

1 Fernando Gaytan (SBN 224712) fgaytan@lafla.org
2 Paul J. Estuar (SBN 167764) pestuar@lafla.org
3 Shayla R. Myers (SBN 264054) smyers@lafla.org
4 **LEGAL AID FOUNDATION OF LOS ANGELES**
5 7000 S. Broadway
6 Los Angeles, CA 90003
7 Tel: (213) 640-3831
8 Fax: (213) 640-3988

9 Paul L. Hoffman (SBN 71244)
10 Catherine Sweetser (SBN 271142) catherine.sdshhh@gmail.com
11 **SCHONBRUN DeSIMONE SEPLOW HARRIS & HOFFMAN, LLP**
12 723 Ocean Front Walk, Suite 100
13 Venice, CA 90291
14 Tel: (310) 396-0731
15 Fax: (310) 399-7040

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

18 LOS ANGELES CATHOLIC
19 WORKER, an unincorporated
20 association; CANGRESS, a non-profit
21 corporation; HARRY JAMES JONES,
22 LOUIS GRADY, LLOYD HINKLE,
23 WALTER SHOAF, individuals

24 Plaintiffs,

25 vs.

26 LOS ANGELES DOWNTOWN
27 INDUSTRIAL DISTRICT BUSINESS
28 IMPROVEMENT DISTRICT,
CENTRAL CITY EAST
ASSOCIATION, INC., CITY OF LOS
ANGELES; DOES 1 -10

Defendants.

) Case No.

) **COMPLAINT: CIVIL RIGHTS**

) **42 U.S.C. § 1983 AND FOURTH, FIFTH
AND FOURTEENTH AMENDMENTS**

) **CALIFORNIA CONSTITUTION
ARTICLE I, §§ 7 AND 13**

) **CALIFORNIA CIVIL CODE §§ 52, 52.1**

) **CONVERSION**

) **TRESPASS TO PROPERTY**

JURISDICTION AND VENUE

1
2 1. This is an action for injunctive relief and damages pursuant to 42
3 U.S.C. § 1983, based upon ongoing violations by the defendants of the rights
4 secured to plaintiffs by the Fourth, Fifth and Fourteenth Amendments of the United
5 States Constitution. Jurisdiction exists based on 28 U.S.C. §§ 1331 and 1343 in
6 that this case is brought pursuant to 42 U.S.C. § 1983 and raises questions of
7 federal constitutional law. The court has supplemental jurisdiction over plaintiffs’
8 state law claims pursuant to 28 U.S.C. § 1367.

9 2. Venue is proper in the Central District in that the events and conduct
10 complained of in this action occurred in the Central District.

PRELIMINARY STATEMENT

11
12 3. The City of Los Angeles is currently enjoined from seizing property
13 from homeless people in violation of their Fourth and Fourteenth Amendment
14 rights. *See Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005 (C.D.Cal. 2011)
15 *affirmed by Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012). This is
16 the third time in the past thirty years that the Court has restrained the City of Los
17 Angeles from seizing homeless people’s property in the Skid Row area of
18 Downtown Los Angeles. *See also Adam Young Bennion v. City of Los Angeles*,
19 C637718 (LA Sup. Ct., February 25, 1987); *Justin v. City of Los Angeles*, CV 00-
20 12352 LGB (C.D.Cal. 2001) (AIJx).) The current injunction against the City is the
21 result of explicit holdings by both the District Court and the Ninth Circuit Court of
22 Appeals that it is a violation of the Fourth and Fourteenth Amendments to seize a
23 homeless person’s property that is not abandoned, or to seize abandoned property
24 without notice or due process. *Lavan*, 797 F. Supp. 2d at 1020; *Lavan v. City of*
25 *Los Angeles*, 693 F.3d at 1030.

26 4. Despite clear language from the Court that such behavior is
27 unconstitutional, the Los Angeles Downtown Industrial District Business
28 Improvement District, a special assessment district created by the City of Los

1 Angeles pursuant to California Streets and Highways Code § 36600, and its agent,
2 the Central City East Association, with cooperation and participation by the City of
3 Los Angeles, have engaged in a long-running campaign to seize homeless people's
4 unattended property. BID officers take property they have no reason to believe is
5 abandoned or creating a health and safety risk. They do so with no notice of any
6 kind to individuals that their property will be taken. By design, the seizures serve
7 no purpose other than to make life even harder for homeless residents in the BID,
8 and individuals who live on the street cannot reasonably predict when their
9 property will be taken or prevent it from happening. These actions are in clear
10 violation of individuals' rights under the United States Constitution.

11 5. In the face of these violations, yet another group of plaintiffs is forced
12 to come before a Court to seek protection against these violations and the
13 conditions created by defendants because of the seizure of their possessions.

14 6. Plaintiffs are four homeless individuals and two organizational
15 plaintiffs who live or operate in the area of Los Angeles known as Skid Row,
16 which is largely encompassed by the Los Angeles Downtown Industrial District
17 (LADID). It also has one of the largest concentrations of homeless people in the
18 area as well as one of the largest concentrations of service providers that provide
19 food, shelter, and other services to homeless people in the area.

20 7. Like many other homeless individuals in Skid Row, the plaintiffs keep
21 all of their worldly possessions with them during the day and use blankets and
22 tents to shelter themselves at night. Although they each attempt to stay with their
23 property as much as possible during the day, it is virtually impossible for them to
24 stay in one place at all times, or to take their possessions with them wherever they
25 go. They have no choice but to leave their property unattended to get food, use the
26 restroom, attend court proceedings, and get medical treatment for ailments that are
27 by all accounts made worse by their life on the streets. Defendants are aware that
28

1 homeless people must leave their property unattended at times during the day to
2 attend to the necessities of life.

3 8. When plaintiffs do leave their property, they risk having their property
4 seized by the LADID and the CITY, which with no notice and seemingly at
5 random, seize homeless people's unattended but clearly not abandoned property.
6 Over the course of the last two years, the individual plaintiffs have all had their
7 property seized by LADID's public safety officers who are performing municipal
8 services in the LADID. In each instance, the plaintiffs' property was neatly packed
9 up, and plaintiffs were gone for only a short period of time. When they returned,
10 they each found their property had been seized. They had no way of knowing their
11 property would be taken when they were gone, and they had no way to prevent it.
12 In one instance, one of the plaintiffs left a sign on his property, as he was told to do
13 by the BID, stating that his property was not abandoned, yet his property was taken
14 none-the-less.

15 9. When their property is taken, individuals are often not given notice
16 where their property is taken or how to retrieve it. When they do discover that
17 their property is being held at a storage facility, they are then forced to retrieve it
18 from the facility, which is located more than a half mile away from where many
19 homeless people stay. What was hauled away in a truck, plaintiffs must then carry
20 back, unassisted, to the place where they reside. In the heat of the day or for
21 individuals with mobility issues or health problems, this is a nearly impossible
22 task. It is made even more difficult because defendants seize and will not return
23 any shopping carts used by individuals to cart or store their property or which were
24 used as ambulatory assistance. This includes carts given to people by the Los
25 Angeles Catholic Worker specifically for this purpose.

26 10. These BID officers, acting under color of law, seize this property in
27 accordance with the LADID's policy of taking unattended property in the BID.
28 The CITY has conspired with LADID and participated in and ratified these actions.

1 Together, the LADID and the CITY have deprived the individual plaintiffs of their
2 property, in complete disregard of plaintiffs' Fourth and Fourteenth Amendment
3 rights and in direct contravention of the Ninth Circuit's mandate in *Lavan* to ensure
4 that these rights are protected. Defendants are doing so as part of an ongoing
5 campaign to make the streets less hospitable to the homeless residents of Skid
6 Row, and as a result of these seizures, which plaintiffs cannot predict or prevent,
7 they are more hesitant to leave their property during the day to seek medical care,
8 get case management, attend court hearings, or even get food or perform personal
9 tasks.

10 **PLAINTIFFS**

11 11. Plaintiff Los Angeles Catholic Worker (LACW), founded in 1970, is
12 an unincorporated lay Catholic community of women and men providing services
13 to homeless residents of Skid Row since its founding. Each week LACW provides
14 free meals to as many residents as resources allow. They provide these meals at
15 their building on the corner of 6th Street and Gladys Avenue, which is nicknamed
16 the "Hippie Kitchen" and is located in the area covered by the Los Angeles
17 Downtown Industrial District Business Improvement District. In addition to
18 providing meals through the Hippie Kitchen, LACW provides hospice care for the
19 dying, operates a dental clinic, and provides much-needed foot care to homeless
20 people who spend significant time on their feet, often in worn and ill-fitting shoes.
21 LACW provides toiletries, over-the-counter medications, and other tangible items
22 to people in need.

23 12. LACW also provides shopping carts to homeless residents of Skid
24 Row. The carts are loaned to homeless individuals who use the carts to move and
25 store their personal possessions and as assistance for the many individuals in Skid
26 Row with ambulatory disabilities. LACW purchases the bright red carts with their
27 name embossed on the handle, and places laminated signs indicating they are
28 "Shopping Carts for the Homeless". The signs are attached in accordance with

1 Business and Professions Code § 22435.1 and provide notice to law enforcement
2 and others, including the LADID officers that the shopping cart is owned by Los
3 Angeles Catholic Worker and used with permission by homeless individuals in
4 Skid Row.

5 13. As a result of the policies and the practices of the LADID, CCEA and
6 the CITY to illegally seize people's property, including their shopping carts, the
7 LACW has had to expend worker time and resources to get their carts back from
8 the LADID. In addition, because carts are rarely returned after being seized by the
9 BID officers, LACW has had to replace these carts. LACW has also had to replace
10 toiletries and other tangible items that are taken when property is seized. These
11 expenditures have diverted resources from other activities. In addition,
12 defendants' illegal policies and practices have frustrated LACW's mission of
13 providing food and services to homeless residents of Skid Row. Defendants'
14 policies of seizing unattended property make it more difficult for people to leave
15 their belongings when they seek services in Skid Row, including getting food from
16 the Hippie Kitchen. Finally, these policies have frustrated LACW's mission of
17 ensuring that that homeless people are treated with dignity and respect by, among
18 other things, disrespecting their rights and creating a hostile environment for
19 homeless people living in Skid Row.

20 14. Plaintiff CANGRESS, aka The Los Angeles Community Action
21 Network ("LA CAN") is a grassroots, non-profit organization operating and
22 organized under the laws of the State of California. Its members include over 800
23 poor people in Skid Row, many of whom are homeless residents in Skid Row. The
24 organization's main purpose is to organize and empower community residents to
25 work collectively to address systemic poverty and oppression in their community.
26 Since its founding in 1999, LA CAN has operated as the only member-driven
27 organization in Skid Row whose goal is to protect the rights and prevent the further
28 disenfranchisement of homeless and poor people in Los Angeles. LA CAN brings

1 this action on behalf of its members whose property has been seized by BID
2 officers as part of defendants' policies and practices of seizing unattended property
3 in Skid Row.

4 15. Plaintiff Harry James Jones is a 63-year-old disabled Vietnam War
5 veteran who suffers from chronic medical conditions such as high blood pressure,
6 glaucoma, diabetes, and PTSD. He was homeless for nearly 40 years, since he was
7 honorably discharged from the Marine Corps in 1975. He resided in the Skid Row
8 area for most of that time. Mr. Jones has had all of his personal property seized by
9 LADID officers on at least three occasions. Each time, the BID officers failed to
10 leave him notice that his property was taken, and as a result, he was unable to
11 retrieve his property.

12 16. Plaintiff Louis Grady is a 51-year-old homeless man who fell on hard
13 times last year and has been living on the streets of Skid Row since then. Although
14 he works to support himself by doing odd jobs and collecting recycling, he does
15 not earn enough to afford an apartment. Mr. Grady has had his personal property
16 seized by BID officers on at least two separate occasions in the past year while he
17 momentarily stepped away to perform life-sustaining activities.

18 17. Plaintiff Lloyd Hinkle is a 61-year-old Vietnam War veteran who has
19 lived in Skid Row for approximately a year. Since he started living on the streets,
20 he has kept all of his personal belongings with him in shopping carts, but leaves
21 them to get food and run other errands because he cannot take them with him into
22 the missions or other agencies from which he receives services. On or about June
23 30, 2014, BID officers and LAPD officers took Mr. Hinkle's property. He was
24 provided no notice of the seizure, and the BID and LAPD officers were repeatedly
25 informed that his property was not abandoned but took it anyway.

26 18. Plaintiff Walter Shoaf is a 62-year-old veteran who suffers from
27 chronic pain and Post Traumatic Stress Disorder as well as other mental health
28 issues. He has been homeless and residing in the Skid Row area since he was

1 discharged from the army nearly 40 years ago. In February 2014, Mr. Shoaf left
2 his property for a short time to run an errand. As he was returning to his property,
3 he saw the BID officers loading all of it into a truck. By the time he got to the
4 place where he stays, they had loaded up his things, taking his property, including
5 his military identification card and his tent. Although he tried to stop them, the
6 BID officers ignored him, and they left him no notice where to retrieve his
7 possessions.

8 DEFENDANTS

9 19. Defendant Los Angeles Downtown Industrial District (LADID) is a
10 Business Improvement District (BID) initially created by the City of Los Angeles
11 in 1998, pursuant to California Streets and Highways Code Section 36600 *et seq.*
12 *See* Los Angeles Municipal Ord. 172155. LADID's boundaries are roughly
13 between 3rd St. and 8th St. and Olympic to the North and South, and San Pedro and
14 Alameda to the west and east. The current BID was authorized through the
15 passage of Los Angeles Municipal Ordinance 180801. The LADID is funded by
16 the City of Los Angeles through an assessment on property owners located within
17 the BID.

18 20. Defendant Central City East Association ("CCEA") is a 501(c)(6) not-
19 for-profit business corporation contracted by the City of Los Angeles to manage
20 the LADID. CCEA maintains offices in the City of Los Angeles. At all times
21 relevant to this action, the LADID and CCEA, operating as the agent of LADID,
22 acted under color of state law.

23 21. Defendant the City of Los Angeles ("CITY") is a municipal entity
24 organized under the laws of the State of California. The CITY is a legal entity with
25 the capacity to sue and be sued. The CITY created the LADID and has authorized
26 and/or ratified all of the actions of the LADID alleged herein. The LADID and the
27 CCEA act as agents of the CITY and have conspired with the CITY to violate
28 plaintiffs' rights. The departments of the City of Los Angeles include the Los

1 Angeles Police Department, employees of which have also engaged in acts
2 constituting the violations of plaintiffs' rights alleged in this action.

3 22. The identities and capacities of defendants DOES 1 through 10 are
4 unknown to plaintiffs. Plaintiffs, therefore, sue these defendants by fictitious
5 names. As to all defendants sued by fictitious names, plaintiffs will give notice of
6 this Complaint and their true names and capacities when ascertained. Plaintiffs are
7 informed, believe, and thereon allege that DOES 1 through 10 are, and were at all
8 times relevant herein, other corporate or business entities, agents, successors in
9 interest, assigns, representatives, principals and/or employees of the defendants
10 and are responsible for the acts and omissions resulting in the violations alleged in
11 this complaint. Defendants DOES 1 through 10 are sued in both their official and
12 individual capacities.

13 23. Each of the defendants acted as joint actors with joint obligations, and
14 each defendant was and is responsible for the conduct and injuries herein alleged.

15 24. Each of the defendants acted, alone or together jointly, under color of
16 law. The CITY has delegated traditional municipal functions, including additional
17 sanitation and security services, to the LADID through the adoption of ordinances
18 and pursuant to state law, and the CCEA, acting as an agent of the LADID,
19 performs those municipal functions.

20 **HISTORY AND STRUCTURE OF THE LADID**

21 25. The Los Angeles Downtown Industrial District Business
22 Improvement District was created by the City of Los Angeles pursuant to the
23 Property and Business Improvement Area Law, codified as California Streets &
24 Highways Code §§ 36600 *et seq.*¹
25

26
27 ¹ All statutory citations are to the California Streets and Highways Code unless
28 otherwise noted.

1 26. The purpose of the Property and Business Improvement Area Law is
 2 to promote the economic revitalization and physical maintenance of the business
 3 districts of its cities in order to create jobs, attract new businesses, and prevent
 4 erosion of the business districts and promote tourism. § 36601(b). To facilitate this,
 5 the law “provides an alternative method of financing certain improvements and
 6 activities” in an area of a city by allowing it to create BIDs. Cities are then
 7 authorized to levy assessments on businesses in the area. § 36617. The funds
 8 collected are in turn used to finance the improvement of public facilities within the
 9 district,² including maintaining or creating public parks, trash receptacles and
 10 public restrooms, widening city streets, and creating facilities or equipment to
 11 enhance security of persons or property within the area. Funds can also be used for
 12 maintenance and activities³ in the district. § 36601(b). Activities specifically
 13 contemplated include providing security, sanitation, graffiti removal, street and
 14

15 _____
 16 ²Improvement under the statute is defined as “the acquisition, construction,
 17 installation, or maintenance of any tangible property with an estimated useful life
 18 of five years or more.” § 36610. Contemplated public facilities include parking
 19 facilities, benches, trash receptacles and public restrooms, street lighting,
 20 decorations, parks and fountains, closing, opening, widening or narrowing of
 existing streets, facilities or equipment, or both, to enhance security of persons and
 property within the area. *Id.*

21 “‘Activities’ means, but is not limited to, all of the following:

22 (a) Promotion of public events which benefit businesses or real property in the
 district.

23 (b) Furnishing of music in any public place within the district.

24 (c) Promotion of tourism within the district.

25 (d) Marketing and economic development, including retail retention and
 recruitment.

26 (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning,
 27 and other municipal services supplemental to those normally provided by the
 municipality.

28 (f) Activities which benefit businesses and real property located in the district.

§ 36613.

1 sidewalk cleaning, and other municipal services supplemental to those normally
2 provided by the municipality. § 36613.

3 27. The CITY established the LADID pursuant to § 36600 with the passage
4 of Ordinance 172155 in 1997. The LADID was subsequently renewed by the CITY
5 in 2003 and 2009. Los Angeles Municipal Ord. 175398, 180801. The present BID
6 was renewed through December 31, 2014. *See* Los Angeles Municipal Ord.
7 180801. On July 30, 2014, the CITY approved the renewal of the LADID for a
8 period to run through December 31, 2021. *See* Los Angeles Municipal Ord.
9 183156; *see also* Los Angeles Municipal Ord. 183068 (incorporating the 2014-
10 2021 Management District Plan). As required under the state statute, the enabling
11 ordinance incorporated a Management District Plan, which outlined the approved
12 activities of the BID for the duration of the BID. Only the CITY has the authority
13 to approve or change the LADID's Management District Plan.

14 28. When the CITY approved the current BID, it approved a yearly levy
15 of approximately \$1.8 million in special assessments on businesses in the district in
16 order to pay for the services outlined in the Management District Plan. *See* Ord.
17 180699. Under state law and the operating ordinance, those funds can only be
18 used to perform the municipal services outlined in the Management District Plan,
19 which is incorporated by reference into the enabling ordinance. *See* Ord. 180801,
20 Sect. 11; Ord. 180,699.

21 29. According to the Management District Plan, CCEA is designated as
22 the Owner's Association, which contracts with the CITY to administer the LADID
23 in accordance with the Management District Plan.

24 30. The special assessments levied by the CITY to pay for LADID
25 activities are collected by the County of Los Angeles through its annual property
26 tax assessment, and failure to pay the assessment results in a tax lien on the
27 property. All municipal services provided by the LADID are paid for by the CITY
28

1 with funds collected pursuant to the special assessment. Los Angeles Municipal
2 Ord. 18086.

3 31. Under the current Management District Plan, a vast majority of the
4 LADID's focus is on its Clean and Safe Programs. Seventy seven percent of the
5 assessments on a yearly basis go to Clean and Safe Programs.

6 32. The Clean and Safe program includes two components: an enhanced
7 security program dealing with crime prevention and inappropriate conduct in the
8 district, and an enhanced maintenance program, which provides amongst other
9 services, sanitation and maintenance services to the public streets and sidewalks in
10 the District.

11 33. The LADID provides personnel to patrol the streets of the LADID and
12 to perform the municipal services outlined in the Management District Plan, as
13 approved by the CITY. These "BID officers" are frequently referred to as "Red
14 Shirts" because of the red shirts they wear to signify that they are BID officers for
15 the LADID, although supervisors wear black shirts. As provided for in the current
16 Management District Plan, BID officers provide both public safety and
17 maintenance in the public areas of the district.

18 34. BID public safety officers wear red shirts that say "Public Safety" on
19 the back and wear badges. These officers patrol the streets in the 44 block area of
20 the district on bicycles. Pursuant to the Management District Plan, the purpose of
21 the public safety officers is to "prevent, deter, and report illegal activities taking
22 place on the streets, sidewalks, storefronts, parking lots and alleys." According to
23 CCEA, BID officers are tasked with "controlling unsuitable street and alley
24 behavior" and "enforcing cleanliness and other street code compliances." The
25 officers routinely cooperate with LAPD in the apprehension and arrest of violators
26 of these laws and provide police assistance as needed. BID officers assist in crime
27 suppression and prevention, including assisting in the "prevention of break-ins,
28 automobile-related crimes and generally disruptive street elements." BID officers

1 are connected via two-way radio to a dispatcher who can dispatch the BID officers
2 to locations throughout the BID. The BID officers and dispatch maintain
3 communication with the LAPD area patrols.

4 35. Other BID officers perform sanitation services for the district,
5 including trash removal, graffiti removal, sidewalk cleaning/weed abatement and
6 abandoned property removal.

7 36. LADID also employs a fleet of trucks, which are dispatched to assist
8 BID officers and LAPD with the seizure, storage, and destruction of homeless
9 individuals' personal belongings.

10 **HISTORY OF PROPERTY SEIZURES AND INJUNCTIONS**
11 **IN DOWNTOWN LOS ANGELES**

12 37. The deploying of LADID BID officers and their trucks to seize
13 homeless people's property is only the latest step by the CITY to "clean up the
14 streets of Skid Row." Over the past 30 years, the CITY has repeatedly engaged in
15 campaigns purportedly to address public health and sanitation in the area, but in
16 doing so, has repeatedly implemented its programs in a way that has repeatedly led
17 to the deprivation of the rights of homeless people living on the streets in
18 Downtown Los Angeles.

19 38. In 1987, homeless residents of Skid Row filed a lawsuit to enjoin the
20 CITY from illegally seizing their property, which resulted in a restraining order
21 against the CITY's seizures of people's property. *See Young Bennion v. City of*
22 *Los Angeles*, C637718, Exh. A. The terms of the restraining order included a
23 requirement that the City give 12 hours written notice before removing property on
24 the presupposition that it has been abandoned on the public streets of Skid Row.
25 Exh. A, p.2("III. Notice Requirements"). The *Bennion* Order required City
26 employees to post a "prominent notice in a conspicuous place at the site before the
27 property is seized. The notice shall include the specific citation to the law allegedly
28

1 violated and state that the property will be subject to disposal if the violation is not
2 corrected within twelve hours from the time the notice is posted.” *Id.*

3 39. In 2000, the CITY again began a campaign of confiscating the
4 property of homeless persons, ordering them to move away from their belongings,
5 and then immediately crushing all of the property in dump trucks. In response,
6 several individuals filed a lawsuit entitled *Justin v. City of Los Angeles*, CV 00-
7 12352 LGB (AIJx), Exh. B. On November 5, 2001, Judge Lourdes Baird entered a
8 permanent injunction against the CITY, incorporating the terms of the *Bennion*
9 restraining order and enjoining the CITY to

10 not confiscate personal property that does not appear abandoned and destroy
11 it without notice. Where applicable, defendants will give notice in
12 compliance with the temporary restraining order issued in *Bennion v. City of*
13 *Los Angeles* (C637718). Any personal property that does not appear
14 intentionally abandoned collected by defendants will be retained for 90 days
15 as provided in California Civil Code section 2080.2.

16 Exh. B, p.2.

17 40. At the request of the CITY, the injunction expired after 48 months.
18 *Id.*

19 41. Yet again, in February 2011, CITY employees from the LAPD and
20 the Bureau of Street Services began seizing and summarily destroying property
21 they came upon on the public sidewalks of Skid Row, without any evidence that
22 the property had been abandoned, and without any notice or due process to the
23 owners of the property.

24 42. In April 2011, eight homeless individuals filed another lawsuit against
25 the CITY on behalf of themselves and all others similarly situated. The lawsuit,
26 *Tony Lavan, et.al. v. City of Los Angeles* (CV1102874), alleged, *inter alia*, that the
27 CITY violated their Fourth and Fourteenth Amendment rights by seizing and
28

1 destroying their property, which they temporarily left on the public sidewalks
2 while they attended to necessary tasks.

3 43. On June 21, 2011, U.S. District Court Judge Phillip Gutierrez granted
4 the plaintiffs' request for a preliminary injunction and enjoined the City from

5 a. Seizing property in Skid Row absent an objectively reasonable belief
6 that it is abandoned, presents an immediate threat to public health or
7 safety, or is evidence of a crime, or contraband; and

8 b. Absent an immediate threat to public health or safety, destruction of said
9 seized property without maintaining it in a secure location for a period
10 of less than 90 days.

11 *Lavan*, 797 F. Supp. 2d at 1020, Exh. C, p. 16.

12 44. The injunction was affirmed by the Ninth Circuit on the ground that
13 the taking of unabandoned property constituted a seizure under the Fourth
14 Amendment, and that it was a deprivation of the plaintiffs' due process rights to
15 take people's property without notice: "Government may not take property like a
16 thief in the night; rather, it must announce its intentions and give the property
17 owner a chance to argue against the taking." 693 F.3d at 1032. As a result, the
18 injunction remains in effect today, and the litigation is ongoing.

19 **PROPERTY SEIZURE BY THE LADID**

20 45. Although the CITY remains enjoined from seizing property that is not
21 abandoned, presents an immediate threat to public health or safety, or is evidence
22 of a crime, or contraband, and from destroying abandoned property without notice
23 and due process of law, BID officers, acting under color of law and in coordination
24 with the CITY and its agent, the LAPD, have continued the CITY's campaign of
25 seizing homeless people's property.

26 46. As part of the municipal services provided by the LADID, BID public
27 safety officers routinely seize unattended property on the streets. The property the
28 BID officers seize is often left for only minutes at a time by individuals who have

1 no choice but to leave their property on the streets while they are getting a meal at
2 a mission in the District, attending an appointment, or even using the restroom.

3 47. The BID officers make no effort to determine how long property has
4 been unattended or whether property is abandoned before they remove the
5 property. Property could be unattended for as little as a few minutes or a few hours
6 before it is seized. They seize property that no reasonable person could believe is
7 abandoned. On information and belief, the BID officers do not take into account
8 any indicia that property is not abandoned, such as its appearance or whether it is
9 packed neatly in a shopping cart, before property is seized. Nor do BID officers
10 ask individuals in the vicinity whether the property is abandoned. BID officers
11 ignore statements from neighbors that property is not abandoned or that the owner
12 of the property has stepped away for only a moment.

13 48. BID officers provide no notice of any kind to the community that it is
14 conducting sweeps at any particular time, and the seizures are not pursuant to any
15 established maintenance schedule that is made public in any way. Nor do BID
16 officers provide notice to any individuals that their property will be taken prior to
17 its seizure. The BID officers will seize a single person's property on a block but
18 leave all the other property alone. An individual who is living on the street has no
19 way of discerning when or if his or her property will be taken, and has no way of
20 avoiding a seizure by the BID officers if they must leave their property to perform
21 vital tasks like going to the restroom, getting a meal, or receiving medical care or
22 case management services from entities that frequently do not allow people to
23 bring in their property when they are accessing services.

24 49. BID officers routinely seize property at times that they know or
25 should know that individuals will be away from their property for brief periods of
26 time, including at times when area missions provide meals.

27 50. Unlike when property is seized by the CITY's Bureau of Street
28 Services, which the CITY has previously contended is not fast-moving and as

1 such, it is therefore apparent that street cleaning is underway, when BID officers
2 seize property, it is extremely fast. BID officers can identify, tag, and seize a
3 person's property in five minutes. If a person returns while the BID is removing
4 the property, BID officers will not give the property back, and if individuals
5 attempt to intervene either on their own behalf or on behalf of others, LAPD is
6 called or stop on their own and prevent people from intervening or protesting with
7 threats of arrest.

8 51. When BID officers take property, they sometimes, although not
9 always, leave an "unattended property receipt" which states that property can be
10 reclaimed from the LADID's warehouse on 7th Street and Central Avenue. The
11 notice provides no other information about why the property was taken and states
12 only that the property was "unattended." When the BID officers leave a receipt,
13 they may stick it on a wall above the location from where the property was seized,
14 but individuals often do not receive the receipt. On information and belief, BID
15 officers do not consistently make any other attempts to ensure that the individual
16 whose property was taken is notified that the property was seized. This is true
17 even though the BID officers ride or walk through the same streets frequently and
18 interact with the owners of the property.

19 52. LAPD officers conspire with the LADID in the seizure of property.
20 They alert BID officers where and when homeless individuals' property is
21 unattended. They also directly participate in the seizures by standing at attention
22 while the property is seized, interfering with individuals' protests when property is
23 taken, and threatening individuals with arrest if they interfere with the BID
24 officers' attempts to take property. LAPD has also repeatedly refused to take
25 statements or file reports for theft by individuals whose unabandoned property has
26 been taken by the BID officers. These actions were taken pursuant to an official
27 custom and policy of the LAPD.

28

1 53. According to CCEA, after BID officers seize individuals' property, it
2 is taken to a warehouse on 7th Street and Central, where facility staff go through
3 the items seized by the BID officers. Items the staff deem perishable, soiled or wet
4 are destroyed. CCEA claims that other items are re-bagged and held at the facility
5 for no more than 90 days.

6 54. Although the Unattended Property Receipt directs individuals to the
7 "Personal Property Storage Facility," a facility operated by CCEA which allows
8 people to store a single bin of property during the day, property that is seized is not
9 stored in the same area as the bin storage, and it cannot be accessed through the
10 entrance on 7th Street.

11 55. Instead, seized property is stored in a separate section of the storage
12 facility, which is controlled by the LAPD. Individuals picking up property
13 confiscated by the BID are instructed to pick up their property from the LAPD
14 Property Pickup section of the facility located on Industrial Street. This entrance is
15 also controlled by the LAPD. The receipt indicates that property can be retrieved
16 Monday through Friday from 8:00 a.m. to 4:00 p.m.; however, the posted hours of
17 the facility are more circumscribed and states that it is closed on Monday, Saturday
18 and Sunday, and only open only from 8:00 a.m. to 1:00 p.m. on Tuesday through
19 Friday.

20 56. An individual seeking to retrieve their property must present the
21 "unattended property receipt". On information and belief, without a receipt, the
22 CCEA is frequently unable or unwilling to return an individual's possessions.

23 57. When individuals whose property is seized and who are able to locate
24 an unattended property receipt attempt to retrieve their property, they are not
25 informed why their property was taken. Nor are they shown or given a copy of any
26 inventory taken of property seized or destroyed. They are however required to
27 sign a form which states that "I have examined the contents of the bag containing
28

1 my property and confirmed that all property is accounted for.” and it is defendants’
2 policy not to return any property unless an individual signs that statement.

3 58. Defendants operate a strict “all of it or none” rule, in which
4 individuals retrieving seized property may only take all of their possessions or
5 none of their possessions. An individual is not allowed to retrieve critical items
6 like a wallet or medication without either taking all of his or her property or
7 surrendering the property they cannot retrieve at that time and allowing it to be
8 destroyed. Therefore, if an individual has too much property to carry in one trip,
9 he or she must leave the property unattended on the street or surrender it for
10 destruction.

11 59. Unattended property that is seized and taken to the facility is retained
12 for 90 days. If it is not claimed during that time period, it is destroyed.

13 **INDIVIDUAL PLAINTIFFS’ SPECIFIC ALLEGATIONS**

14 **HARRY JAMES JONES**

15 60. On or about March 1, 2013, plaintiff Harry James Jones stepped away
16 from his property, as he did every day in order to get food or to receive the vital
17 services necessary to survive. As he did every day, he left his property neatly
18 packed in the area where he stayed every night, on Towne Avenue near 3rd Street.

19 61. There were no posted signs indicating that the streets would be
20 cleaned or cleared while he was gone. He was away from his property for only a
21 short period of time. While he was gone, BID officers seized all of his personal
22 property, including his identification card, his life-saving medication, his tent, and
23 his clothing. The BID officers provided Mr. Jones with no notice that his property
24 would be taken before they took his property, and when he returned, there was no
25 notice posted on the wall where his items were previously located. Based on the
26 way his property was packed at the time, there was no objectively reasonable basis
27 to believe that the property was abandoned. Nor was there any objectively
28 reasonable basis to believe that the property caused an immediate threat to public

1 health or safety, or was evidence of a crime, or contraband. On the contrary, the
2 seizure of Mr. Jones's property, including his medication, created a threat to Mr.
3 Jones's health.

4 62. Because he had his property taken by the BID officers before, Mr.
5 Jones understood that he should be able to obtain the property from the warehouse
6 at 7th and Central. However, when he went to retrieve his belongings, he was told
7 they could not assist him because he did not have his "ticket."

8 63. As a result of this seizure of his property, Mr. Jones went without his
9 medication for approximately one month. He was unable to refill his prescription
10 because his identification card was seized along with his medication. He became
11 very ill as a result of his lack of medications and was hospitalized for several days.

12 64. On or about December 30, 2013, Mr. Jones again stepped away from
13 his property to get a meal, as he had done every day for the preceding months
14 without incident. While he was gone, BID officers once again came to the place he
15 resided and seized all of his property. There was again no notice given before his
16 property was taken and no notice left afterwards, and Mr. Jones was once again
17 unable to obtain his property after it was seized.

18 65. As a result of the seizures of his property, including his military
19 identification card and his medication, Mr. Jones suffered from severe health
20 consequences. He also suffered emotional distress and continues to suffer from
21 severe anxiety that he will once again lose his property and suffer another medical
22 setback as a result.

23 **LOUIS GRADY**

24 66. On or about January 15, 2014, Louis Grady left the area where he
25 resides on the sidewalk at 531 Towne Avenue to get lunch at the Midnight
26 Mission. Before he left, he packed his belongings in two LACW carts. He wrote a
27 note and posted it in front of his belongings to inform the BID officers that his
28 property was not abandoned, as was his practice every time he left his things. He

1 left the note because he knew that BID officers randomly seized property and had
2 been told by a BID supervisor that he should leave a note to alert the BID officers
3 that his property was not abandoned.

4 67. Mr. Grady was gone for approximately 30 to 45 minutes. When he
5 returned, all of his possessions were gone, including the LACW carts, his tent, his
6 blankets, his laptop computer and cell phone, and his personal journal. A notice
7 was posted on the wall behind where his things had been located, indicating that
8 BID officers had taken his belongings to a warehouse.

9 68. When Mr. Grady attempted to retrieve his property from the
10 warehouse, he discovered that several items were missing, including his tent, his
11 laptop, his cell phone and his journal. The LACW carts were also not returned to
12 him. He was not given an inventory of the property that had been seized, and
13 when he complained about the missing items, he was asked to leave.

14 69. Because Mr. Grady was not given any carts back, it was very difficult
15 for him to transport his property back to the place he stays. He has a chronic knee
16 condition that makes walking difficult. He uses a cane and relies on the carts from
17 the Hippie Kitchen to provide ambulatory assistance when moving his belongings.
18 Without the carts, it took him hours to transport the property returned to him to the
19 place where he stays. He could not carry the property back in a single trip, and so
20 he was forced to move his belongings one bag at a time. He left the remaining
21 bags on the street, unattended.

22 70. On another occasion several months later, Mr. Grady had other items
23 seized by BID officers under similar circumstances. He attempted to submit a
24 complaint to the LADID, but he never received a response to or even an
25 acknowledgment of his complaint.

26 71. As a result of the property seizures, Mr. Grady has suffered emotional
27 distress and anxiety. He is less willing to leave his property on the street and as a
28

1 result, he has sometimes missed doctor's appointments and meals for fear that
2 when he is gone, his things will be taken by the Red Shirts.

3 **WALTER SHOAF**

4 72. In February 2014, Mr. Shoaf stepped away from his property, which
5 he kept neatly packed where he stays on Towne Avenue near 6th Street.

6 73. He was gone for less than an hour. As he was walking back to his
7 property, Mr. Shoaf witnessed the BID officers seizing his property, including his
8 identification card and his medication. They were also packing up his tent, his
9 extra clothing, and all of his other possessions. Mr. Shoaf attempted to reach the
10 BID officers and tell them that his property was not abandoned, that the things
11 belonged to him and that he did not want them to take it. By the time he reached
12 them, the BID officers were almost finished loading it in the truck, and they drove
13 away with his property.

14 74. The BID officers did not provide Mr. Shoaf any information as to
15 where they were taking his property or where he could retrieve it. As a result, he
16 did not know he should be able to retrieve his property from the warehouse. He
17 was forced to go without his medication for several weeks. He was also forced to
18 sleep in the cold without a tent or blankets.

19 75. The loss of his property caused him extreme distress, discomfort, and
20 pain.

21 **LLOYD HINKLE**

22 76. On June 30, 2014 at around 12:00 p.m., Lloyd Hinkle left his property
23 neatly packed under a tarp on 5th Street between Gladys and Stanford. Mr. Hinkle
24 ensured that his property was out of the way and not blocking the sidewalk. He
25 then walked across the street to get lunch and on the way, passed BID officers. He
26 was not concerned that his property would be taken because it was clearly packed
27 up, his neighbors knew he was in the area, and there was no notice anywhere of
28

1 any street cleaning or that property could be seized if left unattended. He also
2 knew that he would not be gone long.

3 77. After Mr. Hinkle walked away, the BID officers approached the first
4 property on the corner of Fifth Street and Gladys and began writing a receipt for
5 the property, which belonged to Mr. Hinkle's neighbor.

6 78. The BID officers placed the receipt on the fence behind the neighbor's
7 property and began to pack up the property. However, the property owner was
8 present and confronted the BID officers who instead placed the receipt on Mr.
9 Hinkle's property, which was down the block. While the BID officers were
10 writing the receipt, they were joined by additional BID officers driving two pickup
11 trucks. The BID officers then began packing up Mr. Hinkle's things.

12 79. Mr. Hinkle's neighbor informed the BID officers that Mr. Hinkle's
13 property was not abandoned and that he was watching the property for Mr. Hinkle
14 but the BID officers ignored him. Staff and members of LA CAN recorded the
15 incident on video; they also informed the BID officers that the property was not
16 abandoned, but they were ignored as well.

17 80. The BID officers were joined by two Los Angeles Police Department
18 officers who parked their cruiser on the street and told the individuals present,
19 including Mr. Hinkle's neighbor and LA CAN members and staff, to move back
20 and allow the BID officers to do their jobs. When the LA CAN staff member said
21 that the BID officers were stealing Mr. Hinkle's property, Officer Zambrano
22 informed them that no one was stealing any property.

23 81. Officer Zambrano placed herself between Mr. Hinkle's neighbor and
24 the BID officers who were packing up the property. She prevented him and LA
25 CAN from intervening. She informed them that "we're going to take someone's
26 property that is abandoned." During this interaction, another LAPD officer also
27 was present while the BID officers seized Mr. Hinkle's property.

28

1 86. Defendants CITY and LADID have engaged in a conspiracy to
2 remove unattended property from the streets of Skid Row. This conspiracy has
3 continued since the *Lavan* injunction was imposed on the CITY. On information
4 and belief, the CITY and its officers and/or agents urged the BID to remove
5 homeless individuals' property on Skid Row. The CITY acts in concert with the
6 BID to identify property to be removed and to ensure that the removals were not
7 stopped or hindered.

8 87. In addition, the CITY failed to train its officers that they should not
9 aid and abet the conversion or trespass of BID officers taking property that is not
10 abandoned. The CITY failed to properly train officers to determine when property
11 may or may not be removed. The CITY instead maintained a policy of removing
12 homeless people's property from Skid Row, regardless whether it was not
13 abandoned, not blocking the sidewalks, or otherwise constituting a health and
14 safety violation. The CITY failed to adequately train its officers to take police
15 reports concerning these actions, and instead maintained a policy that it would not
16 take reports concerning BID officers' removal of property.

17 88. Plaintiffs have repeatedly placed the CITY on notice of the LADID's
18 actions. The CITY has taken no actions to constrain defendants' illegal acts,
19 despite authority under state law to do so and therefore ratified the actions of the
20 LADID and the CCEA.

21 89. LAPD, a department of the CITY, have refused to take complaints
22 from individuals whose personal property has been seized in the manner described
23 above. LAPD intentionally conspired with the LADID in the removal and storage
24 of property that was not abandoned. In the case of Mr. Hinkle, and in other cases
25 like his, LAPD officers were present to aid in the removal of property. Officers
26 working in Skid Row have provided materials to BID officers to assist in the
27 seizure of property.

28

1 92. Plaintiffs reallege and incorporate the allegations set forth in
2 paragraphs 1 through 91 as though fully set forth herein.

3 93. Defendants violated plaintiffs' Fourth Amendment right to be free
4 from unreasonable seizure of their property by taking plaintiffs' property without
5 proper justification and without any authority to do so.

6 94. Defendants' actions at all times were under color of law.

7 95. Defendants' unlawful actions, through the conduct of their employees,
8 were done with the specific intent to deprive plaintiffs of their constitutional rights
9 to be secure in their property.

10 96. Plaintiffs are informed and believe that Defendants' employees and
11 agents are seizing property intentionally without a lawful justification or authority
12 to do so, or at least defendants were deliberately indifferent to the likely
13 consequence that the property would be seized without lawful justification or
14 authority to do so, based on the past circumstances of similar constitutional and
15 statutory violations of the law, and in light of an existing injunction against such
16 actions.

17 97. As a direct and proximate consequence of the acts of defendants'
18 agents and employees, plaintiffs Harry James Jones, Lloyd Hinkle, Walter Shoaf,
19 and Louis Grady have suffered and continue to suffer injury and loss. These
20 plaintiffs are entitled to compensatory damages for the loss of and damage to
21 property and other injuries to their persons that resulted from the violation of their
22 Fourth Amendment rights.

23 98. Plaintiffs are also entitled to injunctive relief prohibiting defendants
24 from seizing their property in the future. Plaintiffs are informed and believe that unless
25 restrained from doing so, defendants will continue to engage in said wrongful conduct
26 for which plaintiffs have no adequate remedy at law. Members of LA CAN, and
27 individual plaintiffs Lloyd Hinkle, Louis Grady, and Walter Shoaf continue to reside
28 on or operate in Los Angeles' Skid Row and are frequently forced to leave some of

1 their property behind, packed neatly and clearly not abandoned, when attending to their
2 daily needs. LACW's mission is frustrated by these practices, and they continue to
3 divert resources as a result of these practices. The practices detailed in the preceding
4 paragraphs will continue to violate their constitutional rights.

5
6 **SECOND CAUSE OF ACTION**

7 **Right to Due Process of Law**

8 **42 U.S. C. §1983, Fifth and Fourteenth Amendments; Art. I,**

9 **§7 Calif. Constitution**

10 **Against All Defendants**

11 99. Plaintiffs reallege and incorporate the allegations set forth in
12 paragraphs 1 through 91 as though fully set forth herein.

13 100. Defendants owed plaintiffs a duty under the due process clause of the
14 Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sec. 7 of
15 the California Constitution, to protect the personal property of plaintiffs that was
16 known not to be abandoned.

17 101. Defendants provided plaintiffs with no notice that their property was
18 at risk of being seized and/or destroyed. Even when defendants were specifically
19 put on notice that the property was not abandoned and given an opportunity to stop
20 the seizure of plaintiffs' personal items, defendants proceeded with the seizure,
21 denying plaintiffs any due process.

22 102. Plaintiffs are informed and believe that defendants' employees and
23 agents are seizing property intentionally without a lawful justification or authority
24 to do so, or at least defendants were deliberately indifferent to the likely
25 consequence that the property would be seized without lawful justification or
26 authority to do so, based on the past circumstances of similar constitutional and
27 statutory violations of the law, and in light of an existing injunction against such
28 actions.

1 103. Insofar as defendants rely on Los Angeles Municipal Code section
2 56.11⁴ to justify the seizure of plaintiffs' property, defendant LADID and CCEA
3 are without any authority to enforce such an ordinance. To the extent the
4 ordinance is enforced by the CITY or by defendants LADID or CCEA pursuant to
5 a valid grant of authority, the ordinance is unconstitutional and violates the
6 Fourteenth Amendment by failing to require the CITY and its agents to provide
7 notice of the seizure of property that is unattended but not abandoned or otherwise
8 creating a health and safety hazard.

9 104. As a direct and proximate consequence of the acts of defendants'
10 agents and employees, plaintiffs Harry James Jones, Lloyd Hinkle, Walter Shoaf,
11 and Louis Grady have suffered and continue to suffer injury and loss. These
12 plaintiffs are entitled to compensatory damages for the loss of and damage to
13 property and other injuries to their persons that resulted from the violation of their
14 Fifth and Fourteenth Amendment rights.

15 105. Plaintiffs are also entitled to injunctive relief prohibiting defendants
16 from seizing their property in the future without due process. Plaintiffs are
17 informed and believe that unless restrained from doing so, defendants will
18 continue to engage in said wrongful conduct for which plaintiffs have no adequate
19 remedy at law. Members of LA CAN, and individual plaintiffs Lloyd Hinkle,
20 Louis Grady, and Walter Shoaf continue to reside on or operate in Los Angeles's
21

22 ⁴Los Angeles Municipal Code § 56.11 states

23 No person shall leave or permit to remain any merchandise, baggage or any
24 article of personal property upon any parkway or sidewalk. Provided, that
25 boxes, barrels and other receptacles for merchandise may be unpacked and
26 their contents removed upon parkways or sidewalks outside of the Central
27 Traffic District if such boxes, barrels and other receptacles for merchandise
28 are removed immediately thereafter.

1 Skid Row and are frequently forced to leave some of their property behind,
2 packed neatly and clearly not abandoned, when attending to their daily needs.
3 LACW's mission is still frustrated by these policies and practices, and they
4 continue to divert resources as a result of these policies and practices. The
5 practices detailed in the preceding paragraphs will continue to violate their
6 constitutional rights.

7 **THIRD CAUSE OF ACTION**

8 **Violation of Civil Rights: Interference By Threat, Intimidation or Coercion**

9 **California Civil Code § 52.1**

10 106. Plaintiffs reallege and incorporate the allegations set forth in
11 paragraphs 1 through 91as though fully set forth herein.

12 107. Defendants' agents and employees have used threats of arrest and
13 intimidation to interfere with plaintiffs' rights secured by the Constitution of the
14 United States, the Constitution of the State of California, and the statutory laws of
15 the State of California.

16 108. Plaintiffs are entitled to an injunction pursuant to California Civil
17 Code § 52.1. Plaintiffs are informed and believe that unless restrained from doing
18 so, defendants will continue to engage is said wrongful conduct for which plaintiffs
19 have no adequate remedy at law. Plaintiffs are also entitled to damages pursuant to
20 Civil Code §§ 52 and 52.1.

21 **FOURTH CAUSE OF ACTION**

22 **Conversion**

23 109. Plaintiffs reallege and incorporate the allegations set forth in
24 paragraphs 1 through 91as though fully set forth herein.

25 110. Plaintiffs owned and had a right to the possession of their personal
26 property at the time that defendants' agents and employees seized their property
27 without notice. Plaintiffs' property was not abandoned at the time that defendants
28 seized it.

1 111. Defendant's agents and employees intentionally and substantially
2 interfered with Plaintiffs' property rights by unlawfully taking possession of their
3 property and preventing plaintiffs from securing their personal property and the
4 personal property of others left in their care. Even when able to reclaim their
5 property, plaintiffs found that some of it was broken or missing.

6 112. Defendants had no legitimate interest, governmental or otherwise,
7 justifying confiscation of plaintiffs' property without prior notice to plaintiffs.

8 113. As a direct and proximate consequence of the acts of defendant's
9 agents and employees, plaintiffs have suffered and continue to suffer loss of their
10 personal property and are entitled to compensatory damages for their property and
11 other injury to their person.

12 **FIFTH CAUSE OF ACTION**

13 **Trespass to Personal Property**

14 114. Plaintiffs reallege and incorporate the allegations set forth in
15 paragraphs 1 through 91 as though fully set forth herein.

16 115. Defendants had no legal right or justification to remove plaintiffs'
17 property from where it was found and to store it in their warehouse. Upon finding
18 plaintiffs' property on the public sidewalk, and without notice to plaintiffs,
19 defendants took and carried away all of plaintiffs' personal effects. Defendants
20 stored the property in a place where it was difficult for plaintiffs to obtain it, in a
21 facility where plaintiffs could only obtain it between certain hours of the day.

22 116. This taking and carrying away of plaintiffs' property restricted
23 plaintiffs' use of said property while it was in storage and outside of plaintiffs'
24 control. As a direct and proximate consequence of defendants' acts, plaintiffs
25 suffered injury: namely, the deprivation of their property for a period of time and
26 the expenditure of time and energy to retrieve the property.

27 117. Plaintiffs are entitled to compensatory damages for the impairment of
28 the right to use their property, including but not limited to any and all injuries and

1 distress they suffered as a result of not having their property and for any damage to
2 their property while in storage.

3 **WHEREFORE**, plaintiffs pray as follows:

4 1. For an injunction, enjoining and restraining defendants from engaging in
5 the policies, practices and conduct complained of herein;

6 2. For a declaratory judgment that defendant's policies, practices and
7 conduct as alleged herein violates plaintiffs' rights under the United States
8 Constitution, the California Constitution and the laws of California;

9 3. For plaintiffs Harry James Jones, Lloyd Hinkle, Louis Grady, and Walter
10 Shoaf , damages in an amount to be determined according to proof but in no
11 event less than \$4,000 per incident pursuant to Cal. Civ. Code §§ 52, 52.1 and
12 Cal. Government Code § 815.6.

13 5. For costs of suit and attorney fees as provided by law;

14 6. For such other relief as the Court deems just and proper.

15
16 Dated: September 19, 2014

Respectfully submitted,

17
18 Legal Aid Foundation of Los Angeles
19 Schonbrun DeSimone Seplow
Harris and Hoffman

20
21 By: _____/s/
22 Fernando Gaytan
23 Attorneys for Plaintiff
24
25
26
27
28

EXHIBIT A

1 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
2 PAUL L. HOFFMAN
3 MARK D. ROSENBAUM
4 CATHERINE LESLIE
5 633 South Shatto Place
6 Los Angeles, California 90005
7 213/487-1720

ORIGINAL FILED
FEB 25 1987
COUNTY CLERK

5 O'DONNELL & GORDON
6 JEFFREY S. GORDON, P.C.
7 601 West Fifth Street, Suite 1200
8 Los Angeles, California 90017

Attorneys for Plaintiffs

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

10
11 ADAM YOUNG BENNION, JR.,)
12 et al.,)
13 Plaintiffs,)
14 vs.)
15 CITY OF LOS ANGELES, et al.,)
16 Defendants.)

No. C 637718
TEMPORARY RESTRAINING ORDER

17 The Court having considered the declarations, pleadings and
18 arguments of counsel, and good cause having been shown, issues
19 the following order:

20 ORDER TO SHOW CAUSE

21 Defendants are hereby ordered to appear on March 12, 1987,
22 in Department 86 at 9:00 a.m. to show cause why a preliminary
23 injunction should not be issued, in the form of the Temporary
24 Restraining Order below.

25 It is further ordered that the complaint, points and
26 authorities, declaration and this Order to Show Cause and
27 Temporary Restraining Order be served on defendants twelve days
28 prior to the hearing. Depositions can be taken and requests for

1 documents can be made upon seven days notice. Opposition papers
 2 are due seven days before the hearing and all reply papers are
 3 due three days before the hearing, *by hand delivery.*

4 TEMPORARY RESTRAINING ORDER

5 I. BOUNDARIES

6 The area affected by this order is the Skid Row area of the
 7 City of Los Angeles -- that area bordered on the north by Third
 8 Street, on the South by Eighth Street, on the east by Central
 9 Avenue, and on the west by Spring Street. The order applied to
 10 both sides of each of the named streets that make up its
 11 boundaries.

12 II. PERSONS RESTRAINED

13 The persons who are restrained under this order are all
 14 employees of the City of Los Angeles (and their agents and
 15 representatives), including but not limited to, the Los Angeles
 16 Police Department and the Department of Public Works (hereafter
 17 collectively and individually referred to as City employees):

18 III. NOTICE REQUIREMENTS

19 In the event a City employee determines that specific
 20 personal property is placed, stored or kept in such a manner
 21 that it is in violation of applicable ordinances, statutes or
 22 other legislation, the City employee must post a prominent
 23 notice in some conspicuous place on the site, ~~from which the~~
 24 ~~property is to be seized.~~ The notice shall include the specific
 25 citation to the law allegedly violated and state that the
 26 property will be subject to ~~seizure~~ *disposal* if the violation is not
 27 corrected within twelve hours from the time the notice is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

posted. The notices can only be posted between the hours of
12:00 a.m. and 12:00 p.m.

Dated: February 25, 1987

ts/

Honorable Ricardo A. Torres
Judge of the Superior Court

(H)

EXHIBIT B

ORIGINAL
FILED
CLERK, U.S. DISTRICT COURT
NOV - 6 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

1 Diana Greene Gordon (State Bar No.79389)
LAW OFFICE OF DIANA GREENE GORDON
2 429 Santa Monica Boulevard, Suite 550
Santa Monica, California 90401-3439
3 T. (310) 260-2636 F. (310) 260-2977

4 Mark D. Rosenbaum (State Bar No.59940)
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
5 1616 Beverly Boulevard
Los Angeles, California 90026-9938
6 T. (213) 977-9500, Ext.224 F. (213) 250-3919

7 Carol A. Sobel (State Bar No.84483)
Yvonne T. Simon (State Bar No. 176239)
8 LAW OFFICE OF CAROL A. SOBEL
429 Santa Monica Boulevard, Suite 550
9 Santa Monica, California 90401-3439
T. (310) 393-3055 F. (310) 393-3605

ENTERED
CLERK, U. S. DISTRICT COURT
NOV - 7 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

10 Douglas E. Mirell (State Bar No.94169)
11 Negin Mirmirani (State Bar No. 211586)
1000 Wilshire Boulevard, Suite 1800
12 Los Angeles, California 90017
T. (213) 688-3400 F. (213) 688-3460

13 Dilan A. Esper (State Bar No.178293)
14 9200 Sunset Boulevard, Suite 825
Los Angeles California 90069
15 T. (310) 275-5351 F. (310) 273-8706

16 Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LODGED

17
18
19
20 MICHAEL JUSTIN, et al.,
21 Plaintiffs,
22 v.
23 CITY OF LOS ANGELES, et al.,
24 Defendants.

CASE NO. CV 00-12352 LGB (Allx)
NOTICE OF SETTLEMENT AND
STIPULATED REQUEST FOR ENTRY
OF A PERMANENT INJUNCTION
AND JUDGMENT ORDER THEREON,
WITH A RESERVATION OF
JURISDICTION

Docketed
 Copies *NTC Sent*
 JS - 5 / JS - 6
 JS - 2 / JS - 3
 CLSD

44

1 The parties hereby file this joint notice of settlement and order of
2 permanent injunction thereon in the above-captioned action, with a reservation of
3 the Court's jurisdiction to enforce the terms of the settlement. The executed
4 Settlement Agreement and Release entered into by the parties is attached as
5 Exhibit 1 and incorporated as though fully set forth herein.

6 This action was filed on November 20, 2000. The Court entered a
7 temporary restraining order on December 5, 2000, which, by stipulation of the
8 parties, has remained in effect since that date. On June 11, 2001, the Court
9 granted plaintiffs' motion for certification of this matter as a class action pursuant
10 to Federal Rules of Civil Procedure 23(b)(2). By stipulation of the parties, the
11 Court now enters a permanent injunction in accord with the terms of the
12 Settlement Agreement entered into by the parties.

13 Defendants do not admit any liability, as it is defendants' understanding and
14 belief that defendants' current policies are consistent with the terms of this
15 injunction and with the First and Fourteenth Amendments to the United States
16 Constitution. Nevertheless, defendants are hereby enjoined as follows with
17 respect to all members of the Class, when such Class members are in the Skid Row
18 area as described in the Complaint filed in this action:

19 IT IS ORDERED AND ADJUDGED that defendants, their agents,
20 employees and successors, are hereby permanently enjoined from doing the
21 following:

- 22 1. Officers will not conduct detentions or "Terry" stops without
23 reasonable suspicion. However, officers may continue to engage in consensual
24 encounters with persons in the Skid Row area, including members of the Class;
- 25 2. Officers will not demand identification upon threat of arrest or
26 arrest individuals solely due to their failure to produce identification in
27 circumstances where there is no reasonable suspicion to stop or probable cause to
28 arrest;

1 3. Officers will not conduct searches without probable cause to do
2 so, except by consent or for officer safety reasons as permitted by law;

3 4. Officers will not order individuals to move from their position on
4 the sidewalk on the basis of loitering unless they are obstructing or unreasonably
5 interfering with the free passage of pedestrians on the sidewalk or "loitering" for a
6 legally independent unlawful purpose as specified in California Penal Code
7 section 647;

8 5. Defendants will not confiscate personal property that does not
9 appear abandoned and destroy it without notice. However, defendants may
10 continue to clean streets and sidewalks, remove trash and debris from them, and
11 immediately dispose of such trash and debris. Where applicable, defendants will
12 give notice in compliance with the temporary restraining order issued in *Bennion*
13 *v. City of Los Angeles* (C637718). Any personal property that does not appear
14 intentionally abandoned collected by defendants will be retained for 90 days as
15 provided in California Civil Code section 2080.2;

16 6. Officers will not cite individuals for violation of either Penal Code
17 section 647(e) (loitering) or that portion of Los Angeles Municipal Code section
18 41.18 which makes it unlawful to "annoy or molest" a pedestrian on the sidewalk.
19 However, officers may cite for obstructing or unreasonably interfering with the
20 free passage of pedestrians on the sidewalk;

21 Notwithstanding these injunctions, defendants will continue to be permitted
22 to engage in lawful conduct necessary to protect the public safety and welfare in
23 times of national emergency, natural disaster, or immediate threat to public health.

24 IT IS FURTHER ORDERED that this injunction will remain in force for 48
25 months from the date on which it is signed by the court. However, plaintiffs may
26 move for an extension of the injunction upon a showing of good cause presented
27 by way of a motion filed within the last 90 days prior to expiration. The duration
28 of any extension granted by the court will be subject to the court's discretion, but

1 in any case will not exceed 48 months.

2 Upon entry of the permanent injunction, the court further orders that this
3 shall constitute the final judgment in this action, with an express reservation of the
4 court's jurisdiction to enforce the terms of the settlement agreement and the
5 permanent injunction entered in this action.

6
7 Dated: November 5, 2001

Jurda H. Quinn
UNITED STATES DISTRICT JUDGE

8
9
10
11 Lodged by:

12 ACLU FOUNDATION OF SOUTHERN
13 CALIFORNIA
14 LAW OFFICE OF DIANA GREENE GORDON
15 LAW OFFICE OF CAROL A. SOBEL
16 DOUGLAS E. MIRELL

Carol A. Sobel
By: CAROL A. SOBEL
Attorneys for Plaintiffs

17 ROCKARD DELGADILLO, City Attorney
18 DEBRA GONZALES, Asst. City Attorney
19 JAMES AXTELL, Deputy City Attorney

James Axtell, Jr.
By: JAMES AXTELL
Attorneys for Defendants

20
21
22
23
24
25
26
27
28

1 in any case will not exceed 48 months.

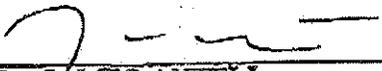
2 Upon entry of the permanent injunction, the court further orders that this
3 shall constitute the final judgment in this action, with an express reservation of the
4 court's jurisdiction to enforce the terms of the settlement agreement and the
5 permanent injunction entered in this action.

7 Dated: _____ UNITED STATES DISTRICT JUDGE

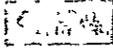
11 Lodged by:
12 ACLU FOUNDATION OF SOUTHERN
13 CALIFORNIA
14 LAW OFFICE OF DIANA GREENE GORDON
15 LAW OFFICE OF CAROL A. SOBEL
16 DOUGLAS E. MIRELL

15 By: CAROL A. SOBEL
16 Attorneys for Plaintiffs

17 ROCKARD DELGADILLO, City Attorney
18 DEBRA GONZALES, Asst. City Attorney
19 JAMES AXTELL, Deputy City Attorney

19 
20 By: JAMES AXTELL
21 Attorneys for Defendants

100% post consumer waste



Grid A - Line up 7/16" tabs using long line as guide for 20 tabs. Line up 7/8" tabs using short line as a guide for 10 tabs.
Grid B - Line up 17/16" tabs using long line as guide for 5 tabs. Line up 17/8" tabs using short line as a guide for 8 tabs.

Line up 1" tabs using long line as guide

Line up bottom of 1/2" tabs using every line as a guide

A B

SETTLEMENT AGREEMENT
(Justin v. City of Los Angeles CV00-12352)

This Settlement Agreement and Release ("Agreement") is made by and between (1) plaintiffs Michael Justin, Troy B., Todd P., Jo Jo Brown, and Bruce Snyder, and (2) defendants City of Los Angeles, Chief Bernard C. Parks, and Captain Stuart A. Maislin.

BACKGROUND:

A. On November 20, 2000, plaintiffs filed their complaint in case number CV00-12352 alleging that defendants were acting in violation of the First and Fourth Amendment rights of "homeless" persons in the "Skid Row" area of Los Angeles by engaging in the following practices: stopping homeless persons on public sidewalks and demanding identification on threat of arrest; arresting homeless persons for failure or refusal to produce identification; searching the possessions of homeless persons without probable cause; threatening citation or arrest for "loitering"; writing improper citations for jaywalking or blocking the sidewalk; and seizing personal property and destroying it without notice. Skid Row was defined as that area between Third and Seventh Streets and between Main and Alameda in Downtown Los Angeles. Plaintiffs sought injunctive relief only.

B. On December 5, 2000, the Honorable Lourdes G. Baird, Federal District Court Judge, issued a Temporary Restraining Order enjoining defendants from engaging in many of the activities alleged by plaintiffs. The TRO has been in effect since that time.

C. On June 11, 2001, Judge Baird issued an order certifying the case as a Class Action. Members of the Class include all homeless persons present in the Skid Row area of Downtown Los Angeles who are subject to any unlawful policy of defendants as alleged in plaintiffs' complaint.

D. Defendants deny the existence of any of the unlawful policies alleged in plaintiffs' complaint and assert that their current policies are consistent with both the First and Fourth Amendment rights of homeless persons and of all other people in Los Angeles. Nothing in this settlement agreement constitutes an admission of liability by defendants.

E. Nevertheless, at this time the parties desire to resolve this matter without further litigation and therefore intend with this Settlement Agreement to resolve all issues pertaining to case number CV00-12352 upon the terms and conditions set forth in this Agreement.

THEREFORE, in consideration for the recitals, promises, representations, covenants, terms, conditions, and releases contained in this Agreement, the parties agree as follows:

1. Injunctive Relief. A stipulated permanent injunction will issue containing the following substantive language:

“Defendants do not admit any liability, as it is defendants’ understanding and belief that defendants’ current policies are consistent with the terms of this injunction and with the First and Fourth Amendments to the United States Constitution. Nevertheless, defendants are hereby enjoined as follows with respect to all members of the Class, when such Class members are in the Skid Row area as described in plaintiffs’ complaint :

1. Officers will not conduct detentions or “Terry” stops without reasonable suspicion. However, officers may continue to engage in consensual encounters with citizens, including members of the Class.

2. Officers will not demand identification upon threat of arrest or arrest individuals solely due to their failure to produce identification in circumstances where there is no reasonable suspicion to stop or probable cause to arrest.

3. Officers will not conduct searches without probable cause to do so, except by consent or for officer safety reasons as permitted by law.

4. Officers will not order individuals to move from their position on the sidewalk on the basis of loitering unless they are obstructing or unreasonably interfering with the free passage of pedestrians on the sidewalk or “loitering” for a legally independent unlawful purpose as specified in California Penal Code section 647.

5. Defendants will not confiscate personal property that does not appear abandoned and destroy it without notice. However, defendants may continue to clean streets and sidewalks, remove trash and debris from them, and immediately dispose of such trash and debris. Where applicable, defendants will give notice in compliance with the temporary restraining order issued in *Bennion v. City of Los Angeles* (C637718). Any personal property that does not appear intentionally abandoned collected by defendants will be retained for 90 days as provided in California Civil Code section 2080.2.

6. Officers will not cite individuals for violation of either Penal Code section 647(e) (loitering) or that portion of Los Angeles Municipal Code section 41.18 which makes it unlawful to “annoy or molest” a pedestrian on any sidewalk. However, officers may cite for obstructing or unreasonably interfering with the free passage of pedestrians on the sidewalk.

Notwithstanding these injunctions, defendants will continue to be permitted to engage in lawful conduct necessary to protect the public safety and welfare in times of national emergency, natural disaster, or immediate threat to public health.”

2. Duration of Injunction. The injunction will not be of indefinite duration. Rather, the injunction will include the following language pertaining to expiration:

"This injunction will remain in force for 48 months from the date on which it is signed by the court. However, plaintiffs may move for an extension of the injunction upon a showing of good cause presented by way of a motion filed within the last 90 days prior to expiration. The duration of any extension granted by the court will be subject to the court's discretion, but in any case will not exceed 48 months."

3. Attorneys fees and costs. Within 30 days after this agreement is executed by all parties, defendant City of Los Angeles will pay plaintiffs attorneys fees and costs in the amount of \$206,000. Plaintiffs accept this amount as full payment for any and all monetary amounts owed in connection with case number CV00-12352, and, on behalf of themselves and all other members of the Class, hereby release all defendants, as well as all other employees and entities of the City of Los Angeles, from any further obligations to pay any further amounts.

4. Release of defendants. Except as provided for in this Agreement, plaintiffs, on behalf of themselves and all other members of the Class, hereby release defendants, as well as all other employees and entities of the City of Los Angeles from any and all obligations and liabilities in connection with the injunctive relief claims in case number CV00-12352 and the allegations made therein.

5. Release of Plaintiffs. Except as provided for in this Agreement, defendants, on behalf of themselves and all other employees and entities of the City of Los Angeles, hereby release plaintiffs, as well as all other persons and entities from any and all obligations and liabilities in connection with the injunctive relief claims in case number CV00-12352 and the allegations made therein.

6. Exhibits. A true and correct copy of the temporary restraining order issued in *Bennion v. City of Los Angeles* is attached as Exhibit A to this Agreement.

7. Counterparts and Facsimile. This Agreement may be executed in counterparts and by facsimile. Each executed counterpart will be deemed an original, and all executed counterparts, when taken together, shall constitute one and the same document.

8. Authorization. Each undersigned warrants that it has the authority to execute this agreement on behalf of its respective parties and that it has read and understood and agrees to all of the terms and conditions of this Agreement.

MICHAEL JUSTIN

Dated: 10/15, 2001

By: Michael Justin

TROY B.

Dated: _____, 2001

By: _____

TODD P.

Dated: _____, 2001

By: _____

JO JO BROWN

Dated: _____, 2001

By: _____

BRUCE SNYDER

Dated: 10/11, 2001

By: Bruce Snyder

**CITY OF LOS ANGELES
CHIEF BERNARD C. PARKS
CAPTAIN STUART MAISLIN**

Dated: 11/01, 2001

JAMES AXZELL, DEPUTY CITY ATTORNEY
By: [Signature]

143145
September 28, 2001

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings: (In Chambers) Order Issuing a Preliminary Injunction

Pending before the Court is this Court’s Order to Show Cause re: Issuance of a Preliminary Injunction. The Court heard argument on the matter on June 20, 2011. After considering all the evidence submitted, the papers filed in support and opposition, and the arguments offered at hearing, the Court ISSUES a preliminary injunction.

I. Background

Plaintiffs Tony Lavan, Caterius Smith, William Vassie, Ernest Seymore, Lamoen Hall, Shamal Ballantine, Byron Reese, and Regina Wilson (“Plaintiffs”) bring this putative civil-rights class action against the City of Los Angeles (the “City” or “Defendant”) asserting claims under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, Article 1 § 7 and Article 1 § 13 of the California Constitution, California Civil Code § 52.1, California Civil Code § 2080, and common law conversion.

Plaintiffs, eight homeless individuals living in the City of Los Angeles’s “Skid Row” area, allege that since February 2011, the City, through the Los Angeles Police Department (“LAPD”) and Bureau of Street Services, has confiscated and destroyed the personal possessions they temporarily left in public spaces in order to use the restroom, eat a meal, or, among other things, appear in court. *See Compl.* ¶¶ 1-6. Plaintiffs also allege that the City did this in furtherance of an ongoing practice and policy of ridding the area of its homeless population. *Compl.* ¶¶ 4, 6, 19, 24.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

Plaintiffs expect that the City will “continue these practices of confiscating and immediately destroying the property of homeless individuals from the public streets and sidewalks without a warrant and without notice.” *Compl.* ¶ 50. On April 22, 2010, this Court issued a temporary restraining order (the “April TRO”) enjoining Defendant’s purportedly unconstitutional practices. *See* Dkt. #11 (hereinafter “TRO”). At the same time, the Court ordered the parties to show cause why a preliminary injunction should not issue. Pending before the Court is that Order to Show Cause.

II. Legal Standard

A party seeking a preliminary injunction must make a “clear showing” of each of the following elements: (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury to the plaintiff if injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) an advancement of the public interest. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365, 374, 376, 172 L. Ed. 2d 249 (2008) (citation omitted). “The Ninth Circuit recently reaffirmed that within this framework a preliminary injunction also is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff’s favor, thereby allowing district courts to preserve the status quo where difficult legal questions require more deliberate investigation,” so long as the other remaining *Winter* factors are met. *Sencion v. Saxon Mortg. Servs., LLC*, CV 10-3108 JF, 2011 WL 1364007, at *2 (N.D. Cal. Apr. 11, 2011) (internal quotation omitted); *see also Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (allowing for a post-*Winter* “sliding scale” analysis in preliminary injunction inquiries where “the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another”).

III. Discussion

This Court granted Plaintiffs’ TRO after concluding that Plaintiffs would likely succeed on their Fourth and Fourteenth Amendment claims, and that the balance of equities tipped sharply in Plaintiffs’ favor. *See TRO* at 6-7. With the advantage of additional briefing, the City now claims that Plaintiffs have not established a likelihood of success on the merits, that the City’s practices do not cause irreparable harm, and that the balance of equities and public

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

interest favors the Government.¹ For the reasons that follow, the Court disagrees and issues a preliminary injunction.

A. Likelihood of Success on the Merits

Briefly stated, the Complaint alleges that the City, until the Court issued the TRO, was seizing and destroying Plaintiffs' property in violation of the Fourth Amendment's protections against unreasonable searches and seizures and the Fourteenth Amendment's due process clause. Plaintiffs submitted declarations indicating that the City has taken and destroyed personal property that was never abandoned, but only left unattended temporarily. *See, e.g., Lavan Decl.* ¶ 5 ("I then walked . . . to take a shower at the Union Rescue Mission. I was gone a total of approximately 20 to 25 minutes at the most. As I was walking back . . . I ran into [Plaintiff Smith] . . . [who] told me that the police were there and that the [property] was being taken and crushed. I ran back . . . [m]y [property] was already destroyed."). This conduct is the same type of conduct that was enjoined in earlier lawsuits against the City for confiscation and destruction of homeless individuals' property. *See Justin v. City of Los Angeles*, CV 00-12352 LGB AIJ, 2000 WL 1808426, at *13 (C.D. Cal. Dec. 5, 2000) (granting a temporary restraining order to stop, among other things, "confiscating the personal property of the homeless when it has not been abandoned and destroying it without notice").

1. The Fourth Amendment

The City makes a number of arguments in an attempt to show that Plaintiffs will not prevail on the merits of this case. First, the City insists that the "seizure of items in a public place does not violate the Fourth Amendment or Article I, Section 13 of the California

¹ At the preliminary injunction hearing on June 20, 2011, the City requested permission to submit additional supplemental declarations to address issues such as certain Plaintiffs' standing to bring the claims in this case (for example, the City suggested that Plaintiff Hall objected to the seizure of property not belonging to him). The City's request is denied. The City has had ample time to submit declarations to the Court and issues such as standing could have, and should have, been raised in response to the Complaint or Plaintiffs' declarations submitted in support of the TRO Application. To the extent the City seeks an opportunity to respond to the evidence submitted by Plaintiffs' in their preliminary injunction Reply, the Court notes that the City did not hesitate to file an unauthorized supplemental declaration, where it could have, but did not, respond to any of Plaintiffs' evidence.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

Constitution where there is objective evidence of abandonment or probable cause for the property's seizure." *Response* 4:3-6. In addition, the City claims that "property in a public place that is evidence of criminality may be seized under the plain view exception to the Fourth Amendment," and that the property here was evidence of a violation of Los Angeles Municipal Code §§ 56.11 and 41.45(b)-(c). *Response* 12:19-13:5. Both general propositions of law are not necessarily incorrect, but neither aids the City in its attempt to defeat Plaintiffs' efforts to secure a preliminary injunction.

As explained in the April TRO, Plaintiffs have a legitimate expectation of privacy in their property and the Fourth Amendment's protections against unreasonable searches and seizures applies. *See Lehr v. City of Sacramento*, 624 F. Supp. 2d 1218, 1235 (E.D. Cal. 2009) (citing *Justin v. City of Los Angeles*, CV 00-12352 LGB AIJ, 2000 WL 1808426, at *9 (C.D. Cal. Dec. 5, 2000)); *Kincaid v. City of Fresno*, CV 06-1445 OWW SMS, 2006 WL 3542732, at *35-37 (E.D. Cal. 2006) (issuing a preliminary injunction after holding that "[t]he City's seizure of homeless people's personal property without probable cause and the immediate and permanent destruction of such property without a method to reclaim or to assert the owner's right, title, and interest to recovery such personal property violates the Fourth Amendment to the United States Constitution and Article I § 13 of the California Constitution"). This conclusion is not necessarily altered by the fact that the City may have found the property in a public place. *See, e.g., Soldal v. Cook County*, 506 U.S. 56, 68, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992) ("an officer who happens to come across an individual's property in a public area could seize it only if Fourth Amendment standards are satisfied—for example, if the items are evidence of a crime or contraband.").

Despite this, the City maintains that the Fourth Amendment does not apply to Plaintiffs' property because "[i]t is well established that individuals who leave items in public places do not have a reasonable expectation of privacy in them." *See Response*, 8:21-22. In doing so, the City attempts to distinguish the *Lehr*, *Kincaid* and *Justin* cases cited by the Court in the April TRO. The Court is troubled by the City's straight-faced misstatement of the law, especially in light of abundant authority to the contrary. *See, e.g., Soldal*, 506 U.S. at 68. In support of its proposition that there can be no expectation of privacy for any item left in a public place, the City cites to, *inter alia*, the Supreme Court's 1960 decision in *Abel v. United States*, the Ninth Circuit 1969 decision in *United States v. Knight*, and the District of Columbia Circuit's decision in *United States v. Wider*. The City offers no explanation as to why those abandoned-property cases stand for such a sweeping proposition of law. In order to prevent further reliance on inapplicable cases, the Court explains why those cases do not support the City's legal position despite the City's failure to do the same.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

In *Abel v. United States*, 362 U.S. 217, 240-41, 80 S. Ct. 683, 4 L. Ed. 2d 668 (1960), the United States Supreme Court affirmed the lower court’s decision to admit two pieces of “abandoned” evidence found in an empty hotel room “immediately after petitioner had paid his bill and vacated his room,” because at the time the evidence was found, “the hotel then had the exclusive right to its possession, and the hotel management freely gave its consent that the search be made.” Similarly inapplicable is the Ninth Circuit’s brief, twelve-sentence decision in *United States v. Knight*, 412 F.2d 292 (9th Cir. 1969), in which the Ninth Circuit simply held that a defendant did not have standing to “protest the seizure of abandoned property.” Finally, in *United States v. Wider*, 951 F.2d 1283, 1285-86 (D.C. Cir. 1991), the Court of Appeals for the District of Columbia Circuit held that it was not clear error for the district court to conclude that the defendant “abandoned” a bag of cocaine by leaving it in a public place and walking away from it when the police noticed him, thus making the search of the bag lawful.

How the City sincerely believes that *Abel*, *Knight* and *Wider* indicate lack of Fourth Amendment protections for the homeless population’s property is beyond comprehension. In fact, the Northern District of California explicitly rejected almost identical arguments citing to *Wider* in another case involving homeless-property sweeps: “Initially, the City defends on the basis that there is no reasonable expectation of privacy when property is left unattended in public places, citing *United States v. Wider* . . . As plaintiffs correctly argue, however, this is true only where the property is intentionally abandoned,” not simply “unattended.” *Joyce v. City and County of San Francisco*, 846 F. Supp. 843 (N.D. Cal. 1994). The only explanation for the City’s untenable position is that it assumes that all the homeless’ property is abandoned. But, as discussed below, such an assumption is unwarranted, especially in light of Plaintiffs’ clear showing that the City confiscated and destroyed unabandoned property in this case.

The City’s exaggeration of the lack of protections afforded to the property of the homeless population does not stop there. The City also argues that the Fourth Amendment’s protections coincide with the distance that a homeless person is from his or her property. In the City’s own words, “the homeless have an expectation of privacy in their property when they are near it. When they walk away from it, the expectation of privacy dissipates,” and the property can be considered abandoned. *Response* 9:9-11. This argument, too, has been rejected by a court considering a similar case involving property of the homeless. Specifically, in *Kincaid v. City of Fresno*, the court held that:

“The City has attempted to justify its policies and practices by its rule that the property of the homeless that it seizes and destroys is ‘abandoned’ and is therefore ‘trash.’ The City’s ‘rule[]’ . . . is that if a homeless person is not literally beside

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

his or her property laying claim to it during a sweep, then the City deems that property to be abandoned, making the property ‘trash,’ which is then destroyed. There is no legal justification for this rule which is demeaning as it places no value on the homeless’ property and is not honest because the ‘rule’ purports to transmogrify obviously valuable property into trash.”

Kincaid, 2006 WL 3542732, at *36.²

Moreover, if the test for abandonment was simply distance from property, then the test would be superfluous as any person not within close proximity of the lonely item would be deemed to have abandoned it. The law, however, gives different rights to people who find property based on whether that property is lost or abandoned, and the like, not based on distance from the current or former possessor/owner. *See, e.g., Martin v. Cassidy*, 149 Cal. App. 2d 106, 110 (Cal. Ct. App. 1957); 1 Am. Jur. 2d, *Abandoned, Lost, and Unclaimed Property* § 18 (2011). The Court is not willing to say that all parked cars (even those in no parking zones), locked-up bicycles, and tied-up dogs can be seized and destroyed simply because the owner has stepped away to buy a gallon of milk. And, for the reasons stated in *Kincaid*, the Court is unpersuaded by the City’s argument that because the homeless in this case stepped away momentarily to, *inter alia*, get water or shower, they abandoned all their possessions and the City was then free to seize and destroy them.

Thus, the Fourth Amendment’s protections extend to the unabandoned property of Plaintiffs. The question then becomes whether the City, in seizing Plaintiffs’ property, acted reasonably under the Fourth Amendment. Here too, Plaintiffs have made a clear showing that they are likely to succeed on the merits.

The Fourth Amendment prohibits only those searches and seizures that are “unreasonable.” U.S. Const. amend. IV. A seizure of property occurs when there is “some meaningful interference with an individual’s possessory interests in that property.” *Soldal v.*

² The Court also notes that the *Lehr* court found that the plaintiff articulated a claim for the deprivation of her Fourth Amendment rights without respect to her proximity to her belongings, as did the *Justin* court. *See Lehr*, 624 F. Supp. 2d at 1235 (“Plaintiffs have a legitimate expectation of privacy in their property and, thus, the property is protected by the Fourth Amendment.”); *Justin*, 2000 WL 1808426, at *10 (finding a likelihood of success on the merits of homeless plaintiffs’ Fourth Amendment claims despite the fact defendants seized and destroyed the plaintiffs’ property “when left momentarily”).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

Cook County, 506 U.S. 56, 61, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984)). While taking and destroying personal property is a seizure, *see Jacobsen*, 466 U.S. at 124-25, such seizures are only unlawful if they are unreasonable. To assess reasonableness, courts “must balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *Id.* at 125.

As an initial matter, the City does not dispute that it disposes of certain items formerly in the possession of homeless persons in Los Angeles, thus, seizing it. It does dispute whether the property taken was actually abandoned, because if the property was abandoned then seizing it would not be unreasonable. *See, e.g., Hester v. United States*, 265 U.S. 57, 58-59, 44 S. Ct. 445, 68 L. Ed. 898 (1924). Abandonment is determined by the intent of the owner and the “inquiry should focus on whether, through words, acts or other objective indications, a person has relinquished a reasonable expectation of privacy in the property at the time of the search or seizure.” *U.S. v. Nordling*, 804 F.2d 1466, 1469 (9th Cir. 1986). Such a determination is “to be made in light of the totality of the circumstances, and two important factors are denial of ownership and physical relinquishment of the property.” *Id.*

The City claims that it was objectively reasonable for the City to believe that Plaintiffs abandoned all the property seized in this case. For example, the City points to signs in the Skid Row area alerting people that “Los Angeles Municipal Code section 56.11 prohibits leaving . . . personal property on a public sidewalk,” and that there is a “regular clean-up of the area scheduled for Monday through Friday between 8:00 and 11:00 am.” *See Response* 9:14-20 (citing *Paulson Decl.* ¶¶ 2,3; *Duncanson Decl.* ¶ 3). With the presence of this sign, the City makes the assumption that any property left in the area during that time is abandoned. *Id.* 10:3-4. In addition, according to the City, none of the named Plaintiffs informed the City that they owned the property that was being cleaned up on the dates identified in the Complaint or declarations. *Id.* 10:26-27; *Duncanson Decl.* ¶ 9. The evidence submitted by Plaintiffs strongly suggests otherwise and clearly shows that the City did in fact know that at least some of the property seized was not abandoned.

Plaintiffs Lamoen Hall (a/k/a “Bling”), Byron Reese and Ernest Seymore claim that their personal property—including a California ID, birth certificate, Social Security cards, family memorabilia, toiletries, cell phones, sleeping bags and blankets—was neatly packed in carts provided by the “Hippie Kitchen,” but seized by the City while they watched or while they left momentarily to get water or use the restroom. *See Hall Decl.* ¶¶ 3-5; *Reese Decl.* ¶¶ 2-6; *Seymore Decl.* ¶¶ 3-4. The property was seized despite the City’s declaration that “medications,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

legal paperwork, glasses, or other forms of identification” are never dumped, but left for the owner, as is any property found in a Catholic Worker/Hippie Kitchen-labeled cart. *Duncanson Decl.* ¶ 5. And although the City submitted the declaration of John Duncanson—an “investigator for the Bureau of Street Services” who is charged with making the decisions as to what items can be cleaned up and what must be left behind—indicating that he does not remember anyone telling him that the property taken on February 6, 2011 or February 24, 2011 from outside the Catholic Worker was not abandoned, Plaintiffs, in addition to the declarations of the homeless plaintiffs themselves, submit the declarations of two people working at the Catholic Worker on February 24, 2011 indicating that the City knew it was taking unabandoned property. *See Morris Decl.* ¶ 10-12; *Lewis Decl.* ¶¶ 4-7. Jesse Lewis, a declarant for the Plaintiffs, was even able to take pictures of the February 24, 2011 incident. *See Lewis Decl.*, Exs. 1-8. Thus, at least three separate declarations and photographic evidence shows that while Mr. Duncanson might not remember being approached by anyone indicating that the property being dumped was not abandoned, the City was in fact notified that the property belonged to Lamonen Hall and others, and that when attempts to retrieve the property were made, the City took it and destroyed it nevertheless.³ *See Hall Decl.* ¶ 4, *Morris Decl.* ¶¶ 11-12; *Lewis Decl.* ¶¶ 6-7; *Reese Decl.* ¶¶ 2-4. Moreover, the fact that the carts were neatly packed objectively

³ Other portions of Mr. Duncanson’s declarations are similarly unsupported and even conflict with declarations offered by the City. For example, Mr. Duncanson avers that he knows when property is abandoned because, among other things, when no one is around to immediately claim property in a public area, he will leave it “there for *at least a day, if not longer* before it is cleaned up.” *Duncanson Decl.* ¶ 4 (emphasis added). Yet, Plaintiff Vassie stated that his portable tent was destroyed by the City on March 17, 2011, after being told to move it from its prior location on March 16, 2011, which Plaintiff Vassie did. *See Vassie Decl.* ¶ 4. Officer Joseph, whose declaration the City submitted, confirmed Plaintiff Vassie’s account. *See Joseph Decl.* ¶ 8. Mr. Duncanson states, however, that Plaintiff Vassie’s portable tent had been at the new location since “March 15, 2011.” *Duncanson Decl.* ¶ 9(d). Plaintiff Vassie could not have both left his tent at the new location since March 15, 2011—as claimed by Mr. Duncanson—and have moved the tent there on March 16, 2011—as claimed by Officer Joseph and Plaintiff Vassie. Moreover, the fact that the City instructed Plaintiffs to move their portable tents and Plaintiffs followed the instruction (likely less than a day before destruction), is objective evidence that the moved tents were not abandoned. The City relied heavily on this aspect of Mr. Duncanson’s declaration at oral argument to establish that the City only disposes of abandoned property left unattended for at least a day. The Court, however, cannot simply take Mr. Duncanson’s declaration at face value in light of the other evidence offered by both Plaintiffs and the City.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

suggests ownership: “[T]he homeless often arrange their belongings in such a manner as to suggest ownership-e.g., they may lean it against a tree or other object or cover it with a pillow or blanket; []by its appearance, the property belonging to homeless persons is reasonably distinguishable from truly abandoned property.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992); *Morris Decl.* ¶ 5 (indicating that on February 24, 2011, the City took property contained in Hippie Kitchen carts, even though “[t]he carts were lined up in a row on the sidewalk . . . there was not a pile of trash in the street . . . [and t]he carts were neatly packed up”).

With this in mind, the Court concludes that Plaintiffs have clearly shown that they will likely succeed in establishing that the City seized and destroyed property that it knew was not abandoned. As a result, it is necessary to balance this invasion of Plaintiff’s possessory interests in their personal belongings with the City’s reasons for taking the property. At the TRO hearing in April and in the papers filed in conjunction with the potential issuance of a preliminary injunction, the City repeatedly cited to the need to keep its streets clean in order to avert a severe impact to “the public interest in health, safety, and the economic vitality of the Skid Row area.” *Response 25:6-7*. The Court, however, already addressed this concern in the TRO and sees no reason to change its view now:

Here, Defendants may be slowed in their efforts to keep the City, and especially the downtown area, clean and safe. [An] injunction may disturb their new initiative to revitalize and uplift communities, to improve the streets and sidewalks, and to diminish the crime rate . . . Plaintiffs, however, risk a greater harm if the injunction is not granted: the violation of their First, Fourth, and Fourteenth Amendment rights. The Court in *Pottinger* eloquently expressed the dangers homeless individuals face in analogous situations:

“The court recognizes the City’s interest in keeping its parks and public areas clear of unsightly and unsafe items. However, the City’s interest in having clean parks is outweighed by the more immediate interest of the plaintiffs in not having their personal belongings destroyed. As this court previously found, the loss of such items such as clothes and medicine threatens the already precarious existence of homeless individuals by posing health and safety hazards.”

Pottinger, 810 F. Supp. at 1573. Similarly, Defendants’ actions are likely to displace homeless individuals and threaten their ability to access charities for food, shelter, and assistance in Skid Row. As the *Pottinger* Court stated, Defendants’ actions are likely to “threaten[] the already precarious existence of homeless individuals by posing health and safety hazards.”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

TRO at 7 (quoting *Justin*, 2000 WL 1808426, at *11). The Court is certainly not blind to the concerns of the City, but agrees with the other courts that have considered the issue and found that similar conduct, even by the same defendant in this case, violated the Fourth Amendment despite an inherent interest in keeping public areas clean and prosperous. *See Lehr v. City of Sacramento*, 624 F. Supp. 2d 1218; *Justin v. City of Los Angeles*, 2000 WL 1808426; *Kincaid v. City of Fresno*, 2006 WL 3542732; *Pottinger v. City of Miami*, 810 F. Supp. 1551.

The City's final attempt to justify the seizure and destruction of property that is not abandoned is based on the Los Angeles Municipal Code ("LAMC"). More specifically, the City argues that it was entitled to collect Plaintiffs' property as it was in "plain view" and evidence of "criminal" conduct under LAMC sections 56.11, and 41.45. LAMC § 56.11 provides in relevant part that "[n]o person shall leave or permit to remain any merchandise, baggage, or any article of personal property upon any parkway or sidewalk." LAMC § 41.45 prohibits abandoning or leaving any shopping cart removed from "the owner's premises" in a public place.⁴ Even if violation of these municipal code provisions warrant application of the exception allowing for the seizure of evidence of a crime found in plain view, *see Horton v. California*, 496 U.S. 128, 137-39, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990), LAMC § 56.11, as applied, conflicts with California Civil Code § 2080, which requires that "any person or public entity or private entity that finds and takes possession of any . . . personal property" must make a reasonable effort to return it or turn it over to the police, who must notify the owner and hold it for at least 90 days,⁵ *see Cal. Civ. Code § 2080; Candid Enters. Inc. v. Grossmont Union High Sch. Dist.*, 39 Cal.3d 878, 885 (1985) ("if otherwise valid local legislation conflicts with state law, it is preempted by such law and is void"). It should also be noted that an otherwise lawful seizure "at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'" *Jacobsen*, 466 U.S. at 124. Therefore, assuming *arguendo* that the City had a valid reason to seize Plaintiffs unabandoned property under the LAMC, its conduct of

⁴ Because all the evidence presented suggests that the property taken in conjunction with the February 6, 2011 and February 24, 2011 incidents outside the Hippie Kitchen came out of Hippie Kitchen carts, which are provided to homeless persons for the express purpose of keeping their belongings in them, the Court need not address the City's LAMC § 41.45 argument.

⁵ Civil Code § 2080 also permits a public agency to adopt its own similar regulations for the "care, restitution, sale or destruction of unclaimed property in its possession," but even under an alternative system, a public agency must still hold the property for "at least three months." Cal. Civ. Code § 2080.6(a).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

immediately destroying the property rather than holding it pursuant to Cal. Civ. Code § 2080,⁶ turns what could be an otherwise lawful seizure into an unlawful one by forever depriving an owner of his or her interests in possessing the property without recourse, in violation of § 2080, and without a sufficient governmental interest.

The property of the homeless is entitled to Fourth Amendment protection. Here, Plaintiffs have clearly shown a strong likelihood of success on the merits of the claim that in collecting and destroying Plaintiffs' property on the spot, the City unlawfully and unreasonably seized personal property in violation of the Fourth Amendment.

2. The Fourteenth Amendment

Under the Fourteenth Amendment to the United States Constitution, “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of laws.” U.S. Const. amend. XIV. Article I, section 7 of the California Constitution similarly provides that a “person may not be deprived of life, liberty, or property without due process of law.” Plaintiffs’ personal possessions, perhaps representing everything they own, must be considered “property” for purposes of this due process analysis. *See Fuentes v. Shevin*, 407 U.S. 67, 84, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972); *see also Pottinger v. City of Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992) (holding that confiscation and destruction of the property of the homeless violates both the Fourth and Fourteenth Amendments after noting that “a homeless person’s personal property is generally all he owns; therefore, while it may look like ‘junk’ to some people, its value should not be discounted”). As such, before the City can seize and destroy Plaintiffs’ property, it must provide notice and an “opportunity to be heard at a meaningful time and in a meaningful manner,” *Matthews v. Eldridge*, 424 U.S. 319, 339-43, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), except in “extraordinary situations where some valid governmental interest is at stake that justifies the postponing of the hearing until after the event,” *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993). Under *Matthews v. Eldridge*, a court is to consider three factors to determine whether the basic procedural due process requirements have been met:

⁶ The Court recognizes that Mr. Duncanson claims that the City keeps property that has been seized *and* objected to at the time of seizure, for at least 72 hours. *Duncanson Decl.* ¶ 7. The Court has already explained its concerns with Mr. Duncanson’s declaration, and further notes that Plaintiff Reese went to the dump during the time when his property should have been available, but was told that it had already been “trashed.” *Reese Decl.* ¶ 3.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

Matthews v. Eldridge, 424 U.S. at 321.

The City claims that it provides notice before seizing homeless individuals' property via the street signs indicating sidewalk cleanups between certain hours. *See Duncanson Decl.* ¶ 2. At oral argument, the City acknowledged that this notice, often posted at a very high level with small print, obscured by foliage or taped over, is inadequate. *See Sobel Decl.* ¶¶ 3-12, Exs. 1-10. Even if this notice was adequate, however, Plaintiffs have established the lack of either pre or post-deprivation opportunities to be heard. For example, the City claims that if a person objects to the seizure of his or her property *while* it is being seized, then that person can go to the dump within 72 hours and retrieve his or her property. *Duncanson Decl.* ¶ 7. This is contradicted by Byron Reese, who avers that he was told to go to the dump to collect items that had been seized by the City, but when he got there a few hours later he was informed that all the property had been "trashed." *Reese Decl.* ¶ 3. Moreover, even if there was a meaningful "post-deprivation," 72-hour opportunity to be heard at the dump, it only affects those people who were present to witness and object to the seizure of their property, not those who temporarily left to attend other business, use the restroom, eat a meal or get some water; they are deprived of their property without any recourse at all.⁷ *See Duncanson Decl.* ¶ 7 ("If someone *approaches* me and informs me that the property belongs to them," but the property has already been loaded in the dump truck, "*then* we provide a map to the dump site," where that "particular load" is segregated and "kept for three days before it is brought to the landfill." (emphasis added)).

⁷ At oral argument, the City argued that it provides a post-deprivation opportunity to be heard and collect seized property through "bag and tag" programs administered by the LAPD and the Central City East Association Business Improvement District ("BID"). *See also Response 2:16-3:7*. The Court does not doubt the existence of those programs, but the City has still failed to overcome Plaintiffs' showing that unabandoned property was seized and immediately destroyed. That the LAPD and BID have the *ability* to "bag and tag" seized property is substantially different than actually holding unabandoned, seized property and affording people the opportunity to be heard and collect it. No evidence submitted supports anything other than the City's *ability* to "bag and tag."

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

The City's admission that it has a practice of on-the-spot destruction of seized property only bolsters Plaintiffs' Fourteenth Amendment claim.⁸ This practice presents an enormous risk of erroneous deprivation, which could likely be mitigated by certain safeguards such as adequate notice and a meaningful opportunity to be heard. *See Kincaid*, 2006 WL 3542732, at *38. Together, the declarations and state of the law with respect to the Fourteenth Amendment's due process requirements make it such that Plaintiffs have, again, sufficiently shown a likelihood of success on the merits under *Winter*. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982) ("the state may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement"); *Propert v. District of Columbia*, 948 F.2d 1327, 1335 (D.C. Cir. 1991) ("Although [a state] may have a strong interest in the prompt removal of supposed junk vehicles from the streets, its interest in the immediate destruction of such vehicles is far from apparent. On balance, the severity of the deprivation imposed on the vehicle's owner, combined with the potential vagaries of the enforcing officer's determinations, outweighs any government interest in the immediate destruction of a towed vehicle that has been identified as "junk" and compels the conclusion that post-towing process is required."). The City admits that for Plaintiffs like Tony Lavan, whose property was seized and destroyed while he showered at a local shelter, no pre or post-deprivation hearing is afforded at all, in violation of the Fourteenth Amendment. *See Lavan Decl.* ¶ 5. Thus, Plaintiffs have clearly shown that they are likely to succeed on the merits of their Fourteenth Amendment claims because the City admittedly fails to provide any meaningful pre or post-deprivation opportunity to be heard before or after seizing and destroying property belonging to Skid Row's homeless population. *See Fuentes v. Shevin*, 407 U.S. 67, 84-87, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972) (the government must provide notice and a meaningful opportunity to be heard in cases where common household goods are seized).

Without citing to a single case to justify its position, the City argues that it is "impracticable to provide a pre-deprivation hearing" when seizing the homeless population's property and therefore no opportunity to be heard must be afforded before or after a seizure. Again, the Court recognizes the City's desire for an efficient street cleaning process, but, as explained by the Supreme Court, often efficiency must take a backseat to constitutionally protected interests:

A prior hearing always imposes some costs in time, effort, and expense, and it is often more efficient to dispense with the opportunity for such a hearing. But these

⁸ This admission also dooms the City's argument that no pre-deprivation due process is needed where a loss is due to "a random and unauthorized act by a state employee." *Response* 17:3-4.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

rather ordinary costs cannot outweigh the constitutional right. . . Procedural due process is not intended to promote efficiency or accommodate all possible interests: it is intended to protect the particular interests of the person whose possessions are about to be taken. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

Fuentes, 407 U.S. 67, 92 n.22 (quotations and citations omitted). Plaintiffs have established that, in some cases, the City both seizes and destroys Plaintiffs' necessities without any meaningful pre or post-deprivation opportunity to be heard. In the absence of such process, Plaintiffs have established a strong likelihood of success on the merits of their Fourteenth Amendment claim.

Finally, the Court notes that Federal Rule of Civil Procedure 65(d) provides that an injunction or restraining order only binds: "(A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with [the parties]." Although this lawsuit is stylized as a class-action, the equivalent of class-wide relief may still be appropriate despite the fact that a class has not yet been certified. In *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486 (9th Cir. 1996), the Court held that "[w]hile injunctive relief generally should be limited to apply only to named plaintiffs where there is no class certification, an injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action- *if such breadth is necessary to give prevailing parties the relief to which they are entitled.*" *Easyriders Freedom F.I.G.H.T.*, 92 F.3d at 1501-02 (internal citations omitted) (emphasis in original). As discussed, the allegations in the Complaint indicate that the City is seizing and destroying property that has been temporarily left in public places by its owner, but not abandoned. Thus, it would likely be impossible for the City to determine whose property is being confiscated—i.e. whether it is one of the named Plaintiffs or another homeless person—and a preliminary injunction, as fashioned below, is necessary to "give prevailing parties the relief to which they are entitled." *Id.*

B. Irreparable Injury

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

The Ninth Circuit has held that “an alleged constitutional infringement will often alone constitute irreparable harm.” *Associated Gen. Contractors of Cal., Inc. v. Coalition for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991); *see also Citicorp Servs., Inc. v. Gillespie*, 712 F. Supp. 749, 753 (N.D. Cal. 1989) (“In various cases, courts in the Ninth Circuit have presumed irreparable harm from an alleged violation of constitutional rights.”). Plaintiffs have shown the likelihood of proving past constitutional violations and there is a potential for continuing violations, especially considering that the City has been ordered to stop similar practices in the past. *See Justin v. City of Los Angeles*, 2000 WL 1808426, at *13; *Compl.* ¶¶ 4-6, 20, 24 (each paragraph generally alleging a continuing policy to rid Skid Row of its homeless population).

C. Balancing of Equities and the Public Interest

A Court considering an application for a preliminary injunction must identify the harm that a injunction might cause a defendant and weigh it against the injury to a plaintiff. *Justin*, 2000 WL 1808426, at *11 (citing *Armstrong v. Marurak*, 94 F.3d 566, 568 (9th Cir. 1996)). As indicated above and in the April TRO, the City claims that an injunction would hamper its efforts to ensure the health, safety and the economic vitality of the Skit Row area.” *Response* 25:6-8. However, the City’s interest in clean streets is outweighed by Plaintiffs’ interest in maintaining the few necessary personal belongings they might have. *See TRO* at 7. The City will still be able to lawfully seize and detain property, as well as remove hazardous debris and other trash; issuance of the injunction would merely prevent it from *unlawfully* seizing and destroying personal property that is not abandoned without providing any meaningful notice and opportunity to be heard. This not only benefits the Plaintiffs, but the general public as well. *See Pottinger*, 810 F. Supp. at 1573.

D. The Language of the Injunction

Federal Rule of Civil Procedure 65(d) requires that “[e]very order granting and injunction and every restraining order *must*: (A) state the reason why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.” Thus, the Court must clearly state the specific terms of the injunction in order to “prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.” *Schmidr v. Lessard*, 414 U.S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974). The Court finds that the following language satisfactorily complies with Rule 65’s requirements:

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2874 PSG (AJWx)	Date	June 23, 2011
Title	Tony Lavan, <i>et al.</i> v. City of Los Angeles, <i>et al.</i>		

Defendant City, its agents and employees, are hereby preliminarily enjoined from doing any of the following:

1. Seizing property in Skid Row absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband; and
2. Absent an immediate threat to public health or safety, destruction of said seized property without maintaining it in a secure location for a period of less than 90 days.

Defendant City, its agents and employees, is further directed to leave a notice in a prominent place for any property taken on the belief that it is abandoned, including advising where the property is being kept and when it may be claimed by the rightful owner.

IV. Conclusion

Based on the foregoing Plaintiffs have clearly shown a likelihood of success on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip in their favor and that an injunction is in the public interest. As a result, the Court ISSUES a PRELIMINARY INJUNCTION.

IT IS SO ORDERED.