

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

De-Occupy Honolulu;
Catherine Russell;
Christopher Smith;
Andrew Smith;
Madori Rumpungworn; and
John Does 1-50,

Plaintiffs,

vs.

City and County of Honolulu;
Westley Chun, in his personal and
official capacity;
Trish Morikawa, in her personal and
official capacity;
Larry Santos, in his personal and official
capacity; and
John Does 1-50 in their personal and
official capacities.

Defendants.

CASE NO. 1:12-cv-000668

DECLARATION OF PLAINTIFF
CHRISTOPHER SMITH

DECLARATION OF PLAINTIFF CHRISTOPHER SMITH

1. My name is Christopher Smith. I am a plaintiff in the above-styled case.
2. On December 19, 2012, I was informed that a number of items were “tagged” at Thomas Square and pursuant to Chapter 29, Article 19 of the Revised Ordinances of Honolulu.
3. On December 20, 2012, I was present and videotaped a raid at Thomas Square. Numerous City employees and HPD officers appeared with a bulldozer and a garbage truck. **Exhibit One** at 2:33. City Workers roped off an area far beyond ten feet of any tagged property that was to be seized. **Exhibit Two** at 5:15.
4. The City workers began to break down a gold-colored tent without first making any effort to identify the owner and allow the owner to retrieve the property inside the tent. **Exhibit One** at 5:47. I confronted the worker who appeared to be the supervisor and told him that the Order to which the parties in this suit have agreed requires the City to attempt to identify the owner and allow removal of the items. **Exhibit One** at 6:05. Only after I confronted him and after the tent was already being seized along with its contents, the City Worker asked if anyone was claiming ownership. **Exhibit One** at 6:25.
5. I left the immediate vicinity and when I returned, I noticed the City Workers were seizing a blue tent that was beside the gold-colored tent. I again confronted the workers and one of them told me that nobody claimed ownership. This

incident occurs at 8:20 to 10:15 on the video attached as **Exhibit One**. However, another De-Occupy member videotaped the seizure of the blue tent. **Exhibit Two**. A City Worker opened, entered, and rummaged through the property of the blue tent without attempting to identify the owner and without providing anyone the opportunity to claim the items within the blue tent. **Exhibit Two** at 7:06, 9:38.

6. The tents were not disassembled before being placed in the bins. Instead, the canvas and poles were stuffed into the bins without regard to whether the poles would be damaged. **Exhibit Two** at 8:05 shows the gold tent with its poles still in place and appearing broken. It is stuffed into the bins at 9:23 at **Exhibit Two**. The blue tent receives the same treatment at 10:40 to 10:57 at **Exhibit Two**.

7. A paint can that had not been tagged was also seized. **Exhibit One** at 12:10; **Exhibit Two** at 13:45. This paint had been used by various De-Occupy members to create signs used in the expression of protected speech. I confronted the supervisor about the seizure of the untagged paint can. **Exhibit One** at 13:13. The supervisor said that he had personally tagged the can the day before. **Exhibit One** at 13:30. However, the day before, the paint can had been inside one of the, at that time “untagged”, tents. Thus, if he had tagged the paint can, he entered an untagged without a warrant to do so. If he did not enter the tent the day before, untagged property was seized. No bin number was left on the notice. **Exhibit Three**, Notices.

8. I had several chairs and a table that I had made into a sign. Those items had been tagged the day before. De-Occupy members and I were using those chairs and table to disseminate protected speech. Although I stopped using the chairs in order to record the raid, others continued to use the chairs to view the raid. Those items were seized at the raid. The items were not placed in bins and, accordingly, no bin numbers were left on the notices. **Exhibit One; Exhibit Three.**

9. After recording the raid for 24:40, the supervisor informed me that he had no court order governing the raid. I turned my video recorder off to review the court order with him. **Exhibit Two** at 32:30. The supervisor informed that he did not know about any Order, that he was not held to any Order, and essentially, that he did not care what the Order said.

10. Nevertheless, I continued to observe the raid, which is memorialized in a continuing video by another De-Occupy member and, as cited above, is attached as **Exhibit Two.**

11. I also saw that the City had tagged various bicycles on December 19, 2012. Chapter 29, Article 19 specifically excepts bicycles from the definition of personal property. ROH § 29-19.2 (“The term shall not include any vehicle as defined in HRS Section 291C-1 . . .”); Haw. Rev. Stat. § 291C-1 (“‘Vehicle’ means every device in, upon, or by which any person or property is or may be transported or

drawn upon a roadway or highway, **including mopeds and bicycles . . .**”) (emphasis added).

12. I contacted the City later that day in an attempt to reclaim my chairs and table by calling the number left on the notice. I informed the City that I had the notice that was left following the seizure of the property. I was told that “nothing could be done” to return the property to me immediately. Instead, I would have to wait until Monday (December 24, 2012) to “make an appointment” to schedule the return of my property.

I, Christopher Smith, do declare under penalty of law that the fore-going is true and correct.

DATED: Honolulu, Hawaii, December 20, 2012.



Christopher Smith

EXHIBIT ONE
(TO BE MANUALLY FILED)

EXHIBIT TWO
(TO BE MANUALLY FILED)

EXHIBIT THREE



510

STORAGE & DISPOSAL NOTICE

This Notice relates to property impounded at 10.4K

o'clock on Dec 20, 2012, at

(location): Thomas Square

The impounded property is stored at: Div of Road Maintenance

Telephone Number: 7683600

List of impounded items:

1. wooden table
2. wooden brown flower chair
3. Metal Green chair (right side)
4. Plastic white chair arms broken
5. Wooden brown seat tipped chair
6. Metal brown vinyl chair
7. _____
8. _____
9. _____

10. If checked, please see attached sheet.

IMPOUNDED PROPERTY WILL BE SOLD, DONATED, OR OTHERWISE DISPOSED OF IF NOT CLAIMED WITHIN 30 DAYS AFTER THE DATE OF THIS NOTICE.

NAME / SIGNATURE OF PROPERTY OWNER

- Property owner refused to sign
- Notice handed to property owner
- Notice sent to property owner via certified mail to last known address
- Notice posted at site where property was seized
- Notice posted on City website

Removal Notice Number 3391 3388

[Signature]
SIGNATURE OF CITY EMPLOYEE & I.D. NO.



158

00101002

STORAGE & DISPOSAL NOTICE

This Notice relates to property impounded at 10:30a o'clock on Dec 21, 2012 at (location): Thomas Square

The impounded property is stored at: Div of Road Maintenance
Telephone Number: 768 3600

List of impounded items:

1. paint can
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____

10. If checked, please see attached sheet.

IMPOUNDED PROPERTY WILL BE SOLD, DONATED, OR OTHERWISE DISPOSED OF IF NOT CLAIMED WITHIN 30 DAYS AFTER THE DATE OF THIS NOTICE.

NAME/SIGNATURE OF PROPERTY OWNER

- Property owner refused to sign
- Notice handed to property owner
- Notice sent to property owner via certified mail to known address
- Notice posted at site where property was seized
- Notice posted on City website

Removal Notice Number 3309

SIGNATURE OF CITY EMPLOYEE & I.D. NO.

[Signature]
**CITY AND COUNTY OF HONOLULU
ORDINANCE NO. 11-029**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

De-Occupy Honolulu;
Catherine Russell;
Christopher Smith;
Andrew Smith;
Madori Rumpungworn; and
John Does 1-10,

Plaintiffs,

vs.

City and County of Honolulu;
Westley Chun, in his personal and
official capacity;
Trish Morikawa, in her personal and
official capacity;
 Santos, in his personal and
official capacity; and
John Does 1-10 in their personal and
official capacities.

Defendants.

CASE NO. 1:12-CV-000668

DECLARATION OF
CHRISTOPHER BAKER

DECLARATION OF CHRISTOPHER BAKER

1. My name is Christopher Baker.
2. I am a resident of the State of Hawaii, and I currently reside in the City and County of Honolulu.
3. I am a legal investigator who works for multiple defense attorneys in the local area; I also have earned Bachelors degree in Criminal Justice.
4. On December 20, 2012, I was in the immediate vicinity of Thomas Square in downtown Honolulu at approximately 10:40.
5. Spread around Thomas Square, there were numerous individuals who appeared to be employed by the City and County; some individuals were wearing shirts from the Parks and Recreation Department, some from the Department of Facilities Maintenance, and others who were visibly identified as Honolulu Police Officers. *See* Exhibit "A".
6. I observed a male, late 50's, graying hair, balding, wearing a blue and yellow aloha shirt, who appeared to be supervising the operation. This male was operating in and around a City and County vehicle (HI Plates: C&C 6773). *See* Exhibit "B".
7. During the raid, I heard the individual in the photograph identified in Exhibit "B" verbally state that: he was unaware of any court orders; that he did not follow and orders; and that no orders were bothering him.

8. I further witnessed Christopher Smith, a plaintiff in this action, attempt to inform the Unidentified Male of the court order. The individual paid no attention to Mr. Smith and continued confiscating property.

9. The immediate area was taped off from access by red and black danger tape. *See Exhibit "B"*.

10. It appeared that the total boundary was reduced in comparison to previous raids that I have witnessed; however, some areas were indeed in excess of ten feet. *See Exhibit "C"*.

11. Additionally, it appeared that the area surrounding untagged property was also included in the barrier. To my knowledge, the City and County did not previously tag these items for removal. *See Exhibit "D"* (showing red tents on edge of sidewalk that were lining a significant portion of the walkaway; these tents were not previously tagged). Nevertheless, that property was "taped off" with red tape.

12. During the course of the raid, I was able to observe multiple objects being confiscated as abandoned property. *See Exhibit "E"*.

13. Additionally, during the raid, I did not hear or see any City worker attempt to identify any owner of the tents that were seized nor invite any person to remove personal property from within the tent.

14. Nearing the end of the raid, I observed the unidentified male from Exhibit "B" walk down near the end of the park to the Northeast corner of Thomas Square. Here, a homeless individual had erected a temporary shelter using tarps. The unidentified male picked up the edge of the tarp and looked underneath the tarps into the shelter. I did not see any tags on any of the tarps and the shelter was not seized. Instead, the homeless individual was told he "needed to leave."

15. At the conclusion of the raid, I carefully inspected the storage and disposal notice left by the workers who confiscated the property, specifically tickets #510 and #160.

16. I observed that these tickets do not have a bin number written on the physical copy of the ticket. *See* Exhibit "F".

17. I, Christopher Baker, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, December 20th, 2012.

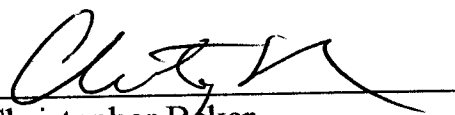

Christopher Baker

Exhibit A

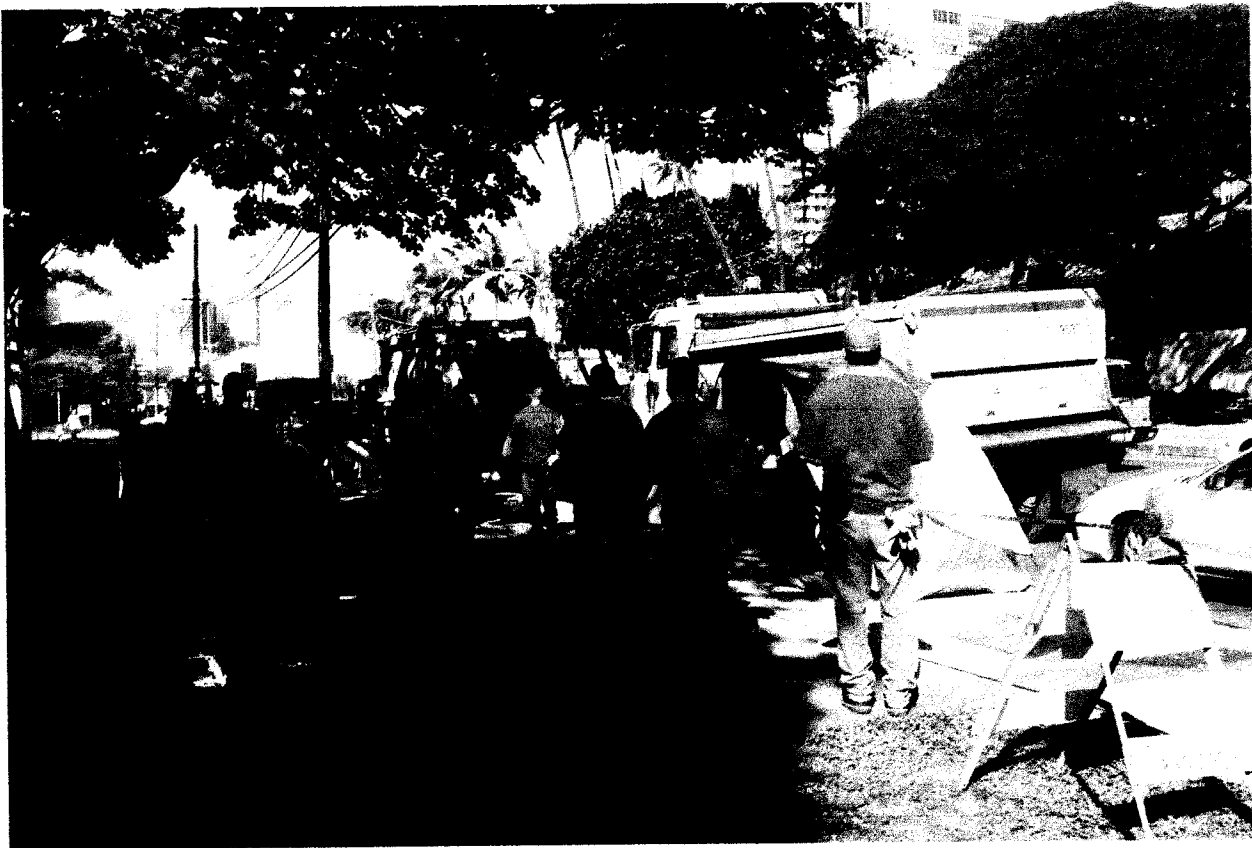


Exhibit B

9



Exhibit C



Exhibit D

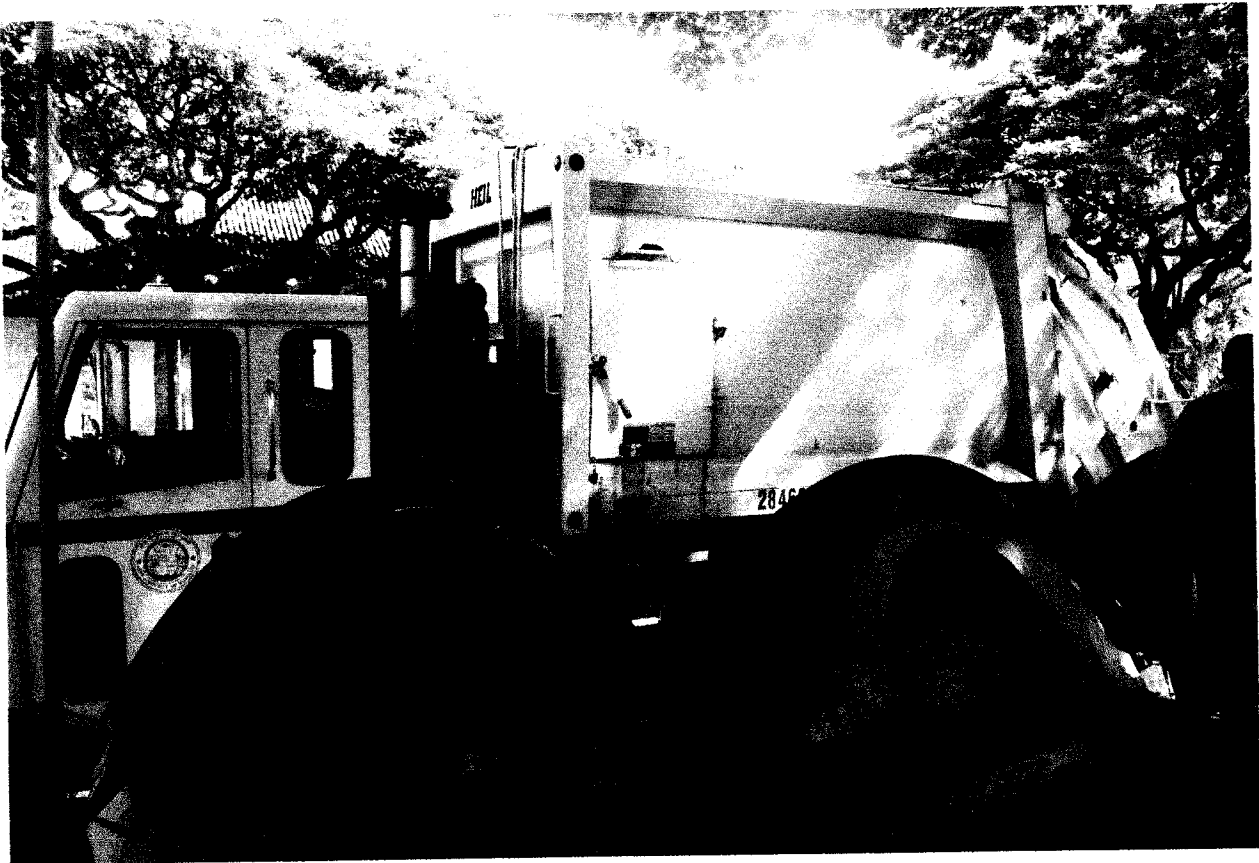


Exhibit E

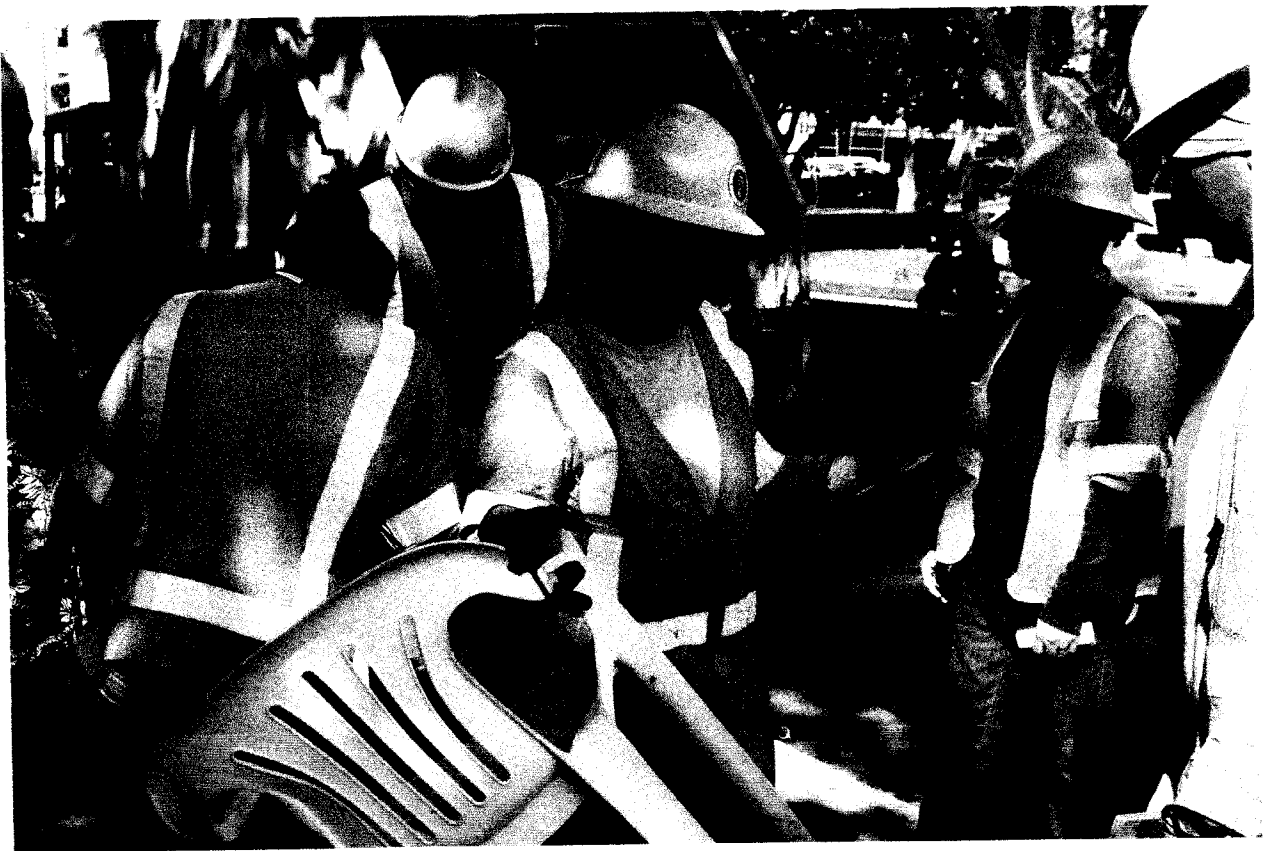




Exhibit F



510

STORAGE & DISPOSAL NOTICE

This Notice relates to property impounded at 10.45
o'clock on Dec 20, 2012, at
(location): Thomas Square

The impounded property is stored at:
Div 3 Road Maintenance
Telephone Number: 768-2400

List of impounded items:

1. wooden table
2. wooden brown chair
3. Metal Green chair (right side)
4. Plastic white chair and bench
5. wooden brown folding chair
6. metal black vinyl chair
7. _____
8. _____
9. _____
10. If checked, please see attached sheet.

IMPOUNDED PROPERTY WILL BE SOLD, DONATED, OR OTHERWISE DISPOSED OF IF NOT CLAIMED WITHIN 30 DAYS AFTER THE DATE OF THIS NOTICE.

NAME / SIGNATURE OF PROPERTY OWNER

Property owner refused to sign
Notice handed to property owner

Notice sent to property owner via certified mail to last known address

Notice posted at site where property was seized

Notice posted on City website 3381
Removal Notice Number 3381 3388

SIGNATURE OF CITY EMPLOYEE & I.D. NO.

**CITY AND COUNTY OF HONOLULU
ORDINANCE NO. 11-029**



160

STORAGE & DISPOSAL NOTICE

This Notice relates to property impounded at 10:40
o'clock on Dec 20, 2012, at
(location): Thomas Squ

The impounded property is stored at:
Dv. of Road Maintenance
Telephone Number: 768 3600

- List of impounded items:
1. Christmas tree stand
 2. Work bench
 3. wooden board
 4. cell nozzle
 5. _____
 6. _____
 7. _____
 8. _____
 9. _____
 10. If checked, please see attached sheet.

**IMPOUNDED PROPERTY WILL BE SOLD
DONATED, OR OTHERWISE DISPOSED
OF IF NOT CLAIMED WITHIN 30 DAYS
AFTER THE DATE OF THIS NOTICE.**

- NAME / SIGNATURE OF PROPERTY OWNER
- Property owner refused to sign
- Notice handed to property owner
- Notice sent to property owner via certified mail to known address
- Notice posted at site where property was seized
- Notice posted on City _____
- Removal Notice Number _____

[Signature]
CITY AND COUNTY OF DENVER
ORIGINAL