

1 John G. Barisone, SBN 87831  
Susan E. Barisone, SBN 106757  
2 **ATCHISON, BARISONE, CONDOTTI & KOVACEVICH**  
A Professional Corporation  
3 333 Church Street  
Santa Cruz, CA 95060  
4 Telephone: (831) 423-8383  
Facsimile: (831) 576-2269  
5

6 Attorneys for Plaintiff PEOPLE OF THE STATE OF CALIFORNIA ex rel. John G. Barisone, City  
Attorney for the City of Santa Cruz  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA CRUZ  
10

11 PEOPLE OF THE STATE OF CALIFORNIA,  
ex rel. John G. Barisone, City Attorney for the  
12 City of Santa Cruz,  
13 Plaintiff,  
14 vs.  
15 ANNA GALEEN RICHARDSON, and  
MIGUEL ANGEL DELEON.  
16 Defendants.  
17

**Case No. CV162526**  
**[consolidated with CV162525]**  
**PLAINTIFF'S TRIAL BRIEF**  
Trial Date: June 14, 2010  
Time: 9:00 a.m.  
Dept: [TO BE ASSIGNED]

18 **I. BACKGROUND AND FACTS**

19 This is an action to abate a public nuisance.<sup>1</sup> After a hearing on May 29, 2009 at which all parties  
20 were represented by counsel, the Court issued an Order for Preliminary Injunction against Defendants  
21 Anna Galeen Richardson and Miguel Angel Deleon.<sup>2</sup> Pursuant to that Order, Defendants were enjoined,  
22 pending a trial on the merits, from sleeping, setting up bedding, or camping in violation of Santa Cruz  
23 Municipal Code ("SCMC") Section 6.36.010 while in downtown Santa Cruz in the area comprised of  
24 Pacific Avenue and North Pacific Avenue (and adjoining businesses and parking lots); Scope Park; the  
25 Town Clock Plaza; Front Street from Spruce Street to Water Street (and adjoining businesses and  
26

27 <sup>1</sup> CCP §731 provides: "A civil action may be brought in the name of the People of the State of California to abate a public  
nuisance, as the same is defined in §3480 of the Civil Code, by...the city attorney of any town or city in which such nuisance  
exists...."  
28 <sup>2</sup> *People vs. Anna Galeen Richardson* (Case No. CV 162526) and *People vs. Miguel Angel Deleon* (Case No. CV 162525)  
were consolidated at Defendants' request.

1 parking lots, including the Post Office and the Veterans' Memorial Building); River Street from Soquel  
2 Avenue to Madrone Street (and adjoining businesses and parking lots); San Lorenzo Park and the  
3 Front/River Street public parking garage.<sup>3</sup> Plaintiff seeks a permanent injunction enjoining Defendants  
4 from, in addition to sleeping, setting up bedding, and camping in violation of Santa Cruz Municipal  
5 Code Section 6.36.010, refusing to leave businesses when requested to do so, remaining in public parks  
6 after hours, making unreasonably disturbing noise, excessive littering, interfering with police officers in  
7 the discharge of their duties, carrying open containers of alcohol in public, obstructing public sidewalks  
8 and public ways, soliciting within prohibited zones, bathing in the Town Clock Plaza fountain, and  
9 sitting and lying on public sidewalks in designated city zones where prohibited.

10 Plaintiff seeks to enjoin specified activities of two individuals who, as a result of their conduct,  
11 are creating a continuing public nuisance in downtown Santa Cruz. Their illegal actions and anti-social  
12 behavior, spanning over a three-year period, demonstrate a complete disregard for the rights of others.  
13 Defendants not only violate Santa Cruz municipal codes repeatedly, they create conditions which  
14 interfere with the health, safety, welfare, and rights of others in the use and enjoyment of public and  
15 private property downtown by utilizing the downtown area for living accommodations. Defendants set  
16 up extensive campsites, sleep outdoors on business property and in public parking lots, garages, parks  
17 and public ways, refuse to leave public parks after closing, take over areas of Scope Park and the Town  
18 Clock Plaza for their own exclusive use by erecting barriers, interfere with park maintenance, block bike  
19 lockers with their personal belongings, carry open containers of alcohol, litter excessively, become  
20 aggressive and threatening with City maintenance staff and police officers, solicit within prohibited  
21 areas, sit and lie on sidewalks in prohibited locations, disturb residents and businesses with unreasonably  
22 disturbing noise, trespass, refuse to leave business premises when asked and return repeatedly to the  
23 same premises after such requests. Defendants obstruct the free use of property by the general public  
24 and their activities require constant intervention from the police department. Defendants fail to respond  
25 to warnings, refuse to pay citations, and fail to appear in court to challenge citations.<sup>4</sup> This action is

26 \_\_\_\_\_  
27 <sup>3</sup> This geographic area was delineated in Plaintiff's injunction request based upon the locations of Defendants' recurring  
28 violations from 2006 until the initial filing in this action. Recurring violations were determined based upon addresses  
identified on citations issued to Defendants and maintained in the City's ALLIANCE System. The area included within the  
designated area comprises only 1.3% of the City's land area.

<sup>4</sup> Penal Code §1214.1 provides that the court may impose a civil assessment of up to three hundred dollars against any

1 necessary because Defendants have not demonstrated any intention to cease their unlawful and anti-  
2 social conduct downtown and Plaintiff has been unable to curtail these actions and behaviors which date  
3 back to at least 2007 and which constitute a continuing and significant interference with the rights of  
4 others in the downtown area.

## 5 II. LEGAL ARGUMENT

### 6 A. Defendants' Conduct Constitutes a Public Nuisance Which May Be Enjoined

7 Defendants' actions and behavior fall squarely within the definition of a public nuisance.  
8 California Civil Code section 3479 defines a nuisance as "Anything which is injurious to health ...or is  
9 indecent or offensive to the senses or an obstruction to the free use of property, so as to interfere with  
10 the comfortable enjoyment of life or property." Civil Code section 3480 states that "A public nuisance is  
11 one which affects at the same time an entire community or neighborhood, or any considerable number of  
12 persons...." Defendants' conduct falls within the description of a public nuisance as defined in Santa  
13 Cruz Municipal Code Section 4.01.010(16) which includes within that definition the "use of property in  
14 the city in a manner that jeopardizes or endangers the health, safety or welfare of persons on the  
15 premises or in the surrounding area ... or use of property in the city in a manner that violates ... any  
16 provision of this code or any other city, state or federal law or regulation."<sup>5</sup> All of the activities Plaintiff  
17 seeks to curtail by this injunction violate provisions of state and local laws.<sup>6</sup> Defendants' conduct is

18  
19 defendant who fails, after notice and without good cause, to appear in court for any proceeding or who fails to pay all or any  
20 portion of a fine ordered by the court. If a civil assessment is imposed under this section, no bench warrant or warrant of  
21 arrest shall be issued with respect to the failure to appear at the proceeding. Application of the penalties prescribed in Penal  
22 Code § 1214.1 has not provided Defendants with incentive to pay or appear on citations or had the effect of altering  
23 Defendants' behavior in any meaningful way. In its Request for Judicial Notice filed with this Court on April 23, 2009,  
24 pursuant to California Evidence Code section 452(d), Plaintiff attached Santa Cruz County Superior Court Records indicating  
25 that at the time these proceedings were initiated, Defendant Richardson had 25 Active cases and 5 Failure to Appear  
26 Collections cases under California Penal Code §1214.1 and Defendant Deleon had 18 Active cases and 12 Failure to Appear  
27 Collections cases pursuant to California Penal Code §1214.1.

28 <sup>5</sup> City legislative bodies are empowered by Cal. Gov. Code § 38771 to declare what constitutes a nuisance.

<sup>6</sup> Sleeping or setting up bedding outdoors between the hours of 11:00 p.m. and 8:30 a.m. violates SCMC §6.36.010 (a) and  
(b); camping outdoors any time violates SCMC §6.36.101(c); remaining on business property after being requested to leave  
violates SCMC §9.60.010; making unreasonably disturbing noise violates SCMC §9.36.010; excessive littering violates  
SCMC §6.12.080 and is deemed nuisance activity pursuant to SCMC § 4.01.010 (16); carrying open containers of  
intoxicating liquor in public violates SCMC § 9.12.030; obstructing public sidewalks and public ways violates SCMC  
§9.50.010 ; remaining in a public park after hours violates SCMC 13.04.011(c); soliciting within 14 feet of a building  
violates SCMC §9.10.030(e); sitting down on sidewalks in designated city zones downtown (including within fourteen feet of  
a building, fifty feet of an ATM, fourteen feet of a public bench, sculpture, artwork or vending cart) violates SCMC  
§9.50.012; lying down on public sidewalks in designated city zones violates SCMC § 9.50.011; sitting, standing or lying on  
monuments, fountains, medians, street tree planters, berms or other public property not designed for such purposes after  
being given a warning to stop violates SCMC § 9.50.020; bathing in public fountains violates SCMC §13.08.060; interfering

1 injurious to health as a result of sanitation issues that accompany camping outdoors in downtown Santa  
2 Cruz and the excessive litter that accompanies Defendants' outdoor encampments. The safety of others  
3 is implicated when Defendants sleep in business doorways and employees are required to wake  
4 Defendants up in order to enter their places of business and when Defendants become combative with  
5 City staff and police officers. Defendants interfere with the free use of property and comfortable  
6 enjoyment of life downtown when they take over areas of parks and plazas to the exclusion of others,  
7 establish elaborate encampments, fight loudly with each other and verbally abuse City maintenance  
8 workers attempting to maintain City property. Defendants' conduct clearly affects a considerable  
9 number of persons, including residents who live downtown, business managers and employees who  
10 encounter defendants' illegal and anti-social behavior on a regular basis, the general public who must  
11 navigate around Defendants' personal belongings and equipment in entryways, parks, plazas, garages  
12 and parking lots, and City staff who are impeded in the performance of their duties. As stated in *People*  
13 *ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1120, where conduct is injurious to health, indecent or  
14 offensive to the senses, an obstruction to the free use of property so as to interfere with the comfortable  
15 enjoyment of life or property, and in addition affects an entire community or a considerable number of  
16 persons, it falls within the statutory definition of public nuisance under Civil Code sections 3479 and  
17 3480. In *Acuna*, gang member activities were determined to be a public nuisance and gang members  
18 were enjoined from engaging in those specific activities in a designated neighborhood. Although *Acuna*  
19 involved violence, defendants in that case were enjoined from such activities as walking, driving and  
20 gathering with other defendants or gang members in the designated neighborhood. *People v. McDonald*  
21 (2006) 137 Cal.App.4th 521 makes it clear that Defendants' conduct need not reach the level of violence  
22 found in *Acuna* to be a public nuisance; it is the interference with the rights of the community at large  
23 that determines whether conduct constitutes a public nuisance. 137 Cal.App.4th at 533-534.<sup>7</sup>  
24 *McDonald* found public urination to be a public nuisance, stating: "Viewed broadly, the public nuisance  
25 doctrine thus represents an effort to balance the rights of the individual with the interest of the

26 with police officers in the discharge of their duties violates Cal. Penal Code §148 and SCMC §10.12.030. SCMC §6.36.060  
27 makes camping in violation of Chapter 6.36 a public nuisance per se, stating: "[a]ny campsite established in the city in  
28 violation of this chapter is declared to be a public nuisance...."

<sup>7</sup> See also, *Venuto v. Owens Corning Fiberglass Corp.* (1971) 22 Cal.App.3d 116, 123-124 (an act or omission which  
interferes with the interests of the community or the comfort or convenience of the general public and interferes with the  
public health, comfort and convenience is a nuisance).

1 community in maintaining a decent society.” 137 Cal.App.4th at 534 (quoting *Gallo v. Acuna*, 14  
2 Cal.4th 1090, 1102).

3 B. A Permanent Injunction Is Appropriate to Abate This Public Nuisance

4 Wrongs of a repeated and continuing nature may be enjoined under C.C.P. § 526. Section 526  
5 provides in pertinent part: “An injunction may be granted...when it appears by the complaint that the  
6 plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the  
7 commission or continuance of the act complained of, either for a limited period or perpetually...” In  
8 *People v. Mitchell Bros. Santa Ana Theater* (1981) 118 Cal.App.3d 863, 871 the court concluded that an  
9 injunction may issue to prevent wrongs of a repeated and continuing nature. Any claim by Defendants  
10 that an injunction is not necessary due to changed circumstances is without merit. Defendants’ nuisance  
11 conduct, although somewhat tempered after the preliminary injunction was granted, is ongoing.  
12 Defendants’ behavior and activities, both past and present, demonstrate Defendants’ disregard for legal  
13 mandates and the rights of others. Plaintiff contends that without an injunction in place, Defendants have  
14 no incentive to refrain from continuing their nuisance behavior. A court is not required to accept a  
15 guilty party’s statement that he or she no longer intends to commit transgressions when he or she retains  
16 the means of continuing transgressions. *Department of Agriculture v. Tide Oil Co.* (1969) 269  
17 Cal.App.2d 145, 150; *Wood v. Peffer* (1942) 55 Cal.App.2d 116, 124. An injunction may be granted  
18 with regard to past acts if there is evidence they will probably recur. *Rosicrucian Fellowship v.*  
19 *Rosicrucian Fellowship Non-Sectarian Church* (1952) 39 Cal.2d 121, 144.

20 Section 526(a)(5) provides for injunctive relief when pecuniary compensation would not afford  
21 adequate relief. Plaintiff does not seek damages in this action and monetary relief would not ameliorate  
22 the nuisance conditions created by Defendants. California Civil Code section 3369 provides for specific  
23 and preventive relief to enforce penal laws in the case of a nuisance. According to *People v. Wheeler*  
24 (1973) 30 Cal.App.3d 282, 294: “Acts or conduct which qualify as public nuisances are enjoined as  
25 civil wrongs or prosecutable as criminal misdemeanors, a characteristic that derives not from their status  
26 as independent crimes, but from their inherent tendency to injure or interfere with the community’s  
27 exercise and enjoyment of rights common to the public.”

28 ///



1            C. A City Has the Right and the Duty to Keep Its Streets and Other Public Property Open and  
2            Available for the Purpose To Which They Are Dedicated

3            It is well within the City's police power to protect the public's right to health, safety and welfare.  
4 California Constitution, art. XI, § 7 states: "A county or city may make and enforce within its limits all  
5 local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Plaintiff  
6 is authorized to abate public nuisances and enforce its municipal code provisions through the use of  
7 injunction pursuant to SCMC Sections 4.04.020<sup>8</sup> and 4.04.040<sup>9</sup>.

8            D. Equitable Relief in the Form of a Permanent Injunction to Enforce City Ordinances Which  
9            Protect the Community's Exercise and Enjoyment of Rights Common to the Public Does Not  
10           Violate Defendants' Constitutional Rights

11           "An ordinance is presumed to be valid and must be upheld unless its unconstitutionality clearly,  
12 positively and unmistakably appears." *City of Santa Cruz v. Patel* (2007) 155 Cal.App.4th 234, 243-244  
13 (*citing Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1102). Plaintiff City's ordinances are not  
14 unconstitutional. Defendants do not have a right to use public property or business premises for living  
15 accommodations. *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069. In *Tobe*, the California Supreme  
16 Court upheld a city's ordinance prohibiting camping and the storage of personal property, including  
17 camping equipment, on public property. Acknowledging that evidence provided at trial indicated that on  
18 any given night the number of shelter beds available in Santa Ana was more than 2,500 less than the  
19 need, *Tobe* makes it clear that a city is not required to provide alternative accommodations to homeless  
20 persons violating a camping ordinance before it may deny them the right to live on public property.<sup>10</sup> In  
21 reaching its conclusion that there is no fundamental right to camp or store personal belongings on public  
22 property, the court observed that "[t]he Legislature has expressly recognized the power of a city to  
23 regulate conduct upon a street, sidewalk, or other public place or on or in a place open to the public and  
24 has specifically authorized local ordinances governing the use of municipal parks." *Id.*, 9 Cal.4th at

25 <sup>8</sup> SCMC §4.04.020 states: "In addition to any other remedies provided by this code, any provision of this code may be  
26 enforced by injunction issued by the Superior Court upon a suit brought by the City of Santa Cruz."

27 <sup>9</sup> SCMC §4.04.040 states: "Pursuant to California Penal Code section 372 and California Code of Civil Procedure section 731  
28 the City has the authority to judicially abate public nuisances by filing criminal or civil nuisance actions."

<sup>10</sup> Evidence provided at trial in *Tobe* indicated that there were from 10,000 to 12,000 homeless persons in the county and 975  
permanent beds available to them. When the National Guard armories opened in cold weather there were 125 additional beds  
in Santa Ana and another 125 in Fullerton. "On any given night, however, the number of shelter beds available was more  
than 2,500 less than the need." 9 Cal.4th at 1083.

1 1109.

2 Adoption of [Santa Ana's camping] ordinance was clearly within the police power of the  
3 city, which may make and enforce within its limits all local, police, sanitary and other  
4 ordinances and regulations not in conflict with general laws. As the more than 90 cities  
5 and the California State Association of Counties that have filed an amicus curiae brief in  
6 this court have observed, a city not only has the power to keep its streets and other public  
7 property open and available for the purpose to which they are dedicated, it has a duty to  
8 do so (citations omitted).

9 Cal.4th at 1109.

10 In *Lehr v. City of Sacramento*, 624 F. Supp.2d 1218 (E.D. Cal., May 2009), the City of  
11 Sacramento's 'anti-camping' ordinance was upheld against an "as applied" challenge from plaintiffs,  
12 homeless persons and advocates, who claimed that its enforcement against them constituted a violation  
13 of the Eighth, Fourth and Fourteenth Amendments.<sup>11</sup> According to the *Lehr* plaintiffs, the ordinance  
14 made it a criminal offense for homeless individuals to be outside, anywhere in the city at all times of day  
15 or night if they maintain their possessions for camping at that place, or use said possessions for camping  
16 at that place. Moreover, plaintiffs argued, if, because they cannot afford housing or because there is  
17 inadequate shelter people have nowhere to "be" but outside, the ordinance effectively punishes them for  
18 being homeless. Thus, enforcement of the ordinance is unconstitutional. Rejecting *Jones v. Los Angeles*  
19 444 F.3d 1118 (9th Cir. 2008) (opinion depublished) and its suspect application of the *Robinson*<sup>12</sup> and  
20 *Powell*<sup>13</sup> decisions, the *Lehr* Court held that a decision in favor of Plaintiff's Eighth Amendment  
21 violation claim "would set precedent for an onslaught of challenges to criminal convictions by those  
22 who seek to rely on the involuntariness of their actions. It would potentially provide constitutional  
23 recourse to anyone convicted on the basis of conduct derivative of a condition he is allegedly 'powerless  
24 to change'. While this Court is sympathetic to the plight of Plaintiffs in this case, as well as to that of all

25 <sup>11</sup> Plaintiffs claimed that (1) defendant's enforcement of the city's anti-camping ordinance was cruel and unusual punishment  
26 in violation of the Eighth Amendment to the United States Constitution and (2) city employees operated to unconstitutionally  
27 deprive individuals of their property in violation of the Fourth and Fourteenth Amendments. Defendant city's motion for  
28 summary judgment was granted as to all of the first cause of action (Eighth Amendment); its motion for summary  
29 adjudication as to the second cause of action (Fourth and Fourteenth Amendments) was granted as to all plaintiffs except one  
30 (who alleged that the City routinely confiscated and destroyed the property of homeless individuals but failed to take the  
31 same action regarding the property of persons thought to have homes). Subsequently, in *Lehr v. City of Sacramento*, 2009  
32 U.S. Dist. LEXIS 49450, the court noted that if the city's objective is to remove the property from locations where it has been  
33 stored by homeless persons, this objective can be met by simply following the established procedures for preservation of  
34 found or abandoned property, rather than its immediate destruction. Plaintiff, City of Santa Cruz, does not immediately  
35 confiscate and destroy property. Any property that is removed after 72 hour notice is stored in conformance with the City's  
36 established procedures for preservation of found or abandoned property.

<sup>12</sup> *Robinson v. California* (1962) 370 U.S. 660.

<sup>13</sup> *Powell v. Texas* (1968) 392 U.S. 514.

1 individuals who are without shelter, a decision in favor of Plaintiff today would be dangerous bordering  
2 on irresponsible. Accordingly, the Court now finds that Plaintiffs' Eighth Amendment Claims fail as a  
3 matter of law." *Lehr*, 624 F. Supp., *supra*, at 1234.

4 Defendants' camping activities are not protected by the First Amendment. *Clark v. Community*  
5 *for Creative Non-Violence* (1984) 468 U.S. 288, 293-299; *People v. Davenport* (1985) 176 Cal.App.3d  
6 Supp. 10. In *Clark*, a no-camping regulation was challenged when a group wishing to bring attention to  
7 the plight of the homeless wanted to sleep overnight in a park in connection with a demonstration.  
8 According to *Clark*, "There is a substantial Government interest, unrelated to suppression of expression,  
9 in conserving park property that is served by the proscription of sleeping." *Id.*, 468 U.S. at 298-299. The  
10 court concluded that, even if the proposed sleeping demonstration were considered expressive conduct,<sup>14</sup>  
11 the regulations limiting camping constitute reasonable time, place and manner restrictions. *Id.*, 468 U.S.  
12 at 293-294. The court made it clear that "All those who would resort to the parks must abide by  
13 otherwise valid rules for their use, just as they must observe the traffic laws, sanitation regulations, and  
14 laws to preserve the public peace." *Id.* at 297-298. In *People v. Davenport, supra*, 176 Cal. App. 3d  
15 Supp. 10, a Santa Barbara city ordinance prohibiting sleeping in certain areas at certain times was  
16 similarly upheld against a First Amendment challenge.

#### 17 E. Defendants Do Not Have A Viable Necessity Defense

18 Defendants had the opportunity to present a necessity defense on each and every occasion that  
19 they have been cited. They did not present any such defense; rather, they simply did not appear or  
20 respond to citations in any way except to ignore or destroy them. They also refused officer suggestions  
21 that they utilize available shelter services.<sup>15</sup> An appropriate necessity defense requires a particularized

22  
23 <sup>14</sup> The court assumed for purposes of its decision, but did not decide, that sleeping in connection with the demonstration was  
24 expressive conduct protected to some extent by the First Amendment. *Clark, supra*, 468 U.S. at 293. Significantly, the court  
25 noted, "Although it is common to place the burden upon the Government to justify impingements on First Amendment  
26 interests, it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First  
27 Amendment even applies. To hold otherwise would be to create a rule that all conduct is presumptively expressive. *Id.* at  
28 297-298.

<sup>15</sup> The Declarations of Eric Seiley, Dan Forbus, William Winston, Wendy Bynes and Anna Richardson on file in this matter  
evidence Defendants' knowledge of shelter services and refusal to utilize them. *See, e.g.*, Seiley Declaration, p. 2: lines 12-  
13; Forbus Declaration, p. 1: lines 23-28, p.2: lines 1-3; Winston Declaration, p. 2: lines 10-13; Bynes Declaration, p. 2: lines  
3-5. According to Defendant Anna Richardson's February 27, 2009 Declaration, "local shelters impose severe restrictions on  
our life. The shelter separates its residents by sex, so I am forced to sleep separately from my fiancé, Miguel Angel Deleon.  
This disrupts our family. Further, I am a musician and earn the majority of my sustenance money at night on Pacific Avenue  
in Santa Cruz. The shelter requires us to be inside by 6pm, which would prevent us from earning money. [¶] I also view the



1 showing that defendants were not able to comply with the violated ordinance on the occasion for which  
2 they are being prosecuted. *In re James Warner Eichorn* (1998) 69 Cal.App.4th 382.<sup>16</sup> Under *Eichorn*, a  
3 defendant who is criminally prosecuted for violation of an ordinance must be provided the opportunity  
4 to present a viable necessity defense. To successfully plead necessity, the defendant must show  
5 particular circumstances making it impossible to comply with the law on the occasion for which he or  
6 she is being prosecuted. If, at any time, Defendants violate a court ordered injunction, they must be  
7 given the opportunity to make a particularized showing that they could not comply pursuant to *Eichorn*.  
8 As exemplified by the decisions in *Tobe* and *Lehr* above, however, lack of sufficient shelter for all  
9 homeless persons in the area does not prevent a city's enforcement of its camping ordinance.

10 **III. CONCLUSION**


11 The streets and public areas within the City of Santa Cruz should be readily accessible and  
12 available to residents and the public at large. Defendants' use of downtown property for living  
13 accommodations, including camping and storing personal belongings, interferes with the rights of others  
14 to use that property for its intended purposes and can constitute a public health and safety hazard which  
15 adversely impacts residents, businesses, visitors and the community in general. Camping on private  
16 property and business property without the consent of the owner constitutes trespassing and also affects  
17 health, safety and welfare. Defendants' interference with the public's right to use and enjoy downtown  
18 parks, pathways, sidewalks, parking lots and business premises for their intended purposes is  
19 unreasonable and constitutes a continuing public nuisance. This Court clearly has the authority to use its  
20 injunctive power to order abatement of defendants' continuing public nuisance behavior downtown.  
21 Defendants have been unresponsive to repeated and continuing requests that they cease and desist from  
22 their unlawful, disorderly and disruptive actions and they have not indicated to Plaintiff any intention to  
23 do so. Monetary damages will not ameliorate or eliminate Defendants' nuisance conduct. Plaintiff's  
24 injunction request specifically describes the nuisance behavior it seeks to enjoin and identifies precisely  
25 the geographic area within which the described behavior is to be enjoined. Without this injunction

26  
27 manner in which I live as part of my free expression and my right to free speech." Richardson Declaration: p.2, lines 12-18.  
28 <sup>16</sup> *Eichorn* requires a particularized evidentiary showing that the defendant violated the law: (1) to prevent a significant evil  
(2) with no adequate alternative (3) without creating a danger greater than the one avoided (4) with a good faith belief in the  
necessity (5) with such belief being objectively reasonable, and (6) under circumstances in which he or she did not  
substantially contribute to the emergency. The evidence must satisfy all of the elements of the defense.

1 Defendants will continue to create conditions downtown that are unsafe, unhealthy and obstruct the free  
2 use and enjoyment of sidewalks, public monuments, parks, pathways, parking lots and businesses. If  
3 Plaintiff's injunction request is granted, on the other hand, Defendants will not be deprived of any  
4 protected interests. They will simply be required to obey laws which impact the rights of the general  
5 public downtown in an area comprised of only 1.4% of the City. Defendants will continue to be free to  
6 play music, shop, gather, use and enjoy downtown spaces as long as they do so lawfully. In determining  
7 whether to issue an injunction courts should weigh and consider the public's interest. *Loma Portal Civil*  
8 *Club v. American Airlines Inc.* (1964) 61 Cal.2d 582, 588-89. As a general policy, the courts of equity  
9 favor the public's interest over private interests. *Socialist Workers v. Brown* (1976) 53 Cal.App.3d 879,  
10 889. "The very concept of ordered liberty precludes allowing every person to make his own standards  
11 on matters of conduct in which society as a whole has important interests. The state has not only a right  
12 to maintain a decent society, but has an obligation to do so, and interests of the community are not  
13 invariably less important than the freedom of individuals." *Acuna, supra*, 14 Cal.4th at 1102.

14  
15 ATCHISON, BARISONE, CONDOTTI &  
16 KOVACEVICH

17 Dated: 6/10/10

18 By:   
19 SUSAN E. BARISONE  
20 Attorneys for Plaintiff PEOPLE OF THE STATE OF  
21 CALIFORNIA ex rel. John G. Barisone, City Attorney for  
22 the City of Santa Cruz  
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