

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LISA HOOPER, BRANDIE OSBORNE,
KAYLA WILLIS, individually and on behalf
of a class of similarly situated individuals; THE
EPISCOPAL DIOCESE OF OLYMPIA;
TRINITY PARISH OF SEATTLE; REAL
CHANGE,

Plaintiffs,

v.

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-RSM

DEFENDANT CITY OF SEATTLE'S
ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM
TO AMENDED COMPLAINT

Defendant City of Seattle (the "City") answers the Complaint of Plaintiffs Lisa Hooper, Brandie Osborne, and Kayla Willis; the Episcopal Diocese of Olympia; Trinity Parish of Seattle; and Real Change (collectively "Plaintiffs") as follows:

1. The City denies the allegations in paragraph 1 to the extent they attempt to describe the City's policies toward homelessness and more specifically encampment clean-ups.

1 The allegations in paragraph 1 otherwise constitute legal conclusions and legal argument to
2 which no response is required. To the extent a response is required, the City denies the same.

3 2. The issues of homelessness and encampments on public property are complex and
4 defy generalized descriptions or explanations. The allegation in the first sentence of paragraph 2
5 is ambiguous, especially the use of the word “forced,” and the City thus denies the same. The
6 remaining allegations in paragraph 2 relate to a report of the Seattle/King County Coalition on
7 Homelessness. The City responds that the report speaks for itself, and otherwise denies the
8 allegations contained in paragraph 2.
9

10 3. The City denies the allegations in paragraph 3, particularly to the extent they
11 attempt to describe the City’s policies and practices.

12 4. The City denies the allegations in paragraph 4.

13 5. The allegations in paragraph 5 constitute legal conclusions to which no response
14 is required. To the extent a response is required, the City denies the same.
15

16 6. The City admits that when it cleans up problematic encampments on its property,
17 items left on the property may be removed from the premises and, depending on the
18 circumstances, might be stored or discarded. The City otherwise denies the allegations in
19 paragraph 6.
20

21 7. To the extent the allegations in paragraph 7 are based on prior denied allegations,
22 including attempts to describe the City’s policies or practices, the City denies the same. The City
23 otherwise lacks sufficient knowledge or information to form a belief about the truth of the
24 remaining allegations in paragraph 7 and therefore denies the same.

25 8. To the extent the allegations in paragraph 8 are based on prior denied allegations,
26 including attempts to describe the City’s policies or practices, the City denies the same. The City
27

1 otherwise lacks sufficient knowledge or information to form a belief about the truth of the
2 remaining allegations in paragraph 8 and therefore denies the same.

3 9. To the extent the allegations in paragraph 9 are based on prior denied allegations,
4 including attempts to describe the City's policies or practices, the City denies the same. The City
5 otherwise lacks sufficient knowledge or information to form a belief about the truth of the
6 remaining allegations in paragraph 9 and therefore denies the same.

7
8 10. To the extent the allegations in paragraph 10 are based on prior denied
9 allegations, including attempts to describe the City's policies or practices, the City denies the
10 same. The City denies the remaining allegations in paragraph 10.

11 11. To the extent the allegations in paragraph 11 are based on prior denied
12 allegations, including attempts to describe the City's policies or practices, the City denies the
13 same. The City admits that homelessness is a serious and complex problem. The City otherwise
14 denies the allegations in paragraph 11.

15
16 12. To the extent the allegations in paragraph 12 are based on prior denied
17 allegations, including attempts to describe the City's policies or practices, the City denies the
18 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
19 truth of the allegations in paragraph 12 and therefore denies the same.

20
21 13. To the extent the allegations in paragraph 13 are based on prior denied
22 allegations, including attempts to describe the City's policies or practices, the City denies the
23 same. The allegations in paragraph 13 otherwise constitute legal conclusions and legal argument
24 to which no response is required. To the extent a response is required, the City denies the same.

25 14. The City denies the allegations in paragraph 14.
26
27

1 15. The City admits that it has conducted clean-ups of encampments on public
2 property after this lawsuit was filed, which have complied with applicable legal requirements.

3 The City denies the remaining allegations in paragraph 15.

4 16. The City denies that it conducted the referenced clean-up on January 26, 2017.
5 The City otherwise lacks sufficient knowledge or information to form a belief about the truth of
6 the remaining allegations in paragraph 16 and therefore denies the same.
7

8 17. The City admits that it has conducted clean-ups of encampments on public
9 property after this lawsuit was filed, which have complied with applicable legal requirements.
10 The City further admits that in some cases, clean-ups may last longer than expected or work may
11 be delayed by unexpected circumstances, and items not suitable for storage may be broken down
12 to be discarded. The City denies the remaining allegations in paragraph 17.
13

14 18. The City admits that it has adopted new administrative rules (a Multi Department
15 Administrative Rule and a Department of Finance and Administrative Services rule, collectively
16 called “MDARs”) that govern encampment clean-ups and become effective April 3, 2017. The
17 City further responds that public notice of the MDARs was given to allow for public comment.
18 The City further responds that the prior and new MDARs speak for themselves, and that the City
19 urged Plaintiffs and their counsel on multiple occasions to submit comments on the MDARs, but
20 neither Plaintiffs nor their counsel submitted any comments. The City denies the remaining
21 allegations in paragraph 18.
22

23 19. The first sentence in paragraph 19 consists of legal argument and conclusions to
24 which no response is required. To the extent a response is required, the City denies the same.
25 The remaining allegations in paragraph 19 reference filings with the Court. The City responds
26
27

1 that those filings speak for themselves and otherwise denies the characterizations of the filings to
2 the extent they comprise allegations in paragraph 19.

3 20. The allegations in paragraph 20 reference filings with the Court. The City
4 responds that those filings are by WSDOT not the City and speak for themselves, and the City
5 otherwise denies the attempted characterizations of the filings to the extent they comprise
6 allegations in paragraph 20.

7
8 21. The allegations in paragraph 21 reference a declaration on file with the Court.
9 The City responds that the declaration speaks for itself and otherwise denies the attempted
10 characterizations of the filings to the extent they comprise allegations in paragraph 21.

11 22. The allegations in paragraph 22 reference a declaration submitted by WSDOT and
12 on file with the Court. The City responds that the declaration speaks for itself and otherwise
13 denies the attempted characterizations of the filings to the extent they comprise allegations in
14 paragraph 22.

15
16 23. The City admits that persons living outside often gather and camp on public
17 property amongst items that are unclean, moldy, or in poor condition. The City denies the
18 remaining allegations in paragraph 23.

19 24. To the extent the allegations in paragraph 24 are based on prior denied
20 allegations, including attempts to describe the City's policies or practices, the City denies the
21 same. The allegations in paragraph 24 otherwise constitute legal conclusions and legal argument
22 to which no response is required. To the extent a response is required, the City denies the same.

23
24 25. The allegations in paragraph 25 constitute a request for relief to which no
25 response is required. To the extent a response is required, the City denies the same.

1 26. The allegations in paragraph 26 constitute legal conclusions and legal argument to
2 which no response is required. To the extent a response is required, the City denies the same,
3 except that the City admits that certain policies and procedures do not implicate the rights
4 described.

5 27. The allegations in paragraph 27 constitute legal conclusions and legal argument to
6 which no response is required. To the extent a response is required, the City denies the same.
7

8 28. The City admits the first sentence of paragraph 28. The second sentence of
9 paragraph 28 constitutes a request for relief to which no response is required. To the extent a
10 response is required, the City denies any relief should be granted.

11 29. The City admits the allegations in the first sentence of paragraph 29. The City
12 also admits that it resides in the Western District of Washington. The City lacks sufficient
13 knowledge or information to form a belief about the truth of the remaining allegations in
14 paragraph 29, and therefore denies the same.
15

16 30. The City lacks sufficient knowledge or information to form a belief about the
17 allegations in paragraph 30 and therefore denies the same.

18 31. The allegations in paragraph 31 are vague, and the City otherwise lacks sufficient
19 knowledge or information to form a belief about the truth of the allegations and therefore denies
20 the same.
21

22 32. To the extent the allegations in paragraph 32 are based on prior denied
23 allegations, including attempts to describe the City's policies or practices, the City denies the
24 same. The allegation in the first sentence of paragraph 32 that the City gave "minimal to no
25 notice" is compound and ambiguous, and also fails to specify which Defendant is at issue, and
26 the City thus denies the same. The City otherwise lacks sufficient knowledge or information
27

1 sufficient to form a belief about the truth of the allegations in paragraph 32 and therefore denies
2 the same.

3 33. To the extent the allegations in paragraph 33 are based on prior denied
4 allegations, including attempts to describe the City's policies or practices, the City denies the
5 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
6 truth of the allegations in paragraph 33 and therefore denies the same.

7
8 34. To the extent the allegations in paragraph 34 are based on prior denied
9 allegations, including attempts to describe the City's policies or practices, the City denies the
10 same. The allegation in the third sentence of paragraph 34 that the City posted no prior notice
11 "in the area" is ambiguous, and the City thus denies the same. Based in part on the lack of
12 specificity provided, the City lacks sufficient knowledge or information to form a belief about
13 the truth of the remaining allegations in paragraph 34 and therefore denies the same.

14
15 35. The City lacks sufficient knowledge or information to form a belief about the
16 truth of the allegations in paragraph 35 and therefore denies the same.

17 36. To the extent the allegations in paragraph 36 are based on prior denied
18 allegations, including attempts to describe the City's policies or practices, the City denies the
19 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
20 truth of the allegations in the first and last sentences of paragraph 36 and therefore denies the
21 same. The City further responds that the new MDARs speak for themselves and otherwise
22 denies the attempted characterizations of the rules to the extent they comprise allegations in
23 paragraph 36.

24
25 37. To the extent the allegations in paragraph 36 are based on prior denied
26 allegations, including attempts to describe the City's policies or practices, the City denies the
27

1 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
2 truth of the allegations in paragraph 37 and therefore denies the same.

3 38. To the extent the allegations in paragraph 38 are based on prior denied
4 allegations, including attempts to describe the City's policies or practices, the City denies the
5 same. Based primarily on the lack of specificity provided, the City otherwise lacks sufficient
6 knowledge or information to form a belief about the truth of the allegations in paragraph 38 and
7 therefore denies the same.

8 39. To the extent the allegations in paragraph 39 are based on prior denied
9 allegations, including attempts to describe the City's policies or practices, the City denies the
10 same. The allegation in the first sentence of paragraph 39 that the City gave "minimal to no
11 notice" is compound and ambiguous, and the sentence is also ambiguous as to the time and
12 location referred to, and the City thus denies the same. The City otherwise lacks sufficient
13 knowledge or information to form a belief about the truth of the allegations in paragraph 39 and
14 therefore denies the same.

15 40. The City lacks sufficient knowledge or information to form a belief about the
16 truth of the allegations in paragraph 40 and therefore denies the same.

17 41. To the extent the allegations in the first sentence of paragraph 41 are based on
18 prior denied allegations, including attempts to describe the City's policies or practices, the City
19 denies the same. Based in part on the lack of specificity provided, the City otherwise denies the
20 allegations in the first sentence of paragraph 41. The remaining allegations in paragraph 41 are
21 not about the City, and the City lacks sufficient knowledge or information to form a belief about
22 the truth of those allegations and therefore denies the same.
23
24
25
26
27

1 42. The City lacks sufficient knowledge or information to form a belief about the
2 truth of the allegations in paragraph 42 and therefore denies the same.

3 43. The City lacks sufficient knowledge or information to form a belief about the
4 truth of the allegations in paragraph 43 and therefore denies the same.

5 44. The City lacks sufficient knowledge or information to form a belief about the
6 truth of the allegations in paragraph 44 and therefore denies the same.

7 45. To the extent the allegations in paragraph 45 are based on prior denied
8 allegations, including attempts to describe the City's policies or practices, the City denies the
9 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
10 truth of the allegations in the first and last sentences of paragraph 45 and therefore denies the
11 same. The City further responds that the new MDARs speak for themselves and otherwise
12 denies the attempted characterizations of the rules to the extent they comprise allegations in
13 paragraph 45.

14 46. The City lacks sufficient knowledge or information to form a belief about the
15 truth of the allegations in paragraph 46 and therefore denies the same.

16 47. To the extent the allegations in paragraph 47 are based on prior denied
17 allegations, including attempts to describe the City's policies or practices, the City denies the
18 same. To the extent the allegations in paragraph 47 constitute legal argument or conclusions, no
19 response is required. To the extent a response is required, the City denies the same. The City
20 otherwise lacks sufficient knowledge or information to form a belief about the truth of the
21 remaining allegations in paragraph 47 and therefore denies the same.

22 48. To the extent the allegations in paragraph 48 are based on prior denied
23 allegations, including attempts to describe the City's policies or practices, the City denies the
24 same.

1 same. The City lacks sufficient knowledge or information to form a belief about the truth of the
2 remaining allegations in paragraph 48 and therefore denies the same.

3 49. The City denies the allegations in paragraph 49.

4 50. To the extent the allegations in paragraph 50 are based on prior denied
5 allegations, including attempts to describe the City's policies or practices, the City denies the
6 same. The City lacks sufficient knowledge or information to form a belief about the truth of the
7 remaining allegations in paragraph 50 and therefore denies the same.

8 51. The allegations in paragraph 51 constitute legal conclusions to which no response
9 is required. To the extent a response is required, the City denies the same.

10 52. The City lacks sufficient knowledge or information to form a belief about the
11 truth the allegations in paragraph 52 and therefore denies the same.

12 53. The City commends and supports community-based efforts to address problems
13 associated with homelessness. The City otherwise lacks sufficient knowledge or information to
14 form a belief about the truth of the allegations in paragraph 53 and therefore denies the same.

15 54. The City lacks sufficient knowledge or information to form a belief about the
16 truth of the allegations in paragraph 54 and therefore denies the same.

17 55. To the extent the allegations in paragraph 55 are based on prior denied
18 allegations, including attempts to describe the City's policies or practices, the City denies the
19 same. The City lacks sufficient knowledge or information sufficient to form a belief about the
20 truth of the remaining allegations in paragraph 55 and therefore denies the same.

21 56. The City commends and supports community-based efforts to address problems
22 associated with homelessness. Otherwise, the City lacks sufficient knowledge or information to
23 form a belief about the truth of the allegations in paragraph 56 and therefore denies the same.

1 57. The City commends and supports community-based efforts to address problems
2 associated with homelessness. To the extent the allegations in paragraph 57 are based on prior
3 denied allegations, including attempts to describe the City’s policies or practices, the City denies
4 the same. Otherwise, the City lacks sufficient knowledge or information to form a belief about
5 the truth of the remaining allegations in paragraph 57 and therefore denies the same.
6

7 58. The City commends and supports community-based efforts to address problems
8 associated with homelessness. To the extent the allegations in paragraph 58 are based on prior
9 denied allegations, including attempts to describe the City’s policies or practices, the City denies
10 the same. Otherwise, the City lacks sufficient knowledge or information to form a belief about
11 the truth of the remaining allegations in paragraph 58 and therefore denies the same.
12

13 59. To the extent the allegations in paragraph 59 are based on prior denied
14 allegations, including attempts to describe the City’s policies or practices, the City denies the
15 same. Based in part on the lack of specificity provided, the City otherwise lacks sufficient
16 knowledge or information to form a belief about the truth of the allegations in paragraph 59 and
17 therefore denies the same.

18 60. To the extent the allegations in paragraph 60 are based on prior denied
19 allegations, including attempts to describe the City’s policies or practices, the City denies the
20 same. Based in part on the lack of specificity provided, the City otherwise lacks sufficient
21 knowledge or information to form a belief about the truth of the allegations in paragraph 60 and
22 therefore denies the same.
23

24 61. To the extent the allegations in paragraph 61 are based on prior denied
25 allegations, including attempts to describe the City’s policies or practices, the City denies the
26
27

1 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
2 truth of the allegations in paragraph 61 and therefore denies the same.

3 62. To the extent the allegations in paragraph 62 are based on prior denied
4 allegations, including attempts to describe the City's policies or practices, the City denies the
5 same. The City otherwise lacks sufficient knowledge or information to form a belief about the
6 truth of the allegations in paragraph 62 and therefore denies the same.

7 63. To the extent the allegations in paragraph 63 are based on prior denied
8 allegations, including attempts to describe the City's policies or practices, the City denies the
9 same. The City admits it is a municipal corporation organized under the laws of the State of
10 Washington with the capacity to sue and be sued. The City lacks sufficient knowledge or
11 information to form a belief about the truth of the allegations in paragraph 63 regarding the
12 capacity in which the plaintiffs purport to sue the City, and therefore denies the same. To the
13 extent paragraph 63 also purports to allege legal conclusions, the City denies the same.
14

15 64. The City admits the factual allegations in paragraph 64. To the extent paragraph
16 64 also purports to allege legal conclusions, the City denies the same.
17

18 65. The City admits that Roger Millar is the current Secretary of Transportation for
19 WSDOT. The City otherwise lacks sufficient knowledge or information to form a belief about
20 the truth of the allegations in paragraph 65 and therefore denies the same. To the extent
21 paragraph 65 also purports to allege legal conclusions, the City denies the same.
22

23 66. The allegations in paragraph 66 consist of legal conclusions to which no response
24 is required. To the extent a response is required, the City denies the same.

25 67. The allegations in paragraph 67 constitute legal conclusions and legal argument to
26 which no response is required. To the extent a response is required, the City denies the same.
27

1 68. The allegations in the first sentence of paragraph 68 constitute legal conclusions
2 and legal argument to which no response is required. To the extent a response is required, the
3 City denies the same. The allegations in the second and third sentences of paragraph 68 relate to
4 a report of the Seattle/King County Coalition on Homelessness. The City responds that the
5 report speaks for itself, and otherwise denies the allegations. To the extent the allegations in the
6 fourth sentence of paragraph 68 are based on prior denied allegations, including attempts to
7 describe the City's policies or practices, the City denies the same. The City admits that it can in
8 certain circumstances be difficult to find and identify transient individuals but denies that any
9 such difficulty is due to the City's policies or practices, and otherwise denies the remaining
10 allegations.
11

12 69. The allegations in paragraph 69 constitute legal conclusions and legal argument to
13 which no response is required. To the extent a response is required, the City denies the same.
14

15 70. The allegations in paragraph 70 constitute legal conclusions and legal argument to
16 which no response is required. To the extent a response is required, the City denies the same.
17

18 71. The allegations in paragraph 71 constitute legal conclusions and legal argument to
19 which no response is required. To the extent a response is required, the City denies the same.
20

21 72. The City admits the allegations in paragraph 72, with the exception that the City
22 lacks knowledge as to the specific resources available to the ACLU of Washington, and as a
23 result denies the allegation with respect to that issue.
24

25 73. The allegations in paragraph 73 constitute legal conclusions and legal argument to
26 which no response is required. To the extent a response is required, the City denies the same.
27

1 74. The City admits that in November 2015 Mayor Murray declared a State of
2 Emergency on homelessness, the content of which otherwise speaks for itself. The City is
3 awaiting the results of recent data collection with respect to the number of persons living outside.

4 75. The allegations in paragraph 75 relate to a report of the Seattle/King County
5 Coalition on Homelessness. The City responds that the report speaks for itself, and otherwise
6 denies the allegations.

7 76. The City admits that homelessness is a crisis. In response, the Mayor has
8 declared a state of emergency with regard to homelessness, established some authorized tent
9 encampments, devoted increased funds to this issue, and continues to develop policies and
10 practices to address the crisis. The City further admits that a count of homeless persons in the
11 City was conducted earlier this year and the results will be released this spring. The City
12 otherwise lacks sufficient knowledge or information to form a belief about the truth of the
13 allegations in paragraph 76 and therefore denies the same.

14 77. The City admits that unhoused persons may have homes and personal possessions
15 of including possessions with psychological value. The City otherwise denies the allegations in
16 paragraph 77 as overly generalized and unqualified.

17 78. The City admits that unhoused persons sometimes set up encampments on public
18 property. The City otherwise denies the allegations in paragraph 77 as overly generalized.

19 79. The City admits that unhoused persons may engage in the activities listed in
20 paragraph 79 and that having a stable place to live is important. The City otherwise denies the
21 allegations in paragraph 79 as overly generalized.

22 80. The City admits the first sentence of paragraph 80. The City admits that it offers
23 disposal and retrieval services and operates a sewer system. The City admits that garbage
24

1 accumulates quickly in encampments. The allegations in paragraph 80 regarding taken property
2 are vague. The City lacks sufficient knowledge or information to form a belief about the truth of
3 the allegations as to whether items being referred to were taken during clean ups, and otherwise
4 denies the remaining allegations in paragraph 80.

5
6 81. To the extent the allegations in paragraph 81 are based on prior denied
7 allegations, including attempts to describe the City's policies or practices, the City denies the
8 same. Based on Plaintiffs' definition of "sweeps", the City denies the allegations of paragraph
9 81.

10 82. The allegations in paragraph 82 constitute legal conclusions and legal argument to
11 which no response is required. To the extent a response is required, the City denies the same.

12 83. The City denies the allegations of paragraph 83.

13
14 84. The City admits that it facilitates the reporting of unauthorized encampments
15 whether by phone, online, or app, and otherwise denies the allegations in the first sentence of
16 paragraph 84. The second sentence of paragraph 84 is addressed to another party, and the City
17 lacks sufficient knowledge or information to form a belief about the truth of those allegations
18 and therefore denies the same.

19 85. To the extent the allegations in paragraph 85 are based on prior denied
20 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
21 definition of "sweeps", the City denies the same. The City also denies the allegations in
22 paragraph 85 to the extent they are based on misinterpretation of data from the Seattle
23 Encampment Response Information System (SERIS), as explained in the Second Declaration of
24 Chris Potter in Support of the City's Opposition to Plaintiffs' Motion for Temporary Restraining
25
26
27

1 Order. The City admits that it has conducted lawful clean-ups, including some after this lawsuit
2 was filed, and otherwise denies the remaining allegations in paragraph 85.

3 86. To the extent the allegations in paragraph 86 are based on prior denied
4 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
5 definition of "sweeps", the City denies the same. The City admits that it has devoted meaningful
6 resources to conducting lawful clean-ups as part of its broader strategy and efforts at addressing
7 issues related to homelessness. The last sentence of paragraph 86 is addressed to another party,
8 and the City lacks sufficient knowledge or information to form a belief about the truth of those
9 allegations and therefore denies the same.
10

11 87. The allegations in paragraph 87 appear to be based on prior denied allegations,
12 including attempts to describe the City's policies or practices and the Plaintiffs' definition of
13 "sweeps", and the City therefore denies the same.
14

15 88. The City admits that it has adopted the original MDARs in 2008. The remaining
16 allegations in paragraph 88 are addressed to another party, and the City lacks sufficient
17 knowledge or information to form a belief about the truth of those allegations and therefore
18 denies the same.

19 89. To the extent the allegations in paragraph 89 are based on the Plaintiffs' definition
20 of "sweeps", the City denies the same. The City admits that the MDARs (now updated)
21 represent the City's uniform rules and procedures for cleaning up encampments on public
22 property. The remaining allegations in paragraph 89 are addressed to another party and the City
23 lacks sufficient knowledge or information to form a belief about the truth of those allegations
24 and therefore denies the same.
25

26 90. The City denies the allegations in paragraph 90.
27

1 91. To City denies the allegations in paragraph 91.

2 92. The allegations in paragraph 92 constitute legal conclusions and legal argument to
3 which no response is required. To the extent a response is required, the City denies the same.

4 93. The allegations in paragraph 93 constitute legal conclusions and legal argument to
5 which no response is required. To the extent a response is required, the City denies the
6 allegations.

7 94. The City denies the allegations in paragraph 94.

8 95. The City denies the allegations in paragraph 95.

9 96. The City denies the allegations in paragraph 96.

10 97. The City denies the allegations in paragraph 97.

11 98. To the extent the allegations in paragraph 98 are based on prior denied
12 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
13 definition of "sweeps", the City denies the same. The remaining allegations in paragraph 98
14 constitute legal conclusions and legal argument to which no response is required. To the extent a
15 response is required, the City responds that the MDARs speak for themselves and otherwise
16 denies the allegations.

17 99. The allegations in paragraph 99 constitute legal conclusions and legal argument to
18 which no response is required. To the extent a response is required, the City responds that the
19 WSDOT Guidelines speak for themselves and otherwise denies the allegations.

20 100. The City denies the allegations in paragraph 100.

21 101. The City admits that policymakers have expressed various views on the City's
22 clean-up process, including prior versions of its notices. The City admits that one
23 councilmember, in a council briefing in January of 2016, stated: "These postings, I imagine, are
24
25
26
27

1 ones that I could probably barely understand with a law degree.” The City otherwise denies the
2 allegations in paragraph 101.

3 102. The City denies the allegations in paragraph 102.

4 103. The City denies the allegations in paragraph 103.

5 104. The City responds that it trains staff on appropriate implementation of the
6 MDARs. The City admits that the MDARs do not reference training. The City further responds
7 that the WSDOT Guidelines speak for themselves and otherwise denies the allegations.
8

9 105. The City denies the allegations in the first and last sentences of paragraph 105.
10 The City admits that the WSDOT Guidelines contain the quoted language and denies the
11 remaining allegations in paragraph 105.

12 106. The City denies the allegations in paragraph 106.

13 107. The City denies the allegations in paragraph 107.

14 108. The City denies the allegations in paragraph 108.

15 109. The allegations in paragraph 109 constitute legal conclusions and legal argument
16 to which no response is required. To the extent a response is required, the City responds that the
17 WSDOT Guidelines speak for themselves and otherwise denies the allegations.
18

19 110. The City denies the allegations contained in paragraph 110.

20 111. The City denies the allegations in paragraph 111.

21 112. The City admits that the MDARs do not refer to payment of compensation. The
22 City otherwise responds that the MDARs and WSDOT Guidelines speak for themselves and
23 otherwise denies the allegations.
24

25 113. The City denies the allegations in paragraph 113.
26
27

1 114. The City admits that it has new MDARs and received public comment on those
2 rules, but not from Plaintiffs or their counsel. The City denies the remaining allegations in
3 paragraph 114.

4 115. The City denies the allegations in paragraph 115.

5 116. The City denies the allegations in paragraph 116.

6 117. The City denies the allegations in paragraph 117.

7 118. The City denies the allegations in paragraph 118.

8 119. The City denies the allegations in paragraph 119.

9 120. The City denies the allegations in paragraph 120.

10 121. The City admits that the new MDARs contain a provision for “emphasis areas”,
11 but denies the remaining allegations in paragraph 121.

12 122. The City denies the allegations in paragraph 122.

13 123. The City denies allegations in paragraph 123.

14 124. The City admits that the new MDARs amended the prior MDARs and otherwise
15 denies allegations in paragraph 124.

16 125. The City denies that it does not provide for training as it trains staff on
17 appropriate implementation of the MDARs. The City denies the remaining allegations in
18 paragraph 125.

19 126. The allegations in paragraph 126 constitute legal conclusions and legal argument
20 to which no response is required. To the extent a response is required, the City otherwise denies
21 the allegations in paragraph 126.

22 127. The City admits that numerous individuals and organizations submitted comments
23 on the new MDARs, but the Plaintiffs and their counsel did not. The City further responds that
24

1 the wording of the comments received speaks for itself and otherwise denies the allegations in
2 paragraph 127.

3 128. The allegations in paragraph 128 constitute legal conclusions and legal argument
4 to which no response is required. To the extent a response is required, the City denies the same.
5

6 129. The City denies the allegations in paragraph 129.

7 130. To the extent the allegations in paragraph 130 are based on prior denied
8 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
9 definition of "sweeps", the City denies the same. To the extent the allegations in paragraph 130
10 are addressed to another party, the City lacks sufficient knowledge or information to form a
11 belief about the truth of those allegations and therefore denies the same. The City denies the
12 remaining allegations in paragraph 130.
13

14 131. To the extent the allegations in paragraph 131 are based on prior denied
15 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
16 definition of "sweeps", the City denies the same. The City admits different clean-ups it conducts
17 may have some differences (and some similarities) in comparison to any other clean-up. The
18 City otherwise denies the allegations in paragraph 131.

19 132. The City admits it uses the word "clean up" and that part of its goal is to remove
20 trash, debris, waste, and hazardous materials. The City denies the remaining allegations in
21 Paragraph 132.
22

23 133. The allegations in paragraph 133 constitute legal arguments or conclusions, to
24 which no response is required. To the extent a response is required, the City denies the same.

25 134. The City denies the allegations in Paragraph 134.

26 135. The City denies the allegations in paragraph 135.
27

1 136. The City denies the allegations in paragraph 136.

2 137. The City denies the allegations in paragraph 137.

3 138. The City admits that for clean-ups it attaches notices to individual tents and in the
4 surrounding area to be cleaned up. The City denies the remaining allegations in paragraph 138.

5 139. The City denies the allegations in paragraph 139.

6 140. The City denies the allegations in paragraph 140.

7 141. The City lacks sufficient knowledge or information to form a belief about the
8 truth of the allegations in paragraph 141 and therefore denies the same.

9 142. The City denies the allegations in paragraph 142.

10 143. To the extent the allegations in paragraph 143 are based on prior denied
11 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
12 definition of "sweeps", the City denies the same. Otherwise, the City lacks sufficient knowledge
13 or information to form a belief about the truth of the allegations in paragraph 143 and therefore
14 denies the same.

15 144. The City denies the allegations in paragraph 144.

16 145. To the extent the allegations in paragraph 145 constitute legal arguments or
17 conclusions, no response is required. To the extent a response is required, the City denies those
18 allegations. The City denies the remaining allegations in paragraph 145.

19 146. The City denies the allegations in paragraph 146.

20 147. The City denies the allegations in paragraph 147.

21 148. To the extent the allegations in paragraph 148 are based on prior denied
22 allegations, including attempts to describe the City's policies or practices, the City denies the
23

1 same. The allegations in paragraph 148 are otherwise legal argument and conclusions, to which
2 no response is required. To the extent a response is deemed required, the City denies the same.

3 149. The City admits that it conducts both clean ups and targeted outreach when
4 encampments on its public property raise significant public health or safety concerns, obstruct
5 the intended use of public facilities, or otherwise necessitate intervention in furtherance of the
6 public interest. The allegations in paragraph 149 are otherwise legal argument and conclusions,
7 to which no response is required. To the extent a response is deemed required, the City denies
8 the same.
9

10 150. The City denies the allegations in paragraph 150.

11 151. The City denies the allegations in Paragraph 151.

12 152. To the extent the allegations in paragraph 152 are based on prior denied
13 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
14 definition of "sweeps", the City denies the same. The City denies the allegations in the first
15 sentence of paragraph 152. The City lacks sufficient knowledge or information to form a belief
16 about the truth of the remaining allegations in paragraph 152 and therefore denies the same.
17

18 153. The City admits that it uses various tools and equipment to clean up unauthorized
19 encampments and that some objects, including hazardous items, may be manipulated, cut, and/or
20 discarded as part of the clean-up. The City otherwise denies the allegation in paragraph 153.
21

22 154. The City admits that when it cleans up problematic encampments on its property,
23 items left on the property may be removed from the premises and, depending on the
24 circumstances, might be stored or discarded. The City otherwise denies the allegations in
25 paragraph 154.

26 155. The City denies the allegations in paragraph 155.
27

1 156. The City denies the allegations in paragraph 156.

2 157. To the extent the allegations in paragraph 157 are based on prior denied
3 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
4 definition of "sweeps", the City denies the same. The City admits that it conducts clean-ups on
5 its property without obtaining a warrant to do so, and denies that a warrant is required. The
6 remaining allegations in paragraph 157 constitute legal arguments or conclusions, to which no
7 response is required. To the extent a response is required, the City denies those allegations.
8

9 158. The City admits that it sometimes gathers and stores items as part of a clean-up on
10 its property when no one present asserts ownership over the item. The City denies the remaining
11 factual allegations in paragraph 158. To the extent the allegations in paragraph 158 constitute
12 legal arguments or conclusions, no response is required. To the extent a response is required, the
13 City denies those allegations.
14

15 159. The City denies the allegations in paragraph 159.

16 160. The City denies the allegations in paragraph 160.

17 161. The City admits that the clean-up process can be stressful. The City further
18 admits it might not store an item remaining at a clean-up site notwithstanding a request that the
19 item be stored, for example, if the item is hazardous. The City otherwise lacks sufficient
20 knowledge or information sufficient to form a belief about the truth of the remaining allegations
21 in paragraph 161 and therefore denies the same.
22

23 162. The City denies the allegations in paragraph 162.

24 163. The City denies the allegations in paragraph 163.

25 164. The City denies the allegations in paragraph 164.
26
27

1 165. To the extent the allegations in paragraph 165 are based on prior denied
2 allegations, including attempts to describe the City's policies or practices, the City denies the
3 same. The City admits that items that are identified as garbage may be destroyed. The City
4 otherwise lacks sufficient knowledge or information sufficient to form a belief about the truth of
5 the remaining allegations in paragraph 165 and therefore denies the same.
6

7 166. The allegations in paragraph 166 are ill-formed and ungrammatical. To the extent
8 a response is deemed required, the City denies the allegations.

9 167. The City denies the allegations in paragraph 167.

10 168. The City denies the allegations in paragraph 168.

11 169. The City denies the allegations in paragraph 169. The City further responds that
12 the pictured sticker is presented out of context. For a more accurate understanding, refer to the
13 Second Declaration of Chris Potter in Support of the City's Opposition to Plaintiffs' Motion for
14 Temporary Protective Order.
15

16 170. The City denies the allegations in paragraph 170.

17 171. The City denies the allegations in the first and second sentences of paragraph 171.
18 The City lacks sufficient knowledge or information sufficient to form a belief about the truth of
19 the allegations in the third sentence of paragraph 171 and therefore denies the same. The City
20 denies the remaining allegations in paragraph 171 and refers to the Second Declaration of Chris
21 Potter regarding this issue.
22

23 172. The City denies the allegations in paragraph 172.

24 173. The City admits that it stores at 4200 Airport Way South personal property left on
25 the City's property after notice was given that a clean-up would be conducted. The City also
26 admits that this property is available for retrieval at that storage facility. The City notes that its
27

1 new MDARs provide for free delivery of stored items. The City otherwise denies the allegations
2 in paragraph 173.

3 174. The City denies the allegations in paragraph 174.

4 175. The City denies the allegations in paragraph 175.

5 176. The City lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations in paragraph 176, which do not specify information regarding the quoted
7 material, and therefore denies the same.

8 177. The allegations in paragraph 177 are non-specific and as a result the City lacks
9 knowledge or information sufficient to form a belief about the truth of those allegations and
10 therefore denies them.

11 178. To the extent the allegations in paragraph 178 constitute legal arguments or
12 conclusions, no response is required. To the extent a response is required, the City denies those
13 allegations. The City denies the remaining allegations in paragraph 178.

14 179. The City admits that it received a letter from Columbia Legal Services and the
15 American Civil Liberties Union in 2015. The City responds that the letter speaks for itself and
16 otherwise denies the allegations in paragraph 179.

17 180. The City denies the allegations in the first sentence of paragraph 180. The
18 remaining allegations in paragraph 180 constitute legal conclusions to which no response is
19 required. To the extent a response is required, the City responds that the text of the *Lavan*
20 opinion speaks for itself and otherwise denies the allegations.

21 181. The allegations in paragraph 181 relate to a *Seattle Times* report. The City
22 responds that the text of the report speaks for itself, and otherwise denies the allegations
23 contained in paragraph 181.

1 182. The allegations in paragraph 182 are non-specific and as a result the City lacks
2 knowledge or information sufficient to form a belief about the truth of those allegations and
3 therefore denies them.

4 183. To the extent the allegations in paragraph 183 are based on prior denied
5 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
6 definition of "sweeps", the City denies the same. The remaining allegations in paragraph 183
7 relate to a Task Force report. The City responds that the text of the report speaks for itself, and
8 the City otherwise denies the allegations contained in paragraph 183.

9 184. To the extent the allegations in paragraph 184 are based on prior denied
10 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
11 definition of "sweeps", the City denies the same. The remaining allegations in paragraph 184
12 relate to monitor reports. The City responds that the text of the reports speak for themselves, and
13 the City otherwise denies the allegations contained in paragraph 184.

14 185. The allegations in paragraph 185 reference a letter sent from the Seattle Human
15 Rights Commission to the Mayor and City in September 2016. The City responds that the text of
16 the letter speaks for itself and otherwise denies the allegations in paragraph 185.

17 186. The City denies the first sentence of paragraph 186. The City admits that its
18 Department of Finance and Administrative Services ("FAS") is charged with administering the
19 City's clean-ups. The remaining allegations in paragraph 186 relate to a written communication;
20 the City responds that the text of the communication speaks for itself and otherwise denies the
21 allegations in paragraph 186.

22 187. The allegations in the first sentence of paragraph 187 relate to statements made by
23 the Seattle Human Rights Commission. The City responds that the text of those statements
24

1 speak for themselves and otherwise denies the allegations in that sentence. The City admits that
2 FAS performs robust and responsible management of the City's clean-up efforts.

3 188. The City admits that it commenced a clean-up on January 4, 2016 that was called
4 off for safety reasons. The City otherwise denies the allegations in paragraph 188.

5 189. The City denies the allegations in paragraph 189.

6 190. The City admits that it has adopted new MDARs. The City denies the remaining
7 allegations in paragraph 190.

8 191. The City lacks sufficient knowledge or information to form a belief about the
9 truth of the allegations in paragraph 191 and therefore denies the same.

10 192. The City admits that it has lawfully cleaned up encampments since Plaintiffs filed
11 this lawsuit. The City otherwise denies the allegations in paragraph 192.

12 193. The City admits that it has conducted lawful clean-ups of hazardous encampments
13 on public property after this lawsuit was filed. The City further admits that in some cases, clean-
14 ups may last longer than expected (as with the February 10 clean-up) or work may be delayed by
15 unexpected circumstances (as with the February 27 clean-up), and items not suitable for storage
16 may be broken down to be discarded. The City further responds that the text of the declaration
17 referred to in the fourth sentence of paragraph 193 speaks for itself.

18 194. The City admits that it provided substantial prior written and oral notice of a
19 clean-up at the area called the "Field", provided substantial outreach efforts to residents of the
20 encampment, and commenced a clean-up of that area on March 7, 2017. The City otherwise
21 denies the allegations in paragraph 194.

22 195. The City denies the allegations in paragraph 195.

1 196. To the extent the allegations in paragraph 196 are based on prior denied
2 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
3 definition of "sweeps", the City denies the same. The remaining allegations in paragraph 196
4 constitute legal conclusions and legal argument, to which no response is required. To the extent
5 a response is required, the City denies those allegations.
6

7 197. To the extent the allegations in paragraph 197 are based on prior denied
8 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
9 definition of "sweeps", the City denies the same. The City admits that in general unhoused
10 persons may face difficulties replacing items that are lost or in replacing items. The City
11 otherwise denies the allegations in paragraph 197.
12

13 198. To the extent the allegations in paragraph 198 are based on prior denied
14 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
15 definition of "sweeps", the City denies the same. The City denies the first sentence of paragraph
16 198. The City admits that in general unhoused persons can face difficulties in obtaining housing,
17 employment, or medical care, and otherwise denies the allegations in the second sentence of
18 paragraph 198. The City lacks knowledge or information sufficient to form a belief about the
19 truth of the allegations in the third sentence of paragraph 198 and therefore denies them.
20

21 199. To the extent the allegations in paragraph 199 are based on prior denied
22 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'
23 definition of "sweeps", the City denies the same. The City admits that unhoused persons face
24 difficult circumstances and otherwise denies the allegations in paragraph 199.
25

26 200. To the extent the allegations in paragraph 200 are based on prior denied
27 allegations, including attempts to describe the City's policies or practices, or the Plaintiffs'

1 definition of “sweeps”, the City denies the same. The first sentence of paragraph 200 consists of
2 legal argument and conclusions, to which no response is required. To the extent a response is
3 deemed required, the City denies the same. The City admits that unhoused persons face difficult
4 circumstances but denies that those circumstances are caused by the City’s clean-ups.

5 201. The City denies the allegations in paragraph 201.

6 202. The allegations in paragraph 202 constitute legal conclusions and legal argument
7 to which no response is required. To the extent a response is required, the City denies the same.
8

9 203. The allegations in paragraph 203 constitute legal conclusions and legal argument
10 to which no response is required. To the extent a response is required, the City denies the same.
11

12 204. The allegations in paragraph 204 constitute legal conclusions and legal argument
13 to which no response is required. To the extent a response is required, the City denies the same.
14

15 205. The City reincorporates its responses as set forth above.

16 206. The allegations in paragraph 206 constitute legal conclusions and legal argument
17 to which no response is required. To the extent a response is required, the City denies the same.
18

19 207. The City reincorporates its responses as set forth above.

20 208. The allegations in paragraph 208 constitute legal conclusions and legal argument
21 to which no response is required. To the extent a response is required, the City denies the same.
22

23 209. The City reincorporates its responses as set forth above.

24 210. The allegations in paragraph 210 constitute legal conclusions and legal argument
25 to which no response is required. To the extent a response is required, the City denies the same.
26

27 211. The City reincorporates its responses as set forth above.

212. The allegations in paragraph 212 constitute legal conclusions and legal argument
to which no response is required. To the extent a response is required, the City denies the same.

1 5. Plaintiffs oppose the City’s ongoing clean-up efforts. As a result, the parties have
2 genuine and adverse legal interests.

3 6. This controversy is of sufficient immediacy and reality to warrant the issuance of
4 a declaratory judgment declaring the MDARs constitutional.

5 7. The MDARs provide for notice and retrieval of property. The new MDARs
6 provide even more robust protections, including individualized notice and free delivery of stored
7 property for retrieval.

8 8. The City will follow the new MDARs.

9 9. A judicial determination that the City’s clean-up procedures and practices are
10 constitutional would provide a final and conclusive adjudication.

11 10. The City is therefore entitled to a declaratory judgment, under 28 U.S.C. § 2202
12 and RCW 7.24.010, that its clean-up policies and practices, including the prior and new MDARs,
13 are lawful and constitutional.
14
15
16
17

18 The City requests that judgment be entered in its favor and against Plaintiffs as follows:

19 1. Entry of judgment in favor of the City and against Plaintiffs declaring the City’s
20 policies and practices lawful and constitutional.

21 2. An award of reasonable attorney fees, expenses, and costs, to the fullest extent
22 allowed by law and equity.

23 3. Such other and further relief as the Court deems proper.
24
25
26
27

DATED this 16th day of March, 2017.

SEATTLE CITY ATTORNEY'S OFFICE

PACIFICA LAW GROUP LLP

By s/ Gregory Narver

By s/ Matthew J. Segal

Patrick Downs, WSBA #25276
Andrew Myerberg, WSBA #47746
Gregory Narver, WSBA #18127
Carlton Seu, WSBA #26830
Gary Smith, WSBA #29718

Matthew J. Segal, WSBA #29797
Gregory J. Wong, WSBA #39329
Taki V. Flevaris, WSBA #42555

Co-Counsel for Defendant City of Seattle

Attorneys for Defendant City of Seattle

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2017, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to the following:

Emily Chiang
Nancy Talner
Breanne Schuster
ACLU of Washington
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Email: echiang@aclu-wa.org
Email: Talner@aclu-wa.org
Email: bschuster@aclu-wa.org

Blake Edward Marks-Dias
Eric Lindberg
Todd T. Williams
CORR CRONIN MICHELSON
BAUMGARDNER FOGG & MOORE LLP
1001 - 4th Avenue, Suite 3900
Seattle, WA 98154
Email: bmarksdias@corrchronin.com
Email: elindberg@corrchronin.com
Email: twilliams@corrchronin.com

Attorneys for Plaintiffs

Attorneys for Plaintiffs

Patrick Downs
Andrew Thomas Myerberg
Gregory Colin Narver
Carlton Seu
Gary Smith
SEATTLE CITY ATTORNEY'S OFFICE
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Email: Patrick.downs@seattle.gov
Email: Andrew.myerberg@seattle.gov
Email: Gregory.narver@seattle.gov
Email: carlton.seu@seattle.gov
Email: gary.smith@seattle.gov

Matthew D. Huot
Alicia O. Young
ATTORNEY GENERAL'S OFFICE
TRANSPORTATION & PUBLIC
CONSTRUCTION
7141 Cleanwater Drive SW
PO Box 40113
Olympia, WA 98504-0113
Email: matth4@atg.wa.gov
Email: aliciaO@atg.wa.gov

*Attorneys for WA State Dept. of Transportation
and Roger Millar, Secretary of Transportation
for WSDOT, in his official capacity*

Co-Counsel for Defendant City of Seattle

Dated this 16th day of March, 2017.

Sydney Henderson