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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT

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12 NORTHERN DISTRICT OF CALIFORNIA

13 WESTERN REGIONAL ADVOCACY
14 PROJECT, a nonprofit organization, and
15 CALVIN DAVIS, on behalf of himself and all
16 other individuals similarly situated, and
17 ANTHONY COLEMAN, on behalf of
18 himself and all other individuals similarly
19 situated.

20 Plaintiffs,

21 v.

22 MAYOR GAVIN NEWSOM, in his official
23 capacity, BOARD OF SUPERVISORS OF
24 SAN FRANCISCO COUNTY, in their official
25 capacity,

26 Defendants.

CV 08 - 4087
CLASS ACTION COMPLAINT FOR
DISCRIMINATION: SECTION 504 OF
THE REHABILITATION ACT;
AMERICANS WITH DISABILITIES
ACT; CAL. CIV. CODE § 54, et seq., CAL.
GOVERNMENT CODE § 11135, et seq.;
CALIFORNIA WELFARE AND
INSTITUTIONS CODE §17000, et seq.

INTRODUCTION

1
2 1. This lawsuit challenges pervasive discrimination against people with
3 disabilities who attempt to access San Francisco's homeless shelter program which fails to
4 provide essential shelter services to homeless people with disabilities.

5 2. There are approximately 6,400 homeless people in San Francisco, well over
6 half of whom are disabled.

7 3. A central component of the San Francisco homeless program is a bed
8 reservation and service delivery system labeled Care Not Cash ("CNC"). The major benefits
9 provided by the CNC program are shelter beds and the advantage of making a 45-day
10 reservation for a shelter bed.

11 4. People who are enrolled in Supplemental Security Income ("SSI"), Social
12 Security Disability Insurance ("SSDI"), Veterans Benefits, or Disability Benefits are not
13 eligible for CNC. People with disabilities are thus denied any opportunity to access CNC-only
14 beds and have no opportunity to make a 45-day shelter bed reservation.

15 5. In reserving beds solely for CNC participants, the CNC program takes over
16 three hundred (350) shelter beds out of circulation and makes these beds unavailable to the
17 general homeless population. Every day many homeless people with disabilities are not able
18 to find a shelter bed because they are not allowed to participate in CNC.

19 6. Homeless people with disabilities get a disproportionately small share of shelter
20 resources in part because many are not permitted to participate in CNC.

21 7. CNC shrinks the already inadequate number of generally available shelter beds.
22 In doing so, CNC makes it much harder for people with disabilities to secure one of the
23 leftover non-CNC beds. The result is that the people who most need aid are effectively
24 excluded from accessing the San Francisco homeless shelter system.
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WRAP, et al. v. Mayor Newsom, et al.

Class Action Complaint for Discrimination: Americans with Disabilities Act, Section 504 of the Rehabilitation Act,
Cal. Civ. Code § 54, *et seq.*, Cal. Gov't Code § 11135, *et seq.*, Cal. Welf. & Inst. Code § 17000, *et seq.*

PARTIES

14. Plaintiffs are homeless people with disabilities who have been and are being discriminated against by Defendants' operation of the homeless shelter system and the Care Not Cash program in a manner that denies Plaintiffs access to San Francisco's homeless shelter programs and services.

15. Plaintiff Western Regional Advocacy Project (WRAP) is a San Francisco based organization which seeks to advocate for and protect the rights of homeless people, including homeless people with disabilities.

16. WRAP was formed in San Francisco and has, for many years, focused on fighting homelessness in San Francisco.

17. WRAP has six membership organizations which it helps to fund and support. WRAP's advocacy and outreach work is based on an intimate relationship with its constituents. The staff of WRAP consists of former homeless people and WRAP advisors are both direct service workers and homeless individuals themselves.

18. A majority of WRAP's leaders and members of committees (including the constituency of WRAP's member organizations) are people with disabilities. For many people, WRAP is their singular means of protecting their interests. Many of WRAP's constituents are homeless in San Francisco.

19. WRAP currently expends substantial time and resources on dealing with mentally ill people who are homeless in San Francisco and on advocacy work concerning city policies that affect disabled people who are homeless in San Francisco.

20. WRAP itself has been injured as a direct result of the Defendants' operation of the Care Not Cash program. WRAP's interests are adversely affected since they are forced to

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1 expend resources advocating for their constituency that is excluded from and damaged by
2 Care Not Cash. Such injury would be directly redressed by a favorable decision in this case.

3 21. Plaintiff Calvin Davis is a homeless individual in the City of San Francisco.

4 22. Because Mr. Davis receives SSI benefits, he is ineligible for General
5 Assistance. Because Mr. Davis is ineligible for General Assistance, he is prohibited from
6 enrolling in the Care Not Cash program.
7

8 23. Mr. Davis is a person with a physical disability. Mr. Davis became disabled
9 after a serious accident. After his accident, Mr. Davis' body healed improperly and as a result
10 the left and right side of his body are out of alignment. This disability substantially impairs
11 his ability to speak and walk. This physical disability is permanent and causes Mr. Davis
12 significant pain throughout his daily life.

13 24. Mr. Davis' medical condition qualifies him as a person with a disability within
14 the meaning of all relevant statutes.

15 25. Plaintiff Anthony Coleman is a homeless individual in the City of San
16 Francisco.
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18 26. Because Mr. Coleman receives SSI benefits, he is ineligible for General
19 Assistance. Because Mr. Coleman is ineligible for General Assistance, he is prohibited from
20 enrolling in the Care Not Cash program.

21 27. Mr. Coleman is a person with a physical disability. Mr. Coleman is HIV
22 positive. Mr. Coleman also has varicose veins in his right leg that cause him a great deal of
23 pain when standing and walking. In 1994, Mr. Coleman also suffered a serious disabling
24 accident when he was hit by a car. As a result of this accident the bones in his back have been
25 replaced with metal. As a result of this accident, Mr. Coleman suffers from chronic pain and
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1 is prescribed pain killers. These physical disabilities are permanent and cause Mr. Coleman
2 significant pain throughout his daily life.

3 28. Mr. Coleman's medical condition qualifies him as a person with a disability
4 within the meaning of all relevant statutes.

5 29. Defendant Gavin Newsom is the Mayor of the City of San Francisco.
6 Defendant Newsom and his administration implemented and operate the Care Not Cash
7 program.
8

9 30. Defendant Board of Supervisors of San Francisco County allocates funds to
10 operate the Care Not Cash program. In doing so, the Board of Supervisors funds a
11 government program which unlawfully excludes people with disabilities from accessing
12 programs and services that are available to similarly situated non-disabled people.

13 31. Defendants, and each of them, operate and maintain the San Francisco
14 homeless shelter system and provide the service of shelter beds to homeless people in the City
15 in a manner that unlawfully discriminates against Plaintiffs.
16

17 FACTUAL ALLEGATIONS

18 32. Defendants operate the San Francisco homeless shelter system in such a way
19 that homeless people with disabilities are being discriminated against and denied meaningful
20 access to the beds and services offered by that system.

21 33. San Francisco does not have enough shelter beds to house the existing
22 homeless population. There are approximately three homeless adults in need of emergency
23 shelter for every one of the existing emergency shelter beds. Most of the people sleeping on
24 the streets are disabled and sleep on the street because they are unable to get a shelter bed.
25

26 34. Each night, about 2,800 homeless people sleep without shelter. This number,
27 however, is likely a gross underestimation, since certain segments of the homeless population,
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1 such as well-hidden people, those who are mobile, those living in their cars, or those sleeping
2 in areas deemed too dangerous for volunteer counters at night, are particularly likely to be
3 omitted from homeless counts. Homeless counts also tend to miss a significant segment of the
4 sheltered homeless: those persons doubled up illegally in public housing or living with
5 overcrowded families, those living in SROs, as well as those who are not obviously homeless
6 based on visual assessment.

7
8 35. A very high percentage of the homeless population in San Francisco consists of
9 people with disabilities, both mental and physical. A 2007 survey reported that 50% of
10 individuals in the San Francisco homeless shelter system self-identified as having a disability
11 that year. According to the San Francisco Plan to Abolish Chronic Homelessness, 30-70% of
12 the City's homeless are disabled. Some observers put that number closer to 80%. In addition,
13 San Francisco's last official count found that the number of chronically homeless persons --
14 who are by definition people with a disabling condition -- was 1,735.

15
16 36. Defendants operate the homeless shelter system and use the CNC program to
17 allocate shelter resources and determine which homeless people should be entitled to
18 preferential bed reservations and case management services.

19
20 37. Homeless people who receive Supplemental Security Income, Social Security
21 Disability Insurance, Veterans Benefits, or Disability Benefits are automatically ineligible for
22 the CNC program and the benefits and services it offers.

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24 38. One goal of CNC was to drive homeless people out of San Francisco by
25 reducing General Assistance cash payments to levels so low as to preclude survival, or as the
26 statute enacting CNC euphemistically explained: the City sought to eliminate "the incentive
27 for homeless individuals who want cash rather than services to congregate [in San Francisco]."
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1 Prop. N, Ballot Pamphlet, City and County of San Francisco, November 2002 General
2 Election at P-169-75.

3 39. A CNC-designated shelter bed is reserved for 45 days. A CNC recipient may
4 keep this reservation for 45 days by using the bed each night. The bed is held for a minimum
5 of 3 days if the CNC participant does not show up to sleep in the bed. Some recipients do not
6 show up. Consequently, each night there are 60 to 80 CNC reserved beds in the emergency
7 shelter system left vacant. If the recipient fails to claim the bed, then notice is issued to
8 reassign the CNC recipient to a new shelter bed and the unclaimed shelter bed is reassigned to
9 another CNC participant. The CNC beds are not released into the general shelter reservation
10 system.

11
12 40. Homeless people who are not CNC enrollees are routinely turned away from
13 shelters even when there are empty CNC beds inside the shelter. Because any person who is
14 eligible for disability benefits is not able to participate in the CNC program even if there is an
15 empty CNC bed at a shelter, a homeless person with a disability may be denied shelter solely
16 because of his or her disabled status.

17
18 41. The City allocates at least one quarter of all of the available emergency shelter
19 beds to CNC participants. The City takes these beds out of circulation and sets them aside for
20 CNC participants only. Because many homeless people with disabilities are not permitted to
21 participate in CNC, they are excluded from around 320 beds every day.

22 42. Any individual who is not enrolled in CNC must often wait until nearly
23 midnight to learn if he will be able to sleep in a shelter bed. Non-CNC recipients who try to
24 access temporarily vacant CNC beds must go through a daily bureaucratic process that
25 frequently includes multiple visits to resource centers, hours of queuing up for beds and
26 arduous late night travels across the City.
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1 43. The CNC program also provides CNC participants with assistance in obtaining
2 more permanent shelter in Single Room Occupancy (SRO) housing. People with disabilities
3 who are excluded from CNC have no opportunity to access these CNC services. These people
4 receive no preferential treatment to facilitate their placement in an SRO.

5 44. As a result of Defendants' operation of CNC in a way that excludes homeless
6 people with disabilities, homeless people with disabilities are less likely than their non-
7 disabled peers to have access to the case management services necessary to transition from
8 emergency shelter to more permanent SRO housing.

9 45. Despite the fact that there are many thousands of homeless people in San
10 Francisco who desperately need shelter beds, mental health services, and case management
11 services, San Francisco for the past several years has engaged in a pattern of eliminating
12 shelter services, shrinking shelter resources, and closing essential shelters.

13 46. Throughout the years, Defendants have chosen to shrink the resources available
14 to shelters that provide emergency overnight shelter beds and chairs. For example, this year
15 San Francisco has decided to close, among others, Ella Hill Hutch shelter that served 100
16 people per night.

17 47. The total number of shelter beds in San Francisco is frequently overstated and
18 is constantly changing. For example, Defendants often close down shelters and fail to replace
19 the lost beds and services. Defendants also frequently change shelter requirements (i.e.
20 shifting from single man to families), eliminate or reduce shelter funding and switch a
21 centrally located facility to an inconveniently located facility with minimum access.

22 48. The City's constant whittling down of shelter services has resulted in far fewer
23 services available for all homeless people. With fewer resources available, the demand for the
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1 existing services has increased and this has further marginalized disabled homeless people and
2 prevented them from having access to the shelter services they desperately need.

3 49. In order to justify their discrimination against disabled homeless people and
4 cutbacks to essential services, Defendants have inaccurately characterized San Francisco's
5 homeless population as people who are homeless by choice.

6 50. In fact, homelessness in San Francisco is created by multiple factors beyond the
7 control of the homeless individuals. These factors include disability, the lack of affordable
8 housing, gentrification, intensified poverty and unemployment.

9 51. San Francisco has one of the most severe affordable housing shortages in the
10 country and is consistently cited by the National Low Income Housing Coalition as one of the
11 least affordable metropolitan areas in the country.

12 52. The shelter program's systematic exclusion of disabled men and women means
13 that this most needy class of homeless people are forced to either sleep on the street or
14 compete for access to a shelter bed in a system where they are severely disadvantaged.
15 Especially for homeless people with disabilities, the consequences of this system can be life
16 threatening.

17 53. For all the foregoing reasons, Defendants' operation and maintenance of the
18 San Francisco homeless shelter system discriminates against people with disabilities and fails
19 to provide meaningful access to its programs, services, and activities as required by Federal
20 and State law.

21 54. Plaintiffs are without a plain, speedy or adequate remedy at law, thereby
22 rendering injunctive relief appropriate in that:

- 23 a. Damages cannot adequately compensate Plaintiffs and their class for the
24 injuries suffered;

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- 1 b. If the conduct complained of is not enjoined, a multiplicity of suits will result
2 in that the Defendants' conduct is continuous and ongoing; and
3 c. Damages for the harm inflicted upon Plaintiffs and their class are difficult to
4 ascertain.

5 CLASS ALLEGATIONS

6 55. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the named
7 Plaintiffs bring this action for injunctive and declaratory relief on their own behalf and on
8 behalf of all persons similarly situated. The class the named Plaintiffs seek to represent is
9 composed of all homeless persons with disabilities in San Francisco who have been excluded
10 from the CNC program by reason of their receipt of Supplemental Security Income, Social
11 Security Disability Insurance, Veterans Benefits, or Disability Benefits. The class claims
12 asserted herein are solely for injunctive and declaratory relief for the class.

13
14 56. The persons in the class are so numerous that joinder of all such persons is
15 impractical and the disposition of their claims in a class action is a benefit to the parties and to
16 the Court.

17 57. There is a well-defined community of interest in the questions of law and fact
18 involved affecting the parties to be represented in that they, or their members, have been and
19 continue to be denied their civil rights of access to, and use and enjoyment of San Francisco's
20 homeless shelter programs, services and facilities due to the City's discriminatory
21 implementation of the Care Not Cash program and failure to provide Plaintiffs with
22 meaningful access to the San Francisco shelter program.

23
24 58. Common questions of law and fact predominate, including questions raised by
25 Plaintiffs' allegations that Defendants have failed to provide program access to San Francisco
26 homeless shelter programs, services and facilities and that Defendants' core approach to
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1 providing services and beds to homeless people, the Care Not Cash program, excludes and
2 discriminates against people with disabilities.

3 59. The claims of the named Plaintiffs are typical of the claims of the class as a
4 whole because the named Plaintiffs, or their members, are similarly affected by Defendants'
5 failure to provide access to their homeless shelter programs, services and facilities.

6 60. The named Plaintiffs are adequate class representatives because they, or their
7 members, are directly impacted by Defendants' discriminatory implementation of their
8 homeless shelter system and Care Not Cash program, which denies class members meaningful
9 access to Defendants' shelter system. The interests of the named Plaintiffs are not
10 antagonistic to, or in conflict with, the interests of the class as a whole. The attorneys
11 representing the class are experienced in disability law and in class action institutional reform
12 litigation. Plaintiffs' counsel is qualified to fully prosecute this litigation and possess adequate
13 resources to see this matter through to a resolution.

14 61. Defendants have acted and/or failed to act on grounds generally applicable to
15 the class as a whole, thereby making appropriate final declaratory and injunctive relief with
16 respect to the class as a whole.

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19 **FIRST CAUSE OF ACTION**
20 **SECTION 504 OF THE REHABILITATION ACT OF 1973**

21 62. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of
22 the complaint.

23 63. Section 504 of the Rehabilitation Act provides that "no otherwise qualified
24 individual with a disability in the United States . . . shall, solely by reason of his or her
25 disability, be excluded from the participation in, be denied the benefits of, or be subjected to
26 discrimination under any program or activity receiving federal financial assistance." 29
27 U.S.C. § 794(a).

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1 64. An “individual with a disability” is defined under the statute, in pertinent part,
2 as “an individual who has a physical or mental impairment which substantially limits one or
3 more of such person’s major life activities.” 29 U.S.C. § 705(20)(A). The Plaintiffs are, or
4 represent, qualified individuals with disabilities within the meaning of the applicable statutes.

5 65. Section 504 requires the head of every executive agency to promulgate
6 regulations as shall be necessary to carry out the Act. 29 U.S.C. § 794(a).

7 66. The Department of Housing and Urban Development (“HUD”) regulations
8 provide that “no qualified handicapped person shall, solely on the basis of handicap, be
9 excluded from participation in, be denied the benefits of, or otherwise be subjected to
10 discrimination under any program or activity that receives Federal financial assistance from
11 the Department.” 24 C.F.R. §8.4(a).

12 67. These regulations prohibit the San Francisco homeless shelter system, from
13 providing any “housing, aid, benefit, or service, in a program or activity . . . [either] directly or
14 through contractual, licensing, or other arrangements” in a way that discriminates “on the
15 basis of handicap.” 24 C.F.R. §8.4(b)(1).

16 68. The regulations define “discrimination” as prohibiting the Defendants from:

- 17 a. “Deny[ing] a qualified handicapped person the opportunity to participate in or
18 benefit from the housing, aid, benefit, or service;” 24 C.F.R. §8.4(b)(1)(i).
19 b. “Afford[ing] a qualified handicapped person an opportunity to participate in
20 or benefit from the housing, aid, benefit, or service that is not equal to that
21 afforded others;” 24 C.F.R. §8.4(b)(1)(ii).
22 c. “Provid[ing] a qualified individual with handicaps with any housing, aid,
23 benefit, or service that is not as effective in affording equal opportunity to
24 benefit, or service that is not as effective in affording equal opportunity to
25 benefit, or service that is not as effective in affording equal opportunity to
26 benefit, or service that is not as effective in affording equal opportunity to
27 benefit, or service that is not as effective in affording equal opportunity to
28 benefit, or service that is not as effective in affording equal opportunity to

1 obtain the same result, to gain the same benefit, or to reach the same level of
2 achievement as that provided to others;" 24 C.F.R. §8.4(b)(1)(iii).

3 d. "Provid[ing] different or separate housing, aids, benefits or services to
4 handicapped persons or to any class of handicapped persons than is provided
5 to others unless such action is necessary to provide qualified handicapped
6 persons with housing, aid, benefits, or services that are as effective as those
7 provided to others;" 24 C.F.R. §8.4(b)(1)(iv).

8 e. "Otherwise limit a qualified individual with handicaps in the enjoyment of
9 any right, privilege, advantage, or opportunity enjoyed by other qualified
10 individuals receiving the housing, aid, benefit, or service." 24 C.F.R.
11 §8.4(b)(1)(viii).

12
13 69. These regulations also require that the San Francisco homeless shelter system
14 operate and maintain "housing, aids, benefits, and services" in such a way that "afford[s]
15 individuals with handicaps equal opportunity to obtain the same result, to gain the same
16 benefit, or to reach the same level of achievement." 24 C.F.R. §8.4(b)(2).

17
18 70. These regulations further define discrimination to prohibit the San Francisco
19 homeless shelter system, directly or through contractual or other arrangements, from
20 "utilize[ing] criteria or methods of administration the purpose or effect of which would—(i)
21 Subject qualified individuals with handicaps to discrimination solely on the basis of handicap,
22 (ii) Defeat or substantially impair the accomplishment of the objectives of the recipients
23 federally assisted program or activity for qualified individuals with a particular handicap
24 involved in the program or activity, unless the recipient can demonstrate that the criteria or
25 methods of administration are manifestly related to the accomplishment of an objective of a
26 program or activity." 24 C.F.R. §8.4(b)(4).

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1 77. A “public entity” includes state and local governments, their agencies, and their
2 instrumentalities. 42 U.S.C. § 12131(1). Defendants qualify as public entities within the
3 meaning of 42 U.S.C. § 12132 and 28 C.F.R. § 35.104.

4 78. Title II of the ADA generally requires that public entities must operate each
5 service, program, or activity so that the service, program, or activity, when viewed in its
6 entirety, is readily accessible to and usable by individuals with disabilities. 28 C.F.R. §
7 35.150.

8 79. Under the ADA, a program operated by a public entity, like the San Francisco
9 homeless shelter system, is required to provide disabled persons with “meaningful access” to
10 enjoy the benefits of programs, services, and activities. Thus, public services must
11 affirmatively consider the needs of disabled persons who are qualified recipients of such
12 services.

13 80. Through its establishment of a priority bed system for Care Not Cash
14 participants, the Defendants have created eligibility requirements that, in its design and
15 administration of the homeless shelter programs, tend to screen out individuals with
16 disabilities in violation of 28 C.F.R. § 35.130(b)(8).

17 81. Defendants use criteria or methods of administration that have the purpose or
18 effect of defeating or substantially impairing the accomplishment of the objectives of the
19 public entity’s program with respect to persons with disabilities in violation of 28 C.F.R. §
20 35.130(b)(8).

21 82. In providing the aid, benefits, and services associated with the San Francisco
22 homeless shelter programs, the Defendants may not deny the Plaintiffs the equal opportunity
23 to participate in or benefit from the aid, benefits, or services of said program. 28 C.F.R. §
24 130(b)(1)(ii). Further, Defendants may not provide Plaintiffs with an aid, benefit, or service
25 that is not as effective in affording the same opportunity to obtain the same result, gain the
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1 same benefit, or to reach the same level of achievement as provided to persons without
2 disabilities. 28 C.F.R. § 130(b)(1)(iii).

3 83. Title II of the ADA requires Defendants to make reasonable modifications in
4 the homeless shelter system to avoid discrimination against Plaintiffs on the basis of disability.
5 28 C.F.R. § 35.130(b)(7).

6 84. Defendants' conduct constitutes an ongoing and continuous violation of Title II
7 of the ADA. Unless restrained from doing so, Defendants will continue to violate the ADA.
8 Unless enjoined, said conduct will continue to inflict injuries for which plaintiffs have no
9 adequate remedy at law.

10 WHEREFORE, Plaintiffs request relief as set forth below.

11 **THIRD CAUSE OF ACTION**
12 **TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

13 85. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of
14 the complaint.

15 86. Similar to Title II of the ADA, Title III prohibits discrimination against an
16 individual:

17 on the basis of disability in the full and equal enjoyment of the goods, services,
18 facilities, privileges, advantages, or accommodation of any place of public
19 accommodation by any person who owns, leases (or leases to), or operates
20 a place of public accommodation.

21 42 U.S.C. § 12182(a).

22 87. 42 U.S.C. § 12181(7)(K) specifically enumerates a homeless shelter as a place
23 of public accommodation.

24 88. Defendants operate and maintain homeless shelters and leases shelter space
25 from private entities to temporarily house a portion of the homeless population of San
26 Francisco.

27 89. In providing the aid, benefits, and services associated with the shelter program
28 and Care Not Cash program, Defendants may not deny the Plaintiffs and class members the

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1 equal opportunity to participate in or benefit from the aid, benefits, or services of said
2 programs. 42 U.S.C. § 12182(b)(1)(A)(i). Additionally, Defendants may not provide
3 Plaintiffs and class members with an aid, benefit, or service that is not as effective in affording
4 the same opportunity to obtain the same result or gain the same benefit as provided to persons
5 without disabilities. 42 U.S.C. § 12182(b)(1)(A)(ii).

6
7 90. Title III of the ADA prohibits the Defendants from imposing eligibility criteria
8 that “screen out or tend to screen out an individual with a disability or any class of individuals
9 with disabilities from fully and equally enjoying any . . . services, facilities, privileges,
10 advantages, or accommodations.” 28 C.F.R. § 36.301(a). The Defendants’ policy of reserving
11 beds for Care Not Cash participants is a policy that tends to screen out individuals on the basis
12 of their disability and denies said individuals with disabilities access to the benefits and
13 privileges of the Defendants’ homeless shelters.

14
15 91. Title III of the ADA requires the Defendants to make reasonable modifications
16 to the Care Not Cash bed reservation program to avoid discrimination against Plaintiffs and
17 class members of the basis of disability. 28 C.F.R. § 36.302.

18
19 92. Defendant’s conduct constitutes an ongoing and continuous violation of Title
20 III of the ADA. Unless restrained from doing so, the Defendants will continue to violate the
21 ADA. Unless enjoined, said conduct will continue to inflict injuries for which plaintiffs have
22 no adequate remedy at law.

23 **FOURTH CAUSE OF ACTION**
CALIFORNIA CIVIL CODE § 54

24
25 93. Plaintiffs reallege and incorporate all previously alleged paragraphs of the
26 complaint.

27
28 94. California Civil Code §§ 54 *et seq.* (“Disabled Persons Act”) provides that in
California, “[i]ndividuals with disabilities shall be entitled to full and equal access, as other

1 members of the general public, to accommodations, advantages, facilities, medical facilities,
2 including hospitals, clinics, and physicians' offices, and privileges of all common carriers,
3 airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public
4 conveyances or modes of transportation (whether private, public, franchised, licensed,
5 contracted, or otherwise provided), telephone facilities, adoption agencies, private schools,
6 hotels, lodging places, places of public accommodation, amusement, or resort, and other
7 places to which the general public is invited, subject only to the conditions and limitations
8 established by law, or state, or federal regulation, and applicable alike to all persons.” Cal.
9 Civ. Code § 54.1(a)(1).
10

11 95. Defendants operate, and maintain the San Francisco Homeless shelter system
12 which is a “place of public accommodation or other place to which the general public is
13 invited” within the meaning of Civil Code §§ 54 *et seq.*

14 96. In 1992, the California Legislature amended the Disabled Persons Act to
15 increase protections for persons with disabilities by “strengthen[ing] California law in areas
16 where it is weaker than the Americans with Disabilities Act of 1990 ... and...retain[ing]
17 California law when it provides more protection for individuals with disabilities.” (Stats. 1992,
18 Chap. 913, §1.) The ADA provides a minimum floor of protections for Californians with
19 disabilities, while the Disabled Persons Act (like the Unruh Act) offers greater protections
20 than the ADA.
21

22 97. Under the Disabled Persons Act, “disability” is defined as including mental and
23 physical disabilities as those terms are defined in Cal. Gov. Code §§ 12926. (*See* Cal. Civ.
24 Code § 54(b)(1).)

25 98. Under this definition, “[m]ental disability” includes, but is not limited to, all of
26 the following: (1) Having any mental or psychological disorder or condition, such as mental
27
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1 retardation, organic brain syndrome, emotional or mental illness, or specific learning
2 disabilities, that limits a major life activity. . . .” (Cal. Gov’t Code § 12926(i)(1).)

3 99. In turn, “[p]hysical disability’ includes, but is not limited to, all of the
4 following: (1) Having any physiological disease, disorder, condition, cosmetic disfigurement,
5 or anatomical loss that does both of the following: (A) Affects one or more of the following
6 body systems: neurological, immunological, musculoskeletal, special sense organs,
7 respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary,
8 hemic and lymphatic, skin, and endocrine. [¶] (B) Limits a major life activity.” (Cal. Gov.
9 Code §§ 12926(k)(1).)

10 100. Under California law, “[a] mental or psychological disorder or condition limits
11 a major life activity if it makes the achievement of the major life activity difficult.” (Cal.
12 Gov’t Code § 12926(i)(1)(B); *see also* Cal. Gov’t Code § 12926(k)(1)(B)(ii) [using same
13 definition for physical disability].)

14 101. Under California law, the term “limits” for purposes of defining disability
15 “shall be determined without regard to mitigating measures, such as medications, assistive
16 devices, or reasonable accommodations, unless the mitigating measure itself limits a major life
17 activity.” (Cal. Gov’t Code §§ 12926(i)(1)(A) & (k)(1)(B)(i).)

18 102. Under California law, the term “‘major life activities’ shall be broadly
19 construed and shall include physical, mental, and social activities and working.” (Cal. Gov’t
20 Code §§ 12926(i)(1)(C) & (k)(1)(B)(iii).)

21 103. Plaintiff Calvin Davis is an individual with a disability and entitled to the
22 protections of the Disabled Persons Act.

23 104. Plaintiff Anthony Coleman is an individual with a disability and entitled to the
24 protections of the Disabled Persons Act.
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1 112. Defendants' discriminatory policies and practices deny Plaintiffs full and equal
2 access to shelter beds and services in violation of California Government Code §11135 and the
3 regulations promulgated thereunder.

4 113. Defendants have violated California Government Code § 11135(b) in that the
5 conduct alleged herein constitutes a violation of the ADA, 42 U.S.C. § 12132.
6

7 114. As a proximate result of Defendants' violations of §11135, Plaintiffs and the
8 class have been injured as set forth herein.

9 115. Unless enjoined, Defendants' conduct will continue to inflict injuries for which
10 Plaintiffs have no adequate remedy at law.

11 **SIXTH CAUSE OF ACTION**
12 **CALIFORNIA WELFARE AND INSTITUTIONS CODE § 17000**

13 116. Plaintiffs reallege and incorporate herein all previously alleged paragraphs of
14 the complaint.

15 117. California's Welfare and Institutions Code § 17000 mandates that the County
16 relieve and support all incompetent, poor, indigent persons and those incapacitated by age,
17 disease, or accident.

18 118. Welfare and Institutions Code §§ 10000, 11000, and 11004 require that such
19 programs be administered humanely and fairly.

20 119. Defendants are violating the aforesaid laws by adopting and using policies,
21 practices, standards, and procedures that are inhumane and unfair, and wrongfully deny
22 homeless people with disabilities access to Defendants' homeless shelter system.
23

24 120. Unless enjoined, Defendants' conduct will continue to inflict injuries for which
25 Plaintiffs have no adequate remedy at law.

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SEVENTH CAUSE OF ACTION
DECLARATORY RELIEF

121. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the complaint.

122. Plaintiffs contend that the San Francisco homeless shelter system, which Defendants own, operate, and/or control, fails to comply with applicable laws including the Americans with Disabilities Act, which requires public entities to provide meaningful access to programs, activities, and facilities for persons with physical and mental disabilities. Defendants disagree with Plaintiffs' contention.

123. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

WHEREFORE, Plaintiffs request relief as set forth below.

RELIEF REQUESTED

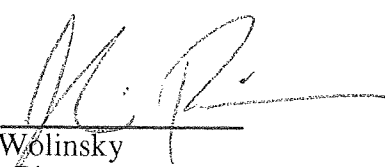
WHEREFORE, Plaintiffs pray for judgment as follows:

1. A declaration that the San Francisco homeless shelter program, specifically including Care Not Cash, is being operated in a manner that discriminates against persons with disabilities and that fails to provide meaningful access for persons with disabilities as required by law;
2. An order enjoining Defendants from violating federal and state disability discrimination laws in their operation of the San Francisco homeless shelter program, specifically including Care Not Cash;
3. Plaintiffs' reasonable attorneys' fees and costs;
4. Such other and further relief as the Court deems just and proper.

WRAP, et al. v. Mayor Newsom, et al.

Class Action Complaint for Discrimination: Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Cal. Civ. Code § 54, et seq., Cal. Gov't Code § 11135, et seq., Cal. Welf. & Inst. Code § 17000, et seq.

1 DATED: August 26, 2008
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4

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