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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 19 2013

at 3 o'clock and 55 min M. SUE BEITIA, CLERK

Attorneys for Plaintiffs

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

Catherine Russell; Terry Anderson;
(De)Occupy Honolulu; And
John Does 1-50,

Plaintiffs,

vs.

City and County of Honolulu;
John Does 1-50.

Defendants.

CASE NOV 13 00475 LEK RLP

MOTION FOR TEMPORARY
INJUNCTIVE ORDER RESTRAINING

Hearing Date:

Time:

Judge:

Plaintiffs' Motion For Temporary Injunctive Relief

COME NOW the Plaintiffs, De-Occupy Honolulu, Christopher Smith, Catherine Russell, Andrew Smith, and Madori Rumpungworn, by and through undersigned counsel and pursuant to the First, Fourth and Fourteenth Amendments to the United States Constitution, Title 42 U.S.C. § 1983, and Rule 65(b) of the Federal Rules of Civil Procedure, and request that this Court issue a temporary restraining order enjoining Defendants and/or their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of this injunction, from:

1. Seizing property . . . absent an objectively reasonable belief that it is [actually] abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband; and
2. Absent an immediate threat to public health or safety, destruction of said seized property without maintaining it in a secure location for a period of less than 90 days.

Lavan v. City of Los Angeles, 693 F.3d 1022, 1024 (9th Cir. 2012);

3. Absent an immediate threat to public health or safety, any property of the homeless [including De-Occupy members] that is seized [and] that is not hazardous or contraband, may not be destroyed without prior written notice that such property will be seized and destroyed and a constitutionally adequate pre- [and] post-deprivation remedy provided to recover such property.

Pamela Kincaid, et. al. v. City of Fresno, et. al., No. 1:06-cv-1445, 2006 WL 3542732 (E.D.Cal. December 8, 2006) (attached to Memorandum in Support of

Motion for Preliminary Injunction, filed contemporaneously herewith). And, compelling those persons identified above to:

“leave a notice in a prominent place for any property taken on the belief that it is [actually] abandoned, including advising where the property is being kept and when it may be claimed by the rightful owner.”

Lavan, 693 F.3d at 1024 (quoting *Tony Lavan v. City of Los Angeles*, No. 11-CV-2874, 2011 WL 1533070, at *5-6 (C.D.Cal. Apr. 22, 2011) (attached to Memorandum in Support of Motion for Preliminary Injunction, filed contemporaneously herewith).

4. Failing to provide a meaningful and prompt post-deprivation hearing justifying the seizure of Plaintiffs' property. *Stypmann v. City & County of San Francisco*, 557 F.2d 1338, 1343-1345 (9th Cir. 1977)(“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ Seizure of property without prior hearing has been sustained only where the owner is afforded prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause.”)

In support of this Motion, Plaintiffs rely on the incorporated Memorandum of Law and Declaration. Plaintiffs also rely on the Memorandum in Support of their Motion for Preliminary Injunction and its attachments, including but not limited to the Declarations of and all corresponding exhibits to those Declarations, filed contemporaneously herewith and incorporated as if restated verbatim herein.

Standard For Relief

In order to obtain a temporary restraining order a party must show:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

See Federal Rules of Civil Procedure Rule 65 (b).

Plaintiffs have submitted alongside this motion a verified complaint and a declaration from Plaintiff's counsel. *See* Complaint and Declaration of Counsel.

For the reasons stated in the Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction, Plaintiffs believe that they are entitled to injunctive relief and that a Temporary Restraining Order should issue until such time as Plaintiffs' Motion for Preliminary Injunction is heard.

III. CONCLUSION

For any and all of the reasons stated above or in the referenced Memorandum, Plaintiffs requests this Court issue a temporary restraining order enjoining Defendants and/or their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of this injunction, from:

1. Seizing property . . . absent an objectively reasonable belief that it is [actually] abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband; and
2. Absent an immediate threat to public health or safety, destruction of said seized property without maintaining it in a secure location for a period of less than 90 days.

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Pamela Kincaid, et. al. v. City of Fresno, et. al., No. 1:06-cv-1445, 2006 WL 3542732 (E.D.Cal. December 8, 2006) (attached to Memorandum in Support of Motion for Preliminary Injunction, filed contemporaneously herewith). And, compelling those persons identified above to:

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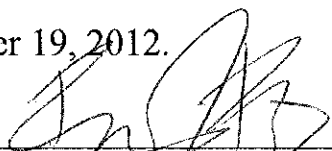
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Memorandum in Support of Motion for Preliminary Injunction, filed contemporaneously herewith).

4. Failing to provide a meaningful and prompt post-deprivation hearing justifying the seizure of Plaintiffs' property. *Stypmann v. City & County of San Francisco*, 557 F.2d 1338, 1343-1345 (9th Cir. 1977).

5. Confiscating free speech materials that are actually attended to or in the physical custody
Declaration of Catherine Russell in Support of Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order of the Plaintiffs.

DATED: Honolulu, Hawai'i; September 19, 2012.


Richard L. Holcomb
Brian Brazier of Counsel
Attorney for Plaintiffs