THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LISA HOOPER, BRANDIE OSBORNE, KAYLA WILLIS, REAVY WASHINGTON, individually and on behalf of a class of similarly situated individuals; THE EPISCOPAL DIOCESE OF OLYMPIA; TRINITY PARISH OF SEATTLE; REAL CHANGE,

Plaintiffs,

vs.

CITY OF SEATTLE, WASHINGTON; WASHINGTON STATE DEPARTMENT OF TRANSPORTATION; ROGER MILLAR, SECRETARY OF TRANSPORTATION FOR WSDOT, in his official capacity,

Defendants.

No. 2:17-cv-00077-RSM

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

NOTED ON MOTION CALENDAR: SEPTEMBER 7, 2017, 11:30 A.M.

ORAL ARGUMENT GRANTED

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I. INTRODUCTION

Six months ago, this Court denied Plaintiffs' motion for a TRO and requested that Plaintiffs gather additional evidence of Defendants' wrongdoing. Plaintiffs have done so, putting forward substantial evidence that: (1) Defendants have conducted more than *one thousand* sweeps since the Mayor's declared a state of emergency on homelessness; (2) Defendants regularly fail to provide adequate pre-deprivation notice: the majority of sweeps since January 2016 were conducted without 72 hours written notice;[1] (3) Defendants regularly fail to provide effective post-deprivation notice: inevitably less than 12 people have successfully reclaimed property Defendants seized during a sweep since January 2016;[2] (4) Defendants regularly destroy personal property that is useful and not abandoned, with property salvaged in only 15 percent of sweeps conducted since January 2016;[3] and (5) Plaintiffs and members of the proposed class continue to suffer significant and debilitating harm as a result.

Defendants do not—and cannot—dispute this evidence, but instead ask the court to trust them, claiming they have remedied past problems. Defendants have not earned that trust. Their own documents demonstrate that nothing has changed since the City's own Office of Civil Rights (OCR) found that City "staff seemed unaware or failed to follow existing procedures" and WSDOT crews were "increasingly frustrated with the removal process and related protocol".[4] In

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[1] *See* COS_085038-2016H & COS_161194H (Aug. 25, 2017 Decl. of B. Schuster ("Schuster Decl.") Ex. 1&2) (highlighting sweeps where the document on its face indicates a posting was provided less than 72 hours prior to a sweep, retroactively, not at all, or a posting was provided but a sweep never occurred). These documents indicate approximately 60% of sweeps were conducted without notice. This is likely an underestimate, however, as it does not account for all incidents where Defendants did not show up on the day of the posting, provided inaccurate or misleading notices, or maintained inaccurate records.

[2] Defendants' inventory sheets, which provide a signature line indicating when property was picked up or delivered to its owner, indicates 9 people have successfully reclaimed property since January 2, 2016.

[3] This estimate was derived from sweeps Defendants conducted in 2016 and 2017. *See* COS_085038-2016H & COS_161194H (Schuster Decl. Ex. 1&2).

[4] Decl. of C. Potter Ex. A (Dkt. 178 at 5–6).

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fact, Defendants admit that even when they attempt to provide advance notice, they often fail to do so in accordance with their own rules.[5] And rather than providing evidence that seized property is kept and returned to owners, Defendants instead claim that seizing and destroying such property is necessary for health and safety reasons—despite the fact that most of their hypothetical concerns could easily be remedied by proper worker protective gear and/or proper storage of the property in question.[6] In so arguing, Defendants blithely ignore the catastrophic consequences that regularly result from their failure to conduct sweeps in accordance with constitutional requirements.

The record before this Court amply demonstrates Defendants' flagrant disregard for Plaintiffs' constitutional rights. Courts throughout the U.S. have issued injunctive relief in similar circumstances. *See, e.g., Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012); *Cooper v. Gray*, No. 12-208 TUC DCB, 2015 WL 13119400 (D. Ariz. Feb. 13, 2015); *Russell v. City & Cty. of Honolulu*, No. 13-00475 LEK, 2013 WL 6222714 (D. Haw. Nov. 29, 2013); *Engle v. Municipality of Anchorage*, No. 3AN-10-7047 CI, 2011 WL 8997466 (Sup. Ct. Alaska Jan. 4, 2011); *Kincaid v. City of Fresno*, No. 1:06-CV-1445 OWW SMS, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006), *Johnson v. Bd. of Police Comm'rs*, 370 F. Supp. 2d 892 (E.D. Mo. 2005); *Justin v. City of Los Angeles*, No. CV0012352LGBAIJX, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000); *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992). So too should this Court. Plaintiffs request that this Court grant their motion for a preliminary injunction and order the limited relief requested under the proposed order.

[5] Decl. of A. Drake-Ericson ¶ 92 (Dkt. 175 at 41) (admitting to notice posted without the requisite 72-hour window); Decl. of J. Horan ¶¶ 32–35 (Dkt. 176 at 10) (describing arriving at a planned sweep to find no visible notice had been posted); *see also* Dkt. 93 at 18–20, 24–25.

[6] Julie Moore, Public Information Officer at the Dept. of Finance and Administrative Services (FAS) for instance, provides storing property outside as one potential option. *See* Dkt. 117-1 Ex. 4.

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II. ARGUMENT ON REPLY

A. Plaintiffs Are Likely to Succeed on the Merits

The evidence in this matter includes witness statements, photos and videos, and Defendants' own documents and communications. All of this evidence is relevant. Even evidence that may be hearsay should be considered because there is a risk of irreparable harm. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (acknowledging reduced formality during preliminary injunction proceedings); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1998) (permitting district court to accept hearsay statement during preliminary injunction proceedings); *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (permitting trial court to give some weight to inadmissible evidence). Even though the City refused to provide an updated estimate of upcoming sweeps until finally relenting on August 17, 2017,[7] and despite Defendants' practice of blocking observers from documenting sweeps,[8] Plaintiffs have been able to gather and submit a remarkable amount of evidence.

1. Defendants' official rules and guidelines governing sweeps are unconstitutional

The City claims that its rules are among the most "compassionate" in the country.[9] But the evidence demonstrates that these rules are designed not to protect the rights of the unhoused, but to enable their efficient removal.[10] And the rules do nothing to bind WSDOT.[11]

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[7] Defendants nevertheless assert that sweeps are often planned well in advance and have provided lists of upcoming sweeps to reporters. *See, e.g.*, (COS_097992) (Schuster Decl. Ex. 3).

[8] Decl. of E. Rodriguez ¶¶ 6–7 (Dkt. 99); Decl. of O. Mansker-Stoker ¶¶ 14, 26, 32 (Dkt. 119); Decl. of R. Lahiri ¶¶ 12–14, 24–25 (Dkt. 120); E. Zerr Dep. at 53:3–54:14 (Schuster Decl. Ex. 4).

[9] *See, e.g.*, Dkt. 42 at 8; Dkt. 171 at 1. In fact, Seattle has an average number of ordinances that criminalize homelessness compared to other cities in Washington, but issues more citations than any other City studied, 71% of which were for sleeping or camping in a public place. *See Washington's War on the Visibly Poor: A Survey of Criminalizing Ordinances and Their Enforcement*, Justin Olson & Scott MacDonald (2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602318.

[10] MDAR 17-01, Rules 1.3–1.4 (Dkt. 94-2 Ex. C); FAS 17-01 Rule 1.2 (Dkt. 94-4 Ex. D).

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First, the MDAR definitions of "obstruction" and "immediate hazard" are overbroad, making any distinction between emergency and non-emergency meaningless, and rendering virtually any encampment in the City exempt from due process protections. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1155 (9th Cir. 2014) ("A statute fails under the Due Process Clause of the Fourteenth Amendment 'if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits . . . .'" (quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966))). And the City has taken full advantage, utilizing its "additional resources" under the EOC to conduct "overdue" sweeps—under the guise of "obstructions" or "hazards"—without 72-hours' notice.[12] This suggests that the more resources the City has, the more sweeps it will conduct without notice. If the City had been waiting to conduct these "obstruction" and "hazard" sweeps for so long, why was it unable to wait just a few more days to provide residents at least 72-hours' notice? OCR itself has expressed concern about the lack of due process,[13] but Defendants continue to ignore their constitutional obligation to provide notice before (and often after) depriving people of their property, **often with the blessing of their own rules**.[14]

The MDARs, in addition to failing to create an adequate process to ensure retrieval, are impermissibly vague with respect to property that is not immediately destroyed. Vagueness may arise "for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and

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[11] There is nothing in the MDARs or FAS rules that binds or even references to WSDOT. And OCR has noted that many problems are "due to WSDOT not following or being aware of existing protocol." (COS_077851–52) (Schuster Decl. Ex. 5).

[12] Dkt. 171 at 28, 39–40; ADE Decl., Dkt. 175 ¶85. *See also* COS_047000 (Schuster Decl. Ex. 6) wherein Ms. Drake Ericson asks WSDOT on February 21, 2017 whether they are "part of this new commitment for us to clean across the City that was rolled out today?" The EOC was issued February 21, 2017.

[13] COS_077851–52 (Schuster Decl. Ex. 5); *see also* Public Comment, COS_136928–31 (Schuster Decl. Ex. 7); COS_136889–93 (Schuster Decl. Ex. 8); COS_136904–07 (Schuster Decl. Ex. 9).

[14] *See, e.g.*, COS_161194H (Schuster Decl. Ex. 2) (highlighting sweeps without 72 hours' notice).

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even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). Here, the definitions of "property" and "hazardous items"[15] fail to provide clear guidelines to City workers and unhoused residents, with no guidance regarding conditions like mud or moisture created by Seattle's characteristically wet climate. Moreover, the rules fatally fail to acknowledge that Plaintiffs' constitutional rights do not turn on the condition of their property: "[A] homeless person's personal property is generally all he owns; therefore, while it may look like 'junk' to some people, it's value should not be discounted." *Kincaid v. City of Fresno*, 2006 WL 3542732, at *37 (E.D. Cal. Dec. 8, 2006); *see also Lavan*, 693 F.3d at 1024, 1030.[16]

Although the City claims it has implemented additional training, it fails to identify what this training is.[17] In fact, Ms. Drake-Ericson, Homeless Encampment Manager, has not herself received any training on the new MDARs.[18] Defendants do not provide specific training regarding site assessment or criteria to determine whether a Field Coordinator has been adequately trained.[19] Jeff Horan, one of the Field Coordinators, could not identify any training he received on determining whether a site is a "hazard" or "obstruction."[20]

This lack of training has direct consequences. For example, when Field Coordinator Jeff Horan was asked about training on how one should decide whether something that is wet is a hazard, he offered no criteria he had been trained on, responding only that "you can basically see

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[15] MDAR 17-01, Rule 3.12 and 3.15 (Dkt. 94-2); FAS 17-01 Rule 11.1, (Dkt. 94-4).

[16] The Office of Civil Rights noted this concern repeatedly. *See* COS_077851–52 (Schuster Decl. Ex. 5); COS_136932–34 (Schuster Decl. Ex. 10); COS_136792–93 (Schuster Decl. Ex. 11); COS_136889–93 (Schuster Decl. Ex. 8).

[17] Dkt. 178 ¶ 20; Dkt. 171 at 29.

[18] Drake-Ericson Dep. 51:9–52:25 (Schuster Decl. Ex. 12).

[19] *Id.* at 40:17–41:24.

[20] Horan Dep. at 82:14–23 (Schuster Decl. Ex. 13).

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that something is wet."[21] If additional training has been conducted, it has not translated into consistency. For example, Mr. Horan testified that he destroys any items that: touch a needle[22]; are in the presence of urine[23]; cannot be immediately dried[24]; and are slightly damaged.[25] Ms. Drake Ericson has also stated items have no value if they show signs of "soil or [wetness]"; and will be destroyed if there are "needles", or the item shows "[dysfunction]."[26] Ms. Moore, Public Information Officer for the City, has also stated the City "can't store wet items."[27] The City now claims that their own statements "misrepresent" their policy despite clear evidence that property, including tents and bedding, is almost always destroyed when it is wet.[28]

Whether the rules are unconstitutional, or Defendants' conduct is a result of deliberately indifferent training, Defendants are liable. *Price v. Sery*, 513 F.3d 962, 973 (9th Cir. 2008) (holding that municipal liability may also be established by demonstrating that the alleged constitutional violation was caused by deliberate indifference to adequate training).

2. Defendants' official guidelines, as applied, violate the state and federal constitutions

Defendants claim that they have "fixed" their unconstitutional practices but do not provide affirmative evidence that rebuts Plaintiffs' claims. *See Navarro v. Block*, 72 F.3d 712, 714–15 (9th Cir. 1996) (holding that a plaintiff may establish municipal liability upon a showing

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[21] *Id.* at 129:17–130:14.

[22] *Id.* at 108:1–13.

[23] *Id.* at 111:20–112:7; 112:23–113:3.

[24] *Id.* at 109:11–19; 127:13–25, 131:17–21, 133:18–134:14.

[25] Dkt. 93 at 7; Dept. of J. Horan at 111–113 (Schuster Decl. Ex. E) (Dkt. 94-5); *see also* Schuster Decl. Ex. 14)

[26] COS_081681–82 (Schuster Decl. Ex.15); Drake-Ericson Dep. at 214:12–215:24 (Schuster Decl. Ex. 12). Ms. Drake-Erickson also notes that the FAS rules state items "near" drug paraphernalia qualify for destruction. COS_083509 (Schuster Decl. Ex. 16).

[27] Dkt. 117-1 Ex. 4.

[28] Dkt. 171 at 26–27.

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that there is a custom or informal policy that the municipality does not remedy); *see also City of Canton, Ohio v. Harris*, 489 U.S. 378, 388–91 (1989). Defendants provide no information on the number of sweeps that have been conducted with proper notice, no information on the amount of property that has been stored versus destroyed, and no information on the amount of property that is retrieved if it is actually stored.

The evidence shows that Defendants consistently fail to provide adequate notice prior to seizing and destroying property.[29] And there is no reason to believe that, with fewer resources, Defendants will engage in more outreach and provide better notice. In fact, even with "more resources," Defendants admit to several failures to provide adequate notice. For example, Ms. Drake-Ericson admits that the City has provided postings in violation of their own rules, but claims she has since exercised additional oversight and quality control.[30] But the evidence shows that these are not isolated incidents.[31] The City also admits that it has provided postings that lack specificity, but claims that notice was sufficient because the encampments were "readily discernable"—to the City, at least.[32] But notice is not for the City's benefit. It is the Plaintiffs who are left with facially inadequate notice, and who are being deprived of their property.[33] Even OCR noted that one of the most frequent reasons they had to halt sweeps was because it was

[29] Defendants claim that Plaintiffs admit to receiving notice—conflating legally required notice with the term they coined for their postings. While Plaintiffs have testified to receiving a posting, which is often referred to as "a notice," this should not be construed as them admitting they received adequate and effective notice as mandated by the constitution.

[30] Dkt. 171 at 25; Dkt. 175 ¶¶ 41, 92.

[31] Dkt. 93 at 24–25 (listing notices that provide less than 72 hours advance notice by their own terms).

[32] Dkt. 171 at 25.

[33] *See, e.g.*, Dep. of Simon Stephens 112:3–10 and 113:6–7 (Schuster Decl. Ex. 17); Dkt. 93 at 18–20.

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"unclear on the notice the full extent of the site to be cleared."[34] Defendants continue to threaten sweeps that they wait days, weeks, or months to conduct.[35]

Defendants' self-congratulatory statements on their increased training and ability to follow notice procedures is not supported by the evidence. The evidence in the record indicates that Defendants only cancel or reschedule a sweep that is conducted in violation of their policies when they know someone is watching.[36] Further, Defendants make assertions that are contradicted by their own documentation. For example, even though news articles, photo documentation, Plaintiff declarations, and the City's own documentation shows that notice of a sweep at Spokane Street was not posted until April 10, 2017,[37] the City now claims it posted on April 9.[38] As another example, the City provides a limited number of site journals online for particular sweeps, including one at Dearborn on July 11, 2017; the same sweep as Ms. Drake-Ericson describes in her "walk through."[39] But the photos in the site journal for that sweep are identical to photos from a sweep at EB I-90, which occurred more than a month prior.[40] These

[34] COS_077851–52 (Schuster decl. Ex. 5).

[35] *See, e.g.*, Decl. of A. Gibson (Dkt. 97 ¶¶ 7–21). Alaskan Way was not swept again until August 7. COS_161194 (Schuster decl. Ex. 2).

[36] *See, e.g.*, Decl. of R. Lahiri ¶¶ 19–21 (Dkt. 120 at 5) (describing a sweep that would have proceeded despite the absence of notice if an observer had not been present and raised the issue); Episcopal Diocese Dep. 46:25–47:3(Schuster decl. Ex. 18) ("Another person tells me he has been in multiple sweeps. When the observers are there, they conduct them properly, but most of the times there's not oversight and it's a very different experience.") *See also* Ex A to Decl. of C. Potter (Dkt. 178 at 4–5); COS_078894–95 (Schuster decl. Ex. 19) (wherein OCR describes 3 times they had to halt a sweep and 5 in which they had to "call off" a sweep due to lack of clarity on notice).

[37] COS_161194 (Schuster Decl. Ex. 2) (noting the area was posted *and* swept April 10, 2017); Decl. of E. Rodriguez (Dkt. 99 ¶ 10); Decl. of R. Massey (Dkt. 103 ¶ 7); Decl. of T. Cross (Dkt. 108 at ¶ 6); Decl. of A. Levine (Dkt. 113 ¶¶ 32–33); Decl. of J. Grant (Dkt. 118 ¶¶ 30–32); http://www.seattleweekly.com/news/seattle-evicts-homeless-campers-from-beneath-west-seattle-bridge/l; http://homelessness.seattle.gov/category/homelessness/page/3/ (wherin the City claims it provided notice on April 7 rather than the April 9 or 10th).

[38] Dkt. 171 at 21.

[39] Decl. of A. Drake-Ericson (Dkt. 175 ¶¶ 22–55).

[40] *See* Schuster Decl. Ex. 14.

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examples of material discrepancies in the City's documentation and other inconsistent or controverted assertions the City has made (attached as Schuster Decl. Ex.20) call into question the credibility of the City's assertions that they have remedied the constitutional violations noted by OCR and in this lawsuit.

The evidence also shows that Defendants routinely destroy property for no constitutionally acceptable reason.[41] *See, e.g.*, *Lavan*, 693 F.3d at 1026 (seizures of property may be necessary to protect against an "**immediate threat** to public health or safety") (emphasis added); *id.* at 1031 ("The City does not—and almost certainly could not—argue that its summary destruction of Appellees' family photographs, identification papers, portable electronics, and other property was reasonable under the Fourth Amendment."); *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 977–78 (9th Cir. 2005) ("[T]he Fourth Amendment forbids . . . the destruction of a person's property, when that destruction is unnecessary—i.e., when less intrusive, or less destructive, alternatives exist."). That Defendants have the capacity to store Plaintiffs' belongings—which is about the only thing Ms. Drake-Ericson's "walkthrough" demonstrates—is insufficient to pass constitutional muster. *See Lavan* 797 F. Supp. 2d 1005, 1017 n.7 (C.D. Cal. 2011) ("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 . . . 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.").

Notably, the possibility of storage was not made a reality for individuals like Lisa Hooper, Brandie Osborne, Darryl Manassa, Melvin Christian, Garth Carroll, Andre Moore, Love McCoy, Anna Gibson, Amanda Richer, Reavy Washington, Teresa Peila, Buddy McArdle,

[41] Dkt. 93 at 11–12.

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Timothy Alexander, Rosco, or others whose property Defendants destroyed, including individuals in 75 percent of sweeps since January 2016.[42] Rather than producing evidence to the contrary, Defendants blame unhoused individuals for not moving their property. The reality is that many people find it impossible to move their belongings within the short times allotted because (1) there is simply nowhere else safe for them to go;[43] (2) Defendants block access to the area where their belongings are;[44] and (3) Defendants fail to provide adequate advance notice. Further, Defendants cannot treat property as abandoned and trash just because the owner has not removed it in the time the government has allotted. *A & W Smelter and Refiners, Inc. v. Clinton*, 146 F.3d 1107, 1111 (9th Cir. 1998).

Consistent with past practice, Defendants attempt in their opposition to explain away eyewitness observations, photo and video evidence, the declarations of unhoused individuals, and OCR notes.[45] When OCR was monitoring sweeps, it noted: "Every time OCR questioned procedure, things were explained away or ignored"; "There seems to be a conflict that peoples jobs are doing these sweeps and there is resistance to critique of following protocols and

[42] *See supra* note 3; Schuster Decl. Ex. 21 (destruction of property spreadsheet); PLAINTIFF 001200, 001343, 001352, 001866, & 001857–68 (Schuster Decl. Ex.20); Dkt. 93 at 29–30. This estimate only includes sweeps where there were no inventory sheets or no storage provided at all. It does not account for sweeps wherein most property was destroyed, but at least one thing was salvaged. *See* Dkt. 93 at 3–11.

[43] The City additionally asserts it offers outreach before every sweep (Dkt. 171 at 5). But the evidence shows that outreach was not offered in nearly 45% of sweeps in 2017. COS_161194 (Schuster Decl. Ex. 2). The City also neglects to mention that offers of alternative shelter do not equate to receipt of indoor referral. http://homelessness.seattle.gov/royal-brougham-encampment-cleanup-the-day-after/ (describing information about outreach at the Field). For example, according to the City's website only 5 individuals went to an indoor shelter that night—12 fewer individuals than Jackie St. Louis' declaration might suggest. Decl. of J. St. Louis (Dkt. 179 at 12); *see also* COS_085038-2016O & COS_161194O (highlighting sweeps where outreach was not provided in 2016 and 2017) Schuster Decl. Ex. 22&23.

[44] 2nd Declaration of A. Roberts ¶ 20 (Dkt. 111); Declaration of A. Raftery ¶ 5(c)(ii) (Dkt. 95); Declaration of A. Levine ¶ 23; Declaration of K. Brunette ¶¶ 16–17; Declaration of O. Mansker-Stoker ¶¶ 13–14.

[45] Dkt. 171 at 22.

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stopping sweeps;"[46] and "FAS defensive when OCR asks ?'s."[47] But Defendants have done little to improve storage procedures since OCR wrote:

- "Anything with potential of moisture is thrown out including tents, bedding and clothes"
- "A nice clean bed tossed because its fabric. It was covered by plastic and was in good condition. Meds and phone too. Phone discarded and meds. (expired)"
- "Very little goes to storage, most things tossed as deemed "soiled." "Most items are never recovered from storage."
- A couples packed items were mostly thrown in garbage due to urine smell. Man returned and grabbed out of garbage."; "If soft clothes that are "jumbled," FAS will not store. If folded neatly, they will store. ???"
- "WSDOT HOTT MESS!! Throwing belongings down the ledge."
- Camper came back at 2:35pm to pack up his tent. FAS would not allow them on the site."[48]

Recent evidence suggests that these practices have not changed.[49]

Third, to the extent Defendants do store belongings, they have persistently failed to "take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return." *City of West Covina v. Perkins*, 525 U.S. 234, 240 (1999). In fact, according Defendants' inventory sheets from 2016, they only provided information regarding the retrieval of property in 2 sweeps in 2016. The result is inevitable: less than 10 individuals have successfully retrieved their property since January 2016.[50] And to be clear—the remainder of this property is permanently destroyed.

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[46] Schuster Decl. Ex. 24 (COS_089298).

[47] *Id.* at COS_089327.

[48] *Id.* at COS_089269, COS_089297–98, COS_089358, COS_089351, COS_089380); *see also* Schuster Decl. Ex. 20; Schuster Decl. Ex. 14; Dkt. 93 at 8–11, 25–29 (detailing the destruction of property).

[49] *See supra* notes 15–21; Dkt. 93 at 18–20, 24–25.

[50] *See supra* note 2.

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B. Defendants' Destruction of Property is Unnecessary and Causes Irreparable Harm

Defendants' unlawful acts have devastating consequences that are not obviated by good intentions and promises of compassionate approaches.[51] *See Lavan*, 593 F.3d at 1032. When people lose everything they own, "including their means of survival, it is a catastrophe for them. It is a violence. It is a shock."[52] It sends "people into a downward spiral because when they have basic—some of their basic possessions taken from them, it complicates their lives greatly. It makes it much more difficult to find the next ring up on the ladder, you know. And they're back to zero all of a sudden when they finally had an ID and now they don't anymore."[53] For example:

- Brandie Osborne has lost important property each time a sweep occurs, and sweeps affect her mental ability to "continue on from day to day."[54]
- Lisa Hooper has lost the only pictures of her daughters, their baby teeth that she had been saving for 20 years, and a family bible.[55]
- Kayla Willis regularly suffers seizures due to the stress of the sweeps. She is stressed, depressed, and constantly worried she will lose more of her belongings.[56]
- Reavy Washington lost countless belongings in a sweep on Field March 7, 2017. The sweeps have left him completely worn out. Some days, he just wants to cry.[57] While Reavy had hoped to secure housing in May 2017, that hope has not come to fruition.[58]
- Anna Gibson was unable to sell Real Change newspapers for days after losing everything she owned. Under threat of another sweep just days later, Anna was so afraid to leave her tent

[51] Dkt. 42 at 8; Dkt. 171 at 1, 9–11; Dkt. 93 at 27–28.

[52] Dep. of Episcopal Diocese at 45:18–22 (Schuster Decl. Ex. 18).

[53] Dep. of Trinity Parish of Seattle at 31:4–10 (Schuster Decl. Ex. 25); *see also* Dep. of Episcopal Diocese at 42:9–16 (Schuster Decl. Ex. 18).

[54] Dep. of Brandie Osborne at 58:6–12 (Schuster Decl. Ex. 26), Dkt. 32 at 5–6.

[55] Decl. of L. Hooper ¶ 4 (Dkt. 27).

[56] Decl. of K. Willis ¶¶ 20–21 (Dkt. 54).

[57] Decl. of R. Washington ¶¶ 26, 32 (Dkt. 122).

[58] Decl. of R. Washington ¶ 7.

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that she missed work, and avoided going to the bathroom.[59]

- Love McCoy was devastated after coming home to find all of her property destroyed, right before Christmas. Months later, she still couldn't replace the majority of her belongings, including her ID. Love is constantly on the move and unable to sleep.[60]

- Timothy Alexander's disability is exacerbated by constantly having to carry around his most important possessions at all times. This has prevented Timothy from working regular shifts at Real Change and hinders his ability to move his belongings.[61]

- A patient of Kelliegh Kinst developed scabies when she was unable to take a shower or wash her clothes after Defendants took her toiletries in a sweep.[62]

- A Real Change vendor suffered debilitating grief after Defendants destroyed the last picture he owned of his mother in a sweep.[63]

- An individual at St. Luke's fell into a diabetic coma after Defendants destroyed his insulin and another individual on St. Luke's property who had been on a methadone treatment plan subsequently relapsed after he lost his methadone and ID in a sweep.[64]

The harms caused by Defendants' permanent deprivation of property without adequate notice are well known by those that work with the unhoused – many of whom are unable to keep up with the increased need as a result of Defendants' policy and practice. As stated by the Episcopal Diocese:

> When their possessions are taken, they have to try and put together all the things that they have lost, some of which are irreplaceable. . . They have to go from place to place, asking for another sleeping bag or another tent. Often our churches and our organizations are completely out of those essential items because the demand has become so great. When tents and sleeping bags and blankets and all the people's possessions are trashed, they have an immediate need that very night

[59] A. Gibson decl. (Dkt. 97 ¶ ¶11–13; 17–20.

[60] Dec. of L. McCoy (Dkt. 28 ¶¶ 3–6, 7, 9–10).

[61] Decl. of T. Alexander at (Dkt. 29 ¶7–8); Alexander Decl. (Dkt. 109 ¶¶ 6–8; 10–12)

[62] Decl. of K. Kinst (Dkt. 102 ¶¶ 28–29).

[63] *See* Dep. of Real Change at 20:24–21:12 (Schuster Decl. Ex. 27).

[64]Dep. of Episcopal Diocese at 52:13–22 (Schuster Decl. Ex. 18).

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> and they can not access in quick enough time what they need for their survival and for their comfort.[65]

The sweeps also harm the organizational plaintiffs. Real Change has seen a decline in the circulation of its paper, in part due to the stress and trauma imposed by the sweeps on its vendors.[66] The Episcopal Diocese has seen a dramatic increase in the use of its services and forgone rental income for space it instead devotes to serving the unhoused.[67] "There are so many sweeps being conducted, so many people being harmed that the numbers are overwhelming" the Diocese.[68] And congregations are forced to invest more and more of their "financial resources, building resources, donations to care for these astronomical increases in need."[69] And the harm is ongoing, as unhoused individuals everywhere in the City are at risk.[70]

Defendants' fear-mongering notwithstanding, their wholesale seizure and destruction of Plaintiffs' property is unjustified by public safety or health concerns.[71] For example, Defendants' public communications document the "drug paraphernalia" or "garbage" in areas being swept,[72] but nowhere do they articulate the particular danger unhoused persons' property poses—and their expressed concerns about crime, landslides, traffic accidents, or drug use are ones that occur with regularity throughout the City. To the extent there are legitimate public health and

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[65] *Id.* at 42:20–43:6.

[66] Dep. of Real Change at 19:20–25; 20:18–21:18, 33:2-25 (describing two examples in which Real Change vendors were prevented from working as a result of the sweeps).

[67] Dep. of Episcopal Diocese at 40:16–19, 52:4–12 (Schuster Decl. Ex. 18).

[68] *Id.* at 54:9–11.

[69] *Id.* at 54:18–25.

[70] *See, e.g.*, Decl. of C. Rutan (Ex. 6–9) (maps of sweeps conducted in the City since January 2016).

[71] A University of Washington research group conducted a media and public policy analysis of the City's sweeps when the old MDARS were being enacted. They found that the City designed a public relations campaign to portray sweeps as necessary for public health and safety and emphasized filth and contagion in its administrative documents and rules—and as a result, fear based discourse dominated the media coverage. Schuster Decl. Ex. 28.

[72] *See* COS_072000 (Schuster Decl. Ex. 29) (wherein Ms. Drake-Ericson requests, for a powerpoint for a "City/Stakeholder Homeless conversation, "Can we dump at least one pictures of a needle pile in?").

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safety concerns, Defendants fail to articulate why they must seize and destroy property. If Defendants were simply trying to move residents to work on construction projects, or prevent car accidents and landslides, Defendants could offer moving services rather than demolition crews. And if Defendants wanted to protect the public health and safety of residents, they would provide garbage pick-up and sanitation services to more than three out of approximately 400 estimated encampments.[73] Instead, their practices force unhoused persons into less safe and suitable environments:[74] "[T]here's no place for them to go, and they are left destitute, standing on a street corner with no dry [clothes], no shelter for that night. They will have to go somewhere, and often that is in places that are unsuitable."[75]

Defendants' handwaving invocation of public health and safety is similar to pretext that has been rejected by other courts. *Kincaid*, 2006 WL 3542732, at *2 (Granting a preliminary injunction even when Defendants "cite[d] public health and sanitation concerns . . . and claim[ed] that the areas where homeless individuals live typically reek of urine and feces . . . include human sewage, syringes, used condoms, rotting food, and piles of trash and debris . . . [and] pose public health and safety concerns including assault, drug use, prostitution, and child endangerment."); *Pottinger*, 810 F. Supp. at 1573; *Lehr v. City of Sacramento*, 624 F. Supp. 2d 1218, 1225 (E.D. Cal. 2009) (denying Defendant's motion for summary judgment on Fourth Amendment claim).

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[73] Ms. Drake-Ericson only offers 2 examples of areas where the City has offered garbage pick-up; one of those areas is now being scheduled for a sweep. Dkt. 175 ¶¶ 5–6; http://homelessness.seattle.gov/addressing-encampments-along-spokane-street-with-repeated-individualized-outreach/; *see also* http://www.seattle.gov/homelessness (providing an estimate of encampment sites).

[74] *No Rest for the Weary: Why Cities Should Embrace Homeless Encampments*, Samir Junejo 17–18 (2016) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2776425; *see also* Episcopal Diocese Dep. 50:10–25 (Schuster decl. Ex. 18).

[75] Episcopal Diocese Dep. 41:19–24, 51:2–6 (Schuster decl. Ex. 18).

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C. The Balance of Equities Tips Sharply to Plaintiffs

Courts across the country have confronted the balance of equities presented by sweeps and concluded that a preliminary relief was warranted. *See, e.g., Lavan,* 797 F. Supp. 2d at 1015 (Ruling against Defendants purported interests because "Plaintiffs, . . . risk a greater harm if the injunction is not granted: the violation of their First, Fourth, and Fourteenth Amendment rights."); *Kincaid*, 2006 WL 3542732, at *37 ("Protection of the public does not require the wholesale seizure and immediate destruction of all Plaintiffs' possessions and in any event is outweighed by the more immediate interests of the plaintiffs in not having their personal belongings destroyed." (quotation marks omitted)); *Pottinger*, 810 F. Supp. at 1573 ("As this court previously found, the loss of such items such as clothes and medicine threatens the already precarious existence of homeless individual by posing health and safety hazards.").

Contrary to Defendants' attempt to portray Plaintiffs as a group of disgruntled activists who seek to accomplish through the courts what they could not accomplish legislatively, the Order sought by Plaintiffs in this Motion seeks only what the Ninth Circuit directs: an order preventing WSDOT and the City from seizing and destroying property absent an immediate threat to public health and safety. *See Lavan*, 693 F.3d at 1022.

III. CONCLUSION

This action challenges an ongoing practice and policy of the City of Seattle and WSDOT of seizing and destroying the property of people within the City of Seattle who are unhoused and living outside. For the aforementioned reasons, Plaintiffs and members of the proposed class are entitled to injunctive relief to prevent their property from being destroyed. A proposed order is submitted herewith.

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DATED this 25th day of August, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on **August 25, 2017**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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