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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION

Pamela Kincaid, Doug Deatherage, Charlene
Clay, Cynthia Greene, Joanna Garcia, and
Randy Johnson, Individually on Behalf of
Themselves and All Others Similarly Situated,
Plaintiffs,

v.

City of Fresno, California Department of
Transportation, Alan Autry, Jerry Dyer, Greg
Garner, Reynaud Wallace, John Rogers, Phillip
Weathers, and Will Kempton, individually and
in their official capacities; DOES 1-100,
inclusive,
Defendants.

Civil Action No.:

**COMBINED MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

1 Plaintiffs Pamela Kincaid, Doug Deatherage, Charlene Clay, Cynthia Greene, Joanna
2 Garcia, and Randy Johnson, move this court, pursuant to Rule 65 of the Federal Rules of
3 Civil Procedure:

4 **Relief Sought**

5 1. To issue a temporary restraining order restraining Defendant City of Fresno,
6 including the Fresno Police Department and the Community Sanitation Division of the City
7 of Fresno, from taking and destroying property that they know or reasonably should know is
8 the property of the homeless, including but not limited to their tents, clothing, personal
9 effects, carts and other related property pending the hearing on and determination of
10 Plaintiffs' Motion for Preliminary Injunction.

11 2. To issue a preliminary injunction restraining Defendant City of Fresno,
12 including the Fresno Police Department and the Community Sanitation Division of the City
13 of Fresno, from taking and destroying property that they know or reasonably should know is
14 the property of the homeless, including but not limited to their tents, clothing, personal
15 effects, carts and other related property.

16 **Grounds for Motion**

17 1. The grounds for this motion, as more fully set forth in the verified complaint,
18 the Memorandum of Points and Authorities filed herewith and the Declarations of Michael
19 Rhodes, Pamela Kincaid, Joanna Garcia, Doug Deatherage, Randy Johnson, Charlene Clay,
20 Cynthia Greene, Samuel Vizcarrondo, Tracy Williams and Liza Apper are that:
21 Defendants, including but not limited to City of Fresno, the Fresno Police Department, the
22 Community Sanitation Division of the City of Fresno and other Fresno City employees, go
23 to places where homeless people are found in the City of Fresno and systematically seize
24 and destroy all of Plaintiffs' personal property, including their tents, clothing, shoes,
25 personal effects and related property essential to their ability to survive. They do so even
26 though the property is clearly not abandoned and even though Plaintiffs and/or members of
27 the Plaintiff Class plead to be allowed to save or retrieve their personal property. No

1 provision to allow Plaintiffs or members of the Plaintiff Class to claim or retrieve their
2 possessions is made; to the contrary, their property is taken and immediately destroyed.

3 2. No valid or lawful basis exists for all the personal possessions of the homeless
4 Plaintiffs. The confiscation and immediate destruction of Plaintiffs' personal possessions
5 which include their shelter (such as a tent, their clothing, shoes and other essentials of life as
6 well as personal effects, photographs and documents). Plaintiffs have not abandoned their
7 property and there is no basis to presume otherwise.

8 3. The continuing destruction of Plaintiffs' personal property, including their
9 shelter, clothing, personal effects and related property will cause immediate and irreparable
10 injury to the plaintiff. The declarations of Michael Rhodes, Pamela Kincaid, Joanna Garcia,
11 Doug Deatherage, Randy Johnson, Charlene Clay, Cynthia Greene, Samuel Vizcarrondo,
12 Tracy Williams and Liza Apper show the nature of the conduct and the irreparable harm
13 that has been and will continue to be suffered by Plaintiffs absent an order of this Court.

14 4. Unless the operation and enforcement of the order is restrained pending final
15 disposition of the action, the injury to Plaintiffs in the interim will be irreparable even if the
16 final judgment is for the Plaintiffs.

17 5. No injury will be sustained by the Defendants or by the public through
18 issuance of a temporary restraining order.

19 This motion is based on the Motion papers, including this document, the Certificate
20 of Counsel, the attached Memorandum of Points and Authorities, the supporting
21 Declarations of Michael Rhodes, Pamela Kincaid, Joanna Garcia, Doug Deatherage, Randy
22 Johnson, Charlene Clay, Cynthia Greene, Samuel Vizcarrondo, Tracy Williams, and Liza
23 Apper, as well as the verified complaint and all other papers and records on file in this
24 action, together with any argument and evidence that may be presented at the hearing of this
25 motion.

1 October 16, 2006

Respectfully submitted,

2 HELLER EHRMAN LLP

3 LAWYERS' COMMITTEE FOR CIVIL RIGHTS

4 ACLU OF NORTHERN CALIFORNIA

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7 By /s/ Paul Alexander

8 Paul Alexander

9 Attorneys for Plaintiffs

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