

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,

v.

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

DEFENDANT CITY OF SEATTLE'S  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION

HEARING DATE: Sept. 7, 2017

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**I. INTRODUCTION**

Plaintiffs in this case purport to raise the narrow question of notice and storage of property when the City of Seattle (“City”) conducts clean-ups at unauthorized encampments on public property. Their arguments and testimony, however, are actually focused on ending clean-ups of any sort, regardless of the notice, storage, or other services provided. Whether to conduct clean-ups is a complex legislative and policy issue. The City admits that the current homelessness crisis raises complicated choices, and some persons oppose while others support clean-ups—but the mere fact of cleans-ups does not violate the Constitution.

The City has responded to the current crisis with a compassionate and comprehensive approach. The City is devoting significant resources to the immediate needs of unhoused persons, while working to address the root causes of homelessness and emphasizing long-term solutions. Currently, some unhoused persons still live in unauthorized encampments on City or state property, and these camps present substantial and continuing public health and safety issues. To address these concerns while also protecting the rights of unhoused persons, the City recently enacted a new set of Multi-Disciplinary Administrative Rules (“MDARs”). The MDARs provide a reasonable, balanced approach to cleaning up problematic encampments, including: written notice at least 72 hours in advance; outreach workers offering oral notice, resources, and shelter; trained City workers sorting unclaimed items for storage and assisting campers to pack, move, or store their belongings; and notice of storage, with free delivery of property anywhere in the City.

With the MDARs, the City is exceeding the constitutional standards of reasonableness and due process under the Fourth and Fourteenth Amendments. Courts have repeatedly rejected challenges to city clean-up policies that contain far less robust notice and storage requirements

1 than the MDARs. Moreover, Plaintiffs fail to meet the requirements for municipal liability under  
 2 *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), because in  
 3 practice, the City follows the MDARs and respects the property rights of unhoused persons.  
 4 Plaintiffs' alleged evidence to the contrary is overstated, contradictory, largely inadmissible, and  
 5 otherwise controverted. Plaintiffs are unlikely to succeed on the merits, and do not satisfy the  
 6 remaining requirements for the extraordinary remedy of a preliminary injunction. The City  
 7 respectfully requests the Court deny Plaintiffs' motion.  
 8

## 9 II. FACTUAL BACKGROUND

### 10 A. The public health and safety risks associated with unauthorized encampments.

11 As previously elaborated, the City is taking a multi-faceted approach to an unprecedented  
 12 homelessness crisis. *See* Dkt. # 132 at 3-4; Dkt. ## 133-34, 136. The City is investing significant  
 13 resources to meet immediate needs of unhoused persons, while working toward long-term  
 14 solutions, safeguarding public health and safety, and ensuring continued use and enjoyment of  
 15 City property for all residents. *See id.* The City supports emergency shelter options, such as  
 16 traditional shelters, authorized encampments, tiny houses, and the new 24-hour Navigation  
 17 Center that offers flexible, low-barrier shelter to unhoused persons. *See* Dkt. # 136; Decl. of  
 18 Chris Potter in Supp. City's Opp. to P.I. ("Potter Decl.") at ¶ 24. The City also is focused on  
 19 housing affordability, homelessness prevention, and social services. *See* Dkt. # 133 at ¶¶ 3-7.  
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22 A segment of the unhoused population resides in unauthorized encampments on public  
 23 land in the City. The persons in such encampments lack adequate shelter, and unfortunately,  
 24 often struggle with mental illness, drug abuse, and other difficulties. *See* Dkt. # 47 at ¶ 7; Decl.  
 25 of David Cowan, Ph.D, in Supp. City's Opp. to P.I., Ex. B ("Cowan Rept.") at 1-4, 12-17. As  
 26 time goes on, encampments can also become increasingly dangerous and harmful. *See* Dkt. # 47  
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1 at ¶ 7. This may include concentrations of hazardous and biological waste, increases in violence,  
2 amplified drug use and growing numbers of discarded needles, covert sex trafficking, large  
3 uncontrolled fires, and other harmful conditions and activities. *See* Dkt. # 47 at ¶¶ 4-7; Dkt. # 43  
4 at ¶¶ 8-10; Dkt. # 44 at ¶¶ 9-19; Dkt. # 48 at ¶¶ 2-6; Dkt. # 45 at ¶¶ 9-10; *see also* Decl. of  
5 August Drake-Ericson in Supp. City’s Opp. to P.I. (“ADE Decl.”) at ¶¶ 4-6, 23-28, 58-69. These  
6 conditions pose a danger to both campers and the surrounding community. As one example, this  
7 year the Seattle Cancer Care Alliance reported serious criminal activity associated with nearby  
8 encampments, including the stabbing of a caregiver in a residential facility. Dkt. # 47 at ¶ 6.

10 After observing the conditions at several unauthorized encampments, Dr. David Cowan,  
11 an epidemiologist, concluded they present “a substantial risk of a number of infectious diseases,”  
12 including tuberculosis, hepatitis, hantavirus, and leptospirosis, among others. Cowan Rept. at 16.  
13 Many of these diseases can be spread by rats, insects, or other animals, in addition to human-to-  
14 human transmission. *See id.* at 4-7, 9-10, 14-15. Unhoused persons living in unauthorized  
15 encampments are at a “much higher risk” of exposure to these health and safety concerns. *Id.* at  
16 15. The risks extend not only to campers but also to the general public—especially those who  
17 traverse the camps—and to workers who clean up the sites. *See id.* at 11-12, 16-17.

19 Encampments sometimes obstruct access to public facilities dedicated to other uses—  
20 such as parks, playgrounds, sidewalks, or courthouses—or pose a risk of serious injury or death.  
21 *See* Dkt. # 43 at ¶ 10; Dkt. # 45 at ¶¶ 5-8. A few examples where the City has had to clear such  
22 encampments include: after two RVs on Spokane Street caught fire resulting in “flames and  
23 smoke billowing up directly underneath the Spokane Street Viaduct”; when encampments  
24 blocked entire public sidewalks, forcing pedestrians to walk in the street; and when tents were  
25 “partially hanging over a freeway”. Potter Decl. at ¶ 11; Decl. of Jeff Horan in Supp. City’s Opp.  
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1 to P.I. (“Horan Decl.”) at ¶¶ 12, 28-29, 37; Decl. of Taki Flevaris in Supp. City’s Opp. to P.I.  
2 (“Flevaris Decl.”), Ex. A at 100:2-14.

3 **B. The City’s policies and practices for cleaning up unauthorized encampments.**

4 In response to the conditions at unauthorized encampments, the City has enacted and  
5 updated the MDARs to govern notice, outreach, storage of personal property, and clean-up of  
6 unauthorized encampments in the City.<sup>1</sup> As explained below, the City acts to prevent the need  
7 for clean-ups, but when they are needed, the City follows the MDARs, providing robust notice,  
8 outreach, and storage. The City strives to conduct this work with compassion and care.

9 **1. The City implements preventive measures as appropriate.**

10 On an ongoing basis, the City investigates and evaluates unauthorized encampments for  
11 problematic conditions. *See* Dkt. # 135 at ¶¶ 12-16. Depending on the circumstances, the City  
12 may offer services designed to prevent the need for a clean-up, such as garbage pickup, portable  
13 restrooms, wood chips, or litter pickup. ADE Decl at ¶¶ 5-6 (showing examples); Flevaris Decl.,  
14 Ex. A at 131:3-20 (describing other examples). Even when the City provides such services,  
15 however, conditions may continue to deteriorate and eventually necessitate a clean-up. *See, e.g.*,  
16 ADE Decl. at ¶¶ 4-6, 58-69. In a clean-up, the City clears the site completely to allow for a  
17 thorough cleaning and decontamination, to identify and make needed repairs, and to protect City  
18 workers, among other reasons. *Id.* at ¶ 8.

19 **2. The City provides notice prior to the clean-up.**

20 Once a clean-up has been scheduled for a given site, the City provides multiple forms of  
21 notice. The City posts written notice between 72 hours and seven days prior to the clean-up. *See*  
22 Dkt. # 134-1 at 22; ADE Decl. at ¶ 7. The notice includes the day and time the clean-up will  
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27 <sup>1</sup> “MDARs” refers collectively to the adopted MDARs and the concurrently adopted FAS Encampment Rule 17-01, which reflect the City’s written policies for cleaning up unauthorized homeless encampments. *See* Dkt. # 134-1.

1 start, the location of the clean-up, and a dedicated phone number to have stored personal  
2 property delivered for free anywhere safe in the City. *See id.* Notice is posted around the entire  
3 perimeter of the encampment; at entranceways; on trees, poles, and other surfaces; and on the  
4 tents. Flevaris Decl., Ex. B at 155:15-20. The City has progressed from using stickers to taping  
5 “whole sheets” containing the notice onto each tent. *Id.* at 63:9-64:3; *see, e.g.*, Dkt. # 135-1 at  
6 27-30. In addition, the City provides oral notice of the clean-up, including whenever outreach is  
7 conducted. Flevaris Decl., Ex. B at 155:21-156:7; Ex. C at 62:13-64:6.

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9 **3. The City provides outreach and offers alternative shelter.**

10 Once a site has been designated for a clean-up, prior outreach is mandatory, including  
11 offers of alternative shelter. Dkt. # 134-1 at 23; Dkt. # 136 at ¶ 4. Outreach workers assess “the  
12 number of individuals on site and their specific needs.” Dkt. # 136 at ¶ 5. Outreach may be  
13 provided several times before the clean-up. *Id.* at ¶ 6; Flevaris Decl., Ex. C at 62:19-63:11. The  
14 supportive services being offered are a point of emphasis for the City. In addition to funding and  
15 providing “active, individualized problem-solving,” the City is supporting an array of alternative  
16 shelter options including traditional shelters, tiny houses, authorized encampments, and the  
17 Navigation Center, which is currently at one-third capacity. Dkt. # 133 at ¶¶ 6-7; Dkt. # 136 at ¶  
18 9; Decl. of Jackie St. Louis in Supp. City’s Opp. to P.I. (“St. Louis Decl.”) at ¶ 17.

19  
20 Outreach is also offered during each clean-up. Flevaris Decl., Ex. C at 168:8-170:18. The  
21 morning of a clean-up, information on available shelter options is provided to outreach staff, who  
22 confirm sufficient slots are available to offer all campers at the site. *Id.* at 111:1-113:25. Staff  
23 will tailor offerings and shelter alternatives to each individual camper. *Id.* at 127:23-128:19,  
24 168:8-170:18. Through these efforts, the City has successfully relocated numerous unhoused  
25 persons into other arrangements. *See* Dkt. # 136 at ¶¶ 13, 15-16. The City’s records show that in  
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1 2017, approximately one-third of campers have accepted offers of alternative shelter and another  
2 third have accepted other services. St. Louis Decl. at ¶ 18; Potter Decl. at ¶ 23.

3 **4. The City stores personal property still on-site.**

4 It is only after the extensive notice and outreach described above that the City then moves  
5 to the clean-up phase of the process. At each clean-up, the City has at least one designated “Field  
6 Coordinator” whose job is to coordinate the entire process and oversee the disposition of  
7 belongings. *See* ADE Decl at ¶ 11; Flevaris Decl., Ex. B at 15:6-17:9, 24:9-25:2. At the outset,  
8 the Field Coordinator ensures that proper notice was provided per the MDARs and that all  
9 required workers are present, including outreach, police, and cleaning crew. *See* Flevaris Decl.,  
10 Ex. B at 15:25-17:9. If the Field Coordinator allows the clean-up to proceed, he or she will  
11 engage with each and every camper regarding the disposition of their belongings, including an  
12 offer of storage. *See id.* at 15:25-17:9, 24:9-25:2, 125:8-126:21. The City offers campers large  
13 storage bags, will assist campers in packing their personal property for moving or storage, and  
14 helps them load property into vehicles or out of the clean-up area. ADE Decl. at ¶ 10. Once  
15 campers are done moving personal property they want to keep, or have given it to the City for  
16 storage, they often indicate items to be discarded. Items that might have apparent utility—such as  
17 tents or cooking supplies—frequently are abandoned and then subject to disposal. *Id.*

18 Despite the lengthy notice and outreach procedures, there are usually unclaimed tents and  
19 other items remaining at each site. *Id.* Sometimes this is because campers move what they want  
20 to a different area prior to the clean-up, leaving behind abandoned property. *Id.* Regardless, the  
21 Field Coordinator inspects all unclaimed tents and other items on-site—including piles of  
22 debris—to determine whether items qualify as personal property under the MDARs. *See* Flevaris  
23 Decl., Ex. B at 24:9-25:2, 152:10-152:25; Ex. A at 118:13-123:23. In particular, the Field  
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1 Coordinator evaluates if each item (1) “is reasonably recognizable as belonging to a person,” (2)  
2 “has apparent utility in its present condition and circumstances,” and (3) is neither “hazardous”  
3 nor “reasonably expected to become a hazard during storage . . . .” Dkt. # 134-1 at 20, 24.

4 The Field Coordinator’s job is not easy. Each site is different and complex, and “the  
5 conditions are often unsafe, hazardous, or both.” ADE Decl. at ¶ 11. It might be difficult or  
6 unsafe to open or go into a tent, for example, “due to the presence of bio-waste, strewn needles,  
7 the sheer amount of items filling the tent, or otherwise.” *Id.* at ¶ 17. In such cases, depending on  
8 the weight of the tent, the Field Coordinator either will lift a corner of the tent to empty the  
9 contents for sorting and storage, or might cut open the top of the tent to inspect the items inside  
10 from above. *Id.* at ¶ 17. The Field Coordinator must make such decisions based on the safety  
11 risks, hazards involved, and the totality of the circumstances. *Id.* at ¶¶ 11-12, 17-18.

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14 During a clean-up, there are various kinds of unclaimed items a Field Coordinator might  
15 encounter that are hazardous or likely to become hazardous in storage. These include used drug  
16 needles, items contaminated with human or animal waste, moldy items, and soaking wet items  
17 that are not dryable during the clean-up. ADE Decl. at ¶¶ 13-16. Urine is treated as a serious  
18 health risk not only due to diseases that humans carry, but also diseases in rats and other animals,  
19 which can be transmitted through airborne exposure, especially in wet conditions. ADE Decl. at  
20 ¶ 14; Cowan Rept. at 4-6, 9-10, 11-12, 14-15. In addition to increasing the risk of disease  
21 transmission, items that are soaking wet are likely to be moldy and to generate mold in storage,  
22 raising concerns over respiratory health and the preservation of property. ADE Decl. at ¶ 16;  
23 Cowan Rept. at 5, 7-9, 15-16. Thus, items contaminated with urine or soaking wet are generally  
24 not stored. ADE Decl. at ¶¶ 13-16. Otherwise, the Field Coordinator’s goal is to store all  
25 property. *See Flevaris Decl., Ex. A at 107:7-22, 198:5-199:23; Ex. B at 110:5-111:7.*  
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1 The Field Coordinator also directs the cleaning crew at the site. Before the crew enters an  
2 area, campers have taken or stored the items they wish to keep and indicated what items they are  
3 abandoning, and the Field Coordinator has inspected unclaimed items for storable property. *See*  
4 ADE Decl. at ¶ 10. Only after this inspection is completed does the Field Coordinator give the  
5 cleaning crew permission to enter and dispose of remaining items. *See id.* at ¶¶ 11-12, 20, 31.  
6

7 Field Coordinators work under the supervision of the City’s Encampment Response  
8 Team Program Manager, August Drake-Ericson, who also serves as a Field Coordinator herself  
9 from time to time. *See* ADE Decl. at ¶¶ 3, 22. To give the Court a more complete understanding  
10 of the clean-up process, Ms. Drake-Ericson has included within her supporting declaration a  
11 “walkthrough” of a recent clean-up conducted on July 11, 2017. *See id.* at ¶¶ 22-55. With  
12 detailed descriptions and pictures, Ms. Drake-Ericson shows the kinds of difficult conditions that  
13 Field Coordinators encounter, the complex decisions they must make, and the reasonableness of  
14 the City’s approach to inspecting and storing unclaimed items. *See id.*  
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16 **5. The City keeps property stored for 70 days and offers free return delivery.**

17 The City assists unhoused persons in recovering their stored property. The City logs  
18 items stored from an encampment using inventory sheets, whether an unhoused person requested  
19 storage or the City determined unclaimed property was storable. *See* Flevaris Decl., Ex. B at  
20 224:11-16; Dkt. # 134-1 at 24. Field Coordinators also post notice at the site whenever  
21 unclaimed items have been stored. *See* Horan Decl. at ¶ 42. The notices include a City phone  
22 number devoted to calls for retrieving property from encampment clean-ups. ADE Decl. at ¶¶ 7,  
23 106-07. Calls to that number are routed directly to a Field Coordinator. *Id.* Upon identification of  
24 stored property, the City will deliver the property to the unhoused person for free, anywhere safe  
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1 in the City. *See id.* The City stores all property from a clean-up for at least 70 days. *See* Flevaris  
2 Decl., Ex. B at 15:25-17:9; Dkt. # 134-1 at 25.

3 **6. Obstructions and immediate hazards require modified procedures.**

4 For encampments that present obstructions or immediate hazards—whether blocking a  
5 sidewalk, risking a steep fall onto high-speed traffic, or otherwise—the City’s notice, outreach,  
6 clean-up, and storage requirements may be abridged. Such sites are identified on a case-by-case  
7 basis in accordance with the MDARs. *See* Flevaris Decl., Ex. B at 90:8-93:13; Dkt. # 134-1 at  
8 20. Notice is provided to the extent practicable. *See* Dkt. # 134-1 at 21; ADE Decl. at ¶ 91. In  
9 some cases, the City has been able to provide a day of notice, a full 72 hours, or more. *See*  
10 Flevaris Decl., Ex. A at 98:2-16, 193:7-17. Outreach is conducted during the clean-up, and  
11 sometimes beforehand. *See* Flevaris Decl., Ex. C at 147:16-48:25, 150:22-151:17. Although  
12 campers are asked to remove belongings from the area immediately, the Field Coordinator will  
13 offer storage and work with each camper to assist with the move—giving more time as  
14 appropriate under the circumstances—and inspect any unclaimed items for storable property. *See*  
15 Flevaris Decl., Ex. B at 64:25-65:18; Horan Decl. at ¶¶ 11, 30-31, 38-39. The rules governing  
16 storage and retrieval remain the same. *See* Dkt. # 134-1 at 21.

19 **7. The City’s trained staff cares deeply about helping unhoused persons.**

20 The City takes numerous steps to ensure that all its work related to clean-ups is done  
21 appropriately and compassionately. This begins with hiring. The City’s Program Manager, Ms.  
22 Drake-Ericson, is firmly committed to helping and respecting unhoused persons. *See* ADE Decl.  
23 at ¶ 21; *see also* Flevaris Decl., Ex. A at 48:24-49:23 (describing prior volunteer work at food  
24 bank and work in Social Justice Commission). Plaintiffs call into question Ms. Drake-Erickson’s  
25 motives based on meeting minutes taken out of context, *see* Dkt. # 93 at 21, but those very  
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1 minutes confirm that she has “stressed the importance of having [staff members] who can do  
2 outreach and help people instead of just worrying about people getting out and cleaning up,”  
3 Dkt. # 94-19 at 4; *see also* Flevaris Decl., Ex. A at 154:13-155:11.

4 Ms. Drake-Ericson’s priorities are reflected in the City’s other hiring decisions. The  
5 City’s primary Field Coordinator, Jeff Horan, has 18 years of prior experience as a social worker  
6 for unhoused persons and other vulnerable communities. *See* Flevaris Decl., Ex. B at 9:7-15:24.  
7 He builds “rapport” with campers, does not “come from a place of ego or aggression,” and  
8 makes it his “priority” to “treat people with dignity and compassion . . .” *Id.* at 49:15-50:12,  
9 74:7.-75:3. The lead police officer doing this work, Sergeant Eric Zerr, sought the assignment,  
10 appreciates the “traumatic” nature of clean-ups, and is “really focused on people” and looking  
11 for “some way to help” the campers. Flevaris Decl., Ex. C at 13:16-16:10, 181:19-184:14. The  
12 City’s Outreach Coordinator, Jackie St. Louis, is a licensed mental health provider and has over  
13 seven years of experience in counseling for low-income communities. St. Louis Decl. at ¶ 2.  
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15 The City also trains everyone doing this work to act humanely, respect property rights,  
16 and follow the MDARs. *See, e.g.*, ADE Decl. at ¶ 21; Flevaris Decl., Ex. C at 44:5-46:25. As the  
17 primary Field Coordinator, Mr. Horan has had a multi-day PowerPoint presentation, in-depth  
18 discussions with his supervisors on the MDARs spanning multiple days, and several days of field  
19 training with Ms. Drake-Ericson. Flevaris Decl., Ex. B at 25:3-31:9, 34:4-37:22; Ex. A at 56:7-  
20 57:23. Ms. Drake-Ericson’s “walkthrough” provides the Court a window into the field training  
21 Mr. Horan and others have received. *See* ADE Decl. at ¶ 22; Flevaris Decl., Ex. B at 45:10-46:2.  
22 Police officers are also trained on the MDARs and related issues, including special training for  
23 the officers specifically assigned to this work. *See* Flevaris Decl., Ex. C at 44:5-46:2.  
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1 The City also staffs work related to clean-ups in a way that promotes consistency and  
2 effectiveness. In February 2017, the City activated its Emergency Operations Center (“EOC”) to  
3 centralize and manage the City’s multi-departmental efforts to address the homelessness crisis.  
4 *See* Dkt. # 134 at ¶¶ 5-7. This increased the resources available to address problematic  
5 encampments, among other efforts. *See id.* As part of the EOC activation, the City also created a  
6 dedicated “Navigation Team” to provide outreach and conduct clean-ups going forward. Dkt. #  
7 135 at ¶ 8. The Navigation Team consists of Field Coordinators, dedicated Police Officers, and  
8 Outreach Coordinators. *Id.* The police officers on the team focus on conducting outreach with  
9 social workers, while ensuring safety. *See* Flevaris Decl., Ex. C at 14:5-17:25.

11 The record validates the City’s efforts in hiring, training, and staffing. Workers regularly  
12 ensure campers are provided with medical care or counseling, and return important papers found  
13 among debris. *See* Flevaris Decl., Ex. B at 42:17-44:1, 131:13-21, 133:4-17, 150:22-151:11; Ex.  
14 A at 72:7-73:10, 198:18-199:9; Ex. C at 25:12-26:8, 161:19-162:25. Plaintiff Brandie Osborne  
15 went out of her way at her deposition to say how “nice” and “understanding” Jeff Horan has  
16 been to her. Flevaris Decl., Ex. D at 89:6-14; *see also* Ex. B at 48:6-51:12. Another of Plaintiffs’  
17 declarants admitted that he “see[s] people on the navigation team . . . being nice to people and  
18 offering to help them . . . .” Flevaris Decl., Ex. E at 178:13-18.

20 **8. The City continually monitors and improves its practices.**

21 The City continues to develop its policies and practices, monitor its work, and correct any  
22 deviations as they are discovered. As described in prior briefing, the City developed the MDARs  
23 with broad community input and recently updated the rules, after additional feedback, to provide  
24 greater protections for encampment residents. *See* Dkt. # 132 at 5-6.  
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1 The City regularly monitors its work to ensure compliance with its policies. The City  
 2 documents notice, outreach, clean-up, and storage activities in “site journals.” Flevaris Decl., Ex.  
 3 A at 37:5-38:23. Many of these are published on a dedicated City website. *See* Dkt. # 135 at ¶  
 4 35. More broadly, the City engaged its Office for Civil Rights (“OCR”) to monitor clean-ups  
 5 from September through December 2016. The goal was a “critical assessment” to “improve[e]  
 6 the City’s efforts to respond to unauthorized encampments.” Potter Decl. at ¶¶ 19-20. The City  
 7 improved its practices as a result of OCR’s involvement. *See id.* at ¶¶ 20-21. More recently,  
 8 OCR was engaged for additional monitoring, observed a clean-up under the new MDARS, and  
 9 found that “[c]lean-ups are much more organized and coordinated now.” Flevaris Decl., Ex. F at  
 10 1; Potter Decl. at ¶ 22.

12 When the City discovers any clean-up activity that deviates from the MDARs, it corrects  
 13 the issue. For example, on a few occasions notices were put up three days before a clean-up, but  
 14 not a full 72 hours prior. ADE Decl. at ¶ 92. Ms. Drake-Ericson saw such notices being printed,  
 15 caught the error, and “exercised additional oversight and quality control” for the “calculation of  
 16 an accurate 72-hour period.” *Id.* When questioned, Plaintiffs and their declarants have admitted  
 17 the City’s clean-ups are being conducted today with consistency and clarity, notwithstanding any  
 18 disagreements over past events. *See* Dkt. # 138-1 at 188 (acknowledging clarity and that “people  
 19 are not losing as much stuff because they know . . . well ahead of time”); Flevaris Decl., Ex. D at  
 20 18:17-25 (“Q. So the practice of noting a certain day and then not showing up has stopped? A.  
 21 As far as I know, it has . . . .”); Ex. E at 177:8-178:22 (acknowledging consistency).

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 24 **9. Plaintiffs are against clean-ups, not how the City conducts them.**

25 While this lawsuit is ostensibly about notice and storage in clean-ups, Plaintiffs’ actual  
 26 objection is to the City’s decision to conduct clean-ups at all—a difficult legislative issue, not a  
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1 constitutional one. Some of the individual Plaintiffs have admitted that this suit is their way of  
 2 “asking the City” to “stop” conducting clean-ups. Dkt. # 138-1 at 141; *id.* at 104. Plaintiff Trinity  
 3 Parish of Seattle (“Trinity”) indicated “the way a sweep is conducted doesn’t make a whole lot of  
 4 difference to [unhoused persons],” and whether or not “the rules are being followed,” or even if  
 5 perfect notice and storage are being provided, is irrelevant. Flevaris Decl., Ex. G at 19:5-18,  
 6 31:18-32:11. Trinity’s goal for this lawsuit is “to help force” the City to “stop” conducting clean-  
 7 ups. *Id.* at 29:9-30:16, 40:5-16. At the same time, Trinity does not know the City’s actual reasons  
 8 for conducting clean-ups. *See id.* at 39:9-13.

10 Previously, Plaintiffs’ counsel, the American Civil Liberties Union (“ACLU”), lobbied  
 11 the Seattle City Council for legislative change to the City’s clean-up policies, without success.  
 12 *See* Dkt. # 47 at ¶ 13. This lawsuit was billed as an alternative “vehicle” for putting “pressure”  
 13 on the City. Flevaris Decl., Ex. G at 41:1-42:8. The premise was “the higher the stakes, the more  
 14 eager [the City will be] to settle,” i.e., to stop conducting clean-ups. *Id.* at 40:5-43:16; Ex. H at 1.  
 15 Despite being expressly invited to do so, Plaintiffs declined to participate in the City’s  
 16 collaborative process to update the MDARs. Dkt. # 134 at ¶¶ 8-10; *see also* Dkt. # 132 at 5-6,  
 17 25; Flevaris Decl., Ex. G at 43:17-44:4.

### 19 III. ARGUMENT

20 A preliminary injunction is “an extraordinary remedy” and “may only be awarded upon a  
 21 clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*,  
 22 555 U.S. 7, 22 (2008). Plaintiffs must show (1) it is “likely” they will “succeed on the merits;”  
 23 (2) it is “likely” they will “suffer irreparable harm” without the requested relief; (3) the “balance  
 24 of equities tips” in their favor; and (4) the requested relief is “in the public interest.” *Id.* at 20.  
 25 Where the moving party’s assertions “are substantially controverted by counter-affidavits,” relief  
 26

1 should not be granted unless that party makes a “further showing” that it will “probably succeed  
 2 on the merits.” *K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1089 (9th Cir. 1972). Here,  
 3 Plaintiffs have not made the required showing as to any element, much less all of them.<sup>2</sup>

4 **A. Plaintiffs are unlikely to succeed on the merits.**

5 **1. Applicable constitutional standards.**

6 As an initial matter, there is no dispute that the encampments at issue are on public  
 7 property, including in parks, on sidewalks, and adjacent to freeway onramps. *See* Dkt. # 43 at ¶¶  
 8 3, 8-10; Dkt. # 44 at ¶ 9; Dkt. # 45 at ¶¶ 5-10. There is no constitutional right to trespass or store  
 9 belongings on such property contrary to City ordinance. *See, e.g., Lindsey v. Normet*, 405 U.S.  
 10 56, 74 (1972); *Church v. City of Huntsville*, 30 F.3d 1332, 1345 (11th Cir. 1994). Plaintiffs thus  
 11 argue unlawful seizure and destruction of their belongings under the Fourth and Fourteenth  
 12 Amendments, but largely omit from their motion legal analysis on those claims.<sup>3</sup>

13  
 14 In the context of removing unauthorized items from public property, the baseline  
 15 requirements of the Fourth and Fourteenth Amendment are reasonableness and procedural  
 16 fairness, respectively. *See Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030, 1032 (9th Cir.  
 17 2012). In each case, the procedures provided must reasonably balance the property rights of  
 18 unhoused persons against the government’s need to protect public health and safety, effectuate  
 19 the appropriate use of its own property, and enforce its laws. *See De-Occupy Honolulu v.*  
 20 *Honolulu*, No. 12-00668, 2013 WL 2285100, at \*6-\*7 (D. Haw. May 21, 2013); *Fuller v. Aila*,  
 21 No. 14-00097, 2015 WL 127887, at \*4-7 (D. Haw. Jan. 7, 2015).

24 \_\_\_\_\_  
 25 <sup>2</sup> The Ninth Circuit also employs a sliding scale test whereby “serious questions going to the merits” and “a  
 26 balance of hardships that tips sharply towards the plaintiff” can support a preliminary injunction, if plaintiff also  
 27 shows “a likelihood of irreparable injury” and that “the injunction is in the public interest.” *All. for the Wild Rockies*  
*v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Plaintiffs have also failed to show they meet this test.

<sup>3</sup> Because Plaintiffs have not separately argued or differentiated their claims under the Washington Constitution,  
 those claims provide no separate basis for relief here. *See, e.g., Young v. King Cnty.*, 70 Fed. App’x 939, 941 (9th  
 Cir. 2003); *Alverto v. Dept. of Corrections*, No. C11-5572, 2012 WL 6025617, at \*33 (W.D. Wash. Nov. 15, 2012).

1 A city acts constitutionally if it provides adequate notice that items will be removed and a  
2 reasonable opportunity for those items to be retrieved. *See Martin v. City and Cty. of Honolulu*,  
3 No. 15-00363, 2015 WL 5826822, at \*4 (D. Haw. Oct. 1, 2015) (finding no likelihood of success  
4 where clean-up ordinance provided for 24 hours' notice and opportunity to retrieve from storage  
5 within 30 days); *Cobine v. City of Eureka*, No. C 16-02239, 2016 WL 1730084, at \*4 (N.D. Cal.  
6 May 2, 2016) (same, based on similar provisions); *Acosta v. City of Salinas*, No. 15-cv-05415,  
7 2016 WL 1446781, at \*8 (N.D. Cal. Apr. 13, 2016) (same). By contrast, in *Lavan*, the issue was  
8 whether the City of Los Angeles could, without any notice, remove and in all cases destroy  
9 property left temporarily on public sidewalks. 693 F.3d at 1024. Unsurprisingly, the *Lavan* court  
10 disapproved of this “summary” and “on-the-spot” destruction of “unabandoned, but momentarily  
11 unattended, personal property.” *Id.* at 1024, 1031, 1032-33.  
12

13 To impose municipal liability for a violation of constitutional rights, in addition to  
14 demonstrating a violation of such rights, Plaintiffs must also satisfy the criteria set forth in  
15 *Monell*, 436 U.S. 656. In particular, Plaintiffs must show that the City has an unconstitutional  
16 “policy” or “custom” that amounts to “deliberate indifference” to their constitutional rights, and  
17 that the policy or custom is the “moving force” behind an actual violation of those rights. *Mabe*  
18 *v. Dep't. of Pub. Soc. Servs.*, 237 F.3d 1101, 1110-11 (9th Cir. 2001). Plaintiffs fail on all counts.  
19

## 20 **2. The MDARs are facially constitutional.**

21 At the outset, Plaintiffs cannot make the showing required for a facial challenge to the  
22 MDARs. Such challenges are disfavored. *See Wash. State Grange v. Wash. State Republican*  
23 *Party*, 552 U.S. 442, 451 (2008). Invalidating a legislative act as facially unconstitutional  
24 requires showing that “no set of circumstances exists” under which the act would be valid. *See*  
25 *United States v. Salerno*, 481 U.S. 739, 745 (1987).  
26  
27

1 On their face, the MDARs provide for adequate notice and opportunity for retrieval.  
 2 Among other things, they require (1) detailed notice 72 hours in advance; (2) outreach, including  
 3 offers of alternative shelter; and (3) storage of property for 70 days, with free delivery. Dkt. #  
 4 134-1 at 22-25. These provisions far exceed constitutional minimums. In *De-Occupy Honolulu*,  
 5 for example, the court denied a preliminary injunction based on 24-hour notice and 30 days of  
 6 storage, without delivery. 2013 WL 2285100, at \*2, 6. Here, the City provides more generous  
 7 timelines, alternative shelter options, and free delivery, among other services and protections.  
 8

9 Plaintiffs raise at most two facial attacks against the MDARs. First, Plaintiffs object that  
 10 on their “face,” the definitions of ‘personal property’ and ‘hazardous’ are “vague” and allow for  
 11 “impermissible discretion.” Dkt. # 93 at 8. But those definitions are targeted and reasonable,  
 12 albeit fact-dependent. *See* Dkt. # 134-1 at 20 (defining personal property as any item  
 13 “recognizable as belonging to a person,” with “apparent utility in its present condition,” that is  
 14 “not hazardous”); *id.* at 6 (defining hazardous item as one that “reasonably appears to pose a  
 15 health or safety risk”). While some discretion might be required, that reflects the nature of clean-  
 16 ups as “highly variable” and decisions that must be “based on the totality of the circumstances in  
 17 each instance.” ADE Decl. at ¶ 11. At the very least, Plaintiffs do not show that the definitions  
 18 can never be properly applied, which would be required for a facial challenge to succeed.<sup>4</sup>  
 19  
 20

21 Second, Plaintiffs argue that the definitions of ‘obstructions’ and ‘immediate hazards,’  
 22 “on their face,” are overbroad. Dkt. # 93 at 18-19. But again, those definitions are reasonable in  
 23

---

24 <sup>4</sup> Plaintiffs take statements from the deposition of Mr. Horan out of context to suggest he agrees that the MDARs  
 25 are vague. *See* Dkt. # 93 at 8. When asked what it means for an item to have “apparent utility,” Mr. Horan  
 26 explained it means an item “actually can be used and is in workable condition,” rather than something “not serving a  
 27 purpose,” such as “a cart” that is “broken” or a “tent” with “half of it ripped off . . . .” Flevaris Decl., Ex. B at  
 100:25-101:9. Plaintiffs’ counsel then followed up with an esoteric question, which Mr. Horan believed was vague:  
 “Q. Whose purpose does it have to serve? Who does it have to be useful for? . . . A. That’s kind of vague. I mean, I  
 don’t know how to answer that, to be honest with you.” *Id.* at 101:10-14. Mr. Horan did not hesitate to confirm that  
 he has confidence in his judgments in the field. *Id.* at 229:17-230:16.

1 light of the relevant interests at stake and the conditions on site. *See* Dkt. # 134-1 at 20 (defining  
2 “obstruction” as “objects related to an encampment” that are in a park, on a sidewalk, or  
3 otherwise “interfere with areas that are necessary for or essential to the intended use of a public  
4 property or facility”); *see id.* (defining “immediate hazard” as encampment posing a “risk of  
5 serious injury or death”). Again, Plaintiffs do not suggest there is “no set of circumstances”  
6 under which these provisions may be properly applied. Nor could they, as the City regularly  
7 encounters incidents such as fires under roadways, encampments forcing pedestrians into the  
8 street, and tents in vehicular traffic. *See, e.g.*, Potter Decl. at ¶¶ 11, 15. In these cases, it is  
9 reasonable and lawful for the City to provide less than 72-hour notice while still giving notice to  
10 the extent practicable, in addition to storage. In sum, Plaintiffs’ facial challenge fails.

11  
12 **3. The City’s implementation of the MDARs is constitutional as applied.**

13 The City also carefully and reasonably implements the MDARs in practice.  
14 Municipalities are not liable for alleged constitutional violations “unless action pursuant to  
15 official municipal policy of some nature caused a constitutional tort.” *Monell*, 436 U.S. at 691.  
16 Plaintiffs’ as-applied challenge is unlikely to succeed under *Monell* for two distinct reasons: first,  
17 Plaintiffs have not demonstrated a City custom that amounts to deliberate indifference to their  
18 constitutional rights, and second, Plaintiffs have not shown any such custom is the moving force  
19 behind actual violations of their rights.  
20

21 **a. Plaintiffs fail to establish an unconstitutional custom amounting to**  
22 **deliberate indifference as required by *Monell*.**

23 To advance a *Monell* claim based on the City’s implementation of the MDARs, Plaintiffs  
24 must prove an unlawful practice is “so ‘persistent and widespread’ that it constitutes ‘a  
25 permanent and well settled city policy.’” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996)  
26 (quoting *Monell*, 436 U.S. at 691). Isolated or sporadic incidents are insufficient. Instead,  
27

1 Plaintiffs must show “practices of sufficient duration, frequency and consistency that the conduct  
2 has become a traditional method of carrying out policy.” *Id.* In other words, the practices must  
3 “amount[] to deliberate indifference” attributable to the City. *Levine v. City of Alameda*, 525  
4 F.3d 903, 907 (9th Cir. 2008) (internal quotations omitted).

5  
6 Out of the hundreds of clean-ups the City has conducted of unauthorized encampments,  
7 Plaintiffs’ motion centers on four specific ones as a basis for seeking a preliminary injunction  
8 against the City. These are: (1) a March 7, 2017 clean-up at an area known as “The Field,” *see*  
9 Dkt. # 93 at 10, 13; (2) two clean-ups on Columbia Street, on April 7, 2017 and May 22, 2017,  
10 *see id.* at 18-20; and (3) an April 11, 2017 clean-up on Spokane Street under the West Seattle  
11 Bridge, *see id.* at 11, 16, 24. Notably, of these four clean-ups, only two involve a named  
12 Plaintiff—Reavy Washington—and he allegedly lost property in only one incident. *See* Dkt. #  
13 132 at 8-11. The circumstances surrounding each clean-up are explained below, demonstrating  
14 the propriety of the City’s actions, and the absence of a pattern of unconstitutional conduct.  
15

16 **i. The Field**

17 The Field is an area of public land near Airport Way South and South Royal Brougham  
18 Way. ADE Decl. at ¶ 56. In October 2016, the City agreed with one of its outreach providers that  
19 campers would be allowed to relocate temporarily to the Field, with focused outreach to be  
20 provided. *Id.* at ¶ 57. As the encampment grew, the City also provided garbage dumpsters,  
21 portable toilets, a regular litter pick throughout the camp, and multiple truckloads of woodchips  
22 to improve ground conditions. *Id.* at ¶¶ 58, 64-65. Notwithstanding these efforts, the City’s  
23 services were vandalized or abused, the campers remaining at the site refused outreach, and  
24 conditions at the site deteriorated dramatically. *See id.* at ¶¶ 59-63, 66-69.  
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1 Eventually, the conditions at the site necessitated a clean-up. *See* Potter Decl. at ¶¶ 3-4.  
2 Harmful conditions included a large rat infestation, biological waste, increased reports of crime  
3 in the surrounding area, multiple serious assaults at the camp, and individuals involved in child  
4 sex trafficking. *See* ADE Decl. at ¶¶ 66-68; *see also* Flevaris Decl., Exs. I, T, U. The City posted  
5 written notices of the clean-up on poles, fences, and trees surrounding the encampment well in  
6 advance of 72 hours prior to the clean-up date. ADE Decl. at ¶ 70. The City also engaged  
7 multiple agencies to conduct daily outreach leading up to the clean-up, offering services and  
8 giving supplemental notice. *Id.* at ¶¶ 71-72.

10 On the day of the clean-up, most of the campers had complied with the advance notice as  
11 only approximately 37 tents and structures remained, down from 80 during the previous weeks.  
12 *See id.* at ¶ 73. Some campers decided as a matter of principle not to move in advance of the  
13 clean-up, to “make” a “stand” with Reavy Washington. Dkt. # 138-1 at 171; *see* Flevaris Decl.,  
14 Ex. I at 2 (indicating “majority” of campers were considering “not . . . moving” as a form of  
15 “protest”). The City provided outreach and related services at the clean-up, such as covered areas  
16 for packing, hats and gloves, food, and transportation of belongings. St. Louis Decl. at ¶¶ 9-11.

18 Multiple Field Coordinators worked with campers and identified storable property. Horan  
19 Decl. at ¶ 4. Many campers removed their own belongings. *Id.* at ¶ 6. Others designated items for  
20 storage, with Field Coordinators providing assistance. *Id.* at ¶ 7. Campers indicated to Field  
21 Coordinators they were abandoning many items as garbage, including ten tents. ADE Decl. at ¶  
22 75. Other tents appeared abandoned and were soaked in mud mixed with human and animal  
23 waste, which permeated the site. Horan Decl. at ¶¶ 4-5. Field Coordinators canvassed the entire  
24 site for storable, unclaimed property. ADE Decl. at ¶ 74. In total, 70 container bins of items, 2  
25 bicycles, and 4 large items were stored. *Id.* at ¶ 80. At the end of the clean-up, the City posted  
26  
27

1 written notice along the entire perimeter of the site on fences and light poles, indicating that  
 2 property had been stored and providing information for its retrieval. Horan Decl. at ¶ 8. During  
 3 the clean-up, 18 individuals accepted alternative arrangements, ranging from a traditional shelter  
 4 bed to a substance abuse treatment facility. St. Louis Decl. at ¶ 12.

## 5 **ii. Columbia Street Obstructions**

6 The area underneath the Alaskan Way Viaduct from Madison Street to South Jackson  
 7 Street (including Columbia Street) raises continuing concerns from recurring unauthorized  
 8 encampments. Potter Decl. at ¶ 15. The area lacks open space, and tents are placed on sidewalks,  
 9 in parking areas, and in areas with vehicular traffic. *Id.* This forces pedestrians into lanes of  
 10 traffic and puts both pedestrians and campers at risk of being injured or killed by vehicles. *Id.*

11 On both April 7 and May 22, 2017, Field Coordinator Jeff Horan observed encampments  
 12 in this area. Horan Decl. at ¶¶ 26-27, 36-37. Tents were blocking sidewalks, in areas of heavy  
 13 vehicular traffic, and in parking spots. *Id.* at ¶¶ 28-29, 37. After confirming the encampments  
 14 should be removed, Mr. Horan handed out written notice and instructed campers to move from  
 15 the site. *Id.* at ¶¶ 30, 38. At the April 7 clean-up, there were 18 tents and 2 structures; owners of  
 16 the 18 tents were present and declined storage; two storage bins of items were collected and  
 17 stored, including a typewriter. *Id.* at ¶¶ 27, 31. At the May 22 clean-up, there were 18 tents and 2  
 18 bedrolls; owners of 15 tents were present and declined storage; one bin of items was stored,  
 19 including a backpack and clothing. *Id.* at ¶¶ 37, 39. Both times, Mr. Horan posted notice to  
 20 facilitate retrieval of stored items. *Id.* at ¶¶ 31, 39.

## 21 **iii. Spokane Street/West Seattle Bridge RV Fire**

22 Prior to April of 2017, the area on Spokane Street near the West Seattle Bridge had been  
 23 used as an encampment site for both tents and RVs. Potter Decl. at ¶ 10. The City had conducted  
 24

1 extensive outreach to campers there. *Id.* On April 6, 2017, a fire consumed two RVs at this  
2 location, with flames and smoke directly underneath the Bridge. *See id.* at ¶ 11 (photo of blaze).

3 In response, City officials—including from the Fire Department—investigated and  
4 concluded that the encampment presented a clear and continuing fire hazard, with a risk to the  
5 structural integrity of the Bridge. *Id.* at ¶ 12. A similar incident had occurred recently in Atlanta,  
6 causing a freeway overpass to collapse. *Id.* at ¶¶ 11-12. In addition to being a fire hazard, the  
7 encampment also prevented the City from repairing recently discovered lighting problems that  
8 resulted from the theft of wiring. *Id.* at ¶ 12. City officials ultimately agreed that the encampment  
9 qualified for removal as an obstruction and immediate hazard. *Id.* at ¶ 13. The City proceeded to  
10 evaluate the resources that would be needed to conduct a clean-up of the encampment. *Id.*

11  
12 In the meantime, an initial inspection on April 6 revealed numerous tents, structures, and  
13 approximately 28 vehicles. ADE Decl. at ¶ 84. The City began providing outreach, including  
14 notification of the upcoming clean-up, on a daily basis. St. Louis Decl. at ¶ 13. Ultimately, the  
15 City determined that sufficient resources were available to conduct the clean-up. Potter Decl. at ¶  
16 14. On April 9, the City posted multiple written notices indicating that property had to be  
17 removed from the site as of April 10. ADE Decl. at ¶ 85. The next day, the Navigation Team  
18 conducted outreach, gave notice of the option to store property, and encouraged campers to begin  
19 moving. Decl. of James Lohman in Supp. City’s Opp. to P.I. (“Lohman Decl.”) at ¶¶ 5-6.  
20 Unclaimed tents “were left in place in case the owners returned during the process.” *Id.* at ¶ 6.

21  
22 On April 11, 2017, the City conducted a clean-up at the site. *Id.* at ¶ 7. The City provided  
23 outreach again, including mechanic and towing services and fuel. St. Louis Decl. at ¶ 15. Three  
24 Field Coordinators worked closely with campers to identify property for storage. Lohman Decl.  
25 at ¶¶ 9-10. Many tents were expressly relinquished by their owners; others were found damaged  
26  
27

1 or contaminated and apparently abandoned. *Id.* at ¶ 7. The process spanned several days. *Id.* at ¶  
 2 10. In total, ten bins of items and seven large items were stored. ADE Decl. at ¶ 88. During the  
 3 clean-up, eight campers accepted relocation to alternative housing. St. Louis Decl. at ¶ 16.

4 **iv. Plaintiffs substantially mischaracterize the City’s clean-ups.**

5 Plaintiffs accuse the City of “wanton” and “wholesale” destruction of property in these  
 6 and other clean-ups. Dkt. # 93 at 14-15, 17. Plaintiffs’ evidence does not support this accusation,  
 7 however, and is deficient in numerous other respects. Plaintiffs assert, for example, that they  
 8 have submitted 12 videos showing “workers tearing apart [] homes,” 8 videos showing “on-the-  
 9 spot destruction,” and “an additional 19 photos and videos” showing “wholesale destruction of  
 10 property” as the “norm” at clean-ups. Dkt. # 93 at 14, 15. But these recordings depict cleaning  
 11 crews at a later point in the City’s clean-up process, after campers have relinquished unwanted  
 12 belongings and a Field Coordinator has inspected any unclaimed items for storage. *See* ADE  
 13 Decl. at ¶¶ 12, 20, 31, 33, 46-49, 93-105; Horan Decl. at ¶¶ 40-41. The photos and videos do not  
 14 indicate whether items have been relinquished, or the actual condition of discarded items. *See*  
 15 ADE Decl. at ¶¶ 38, 52, 93-105.

16  
 17  
 18 A primary source of the recordings in question, Simon Stephens, admitted at his  
 19 deposition that although he would see “workers going through and slashing tents” and “creating  
 20 a trash pile” out of them, it was “plausible” that in those cases, another City worker had already  
 21 inspected and removed any storable items. Flevaris Decl., Ex. E at 159:2-14. Similarly, he could  
 22 not say whether the tents and other items in his recordings had been relinquished or were  
 23 contaminated. *See id.* at 152:10-16, 155:3-161:24, 174:3-18. Most tellingly, Mr. Stephens  
 24 revealed he recorded notice, outreach, and storage at many clean-ups, to capture the “full scope”  
 25 of the event. *Id.* at 101:25-103:17, 154:12-21. Rather than allowing the Court to consider a  
 26  
 27

1 complete record, Plaintiffs have refused to produce those photos and videos in discovery and  
 2 prevented their production by Mr. Stephens. *See* Flevaris Decl., Ex. J; *see also* Ex. K (indicating  
 3 “fewer than 1000” photos and videos are being withheld) (emphasis added).

4 Like their visual evidence, Plaintiffs’ declarations also lack necessary context or detail.  
 5 For example, Plaintiffs point to allegations from Reavy Washington, Brandie Osborne, and  
 6 others, to further their argument that the City summarily destroys property. *See* Dkt. # 93 at 17.  
 7 But these declarants do not specify whether notice was provided, belongings were already moved  
 8 or stored, or whether “destroyed” items had been relinquished or deemed unsuitable for storage.  
 9 *See id.* As Ms. Drake-Ericson shows in her walkthrough, a clean-up is a complex event that can  
 10 be misinterpreted based on limited information or faulty assumptions. ADE Decl. at ¶¶ 22-55.<sup>5</sup>

11 As to Mr. Washington, Plaintiffs omit the opening portion of his quoted allegation, which  
 12 clarifies that the destruction he saw occurred only after “the City cleared people from a part of  
 13 the camp . . . .” Dkt. # 122 at ¶ 22. Mr. Washington also admitted he and others were allowed to  
 14 move or store property, that he “didn’t see” what others were doing because he was “busy,” and  
 15 that a City worker could have already inspected the tents he saw being discarded. Dkt. # 138-1 at  
 16 160-66. Brandie Osborne similarly admitted property is not summarily destroyed in clean-ups:

17 So they didn’t just show up and trample it. It wasn’t like that. I give them credit  
 18 for that. As much as I don’t want to, but I will. They haven’t always just been  
 19 heartless people to show up and trample over your camp. They gave somebody an  
 20 opportunity if that person was not there to do it.

21  
 22  
 23  
 24  
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 26 <sup>5</sup> Plaintiffs’ declarations are replete with indicators that witnesses were unaware of key context or details. *See*,  
 27 *e.g.*, Dkt. # 95 at ¶ 5.c.i (witness arrived “a few hours after the sweep had already begun”); Dkt. # 111 at ¶ 34  
 (criticizing storage process but admitting “I really don’t know all the details”); Dkt. # 119 at ¶ 15 (saying it “seemed  
 like” workers were “dismantling tents without removing belongings”); Dkt. # 120 at ¶¶ 4, 17 (stating items being  
 discarded “appeared” to be useful and that cutting tents and ropes “appeared” unnecessary, without elaboration).

1 Flevaris Decl., Ex. D at 100:7-16. Plaintiffs are thus wrong to suggest Ms. Osborne could not  
2 object. *See* Dkt. # 93 at 18. As she clarified, she never spoke with clean-up workers and simply  
3 left items behind without asking for them to be preserved. Flevaris Decl., Ex. D at 46:20-47:6.

4 Plaintiffs' testimony is also inconsistent and otherwise of questionable accuracy. For  
5 example, Mr. Stephens stated in his signed declaration: "I have [] observed some sweeps where  
6 no notice was provided." Dkt. # 25 at ¶ 6. But at his deposition, he testified "I don't think that  
7 there was ever an instance of a sweep that I witnessed where there was no notice at all." Flevaris  
8 Decl., Ex. E at 110:11-24. Likewise, Plaintiff Lisa Hooper and Mr. Stephens both made the  
9 following statement, word-for-word, in their declarations: "The workers make no effort to  
10 distinguish between obviously important, valuable and un-abandoned property, and anything that  
11 could legitimately be regarded as trash." Dkt. # 27 at 4; Dkt. # 25 at ¶ 8. When questioned, both  
12 indicated to the contrary, that workers did sort through items for storage. *See* Flevaris Decl., Ex.  
13 L at at 82:7-11; Ex. E at 117:19-118:17, 175:14-176:3.

14 Plaintiffs also rely heavily on hearsay and other inadmissible evidence. For example,  
15 Cory Potts declares he spoke with a camper named Debbie who "was being told by August  
16 Drake-Ericson that the city would be unable to store her personal belongings." *See* Dkt. # 117 at  
17 5. This appears to be what Mr. Potts was told, not what he observed. Unsurprisingly, the  
18 allegation is false, as demonstrated by Mr. Potts's own recording and the City's records. *See*  
19 Flevaris Decl., Ex. M; ADE Decl. at ¶ 77 & Ex. A. Similarly, Plaintiffs submit testimony from  
20 social workers who relay in general terms what they say their clients told them, not the specifics  
21 of any incident or their own personal observations of clean-ups. *See* Dkt. ## 98, 101, 102.

22 In sum, Plaintiffs fail to substantiate their allegation that the City has a custom of  
23 wantonly destroying property or disregarding its own notice and storage protocols.  
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1                                    **v.        Plaintiffs' remaining arguments are unavailing.**

2            Plaintiffs' remaining attacks on the City's practices are equally unsubstantiated and  
3 without merit. First, Plaintiffs disparage the City's training efforts. *See* Dkt. # 93 at 9. But the  
4 City puts Field Coordinators through multiple types of rigorous training, including numerous  
5 hours of field training. *See* ADE Decl. at ¶ 11; Dkt. # 135 at ¶ 11. Field Coordinators also meet  
6 daily as a group to discuss conditions and determinations being made in the field, to promote  
7 consistency and reliability. ADE Decl. at ¶ 11. The rest of the Navigation Team is also trained on  
8 the MDARs, including police officers, who are specially assigned to this work. *See* Flevaris  
9 Decl., Ex. C at 44:5-46:25. In all, the City's training is more than adequate.

10  
11            Second, Plaintiffs argue the City is not providing sufficient notice. Plaintiffs' complaints  
12 mostly center on the clean-ups at Columbia Street discussed above. *See* Dkt. # 93 at 22-23. But  
13 these were obstruction and immediate hazard clean-ups that were conducted reasonably and  
14 consistent with the MDARs. *See supra*, at 20; Horan Decl. at ¶¶ 26-31, 36-39. Other complaints  
15 concern the clarity and consistency with which notice is provided. *See* Dkt. # 93 at 23, 24-25.  
16 Most of the underlying allegations are vague and lacking relevant context or details—such as one  
17 person's complaint that the City's notice does not specify where to relocate. *See id.* at 23 n.78.  
18 Plaintiffs also cite two notices they claim have vague descriptions of the areas being cleaned up,  
19 *see id.* at n.79, but there is no reason to believe these descriptions were unclear under the  
20 circumstances, *see* ADE Decl. at ¶ 8. In fact, the site journals show that the encampments were  
21 readily discernible and that notices were posted throughout, including on each individual tent.  
22 *See* Dkt. # 93 at 23 n.79 (providing web addresses for site journals). Finally, Plaintiffs cite a  
23 handful of instances in which notices were posted less than 72 hours in advance. *See* Dkt. # 93 at  
24 24-25. When Ms. Drake-Ericson discovered this issue she corrected it. *See* ADE Decl. at ¶ 92.  
25  
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1 Third, Plaintiffs claim the City is not storing enough property overall, because nothing  
 2 was stored in nearly 30 percent of clean-ups during a given period, and at least some items are  
 3 discarded at most clean-ups. *See* Dkt. # 93 at 13. Plaintiffs omit that most of the clean-ups where  
 4 nothing was stored involved only a small number of tents, often only one. *See* Dkt. # 94-14 at 2-  
 5 3. Plaintiffs also ignore that clean-ups are conducted precisely because of hazardous conditions,  
 6 including too much garbage, and that campers “frequently” relinquish belongings—making it  
 7 unsurprising that at least some items are discarded at most sites. ADE Decl. at ¶¶ 4, 10. Plaintiffs  
 8 are well aware that the City is storing an abundance of items from clean-ups, including large  
 9 items, as they observed on their visit to the City’s facility. *See* Flevaris Decl., Ex. N (photos of  
 10 numerous bins and large items); *see also* Dkt. # 94-14 at 2-3.<sup>6</sup>

12 Fourth, Plaintiffs falsely assert that the City refuses to store items that are muddy or near  
 13 drug paraphernalia. *See* Dkt. # 93 at 11. As for mud, Plaintiffs misrepresent the City’s policy,  
 14 citing to a communication specific to The Field, *see* Dkt. # 93 at 11 n.19, where the mud was  
 15 “contaminated with human and animal waste” throughout the camp, St. Louis Decl. at ¶ 8.  
 16 Plaintiffs likewise misrepresent the City’s policy regarding drug paraphernalia, citing to a bullet  
 17 point in a PowerPoint slide that Ms. Drake-Ericson explained as follows:  
 18

19 If there is one needle and that [] is easily removed . . . we’re going to remove . . .  
 20 and salvage. But if it is covered, as it says here, with drug-related paraphernalia,  
 21 we’re not going to fish through a pool of needles to try to recover items.

22 Flevaris Decl., Ex. A at 214:12-23. The City reasonably protects the safety of its workers.

23 Fifth, Plaintiffs object that the City does not store items contaminated with urine. *See*  
 24 Dkt. # 93 at 11, 15-16; Dkt. # 110. But Plaintiffs’ own expert acknowledges that various diseases

25  
 26 <sup>6</sup> Plaintiffs also misrepresent testimony from WSDOT’s Lance Pascubillo regarding storage rates. *See* Dkt. # 93 at  
 27 14. Mr. Pascubillo did say he had seen storage provided “[m]aybe three or four times,” but only after saying he  
 “can’t answer” how often storage is actually provided, because “that’s a job for Jeff [Horan],” and Mr. Pascubillo  
 does not “watch what Jeff does in his job” as Field Coordinator. Flevaris Decl., Ex. O at 34:8-35:12, 92:17-25.

1 “can be transmitted by urine from an infected person,” and protective measures can only reduce,  
2 but not eliminate, the “risk of disease transmission from contact with contaminated urine.” Dkt. #  
3 110 at 4-5. As the City’s expert Dr. Cowan explains, the risk of transmission from human urine  
4 is heightened in the unusual context of unsanitary encampments. Cowan Rept. at 14-15.  
5 Plaintiffs’ expert also acknowledges the serious risk of transmission “by airborne exposure to  
6 environmental materials that are contaminated by diseased animals’ urine or droppings.” Dkt. #  
7 110 at 4. Dr. Cowan explains these risks in detail, including transmission of hantavirus or  
8 leptospirosis. Cowan Rept. at 4-6, 9-10, 14-15. Plaintiffs simply ignore that it is often impossible  
9 or unsafe for a Field Coordinator to determine the source of fecal matter or urine, and in  
10 particular whether the source is human, animal, or both. ADE Decl. at ¶ 14; Cowan Rept. at 15.

11  
12 Sixth, Plaintiffs attack the City’s policy regarding wet items, wrongly suggesting that the  
13 City will not store any items that are “moist.” Dkt. # 93 at 11. Instead, the City avoids storing  
14 items that are “soaking wet” and cannot be “patted dry” or “dried out during the course of the  
15 clean-up,” because storing such items would cause “molds to grow and spread significantly,”  
16 which would raise health concerns and damage property in storage. ADE Decl. at ¶¶ 15-16, 41,  
17 43; Cowan Rept. at 5, 7-9, 15-16. Wet items also increase the risk of disease transmission.  
18 Cowan Rept. at 12, 15; Dkt. # 110 at ¶ 21. Plaintiffs note that determining whether an item is too  
19 wet can be subjective—but the distinction is important, and the City conducts field training to  
20 promote consistency. *See* ADE Decl. at ¶ 11-12, 17. Moreover, the City’s workers go to great  
21 lengths to salvage items of significance, such as military or identification papers, even when they  
22 are wet. Flevaris Decl., Ex. B at 131:13-21, 133:4-17, 150:22-151:11; Ex. A at 198:18-199:9.  
23 Otherwise, the City lacks the ability to dry soaking wet items found at clean-ups, such as  
24 bedding. Flevaris Decl., Ex. A at 199:10-23; Ex. B at 134:5-8.  
25  
26  
27

1 Seventh, Plaintiffs level various complaints against the City's efforts to facilitate retrieval  
2 of stored property. *See* Dkt. # 93 at 26-27. Plaintiffs suggest that the City fails to provide notice  
3 of storage, but the City's outreach workers and Field Coordinators consistently and exhaustively  
4 offer storage and post written notices whenever unclaimed items have been stored. *See, e.g.,*  
5 Horan Decl. at ¶¶ 8, 31, 39; Lohman Decl. at ¶ 12. Plaintiffs object that a phone is required to  
6 inquire about stored property, *see* Dkt. # 93 at 27, but provide no evidence this is, or ever has  
7 been, an actual barrier. The record shows the opposite, that Plaintiffs and other unhoused persons  
8 have consistent access to phones. *See, e.g.,* Flevaris Decl., Ex. P at 43:24-44:9; Ex. Q at 57:17-  
9 58:17, 92:17-24, 158:17-25; Dkt. # 107 at 3. Finally, Plaintiffs say the City's phone system is  
10 burdensome. *See* Dkt. # 93 at 27. But the City, in its ongoing efforts to improve its process, has  
11 dedicated a separate phone number to these calls, which go directly to a Field Coordinator with  
12 access to the City's inventory logs. ADE Decl. at ¶ 106-07; *see also* Dkt. # 137 at ¶ 10.

15 Eighth, Plaintiffs assert that the City's obstruction, immediate hazard, and emphasis area  
16 rules are overused. *See* Dkt. # 93 at 19. Plaintiffs note, for example, that over 55 percent of  
17 clean-ups during a specific period qualified as obstructions or immediate hazards. *See id.* But  
18 during that period, the City addressed a heightened number of such sites due to the EOC  
19 activation, which provided additional resources for overdue clean-ups. ADE Decl. at ¶ 85. More  
20 recently, the City is conducting fewer clean-ups overall, *see* Flevaris Decl., Ex. A at 79:7-15, and  
21 much fewer are obstructions or immediate hazards, *see* Ex. C at 147:6-148:14; ADE Decl. at ¶  
22 90. Plaintiffs assert the City has acted on "pretense," but the only specific obstructions or hazards  
23 they call into question were at Spokane Street, based on their objection that unhoused persons  
24 had been there for some time. *See* Dkt. # 93 at 19-20. Plaintiffs ignore that distinct incidents  
25 (including a large fire that threatened infrastructure) brought those sites to the City's attention.  
26  
27

1 Clean-ups were immediately necessary to mitigate risk and conduct repairs. *See* Potter Decl. at  
2 ¶¶ 7-14. As to emphasis areas, Plaintiffs do not explain why the City has been unreasonable, nor  
3 do they cite a single instance in which property was lost in an emphasis area. Dkt. # 93 at 21-22.

4 Finally, Plaintiffs make much ado about OCR's report regarding clean-ups it monitored  
5 from September to December 2016. *See* Dkt. # 93 at 9-10, 25. Plaintiffs first point to concerns  
6 raised about subjectivity under the prior MDARs. *See id.* at 9-10. But the City responded to those  
7 concerns with improved training, *see* Potter Decl. at ¶ 20, OCR monitors began to report more  
8 consistency and clarity as monitoring progressed, *see* Flevaris Decl., Ex. R, and the MDARs  
9 have been updated. Plaintiffs also suggest OCR "found that only about two-thirds of sweeps in  
10 2016 were conducted in compliance with the MDARs then in effect." Dkt. # 93 at 25. This is  
11 false. For one thing, OCR's report covered only a four-month period. Moreover, the working  
12 draft Plaintiffs cite indicates only 14 percent of events monitored during the period were halted  
13 for non-compliance. Dkt. # 94-6 at 3. The draft was ultimately revised to ensure accurate and  
14 complete information, and the final report confirms that many of the reasons non-compliance  
15 was found, such as the absence of police, have little or nothing to do with notice or the storage of  
16 property. *See* Potter Decl. at ¶ 21 & Ex. A. Overall, the City brought on OCR specifically to  
17 prevent violations, and clean-ups did not proceed if deficiencies were observed. OCR monitors  
18 have since expressed approval of the City's practices under the new MDARs. Flevaris Decl., Ex.  
19 F. In essence, Plaintiffs are faulting the City for taking steps to ensure the MDARs are followed.

20  
21  
22 In sum, Plaintiffs' various attacks against the City are unwarranted. Plaintiffs fail to  
23 substantiate even isolated incidents of wrongdoing with competent evidence, much less  
24 widespread violations as required to impose liability. *See, e.g., Tieman v. City of Newburgh*, No.  
25 13-CV-4178, 2015 WL 1379652, at \*17 (S.D.N.Y. Mar. 26, 2015) (finding 13 instances of  
26  
27

1 similar excessive force allegations over four-year period were insufficient to show a custom  
 2 because “hundreds, if not thousands, of arrests were made” during that period); *Carter v. D.C.*,  
 3 795 F.2d 116, 123 (D.C. Cir. 1986) (finding no pattern of police misconduct after “cull[ing] out”  
 4 alleged occurrences from actual occurrences, reasoning that the “occurrences are scattered and  
 5 do not coalesce into a discernible ‘policy’”). The limited authority Plaintiffs cite involved starkly  
 6 different circumstances, with actual summary destruction of property. *See Lavan*, 693 F.3d at  
 7 1025 (summary destruction without notice); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1554  
 8 (S.D. Fla. 1992) (no adopted rules and custom of arresting and summarily destroying property);  
 9 *Kincaid v. City of Fresno*, No. 1:06-cv-1445, 2006 WL 3542732, at \*1, 38 (E.D. Cal. Dec. 8,  
 10 2006) (no adopted rules and custom of “immediately seizing and destroying” property without  
 11 adequate notice or a “post-deprivation remedy of any sort”); *Mitchell v. City of Los Angeles*, CV  
 12 16-01750 (C.D. Ca. April 13, 2016) (custom of arresting and destroying property without notice  
 13 or any effort to separate and catalog). Here, the City acts constitutionally by adhering to the  
 14 MDARs and providing meaningful notice, outreach, storage, and delivery.

17 **b. Plaintiffs fail to establish that a City policy was the “moving force”**  
 18 **behind any alleged constitutional deprivation as required by *Monell*.**

19 Plaintiffs also must show that “through its deliberate conduct, the [City’s implementation  
 20 of the MDARs] was the ‘moving force’ behind the injury alleged,” including “a direct causal link  
 21 between the municipal action and the deprivation of federal rights.” *Bd. of Cnty. Comm’rs v.*  
 22 *Brown*, 520 U.S. 397, 404 (1997). This “moving force requirement” requires cause-in-fact and  
 23 proximate cause. *See Van Ort v. Estate of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996).

24 Here, Plaintiffs do not establish that the application of an unlawful City policy was the  
 25 “moving force” behind their alleged injuries. Plaintiffs and their declarants have lost belongings  
 26 often due to their own actions, including (1) ignoring notices and waiting for the day of the  
 27

1 clean-up to move, *see, e.g.*, Dkt. # 138-1 at 23, 170-71; (2) accidentally leaving items behind,  
2 *see, e.g., id.* at 23-28; (3) intentionally leaving items, *see, e.g., id.* at 23, 27; (4) leaving items  
3 without asking that they be preserved, *see, e.g., id.* at 70-71; (5) opting not to store items, *see,*  
4 *e.g., id.* at 168-69; (6) knowingly creating obstructions or immediate hazards, *see* Horan Decl. at  
5 ¶ 13; and (7) refusing shelter, St. Louis Decl. at ¶¶ 19-25. Some declarants, including Plaintiffs  
6 Brandie Osborne and Reavy Washington, also acknowledge that their property might have been  
7 lost due to actions of third parties, including theft. *See* Dkt. # 138-1 at 154-55, 178-79; Flevaris  
8 Decl., Ex. D at 71:2-73:23, 100:24-101:25; Dkt. # 96 at ¶ 14. Overall, to the extent Plaintiffs  
9 have lost property, they have not shown the losses are the result of an unlawful City policy.  
10

11 For the above reasons, Plaintiffs have not shown a likelihood of success on the merits.

12 **B. Plaintiffs have not established the other elements for injunctive relief.**

13 Plaintiffs' motion should be denied also because they cannot meet the remainder of their  
14 burden under *Winter*. Given the absence of any constitutional violation, the Plaintiffs cannot  
15 demonstrate irreparable harm, the second element for injunctive relief. *See, e.g., Hale v. Dept. of*  
16 *Energy*, 806 F.2d 910, 918 (9th Cir. 1986); *Acosta*, 2016 WL 1446781, at \*8. Plaintiffs may  
17 allege harm from clean-ups in general, but they fail to tie such harm to an unconstitutional  
18 practice. *See* Dkt. # 93 at 29-30. The City's outreach efforts and offers of alternative shelter  
19 further mitigate any prospect of irreparable harm. *See, e.g., Martin*, 2015 WL 5826822, at \*7.  
20

21 The balance of equities also tips sharply in favor of the City. The City respects and  
22 accommodates Plaintiffs' property rights, most notably by providing notice and an opportunity  
23 for retrieval. The City also specifically invited the Plaintiffs to give input on the MDARs prior to  
24 their adoption. *See* Dkt. # 134 at ¶ 10. In contrast, Plaintiffs and their declarants have refused or  
25 abused the City's offers of alternative shelter, *see* St. Louis Decl. at ¶¶ 21-23, 25; ignored the  
26  
27

1 City's invitation to help shape the MDARs, *see* Dkt. # 134 at ¶ 10; submitted exaggerated and  
 2 inaccurate declarations to this Court, *see supra*, at 22-24; and are using this lawsuit as a way to  
 3 pressure the City to "stop the sweeps," *see supra*, at 12-13. Under the circumstances, the equities  
 4 favor the City's ongoing, good faith efforts.

5  
 6 Finally, the City here is acting in the public interest. *See Veterans for Peace Greater*  
 7 *Seattle, Chapter 92 v. City of Seattle*, No. C09-1032 RSM, 2009 WL 2243796, at \*5 (W.D.  
 8 Wash. July 24, 2009) (noting encampments implicate "several compelling interests" and the City  
 9 has "a substantial interest in protecting its public spaces"). The City is responding to a genuine  
 10 crisis. *See supra*, at 2-4. The Court should defer to government officials' "specific, predictive  
 11 judgments about how [a] preliminary injunction would reduce the effectiveness" of their  
 12 programs. *Winter*, 555 U.S. at 27; *see* Dkt. # 47 at ¶ 7-8; Dkt. # 44 at ¶¶ 20-25; Dkt. # 48 at ¶ 6.

#### 13 14 IV. MOTION TO STRIKE

15 The City respectfully requests that this Court strike or otherwise not consider the  
 16 inadmissible testimony that persists across nearly every declaration Plaintiffs have filed. While  
 17 courts may consider inadmissible evidence at the preliminary injunction phase, they do so when  
 18 there has been "limited factual development" due to exigent circumstances. *Herb Reed Enters.,*  
 19 *LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013). Here, after the  
 20 Court denied Plaintiffs' motion for a temporary restraining order, an extensive factual record has  
 21 been developed over months of discovery. Yet, Plaintiffs continue to rely extensively on  
 22 inadmissible evidence, including hearsay and testimony without personal knowledge.<sup>7</sup> The Court  
 23 should not grant relief based on this evidence.  
 24

#### 25 V. CONCLUSION

26 For the above reasons, the City respectfully requests the motion be denied.

27 <sup>7</sup> A list of inadmissible testimony in Plaintiffs' declarations is attached as **Exhibit V** to the Flevaris Declaration.

1 DATED this 7<sup>th</sup> day of August, 2017.

2  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of August, 2017, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to the following:

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Dated this 7<sup>th</sup> day of August, 2017.



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