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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

TABATHA MARTIN, TRACY  
MARTIN, T.M., a minor, by her  
parents and next friends,  
TABATHA MARTIN and TRACY  
MARTIN; KIONINA KENESO,  
K.H., a minor, by her next  
friend, KIONINA KENESO;  
TANAKO YUG, GABRIEL YUG,  
G.Y., a minor, by his next  
friends, TANAKO YUG and  
GABRIEL YUG; DIANA

Case No. CV 15-00363 HG-KSC  
[Class Action]

**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION;**  
MEMORANDUM IN SUPPORT  
OF MOTION; DECLARATION OF  
NICKOLAS A. KACPROWSKI;  
EXHIBITS 1-10; DECLARATION

*(caption continues)*

CHONIONG; JON JOSEPHSON; NORMA MANUEL; MENSIRIKAT; ARI RODEN; RIMUORUNTE; and SNOPIA WEINEI; individually and on behalf of the class of homeless or formerly homeless individuals whose property was seized and destroyed by City and County of Honolulu officials,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU, a municipal corporation; and DOE EMPLOYEES OF CITY AND COUNTY OF HONOLULU 1-100;

Defendants.

OF REX MORIBE; EXHIBITS 1-23; DECLARATION OF RICHARD SACHAR; EXHIBITS 1-5; DECLARATION OF AMBER COILEY; DECLARATION OF ANTHONY GARO; DECLARATION OF RAINA WHITING; DECLARATION OF JENNIFER DARRAH-OKIKE; EXHIBIT 1; DECLARATION OF BEATRIZ CANTELMO; DECLARATION OF JON JOSEPHSON; SUPPLEMENTAL DECLARATION OF JON JOSEPHSON; DECLARATION OF TABATHA MARTIN; DECLARATION OF TRACY MARTIN; SUPPLEMENTAL DECLARATION OF TRACY MARTIN; DECLARATION OF GABRIEL YUG; SUPPLEMENTAL DECLARATION OF GABRIEL YUG; DECLARATION OF TANAKO YUG; SUPPLEMENTAL DECLARATION OF TANAKO YUG; CERTIFICATE OF SERVICE

Trial Date: Not Set

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs TABATHA MARTIN; TRACY MARTIN; T.M., a Minor, by her parents and next friends TABATHA MARTIN and TRACY MARTIN; KONINA KENESO; K.H., a Minor, by her next friend KIONINA KENSEO; TANAKO YUG; GABRIEL YUG; G.Y., a Minor, by his next friend TANAKO YUG and GABRIEL YUG; DIANA

CHONIONG; JON JOSEPHSON; NORMA MANUEL; MENSİ RİKAT; ARI RODEN; and SNOPIA WEINEI, individually and on behalf of a class of homeless individuals threatened with imminent and unconstitutional seizure and destruction of their property by Defendant City and County of Honolulu (“the City”), by and through their attorneys, Alston Hunt Floyd & Ing and the ACLU of Hawai‘i Foundation, respectfully move this Court for a preliminary injunction.

The reason Plaintiffs bring this new motion is because they have learned in discovery that Defendant’s Opposition to Plaintiffs’ Motion for Temporary Restraining Order was based on ***demonstrably false*** statements about how the city conducts homeless sweeps. (Dkt. No. 16.) Defendant’s statements in its testimony, briefing, and at the hearing, created the false and misleading impression that it stored *all* property encountered while enforcing the Stored Property Ordinance and Sidewalk Nuisance Ordinance (excluding things like human waste and other objects that are unmistakably refuse). It is now clear that those claims are not true.

**First**, the City’s Director of Facilities Maintenance, Mr. Sasamura, declared in testimony submitted with the TRO Opposition that “sidewalk-nuisances’ are **stored** after they are removed. They are **not “destroyed.”** (Dkt. No. 16-1 ¶ 3 (emphasis in original).) In his deposition, however, Mr. Sasamura admitted that the City routinely “disposes of” tents, bedding, clothing, and other property belonging to homeless individuals. By disposal, he means that the City (1) places the property in a garbage truck, (2) transfers that property to a City refuse station, and then (3) incinerates the property at the H-Power plant, leaving nothing but ash. (Kacprowski Decl. Ex. 1, (Sasamura Tran.) 58:3-20; 188:14-193:6.)

**Second**, Mr. Sasamura declared that “[O]ther than empty cups, plastic bottles and caps, used napkins, and empty packages and plastic bags, **nothing is thrown away** when DFM enforces SNO.” (Dkt. No. 16-1 ¶ 16 (emphasis added).) In his deposition, however, Mr. Sasamura (along with both other deponents to date) readily admitted that the City throws away all manner of items, including tents, bedding, tarps, clothing, food, children’s toys, and so on. (Kacprowski Decl. Ex. 1 (Sasamura

Tran.) 58:3-20; Kacprowski Decl. Ex. 2 (Shimizu Tran.) 105:23-106:6; 130:13-131:7; Kacprowski Decl. Ex. 3 (Ponte Tran.) 117:12-120:9.)

There is no dispute that the City seizes property belonging to homeless individuals and disposes of that property on the spot, without any opportunity for due process. The factual dispute that the Court earlier perceived regarding the destruction of property is now conclusively resolved in Plaintiffs' favor.

Plaintiffs' motion is based upon a bulk of new evidence developed since the hearing on Plaintiffs' TRO Application (DKT No. 12), including photographic and video evidence of the City's actions since the hearing on Plaintiffs' Motion for Temporary Restraining Order, deposition testimony from City officials, and declarations from homeless individuals and non-homeless witnesses. The prior motion for preliminary injunction (Dkt No. 12) is therefore withdrawn and replaced with this motion.

Plaintiffs ask for a very narrow order, much narrower than the order they requested in their earlier TRO Application and Preliminary Injunction Motion. (Dkt. No. 12.) The current motions asks only that the City Defendant store property it seizes rather

than destroying (and/or disposing of) that property on the spot. The requested relief is consistent with the City's own ordinances, which the City is consistently violating. The requested order does not require the City to store excrement or other items that could not possibly meet the definition of "property" in the City's laws; the order does, however, put an end to the City's consistent practice of destroying life necessities such as tents, bedding, clothing, and the like.

This Motion is made pursuant to Rules 7 and 65 of the Federal Rules of Civil Procedure ("FRCP"), and is based upon the attached memorandum, declarations, and exhibits and the record and file herein.

DATED: Honolulu, Hawai'i, November 3, 2015.

/s/ NICKOLAS A. KACPROWSKI  
PAUL ALSTON  
NICKOLAS A. KACPROWSKI  
KRISTIN L. HOLLAND  
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