 the existence of any large boarding houses in R-1 districts. No large boarding
27 houses are subject to or adversely affected by Ordinance 14-13 because none exist.

28

1 101. But if large boarding houses did exist, then they would be treated
2 more favorable sober living homes under the City’s Zoning Code in the wake of
3 Ordinance 14-13. Under CMMC § 13-312, the City will abate sober living homes
4 unless they reduce occupancy and obtain a permit. Under CMMC § 13-204, the
5 City will not abate large boarding houses. Instead, large boarding houses will be
6 left unmolested as nonconforming uses. Following passages of Ordinance 14-13,
7 “existing boardinghouses in R-1 zones (if they existed at all) would just continue
8 to be legal non-conforming uses,” the City Attorney admits. Plaintiffs would be
9 treated more favorably if they disclaimed their federally protected status as
10 housing for disabled persons and masqueraded as large boarding houses for
11 nondisabled persons. This result does not benefit disabled persons.

12 **M. The City’s Discriminatory Housing Practices**

13 102. The City, acting through its policy makers, pursues a policy or
14 practice of discrimination on the basis of disability and other unlawful conduct.
15 The City’s policy or practice includes, but is not limited to, the commission of the
16 following unlawful acts:

- 17 a. Denying or otherwise making unavailable housing to disabled
18 persons, including those for whom plaintiffs provide or seek to
19 provide housing, because of disability;
- 20 b. Discriminating in the terms, conditions, or privileges of sale or
21 rental of housing by disabled persons, including those for
22 whom plaintiffs provide or seek to provide housing, or in the
23 provision of services or facilities in connection with housing,
24 because of disability;
- 25 c. Making, printing or publishing, or causing to be made, printed
26 or published a statement in connection with the sale or rental
27 of housing that indicates a limitation, preference or
28 discrimination on the basis of disability;

- 1 d. Restricting or attempting to restrict housing choice of disabled
- 2 persons, including those for whom plaintiffs provide or seek to
- 3 provide housing, because of disability;
- 4 e. Perpetuating or tending to perpetuate segregated housing
- 5 patterns based on disability;
- 6 f. Discouraging the rental or purchase of housing because of
- 7 disability;
- 8 g. Communicating to persons that they would not be comfortable
- 9 or compatible with existing residents of a community because
- 10 of disability;
- 11 h. Enforcing land use restrictions that preclude or restrict the sale
- 12 or rental of housing because of disability;
- 13 i. Threatening, intimidating and interfering with plaintiffs and
- 14 disabled persons, including those for whom plaintiffs provide
- 15 or seek to provide housing, in their enjoyment of a dwelling
- 16 because of disability;
- 17 j. Coercing plaintiffs to deny or limit dwellings to disabled
- 18 persons because of disability;
- 19 k. Assigning disabled persons, including those for whom
- 20 plaintiffs provide or seek to provide housing, to certain
- 21 neighborhoods because of disability;
- 22 l. Providing different municipal services to disabled persons,
- 23 including those for whom plaintiffs provide or seek to provide
- 24 housing, because of disability;
- 25 m. Evicting or threatening to evict disabled persons, including
- 26 those for whom plaintiffs provide or seek to provide housing,
- 27 because of disability;
- 28

- 1 n. Failing to make reasonable accommodations in rules, policies
2 and practices that may be necessary to afford disabled persons,
3 including those for whom plaintiffs provide or seek to provide
4 housing, an equal opportunity to use and enjoy a dwelling;
- 5 o. Failing to affirmatively further fair housing in the
6 administration and application of its zoning, building and life
7 safety codes;
- 8 p. Denying or limiting disabled persons, including those for
9 whom plaintiffs provide or seek to provide housing, the
10 opportunity to participate in or benefit from the supportive
11 housing offered by group homes, including plaintiffs'
12 dwellings;
- 13 q. Using land use ordinances and methods of administering those
14 ordinances for the purposes or with the effect of subjecting
15 disabled persons, including those for whom plaintiffs provide
16 or seek to provide housing, to discrimination on the basis of
17 disability;
- 18 r. Denying disabled persons, including those for whom plaintiffs
19 provide or seek to provide housing, an opportunity to
20 participate in a program in the most integrated setting
21 appropriate to their needs;
- 22 s. Denying disabled persons, including those for whom plaintiffs
23 provide or seek to provide housing, an equal opportunity to
24 participate in or benefit from services and programs equal to
25 those of people without disabilities;
- 26 t. Utilizing licensing and permit requirements to provide
27 municipal services that are not equal as applied to disabled and
28 nondisabled persons;

- 1 u. Utilizing unequal requirements for benefits or services in order
- 2 to deny disabled persons, including those for whom plaintiffs
- 3 provide or seek to provide housing, enjoyment and access to
- 4 those benefits or services as enjoyed by others;
- 5 v. Aiding, abetting, inciting, compelling or coercing the doing of
- 6 acts or practices in violation of federal and state fair housing
- 7 laws;
- 8 w. Discriminating through public land use practices, decisions,
- 9 and authorizations because of disability, including the use of
- 10 zoning laws that make housing opportunities unavailable;
- 11 x. Retaliating against plaintiffs because of their exercise of their
- 12 fair housing rights;
- 13 y. Conspiring with others to violate the federal rights of disabled
- 14 persons;
- 15 z. Refusing or failing to prevent persons from violating the
- 16 federal rights of disabled persons;
- 17 aa. Failing to affirmatively further fair housing
- 18 bb. Classifying housing for disabled persons for the purpose or with the
- 19 effect of excluding them from certain neighborhood;
- 20 cc. Infringing on the privacy rights of disabled persons; and,
- 21 dd. Depriving disabled persons of the safety and security of their home
- 22 from governmental intrusion.

23 103. The City injured plaintiffs by committing each of these unlawful
24 housing practices and discriminatory acts. Accordingly, each plaintiff is an
25 aggrieved person within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i),
26 the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985(3), 1986, the Americans
27 with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, Rehabilitation Act, 42 U.S.C. §
28 29 U.S.C. §794, and related state laws.

1 **N. Injuries**

2 104. By reason of the City's unlawful acts and practices, plaintiffs, and
3 each of them, have suffered violation of their federal statutory and constitutional
4 rights, loss of the value, use and enjoyment of their property, loss of current and
5 future income, and frustration of their mission and diversion of their limited
6 resources, among other injuries. The disabled persons housed by plaintiffs have
7 suffered a violation of their federal and state civil rights and rights to privacy,
8 which has injured plaintiffs. Accordingly, each plaintiff is entitled to
9 compensatory damages.

10 105. There now exists an actual controversy between the parties regarding
11 the City's duties under federal and state civil rights laws. Accordingly, each
12 plaintiff is entitled to declaratory relief under their federal and state law claims
13 including, but not limited to, 42 U.S.C. § 3613(c)(1), 42 U.S.C. §§ 1983-1986, 42
14 U.S.C. § 12133, Rehabilitation Act, 42 U.S.C. § 29 U.S.C. §794, California
15 Government Code § 12989.2, and the California Constitution, as well as Rule 57
16 of the Federal Rules of Civil Procedure.

17 106. Unless enjoined, the City will continue to engage in the unlawful acts
18 and the pattern or practice of discrimination described above. Plaintiffs have no
19 adequate remedy at law. Plaintiffs are now suffering and will continue to suffer
20 irreparable injury from the City's acts and the pattern or practice of discrimination
21 unless relief is provided by this Court. Accordingly, each plaintiff is entitled to
22 injunctive relief under their federal and state law claims including, but not limited
23 to, 42 U.S.C. § 3613(c)(1), 42 U.S.C. § 1983, and 42 U.S.C. § 12133,
24 Rehabilitation Act, 42 U.S.C. § 29 U.S.C. §794, California Government Code §
25 12989.2, and the California Constitution, as well as Rule 65 of the Federal Rules
26 of Civil Procedure.

27 ///

1 **V. CLAIMS FOR RELIEF**

2 **A. First Claim**

3 **[Federal Fair Housing Act]**

4 107. Plaintiffs reallege and incorporate herein by reference each preceding
5 paragraph.

6 108. Defendant City of Costa Mesa injured each plaintiff by committing
7 discriminatory housing practices in violation of the Fair Housing Act, 42 U.S.C.
8 §§ 3601 *et seq.*

9 **B. Second Claim**

10 **[Americans with Disabilities Act]**

11 109. Plaintiffs reallege and incorporate herein by reference each preceding
12 paragraph.

13 110. Defendant City of Costa Mesa injured each plaintiff by committing
14 unlawful practices in violation of Americans with Disabilities Act, 42 U.S.C. §§
15 12131 *et seq.*

16 **C. Third Claim**

17 **[Rehabilitation Act]**

18 111. Plaintiffs reallege and incorporate herein by reference each preceding
19 paragraph.

20 112. Defendant City of Costa Mesa injured each plaintiff by committing
21 unlawful practices in violation of Rehabilitation Act, 42 U.S.C. § 29 U.S.C. §794.

22 **D. Fourth Claim**

23 **[Civil Rights Act of 1871]**

24 113. Plaintiffs reallege and incorporate by reference each of the preceding
25 paragraphs of the complaint herein.

26 114. Defendant City of Costa Mesa injured each plaintiff by conspiring to
27 deprive, failing to stop the deprivation, or depriving them of equal protection of
28 the laws and due process of law, including freedom of association, freedom from

1 unlawful search and seizure, freedom from selective and discriminatory
2 prosecution, and rights to privacy, as guaranteed under the First, Fourth and
3 Fourteenth Amendments to the United States Constitution in violation of the Civil
4 Rights Act of 1871, 42 U.S.C. §§ 1983, 1985(3) and 1986.

5 **E. Fifth Claim**

6 **[California Fair Employment and Housing Act]**

7 115. Plaintiffs reallege and incorporate herein by reference each preceding
8 paragraph.

9 116. Defendant City of Costa Mesa injured each plaintiff by committing
10 unlawful housing practices in violation of the California Fair Employment and
11 Housing Act, Government Code §§ 12926, 12927, and 12955 *et seq.*

12 **F. Sixth Claim**

13 **[State Zoning Powers]**

14 117. Plaintiffs reallege and incorporate herein by reference each preceding
15 paragraph.

16 118. Defendant City of Costa Mesa injured Yellowstone and Sober Living
17 Network by discriminating in the use of the City's zoning powers, including its
18 enactment of Ordinances 14-13 and 15-06, in violation of California Government
19 Code §§ 11135 and 65008.

20 119. Defendant City of Costa Mesa injured Lynn House by discriminating
21 in the use of the City's zoning powers, including its enactment of Ordinances 15-
22 06, in violation of California Government Code §§ 11135 and 65008.

23 **VI. PRAYER FOR RELIEF**

24 Accordingly, plaintiffs pray that the Court awards them the following relief:

25 1. Declares that the City acted unlawfully under the Fair Housing Act,
26 the Americans with Disabilities Act, Rehabilitation Act, and other federal and
27 state laws as alleged herein;

28

1 2. Declares that the City’s enactment, administration, application, and
2 enforcement of its zoning regulations violate the rights of plaintiffs and their
3 residents under the Fair Housing Act, the Rehabilitation Act, California
4 Government Code, the California Constitution, as well as the Americans with
5 Disabilities Act, Fourteenth Amendment, and other federal and state laws alleged
6 herein;

7 3. Enters a temporary restraining order, preliminary and permanent
8 injunctions enjoining the City, its officers, employees, agents, attorneys and
9 successors, and all persons in active concert or participating with any one of them
10 from enforcing unlawful or discriminatory zoning regulations, and from taking
11 actions that either directly or indirectly interfere in any way with plaintiffs’
12 abilities to provide housing to groups of disabled persons in recovery;

13 4. Enters a temporary restraining order, preliminary and permanent
14 injunctions enjoining the City from harassing any plaintiff, including the
15 institution of any abatement or enforcement proceedings against any plaintiff;

16 5. Enters a temporary restraining order, preliminary and permanent
17 injunction enjoining the City, its officers, employees, agents, attorneys and
18 successors, and all persons in active concert or participating with any of them from
19 interfering with the operation of any dwelling occupied by disabled persons in
20 recovery;

21 6. Awards compensatory damages;

22 7. Awards reasonable costs and attorneys’ fees; and,

23 8. Orders other such relief as the Court deems just and proper.

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VII. JURY DEMAND

Plaintiffs demand trial by jury.

* * *

Dated: November 13, 2015.

Respectfully submitted,

BRANCART & BRANCART

/s/ Christopher Brancart

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LAW OFFICES OF STEVEN POLIN
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Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5 of the Federal Rules of Civil Procedure, on November
3 13, 2015, I served by email via ECF a copy of the attached document – **THIRD**
4 **AMENDED COMPLAINT; DEMAND FOR TRIAL BY JURY** – on the
following attorneys:

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/s/ Christopher Brancart