

Of Counsel:

ALSTON HUNT FLOYD & ING
Attorneys at Law, A Law Corporation

PAUL ALSTON 1126
NICKOLAS A. KACPROWSKI 8627
KRISTIN L. HOLLAND 10063
KEE M. CAMPBELL 9168
1001 Bishop Street, Suite 1800
Honolulu, Hawai`i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
E-mail: palston@ahfi.com
nkacprowski@ahfi.com
kholland@ahfi.com
kcampbell@ahfi.com

DANIEL L. GLUCK 7959
MANDY J. FINLAY 10064
ACLU of Hawai`i Foundation
P.O. Box 3410
Honolulu, Hawai`i 96801
Telephone: (808) 522-5908
Facsimile: (808) 522-5909
E-mail: dgluck@acluhawaii.org
mfinlay@acluhawaii.org

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

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 CHONIONG, JON JOSEPHSON, NORMA MANUEL, MENSU RIKAT, ARI RODEN, RIMUO RUNTE, 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.

Civil No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES; SUMMONS**

[CLASS ACTION]

**CLASS ACTION COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES**

I. PRELIMINARY STATEMENT

1. The individual Plaintiffs asserting this class action complaint are homeless or have been in the recent past. Most, if not all, have a high likelihood of being homeless in the near future. Some of the Plaintiffs are employed but still cannot afford permanent residences. Some of the Plaintiffs cannot live in shelters, either because they are ineligible, or because the shelters are full, or because they fear for their physical safety given the conditions in the shelters. Plaintiffs have all had, at most times in the past year, no choice but to live on public property. As a consequence of their poverty and homelessness, Plaintiffs either currently have, have in the past had, and/or will in the future have, no place to store their property other than on the sidewalk or on other public grounds.

2. Plaintiffs' property includes items that are required for mere existence. Their property includes tents, tarps, and makeshift shelters that provide Plaintiffs protection from the elements. It includes the few items that they own for sleeping, such as sleeping bags, blankets, and pillows. It includes the canned food they eat. It includes identification papers, without which it is even more difficult

for homeless persons to obtain employment, access to shelters, and other benefits.

3. Some of Plaintiffs live on the streets with their families, including minor children. Some of the Plaintiffs are minor children. Among their little property are items that Plaintiffs use for the care of their children, including their children's clothing, food, and identification.

4. All the Plaintiffs have suffered a common injury. Employees and/or agents of the City and County of Honolulu (the "City") seized Plaintiffs' property in one or more "sweeps" of the areas where Plaintiffs were living. On some, if not all, occasions, the City provided no prior notice of the sweeps and gave Plaintiffs no opportunity to reclaim their property after the sweeps, but rather seized and immediately destroyed the property.

5. The City knew or objectively should have known that Plaintiffs' property, which it immediately destroyed, was not abandoned. The items were in well-populated homeless encampments that were actively in use. In some cases Plaintiffs, or other victims of the sweeps, made it clear that their property was

being taken. But the City seized the property and destroyed it anyway.

6. The destruction of Plaintiffs' property has caused incredible hardships for Plaintiffs and disruption in their lives above and beyond just the monetary value of the property. For example, the destruction of Plaintiffs' food left them hungry. Several Plaintiffs were only one or two years old at the time of the sweeps, and the City's actions left these children – and their parents/guardians – devastated and hungry. The destruction of Plaintiffs' tents and other shelter materials left them exposed to rain and wind. Some Plaintiffs had to take time off work to replace items the City destroyed.

7. The City's actions prolonged the Plaintiffs' homelessness by forcing Plaintiffs to spend their limited resources replacing food and shelter materials, rather than saving those resources for more permanent housing.

8. Although Plaintiffs were not given prior notice that their property would be seized, prior notice would not have mattered. Because they were homeless, they had no place to take their property that would not violate the law. They could not store it on

private property without subjecting themselves to penalties for trespass. They could not store their belongings on City property, because the City's laws prohibit them doing so.

9. The City's actions in summarily seizing and destroying their possessions violated Plaintiffs' rights in their property under the United States Constitution.

10. Plaintiffs bring this action because they desire, and are entitled to, compensation for the violation of their constitutional rights, including but not limited to reimbursement for the value of their destroyed property. Plaintiffs seek to represent a class of other homeless persons who have also had their property seized and immediately destroyed by the City, so that those individuals may also receive compensation. Plaintiffs also seek injunctive relief prohibiting the City from seizing and immediately destroying their property simply because they are homeless.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights) as well as 42 U.S.C § 1983 (civil action for deprivation of rights).

12. Venue is proper in the District of Hawai'i pursuant to 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred in this District.

III. THE PARTIES

13. Plaintiffs Tabatha and Tracy Martin, and their 4-year-old daughter, Plaintiff T.M., reside in the City and County of Honolulu. They are homeless, and as a consequence they maintain their belongings on public property.

14. Plaintiff Kionina Keneso, and her 3-year-old granddaughter, Plaintiff K.H., reside in the City and County of Honolulu. They are homeless, and as a consequence they maintain their belongings on public property.

15. Plaintiffs Tanako and Gabriel Yug and their minor nephew, Plaintiff G.Y., reside in the City and County of Honolulu. They have at times in the past been homeless, and as a consequence, they maintained their belongings on public property. If Mr. Yug loses his current job, the Yugs have a high likelihood of being homeless again in the near future.

16. Plaintiff Diana Choniong, and her husband, Plaintiff Rimuo Runte, reside in the City and County of Honolulu. They are

homeless. Until very recently they were unsheltered, and as a consequence, maintained their belongings on public property; they have a high likelihood of being without shelter again.

17. Plaintiff Jon Josephson is a resident of the City and County of Honolulu. He has at times in the past been homeless, and as a consequence, he has maintained his belongings on public property. He has a high likelihood of being homeless again in the near future.

18. Plaintiff Norma Manuel is a resident of the City and County of Honolulu. She has at times in the past been homeless, and as a consequence, she has maintained her belongings on public property. She has a high likelihood of being homeless again in the near future.

19. Plaintiff Mensi Rikat is a resident of the City and County of Honolulu. She is homeless, and as a consequence, she maintains her belongings on public property.

20. Plaintiff Ari Roden is a resident of the City and County of Honolulu. He is homeless, and as a consequence, he maintains his belongings on public property.

21. Plaintiff Snopia Weinei is a resident of the City and County of Honolulu. She is homeless, and as a consequence, she maintains her belonging on public property.

22. Defendant City and County of Honolulu (“City”) is a political subdivision and municipal corporation within the State of Hawai`i, and includes the Honolulu Police Department and the Honolulu Department of Facility Maintenance.

23. The violations of Plaintiffs’ Fourth and Fourteenth Amendment rights, as set forth herein, were the result of employees and/or agent of Defendant City acting pursuant to the official policies, practices, and/or customs of the City, and/or because those actions have been approved, ratified, and/or enforced by persons and/or entities with decision-making authority. The City is sued both for damages to redress past violations of Plaintiffs’ Fourth and Fourteenth Amendment rights and for prospective injunctive relief intended to prevent future violations of Plaintiffs’ rights.

24. At all relevant times and in all relevant respects, Defendant (and all of its officials, employees, and agents, including but not limited to Honolulu Police Department (“HPD”) and Department of Facility Maintenance (“DFM”) Officers) has acted

under color of state law, and Defendant is a “person” subject to suit within the meaning of 42 U.S.C. § 1983.

25. On information and belief, Defendant performed, participated in, aided and/or abetted, and/or was deliberately indifferent to the acts averred herein and thereby proximately caused the injuries averred herein.

26. At all times relevant herein, all County officials, employees, and agents (including but not limited to HPD and DFM officers) were acting pursuant to authority delegated or conferred by Defendant City and, in doing or failing to do the things complained of herein, were acting within the scope of that authority.

27. At all times relevant herein, Defendant and one or more of its employees and agents were acting pursuant to the official policies, practices, and/or customs of the City, which have been approved, ratified, and/or enforced by the persons and/or entities with final decision-making authority.

IV. FACTUAL ALLEGATIONS

Plaintiffs' Homelessness and Desperate Poverty

28. Plaintiffs are or have been homeless because they cannot afford homes. They have lived on the streets not by choice, but because they have had no other option.

29. Shelters are not a viable option for many Plaintiffs for a number of reasons. Most notably, there is not nearly enough shelter space to accommodate the nearly 2,000 unsheltered homeless on O`ahu on any given night; there are often *no* shelters on O`ahu with available beds for women or families (or such shelter space that is available is prohibitively far away from Plaintiffs' places of employment or Plaintiffs' childrens' schools). Similarly, many (if not all) of Oahu's shelters require government identification. For the Plaintiffs who had their identification illegally seized and destroyed by the City, that factor can prohibit their access to shelters, even if there were sufficient space. Other Plaintiffs reasonably fear that shelters are unsanitary or unsafe for themselves and/or their children.

30. Even if Plaintiffs had a choice and could lift themselves out of the cycle that keeps them in homelessness, there have been periods of time when there is simply nowhere for them to sleep and store their

property other than in public. Those Plaintiffs who have found themselves some form of temporary shelter or housing are still in precarious economic situations and are highly likely to be homeless again in the near future. During the periods when Plaintiffs have been unsheltered and homeless, the City's practices have subjected them to the immediate seizure and destruction of their property.

The City's Ordinances and Practices Toward the Homeless

31. The City's laws effectively prohibit Plaintiffs from possessing any property on the island of O`ahu at times when they have no shelter. Moreover, a chasm has arisen between the City's laws and the City's practices, making the real danger to the property of the homeless much more harsh than one would imagine when reading the laws on the books.

32. The two City ordinances that prohibit Plaintiffs from possessing property when they are homeless are the Stored Property Ordinance ("SPO"), Revised Ordinances of Honolulu ("ROH") § 29-19.1 *et seq.*, and the Sidewalk Nuisance Ordinance ("SNO"), ROH § 29-16.1 *et seq.*

33. The SPO provides that once the City issues notice to the owners of property that is "stored" on public property, the owner has twenty-four hours to remove the property, or it will be impounded. ROH §§ 29-19.3-19.4. This impoundment occurs whether the property has

been abandoned or not. Other than perishable goods, the City is required to impound all property and store it for no less than 30 days before destroying it. ROH § 19-19.5.

34. The SPO contains an additional clause that is particularly devastating for the homeless: “moving the personal property to another location on public property shall not be considered to be removing the personal property from public property[.]” ROH § 29-19.3(b). In other words, an individual who receives an SPO notice must find some *private* location to store her/his belongings; merely moving the belongings to another sidewalk or park will result in the property’s impoundment.

35. Therefore, even if a homeless person were to reclaim his or her property from the City before its destruction, the property would be again subject to impoundment and destruction as soon as it is placed on public property, making retrieval from impound futile.

36. The SNO is even more antagonistic toward the homeless. Under the SNO, the City may seize property at any time without any notice whatsoever if it is on or hanging over any sidewalk. ROH §§ 29-16.2-16.3. As the Ordinance itself states, the property of homeless persons “shall be subject to summary removal.” ROH § 29-16.3(a). The SNO, like the SPO, requires the City to hold the property for a minimum

of 30 days before destroying it. ROH § 29-16.3(b). The SNO, like the SPO, allows for the immediate destruction of some items (such as perishable food items).

37. The SNO and SPO are particularly offensive to Plaintiffs' constitutionally protected property rights when considering their joint effect. Plaintiffs often have no feasible place to store their property other than the sidewalk when they are homeless, but even if they were to remove it to other public property, it would violate the SPO and still be subject to impoundment. As described above, Plaintiffs often do not have the ability to access shelters or the means to find permanent or temporary housing. And even if they did, it would not save them from the harsh effects of the SPO and SNO if they were to find themselves homeless again, which often occurs. Whenever they have to store their property on the sidewalk, it can be confiscated under the SNO. Unless they can find shelter with 24 hours, which is most times a virtual impossibility, their property will be subject to seizure under the SPO; if they have previously received an SPO notice, the City can seize the property immediately.

38. Even if the City were to follow the SNO and SPO as written (which it does not, as discussed more fully *infra*), the procedures violate due process as applied to the Plaintiffs:

- a. They allow for the immediate destruction of perishable items, though these items are likely to be the food items the homeless individuals intend to eat that day;
- b. They require the owners to travel large distances to reclaim the property, despite the fact they have no means to do so;
- c. They require the owners to pay a \$200.00 fee to collect the belongings seized pursuant to the SNO, unless the owner obtains a waiver. However, owners cannot obtain a waiver unless they (a) go to the Department of Facility Maintenance (“DFM”) office in Kapolei (during business hours only), (b) submit a six-page waiver request (available only in English, *see* http://www.honolulu.gov/rep/site/dfm/spo_docs/reevisedapplicationtoawaivesidewalknuisancefee4.9.14.pdf) (again, during business hours only), (c) provide a mailing address (which some homeless individuals may

not have) to which the City can send its written decision; (d) wait some undetermined period of time for the City to rule upon the waiver request (despite the fact that owners must reclaim the property itself within 30 days of seizure); then, if the waiver request is granted, (e) take a second trip to a *different* Department of Facility Maintenance office – this time, the DFM baseyard in Halawa Valley (again, during business hours only); and (f) have some means of transporting all their belongings all at once (despite the fact that most homeless individuals do not own a car, and must rely on TheBus (which generally prohibits passengers from bringing large objects on board)).

- d. The City's SPO and SNO documents are written only in English, violating Hawaii's Language Access Law (set forth in Hawaii Revised Statutes ("HRS") chapter 321C).

39. The City has applied the SPO and SNO to Plaintiffs in an unconstitutional manner. While the SPO and SNO purport to prohibit the City from summarily destroying everything but perishable goods, the

City's practice has been to seize, and immediately destroy, Plaintiffs' property.

The November 13, 2014 Kaka`ako Sweep

40. On November 13, 2014, the City conducted a sweep of the Kaka`ako area that was not in compliance with the SNO, the SPO, or the Constitution. Each of the Plaintiffs had property summarily seized and immediately destroyed in that sweep.

41. The City's Kaka`ako sweep on November 13, 2014 resulted in the immediate destruction of at least 3.4 tons of property. Plaintiffs' property was among the material destroyed. The City impounded only a single bin full of material – including a skateboard, a razor scooter, and three bedding items – from a woman who was nine months pregnant and gave birth to her son ten days later. (Although that woman had previously attempted to recover some of her property from impound, she was unable to do so after the November 13, 2014 sweep within the time frame set forth by the City because of her pregnancy and childbirth.)

42. The City also seized and immediately destroyed property that was *inside the boundaries of the park* (and not on a sidewalk), even though only the SNO (which applies only to sidewalks) – and *not* the SPO – provides for immediate seizure of property.

43. The City appears to have taken the position that the property it destroyed in the November 13, 2014 sweep was trash or rubbish. Plaintiffs' loss of property, which is detailed further below, illustrates very plainly that the material was not rubbish and could not reasonably be mistaken as such.

44. For example, the following photos taken on November 13, 2014 in Kaka'ako show City workers taking a tent that looks both new and clean and placing it, along with the objects inside of it, straight into a City garbage truck.







45. A minimum of seven City employees participated in the seizure and immediate destruction of Plaintiffs' property in the November 13, 2014 sweep, thus demonstrating that the City has an understood policy, custom, and/or practice of seizing and immediately destroying property.

The September 8, 2015 Kaka`ako Sweep

46. The City also conducted a sweep of a portion of the Kaka`ako area on September 8, 2015. The City publicized this sweep extensively ahead of time, generating broad press coverage. The Mayor gave a press conference standing beside the Governor, a U.S. Congressperson, and a

U.S. Senator. *See Sweep Notices coming Monday*, Honolulu Star-Advertiser (August 28, 2015), available at

http://www.staradvertiser.com/newspremium/20150828_sweep_notices_coming_monday.html?id=323193761; *'Compassionate disruption' of*

Kakaako homeless encampment begins next week, khon 2, available at

<http://khon2.com/2015/09/01/compassionate-disruption-of-kakaako-homeless-encampment-begins-next-week-2/>. If ever there was a time

that one would expect the sweep to conform with at least the minimal protections of the SPO and SNO, one would expect it with the September 8, 2015 sweep.

47. Rather than complying with the SPO and SNO, the notice to the homeless persons affected that the City provided for the September 8, 2015 sweep made it clear that it was the City's intent to violate the SPO and SNO.

48. While the City provided individualized notices to some of the individuals in Kaka`ako, the City also made clear (through signs posted throughout the area) that the *entire* mauka section of Kaka`ako Gateway Park would be swept, and the posted notices for the September 8, 2015 sweep lack four items of specific information that the SPO explicitly requires notices issued under its authority to contain. ROH § 29-19.4(a).

49. Though the notice explicitly states that the sweep was being conducted pursuant to the SPO and SNO, the content of the notice itself made clear that the City intended to violate the SPO and SNO when it seized property during the September 8, 2015 sweep.

50. The SPO by its terms only specifically allows the destruction of perishable items. ROH § 29-19.5(e). All other “personal property” (defined term) must be maintained for at least 30 days. “Personal property” is defined broadly to include “any and all tangible property, and includes, but is not limited to, items, goods, materials...[and] structures...” ROH § 29-19.2. The SNO is similarly broad regarding what the City must maintain for 30 days. The City is required to store any “sidewalk-nuisance” removed for at least 30 days. ROH § 29-16.3(b)(1). “Sidewalk-nuisance” is defined to include “any object or collection of objects constructed, erected, installed, maintained, kept, or operated on or over any sidewalk, including but not limited to structures, stalls, stands, tents, furniture, and containers, and any of their contents or attachments.” ROH § 29-16.2.

51. Under the SNO, the City also has the authority to disassemble a structure for removal, but has no authority to destroy one. See ROH 29-16.3(b).

52. The posted notice provided in advance of the September 8, 2015 sweep, however, states that the City intended to immediately dispose of any “construction materials...poles, wooden structures, and tarps...” In other words, despite the City’s laws clearly providing that it must store items such as structures and the materials of which they are constructed, the notice for the September 8, 2015 sweep stated that all such items “*will be* removed and disposed of immediately.” (Emphasis added.)

53. The notice of the September 8, 2015 sweep perfectly illustrates the City’s actual practice of summarily destroying the property of homeless persons. Even for what is likely its most well-planned and publicized sweep to date, the City still cannot adhere to the minimal standards it has set for itself by ordinance, and still will not refrain from summarily destroying the property of its most destitute residents.

54. The notice regarding the September 8, 2015 sweep prompts other questions regarding the constitutional validity of the SPO and SNO and the City’s practices. For example, when the City posts notices, homeless persons do not know whether they can rely on the ordinances themselves or the notices posted in the area (which, again, are

inconsistent with one another) as the official word from the City on what items of their property will be destroyed.

The City's General Practice of Summarily Destroying Property

55. The summary destruction of property appears to be the rule rather than the exception to the City's practices when conducting sweeps. The press has widely reported on these practices.

56. The City employs a team consisting of approximately eight members, whose job it is to conduct "sweeps" on an ongoing basis. The City refers to this team as the "SPO/SNO Enforcement Team."

57. In a typical sweep, the City employees cordon off the area being swept. The homeless residents of the area are excluded, and typically allowed to take only what they can carry with them, and are only given a short time to gather their things. The rest of their belongings are considered "abandoned" and/or "rubbish" and are summarily destroyed.

58. If the victims of a sweep are lucky, they will have received some form of notice that the sweep is to occur, in which case they can move more of their possessions than if they are roused from their makeshift shelters and tents and can save only what they can hurriedly gather and physically carry.

59. Sometimes victims receive no notice, and are away from their shelters for various reasons, such as work, and then cannot save any of their property from destruction.

60. What they leave behind is then considered “abandoned” and “trash,” though the rightful owners of the property would not consider the “abandonment” voluntary or their property “trash.” It is then summarily placed in a dump truck and destroyed. As one homeless person with a five year-old daughter told the paper about these experiences, “[s]ometimes we can’t carry it all, so things get thrown out.” See *Advocates Decry Homeless Sweeps*, Honolulu Star Advertiser (June 13, 2015) available at http://www.staradvertiser.com/news/20150613_Advocates_decry_homeless_sweeps.html?id=307250311.

61. For example, the Star Advertiser recently described a sweep of Kuwili Street in which it interviewed two victims who lost their shelters in the sweep. These individuals had their shelters disassembled by the City’s “SPO/SNO Enforcement Team.” Despite the fact that the SNO requires the impoundment and holding of disassembled shelters and materials for 30 days, ROH 29-16.3(b), the City simply threw everything into a dump truck. One of the victims was also forced to leave behind a

box of tools, pillows, blankets, and shoes, because he could not carry it away. *See Special Crew Clears Homeless Camps As It Enforces 2 City Bans*, Honolulu Star-Advertiser (August 19, 2015) available at http://www.staradvertiser.com/homeless/20150819_special_crew_clears_homeless_camps_as_it_enforces_2_city_bans.html.

62. The City spends \$15,000 a week on homeless sweeps and destroys four to eight tons of what it calls “junk and garbage.” *See Advocates Decry Homeless Sweeps*, Honolulu Star Advertiser (June 13, 2015) available at http://www.staradvertiser.com/news/20150613_Advocates_decry_homeless_sweeps.html?id=307250311. The City’s description of these items as “junk,” however, ignores the reality and hardship of life on the streets: this so-called “junk” includes the materials homeless persons use to construct their shelters. It includes items that are valuable and hard to replace, like bedding, mattresses, and clothing, which they cannot carry away or move no matter what notice is given to them. And, as Plaintiffs’ stories below indicate, often it includes even more obviously valuable material, like identification documents, medicine, and food. The City is required to preserve these items for reclamation under the already inadequate procedural provisions of the SPO and SNO. Instead the

property is often summarily destroyed by the City in violation of its own laws.

63. Plaintiffs do not object to the disposal of hazardous items. They do, however, want the City to stop coercing them into leaving behind their belongings; categorizing the property they had no choice but to leave behind as “abandoned trash”; and then summarily destroying their property.

64. The repeated, immediate destruction of the property of the homeless, coupled with the close involvement and supervision by the Mayor's office of this practice, is enough to establish that, despite the dictates of the SNO and SPO, the City has a policy and practice of immediately destroying the property of Plaintiffs and other homeless individuals.

65. The City has failed to adequately train its employees on the treatment of the property of the homeless. This failure of training is evident from the pervasive and rampant violations of the City's own (albeit constitutionally inadequate) standards it has set for itself regarding the treatment of homeless individuals' property, as set forth in the SNO and SPO.

V. LEAD PLAINTIFF ALLEGATIONS

Tracy and Tabatha Martin and T.M.

66. Plaintiffs Tabatha and Tracy Martin, and their 4-year-old daughter T.M., are homeless and poor. They sleep in a makeshift shelter along Ohe Street in the Kaka`ako area of Honolulu.

67. In 2013, the Martins were living in a 1-bedroom apartment in Pearl City, where the rent was \$1,250 a month.

68. Mrs. Martin provided full-time care for their young daughter, while Mr. Martin worked full-time at a restaurant. Mr. Martin had been promoted from an hourly kitchen worker to the position of kitchen manager, such that he was paid \$880.00 every other week – a salary that was less than what he made as an hourly worker eligible for overtime. Because Mr. Martin was making less money as a result of his promotion, the Martins fell behind on their rent.

69. In May 2013, Mr. Martin had a heart attack. Without his income, they could not afford the apartment, and became homeless. They came to the Kaka`ako area in August 2013. They purchased a new tent and other equipment to allow them to live on the street.

70. In November or December of 2013, City officials woke the Martins up at approximately 6:00 a.m. While the Martins were still inside

their tent sleeping, City officials put red plastic tape around the entirety of their tent, then ordered them out. Honolulu Police Department (“HPD”) officials informed the Martins that if they did not get out of their tent – which they had recently purchased from Wal-Mart for approximately \$105.00 – they would be arrested.

71. The Martins informed the City officials that they wanted to get Mr. Martin’s heart medication and their identification documents out of the tent. An HPD Officer warned them that if they crossed the red tape they would be arrested and that their daughter, T.M. – who was two years old at the time – would be taken away. City officials forced the Martins’ belongings into a plastic bin, and the Martins watched as their tent was destroyed.

72. The City seized Mr. Martin’s heart medication. The Martins did not have health insurance, and they worried about trying to replace the medication given that the City could simply seize their belongings again at any time.

73. The City seized all of T.M.’s Christmas gifts that others had given her.

74. The City seized the Martins’ marriage certificate, T.M.’s birth certificate, and Mr. Martin’s birth certificate, Social Security Card and

State Identification cards. Among other things, the City also seized the Martins' clothes, their tent, and their propane stove, as well as T.M.'s diapers, backpack, clothing, and toys.

75. The Martins did not receive any kind of receipt or notice from the City indicating that they could retrieve their property. Indeed, they did not believe they could retrieve their property even if they wanted to, because the City had seized their identification documents; this belief was supported by the Martins' conversation with one individual in Kaka`ako who actually attempted to retrieve his property, but was unable to do so because he lacked identification and/or could not prove that the property belonged to him. As such, the Martins believed that any attempt to retrieve their property would be futile.

76. On November 13, 2014, the City *again* seized the Martins' property. This time, there was no pretense about impounding the property: City officials put the Martins' belongings directly into a City garbage truck and destroyed it all. The City did not provide the Martins with advanced warning or notice of any kind that it intended to seize their property.

77. Among other things, the City seized (and immediately destroyed) the Martins' Thanksgiving turkey, shelter materials, coolers, and books for their daughter.

78. The City did not provide the Martins with a receipt or notice of any kind indicating whether, or how, they could retrieve their property. The City has never compensated them for seizing, and destroying, their property.

79. The Martins are afraid of another sweep. If the City again confiscates their belongings, Mr. and Mrs. Martin and 4-year-old T.M. will have no shelter of any kind, and they fear they will go hungry.

Kionina Keneso and her Granddaughter, K.H.

80. Ms. Keneso works full-time at a fast-food restaurant, making approximately \$8.75 an hour. She also provides full-time care for her 3-year-old granddaughter, K.H. (Ms. Keneso's older sister takes care of K.H. while Ms. Keneso is working.) She is 58 years old.

81. Even working full-time, Ms. Keneso cannot afford rent for an apartment for herself and K.H. in Honolulu. At night, she and her granddaughter sleep on a sidewalk in urban Honolulu in a makeshift shelter constructed from a tarp and tent pieces.

82. On November 13, 2014, City officials seized – and immediately destroyed – Ms. Keneso’s and K.H.’s property. Among other things, City officials took Ms. Keneso’s stove, two large bags of clothing (including virtually all of K.H.’s clothing), toys for K.H. (including blocks and stuffed animals), and her two tents.

83. As the sweep began, Ms. Keneso moved some of her belongings into the adjacent park. When she returned to where her tent was (approximately 15 minutes later), her tent and the rest of her belongings were gone. She asked one of the City workers what happened to the tent, and he told her that her property had been dumped into the City garbage truck.

84. Ms. Keneso then went to retrieve the property she had placed in the park. The City had seized and destroyed that property, too, despite the fact that the SPO does not allow for immediate impound (or destruction) of property and the SNO did not apply (because the property was not on a sidewalk).

85. City officials also seized and destroyed her food, which was particularly hard on Ms. Keneso, because she and her granddaughter then had nothing to eat. City officials even seized and destroyed the hot, cooked food that was with her few belongings in the park.

86. The City did not provide Ms. Keneso with a receipt or notice of any kind, nor did it provide Ms. Keneso with advanced warning or notice of any kind that it intended to seize her property. The City never provided her with information on whether, or how, she could retrieve her property. The City has never compensated her for seizing, and destroying, her property.

87. Ms. Keneso's native language is Chuukese. She speaks and reads only a limited amount of English. K.H. likewise speaks Chuukese and only a limited amount of English.

88. Ms. Keneso is afraid of another sweep. If the City again confiscates her belongings, she will have nowhere to sleep, and fears that she and 3-year-old K.H. may starve.

Tanako and Gabriel Yug and G.Y.

89. Plaintiffs Tanako and Gabriel Yug and G.Y. are poor and were homeless for about a year. They have now found an apartment, but if Mr. Yug loses his job again, they fear they could be homeless again soon. Mr. and Mrs. Yug serve as guardians for their 3-year-old nephew, G.Y., whom they consider to be their own son.

90. Mr. and Mrs. Yug have lived in Hawai'i for more than twenty years. They met on Maui, and thereafter moved to Kailua-Kona, where

Mr. Yug worked for a hotel. In June 2014, they moved to Oahu from Kailua-Kona when the hotel transferred Mr. Yug to Honolulu. Three months after moving to O`ahu, his position at the hotel was eliminated, and he was laid off. They could no longer afford their rent, and became homeless in October 2014.

91. The Yugs came to Kaka`ako in November 2014. Very shortly after they arrived, City officials seized, and immediately destroyed, the Yugs' property. Among other things, City officials seized and destroyed two baskets of clothes, shoes, pots and pans, and a backpack. City officials also seized and destroyed a bag belonging to Mrs. Yug's daughter – who was pregnant at the time – containing the daughter's medication, State ID, birth certificate, Social Security card, and U.S. citizenship documents.

92. The City did not provide the Yugs with a receipt or notice of any kind, nor did it provide the Yugs with advanced warning or notice of any kind that it intended to seize their property. The City never provided them with information on whether, or how, they could retrieve their property. The City has never compensated them (or Mrs. Yug's daughter) for seizing, and destroying, their property.

93. Mr. and Mrs. Yug fear that they will be homeless again and thus subject to the City's sweeps. Their economic situation is precarious, and if they find themselves homeless again they will be in the same position they found themselves in up until very recently: living on the streets, struggling and failing to find even temporary shelter, and living in constant fear that the City will destroy their property again in a sweep.

Diana Choniong and Rimuo Runte

94. Diana Choniong and her husband, Rimuo Runte, are homeless and poor. Until very recently they were staying in a tent alongside Ohe Street in Kaka`ako.

95. Ms. Choniong and Mr. Runte were staying in the Kaka`ako area during the November 2014 sweep. The City took their tent and threw it in the trash. City officials destroyed clothes, food, school supplies for their children, and more. The City did not provide them with any notice before, during, or after the sweep as to how they may reclaim their property. The City never compensated them for seizing and destroying their property.

Jon Josephson

96. Until recently, Mr. Josephson was homeless and living in a tent in Kaka`ako. He currently has found temporary housing, but he is poor and is at a substantial risk of becoming homeless again soon.

97. On November 13, 2014, Mr. Josephson was living in a tent in the Kaka`ako area. He was working for a contractor doing construction work in Waikiki, and he left Kaka`ako early that morning for work.

98. When he returned to his tent after work, all of his belongings had been taken. The City had conducted a sweep and had summarily destroyed all his property while he was at work.

99. No reasonable person would have considered his property abandoned or garbage.

100. Mr. Josephson did not receive notice prior to the November 13, 2014 sweep. There did not appear to be any prior notice of the sweep posted on trees or anywhere else before the sweep.

101. Mr. Josephson also did not receive a receipt for his property or any notice telling him what the City had done with it, or how to reclaim it. There was no receipt or subsequent notice regarding reclaiming the property posted in the area near to where the City seized his possessions.

102. The City seized and destroyed almost everything Mr. Josephson owned except the clothes he was wearing. The City took his ID. They took his tent, air mattress, air pump, and laptop. They took his notebooks containing private writings that he had spent much time on, which are effectively irreplaceable.

103. The City's seizure of Mr. Josephson's property further exacerbated his poverty. For example, Mr. Josephson had to take a week off of work to replace the items that the City seized, and those lost wages created a serious hardship for Mr. Josephson.

Norma Manuel

104. Until recently, Ms. Manuel was homeless and living in a tent in Kaka`ako. She and her family have a substantial risk of being homeless again soon.

105. On November 13, 2014, Ms. Manuel was homeless and living in Kaka`ako as the City did a sweep of Ohe Street. City officials seized and destroyed her property.

106. Neither Ms. Manuel nor her family members received any warning or notice that the City was going to conduct a sweep.

107. Ms. Manuel speaks English, but her native language is Chuukese. No one from the City ever spoke to her in Chuukese or gave her any papers that were written in Chuukese.

108. After the sweep, Ms. Manuel did not receive any receipt from the City, or any notice stating where she could reclaim her items. The City has not compensated her for seizing and destroying her property.

Mensi Rikat

109. Ms. Rikat has lived alongside Ohe Street in Kaka`ako for about four years, and was living there on November 13, 2014.

110. On November 13, 2014, City workers appeared with police officers and garbage trucks. The City did not provide any prior notice that they were sweeping the area.

111. The City took Ms. Rikat's property, which was obviously not abandoned, and threw it in the trash. The City threw her tent in the garbage. City officials seized and destroyed her bag, which was inside the tent, her vital documents, and myriad household goods like cooking equipment and sleeping materials.

112. The City never gave Ms. Rikat a receipt for her property, and she did not receive any kind of notice from the City, either before or after the sweep, about having to move her property or about how she could get her property back. Nobody from the City spoke to her about the sweep in any way in her native language of Chuukese.

Ari Roden

113. Mr. Roden is homeless. He has been living in a tent in Kaka`ako for about a year. His native language is Chuukese, but he speaks English.

114. On November 13, 2014, Mr. Roden was present when the City conducted the sweep of the Kaka`ako area. He received no prior notice that the City was going to sweep the area. The City took away almost everything Mr. Roden had, including his tent, his blankets, and his clothes. City officials took food, like canned goods, and his stove and cooking utensils, and immediately destroyed the items by putting them in the trash.

115. The City did not give Mr. Roden any receipt for his property or notice or other instructions on how to reclaim it. Nobody from the City spoke to him about the sweep in any way in his native language of Chuukese.

Snopia Weinei

116. Ms. Weinei is homeless. She lives in a tent in Kaka`ako with two of her children, a 15 year-old girl and a seven year-old boy.

117. On November 13, 2014, Ms. Weinei was living in a tent along Ohe Street in Kaka`ako when the City did its sweep.

118. The City roped off the area it was sweeping with red tape. Ms. Weinei wanted to move her belongings, but the City workers would not let her touch her things after they had put red tape along the area where she was living.

119. It was obvious that Ms. Weinei's property was not abandoned and not trash.

120. The City took Ms. Weinei's tent, clothes, food, cooking utensils, and pots and pans.

121. The City did not give Ms. Weinei any notice beforehand of the sweep or that her property might be seized.

122. The City did not give Ms. Weinei any receipt for her property or any instructions on how to reclaim her possessions, nor did it compensate her for seizing and immediately destroying her property.

123. Although Ms. Weinei speaks some English, her native language is Chuukese. The City never communicated to her in Chuukese about the sweeps in any way.

VI. CLASS ALLEGATIONS

124. The Named Plaintiffs (Tabatha Martin, Tracy Martin, T.M., Kionina Keneso, K.H., Tanako Yug, Gabriel Yug, G.Y., Diana Choniong, Jon Josephson, Norma Manuel, Mensi Rikat, Ari Roden, Rumio Runte, and Snopia Weinei) bring this action on behalf of a class of all those similarly situated pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

125. The Named Plaintiffs seek to represent the following class:

All homeless or formerly homeless individuals whose property was seized and immediately destroyed by the City and County of Honolulu.

126. The class is so numerous that joinder of all members is impractical. The precise number of class members and their addresses are unknown to named Plaintiffs. Although there are currently approximately 2,000 unsheltered homeless on any given night, the number of individuals who have been unsheltered over the class period is higher. Upon information and belief, a substantial portion of these unsheltered homeless have had property seized and immediately destroyed at some point by the City.

127. Common question of law and fact exists, including, but not limited to the following:

- a. Whether the City's practices deprive or have deprived the class members of their property in violation of the United States Constitution;
- b. Whether the Plaintiffs and the class members are entitled to injunctive relief prayed for below;
- c. Whether the Plaintiffs and the class members are entitled to the declaratory relief prayed for below;

- d. The nature of such injunctive and declaratory relief; and
- e. Whether the Plaintiffs and the class members are entitled to damages for the value of their lost property or other measurements of damages.

128. The questions of law and fact that are common to the class predominate over questions affecting only individual members, such that a class action is superior to other methods of fairly and effectively adjudicating the controversy between the class members and Defendant.

129. Plaintiffs' claims are typical of the class, because they have all had property seized from them and destroyed immediately by the City in violation of their constitutional rights. These are the same injuries that the members of the class have suffered, and which they will suffer in the future absent the declaratory and injunctive relief prayed for below, given that it has been the practice of the City to immediately seize and destroy property in its homeless sweeps.

130. The named Plaintiffs will fairly and adequately represent the interests of the class. Plaintiffs possess the requisite personal interest in the subject matter of the lawsuit. The class is represented by counsel experienced in class action and civil rights litigation and in the statutory and constitutional provisions at issue in this case.

131. The City has acted and continues to act on grounds that apply generally to the Class such that final injunctive or declaratory relief is appropriate for the Class as a whole.

DECLARATORY AND INJUNCTIVE RELIEF

132. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendant, which parties have genuine and opposing interests and which interests are direct and substantial. Defendant has failed and continues to fail to respect Plaintiffs' constitutional rights for at least the reasons set forth herein. Plaintiffs are, thus, entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

133. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendant will continue to infringe upon Plaintiffs' statutorily and constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires injunctive relief.

COUNT I
VIOLATION OF THE FOURTH AMENDMENT TO THE U.S.
CONSTITUTION (UNREASONABLE SEIZURE)
ACTIONABLE PURSUANT TO 42 U.S.C. § 1983

134. Plaintiffs incorporate each and every allegation above as though fully set forth here.

135. The Fourth Amendment to the Constitution provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

136. As set forth above, Defendant has deprived Plaintiffs of their constitutional rights pursuant to the Fourth Amendment to the Constitution by, *inter alia*, unreasonably seizing and immediately destroying their property.

137. As a direct and proximate result of the violations of Plaintiffs' constitutional rights by Defendant City, as set forth herein, Plaintiffs have suffered actual and nominal damages, inconvenience, mental and emotional distress, litigation expenses, and other compensatory damages, in an amount to be determined by the Court.

COUNT II
VIOLATION OF FOURTEENTH AMENDMENT TO THE U.S.
CONSTITUTION (DUE PROCESS)
ACTIONABLE PURSUANT TO 42 U.S.C. § 1983

138. Plaintiffs incorporate each and every allegation above as though fully set forth here.

139. The Fourteenth Amendment to the Constitution provides that:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

140. As set forth above, Defendant has deprived Plaintiffs of their constitutional rights pursuant to the Fourteenth Amendment to the Constitution by, *inter alia*, unreasonably seizing and immediately destroying their property without adequate due process of the law.

141. As a direct and proximate result of the violations of Plaintiffs' constitutional rights by Defendant City, as set forth herein, Plaintiffs have suffered actual and nominal damages, inconvenience, mental and emotional distress, litigation expenses, and other compensatory damages, in an amount to be determined by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all persons similarly situated, pray that this Court:

- A. Assume jurisdiction over this action;
- B. Certify a class of individuals similarly situated to the Named Plaintiffs;
- C. Issue a declaratory judgment stating that Defendant has violated Plaintiffs' rights for at least the reasons set forth herein;
- D. Issue a preliminary and permanent injunction enjoining Defendant (and its divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendant or pursuant to Defendant's authority) from subjecting Plaintiffs to the customs, policies, practices, rules, regulations, acts and omissions set forth in this Complaint;
- E. Retain jurisdiction over Defendant until such time as the Court is satisfied that Defendant's unlawful customs,

policies, practices, rules, regulations, acts and omissions complained of herein no longer exist and will not recur;

- F. Award actual, nominal, and punitive (against any individual Defendants) damages to Plaintiffs for the violations of clearly established law set forth herein;
- G. Award reasonable attorneys' fees, costs and other expenditures incurred as a result of bringing this action, pursuant to any applicable law; and
- H. Order such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable herein.

DATED: Honolulu, Hawai`i, September 16, 2015.



PAUL ALSTON
NICKOLAS A. KACPROWSKI
KRISTIN L. HOLLAND
KEE M. CAMPBELL
Alston Hunt Floyd & Ing

DANIEL L. GLUCK
MANDY J. FINLAY
ACLU of Hawaii Foundation

Attorneys for Plaintiffs