

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Supreme Judicial Court
for Suffolk County

Ronald Geddes, AC, and RAR,
each on their own behalf and
on behalf of a class of similarly situated
individuals,

Plaintiffs,

v.

City of Boston; Boston Police Department;
Boston Public Health Commission; Kim M.
Janey, in her capacity as the Mayor of the City of
Boston and individually; Gregory P. Long, in his
Capacity as the Acting Commissioner of the
Boston Police Department and individually; and
Bisola Ojikutu, in her capacity as Executive
Director of the Boston Public Health Commission
and individually,

Defendants.

Civil Action No. _____

**VERIFIED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. In the words of the Mayor-Elect of the City of Boston, “[c]riminalization has failed as a response to public health crises.”¹ Yet, the City of Boston (“City”) has resorted to crackdowns instead of taking action to actually address the public health and humanitarian emergency at the homeless encampment area of Massachusetts Avenue and Melnea Cass Boulevard and including Atkinson and Southampton Streets (“Mass & Cass”).²

2. The City’s ongoing displacement actions—which are driving unhoused persons from Mass & Cass—fail to address the immediate and urgent needs of unsheltered residents, and put the health and safety of an already vulnerable population at even greater risk.³ What is more, the City’s tactics are fundamentally unlawful. Specifically, the City explicitly threatens criminal sanctions for noncompliance with displacement without any meaningful or individualized process to ensure that those people driven from Mass & Cass actually have access to available housing arrangements or shelter that can reasonably accommodate their needs. The City’s actions therefore violate the Eighth Amendment of the United States Constitution and Article 26 of the Declaration of Rights under the Massachusetts Constitution, as well as federal and state disability discrimination laws.

¹ See A Citywide Plan to Address Homelessness, Substance Use, and Mental Health, Michelle for Mayor, <https://www.michelleforboston.com/plans/housing-justice/homelessness-sud> (last visited Nov. 4, 2021).

² The Chief Justice of the Boston Municipal Court (BMC) has defined “Mass and Cass” as “the geographic location surrounded by: a) Melnea Cass Boulevard, Hampden Street and Norfolk Avenue to the train tracks to the south and west; b) Massachusetts Avenue and Southampton Street to the train tracks and Interstate Route 93 to the north and east; and c) Washington Street, Massachusetts Avenue and Harrison Avenue to the north.” Ex. 5, BMC Chief Justice Roberto Ronquillo, Jr., *Boston Municipal Court Comm. Resp. Session Juris.*, Standing Order 02-21 (Oct. 30, 2021).

³ The word “City” as used in this Complaint includes the Boston Public Health Commission (“BPHC”), as it is an independent agency of Boston governed by a board of health whose members are appointed by the Mayor.

3. Additionally, in the course of removing these persons from their only shelter, the City is unlawfully seizing and destroying their personal belongings in violation of the Fourth Amendment to the United States Constitution, Article 14 of the Massachusetts Declaration of Rights, and federal and state due process protections.

4. With this Class Action Complaint for Declaratory and Injunctive Relief, Plaintiffs respectfully request that these unlawful actions cease immediately.

5. Plaintiffs are unhoused people currently or very recently staying on public ways in Mass & Cass. They live outdoors because they have no other viable housing options and staying at individual shelters is not a feasible alternative for them in part because of their disabilities, medical conditions, and family composition. The unsheltered homeless often raise tents or create other simple structures to protect themselves from the elements, gain some privacy, and enable sleeping. Plaintiffs and those similarly situated face or have already experienced displacement under the City policies challenged in this action, and are terrified about losing their liberty, their worldly possessions and any place to *be*, if the City is allowed to continue to force them—under threat of arrest and criminal prosecution—to relinquish their current living spaces without providing alternatives adequate to meet their housing and medical needs.

6. Plaintiffs therefore seek preliminary and permanent injunctive relief preventing Defendants and those acting in concert with them from:

- i. implicitly or explicitly threatening individuals with arrest or criminal process for living outside, including in tents or similar structures, on City-owned public property, either under the Executive Order and Protocols or otherwise, at least unless and until:

- a) the City implements a meaningful, individualized process to both assess the medical and other needs of each person and identify an alternative housing option that meets those needs and is available at the time of the displacement; and
- b) the City implements policies to prevent the unlawful and unjustified seizure and destruction of people’s property.

7. In addition to their primary claims on behalf of the Class for injunctive and declaratory relief, the named Plaintiffs seek actual and punitive damages resulting from Defendants’ intentional destruction of their personal property.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to G.L. c. 214, § 1, G.L. c. 231A, G.L. c. 12, §§ 11I, and 42 U.S.C. § 1983. Venue is appropriate pursuant to G.L. c. 214, § 5.

THE PARTIES

9. Plaintiff Ronald (“Ronnie”) Geddes is experiencing homelessness in part because of the ongoing collateral consequences of having a criminal history and because he lost his job because of the COVID-19 global health pandemic. He has bipolar disorder and post-traumatic stress disorder (“PTSD”), related in part to having been sexually abused as a child. He is in recovery for substance use disorder—for which he receives a regular course of methadone treatment. Over the course of the past year or so, he has resided at Mass & Cass, in a tent with his possessions neatly arranged.

10. Plaintiff RAR is experiencing homelessness and has been living in the Mass & Cass area over the past year in a tent with his long-term partner AC. Mr. RAR’s primary language is Spanish; he speaks and reads limited English. He has numerous disabilities and health conditions,

including HIV, Hepatitis-C, a seizure disorder, a heart condition, and PTSD. His vision is often impaired because of the impact of his seizures and he relies on the assistance of Ms. AC to navigate the activities of his daily life. In the past he has stayed in congregate shelters,⁴ but they exacerbated his PTSD and his vital medications were often stolen while there. In addition, staying in a congregate shelter is unsafe because of the risks of contracting COVID-19, which are particularly acute given his immunocompromised status and underlying health conditions.

11. Plaintiff AC is experiencing homelessness and has been living in Mass & Cass over the past year in a tent with her long-term partner, Plaintiff RAR. Ms. AC has numerous medical conditions, including PTSD, anxiety disorder, depression, asthma, bipolar disorder and a seizure disorder. Staying in congregate settings exacerbates her PTSD and anxiety, and she is very concerned about contracting COVID-19 in such a setting, particularly because she worries she could then infect Mr. RAR. She relies heavily on Mr. RAR for support during times her depression and anxiety are particularly high, as they are today because of the City's actions described in this Complaint.

12. Defendant City of Boston is a municipal corporation of the State of Massachusetts.

13. Defendant Kim M. Janey is the acting Mayor of the City of Boston. She supervises and exercises control over the Boston Police Department and the Boston Department of Environmental Protection. At all times pertinent to the subject matter of this litigation, she was a citizen of the United States and a resident of and domiciled in Massachusetts. At all times pertinent, she was acting under color of state law in her capacity as the Mayor of Boston. She is

⁴ Congregate housing facilities are also known as "shared" housing facilities, where a number of people reside in close proximity to one another.

sued in her official capacity and, for purposes of the claim under G.L. c. 12, § 11H, in her personal capacity.

14. Defendant Gregory P. Long is the Acting Commissioner of the Boston Police Department. At all times pertinent to the subject matter of this litigation, he was a citizen of the United States and a resident of and domiciled in Massachusetts. At all times pertinent, Defendant Long was acting under color of state law in his Capacity as the Acting Commissioner of the Boston Police Department. He is sued in his official capacity and, for purposes of the claim under G.L. c. 12, § 11H, in his personal capacity.

15. Defendant Bisola Ojikutu is the Executive Director of the Boston Public Health Commission. At all times pertinent to the subject matter of this litigation, she was a citizen of the United States and a resident of and domiciled in Massachusetts. At all times pertinent, Defendant Ojikutu was acting under color of state law in her capacity as Executive Director of the Boston Public Health Commission. She is sued in her official capacity and, for purposes of the claim under G.L. c. 12, § 11H, in her personal capacity.

FACTUAL BACKGROUND

16. The situation at Mass & Cass has been brewing for years and is a manifestation of the housing, substance use disorder, and mental illness crises that have upended the lives of countless individuals and families in the City of Boston and across the Commonwealth and the nation. The COVID-19 pandemic has only made matters worse—in some cases, layering on top of, and accelerating, an existing crisis, and in others, creating a whole new plight for individuals and families to navigate.

17. Marginalized and shunned by mainstream society and with nowhere else to go, Plaintiffs and those similarly situated have encamped at Mass & Cass. As of last week, the encampment consisted of approximately 150 tents and an estimated 350 people. Plaintiffs and those similarly situated encamp in the area because they cannot stay in most homeless shelters and, in some cases, receive health care, such as substance use treatment.

18. There is a well-documented lack of affordable housing in Boston and available shelter space is limited. On any given night, the City may not have sufficient shelter space to adequately house its homeless or unsheltered population. Moreover, and just as importantly, congregate shelters are not viable options for many people, including because of their individual medical and family needs.

19. Congregate shelters not only generally require abstinence and prohibit the possession of controlled substances and harm reduction items—thereby effectively banning individuals suffering with active substance use disorder—but the congregate nature of such shelters is also often inconsistent with the needs of people with other physical and mental health disabilities as well.

20. For example, as noted by the U.S. Department of Veterans Affairs, PTSD can cause a person to be startled by loud noises, to have difficulty sleeping, and to fear crowds because they feel dangerous.⁵ These symptoms can render a congregate shelter non-viable for people with diagnosed PTSD like Ronnie Geddes and AC, whose PTSD is frequently activated when in close quarters with others.

⁵ See PTSD: National Center for PTSD, U.S. Dep't of Vets. Affs., https://www.ptsd.va.gov/understand/what/ptsd_basics.asp.

21. In addition, as recognized by the CDC, people who are HIV positive are more likely to become severely ill with COVID-19.⁶ Indeed, the World Health Organization has concluded “HIV infection is a significant independent risk factor for both severe/critical COVID-19 presentation at hospital admission and in-hospital mortality. Overall, nearly a quarter (23.1%) of all people living with HIV who were hospitalized with COVID-19 died.”⁷ As a result, for some people with who are HIV-positive, like RAR, congregate shelters are not viable options because they pose too great a risk of COVID-19 infection.⁸

22. In addition, congregate shelters are not viable for other homeless people because, for instance, such shelters: (i) generally do not allow couples of different sex to stay together, (ii) may prohibit some people based on occurrences during their prior stays; and (iii) provide only night-time shelter, requiring people to leave during the day.

The Mayor’s Executive Order & Implementing Protocol

23. On October 19, 2021, Defendant Janey, in her capacity as the Acting Mayor of Boston, issued an “Executive Order Establishing a Coordinated Response to Public Health and

⁶ See *People with Certain Medical Conditions*, CDC (Oct. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

⁷ See *WHO Warns That HIV Infection Increases Risk of Severe and Critical COVID-19*, WHO (July 15, 2021), <https://www.who.int/news/item/15-07-2021-who-warns-that-hiv-infection-increases-risk-of-severe-and-critical-covid-19>.

⁸ Noting the recent outbreak of 113 new cases of HIV that has mainly erupted among people without homes who are using drugs in Boston, the medical director of the Boston Public Health Commission Dr. Jennifer José Lo stated “[i]t is astounding that we have as many cases as we do” and underscored “[i]t’s impacting a community that is already encountering many significant challenges.” Felice Freyer, *Health Officials Struggle to Contain Boston HIV Outbreak*, The Boston Globe (Apr. 20, 2021), <https://www.bostonglobe.com/2021/04/20/metro/health-officials-struggle-contain-boston-hiv-outbreak/>

Encampments in the City of Boston.” Ex. A. This was issued on the same day the Boston Public Health Commission issued a “Temporary Order Relative to Substance Use Disorder, Unsheltered Homeless, and Related Issues in the City of Boston.” Ex. B. Following the Executive Order’s directive, nine days later the City released the “Boston Homeless Encampment Liaison Protocol as of October 28, 2021.” Ex. C.

24. Together, the Executive Order and the Protocol emphasize that the threat of criminal enforcement undergirds the City’s displacement policies and detail the City’s approach for directing the displaced to alternative housing and for handling their property.

A) Criminal Enforcement

25. The Executive Order “dictate[s] that tents and temporary shelters will no longer be allowed on the public ways in the City of Boston.” The Order does not define the term “temporary shelter.”

26. It further makes clear that these displacement activities will be effectuated against the threat of arrest and prosecution, and mandates that “all City agencies will now prioritize enforcement of existing laws and the exercise of existing powers to prevent the placement and maintenance of these encampments in the [C]ity.” Ex. A, at II(1).

27. Moreover, both the Executive Order and the Protocol clearly provide that a person’s refusal to remove their belongings “may be considered disorderly conduct and subject to enforcement of the existing laws of the Commonwealth of Massachusetts.” Ex. A., at V(D)(i)(3); Ex. C, at II(3).

B) Alternative Housing and Property

28. The Executive Order explicitly “recognize[s] that unsheltered individuals have a property interest in their belongings;” states that prior to any enforcement actions the City will

“give people appropriate notice and the opportunity to remove their tent; offer individuals substance use and mental health treatment; and offer people alternative shelter,” and requires that the “Protocol will clearly state that no City of Boston employee will require an unsheltered individual to remove their encampment from public property *unless there is shelter available for that individual.*” Ex. A, at 4 (emphasis added).

29. In response, the Protocol created a Coordinated Response Team (“CRT”) to execute displacements pursuant to two different procedures, referred to as “the Standard Site Resolution Protocol” (“Standard Protocol”) and the “Immediate Site Resolution Protocol” (“Immediate Protocol”). Ex. C.

i) *Standard Protocol.*

30. The Standard Protocol requires City employees to post notices at least 48 hours before people at an impacted encampment location must remove their tents or other temporary shelters from City property. Ex. C, at 3–4.

31. The notices are supposed to provide information, including contact numbers and addresses, about agencies that provide a range of recovery support services and shelter and housing services, specifically where the City has identified shelter beds, low-threshold housing options, or other reserved shelter options. Ex. C, at 4.

32. In the circumstance where a person is precluded from accessing an identified shelter due to active substance use, the Standard Protocol purports to require City employees to offer the individual the option of seeking treatment before displacing the individual. Ex. C, at 4. Specifically, the Standard Protocol states “[w]here an individual may have barriers that preclude compliance with rules and requirements related to certain housing and shelter placements, the individual must have been offered the opportunity to go to any available low-threshold housing or

other shelter, to enter an inpatient detoxification program, or to engage in other drug treatment programming at least 48 hours before being required to move.” Ex. C, at 5.

33. The Standard Protocol does not define “low-threshold housing or other shelter” and does not clarify that a person must be offered a low-threshold option if they are not ready to enter treatment.

34. The Standard Protocol does not include a process to identify or accommodate those people who cannot use congregate shelters because of disabilities other than substance use disorder.

35. If an individual refuses to remove their belongings when ordered, the Standard Protocol expressly authorizes BPD officers to arrest the non-compliant individual for disorderly conduct. Ex. C, at 6.

36. For displaced individuals wishing to retain their personal property, the Standard Protocol specifies that only “Eligible Property” that fits within a 27-gallon bin can be stored, unless it is “a functional, empty, and disassembled tent ... contained in a bag or neatly tied bundle,” “[a] non-commercial and functional bicycle, walker, crutches, other forms of individual motorized transit such as a mobility scooter, or a wheelchair not clearly identified as property of a medical facility,” or items such as identification papers, eyeglasses, prescription medication, or jewelry. Ex. C, at 7.

37. An item is ineligible for storage if it is, among other things, wet (unless removal occurs while raining) or deemed unsafe to store by City officials—a category including “locked or sealed containers.” Ex. C, at 7–8. All unattended items are subject to immediate disposal at the scheduled time of the “cleanup.” Ex. C, at 8. The Standard Protocol leaves the determination as

to what is considered “Eligible Property” to the discretion of “the relevant staff member.” Ex. C, at 7.

38. For property deemed eligible, the Standard Protocol states that it must be moved into storage prior to the scheduled cleanup date,⁹ and individuals will have 90 days from the date of storage to retrieve it. Ex. C, at 8. Under the Standard Protocol, information about the availability of storage for eligible property must be given at least 48 hours in advance of a displacement action. Ex. C, at 4; *see also* Ex. C, at 6. Individuals can also contact the City to arrange storage options. Ex. C, at 8.

ii) *Immediate Protocol*

39. The Immediate Protocol allows city employees to immediately remove individuals and destroy their property without any prior notice if the CRT determines the property “poses an imminent risk to public health, safety, or security.” Ex. C, at 6.

40. Under these circumstances, the Immediate Protocol does not require the City to provide any alternative housing options. Ex. C, at 6.

41. The Immediate Protocol does not include criteria to define or limit an “imminent risk.”

The City’s Enforcement Actions Pursuant to the Executive Order

42. After the issuance of the Executive Order but before the issuance of the Protocol, the City and its agents began dispersing people encamped at Mass & Cass under threat of arrest, and destroying many of their possessions, contrary to basic constitutional guarantees.

⁹ Per the Standard Protocol, the City will only provide “at least one 27-gallon storage container for use of storing Eligible Property” on “the morning of a scheduled clean-up.” Ex. C, at 8.

43. On or about October 23, 2021, paper signs were posted by the City at and near Plaintiff Mr. Geddes's tent informing residents in the area—in English only—that they needed to remove all of their possessions by Monday, October 25. But, of course, since he and others had no viable options for going anywhere else and no way to move all of their possessions in only 48 hours, Mr. Geddes and others remained.

44. On October 25, against the background threat of arrest, the City conducted sweeps and ordered people to vacate their encampment sites at Mass & Cass. BPHC personnel, with the assistance of the Executive Director of the local business association, directed the action, with BPD officers in the background. On information and belief, the City did so without providing adequate alternative housing. For example, the City failed to institute any process to determine whether a congregate shelter, even if available, might be unsuitable for an affected person. Further, the City unlawfully seized, discarded, and destroyed unabandoned personal property.

45. For example, City officials approached Plaintiff Mr. Geddes and told him he would need to leave his shelter. Without inquiring about his individual circumstances, City officials told him that he could go to Pine Street Inn and that, if he did, he could store some of his personal belongings in a plastic bin. However, Pine Street Inn is not a suitable shelter for Mr. Geddes for a variety of reasons, including his PTSD. Mr. Geddes has stayed at Pine Street Inn once before, where he was given a mattress to sleep within inches next to another person. Because of concerns about COVID-19, Mr. Geddes is concerned about staying close to people, including those who may not be vaccinated. Mr. Geddes is also concerned as he knows that sexual assaults sometimes occur in shelters. Due to his past history being sexually abused as a child, this triggers his PTSD. After Mr. Geddes explained he could not stay at Pine Street, City officials took back the offer of

the bin and storage. City workers did not displace him that day and moved on to approach others living nearby.

46. Other people were not given any reprieve. On information and belief, on October 25, the City ordered a large number of people to vacate their encampments at Mass & Cass despite being offered no alternative housing options other than being told to go to the Pine Street Shelter. The City implemented no process to determine whether Pine Street was a suitable shelter for people with underlying medical conditions.

47. Further, on information and belief, on October 25, the City unlawfully seized, discarded, and destroyed people's personal property. For example, any personal property that did not fit into a small City-provided plastic bin was thrown into a City trash truck. In addition, even though the removal occurred in the rain, on information and belief, City representatives refused to permit storage of any personal possessions that were wet.

48. Additional enforcement activities occurred on October 28. Without any additional advance notice beyond what if any had been given for the October 25 action, persons at Mass & Cass were forced to leave their encampments under threat of arrest, according to an eyewitness of the events. With police officers not far away and a BPD transport van parked nearby, people were ordered to vacate their encampment sites. Upon information and belief, the City did not provide affected people with any specific housing options other than informing them that they could go to "a shelter." As before, other than what people could carry by hand if they were physically present, the property of affected people was seized and thrown into the City trash truck. Upon information and belief, no small plastic bins and no storage options were offered.

49. When City officials arrived at the Mass & Cass area on October 28, Mr. Geddes was at the methadone clinic for his prescribed treatment. When he returned to his tent site, *all* his

possessions except a wet blanket, a few clothes, and a hockey stick had been seized and discarded in a City trash truck. Without inquiring about his individual circumstances, Boston Public Health Commission employees—told him that he could only go to Pine Street. Those BPHC employees did not confirm whether beds were in fact available at the Pine Street Inn men’s shelter, nor did they even ask whether there were any barriers, such as his PTSD, that would make such an option not viable for him. Mr. Geddes observed similar conduct by the City involving others at Mass & Cass who were similarly situated to Mr. Geddes.

50. The paper signs posted before each of these removal actions were only in English, even though numerous people living in the area, like Plaintiff Mr. RAR, read limited English.

51. By the evening of Friday, October 29, more English-only paper signs were posted near certain encampments located close to 112 Southamptton Street that residents would be forced to leave at or after 7 a.m. Monday, November 1, 2021. However, many of the paper signs had disappeared by Saturday morning – possibly because they had been destroyed in the pouring rain.

52. On November 1, a substantial displacement action occurred on Southamptton Street. This action was much more intensive than the October 25 and October 28 enforcement actions and seemingly aligned with the opening of the new “Jail-Court” at the Suffolk County House of Correction.¹⁰ Large numbers of BPHC employees—including BPHC police officers—were present, along with large numbers of BPD officers.

¹⁰ On October 30, 2021, Chief Justice Roberto Ronquillo Jr issued a standing order that “[e]ffective November 1, 2021, all BMC criminal cases involving defendants arrested on warrants or criminal charges in the area commonly known as ‘Mass and Cass,’ as well as all BMC mental health cases initiated pursuant to G.L. c. 123 where the Respondent is apprehended in the Mass & Cass area, shall be heard in the BMC Community Response Session” in the Suffolk County House of Correction. BMC Admin Order 01-21; 02-21.

53. The City employees approached people at approximately 15 different tent sites and directed them to leave the area. Many people were told that their only housing option was to go to one of the congregate shelters at Pine Street, Woods-Mullen or Southampton Street. There was no apparent process for determining whether individual people might be unsuited for or unable to stay in congregate shelters, or to adjust housing suggestions based on what people told City employees about their individual needs.

54. On November 1, the City seized, discarded, and summarily destroyed large amounts of personal property. Initially, the BPHC staff had 27-gallon bins that the targeted people could potentially use to store the few items that might fit, but those who told City representatives that they could not go to the congregate shelters were told they could not use the bins. Whatever personal belongings they could not carry away by hand was thrown into the street and picked up by City workers, presumably for disposal.

55. Mr. RAR and Ms. AC's tent was located in an area in which signs were posted (only in English) indicating it would be the target of removals on November 1.¹¹ To avoid their possessions being taken, on October 31, Mr. RAR and Ms. AC packed up and hid their tent, put their belongings in a friend's tent, and slept outside of it in the open. On the afternoon of November 1, City officials, who appeared to be BPHC and BPD employees, descended on the area of the tent where Mr. RAR and Ms. AC were staying. The City officials ordered Mr. RAR and Ms. AC to leave the area and informed them that their possessions were being removed. Despite being informed that Mr. RAR and Ms. AC had no place to store their possessions, City officials did not present any storage options to Mr. RAR and Ms. AC. Ms. AC quickly salvaged a couple of personal belongings as City employees and their agents seized the tent and all that was in it. Other

¹¹ Only as of November 1 did the City begin posting paper signs of pending removal in Spanish.

items were thrown into the street and picked up for disposal. Among the items of Mr. RAR and Ms. AC that were destroyed by the City were Mr. RAR and Ms. AC's birth certificates, Social Security cards, and copies of other forms of identification.

56. No immediate housing options other than congregate shelter were suggested to Ms. AC or Mr. RAR. Further, the couple was informed that there were no options that would allow them to remain together.

57. After they were displaced, Ms. AC and Mr. RAR remained in the Mass & Cass area on November 1 because they had nowhere else to go. Because they were afraid of arrest, they did not put up the tent that they had saved and instead stayed out in the open, without any shelter, all night. The couple believes that safety in the area has *deteriorated* with the tents gone, the loss of communal protection from the encampments, and people just wandering around.

58. Mr. Geddes, Ms. AC and Mr. RAR were all displaced by the Defendants without being afforded any practically available and appropriate sheltering option. They have each seen their property seized and summarily destroyed. They are all extremely anxious and frightened about what will happen to them in the future.

59. Co-incident with plans to force people out of Mass & Cass, the City has stated that it will arrest people with open warrants in the area. As a result of these pronouncements, people living in the area—who often do not know whether they have outstanding warrants, since many do not receive summonses or other written notice of court hearings precisely because of their homelessness—are living in fear of being seized at any time.

60. These fears are well-founded. On Monday, November 1, 2021, three men arrested during the sweep at Mass & Cass were taken before the "Jail-Court." According to media reports,

only one person was sent to a treatment center; the other two were reportedly forced to undergo withdrawal in jail.¹² .

CLASS ALLEGATIONS

61. Pursuant to Mass. R. Civ. P. 23, Plaintiffs assert claims for declaratory and injunctive relief on behalf of a class of all similarly situated individuals. Plaintiffs seek to represent the following class:

All persons who, on or after October 19, 2021, are or were residing in tents or other temporary structures in the Mass & Cass area and who have been or will be subject to City-authorized actions to force them to leave, whether pursuant to the Executive Order or otherwise.

62. *Numerosity*: This class is so numerous that joinder of all members is impracticable. According to a recent survey, the City estimated that approximately 350 individuals were at Mass & Cass, with about 85% of the people reporting that they slept on the street the night before the survey. Joinder is impracticable in that the putative class is inherently transitory, particularly given the impact of the challenged actions.

63. *Commonality*: The relief sought is common to all putative members of the class in that all members seek relief from the City's policies and practices for forcibly displacing people experiencing homelessness in Boston.

64. There are questions of law and/or fact common to the class:

- i. Whether Defendants' policies and practices for forcibly displacing people experiencing homelessness in Boston, which are implemented under threat of arrest and prosecution, criminalize

¹² Tonya Alanez, 'We Have to do Something': Special Courts Launched to Hear Cases for Those Arrested Near Mass. And Cass, The Boston Globe (Nov. 1, 2021), <https://www.bostonglobe.com/2021/11/01/metro/special-courts-mass-cass-begin-hearing-cases/>.

unhoused people for sleeping in public when there are no viable alternative shelter options, and therefore constitute punishment of Plaintiffs and putative class members based on their status as homeless persons and, as such, subject them to cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution and art. 26;

- ii. Whether Defendants' policies and practices for forcibly displacing people experiencing homelessness in Boston discriminates against Plaintiffs and putative class members on the basis of their disabilities, and as such, violates federal and state discrimination laws;
- iii. Whether Defendants are unlawfully seizing or discarding Plaintiffs' property in violation of the United States and Massachusetts Constitutions;
- iv. Whether the Defendants and those acting as their agents or in concert with them have violated or are violating the Massachusetts Civil Rights Act in that they have designed and are participating in actions that constitute "threats, intimidation or coercion" which interfere or attempt to interfere with rights secured by state or federal law;

65. *Typicality*: The claims of the representative parties are typical of the class in that their claims arise out of the same course of conduct, namely the City's policies and practices for forcibly displacing people experiencing homelessness in Boston.

66. Additionally, pursuant to Mass. R. Civ. P. 23(b), the common questions of law predominate over any questions affecting individual members. Specifically, the predominant question in this case is whether the City's policies and practices for forcibly displacing people experiencing homelessness in Boston, and to seize and dispose of their property without adequate notice, violates federal and state law and the Massachusetts and United States Constitutions. Moreover, pursuant to Mass. R. Civ. P. 23(b), a class action is superior to other methods for a fair and efficient adjudication of this matter. There is no realistic alternative for members of the putative class to bring their claims. As unhoused people, members of the putative class are unlikely to be able to retain counsel or file a claim *pro se*.

67. *Adequacy*: The named Plaintiffs will fairly and adequately protect the interests of class members, in that all share the same interest in remaining free from harassment, threats, abuse, fine, arrest, imprisonment, or the unlawful seizure and/or destruction of their property at the hands of the City for remaining on public land.

68. The named Plaintiffs and the putative class are represented by the American Civil Liberties Union of Massachusetts and the law firm of Wilmer Cutler Pickering Hale and Dorr. Plaintiffs' counsel are experienced in class action litigation and will adequately represent the class.

CAUSES OF ACTION

COUNT ONE:

Violation of Prohibition Against Cruel and Unusual Punishment (Eighth Amendment; 42 U.S.C. § 1983; Article 26 of the Declaration of Rights and/or state common law

69. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

70. Defendants have acted and continue to act under color of state law, and within the course and scope of their employment, at all times relevant to the allegations in this Complaint.

71. Defendants are "persons" under 42 U.S.C. § 1983.

72. Plaintiffs and putative class members are under threat of arrest and prosecution if they do not leave their encampments at Mass & Cass, even though the City has no process to identify for them a concrete, alternative housing option that is practically available to them.

73. Wielding the threat of arrest and criminal prosecution to force displacements of those who live on the streets and who have no actually available, viable alternative housing options violates the Cruel and Unusual Punishment Clauses of the state and federal constitutions and Massachusetts common law.

74. The City's policies and practices that forcibly displace Plaintiffs and members of the class violate the Eighth Amendment, as incorporated in and applied to the states through, the Fourteenth Amendment. Such actions also violate Article 26 of the Declaration of Rights and Massachusetts common law. Plaintiffs seek redress for Defendants' violation of their right to be free from cruel and unusual punishment. Without the injunctive relief sought, Plaintiffs and others similarly situated will be forced to leave Mass & Cass with no adequate alternative shelter—or be arrested.

**COUNT TWO:
Disability Discrimination
(42 U.S.C. § 12101 *et seq.*, and art. 114 of the Amendments to the Massachusetts
Constitution)**

75. Plaintiffs incorporate all previous paragraphs and allegations as if fully rewritten herein and further state as follows:

76. Under Title II of the Americans With Disabilities Act (“ADA”): “[N]o qualified individual with a disability shall, by reason of such disability, be ... denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Art. 114 of the Amendment to the Massachusetts Constitution enshrines the same protections in state law.

77. At all times relevant to this action, Defendants, their employees and agents, were public entities within the meaning of Title II of the ADA and provided programs or services to the general public including Plaintiffs or engaged in activities that impact the Plaintiffs.

78. The Defendants do not have a meaningful, individualized process by which, prior to displacing Plaintiffs or other members of the putative class, they can and do:

- i. Evaluate whether the person potentially being targeted for displacement is a qualified individual with a disability;
- ii. If so, identify whether that person's disability-related needs render a congregate shelter or other generally available alternatives non-viable for them;
- iii. If so, identify alternatives that meet the person's disability-related needs that are available on the day of the proposed displacement; and
- iv. If no such options exist, refrain from displacing that person.

79. As a result of the failure to implement any such process, Defendants are failing to identify alternative housing options prior to displacement that are actually viable for individuals, including the named Plaintiffs, given congregate shelters cannot accommodate their particular disabilities.

80. A large percentage of unhoused individuals suffer from some form of disability, whether physical, cognitive, or psychological. Defendants knew, or should have known, of the prevalence of significant disabilities among the individuals they are targeting for displacement and that these disabilities render certain otherwise available housing options inappropriate for them.

81. Defendants committed and are committing the acts and omissions alleged herein with intent and/or reckless disregard for the rights of the Plaintiffs and putative class members.

82. The Defendants' failure to identify the disabilities of people targeted for displacement and to identify appropriate housing alternatives necessary to accommodate the individual person's disability related needs before displacing them constitutes disability discrimination, including because it (a) constitutes a failure to reasonably accommodate the needs of those with disabilities, (b) applies eligibility requirements for the benefit of alternative housing that screens out those with disabilities, and (c) applies a method of administration that discriminates against those with disabilities, in violation of state and federal disability discrimination laws, including Title II of the ADA, 42 U.S.C. §§ 12102 and 12131(2); 28 C.F.R. § 35.130 and Amendment 114 of the Massachusetts Constitution.

83. As a result of Defendants' acts and omissions, Plaintiffs have suffered injury and are at substantial risk of continuing to suffer injury to their statutory rights, their persons and property.

84. Named Plaintiffs are entitled to compensatory damages, damages according to the provisions of the ADA, and attorneys' fees.

85. Plaintiffs are further entitled to injunctive relief precluding removal under the threat of citation or arrest without adequate processes to guarantee adequate shelter practically available to Plaintiffs. Without the injunctive relief sought, Plaintiffs and others similarly situated will be forced to leave Mass & Cass with no adequate alternative shelter—or be arrested.

**COUNT THREE:
Unreasonable Search and Seizure
(42 U.S.C. § 1983; the Fourth Amendment to the U.S. Constitution; and Article 14 of the
Declaration of Rights)**

86. Plaintiffs incorporate all previous paragraphs and allegations as if fully rewritten herein and further state as follows:

87. Defendants acted and are acting under color of state law, and within the course and scope of their employment, at all times relevant to the allegations in this Complaint.

88. Defendants are “persons” under 42 U.S.C. § 1983.

89. Under the Fourth Amendment, as incorporated against the states by the Fourteenth Amendment, Plaintiffs and the putative class have a constitutionally protected right to be secure in their persons against unreasonable seizures. Article 14 of the Declaration of Rights under the Massachusetts Constitution enshrines the same protections in state law.

90. During the October 25, October 28, and November 1 displacement actions at Mass & Cass, Plaintiffs’ property was not abandoned and it was clear to Defendants that Plaintiffs’ property was not abandoned.

91. By seizing and destroying Plaintiffs’ property, Defendants and/or those acting under their direction and control meaningfully and permanently interfered with Plaintiffs’ possessory interest in their property and unlawfully seized Plaintiffs’ property.

92. Plaintiffs’ right not to have their property seized and destroyed was clearly established, and reasonable officials in Defendants’ position would have known that their actions against Plaintiff’s property violated the Fourth Amendment of the U.S. Constitution and Article 14 of the Declaration of Rights under the Massachusetts Constitution. Defendants would also have known that such conduct violates Article 14 of the Declaration of Rights under the Massachusetts Constitution.

93. Defendants’ actions were authorized before and during the fact, and ratified after the fact, by final policymakers for Boston.

94. Defendants’ actions, as described herein, were motivated by malice and/or involved reckless or callous indifference to Plaintiffs’ federally and state protected rights, and Defendants

engaged in these actions and omissions intentionally, willfully, and/or wantonly, demonstrating deliberate indifference to, and a reckless disregard for, Plaintiffs' rights protected under the federal and state constitutions.

95. As a direct and proximate cause and consequence of Defendants' unconstitutional acts and omissions, described above, Plaintiffs suffered injuries, damages, and losses.

96. The herein described acts or omissions of Defendants are the moving force and the legal, direct, and proximate cause of Plaintiffs' injuries and losses, including but not limited to non-economic damages, economic damages, the physical and mental pain and anguish Plaintiffs suffered before and during the sweeps, and other compensatory and special damages.

97. Without the injunctive relief sought, Plaintiffs and others similarly situated will be subject to the unlawful seizure and destruction of their personal property, in violation of their rights under the state and federal constitutions.

**COUNT FOUR:
Deprivation of Property Without Due Process
(42 U.S.C. § 1983; the Fifth and Fourteenth Amendment to the U.S. Constitution; and the
due process clause of the state constitution)**

98. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

99. Defendants acted and are acting under color of state law, and within the course and scope of their employment, at all times relevant to the allegations in this Complaint.

100. Defendants are "persons" under 42 U.S.C. § 1983.

101. Plaintiffs had a property interest in their possessions.

102. Plaintiffs had a property interest in their property, and an interest in being afforded adequate notice prior to the seizure of their property, and adequate notice regarding the storage of their property and how to reclaim it.

103. The due process clauses of both the state and federal constitutions require state and local actors provide adequate advance written notice before forcing individuals to vacate. They also require that these individuals' property cannot be seized and/or destroyed without affording a reasonable opportunity for them to reclaim their property.

104. The procedures established by the Executive Order and Protocol and otherwise being implemented at Mass & Cass by city employees and other agents of the Defendants do not comport with these fundamental requirements on their face and as-applied.

105. Defendants seized and destroyed Plaintiffs' property without affording them adequate advance notice that their property would be seized and/or destroyed.

106. Defendants seized and destroyed Plaintiffs' property without affording them a pre-deprivation process for challenging the seizure of their property.

107. Defendants seized and destroyed Plaintiffs' property without affording them an adequate amount of time or location to which they could move their property and/or assistance in moving it, to avoid it being seized.

108. Defendants seized and destroyed Plaintiffs' property without affording them an adequate post-deprivation process for challenging the seizure of their property.

109. Defendants did not seize Plaintiffs' property in connection with the prosecution or investigation of any crime.

110. By seizing and destroying Plaintiffs' property, Defendants meaningfully and permanently interfered with Plaintiffs' possessory interest in their property and destroyed Plaintiffs' property without due process of law.

111. Plaintiffs' right to not have their property unlawfully seized and destroyed without due process of law was clearly established, and a reasonable official in Defendants' position would

have known that seizing and destroying property without due process of law violates the due process clauses of both the state and federal constitutions.

112. Defendants' actions were authorized before and during the fact and ratified after the fact by final policymakers for Boston.

113. Defendants' actions, as described herein, were motivated by malice and/or involved reckless or callous indifference to Plaintiffs' federally and state protected rights, and Defendants engaged in these actions and omissions intentionally, willfully, and/or wantonly, demonstrating deliberate indifference to, and a reckless disregard for, Plaintiffs' rights protected under the federal and state constitutions.

114. As a direct and proximate cause and consequence of Defendants' unconstitutional acts and omissions, described above, Plaintiffs suffered injuries, damages, and losses.

115. The herein described acts or omissions of Defendants are the moving force and the legal, direct, and proximate cause of Plaintiffs' injuries and losses, including but not limited to non-economic damages, economic damages, the physical and mental pain and anguish Plaintiffs suffered before and during the sweeps, and other compensatory and special damages.

116. Without the injunctive relief sought, Plaintiffs and others similarly situated will be subject to the unlawful seizure and destruction of their personal property pursuant to the Mayor's Executive Order, in violation of their rights under the state and federal constitutions.

COUNT FIVE:
(The Massachusetts Civil Rights Act – G.L. c. 12, §11I)

117. The Massachusetts Civil Rights Act, G.L. c. 12, §§ 11H and 11I ("MCRA") forbids any person from interfering or attempting to interfere with rights secured by state or federal law by means of threats, intimidation or coercion. Implicitly or explicitly threatening to arrest and

prosecute people if they do not act contrary to their rights constitutes threats, intimidation or coercion.

118. By threatening to arrest and prosecute people who do not leave encampments and seizing and destroying their property, notwithstanding they have nowhere else to stay where their needs, including their disability-related needs and familial relationships, will be accommodated, the Defendants, by their own actions and by the actions of their employees and agents are violating the MCRA.

PRAYERS FOR RELIEF

Plaintiffs therefore respectfully request that the Court enter judgment in their favor and against each of the Defendants, and award them all relief allowed by law and equity, including but not limited to the following:

1. A declaration that the Defendants' policies and practices of forcibly displacing people experiencing homelessness through the threat of arrest and prosecution, without first implementing any meaningful or individualized process to ensure that the people being forcibly displaced actually have access to practically available housing that can accommodate their needs at the time of displacement, is unconstitutional, both facially and as applied.;
2. A declaration that Defendants and their employees and agents may not displace people from Mass & Cass under threat of arrest and prosecution unless and until the City
 - a. has a process in place to
 - i. evaluate whether the person potentially being targeted for displacement is a qualified individual with a disability;

- ii. if so, identify whether that person's disability-related needs render a congregate shelter or other potential alternatives non-viable;
 - iii. if so, identify alternatives that meet the person's disability-related needs that will be available on the day of the proposed displacement; and
 - iv. if no such options exist, refrain from displacing that person and
 - b. appropriate advance notice and property storage policies are in place.
- 3. A declaration that the Defendants are unlawfully seizing and destroying Plaintiffs' property.
- 4. An order certifying the class defined herein pursuant to Mass. R. Civ. P. 23;
- 5. An order appointing the named Plaintiffs as class representatives and their undersigned counsel as class counsel;
- 6. Issuance of a Temporary Restraining Order and Preliminary Injunctive Relief, including:
 - a. A short order of notice for a hearing on Plaintiff's Motion for a Preliminary Injunction;
 - b. A Temporary Restraining Order and a Preliminary Injunction that restrain the Defendants, pending further Order of the Court, from taking any further actions to (i) displace people residing on public ways in the Mass & Cass area or (ii) seize and destroy the property of people residing on public ways in the Mass & Cass area in violation of law;
 - c. A Preliminary Injunction that requires the Defendants to allow people who have been displaced from Mass & Cass on or after October 19, 2021 to return and remain, unless and until Defendants identify alternative housing arrangements that take into account their individual needs.

7. An award of monetary damages to Plaintiffs Ronald Geddes, AC and RAR.
8. An award of reasonable attorneys' fees and costs Plaintiffs' counsel;
9. Such other relief that the Court deems just and proper.

Dated: November 4, 2021

Respectfully submitted,¹³

/s/ Kevin S. Prussia

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¹³ Verifications from the plaintiffs will be submitted in a separate filing.