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**United States District Court
Central District of California
Western Division**

JAMES TYSON, *et al.*,

Plaintiffs,

v.

CITY OF SAN BERNARDINO,

Defendant.

EDCV 23-01539 TJH (KKx)

Order

and

Preliminary Injunction

The Court has considered Plaintiffs’ motion for a preliminary injunction [dkt. # 13] and motion for leave to file supplemental evidence in support of their motion for a preliminary injunction [dkt. # 57], together with the moving and opposing papers.

Plaintiffs Noel Harner, Lenka John, and James Tyson were experiencing homelessness in May, 2023, and June, 2023, when they were evicted, and their personal property was seized, by the City of San Bernardino [“the City”] from encampments at Perris Hill Park and Meadowbrook Park in the City. Harner, John, and Tyson have mobility related disabilities that cause them to use wheelchairs. Plaintiff SoCal Trash Army is a volunteer-run, non-profit, unincorporated association that focuses on, *inter alia*, people experiencing homelessness in the Inland Empire.

On November 8, 2023, Plaintiffs filed their First Amended Complaint alleging,

1 *inter alia*, that the City improperly seizes and destroys personal property belonging to
2 people experiencing homelessness, and that the City fails to provide reasonable
3 accommodations to people with disabilities who are experiencing homelessness during
4 the cleanup and removal of homeless encampments. This case was not filed as a class
5 action.

6 All Plaintiffs alleged claims against the City for: (1) Discrimination, in violation
7 of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*
8 ["ADA"]; (2) Failure to provide reasonable accommodations, in violation of the ADA;
9 (3) Violation of § 504 of the Rehabilitation Act, 29 U.S.C. § 794; (4) Unreasonable
10 search and seizure, in violation of the Fourth Amendment to the United States
11 Constitution and Article I, § 13 of the California Constitution; and (5) Violation of due
12 process guaranteed by the Fifth Amendment to the United States Constitution and
13 Article I, § 7 of the California Constitution. Additionally, Plaintiffs Harner, John, and
14 Tyson alleged a claim against the City for deliberate indifference, in violation of the
15 ADA, and Plaintiffs Tyson and John alleged a claim against the City for improperly
16 destroying personal property that belongs to people experiencing homelessness, in
17 violation of Cal. Civ. Code § 2080, *et seq.*, and Cal. Gov't Code § 815.6.

18 The individual Plaintiffs' claims for unreasonable seizure and due process are
19 premised on the broader fact that they are experiencing homelessness, and not
20 specifically because they have disabilities. Likewise, SoCal Trash Army's claims for
21 unreasonable seizure and due process are based on the fact that they work with people
22 experiencing homelessness.

23 An organization can assert an ADA and/or Rehabilitation Act claim if it can
24 demonstrate: (1) Frustration of its organizational mission; and (2) Diversion of its
25 resources to combat the particular conduct in question. *See Am. Diabetes Ass'n v. U.S.*
26 *Dep't of the Army*, 938 F.3d 1147, 1154 (9th Cir. 2019). SoCal Trash Army was
27 founded in July, 2020, to clean up trash around the City. Thereafter, it expanded its
28 mission to include work with people experiencing homelessness. In November, 2020,

1 it held its first event focused on food distribution. Then, in January, 2021, SoCal
2 Trash Army began providing, on a regular basis, food to people experiencing
3 homelessness. Shortly thereafter, SoCal Trash Army learned that the City was
4 destroying personal property that belonged to people experiencing homelessness, and
5 was failing to provide reasonable accommodations to people with disabilities who were,
6 also, experiencing homelessness and were evicted from encampments. SoCal Trash
7 Army, then, began replacing personal property that was destroyed by the City, and
8 began assisting people who were not able to move themselves or their personal property
9 after being evicted from encampments. Thus, for purposes of the instant motion,
10 SoCal Trash Army has established that it has standing to assert its ADA and
11 Rehabilitation Act claims, here.

12 In September, 2022, the City implemented its Citywide Policy on Encampment
13 Cleanups [“the Policy”]. This case was filed because, allegedly, the City is not
14 complying with the Policy.

15 The Policy mandates that the personal property of people experiencing
16 homelessness must not be treated differently than the property of other members of the
17 public, and that Public Works personnel are not permitted to destroy or dispose of
18 property belonging to people experiencing homelessness except in accordance with the
19 Policy. The Policy requires Public Works personnel to post, at least 72 hours before
20 a cleanup, a Notice of Cleanup stating the date and a three hour window during which
21 the cleanup will start at each targeted encampment. The Policy distinguishes between
22 attended and unattended property. The Policy defines unattended property as personal
23 property left at the site following the 72-hour notice period, where the property owner
24 is not present when City personnel arrive at a cleanup.

25 At the end of the 72-hour notice period, the Policy requires Public Works
26 personnel to, *inter alia*: (1) Tag unattended property with a 24-Hour Notice of Intent
27 to Store, which states that the City may seize and store the property if it is not removed
28 within the following 24 hours; (2) Post a Notice of Storage with the date and time that

1 the property was seized, the case number, the phone number that the owner can call to
2 obtain more information and to arrange retrieval of the seized property, and the time
3 during which the property can be retrieved free of charge and without identification;
4 and (3) Store the seized unattended property for 90 days.

5 The Policy, further, requires the City to provide reasonable accommodations in
6 the form of additional time and/or resources to people experiencing homelessness who
7 are unable to relocate during the cleanup of their encampment.

8 Since June, 2022, the City’s Public Works Department has engaged Burrtec
9 Industries, Inc. [“Burrtec”], a private waste management company under contract with
10 the City, to clean up and remove homeless encampments within the City.

11 Since September, 2022, the City and/or Burrtec have, allegedly, cleaned up and
12 evicted the occupants of over 2,000 encampments, and intend to continue those
13 cleanups and evictions. Further, the alleged Policy violations during those cleanups
14 have, allegedly, hindered SoCal Trash Army’s work distributing food to people
15 experiencing homelessness.

16 Plaintiffs, now, move for a preliminary injunction.

17 **Requested Preliminary Injunction**

18 Plaintiffs seek a preliminary injunction that enjoins the City and its contractors
19 from removing individuals experiencing homelessness, and their attended and
20 unattended personal property, from encampments within the City until the City submits,
21 and the Court approves, a plan that:

- 22 (1) Requires the City to post adequate pre-seizure and post-seizure notices,
23 and to implement lawful storage and documentation practices so that
24 seized items are properly tagged and stored for post-seizure retrieval; and
25 (2) Requires the City to provide – in connection with park closures,
26 encampment clearing, and related property seizure, disposal, and/or
27 destruction – reasonable accommodations to people with disabilities who
28 are, also, experiencing homelessness, including:

- 1 (A) A process that provides for the investigation of reasonable
2 accommodation requests;
- 3 (B) Modifications to the City's programs and activities;
- 4 (C) Training for City employees and contractors who interact with
5 people with disabilities; and
- 6 (D) A self-evaluation of the City's programs and activities within one
7 year.

8 **Standard for Injunctive Relief**

9 Generally, to obtain a preliminary injunction, Plaintiffs must establish that: (1)
10 They are likely to succeed on the merits; (2) They are likely to suffer irreparable harm
11 in the absence of a preliminary injunction; (3) The balance of equities tips in their
12 favor; and (4) An injunction is in the public interest. *Winter v. Nat. Res. Def. Council,*
13 *Inc.*, 555 U.S. 7, 20 (2008). Injunctive relief is an extraordinary remedy that may be
14 awarded only upon a clear showing that Plaintiffs are entitled to relief. *Winter*, 555
15 U.S. at 22.

16 **Likelihood of Success on the Merits**

17 **1. Unreasonable Seizure of Personal Property**

18 Plaintiffs seek an injunction to prohibit, *inter alia*, the illegal seizure of property.
19 The Fourth Amendment's prohibition against unreasonable seizures of property applies
20 to the City through the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643
21 (1961).

22 The Fourth Amendment prohibits the unreasonable seizure of personal property,
23 even if the property is located in a public area. *See Recchia v. City of L.A. Dep't of*
24 *Animal Servs.*, 889 F.3d 553, 558 (9th Cir. 2018). The destruction of personal
25 property is a seizure. *United States v. Jacobsen*, 466 U.S. 109, 12425 (1984).
26 Further, because a warrantless seizure is *per se* unreasonable, the City bears the burden
27 of showing that a warrantless seizure falls within an exception to the Fourth
28 Amendment's warrant requirement. *See Garcia v. City of L.A.*, 11 F.4th 1113, 1118

1 (9th Cir. 2021). In *Lavan v. City of L.A.*, the Ninth Circuit Court of Appeals
2 concluded that a municipality's immediate destruction of personal property that
3 belonged to people experiencing homelessness is an unreasonable seizure in violation
4 of the Fourth Amendment. 693 F.3d 1022, 1031 (9th Cir. 2012).

5 Because private contractors engaged by a municipality are subject to the same
6 Fourth Amendment prohibitions that limit the actions of the municipality, the Court will
7 collectively consider the actions of the City and Burrtec. See *United States v.*
8 *Jacobsen*, 466 U.S. 109, 113 (1984).

9 The City acknowledged, here, that its encampment clean ups were done pursuant
10 to neither a warrant nor a warrant exception. In recognition of *Lavan*, the City did not
11 argue that it is reasonable, under the Fourth Amendment, to immediately destroy
12 publicly stored personal property that belongs to people experiencing homelessness.
13 Instead, the City's opposition was premised upon on its asserted practice of not
14 immediately destroying personal property at clean up locations.

15 In support of the instant motion, Plaintiffs submitted twenty-two declarations
16 from people who witnessed the City's recent encampment clearings. Some of the
17 declarants described instances where the City seized and, then, immediately destroyed
18 personal property that belonged to people experiencing homelessness, including some
19 people who had disabilities.

20 As an example, Plaintiff John declared that, on May 18, 2023, a City employee
21 informed her that she needed to vacate Meadowbrook Park. She, further, declared
22 that, because she is disabled and relies on a wheelchair and service dog, she could not
23 carry away all of her personal property; that she took two backpacks and a small
24 suitcase with her and planned to return for the rest of her property; and that as she was
25 leaving Meadowbrook Park, she saw a clean up crew throw the rest of her personal
26 property, including her walker, a first-aid kit, a suitcase, and her medical records, into
27 a trash truck.

28 As another example, Plaintiff Tyson declared that, in early June, 2023, a clean

1 up crew seized and discarded – without prior notice – his personal property, including,
2 *inter alia*, clothes and hygiene supplies. In sum, Tyson declared that the City seized
3 and immediately destroyed his personal property on five or six different occasions.

4 Plaintiffs, also, submitted a declaration from Kristen Malaby, the founder of
5 SoCal Trash Army, who declared that SoCal Trash Army replaced hundreds of tents,
6 tarps, and items of clothing that belonged to people experiencing homelessness in the
7 City but were destroyed by the City during encampment clearings.

8 Declarations may form the basis for a preliminary injunction, unless the facts set
9 forth in them consist largely of general assertions that are substantially controverted by
10 counter-declarations. *See K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1089–90 (9th
11 Cir. 1972). When considering declarations, the Court can give more or less weight to
12 each declaration based on the declarant’s personal knowledge and credibility. *Flynt*
13 *Distributing Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).

14 In opposition, the City submitted eight declarations from its employees to
15 challenge the veracity of the declarations submitted by Plaintiffs. The Court takes note
16 that the City did not submit any declarations from Burrtec employees.

17 To challenge the veracity of the declarations of John and Tyson, the City
18 submitted a declaration from David Miller, a City Public Works supervisor. Miller
19 declared that the City does not discard personal property that belongs to people
20 experiencing homelessness during encampment clean ups, and that the City discards
21 only trash. However, Miller did not declare that he was present at all of the clean ups
22 identified in the declarations submitted by Plaintiffs, or at all of the 2,406 encampment
23 clean ups conducted by the City and/or Burrtec between September, 2022, and June 30,
24 2023. Consequently, the Court does not give great weight to Miller’s declaration
25 regarding what actually happened at clean ups that he did not specifically declare that
26 he personally supervised from beginning to end. *See Flynt Distributing Co., Inc.*, 734
27 F.2d at 1394.

28 After considering all of the declarations submitted by the parties, here, Plaintiffs’

1 declarations clearly established a *prima facie* case that the City and Burrtec, as the
2 City's agent, seized and immediately destroyed personal property that belonged to
3 people experiencing homelessness, including Plaintiffs John and Tyson. The Court
4 finds that Plaintiffs' declarations were not substantially controverted by the declarations
5 submitted by the City. *See K-2 Ski Co.*, 467 F.2d at 1089–90; *Flynt Distributing Co.*,
6 *Inc.*, 734 F.2d at 1394.

7 Thus, Plaintiffs have established a strong likelihood of success on the merits for
8 their Fourth Amendment unreasonable seizure claim. *See Winter*, 555 U.S. at 20.
9 Consequently, at this juncture, the Court need not, also, consider Plaintiffs'
10 unreasonable seizure claim in the context of Article I, § 13 of the California
11 Constitution, Cal. Civ. Code § 2080, *et seq.*, or Cal. Gov't Code § 815.6.

12 2. Due Process

13 Plaintiffs, here, seek, *inter alia*, an injunction to prohibit the illegal taking of
14 property without due process. The Fourteenth Amendment to the United States
15 Constitution prohibits a municipality from depriving a person of life, liberty, or
16 property without due process; any significant taking of property by a municipality falls
17 within the purview of the Fourteenth Amendment. *See Fuentes v. Shevin*, 407 U.S. 67,
18 86 (1972).

19 In *Lavan*, the Ninth Circuit set forth the due process rights of people
20 experiencing homelessness related to the seizure of personal property. 693 F.3d at
21 1031–33. Specifically, due process requires the City to provide notice and an
22 opportunity to be heard before *and* after it seizes personal property that belongs to
23 people experiencing homelessness. *See Lavan*, 693 F.3d at 1033.

24 The City, here, did not dispute the due process rights of people experiencing
25 homelessness. Instead, it argued that the Policy provides sufficient due process and that
26 it acted in accordance with the Policy.

27 Based on the declarations submitted by Plaintiffs, there were at least several
28 instances where the City failed to provide people experiencing homelessness with an

1 opportunity to be heard before the City seized their personal property. Further, the
2 Policy, on its face, does not provide for an opportunity for people experiencing
3 homelessness to be heard post-seizure.

4 Thus, Plaintiffs have established a likelihood of success on the merits for their
5 due process claim based on the Fourteenth Amendment. *See Winter*, 555 U.S. at 22.
6 Consequently, at this juncture, the Court need not, also, consider Plaintiffs’ due process
7 claim in the context of Article I, § 7 of the California Constitution, Cal. Civ. Code §
8 2080, *et seq.*, or Cal. Gov’t Code § 815.6.

9 **3. ADA and Rehabilitation Act**

10 To assert a claim against the City under § 504 of the Rehabilitation Act, Plaintiffs
11 must, first, show that the City received federal financial assistance. *See Duvall v.*
12 *County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001). To meet that burden,
13 Plaintiffs submitted the City’s adopted budget for the 2023 - 2024 fiscal year, which
14 shows the receipt of federal funds from the Corona Virus State and Local Fiscal
15 Recovery Fund, the Community Development Block Grant, the Emergency Solutions
16 Grant, and the HOME Investment Partnership Program.

17 The ADA prohibits municipalities from discriminating against qualified
18 individuals on account of their disabilities. 42 U.S.C. § 12132. The ADA requires the
19 City to “make reasonable modifications in policies, practices, or procedures when the
20 modifications are necessary to avoid discrimination on the basis of disability, unless [it]
21 can demonstrate that making the modifications would fundamentally alter the nature of
22 the service, program, or activity.” *McGary v. City of Portland*, 386 F.3d 1259,
23 1265–66 (9th Cir. 2004). The failure of the City to provide such reasonable
24 accommodations may constitute discrimination under Title II of the ADA and § 504 of
25 the Rehabilitation Act. *See Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002).

26 Because Title II of the ADA was modeled after § 504 of the Rehabilitation Act,
27 and their elements do not differ in any relevant respect, the Court can, and will,
28 address those two claims together. *See Zukle v. Regents of Univ. of Cal.*, 166 F.3d

1 1041, 1045 (9th Cir. 1999).

2 To establish that the City violated Title II of the ADA and § 504 of the
3 Rehabilitation Act, Plaintiffs, here, must satisfy the following four elements: (1) They
4 have disabilities; (2) They were otherwise qualified to participate in or receive the
5 benefit of the City's services, programs, or activities; (3) They were excluded from
6 participation in, or denied the benefits of, the City's services, programs, or activities,
7 or were otherwise discriminated against by the City; and (4) The exclusion, denial of
8 benefits, or discrimination was by reason of their disabilities. *See Thompson v. Davis*,
9 295 F.3d 890, 895 (9th Cir. 2002); *Duvall*, 260 F.3d at 1135–36.

10 Plaintiffs Harner, John, and Tyson appear to be qualified individuals with
11 disabilities. Harner, John, and Tyson have mobility related disabilities that cause them
12 to use wheelchairs. All of the individual Plaintiffs are qualified and entitled to receive
13 the benefits of the City's programs, activities, and services. *See McGary*, 386 F.3d at
14 1269–70. Thus, Plaintiffs satisfied the first and second elements of their ADA and
15 Rehabilitation Act claims.

16 Plaintiffs can satisfy the third element by showing that they were denied a
17 reasonable accommodation needed to enjoy meaningful access to the benefits of the
18 City's services. *See A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d
19 1195, 1204 (9th Cir. 2016). Generally, a person with disabilities must, first, make a
20 request for a reasonable accommodation. *See Duvall*, 260 F.3d at 1139. A reasonable
21 accommodation may, also, be required, without a request, if the accommodation was:
22 (1) Obvious, or should have been obvious, to a public entity; or (2) Required by a
23 statute or regulation. *See Duvall*.

24 The City's Policy does not set forth a process by which a person experiencing
25 homelessness can make a request for a reasonable accommodation. Regardless, the
26 City acknowledged that the American Civil Liberties Union, which represents
27 Plaintiffs, here, provided Plaintiffs Harner, John, and Tyson with forms to request
28 reasonable accommodations during the clean ups at Perris Hill Park and Meadowbrook

1 Park. Those Plaintiffs declared that they submitted requests for reasonable
2 accommodations to the City but that the City never responded.

3 After a person submits a request for a reasonable accommodation based on a
4 disability, or if the accommodation was obvious or required by a statute or regulation,
5 the City is *mandated* to undertake a fact-specific investigation to determine what
6 constitutes a reasonable accommodation for the situation. *See Duvall*. For a fact-
7 specific investigation to be adequate, the City must have gathered sufficient information
8 from the person with disabilities who made the accommodation request, as well as from
9 qualified experts, so that it was able to determine whether the requested accommodation
10 was reasonable. *See Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir.
11 1999). When evaluating whether a requested accommodation is reasonable, the City
12 is obligated to consider the particular needs of the person who made the request. *See*
13 *Duvall*, 260 F.3d at 1139–40. Further, the City could not have summarily concluded,
14 without undertaking the required investigation, that a requested accommodation was
15 neither reasonable nor feasible. *See Duvall*.

16 The declarations submitted by Plaintiffs describe several instances where the City
17 failed to provide reasonable accommodations to people experiencing homelessness who
18 were, also, disabled. By way of example, John and Tyson both declared that the City
19 did not provide them with the requested assistance to pack and transport their personal
20 property during the cleanup of Meadowbrook Park. Further, Harner declared that the
21 City did not respond to her request to be relocated to a location where she could be
22 with her service dog. Regardless of whether the City received requests, because
23 Plaintiffs Harner, John, and Tyson have mobility related disabilities and use
24 wheelchairs, it should have been obvious to the City that they needed reasonable
25 accommodations to relocate. *See Duvall*, 260 F.3d at 1139.

26 Consequently, the Court finds that Plaintiffs have established that the City failed
27 to provide people with disabilities, including Harner, John, and Tyson, with reasonable
28 accommodations during the clean up and removal of homeless encampments in the

1 City. *See Duvall*.

2 Plaintiffs can satisfy the fourth element of their ADA and Rehabilitation Act
3 claims by showing that the City's denial of access to benefits or services was based on
4 the fact, or perception, that they have disabilities. *See Weinreich v. L.A. Cnty. Metro.*
5 *Transp. Auth.*, 114 F.3d 976, 979 (9th Cir. 1997).

6 To show that the discrimination was based on the fact, or perception, of
7 Plaintiffs' disabilities, they may show that a facially neutral and consistently enforced
8 policy burdened them in a manner different from, and greater than, non-disabled people
9 experiencing homelessness. *See McGary*, 386 F.3d at 1265. To prevent undue
10 burdens on people with disabilities, the ADA imposes an affirmative duty to provide
11 special or preferred treatment as a reasonable accommodation. *McGary*, 386 F.3d at
12 1266.

13 Here, Harner, John, and Tyson declared that the City's actions burdened them
14 in a manner different from, and greater than, people without disabilities. *See McGary*,
15 386 F.3d at 1265. Harner declared that, after the City evicted her from Perris Hill
16 Park, she moved to the side of Perris Hill Park Road where there is no sidewalk. To
17 get out of the dirt, Harner declared that she relies on a friend to push her wheelchair,
18 or she crawls out and pulls her wheelchair behind her, to get to the sidewalk across the
19 street. John declared that, after the City destroyed her walker, she struggles to move
20 in situations where she cannot use her wheelchair. Finally, Tyson declared that, after
21 the City seized his personal property from the parking lot near Meadowbrook Park, he
22 moved to the adjacent ravine, and to get down to the ravine he has to throw his
23 wheelchair down to the ravine and then slide down on his body.

24 Consequently, the Court finds that Plaintiffs have established a *prima facie* case
25 that the City discriminates against people with disabilities, including Harner, John, and
26 Tyson, based on the fact, or perception, of their disabilities. *See Weinreich*, 114 F.3d
27 at 979.

28 Thus, Plaintiffs have established a likelihood of success on the merits for their

1 ADA and Rehabilitation Act claims. *See Winter*, 555 U.S. at 22.

2 **Irreparable Harm**

3 Generally, Plaintiffs must show that irreparable harm will continue in the absence
4 of a preliminary injunction. *See Winter*, 555 U.S. at 2021. Plaintiffs seek an
5 injunction based on both their constitutional and statutory claims, here.

6 A preliminarily established constitutional violation, as is the situation, here,
7 constitutes irreparable harm in support of the issuance of a preliminary injunction. *See*
8 *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 140,
9 1412 (9th Cir. 1991).

10 In support of a preliminary injunction based on their ADA and Rehabilitation Act
11 claims, Plaintiffs Harner, John, and Tyson declared that they submitted requests for
12 reasonable accommodations to the City but that the City never responded. Further,
13 Harner and Tyson declared that they are currently experiencing homelessness, and live
14 in locations that are not wheelchair accessible after the City evicted them from Perris
15 Hill Park and Meadowbrook Park. Because the City has plans to continue cleaning up
16 and evicting the occupants of homeless encampments, Harner and Tyson are
17 immediately threatened by additional discrimination based on the City's failure to
18 provide reasonable accommodations. Consequently, if a preliminary injunction is not
19 issued, Harner and Tyson are likely to continue to suffer irreparable harm before a
20 decision on the merits is rendered. *See Herb Reed Enters., LLC v. Fla. Entm't Mgmt.*,
21 736 F.3d 1239, 1249 (9th Cir. 2013).

22 Accordingly, Plaintiffs have demonstrated that irreparable harm will continue in
23 the absence of a preliminary injunction. *See Winter*, 555 U.S. at 2021.

24 **Balance of Equities and the Public Interest**

25 When considering a motion for a preliminary injunction, the Court must balance
26 the equities by identifying the harm that an injunction may cause to the Defendant and
27 weighing that against the risk of continuing injury to the Plaintiffs. *See Armstrong v.*
28 *Mazurek*, 94 F.3d 566, 568 (9th Cir. 1996).

1 The Court must, also, consider whether the public interest would be furthered
2 by the issuance of a preliminary injunction. *See Inst. of Cetacean Rsch. v. Sea*
3 *Shepherd Conservation Soc.*, 725 F.3d 940 (9th Cir. 2013). Because a municipality’s
4 actions are, presumably, in the public’s interest, the balance of equities analysis merges
5 into the public interest analysis. *See Drakes Bay Oyster Co.*, 747 F.3d 1073, 1092
6 (2014).

7 Here, the City argued that a preliminary injunction would hamper its efforts to
8 regulate public spaces. Thus, the Court must balance the City’s interest in keeping
9 public spaces clean against the constitutional rights of individuals experiencing
10 homelessness to retain their personal belongings and their right to reasonable
11 accommodations if they, also, have disabilities. However, the Court cannot give
12 weight to the Policy, as it has preliminarily found the Policy to be unconstitutional and
13 violative of the ADA. *See Garcia*, 481 F. Supp. 3d at 1050–51.

14 Further, the Court is, and should be, cognizant of the fact that people
15 experiencing homelessness are members of the community, and their interests, too,
16 must be included in assessing the public interest. *See Le Van Hung v. Schaff*, No.
17 19-cv-10436-CRB, 2019 WL 1779584 at 7 (N.D. Cal. 2019). Indeed, “[o]ur society
18 as a whole suffers when we neglect the poor, the hungry, the disabled, or when we
19 deprive them of their rights or privileges.” *Lopez v. Heckler*, 713 F.2d 1432, 1437
20 (9th Cir. 1983).

21 In sum, the balance of equities, here, tips in the favor of Plaintiffs and the
22 issuance of a preliminary injunction. Likewise, the public interest favors the issuance
23 of a preliminary injunction.

24 **Waiver of Bond**

25 Usually, a bond is a condition precedent to the issuance of a preliminary
26 injunction. Fed. R. Civ. P. 65(c). However, the Court may waive the bond when the
27 Plaintiffs are unable to afford its cost or when there is little, or no, harm to the party
28 being enjoined. *See Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003);

1 *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).

2 Plaintiffs failed to provide the Court with evidence of their current financial
3 conditions, so the Court cannot consider whether any of them can afford the cost of a
4 bond, though the Court presumes that the individual Plaintiffs who are currently
5 experiencing homelessness cannot afford the cost of a bond. Regardless, the Court
6 finds, here, that the City will not be harmed by the injunction, and that its lack of harm
7 justifies the waiver of the bond requirement, as it did in *Lavan v. City of Los Angeles*,
8 No. 11-cv-2874-PSG, 2011 WL 1533070 at 6 (C.D. Cal. 2011), where a similar
9 injunction was issued.

10 **Preliminary Injunction**

11 Plaintiffs have established their entitlement to a preliminary injunction that
12 enjoins the City, its contractors and agents, from removing individuals experiencing
13 homelessness and/or their attended and/or unattended personal property from
14 encampments within the City pending a final resolution of this case or further order of
15 the Court.

16 The Court will consider vacating the preliminary injunction if the City crafts and
17 presents a lawful revised Policy regarding homeless encampment clean up operations,
18 and if that revised Policy is approved by the Court.

19 **Plaintiffs' Request for Leave to File Supplemental Evidence**

20 After Plaintiffs filed their motion for a preliminary injunction, they moved,
21 pursuant to Fed. R. Civ. Proc. 65(a), for leave to file supplemental evidence in support
22 of their motion for a preliminary injunction. The motion for leave to file supplemental
23 evidence is, now, moot.

24
25 Accordingly,

26
27 **It is Ordered** that Plaintiffs' motion for a preliminary injunction be, and
28 hereby is, **Granted**.

1 **It is further Ordered** that, pending a final resolution of this case or further
2 order of the Court, the City of San Bernardino, and its employees, agents and
3 contractors, be, and hereby are, **Preliminarily Enjoined**, forthwith, from conducting
4 any operations involving or related to the removal of unhoused people and/or their
5 attended and/or unattended personal property from parks and other publicly accessible
6 locations in the City; the Court will consider vacating this Preliminary Injunction if the
7 City crafts and presents a lawful revised Policy regarding homeless encampment clean
8 up operations and that revised Policy is approved by the Court.

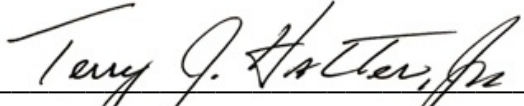
9
10 **It is Further Ordered** that the City shall, forthwith, deliver a copy of this
11 Order and Preliminary Injunction to Burrtec and any other contractors and agents it
12 may have.

13
14 **It is Further Ordered** that the bond for this Preliminary Injunction be, and
15 hereby is, Waived.

16
17 **It is further Ordered** that this Order will serve as the findings of fact and
18 conclusions of law in support of the issuance of this Preliminary Injunction.

19
20 **It is Further Ordered** that Plaintiffs' motion for leave to file supplemental
21 evidence in support of their motion for a preliminary injunction be, and hereby is,
22 Denied as moot.

23
24 Date: January 12, 2024

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26 
27 **Terry J. Hatter, Jr.**
28 **Senior United States District Judge**