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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TABATHA MARTIN, TRACY MARTIN, T.M., a minor, by her parents and next friends TABATHA MARTIN and TRACY MARTIN, KIONINA KENESO, K.H., a minor, by her next friend KIONINA KENESO, TANAKO YUG, GABRIEL YUG, G.Y., a minor, by his next friends, TANAKO YUG and GABRIEL YUG, DIANA CHONIONG, JON JOSEPHSON, NORMA MANUEL, MENSU RIKAT, ARI RODEN, RIMUO RUNTE, and SNOPIA WEINEI, individually and on behalf of the class of homeless or formerly homeless individuals whose property was seized and destroyed by City and County of Honolulu officials,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU, a municipal corporation, and DOE EMPLOYEES OF CITY AND COUNTY OF HONOLULU 1-100,

Defendants.

Case No. 1:15-cv-00363-HG-KSC
[CLASS ACTION]

**STIPULATION, RE:
SCHEDULING and ORDER**

STIPULATION, RE: SCHEDULING

While the parties schedule, conduct, and prepare for discovery, briefing, and trial on the merits regarding the claim for preliminary and permanent injunctive relief set forth in Plaintiffs' Motion for Preliminary Injunction (currently scheduled to begin January 25, 2016), the parties hereby stipulate to and the Court hereby orders the following:

Except as set forth below, Defendant City and County of Honolulu and anyone acting on its behalf ("City") shall not immediately dispose of any property that would constitute a "sidewalk-nuisance" pursuant to the Sidewalk Nuisance Ordinance ("SNO"), Revised Ordinances of Honolulu ("ROH") Section 29-16.2, or that would constitute "Personal Property" pursuant to the Stored Property Ordinance ("SPO"), ROH Section 29-19.2. The property to which this stipulation applies includes, but is not limited to, tents, tarps, children's toys, suitcases, laundry baskets, shelves/crates, backpacks, baby strollers/cribs, air compressors, recreational items like surfboards, bicycles, clothing, bedding, coolers, household

goods, and furniture. Any property that is impounded must be stored for no less than 30 days pursuant to the SNO or SPO.

1. Conditions and Procedures:

a. SPO: All personal property stored on public property must be tagged with notice pursuant to SPO for a period of twenty-four hours before impoundment, unless the property poses an threat to the health, safety, or welfare of the public, or interferes with the orderly management of City property, or remains in a public park after park closure hours, in which case the property may be removed and impounded/stored immediately subject to the conditions/exceptions set forth below. If property poses a threat to the health, safety, or welfare of the public, the City will provide an opportunity for the owners of said property to immediately remedy the threat prior to impoundment, including removal of the property from City-owned land. If such threat is not remedied by the owner, said property shall be impounded and stored, subject to the provisions/exceptions set forth below in subparagraph c, below.

b. SNO: property subject to SNO shall be identified on the SNO notice tag and impounded and stored, subject to the conditions set forth below in subparagraph (c).

- c. Conditions applicable to all enforcement actions:
 - i. A person claiming ownership of a property that has been tagged for impoundment will be provided an opportunity, before the property is impounded, to remove the property. Property retrieved and removed from City-owned property by the person claiming ownership will not be impounded; provided, however, that moving property from City-owned property to another City-owned property shall not be considered removal from City-owned property;
 - ii. Members of the public may be excluded from the area within which SPO and SNO enforcement is taking place; the exclusion area may extend up to ten (10) feet from any property to be impounded. A person claiming ownership of property to be impounded will be permitted to enter the exclusion area for purposes of removing that property so the property will not be impounded; provided,

however, that moving property from City-owned property to another City-owned property shall not be considered removal from City-owned property;

- iii. All impounded property that fits within a bin will be placed in tagged bins; all other impounded property will be removed and impounded with an identifying sticker. Tents, tent poles, canopies, and other large items may be disassembled for storage, and reasonable care shall be used to fit these items within bins in a manner that avoids damage to those items. Nothing herein, however, shall require the City to disassemble structures that have been constructed on City-owned property, though the City shall not dispose of items merely because they are too large to fit inside a storage bin;
- iv. At the time of impoundment, an impoundment notification will be left in the place from which

the property was impounded. This notice will attempt to specifically identify all property impounded and provide a tag number identifying the storage bin in which the impounded property is or was stored;

- v. Impounded property will be stored at a facility in or near the Halawa Yard. At the time that a person produces an impoundment notification with the specified tag number and attests to ownership of the property, all property related to that impoundment notification (and inside the storage bin) will be returned to the person immediately. Production of receipts will not be required for the return of the property.

Payment of any fee shall be waived upon the owner of stored property under the SNO signing a certified statement of financial inability to pay, subject to the right of the Director of the Department of Facility Maintenance to challenge the statement of financial inability;

- vi. Perishable food items (including only those items that require refrigeration, and excluding any items that are sold and/or maintained without refrigeration, which shall be immediately removed by the owner of these excluded items) may be disposed of immediately in any manner without notice or impoundment by the City, provided that the City shall document by video recording any items being disposed. If any owner of food items that are sold and/or maintained with refrigeration refuses to remove such items, such items may be immediately disposed of (and shall be documented by video recording) as provided herein. Property may be disposed of if not retrieved from storage within thirty (30) days after impoundment;
- vii. The City may immediately dispose of property if the property contains flammable or otherwise hazardous chemicals, or similarly dangerous

items that, if stored, could cause fire, explosion, identifiable disease, or pose a threat to life, health, or property. The City may also dispose of property that is wet, soiled, dirty, sharp or odorous only if such items are hazardous or are contaminated by mold or infested with insects, roaches, bedbugs, etc. If the owner of hazardous wet, soiled, dirty, sharp, or odorous items is present at the time of enforcement, he/she may immediately remove said items, otherwise, such items may be immediately disposed of after video taping and video recording the specific hazards as described below. Subject to the foregoing, wet tents must be stored unless they are hazardous due to a condition other than simply being wet. Nothing herein shall be construed as an admission of liability by the City for any damage that may be caused by the storage of wet items. Furthermore, notwithstanding its

agreement to this Stipulation and Order, the City notes its continuing objection to the storage of any wet items because storage of wet item(s) may cause damage to the stored item(s) itself/themselves or other contents in the bin that are stored with the wet item(s);

- viii. The City shall video record the specific item(s) being disposed and the justification therefor. Upon written request by Plaintiffs' counsel to the Department of the Corporation Counsel, the City will provide such video recordings to Plaintiffs' counsel within 10 business days of receipt of the written request. The parties disagree as to who bears the cost for this discovery, and shall take this matter to the Magistrate Judge for resolution if necessary. Furthermore, if the City immediately disposes of any Property on the basis that the Property would be hazardous to store, the City will video record a detailed description of all the hazards

posed by each item disposed, as well as a detailed reasoning why the hazard cannot be removed or why reasonable accommodation could not be made to store the item;

- ix. While this Stipulation and Order is in effect, and only for purposes of this Stipulation and Order, the City will provide Plaintiffs' counsel notice of the time and place of each enforcement action no later than 3:00 p.m. on the day prior to the scheduled enforcement action.

2. This Stipulation and Order will expire when the Court issues its ruling on Plaintiffs' Motion for Preliminary Injunction, Dkt. No. 36, unless otherwise provided by the Court.

3. Nothing in this Stipulation and Order will be construed as granting or inferring or as evidence of Plaintiffs prevailing party status and shall not be used as a basis or factor to recover attorneys' fees. This Stipulation and Order, in and of itself, does not confer "prevailing party" status upon Plaintiffs, nor does it, in and of itself, entitle Plaintiffs to an award of attorneys' fees if they would

not otherwise be entitled to such fees, nor shall this Stipulation and Order be used or construed as a factor in any “prevailing party” status analysis. Nothing in this Stipulation and Order shall be used, construed or considered evidence that this dispute is a certifiable class-action lawsuit. Further, nothing in this Stipulation and Order shall be construed in any way to allow or permit Plaintiffs and any putative class member to use or occupy City sidewalks or other City public property in any way other than their intended use. Nothing in this Stipulation and Order shall be construed or considered or deemed as an admission by the City that its past and/or current enforcement of SPO and SNO has been or is in violation of the law. Similarly, nothing in this Stipulation and Order shall be construed as an admission by Plaintiffs that the procedures contained herein are constitutional on their face or as applied to the Plaintiffs and the putative Plaintiff class. Furthermore, nothing in this Stipulation and Order shall be construed as a waiver of any claim for disposal/destruction of property pursuant to the SPO and/or SNO. Nothing herein shall be construed in any way as amending the allegations set forth in the Complaint to include a

“facial challenge” and the procedures set forth in Fed. R Civ. P. 15 shall comply with any amendment to the Complaint.

4. This Stipulation and Order will be enforceable in the same manner as would be any other order of the Court, and violations of this stipulation would be enforceable as would be a violation of any other court order.

5. The terms of this Stipulation and Order will apply to all City SNO/SPO enforcement actions until the expiration of this Stipulation and Order pursuant to Paragraph 2 above.

DATED: Honolulu, Hawai'i, November 18, 2015.

/s/ Daniel M. Gluck
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/s/ Ernest H. Nomura
ERNEST H. NOMURA
Deputy Corporation Counsel

Attorneys for Defendant
City and County of Honolulu

APPROVED AND SO ORDERED:

Dated: November 18, 2015



/s/ Helen Gillmor
Helen Gillmor
United States District Judge

Martin et al. v. City and County of Honolulu, Civil No. 15-363 HG-KSC; Stipulation, re: Scheduling and Order