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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHASIDY DECKER and ROBERT CALACAL, Plaintiffs, vs. CITY OF MERIDIAN, IDAHO; MERIDIAN CITY COUNCIL; MAYOR ROBERT SIMISON, in his official capacity; CODE ENFORCEMENT OFFICER ANTHONY NEGRETE, in his official capacity, Defendants.	Case No. CV01-22-11962 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Chasidy Decker and Robert Calacal, by and through their attorneys, hereby submit this Memorandum of Law In Support of the Motion for Preliminary Injunction. The Motion and this Memorandum are further supported by the Declaration of Chasidy Decker and Exhibits 1-50 thereto; the Declaration of Robert Calacal and Exhibit 51 thereto; the Declaration of Brett Williamson; and the Declaration of Dan Alban and Exhibits 52-56 thereto, all of which are filed contemporaneously.

INTRODUCTION

During the current housing crisis, the City of Meridian forced Plaintiff Chasidy Decker out of a perfectly safe home on Plaintiff Robert Calacal's private residential property because it was a tiny home on wheels. Although the City would allow Chasidy to park the tiny home on wheels there indefinitely, and the home, in fact, is still parked there today behind a six-foot privacy fence, the City will not allow her to live in it. That is because the City bans living in a tiny home on wheels outside an RV park under Section 11-3A-20 of its zoning ordinance, even at a time when RV parks nearby are full and have long waiting lists. *See* Meridian Code ("MC") § 11-3A-20. That ban is not rationally related to any legitimate government interest, such as health or safety. Nor is it rationally related to maintaining the character or aesthetics of Chasidy's neighborhood or any other neighborhood. Thus, for seemingly no good reason at all, the City uses its zoning ordinance to criminalize living in perfectly safe tiny homes on wheels on private property.

Worse yet, the City enforces its zoning ordinance differently against similarly situated residents. It forces residents who are new to Meridian, like Chasidy and Robert, to follow the ordinance strictly. Residents who have lived in Meridian for a longer time, however, are allowed to ignore provisions of the ordinance and routinely use RVs, trailers, and similar vehicles as living quarters. But how long someone has lived in Meridian is not a rational basis for treating them differently when enforcing the City's zoning ordinances.

Yet that is how the City is treating Chasidy and Robert. Despite many nearby RVs and trailers being used as living quarters, the City ordered her out of her tiny home on wheels the day after she parked it on his private property, depriving her of a place to live and Robert of expected rental income. Chasidy and Robert complied with the City's orders, which threatened heavy fines and jail time for noncompliance. With Chasidy effectively homeless since August 1, Plaintiffs filed this lawsuit on August 15, and now request that the Court enter an order granting them a preliminary injunction to allow Chasidy to resume living in her tiny home on Robert's residential property during this litigation.

BACKGROUND

Chasidy Decker is a 46-year-old woman who has spent nearly her entire life in the Treasure Valley. Chasidy Decl. ¶ 2 (Sept. 12, 2022). She is employed as a warehouse worker in Boise and in the past she worked various jobs, including as a bookkeeper and hair stylist. *Id.* In late 2018, Chasidy

started to explore tiny homes as an alternative to traditional real estate. *Id.* ¶¶ 2-3. Living in a traditional home or apartment was no longer an affordable or desirable option, but a tiny home on wheels could give her the affordability and stability she needed. *See id.* ¶¶ 2-3, 11.

Around that time, in early 2019, Chasidy left the Valley to stay in Reno, Nevada, to help her mother after her grandfather's death. *Id.* ¶ 4. While there, Chasidy continued researching tiny-home options and, using an inheritance from her grandfather, purchased her tiny home on wheels in May 2019 from Tiny Idahomes. *Id.* The home is 252 square feet, has a professionally manufactured exterior with siding that looks like a traditional home, and is mounted permanently to the chassis of a commercial trailer. *Id.* ¶¶ 9-10. The home has a bedroom, bathroom, kitchen, two lofts, and a "slide-out" that can extend into a living/dining area. *Id.* ¶ 9. It was constructed with utility hook ups for water, sewer, and power, and it has safety features such as smoke alarms, a fire extinguisher, and multiple emergency exit windows. *See id.* It is just a house, but smaller and on wheels.

Chasidy brings her tiny house on wheels back home to the Treasure Valley and leases space and RV hook ups on Robert's private property to live in her home.

After helping her mother following her grandfather's death, Chasidy was ready to come back to the Boise area by the end of 2021. Chasidy Decl. ¶¶ 4-5. The traditional real estate market near Boise was not an option: Home prices had skyrocketed since she last lived in the area; and average rent was too expensive as well. *Id.* ¶ 5; *see also* Compl. ¶¶ 27-34. Plus, she already had her tiny home on wheels and had been living in it for more than two years in Reno. Chasidy Decl. ¶ 5. So, she started looking for space back home in the Treasure Valley to live in it. *Id.* ¶¶ 5-6. She searched for months and finally found a place in Meridian when she connected with Robert Calacal. *Id.* ¶ 6.

Robert, who lives in California, had recently purchased the property at 1926 N. Leisure Lane. Robert Decl. ¶¶ 2-3 (Sept. 12, 2022). He purchased the home there, in part, because the previous owners had installed RV hook ups, which he could rent out to offset his mortgage payments. *Id.* ¶ 3. He advertised the space next to his new house for someone to rent to plug their RV into the hook ups on the side of his house. *Id.* ¶ 4. Ultimately, he and Chasidy signed a lease for Chasidy to park her tiny house on wheels and plug into the RV hook ups, which provided her tiny house with power, water, and sewer; in return, Chasidy agreed to pay Robert $600 per month in rent, plus utilities. *Id.* ¶ 4; Chasidy Decl. ¶ 12. Chasidy moved in around May 18, 2022. *See* Chasidy Decl. ¶ 12.

There was nothing unusual about Chasidy and Robert's arrangement. The prior homeowners of 1926 N. Leisure Lane had a trailer hooked up to their RV hook ups to use as a residence or living quarters off and on over the years Williamson Decl. ¶ 5 (Sept. 8, 2022). And as described in detail below, many nearby properties have RVs and trailers visibly hooked up to utilities and being used as

living quarters. *See* Exs. 5-8, 10-50, Chasidy Decl. ¶¶ 24, 49-65.[1] Chasidy and Robert were using their property like everyone else nearby, but the City ordered them to stop after just one day.

The City arbitrarily and unfairly orders Chasidy out of her home.

City Code Enforcement Officer Anthony Negrete arrived the day after Chasidy moved into her tiny house on Robert's private property. Chasidy Decl. ¶ 13. He told Chasidy she could not live in her tiny house on wheels there, giving her only 10 days to move. *Id.*; Robert Decl. ¶ 5. When Robert asked for an extension of time for Chasidy, Officer Negrete refused and said doing Chasidy and Robert a favor could require him to do a favor for everyone else. Robert Decl. ¶ 5; *see also* Chasidy Decl. ¶¶ 13-14. Officer Negrete also said that the tiny home could remain parked where it was on Robert's property, but it had to be unplugged from the RV hook ups and either placed on an "approved surface" or screened from view with a six-foot privacy fence. Robert Decl. ¶ 5; *see also* MC § 11-3C-4 (allowing RVs to be parked indefinitely in residential areas).

Chasidy and Robert were both surprised to learn that their arrangement violated the City's code. Chasidy Decl. ¶ 15; *see also* Robert Decl. ¶¶ 3, 7. Most properties in the neighborhood had similar structures on them, such as RVs, trailers, and even a tiny home on wheels. Chasidy Decl. ¶ 15; Robert Decl. ¶ 7. In fact, just within 1,500 feet of 1926 N. Leisure Lane, there are at least 13 RVs and trailers showing obvious signs of being used as living quarters. Exs. 5-8 & 10-50, Chasidy Decl. ¶¶ 24, 50-64. The use of the RVs and trailers as living quarters is evidenced by them having power cords connecting their RV to utilities, their slide-outs being extended, their stairs being lowered, their stabilizer jacks being in place, and/or other factors. *Id.* ¶ 15. Some of the RVs and trailers even have historic evidence on Google Maps of being used as living quarters for years at a time. *Id.* ¶¶ 52, 56-57. None are behind fences, but instead are openly visible in driveways, on lawns, and even on the public street in front of houses. Chasidy's declaration both describes these RVs and trailers and attaches photos of each. Exs. 5-8 & 10-50, Chasidy Decl. ¶¶ 24, 50-64.

In any event, after Officer Negrete's visit, Chasidy thought she had only ten days to find a place to live. When Officer Negrete refused to extend the deadline, Chasidy sought help. Chasidy Decl. ¶¶ 14, 17. A friend of Chasidy's reached out to the City Council, copying Chasidy on the email, which prompted a response from the Deputy City Attorney refusing to budge but encouraging Chasidy to move her tiny home to an RV park and live in it there. Ex. 1, Chasidy Decl. ¶ 17. But Chasidy called the RV parks in or around the City, and learned they were all full and had long waiting lists. Chasidy

[1] Plaintiffs omit addresses of the other RVs and trailers to protect their owners from litigation-motivated enforcement, but Plaintiffs are prepared to submit these addresses upon the Court's request. *See* Chasidy Decl. ¶¶ 24, 49.

Decl. ¶ 18. In fact, the *Idaho Statesman* has recently reported on the problem of RV parks being full, which is exacerbating homelessness and the lack of affordable housing in the City.[2] Many RV parks also do not accept tiny houses on wheels, anyway. *Id.*

<u>The *Idaho Statesman* tells Chasidy's story.</u>

With few options left, Chasidy's friend went to the press. Chasidy Decl. ¶ 20. Chasidy agreed to share her story with the *Idaho Statesman*, which ran pieces sympathetic to her plight on June 8 and 9, 2022. *Id.* ¶ 20; Ex. 54, Alban Decl. ¶ 6 (Sept. 12, 2022). It was the print paper's front-page story, and the digital feature included a video of Chasidy and a tour of her tiny home. Chasidy Decl. ¶ 20. The piece mentioned her interaction with a "code enforcement officer," but it did not use Officer Negrete's name. *E.g.*, Ex. 54 at 1, 3. The article called the City's enforcement efforts into question.

A few days later, on June 14, 2022, Officer Negrete issued notices of violation and abatement orders to Chasidy and Robert for the tiny house on wheels. Ex. 3, Chasidy Decl. ¶¶ 21-22; Ex. 51, Robert Decl. ¶ 6; *see also* MC § 11-3A-20 (prohibiting use of, among other things, "mobile tiny houses . . . as a residence or as living quarters except within an approved recreational vehicle park"). The order extended the time for Chasidy to move out until August 1. *See* Ex. 3. On information and belief, the City had directed Officer Negrete to give that extension because of the *Statesman* article. *See* Compl. ¶ 71; Chasidy Decl. ¶ 22. If she failed to comply with that order, Chasidy and Robert both faced criminal prosecution and daily fines up to $1,000 and jail time. *See* Ex. 3; MC § 11-1-12(A).[3]

<u>Faced with criminal fines and jail time, Chasidy and Robert complied.</u>

Chasidy and Robert complied. Chasidy Decl. ¶ 25; Robert Decl. ¶¶ 8-9. Robert erected a six-foot privacy fence, which now screens the lower half of Chasidy's tiny home on wheels from view from the street, including the tires, trailer, and RV hookups. Ex. 8, Chasidy Decl. ¶ 44; Robert Decl. ¶ 8. When the August 1 deadline came, Chasidy moved out. Chasidy Decl. ¶ 25. For the first time since she bought the tiny house on wheels, she owned a home but had nowhere to live. Since then, she has been paying her friends to stay with them. Chasidy Decl. ¶¶ 25, 47-48; *see also* Compl. ¶¶ 16, 21, 101.

<u>Officer Negrete confronts Chasidy.</u>

After she moved out, Chasidy returned to her tiny home the morning of August 2 to pick up some things. Chasidy Decl. ¶ 26. Around 6:45 a.m., Officer Negrete came back to the property and

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[2] Rachel Spacek, *Boise-area RV parks are full of people, some facing homelessness, move into vehicles*, Idaho Statesman (Oct. 8, 2021), https://www.idahostatesman.com/news/local/community/canyon-county/article254652837.html.

[3] The same day, Officer Negrete also gave both Plaintiffs citations for vehicles on the property for alleged violations that he had never mentioned before. Ex. 4, Chasidy Decl. ¶¶ 23-24; Ex. 51. These facts are relevant to Chasidy's freedom of speech retaliation claim, which is not at issue in this Motion.

confronted Chasidy in front of Robert's house. *Id.* Officer Negrete asked Chasidy about the *Statesman* article, angrily taking issue with the article using the word "eviction" to describe his order that Chasidy vacate her tiny house in ten days. *Id.* ¶ 28. He also warned her against suing the City, which he said would be "nasty" and costly because of the City's "powerhouse team of attorneys." *Id.* ¶ 38.

Chasidy asked Officer Negrete why the City was singling her out, since so many neighbors had RVs, trailers, and tiny homes on their property, many of which were actively being used as living quarters. *Id.* ¶ 32. He explained those property owners had been around a long time, but Robert was from California, and Chasidy showed up right after Robert bought the property. *Id.* ¶ 34. He even told Chasidy that she could have lived in her very same tiny house on wheels in the very same spot on Robert's property, if only she had entered into a lease with the prior owners. *Id.*

As Plaintiffs allege in their Complaint at ¶¶ 157-65, and as Plaintiffs have personally experienced, the City apparently has a policy, custom, or practice of treating all but the newest residents in the neighborhood as if they are grandfathered into the code, allowing them to use RVs and trailers as living quarters. *See* Chasidy Decl. ¶¶ 34-37, 49-65; Exs. 5-50; Robert Decl. ¶¶ 3, 5-7; Alban Decl. ¶ 8, Ex. 56. Following that policy or practice, Officer Negrete and the City appear to simply ignore code violations for most of the neighborhood and enforce the code only against the newest property owners.[4] Officer Negrete even told Robert that City Code Enforcement has a policy or practice of tracking newly sold homes to check if they have any code violations. Robert Decl. ¶ 5.

The result is absurd: Chasidy's tiny house can be (and still is) parked on Robert's property behind a privacy fence, but she cannot live in it. Meanwhile, Chasidy's tiny home and Robert's property are surrounded by RVs and trailers, many of which are being used as living quarters.

Chasidy and Robert file this lawsuit and request preliminary injunctive relief.

Chasidy and Robert filed this lawsuit on August 15, 2022, asserting three claims under Article I, Sections 13 (substantive due process), 2 (equal protection), and 9 (retaliation against freedom of speech) of the Idaho Constitution. *See, e.g.*, Compl. ¶¶ 17, 121, 135, 144, 167, 182. The Complaint requested preliminary and permanent injunctive relief on the claims under Article I, Sections 2 and 13. *Id.* at 28-29, ¶¶ 1-2, 5, 8. As explained below, Plaintiffs now seek a preliminary injunction to permit Chasidy to continue living in her tiny house on wheels during the pendency of this lawsuit because the City is violating their substantive due process and equal protection rights by excluding her from living in it on Robert's private property. Plaintiffs do not raise Chasidy's freedom-of-speech claim here, but

[4] This is also irrational because grandfathering rights run with the land, and thus pass from owner to owner. *See, e.g.*, 4 Edward H. Ziegler, Jr., Rathkopf's The Law of Zoning and Planning § 72:20 (4th ed. 2022 update). So, if the former owner had grandfathering rights, so would the new owner.

instead focus on seeking to get Chasidy back into her home. The City has notice of Plaintiffs' need for injunctive relief and that Plaintiffs would seek such relief. *See, e.g.*, Exs. 52-53, Alban Decl. ¶¶ 2-4.[5]

ARGUMENT

The City is enforcing its ban on living in tiny houses on wheels outside an approved RV park against Chasidy and Robert to exclude Chasidy from her tiny house that she already owns, has lived in for years, and lived in for two-and-a-half months on Robert's private property. Plaintiffs are substantially likely to succeed on the merits of their claims. Without an injunction, Plaintiffs are also likely to suffer great and irreparable injury. Thus, pursuant to Idaho Rule of Civil Procedure 65(a), Plaintiffs respectfully request that this Court grant them a preliminary injunctive to allow Chasidy to continue living in her tiny house on wheels on Robert's private property during this lawsuit.

Legal Standard for a Preliminary Injunction.

To succeed on a motion for preliminary injunction, the moving party bears the burden to satisfy the requirements of Idaho Rule of Civil Procedure 65(e), *see, e.g.*, *Harris v. Cassia County*, 106 Idaho 513, 517 (1984), which provides in relevant part:

> (1) when it appears by the complaint that the plaintiff is entitled to the relief demanded, and that relief, or any part of it, consists of restraining the commission or continuance of the acts complained of, either for a limited period or perpetually; [and]
> (2) when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff[.]

I.R.C.P. 65(e)(1), (2). Whether to grant a preliminary injunction is left to the sound discretion of the trial court. *See Harris*, 106 Idaho at 517. Plaintiffs satisfy both Rule 65(e)(1) and Rule 65(e)(2).[6]

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[5] During a phone call on Friday, August 19, 2022, Plaintiffs' counsel informed the City that Chasidy was effectively homeless and asked the City to allow Chasidy back into her home during the pendency of the lawsuit, or even only until a hearing on a potential motion for a preliminary injunction. Alban Decl. ¶¶ 2-3. The City refused both. *Id.* ¶ 3. Plaintiffs' counsel then stated that Chasidy would file a motion for injunctive relief as soon as possible. *Id.*

[6] Chasidy and Robert respectfully request that this Court waive the typical requirement that Plaintiffs post a "security" under Rule 65(c). I.R.C.P. 65(c) (requiring security but only in amount "that the court considers proper"). Here, it would not be proper to require Plaintiffs to pay the security to cover the City's costs and attorney's fees because "there is no realistic likelihood of harm" to the City during the pendency of this lawsuit. *See Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003); *see also BYD Co. Ltd v. Khazai*, 2020 WL 3893310, at *6 (C.D. Cal. July 10, 2020) ("Defendants are not likely to suffer harm as a result of being enjoined from engaging in [unconstitutional] conduct."). Moreover, Plaintiffs should not bear, even temporarily, the potential costs of the City because the City has significantly more resources than Plaintiffs have. *Cf. Anderson v. State Farm Mut. Auto. Ins. Co.*, 766 F. App'x 432, 434-35 (9th Cir. 2019) ("Among the permissible considerations [in awarding costs] are the plaintiff's

In Section I, Chasidy and Robert explain that they satisfy Rule 65(e)(1) because they are substantially likely to prevail on the merits of their constitutional claims. As explained in Section 1.A, the City's ban on living in tiny houses on wheels is unconstitutional under Idaho's protections for substantive due process, both on its face and as applied to them. Section I.B demonstrates how Chasidy and Robert are also substantially likely to prevail because the City's enforcement of the ban, and its related policies and practices, violate equal protection as applied to them. In Section II, Plaintiffs explain why the City making Chasidy homeless is a "great and irreparable injury."

I. Chasidy and Robert are substantially likely to succeed on the merits under Rule 65(e)(1).

I.A. Chasidy and Robert's substantive due process claim.

The City's ban violates the substantive due process protections in Article I, Section 13 of the Idaho Constitution, both facially and as applied to Plaintiffs. Section 13 contains Idaho's "Due Process Clause," which provides in relevant part, "No person shall . . . be deprived of life, liberty or property without due process of law." Idaho Const. art. I, § 13. The clause's substantive component prohibits governments from depriving someone of "property" for a reason "so inadequate that the judiciary will characterize it as 'arbitrary.'" *See, e.g.*, *Pace v. Hymas*, 111 Idaho 581, 586 (1986).

This standard for determining whether a law is so unreasonable as to be unconstitutional is the "rational basis test," which requires that a law be rationally related to a legitimate government interest.[7] While plaintiffs carry a heavy burden under the test, plaintiffs can prevail by proving a challenged law is not sufficiently connected to the government's asserted interests, either on the law's face or as applied to the plaintiff. After plaintiffs present their evidence and arguments, "it is incumbent upon the

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limited financial resources and the economic disparity between the parties.") (reversing award of costs to federal government). Thus, Plaintiffs respectfully request that the Court not require the "security" contemplated by Rule 65(c).

[7] Idaho caselaw sometimes uses "rational basis"—the term used by federal courts—and sometimes uses "substantial relation" to describe the connection a law must have to a legitimate purpose. *See, e.g.*, *Citizens Against Range Expansion v. Idaho Dep't of Fish & Game*, 2011 WL 1560029, at *34 (Idaho Dist. Ct. Mar. 10, 2011) ("Where a statute purports to have been enacted to protect the public health, safety and morals, but has no substantial relation to those objects, or where the legislation is a palpable invasion of fundamental rights, courts must give effect to the Constitution by deeming such legislation unlawful."); *Berry v. Koehler*, 84 Idaho 170, 176, 178 (1961) (reviewing due process challenge to regulations on practice of dentistry for "whether it actually accomplishes some real purpose" and whether there is "a direct, real and substantial relation between the legislation and the object to be attained"). At times, Idaho courts have suggested that "substantial relation" review is distinct from, and more searching than, the federal rational-basis standard, but other caselaw suggests the tests are the same. For the sake of this brief, Plaintiffs assume Idaho's test involves scrutiny equivalent to that of the federal rational-basis test, since understanding the precise contours of Idaho's test is not necessary to grant the Motion. However, Plaintiffs preserve, for appellate review, the argument that Idaho's Constitution demands more searching scrutiny.

judicial department to examine the ordinance and to determine whether or not the legislators have overreached their prerogative . . . . If the act is found to be unreasonable, capricious, arbitrary, or discriminatory, it will be held void." *Heck v. Comm'rs of Canyon Cnty.*, 123 Idaho 826, 830 (1993) (remanding for factual determination on whether ordinance violated due process).

While Plaintiffs have not found any relevant Idaho cases concerning a motion for preliminary injunction against a zoning ordinance, caselaw in other states is helpful. For example, earlier this year a Texas trial court granted a preliminary injunction against a zoning ordinance after finding the ordinance likely violated substantive due process under Texas's rational basis test.[8] *Sepulveda v. City of Pasadena*, No. 2021-80180, 2022 WL 952888 (Tex. Dist. Ct. Mar. 21, 2022) (attached as Ex. 55, Alban Decl. ¶ 7). In *Sepulveda*, the challenged ordinance would not allow Plaintiff to open his mechanic business until he provided 28 parking spaces on his property. The government claimed the parking spaces were justified by the City's interests in providing adequate parking and protecting traffic safety. The plaintiff, however, proved that the business did not have room for that many spaces, and the business did not need that many parking spaces anyway. *Id.* ¶¶ 96-100. The plaintiff also showed that the previous owner of the property had operated a similar mechanic shop on the property without the 28 parking spaces. *Id.* ¶ 101. After hearing the evidence, the court found the ordinance was not reasonably related to the government's asserted interests as applied to the plaintiff, and the plaintiff was likely to prevail on the merits of his due process claim.

The same is true here. Plaintiffs are likely to show that the City's ban is unconstitutional under due process both on its face and as applied to them.

<u>The City's ban is likely facially unconstitutional under Article I, Section 13.</u>

The City's ban on tiny houses on wheels does not rationally or substantially promote any legitimate government interest. Idaho's legislature has identified the legitimate interests for zoning regulations, directing that zoning regulations "shall . . . promote the health, safety and general welfare of the people." I.C.A. § 67-6502; *see also id.* §§ 67-6502(a)-(m) (specifying ways to promote those interests, such as subsection (a)'s direction "[t]o protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks"). Here, the City appears not to have articulated any purpose or interest served by its ban, let alone those specified by the Idaho legislature. The City's ban, in fact, does not promote any legitimate interests.

[8] Texas's substantive due process clause is very similar to Idaho's. Texas's clause states that "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

First, consider public health and safety. The City's ban facially bears no relationship to those legitimate interests. The City concedes that living in tiny homes on wheels is not *per se* detrimental to public health or safety, because the City allows people to live in tiny homes on wheels in RV parks. Exs. 1-2, Chasidy Decl. ¶ 17 (emails from Deputy City Attorney and Officer Negrete encouraging Chasidy to live in her tiny home in an RV park); Ex. 54, Alban Decl. ¶ 6 (*Idaho Statesman* article citing statement by Deputy City Attorney). The City's code bans people from using tiny homes on wheels—which it concedes can be safely done—as living quarters anywhere else in Meridian. *See* MC § 11-3A-20 (prohibiting use of mobile tiny homes "as a residence or as living quarters except within an approved recreational vehicle park."). But whether someone lives in a tiny home on wheels inside or outside an RV park has nothing to do with whether it is safe to live in a tiny home on wheels. Regardless, the City's ban still applies. And, as discussed *infra* in the equal protection section, the City has a policy or practice of allowing many people to use RVs and trailers as living quarters outside RV parks; if doing so was a genuine health and safety issue, the City would not tolerate this.

To the contrary, the City's ban is detrimental to health and safety. Its ban forces residents out of homes that the City concedes are safe to live in. The alternative for at least some residents who live in tiny homes on wheels is homelessness and temporary, unstable living arrangements. The detrimental effects on public health and safety of forcing residents into homelessness are obviously significant. On its face, the City's ban does not rationally or substantially promote health and safety.

The City's ban does not rationally or substantially promote any other legitimate state interest for similar reasons. Consider, for example, interests in preserving aesthetics or the character of a neighborhood.[9] Facially, the City's ban does not further either of these interests because, although it bans people from living in tiny homes on wheels outside an RV park, they can be parked on private residential property *indefinitely*. *See* MC § 11-3C-4. And, in fact, many homes in Meridian, including several on Leisure Lane, have an RV or trailer parked on the property, with some having more than one. Exs. 5-8, 10-50, Chasidy Decl. ¶¶ 24, 49-65. The City's ban makes no sense because whether someone is using a tiny home on wheels as a residence or is just storing it on their property has no bearing on whether the tiny home on wheels is attractive or consistent with the neighborhood.

On its face, the City's ban on living in tiny houses on wheels outside RV parks does not rationally further any legitimate interest. As a result, the Court should find that the City's ban is likely facially unconstitutional under Article I, Section 13 of the Idaho Constitution.

The City's ban is also likely unconstitutional as applied to Chasidy and Robert.

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[9] Plaintiff does not concede that aesthetics or neighborhood character are legitimate state interests, or otherwise interests the city can address with its zoning power.

The City's ban on tiny homes on wheels also likely violates due process as applied to Chasidy and Robert: It arbitrarily deprives them of property interests that are protected under Idaho law. And it does so without rationally promoting any legitimate government interest.

First, it deprives Chasidy and Robert of cognizable property interests. Chasidy owns her tiny home on wheels, and she has been using it as a residence for nearly three years. Chasidy Decl. ¶¶ 5, 8. Robert owns the real property at 1926 N. Leisure Lane. Robert Decl. ¶¶ 2-3. Idaho law protects the ownership of real and personal property. *See, e.g.*, I.C.A. §§ 55-101 & 55-102. Idaho law also protects their rights to the safe and reasonable use or enjoyment of that real and personal property. *See e.g.*, *Eddins v. City of Lewiston*, 150 Idaho 30, 34-36 (2010). Moreover, Idaho law recognizes property rights arising out of the lease between Chasidy and Robert. *See, e.g.*, I.C.A. § 6-320 (authorizing claims by tenants to enforce terms of lease agreements); *id.* §§ 55-301, 55-307 (describing certain of owner's rights and remedies in lease arrangements). There is no reason to treat Plaintiffs' property rights any differently from another property interest recognized under Idaho law. And so, Plaintiffs have cognizable property interests allowing them to challenge the City's ban, which deprives them both of the reasonable enjoyment of their properties—Chasidy's tiny home, Robert's real property, and the lease belonging to both of them—under threat of criminal prosecution.

Second, the City's ban deprives Chasidy and Robert of those property interests without rationally or substantially promoting any legitimate interests. Again, consider health and safety. The City concedes that Chasidy's home is safe enough for her to live in it in an RV park. The Deputy City Attorney said so by email to Chasidy's friend, encouraging Chasidy to move to an RV park and live there, and apparently the Deputy City Attorney said the same thing to the *Idaho Statesman*. *See* Exs. 1, 54. Officer Negrete also stated multiple times to Chasidy that she could permanently move to an RV park, including by email. Ex. 2; *see also* Chasidy Decl. ¶ 31.

The City also conceded that her home is safe enough for her to continue living in it *in exactly the same space* where she had been living in it. After Officer Negrete confronted Chasidy about the *Idaho Statesman* story, he explained that Chasidy could continue living in her tiny house on wheels if only she had entered into a lease with the people who owned the property before Robert. Chasidy Decl. ¶ 34; Compl. ¶¶ 80, 130. And presumably, under the City's policy or practice to ignore code violations by all but the newest residents, Chasidy could also live in her tiny home if she rented from a neighbor who had lived in the neighborhood for some time. Moreover, no representative of the City has even alleged that Chasidy's tiny home on wheels—or her living in it on Robert's property—poses any health or safety risk. Chasidy Decl. ¶ 43; Robert Decl. ¶ 10; *see also, e.g.*, Compl. ¶ 126.

The City has not said it would be unsafe for Chasidy to continue living in her tiny house on wheels on Robert's property because, in fact, it was, is, and would continue to be a safe, reasonable use

of their properties. Chasidy Decl. ¶¶ 8, 45; Robert Decl. ¶ 10; *see also, e.g.*, Compl. ¶¶ 96-97, 100, 106-08. Chasidy's tiny house on wheels was professionally constructed with high-quality materials, and it is equipped with various safety features of a traditional home. Chasidy Decl. ¶¶ 8-9; Compl. ¶¶ 36, 125. There is also direct evidence that the home is safe to live in, since Chasidy had been safely using it as a residence for nearly three years when the City forced her out of it, including living in it on Robert's property for two-and-a-half months. Chasidy Decl. ¶¶ 8, 12; *see also* Robert Decl. ¶¶ 4, 9; Compl. ¶¶ 36, 125. Now, instead of living in the tiny home she owns, Chasidy is effectively homeless. *See* Chasidy Decl. ¶¶ 31, 46; Compl. ¶¶ 6, 16, 21. Similarly, Robert has lost out on most of the rental income he expected to receive during the lease to Chasidy. Robert Decl. ¶ 9. Depriving Chasidy and Robert of their private property rights in those ways has not improved Chasidy's, Robert's, or any other person's health and safety. *See, e.g.*, Compl. ¶¶ 124, 128, 142. Thus, the City's ban as applied to Chasidy and Robert does not rationally or substantially promote anyone's health and safety, but rather only worsens Chasidy's by making her effectively homeless. Chasidy Decl. ¶ 47 (stating City's ban has caused her "anxiety, stress, and suffering"); *see also, e.g.*, Compl. ¶¶ 96-105 (describing injuries to Chasidy). While some young adults may not mind crashing with their friends, Chasidy is in her 40s and feels she is burdening her friends and desperately misses having her own place. Chasidy Decl. ¶¶ 47-48.

Applying the ban to Chasidy and Robert does not further any other government interest either. Compl. ¶¶ 120, 131-34, 142. For example, the City's ban does not preserve aesthetics or the character of the neighborhood as applied to Chasidy and Robert. Compl. ¶¶ 131-32. Her tiny home on wheels is still legally parked on Robert's property in the same spot where she had been living in it. Chasidy Decl. ¶ 44; Robert Decl. ¶ 9. And it can remain parked there indefinitely. *See* MC § 11-3C-4. That confirms the City's ban has nothing to do with preserving aesthetics, because whether Chasidy's tiny home on wheels is aesthetically pleasing or consistent with the surrounding neighborhood has nothing to do with whether she lives in it and pays Robert rent. *See* Compl. ¶¶ 131-32. In any event, Chasidy's home is attractive, tidy, and largely screened from view by a six-foot privacy fence. *See* Ex. 9; Chasidy Decl. ¶ 44; *see also Compl.* ¶¶ 8, 36, 131-32.

Even if one could notice her home behind the privacy fence, Chasidy's tiny home on wheels does not detract from the character or aesthetics of Leisure Lane, where nearly all other properties have a mobile home, RV, tiny home on wheels, commercial shipping containers, broken-down cars, debris, or similar items. *See, e.g.*, Chasidy Decl. ¶ 24; Robert Decl. ¶ 3; Compl. ¶¶ 9, 49, 131-32. For example, Exhibits 5-9 are photos of nearby properties on Leisure Lane within sight of Robert's property, including Robert's immediate neighbor. While Chasidy and Robert are happy that other neighbors may use their property as they choose, Chasidy and Robert would like to do so as well.

In addition, many nearby properties have RVs and trailers that are being used as residences or living quarters. As described in Chasidy's declaration, at least 13 homes within just 1,500 feet of Chasidy's tiny house have RVs and trailers showing clear signs of being used as living quarters, such as being connected to utilities, having their slide-outs extended (sometimes called room extenders), having their stairs lowered, having their windows open, having their stabilizing jacks in place, and other factors. Exs. 10-50, Chasidy Decl. ¶¶ 49-65. A couple of the trailers even have historic evidence on Google Maps of being hooked up to utilities for years at a time. Exs. 14, 27, 30-31, *id.* ¶¶ 52, 56-57. And these are just the RVs or similar structures clearly visible from the public roadways within 1,500 feet of 1926 N. Leisure Lane; there are undoubtedly many more throughout Meridian. If these RVs and trailers do not detract from the City's asserted interests in health, safety, aesthetics, or anything else, then Chasidy's tiny house on Robert's property should not detract from those interests either.

For similar reasons, applying the ban to Robert does not rationally further any legitimate government interest. *See, e.g.*, Compl. ¶¶ 136-44. Robert's lease with Chasidy reflected a safe, reasonable use of his private property that was consistent with how the previous owners used the property. *See* Robert Decl. ¶ 3; Williamson Decl. ¶¶ 5-13. It was consistent as well as with how other property owners in the neighborhood used their properties. *See* Robert Decl. ¶ 3; Williamson Decl. ¶¶ 14-15; Compl. ¶¶ 41, 106-08. For the same reasons described above as to Chasidy, applying the City's ban to Robert's use of his property interferes with his property rights without rationally promoting any legitimate government interest, or even potential purposes relating to aesthetics or the character of the neighborhood. *See generally* Compl. ¶¶ 136-44 (stating Robert's substantive due process claim).

Thus, applying the City's ban on living in tiny homes on wheels outside RV parks to Plaintiffs does not rationally further any legitimate interest. As a result, the Court should find that the City's ban is likely unconstitutional under substantive due process, as applied to Plaintiffs.

I.B. Chasidy and Robert's equal protection claim.

The City arbitrarily treats newcomers to the City differently from longtime residents when it enforces its zoning code. As a result, the City's ban likely violates the equal protection guarantee in Article 1, Section 2 of the Idaho Constitution, as applied to Plaintiffs.

Idaho's equal protection guarantee is similar to the federal equal protection clause. "The principle underlying the equal protection clauses of both the Idaho and United States Constitutions is that all persons in like circumstances should receive the same benefits and burdens of the law." *See Bon Appetit Gourmet Foods, Inc. v. State*, 117 Idaho 1002, 1003 (1989).

One type of equal protection claim is a selective enforcement claim, which is what Chasidy and Robert bring here. To prevail on a selective enforcement claim, a plaintiff must show the government is selectively or discriminatorily enforcing a law against them. Specifically, a plaintiff may

show that the government is deliberately enforcing a law "based upon some improper motive like race, sex, religion, or *some other arbitrary classification*." *Anderson v. Spalding*, 137 Idaho 509, 514 (2002) (emphasis added). Selective enforcement claims are sometimes also called "class of one" claims and a plaintiff can prevail on such a claim when she proves that the government treated her differently from similarly situated individuals without a rational basis. *Id.* (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564-65 (2000)) (remanding to the trial court to decide a "class of one" claim after plaintiff alleged she was arbitrarily singled out for enforcement under a zoning code); *City of Coeur D'Alene v. Simpson*, 142 Idaho 839, 853 (2006) (reversing trial court for improperly dismissing class of one claim when plaintiff alleged the City was enforcing zoning ordinance against it but not against others).

Here, Chasidy and Robert are substantially likely to show that the City singled them out for enforcement because they were new to Meridian, while the City has a policy or practice of ignoring longtime neighbors who were also violating the ban by using trailers, RVs, etc., as living quarters. Chasidy details the other homes with identical and similar code violations in her declaration. *See* Exs. 5-8, 10-50, Chasidy Decl. ¶¶ 24, 49-65. They include 13 addresses within a 1,500-foot radius that have RVs or trailers showing clear indications they are being used as living quarters, including a large fifth wheel trailer parked on a public street that was connected to both a generator and electrical power, with its slide-outs extended. *E.g.*, Exs. 38-39, Chasidy Decl. ¶ 60. It seems that the only nearby property that the City enforced its ban against was also a tiny home at 1928 N. Leisure Lane, which according to public property records, is also owned by a newcomer to the neighborhood. *See* Ex. 56.

Officer Negrete even admitted to this arbitrary enforcement. When Chasidy asked Officer Negrete why he was singling her tiny home out for enforcement, while other residents in the neighborhood are not required to abide by the code, Officer Negrete responded that other residents have lived in the neighborhood for a long time, while she and Robert just moved there from out-of-state. Chasidy Decl. ¶ 34. Officer Negrete even told Robert that while no one complained about the tiny home, he and other of the City's inspectors follow a policy or practice of keeping track of newly sold homes in the neighborhood and driving by them to see if they have any code violations. Robert Decl. ¶ 5. But being new to a neighborhood or being from a different state are "arbitrary classification[s]" that do not justify the disparate treatment. *See Anderson*, 137 Idaho at 514.

Officer Negrete also told Chasidy that she would be able to live in her tiny home at the property if she had signed a lease with the former owners instead of Robert. Chasidy Decl. ¶ 34. The former owners of the property had lived there for two decades and did, in fact, have different people living in a trailer connected to their RV hookups off and on over the years—Williamson Decl. ¶¶ 2-12. Code enforcement never contacted or cited the former owners for this. *Id.* ¶ 13. Again, it is completely arbitrary for the City to allow longtime residents to violate the code, but not new residents.

Courts agree. As discussed above, the Texas trial court in *Sepulveda* found that the City forcing new owners of the property to abide by the zoning code, but not the former owners, helped show the irrationality of the City's enforcement. *Sepulveda*, 2022 WL 952888 (attached as Ex. 55, Alban Decl. ¶ 7). Other courts have similarly found that residency—including the length of time of residency—can be an arbitrary classification for equal protection purposes. *See, e.g.*, *Police Ass'n v. City of New Orleans*, 649 So. 2d 951, 964-65 (La. 1995) (striking down "grandfather clause," which operated as an exemption to the requirement that City employees must live in the City to receive a promotion, when the grandfather clause applied to some employees but not others based on an arbitrary date of when they moved out of the City, as the clause violated equal protection); *Wiggins v. City of Jacksonville*, 311 So. 2d 406, 408 (Fla. Dist. Ct. App. 1975) (striking down city ordinance that grandfathered in plumbing licenses for plumbers in one section of the city but not other sections as arbitrary and in violation of equal protection); *City of St. Paul v. Dalsin*, 71 N.W.2d 855, 859-60 (Minn. 1955) (holding that city licensing ordinance that required contractors to have a place of business in the city before they could get a license to work in the city, but only if the prospective licensee's home city imposed the same requirement, was irrational and violated equal protection).

The City may argue that longtime residents are grandfathered into the neighborhood and do not have to abide by the code. But such a claim would be dubious at best. Officer Negrete appears to have taken the position that to be grandfathered into the code, property owners would have had to start living in RVs, trailers, tiny homes and other traveling quarters before 1978. *See* Ex. 56 at 2, Alban Decl. ¶ 8 (Officer Negrete notes to incident report); *see also* Chasidy Decl. ¶ 34. That is the year when the City annexed the neighborhood and subjected it to its zoning code.[10] But the former owners of 1926 N. Leisure Lane did not install their RV hookups until well after 1978—in or around 2001. Williamson Decl. ¶ 4. And the same is likely true of many other neighbors who violate the City's ban. It is simply implausible that most of Chasidy's neighbors have owned their properties and have had RV hook ups installed or in use on their property for over 40 years.

Even if Officer Negrete has somehow misstated the City's position on grandfathering, the City seems to have never actually investigated whether any properties with RVs and trailers being used as living quarters are grandfathered. Instead, it seems the City has a policy or practice of merely enforcing the code against new residents. *See, e.g.*, Chasidy Decl. ¶¶ 34-37, 49-65; Exs. 5-50; Robert Decl. ¶¶ 3, 5-7; Ex. 56. It is arbitrary for the City to subject new residents to the code, but not old

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[10] It seems that the City banned living in traveling quarters before 1978. *See, e.g.*, Meridian City Ordinance No. 112 (passed and approved on June 5, 1961), available at https://weblink.meridiancity.org/WebLink/DocView.aspx?id=45395&dbid=0&repo=MeridianCity (prohibiting sleeping in a trailer coach except in a "trailer court," i.e., a trailer park/RV park).

residents. Indeed, several other courts have found arbitrary grandfathering to pose equal protection problems.[11] Thus, the Court should find that the City has likely selectively enforced its ban in violation of Article I, Section 2 of the Idaho Constitution, as applied to Plaintiffs, who satisfy Rule 65(e)(1).

II. Plaintiffs demonstrate a "great or irreparable" injury under Rule 65(e)(2).

Plaintiffs also satisfy Rule 65(e)(2). That rule allows for injunctive relief here because the City's continued enforcement of the ban causes Chasidy "great or irreparable injury." *See* I.R.C.P. 65(e)(2). "Great or irreparable injury" includes harms that cannot be undone by an award of damages or, put another way, harms for which there are no adequate remedies at law. *See, e.g.*, *Gilbert v. Elder*, 65 Idaho 383, 387-88, 144 P.2d 194, 195 (1943) (allowing continued removal of timber was irreparable harm, despite availability of damages, because "legal remedies are wholly inadequate to reconvert logs and lumber into live, standing, growing trees" (quotations omitted)). Depriving Chasidy of her home, leaving her effectively homeless, is a great and irreparable injury.

The City used its zoning ordinance to force Chasidy out of her perfectly safe tiny house on wheels. Chasidy owns her home and cannot afford purchasing a traditional home or renting an apartment in the Boise area. Chasidy Decl. ¶ 16. Although she already owns a perfectly safe home and has a place to live in it, the City barred her from living in it and left her effectively homeless. The injury here is especially great in light of the ongoing housing crisis and inflated real estate prices in the Treasure Valley. But, under any reasonable view, being homeless—during the pendency of a lawsuit challenging the government action which rendered her homeless—constitutes "great or irreparable injury" to Chasidy. *E.g.*, *Gonzalez v. Recht Fam. P'ship*, 51 F. Supp. 3d 989, 992 (S.D. Cal. 2014) (finding irreparable injury where plaintiff was "forced to move from her current home, she faces the possibility of becoming homeless" in light of "the dearth of affordable, accessible housing in the State of California, and San Diego County"). As a result, the Court should find that Plaintiffs have established a "great or irreparable injury" if Defendants are not enjoined, and that Plaintiffs satisfy Rule 65(e)(2).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order awarding them a preliminary injunction to allow Chasidy to continue living in her tiny home on wheels on Robert's property during the pendency of this lawsuit.

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[11] *See, e.g.*, *Swann v. City of Graysville*, 367 So. 2d 952, 954 (Ala. 1979) (finding city denied plaintiff equal protection when it denied her liquor license, while grandfathering in other licenses, as the disparate treatment was "arbitrary" and based on a "mistaken" view of grandfathering law); *see also Glendale Fed. Sav. & Loan Ass'n v. State*, 485 So. 2d 1321, 1325 (Fla. Dist. Ct. App. 1986); *State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee*, 313 N.W.2d 805, 810-12 (Wis. 1982).

DATED: September 12, 2022

/s/ Robert M. Belden
Robert M. Belden
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this September 12, 2022, a true and correct copy of the foregoing Memorandum of Law in Support of Motion for Preliminary Injunction was served using the iCourt E-File system upon:

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