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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LISA HOOPER, BRANDIE OSBORNE,  
individually and on behalf of a class of  
similarly situated individuals; EPISCOPAL  
DIOCESE OF OLYMPIA, REAL CHANGE,

Plaintiffs,

vs.

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

Defendants.

No. 2:17-cv-00077

**MOTION FOR CLASS CERTIFICATION**

**NOTE ON MOTION CALENDAR:  
FEBRUARY 17, 2017**

**I. INTRODUCTION**

Plaintiffs seek an order certifying and authorizing them to represent a class consisting of all unhoused people<sup>1</sup> who live outside<sup>2</sup> within the City of Seattle, Washington and who keep

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<sup>1</sup> “Unhoused” refers to all individuals who lack fixed, stable, or adequate shelter or housing. While the term “homeless” is often utilized to refer to this population, we use the term “unhoused” because people who lack permanent or stable housing still have homes in which they sleep and go about their private affairs.

<sup>2</sup> “People who live outside” includes all Seattle residents who lack fixed, regular, or adequate shelter and who, for at least part of the year, sleep and keep their belongings outdoors.

1 their personal possessions on public property. The proposed class and action meets all of the  
2 requisites for class certification under Rule 23 of the Federal Rules of Civil Procedure.

3 The City of Seattle (the “City”) and the Washington State Department of Transportation  
4 (“WSDOT”) have an ongoing policy and practice of unconstitutionally seizing and destroying  
5 the personal property of people living outside in what are commonly referred to as “sweeps.”  
6 For years, Defendants have conducted these sweeps sporadically, unpredictably, and with utter  
7 disregard of even their own regulations. In the hundreds if not thousands of sweeps conducted  
8 across the City in recent years, Defendants have failed to follow any consistent procedure with  
9 regards to the provision of notice to people living outside of impending sweeps, the disposal or  
10 storage of property, or a meaningful opportunity for people to reclaim their belongings. Rather,  
11 Defendants frequently intentionally and summarily seize and/or destroy personal property and  
12 possessions within a targeted area, without a warrant or probable cause, without providing  
13 adequate and effective notice, without affording an opportunity to be heard, and without  
14 providing a meaningful opportunity for people to retrieve their belongings.

15 These sweeps are conducted pursuant to official policies established by Defendants,  
16 ratified and approved of by policymakers for Defendants, and carried out openly and  
17 notoriously with the explicit and public support of Defendants. Just as such state action would  
18 be unconstitutional if carried out against a homeowner living in a brick and mortar house, so  
19 too is it unconstitutional when carried out against an unhoused person living in a tent outside.

20 Plaintiffs allege that the City’s policies and practices violate their state and federal  
21 constitutional rights and the rights of similarly situated unhoused Seattle residents living  
22 outside. Defendants’ unlawful conduct results in the same legal violations against all class  
23 members. Further, Defendants’ conduct has caused and will continue to cause long-lasting and  
24 on-going serious irreparable injury to Plaintiffs and the proposed class.

1 Proposed class representatives are two unhoused women who currently live outside on  
2 public property in the City. Both have been victims of Defendants' ongoing practice and policy  
3 and have suffered substantial injury and damages because of it. Both of the class representatives  
4 have already suffered property loss as a direct result of Defendants' sweeps. Both class  
5 representatives will be unhoused, live outside, and maintain their possessions on public property  
6 for the foreseeable future. Both live in constant—and eminently reasonable—fear that  
7 Defendants will seize and destroy what property they have remaining. And both are at  
8 imminent risk of irreparable harm caused by Defendants' official policy and practice of  
9 conducting sweeps. Their experience is typical of the class of unhoused people living outside  
10 that they seek to represent.

11 Certification of this class is appropriate under Rule 23(a) and 23(b)(2). The Class,  
12 which encompasses approximately 2,000 individuals living outside, is so numerous that joinder  
13 of all members is impracticable. The claims of the named Plaintiffs and Class members are  
14 based on a common course of conduct: Defendants' removal and destruction of personal  
15 property without adequate and effective notice, an opportunity to be heard, or a meaningful  
16 opportunity for people to retrieve their belongings. This common course of conduct raises  
17 issues of fact and law that should be resolved on a Class-wide basis. Plaintiffs' claims are  
18 typical of the claims of the Class because all claims arise from the same policies and practices  
19 and are based on the same legal and equitable theories. Plaintiffs and their counsel will  
20 adequately represent the interests of the Class. Finally, Defendants have acted or refused to act  
21 on grounds that apply generally to the Class, making final injunctive relief and declaratory relief  
22 appropriate to the class as a whole.

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## II. FACTUAL BACKGROUND

### A. The City's Homeless Population

According to the Seattle/King County Coalition on Homelessness (“SKCCH”), at least 2,942 Seattle residents lack fixed, regular, or adequate housing or shelter.<sup>3</sup> Of this population, approximately 900 individuals have a vehicle to provide some shelter from the elements and protection from intruders; the remaining 2,000 have no shelter but what they can build for themselves or find in the form of existing structures such as under roadways, in doorways, and in parking garages.

Seattle residents who live outside often build their homes and maintain their possessions on public property by necessity. These homes are made out of tents, tarps, blankets, and other materials to create safe, dry, and private shelter. Like any home, they also generally house all of their owner's worldly possessions, including phones and other electronics; medication, hearing aids, respirators, wheel chairs, and canes; blankets, sleeping bags, and clothing; cookware, eating utensils and food; identification and immigration or court documents; bikes or other modes of transportation; tools for one's profession; schoolbooks and materials; and family photos and mementoes. Because a person living outside must limit everything they own to the items they are able to transport to and fit within their home outside, the vast majority of their belongings are critical to their survival, necessary to go about their daily activities, and/or of particular psychological value.

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<sup>3</sup> This figure is often referred to as the “unsheltered” population. Like any estimates regarding unhoused populations, this figure is assumed to be an undercount, as it excludes numerous individuals who have taken great care to remain invisible to protect their safety and privacy, as well as those residing in areas volunteers cannot get to or affirmatively choose not to visit. This figure, for example, exclude potentially hundreds of people living outside on the East Duwamish Greenbelt, also known as the Jungle, an area which was deliberately not counted in 2016. This number is also generally expected to be higher in warmer months, when seasonal shelter bed spaces close.

1 Like all Seattle residents, unhoused people also often choose to live near and among  
2 other people, in communities. These communities (often referred to as encampments) offer an  
3 increased sense of safety, community, and stability. Once an unhoused individual has chosen  
4 an area to live and build their home, they frequently stay in their place of residency for many  
5 months, or even years.

6 **B. Defendants Have an Ongoing Policy and Practice of Unconstitutionally**  
7 **Confiscating and Destroying the Personal Property of People Living Outside**

8 Defendants have a longstanding and ongoing policy and practice of forcibly seizing and  
9 destroying the property of people living outside. These sweeps have been ongoing for decades  
10 and are conducted only on public property where Seattle's unhoused residents live. Since  
11 November 2, 2015, when the City Mayor, Edward Murray, declared a State of Emergency on  
12 homelessness, the City and WSDOT have conducted approximately 600 sweeps, averaging  
13 nearly 11 sweeps each week. These sweeps are carried out by the City and/or WSDOT  
14 personnel, overseen by City and/or WSDOT personnel, and conducted pursuant to policies  
15 approved by Defendants' most senior decision makers.

16 The sweeps are officially governed by policies that have been in place since 2008 and  
17 are still in effect: the Multi-Departmental Administrative Rules 08-01 ("MDAR"; adopted by  
18 the City), and the Guidelines to Address Illegal Encampments ("WSDOT Guidelines"; adopted  
19 by WSDOT). These official policies fail on their face to provide requisite procedural  
20 safeguards to ensure that the rights of people living outside are not violated when a sweep is  
21 conducted. For example, although they contain some requirements regarding notice Defendants  
22 must provide before seizing and/or destroying property, they contain so many exceptions as to  
23 render the requirements meaningless. Further, Defendants' policies contemplate on their face  
24 arbitrary enforcement and unbridled employee discretion, and lack meaningful oversight and  
enforcement mechanisms.

1 As a result, Defendants have a well-documented and ongoing policy and practice of  
2 repeatedly violating their own rules. Defendants conduct sweeps inconsistently, sporadically,  
3 unpredictably, and with complete indifference to their own regulations.

4 Defendants routinely conduct sweeps without providing adequate or effective notice.  
5 Notice of a sweep is frequently provided less than 72 hours in advance and sometimes after the  
6 fact. Notice that is provided is often inadequate, inconsistent, inaccessible, and/or misleading.  
7 For example, a notice may state a date of the month that conflicts with the day of the week  
8 identified, leaving a reader to guess when the sweep might take place. Notices often describe  
9 very generic areas such as merely giving a street name, leaving a reader to guess where the  
10 sweep will take place. Notices are often posted in inconspicuous areas. Defendants make  
11 minimal to no accommodations to reach people who cannot read English or have other known  
12 difficulties in understanding their signs. Further, Defendants frequently conduct sweeps at  
13 different dates and times than the dates or times listed on the notice.

14 In just the past year, Defendants have conducted numerous sweeps wherein they have  
15 intentionally and indiscriminately removed or destroyed the possessions of people living  
16 outside in the area, making no effort to distinguish between obviously important, valuable, and  
17 un-abandoned property, and anything that could legitimately regarded as trash. Defendants  
18 have used backhoes and bulldozers to remove and destroy property indiscriminately; have  
19 slashed or smashed the tents and tarps of people living outside; and have piled personal property  
20 together with garbage and dumped it immediately into garbage trucks, where it is crushed and  
21 taken off site for disposal.

22 Defendants engage in this removal and destruction of property without a warrant or  
23 probable cause, or permission from the property owners. Defendants do not afford any  
24 opportunity for people living outside to contest the confiscation and destruction of their

1 property and even prohibit people from trying to save the property of their neighbors. People  
2 who return to find their belongings seized are not given any notice as to whether their property  
3 was placed into storage, where their property is, or how to retrieve their property.

4 On the rare occasion Defendants store rather than immediately destroy the property of  
5 people living outside, they routinely and as an officially sanctioned practice fail to observe  
6 appropriate procedures regarding the storage of property. Defendants consistently fail to notify  
7 people whose belongings they have confiscated whether their property has been destroyed or  
8 stored, where it is stored, and how they might reclaim it. Defendants frequently fail to take  
9 detailed inventory of property they are storing, and often offer inquiring individuals inconsistent  
10 or limited information.

11 This conduct is not only a violation of their own policies, but a violation of the  
12 constitutional rights of people living outside. Defendants' sweeps have caused plaintiffs and  
13 members of the class serious irreparable harm and places them at imminent risk of suffering  
14 additional such injury. As a direct result of Defendants' conduct, people living outside have  
15 been deprived of belongings critical to their survival, necessary for their daily activities, and  
16 irreplaceable heirlooms and mementos with significant personal value. Furthermore,  
17 Defendants' sweeps displace unhoused residents from their homes and communities, shifting  
18 them around the City without any information as to where they might be able to safely live and  
19 store their belongings. The forced displacement of Seattle residents and removal and  
20 destruction of their belongings is ineffective, worsens conditions for people living outside, and  
21 makes it more difficult for unhoused people to break the cycle of homelessness.

22 **III. AUTHORITY AND ARGUMENT**

23 Because Defendants are acting or refusing to act on grounds generally applicable to all  
24 people living and keeping their property outside on public grounds, declaratory and injunctive

1 relief are appropriate for the proposed Class as a whole. Accordingly, Plaintiffs respectfully  
 2 request that the Court certify the following individuals as a class pursuant to Rule 23(b)(2): all  
 3 unhoused people who live outside within the City of Seattle, Washington and who keep their  
 4 personal possessions on public property.

5 **A. Plaintiffs Satisfy the Requirements for Class Certification Under Rule 23(a)**

6 “The decision to grant or deny class certification is within the trial court’s discretion.”  
 7 *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir. 2010). In order to grant  
 8 class certification, the Court “must be satisfied, ‘after a rigorous analysis,’ that the prerequisites  
 9 of Rule 23(a) are met and that the class fits within one of the three categories of Rule 23(b).”  
 10 *Unthaksinkun v. Porter*, C11-0588JLR, 2011 WL 4502050, at \*6 (W.D. Wash. Sept. 28, 2011)  
 11 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. 2541, 2551, 180 L.Ed.2d 374  
 12 (2011)).

13 However, when certifying a class, the Court does not evaluate the strength of the claims;  
 14 rather “[a]ny inquiry into the merits . . . should be limited to determining whether the  
 15 requirements of Rule 23 are met and ‘may not go so far . . . as to judge the validity of the  
 16 claims.’” *Id.* (quoting *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. &*  
 17 *Serv. Workers Int’l Union v. ConocoPhillips Co.*, 593 F.3d 802, 808 (9th Cir. 2010).

18 To establish the requirements of Fed. R. Civ. P. 23 (a), Plaintiffs must show:

- 19 (1) that the class is so large that joinder of all members is impracticable (numerosity);  
 20 (2) that there are one or more common questions of law or fact common to the class  
 21 (commonality); (3) that the named parties’ claims are typical of the class (typicality);  
 and (4) that the class representatives will fairly and adequately protect the interests of  
 other members of the class (adequacy of representation).

22 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 980 (9th Cir. 2011). For the reasons set forth  
 23 below, Plaintiffs satisfy each of these.<sup>4</sup>

24 <sup>4</sup> The class of plaintiffs described is also plainly definable and identifiable by objective criteria and  
 appropriate for certification as an injunctive class under Rule 23(b)(2). *See, e.g., Lyon v. United States*

1           1.       Plaintiffs Satisfy the Numerosity Requirement

2           First, Plaintiffs satisfy the numerosity requirement of Rule 23(a), as the proposed class  
3 is “so numerous that joinder of all members is impracticable.” “[I]mpracticability’ does not  
4 mean ‘impossibility,’ but only the difficulty or inconvenience of joining all members of the  
5 class.” *Harris v. Palm Springs Alpine Est., Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (citation  
6 omitted). “The party seeking certification need not identify the precise number of potential  
7 class members.” *Garrison v. Asotin County*, 251 F.R.D. 566, 569 (E.D. Wash. 2008). However,  
8 numerosity has been held presumptively satisfied when a proposed class comprises forty or  
9 more members. *See McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan &*  
10 *Trust*, 268 F.R.D. 670, 673-74 (W.D. Wash. 2010) (citing cases).

11           Numerosity may also be established when class members may be difficult to locate  
12 and/or where the class is likely to contain as yet unknown future members. *Id.* at 1319-20; *Ali*  
13 *v. Ashcroft*, 213 F.R.D. 390, 408-09 (W.D. Wash. 2003), *aff’d*, 346 F.3d 873, 886 (9th Cir.  
14 2003), *vacated on other grounds*, 421 F.3d 795 (9th Cir. 2005) (citations omitted) (“‘where the  
15 class includes unnamed, unknown future members, joinder of such unknown individuals is  
16 impracticable and the numerosity requirement is therefore met,’ regardless of class size.”).

17           Here, the number of putative Class members makes joinder impracticable, if not  
18 impossible. At any given time, there are at least 2,942 people in the City limits without fixed,  
19 regular, or adequate housing or shelter, and at least 2,000 of these Seattle residents live outside.  
20 The demographics of the particular class further underscore the impossibility of joinder:  
21 homeless people by definition lack the financial means to pursue individual litigation and are  
22 transient. In fact, Defendants’ actions have made this community even more transient as

23 \_\_\_\_\_  
24 *Immigration & Customs Enft*, 300 F.R.D. 628, 635 (N.D. Cal. 2014), modified sub nom. *Lyon v. U.S.*  
*Immigration & Customs Enft*, 308 F.R.D. 203 (N.D. Cal. 2015) (finding that a proposed class of persons  
consisting of “[a]ll current and future immigration detainees who are or will be held by ICE” at a  
particular location was sufficiently definable for certification).

1 members of the putative class are now forced to move frequently and without warning in  
2 response to the sweeps. Further, the class contains unknown members—those who will be  
3 subject to Defendants’ policies and practices if they are not enjoined from continuing their  
4 unlawful sweeps. Defendants have conducted approximately 600 sweeps since November 2,  
5 2015. These sweeps have taken place across the City, sporadically and with minimal  
6 predictability. Under these circumstances, joinder of all individual members is impractical and  
7 the numerosity requirement is satisfied.

8 2. The Class Presents Common Questions of Law and Fact

9 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.”  
10 Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate that the class  
11 members have suffered the same injury.” *Unthaksinkun*, 2011 WL 4502050, at \*12 (quoting  
12 *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. at 2551 (internal marks omitted). ““The class  
13 members’ ‘claims must depend upon a common contention,’” and that common contention  
14 “must be of a nature that is it capable of classwide resolution—which means that determination  
15 of its truth or falsity will resolve an issue that is central to the validity of each one of the claims  
16 in one stroke.”” *Id.* (quoting *Dukes*, 564 U.S. at 2251).

17 It is not necessary that members of the proposed class “share every fact in common or  
18 completely identical legal issues.” *Rodriguez v. West Publ. Corp.*, 563 F.3d 948, 1122 (9th Cir.  
19 2009). Rather, the “existence of shared legal issues with divergent factual predicates is  
20 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the  
21 class.” *Hamlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). *See also Doe v. Los*  
22 *Angeles Unified Sch. Dist.*, 48 F. Supp. 2d 1233, 1241 (C.D. Cal. 1999) (“[C]ommonality exists  
23 if plaintiffs share a common harm or violation of their rights, even if individualized facts  
24 supporting the alleged harm or violation diverge.”). In this context, one shared legal issue can

1 be sufficient. *See e.g., Walters v. Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998) (“What makes the  
2 plaintiffs’ claims suitable for a class action is the common allegation that the INS’s procedures  
3 provide insufficient notice.”); *Rodriguez*, 591 F.3d at 1122 (“[T]he commonality requirements  
4 asks us to look only for some shared legal issue or a common core of facts.”).

5 The commonality standard is even more liberal in suits such as this one, challenging a  
6 government policy that deprives a large number of individuals of their constitutional rights. *See*  
7 *Parsons v. Ryan*, 754 F.3d 657, 678, 681 (9<sup>th</sup> Cir. 2014) (affirming certification of a Rule  
8 23(b)(2) class of prisoners seeking injunctive and declaratory relief, noting that “numerous  
9 courts have concluded that the commonality requirement can be satisfied by proof of the  
10 existence of systemic policies and practices that allegedly expose inmates to a substantial risk  
11 of harm), *reh’g en banc denied*, 784 F.3d 571 (2015).

12 In this case, proposed class members share a number of common questions of fact and  
13 law, including but not limited to (1) whether Defendants have a practice and policy of seizing  
14 and destroying the personal property of people living outside without a warrant, probable cause,  
15 adequate notice, an opportunity to have a meaningful pre- or post-deprivation hearing, or an  
16 opportunity to retrieve vital personal property before its seizure or destruction; (2) whether  
17 Defendants’ policy and practice violates Plaintiffs’ constitutional rights against unreasonable  
18 search and seizures under the U.S. Constitution; (2) whether Defendants’ custom, policy, or  
19 practice violates class members’ right to privacy under Article I, Section 7 of the Washington  
20 State Constitution; and (3) whether Defendants’ custom, policy, or practice violates class  
21 members’ constitutional rights to due process under the U.S. Constitution; and (4) whether  
22 Defendants’ custom, policy, or practice violates class members’ constitutional rights to due  
23 process under Article I, Section 3 of the Washington State Constitution.  
24

1           3.       Plaintiff's Claims are Typical of the Class

2           Plaintiffs also satisfy the typicality requirement. Typicality is satisfied if “the claims or  
3 defenses of the representative parties are typical of the claims or defenses of the class.” Fed.  
4 R. Civ. P. 23(a)(3). “The purpose of the typicality requirement is to assure that the interest of  
5 the named representatives aligns with the interests of the class.” *Hanon v. Dataproducts Corp.*,  
6 976 F.2d 497, 508 (9th Cir. 1992). “It is not necessary that the class representatives’ injuries  
7 be identical to all class members’ injuries, ‘only that the unnamed class members have injuries  
8 similar to those of the named plaintiffs and that the injuries result from the same, injurious  
9 course of conduct.’” *Unthaksinkun*, 2011 WL 4502050, at \*13 (quoting *Armstrong v. Davis*,  
10 275 F.3d 859, 869 (9th Cir. 2011), *abrogated on other grounds by Johnson v. California*, 543  
11 U.S. 499, 504-05 (2005)).

12           Similar to commonality, factual differences among class members do not defeat  
13 typicality provided there are legal questions common to all class members. *LaDuke v. Nelson*,  
14 762 F.2d 1318, 1332 (9th Cir. 1985) (“The minor difference in the manner in which the  
15 representative’s Fourth Amendment rights were violated does not render their claims atypical  
16 of those of the class.”); *Smith v. Univ. of Wash. Law Sch.*, 2 F. Supp. 2d 1324, 1342 (W.D.  
17 Wash. 1998) (“When it is alleged that the same unlawful conduct was directed at or affected  
18 both the named plaintiff and the class sought to be represented, the typicality requirement is  
19 usually satisfied, irrespective of the varying fact patterns which underlie individual claims.”)  
20 (citations omitted).

21           Plaintiffs’ claims here are typical of the claims of the proposed Class. Each of the  
22 individual named Plaintiffs lives in imminent danger that her property will be seized and  
23 destroyed by Defendants because she lives outside. Moreover, all of Plaintiffs’ claims are based  
24 on the same legal and equitable legal theories. The named Plaintiffs and Class members seek

1 the same declaratory and injunctive relief. The prosecution of individual actions against the  
2 Defendants by individual class members would create a risk of inconsistent and varying  
3 adjudications, which would result in variable standards of conduct for Defendants. Further,  
4 Plaintiffs and Class members will continue to suffer from Defendants' policies and practices  
5 until this Court grants relief on a class-wide basis. For these reasons, the typicality element is  
6 satisfied.

7 4. The Named Plaintiffs Will Adequately Protect the Interests of the Proposed  
8 Class, and Counsel Are Qualified to Litigate this Action.

9 The named Plaintiffs and their counsel will fairly and adequately protect the interests of  
10 the Class. Rule 23(a)(4) requires that "representative parties will fairly and adequately protect  
11 the interests of the class." In order to make that determination, the Court must "resolve two  
12 questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other  
13 class members and (2) will the named plaintiffs and their counsel prosecute the action  
14 vigorously on behalf of the class?" *Ellis v. Costco Wholesale Corp.*, 657 F.3d at 985 (internal  
15 quotation marks and citation omitted). Courts also consider the "class counsel's ability to  
16 adequately represent the class and absent class members." *Radcliffe v. Experian Info. Solutions*  
17 *Inc.*, 715 f.3d 1157, 1165-69 (9th Cir. 2013). With respect to the adequacy of counsel, the Court  
18 considers the work counsel has done to investigate the claims of the proposed Class, counsel's  
19 experience in handling complex cases, counsel's knowledge of applicable law, and the  
20 resources counsel will commit to representing the Class. Fed. R. Civ. P. 23(g)(1)(A). Rule  
21 23(a)(4) "is satisfied as long as one of the class representatives is an adequate class  
22 representative." *Rodriguez v. West Publ. Corp.*, 563 F.3d 948, 961 (9th Cir. 2009).

23 In this case, none of the named Plaintiffs have interests in conflict with the Class; they  
24 all share a common interest in a remedy that will prevent further violations of their rights under  
the U.S. and Washington State Constitutions. The Class representatives represent a typical

1 cross section of unhoused people in Seattle who are at imminent risk of property destruction  
2 caused by Defendants' policies and practices. Class Representatives have lived in areas that  
3 Defendants have swept on multiple occasions in the past year and are at imminent risk of being  
4 swept again absent Court intervention. Class Representatives have had to move numerous  
5 times, live in constant fear, and cannot leave their property unattended to go about their daily  
6 lives. Class Representatives have lost property as a result of Defendants' refusal to provide  
7 adequate and effective notice before conducting a sweep. Class Representatives have had to  
8 scramble to pack and move many of their possessions, and have had to leave a number of their  
9 belongings behind or risk losing everything. The property left behind out of necessity was  
10 seized and destroyed by Defendants. Class Representatives have also suffered and will continue  
11 to suffer serious emotional harm as a result of Defendants' conduct.

12 Further, Plaintiffs seek to ensure that the Defendants stop all sweeps until they have  
13 adopted and implemented policies to ensure that the constitutional rights of homeless people  
14 are protected when a sweep is conducted. Plaintiffs have affirmed their commitment and  
15 interest in prosecuting this action vigorously on behalf of the Class, and to ensure that they and  
16 other similarly situated homeless residents will no longer be subjected to Defendants' unlawful  
17 and degrading conduct. Because all Plaintiffs are adequate representatives of the Class, they  
18 meet the criteria for Rule 23(a)(4).<sup>5</sup>

19 a. Counsel

20 The adequacy of Plaintiffs' counsel is also satisfied here. Plaintiffs are represented by  
21 the American Civil Liberties Union of Washington Foundation (ACLU-WA), an organization

22  
23 <sup>5</sup> In addition to the individual Plaintiffs and the proposed Class, the Episcopal Diocese of Olympia and  
24 Real Change join this lawsuit as organizational plaintiffs devoted to assisting the homeless in the City  
of Seattle and who seek relief on behalf of their constituencies. The Episcopal Diocese of Olympia and  
Real Change have experienced increased burden on their facilities and services as a result of Defendants'  
unconstitutional seizure and destruction of the property of unhoused persons.

1 with extensive experience in civil-rights and class-action litigation. ACLU-WA has been  
2 appointed as class counsel in numerous actions and has successfully litigated cases in both state  
3 and federal courts, often on behalf of hundreds of thousands of individuals. *See* Declaration of  
4 Emily Chiang. Plaintiffs are also represented by the law firm of Corr Cronin Michelson  
5 Baumgardner Fogg & Moore LLP (“Corr Cronin”). Corr Cronin attorneys have extensive  
6 experience in litigation, including class action lawsuits. *See* Declaration of Todd Williams. In  
7 this case, Plaintiffs’ counsel have worked extensively to investigate the claims, are dedicated  
8 to prosecuting the claims of the Class, and have the resources to do so. Plaintiffs’ counsel will  
9 vigorously represent both the named and absent Class members.

10 **B. This Action Satisfies the Requirements of Rule 23(b)(2) of the Federal Rules of**  
11 **Civil Procedure**

12 This action also satisfies the requirements of Rule 23(b). After satisfying the four  
13 prerequisites of Fed. Civ. R. 23(a), the proposed class must also satisfy one of the three  
14 conditions of Rule 23(b). *Rodriguez*, 591 F.3d at 1122.

15 1. Class Certification Under Rule 23(b)(2) is Appropriate

16 Here, Plaintiffs seek certification under Rule 23(b)(2), which “requires ‘that the primary  
17 relief sought is declaratory or injunctive.’” *Id.* at 1125 (citations omitted). “The rule does not  
18 require [the court] to examine the viability or bases of class members’ claims for declaratory  
19 and injunctive relief, but only to look at whether class members seek uniform relief from a  
20 practice applicable to all of them.” *Id.* Rule 23(b)(2) was specifically designed for cases  
21 challenging a common course of conduct. *See* Fed. R. Civ. P. 23 advisory committee’s note to  
22 1966 Amendment, Subdivision (b)(2) (noting “various actions in the civil-rights field” are  
23 appropriate for (b)(2) certification); 7A Wright & Miller, Federal Practice & Procedure § 1775,  
24 at 71 (3d ed. 2005).

1           “The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory  
2 remedy warranted—the notion that the conduct is such that it can be enjoined or declared  
3 unlawful only as to all of the class members or as to none of them.” *Unthaksinkun*, 2011 WL  
4 4502050, at \*15 (quoting *Dukes*, 131 S. Ct. at 2557). “In other words, Rule 23(b)(2) applies  
5 only when a single injunction or declaratory judgment would provide relief to each member of  
6 the class.” *Id.* (quoting *Dukes*, 131 S. Ct. at 2557). “The fact that some class members may  
7 have suffered no injury or different injuries from the challenged practices does not prevent the  
8 class from meeting the requirements of Rule 23(b)(2).” *Rodriguez*, 591 F.3d at 1125. Rather,  
9 “‘it is sufficient’ to meet the requirements of Rule 23(b)(2) that ‘class members complain of a  
10 pattern or practice that is generally applicable to the class as a whole.’” *Id.* (quoting *Walters v.*  
11 *Reno*, 145 F.3d 1031, 1047 (9th Cir. 1998)).

12           This action meets the requirements of Rule (b)(2). First, the fact that class  
13 representatives seek injunctive and declaratory relief against illegal practices and procedures  
14 makes it particularly well suited for certification. *See Amchem Prods., Inc. v. Windsor*, 521  
15 U.S. 591, 614 (1997) (“Civil rights cases against parties charged with unlawful, class-based  
16 discrimination are prime examples” of Rule 23(b)(2) cases). Plaintiffs challenge Defendants’  
17 unconstitutional policy and practice of seizing and destroying Class members’ property without  
18 adequate notice or procedural safeguards and seek necessary and injunctive relief that would  
19 apply to all similarly situated persons. Plaintiffs in turn seek injunctive and declaratory relief  
20 regarding Defendants’ actions undertaken pursuant to the common policies and procedures  
21 applicable to all homeless individuals residing outside in Seattle.

22           An injunction enjoining Defendants from confiscating and destroying class members’  
23 belongings without a warrant, probable cause, adequate notice, an opportunity to have a  
24 meaningful pre- or post-deprivation hearing, or an opportunity to retrieve vital personal

1 property before its seizure or destruction would provide relief to each member of the Class by  
2 protecting those who would otherwise be subject to the City's policies and procedures in the  
3 future. Similarly, a declaratory judgment finding that Defendants violated or would violate  
4 federal and state law by confiscating and destroying Class members' personal property without  
5 a warrant, probable cause, adequate notice, an opportunity to have a meaningful pre- or post-  
6 deprivation hearing, or an opportunity to retrieve seized property would also provide relief to  
7 each class member. Hence, the requirements of Rule 23(b)(2) are met.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs respectfully request that this Court grant this  
10 Motion and enter the attached order certifying the proposed Class pursuant to Rule 23(b)(2);  
11 appoint Lisa Hooper and Brandie Osborne as Class representatives; and appoint the American  
12 Civil Liberties Union of Washington Foundation and Corr Cronin Michelson Baumgardner  
13 Fogg & Moore LLP as Class counsel.

14 DATED this 20th day of January, 2017.

15 AMERICAN CIVIL LIBERTIES UNION  
16 OF WASHINGTON FOUNDATION

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