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3 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
4 FOR MULTNOMAH COUNTY
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7 **MARK USHER**
8 **STEVEN BLACK**
9 **SCOTT RUPP**
10 **JENNIFER BRYANT**
11 individually and on behalf
of others similarly situated

12 Plaintiffs

13 vs

14 **CITY OF PORTLAND**

15 Defendant
16
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Case No.

**CLASS ACTION COMPLAINT
FOR EQUITABLE RELIEF
PERTAINING TO THE CITY'S
CAMPING SITE SWEEPS**

Filing Fee Authority: ORS 21.135
Not Subject to Mandatory Arbitration

Temporary Restraining Order Sought
Expedited Hearing Requested
Jury Trial Requested

18 **1.**

19 **LEGAL BACKGROUND**

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21 When removing a person from a camping site, Oregon law requires the City
22 of Portland to store any property left by the person, and to make the property
23 reasonably available for the person to recover. Oregon law permits the City to
24 discard the person's property only if the property is useless or insanitary.
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26 **2.**

27 This class action does not seek to change Oregon's laws on camping site
28 sweeps – only to enforce them.

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2 **3.**

3 **COMMON FACTUAL ALLEGATIONS**

4 The City has hired third party contractors like Rapid Response to conduct
5 sweeps of various camping sites within the City. Each of the plaintiffs in this case
6 are homeless people who have been the subject of sweeps by the City in the past six
7 months. During these sweeps, the City, through its contractors, has systematically
8 failed to comply with ORS 203.079(d) by failing to make property taken from the
9 plaintiffs reasonably available to them for 30 days, and by discarding property taken
10 from the plaintiffs that was neither useless nor insanitary. The City's systematic
11 failure to comply with ORS 203.079(d) in part also failed to comply with promises
12 made by the City in the Anderson Agreement¹ and Portland Police Directive
13 0835.20².
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17 **4.**

18 Plaintiffs have retained a qualified expert with personal knowledge of the
19 City's camping site sweeps who is available and willing to testify that the City's
20 contractors have a pattern, practice, and custom of systematically ignoring the
21 requirements of ORS 203.079(d), depriving plaintiffs and other similarly situated
22 homeless people of liberty and property without due process.
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27 _____
28 ¹ <https://www.portlandoregon.gov/toolkit/article/738923>

² <https://www.portlandoregon.gov/police/article/541447>

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2 **5.**

3 On May 19, 2021, the City released a memo announcing that it was changing
4 the rules pertaining to when its contractors can sweep homeless camping sites, in
5 favor of a more assertive approach.³ The City stated in a press release that it will
6 prioritize sweeping camping sites that have eight or more structures or that block
7 public sidewalks.⁴ The City also claims that it will prioritize sweeping camping sites
8 when its law enforcement officers receive “credible reports of criminal activity.”⁵ The
9 City does not define how an officer assesses whether a report is “credible” or what
10 sort of “criminal activity” triggers a sweep, except to say that “camping” alone does
11 not count.
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15 **6.**

16 Each of the plaintiffs in this case are currently camping in the very sites that
17 the City says it intends to target starting today, creating a substantial likelihood
18 that plaintiffs will experience irreparable harm, including the loss of personal
19 property without due process of law, absent intervention from the Court. The public
20 interest strongly favors requiring the City to follow the law when removing people
21 from camping sites.
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25 ³ <https://www.opb.org/article/2021/05/19/portland-oregon-homeless-encampments/>

26 ⁴ <https://www.portland.gov/omf/news/2021/5/19/city-council-unanimously-agrees-health-and-safety-protocols-unsanctioned>

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28 ⁵ <https://www.portland.gov/sites/default/files/2021/revised-covid-19-protocols-may-2021.pdf>

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2 **7.**

3 The City, through its contractors, has a pattern and practice and custom of
4 failing to collect and catalogue and store seized property in a manner sufficient to
5 make the property reasonably available for people to recover as the law requires.
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7 The City has a pattern and practice and custom of failing to document discarded
8 property to allow any meaningful review of whether the property was properly
9 determined to be either useless or insanitary as the law requires.
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11 **8.**

12 The City does not deny that its contractors systematically ignored the
13 requirements of ORS 203.079(d) with respect to plaintiffs in the past, nor has the
14 City confirmed that it has adopted adequate policies and procedures to stop its
15 contractors from continuing to systematically ignore the requirements of ORS
16 203.079(d) moving forward.
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18 **9.**

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20 As a result of the actions and omissions of the City and its contractors as
21 described in this complaint, each plaintiff has experienced a wrongful loss of
22 property and liberty without due process of law. Absent Court intervention or a
23 settlement agreement with the City, each plaintiff faces a substantial likelihood of
24 similar losses in the immediate future, as the City begins its more assertive approach
25 to sweeping the camping sites where plaintiffs live.
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2 **10.**

3 **FACTUAL ALLEGATIONS SPECIFIC TO**
4 **PLAINTIFF MARK USHER**

5 Mr. Usher has been houseless in Portland for about a year. His property has
6 been swept multiple times by the City's contractors. On or about the first week of
7 February of 2021, Mr. Usher was living in the area around Laurelhurst Park when
8 it was swept by the City through its contractor, Rapid Response. This was the fifth
9 sweep Mr. Usher had been subjected to within a few months. Each sweep pushed
10 Mr. Usher back and forth between the area around Laurelhurst Park and the area
11 around Sunnyside School. Notice of the sweep had been posted and Mr. Usher was
12 mostly packed when Rapid Response and Portland Police came to remove the
13 residents. Rapid Response put yellow tape around the residents' tents and
14 belongings and would not let anyone other than the residents behind the tape to help
15 the residents move their belongings. A non-resident tried to go past the tape and
16 Portland Police stopped the person and threatened them with arrest. Mr. Usher was
17 in his tent when the tape went up around him.
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22 **11.**

23 Mr. Usher often gets things like coats and shoes in free boxes. The day before
24 the sweep, Mr. Usher found a nice pair of Gordini goose down gloves in a free box.
25 Mr. Usher has neuropathy that causes a very painful pins-and-needles feeling in his
26 hands. The pain prevents him from sleeping well. He found that the Gordini gloves
27 really helped to prevent and ease that pain and helped him to be able to sleep.
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2 **12.**

3 During the sweep, Portland Police officer Sergeant Jacobsen assigned an
4 officer to speed up Mr. Usher's move. Mr. Usher was told that he had 20 minutes to
5 move all of his belongings. While Mr. Usher was getting the rest of his possessions
6 from inside his tent, a Portland Police officer, without asking Mr. Usher's
7 permission, entered Mr. Usher's tent and began using his feet to kick Mr. Usher's
8 belongings into a black plastic bag. The officer did not ask Mr. Usher if he could help
9 or how he could help. When the bag was full, the officer took the black plastic bag
10 out of the tent and put it on the Rapid Response trash truck. Mr. Usher's Gordini
11 gloves were on the floor of his tent near the officer before the officer started kicking
12 Mr. Usher's belongings into a trash bag. Mr. Usher has not seen the gloves since and
13 has not been able to replace the gloves and has not been able to have the same relief
14 from pain that the gloves had afforded him. The City and its contractors failed to
15 make Mr. Usher's property reasonably available to him and discarded property that
16 was neither useless nor insanitary.
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21 **13.**

22 Mr. Usher has never seen Rapid Response or Portland Police take pictures of
23 any possessions they have taken, has never seen them produce any list of items or
24 receipts, has never seen labels of names put on the bags, and has never seen City
25 agents do anything to ensure that the correct person would be able to reasonably
26 recover their belongings back that Rapid Response and Portland Police officers have
27 taken from the owners.
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2 **14.**

3 Because of the effects of having to start over after people's belongings are
4 taken during sweeps and because of the constant threat of that deprivation by
5 sweeps, Mr. Usher believes that that many unhoused people find it impossible to
6 look for work. Additionally, the uncertainty of when or if the sweep will actually
7 happen during the eight-day window provided in the sweep notice is stressful,
8 causing him to worry and lose sleep. Sometimes Rapid Response will come to the
9 area the day before a sweep and tell the residents to expect it the following day or a
10 particular day. Sometimes that is true and other times the sweep does not happen
11 when Rapid Response has said that it would. Other times there is no warning of
12 when it might happen within the eight days, and Rapid Response just suddenly
13 appears and tells people to move all of their belongings in 15 to 30 minutes. After
14 the last sweep in February of 2021, Mr. Usher got a new tent and set up in the same
15 place later in the day. Mr. Usher currently lives on City property and fears that he
16 will be swept in the next few days and lose more possessions in a sweep. He believes
17 that there is nowhere he can safely live in Portland without the threat of being
18 swept.
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2 **15.**

3 **FACTUAL ALLEGATIONS SPECIFIC TO**
4 **PLAINTIFF STEVEN BLACK**

5 Mr. Black has lived in Portland for almost all of his life, and he has been
6 homeless in Portland since 2013 after being unable to make the final payments on
7 the home he owned. He has slept in camps, doorways, underpasses, shelters and
8 other places. Mr. Black has multiple disabilities that cause him physical pain and
9 that affect his movement and his ability to focus. He has had three back surgeries
10 and has titanium in his back that causes him pain, and he has arthritis. He had been
11 receiving Social Security Disability Insurance, but after his payee retired he has
12 been unable to find a new one. All of his income now comes from returning cans for
13 the deposit money. In warmer weather he is able to return cans to make up to \$100
14 a day, but, in the colder weather, the titanium in his back and his arthritis make it
15 too painful and difficult for him to do the same.
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19 **16.**

20 Mr. Black has had many possessions taken from him by Rapid Response
21 during sweeps in the Spring of 2020 and in the area around Laurelhurst Park in
22 November of 2020. He believes that he has seen and knows of over one hundred
23 people who have had possessions taken by the City over the last two years. In the
24 Spring of 2020, Mr. Black was living in a tent near about 20 other people by the
25 Franz Bakery Outlet Store on NE 11th Ave.
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2 **17.**

3 Mr. Black had lived there for about a month before he was subjected to a
4 sweep by Rapid Response, and some of the other residents had lived there longer
5 and had never been swept before. Rapid Response had posted a notice that the area
6 would be swept, but the residents did not believe they would be swept because of the
7 pandemic guidance that has consistently stated that camps should not be swept.
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10 **18.**

11 On the day of the sweep, Rapid Response and Portland Police officers arrived
12 at 7am, and the officers began yelling at each tent to, "Wake up and get out!", and
13 generally being rude to the people living there. Rapid Response told the residents of
14 the camp to take what they could carry and assured the residents that all their
15 possessions that they could not carry would be very safe in the Rapid Response
16 warehouse. Mr. Black did not see Rapid Response destroy anything while they
17 packed up his tent and other possessions. Rapid Response took no photos of the
18 belongings of the residents. He did not see the Rapid Response create any inventory
19 of the belongings of the residents. All of the belongings that the residents could not
20 carry with them in a single load Rapid Response put in clear plastic bags, with labels
21 that said "Franz" and the date. Rapid Response did not put any residents' names on
22 the bags and no resident was given any receipt, list of items, or other means to track
23 what Rapid Response had taken. Rapid Response gave him only a piece of paper with
24 the phone number of the warehouse on it. Rapid Response didn't tell him where to
25 he could go to be safe from another sweep.
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2 **19.**

3 Mr. Black was able to leave the camp with only some of his clothing, a
4 backpack, and a bike. Rapid Response took Mr. Black's 10-man tent, which he bought
5 'used' by returning 1,200 cans, that had a retail value of \$700. Rapid Response took
6 his sleeping bag, blankets, clothes, another smaller tent that he had inside his tent,
7 a tarp, a bike, and a utility wagon.
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10 **20.**

11 Mr. Black went to the Rapid Response warehouse the next day at around 2pm.
12 At the warehouse, nothing was labeled or sorted by anything other than the date
13 and place a sweep took place. Mr. Black could not find any of his possessions at the
14 Rapid Response warehouse. He described his possessions to a Rapid Response
15 warehouse worker, and the worker told him that someone had already taken his
16 belongings. Mr. Black then rode around inner SE Portland for the next two days
17 trying to find his possessions that had been taken by Rapid Response and then by
18 other people. He found and recovered his tent but nothing else. Rapid Response
19 taking all of his belongings made day-to-day life even harder for Mr. Black and
20 caused him stress and sadness. He felt like he got robbed. After Rapid Response took
21 most of his possessions during that sweep, Mr. Black had no shelter and had to sleep
22 in doorways for a few months.
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2 **21.**

3 Mr. Black did not want to experience the stress and loss of another sweep, so
4 he felt like he could not sleep in his tent, which he stored at a friend's house, or begin
5 keeping possessions that aid his day-to-day life. Mr. Black found it emotionally very
6 hard to sleep in doorways and felt at much greater risk from COVID-19 when he was
7 unable to stay in his tent. After a few months of earning money by returning cans,
8 Mr. Black was able to rebuild the possessions he had and began living in a tent on
9 the grass along the sidewalk near the Laurelhurst Park tennis courts. Mr. Black was
10 swept at Laurelhurst in November of 2020. He had not seen the notice that was
11 posted, but others had told him that a notice had been posted and everybody knew
12 they would be swept. He believed that the original sweep notice had expired and had
13 not been reposted when he was swept.
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17 **22.**

18 The police and Rapid Response came around 1pm. They told Mr. Black that
19 he had 15 minutes to leave, and he started packing. He had already begun packing
20 in anticipation of the sweep. Rapid Response walked around telling everyone they
21 had 15 minutes to leave. After 15 minutes, Rapid Response and the Portland Police
22 officers came back to him. The Portland Police officers stood behind the Rapid
23 Response who told him that his 15 minutes were up, that they were then going to
24 start taking his belongings, and that he would have to come to the warehouse to get
25 them back.
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2 **23.**

3 Rapid Response started taking his belongings as he was still packing up his
4 clothes. Rapid Response did not destroy or cut anything as they were packing it up.
5 Mr. Black believed that the police were there to intimidate the residents into moving
6 more quickly. Mr. Black's belongings were put into clear plastic bags and put into a
7 Rapid Response truck. Rapid Response took no photos of his belongings that they
8 confiscated. The plastic bags were not labeled with his name. Rapid Response
9 confiscated his tent, a newer used bicycle that he had recently bought from a pawn
10 shop, a sleeping bag that his mom had bought for him, the clothing he could not
11 gather in time or did not have space to take with him within 15 minutes, hygiene
12 items, a tarp, an Adidas backpack, and a rechargeable car battery. He was able to
13 walk away with only a backpack, a bike, and a duffel bag full of clothing.
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17 **24.**

18 Mr. Black went to the Rapid Response warehouse two days after the sweep.
19 He gave them his name but they had nothing stored under his name. They took him
20 to the area where the "Laurelhurst" sweep stuff was stored in clear plastic bags on
21 shelves. He could see things that belonged to his friends. But he did not see any of
22 his belongings at the warehouse. He never recovered his belongings. Because of his
23 experiences, he does not believe that he will be able to recover any possessions that
24 are taken by Rapid Response in any future sweeps that he expects and fears that he
25 will experience.
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2 **25.**

3 After he was swept from Laurelhurst, Mr. Black moved to a camp near
4 Sunnyside School. He left Sunnyside before they were swept and went to a shelter
5 for a few months until it closed in April. He is now living on property owned by the
6 City of Portland that he fears will be swept, and will have possessions taken, in the
7 next few days under the enhanced sweeps planned by the City.
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10 **26.**

11 **FACTUAL ALLEGATIONS SPECIFIC TO**
12 **PLAINTIFF SCOTT RUPP**

13 Mr. Rupp has been homeless in Portland for many years. He has been swept
14 three times in the last two years. Each time when Rapid Response arrives, they give
15 the residents 20 minutes to pack up all of their belongings and leave. Mr. Rupp
16 believes that in 20 minutes he and others can only think about where they are going
17 to go next and can only just start processing what is happening. He has never seen
18 any Rapid Response worker or Portland Police officer take any pictures of anyone's
19 property when they take it.
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22 **27.**

23 In December of 2020, Mr. Rupp was living on SE Oak St near Laurelhurst
24 Park when Rapid Response and Portland Police arrived in the morning to conduct a
25 sweep of the people living there in tents. He believes that it was December 13. Rapid
26 Response and the police began sweeping the residents on SE 37th Ave. and worked
27 their way towards Mr. Rupp.
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3 When they reached him, he told them he did not want to move. Rapid
4 Response and the Portland Police proceeded to ignore Mr. Rupp and continued to
5 sweep the rest of SE Oak St. The sweep went on all day. Eventually, Rapid Response
6 and the Portland Police again approached Mr. Rupp and surrounded him and
7 another person there to help him. Sergeant Jacobsen told Mr. Rupp that Rapid
8 Response would bag up all of his belongings and if he interfered he would be
9 arrested. Mr. Rupp asked to take some of his belongings and they answered that he
10 had had his chance to take any of his belongings and prevented him from taking any
11 of his belongings. He asked the police and Rapid Response for a property receipt, but
12 they did not answer him. Rapid Response took no photos of his belongings. They
13 bagged his belongings and did not label them with his name. They did not create or
14 give him an inventory of his possessions, take photos, or create anything that would
15 identify the possessions as his, make a record of what had been taken, or prevent
16 others from claiming his belongings. Rapid Response took his car battery that he
17 had purchased for \$99, two tents, blankets, sleeping bags, clothing, all of his tools
18 worth hundreds of dollars, two backpacks, and three bikes that were in pieces that
19 he was putting back together and which had all of their parts. They also took an
20 irreplaceable and sentimental ring that his late wife had given to him--it was in one
21 of the tents, in a box by his bed. He watched them bag everything up and toss it into
22 the back of the truck.
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2 **29.**

3 Rapid Response told Mr. Rupp that they would bring his belongings anywhere
4 he wanted as long as it was not at Laurelhurst. He has seen Rapid Response deliver
5 some items back to people.
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7 **30.**

8 Mr. Rupp called Rapid Response and asked them if they could deliver his
9 belongings to him near Sunnyside School. They told him that they were too busy to
10 do that. They told him to go to the warehouse to get his belongings. About two weeks
11 later, Mr. Rupp went to the Rapid Response warehouse to retrieve his belongings.
12 The person working in the warehouse said that the possessions from the Laurelhurst
13 sweep were in the corner in a pile of plastic bags. She pointed in the direction and
14 Mr. Rupp went to the pile to find his belongings. At the pile of bags, Mr. Rupp saw a
15 man who he was sure had not been living at Laurelhurst during the sweep and who
16 was going through those plastic bags. Mr. Rupp watched the man take items that
17 belonged to people from Laurelhurst. As soon as Mr. Rupp approached, the man
18 gathered up the stuff that he had pulled from the plastic bags and left. None of the
19 bags were labeled. Mr. Rupp found many bags that were torn open. Mr. Rupp
20 eventually found two bags of his stuff: one bag was on one side of the pile, the other
21 was on the opposite side of the pile. In these two bags were some tarps, a few shirts,
22 a pair of pants and his two backpacks. The clothing and backpacks were muddy,
23 moldy, and mildewed. He did not get any of his tools or bike parts back.
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2 **31.**

3 He learned that Rapid Response had disposed of his car battery when he asked
4 them what they did with batteries and they told him they dispose of them. He
5 learned that they also dispose of propane tanks. Mr. Rupp took his stuff and left. He
6 did not get all of his belongings back.
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8 **32.**

9 Mr. Rupp has found it very difficult emotionally and logistically to start all
10 over after the sweep. He had a community at Laurelhurst and had friends around
11 him. He knew he had people there he could depend on. Mr. Rupp currently lives on
12 City property and believes and fears that the City's enhanced sweeping will target
13 his current home for a sweep in the next few days and that he will have more
14 possessions taken that he will never get back.
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17 **33.**

18 **FACTUAL ALLEGATIONS SPECIFIC TO**
19 **PLAINTIFF JENNIFER BRYANT**

20 Ms. Bryant had a small wood splitting business. She became houseless about
21 a year ago after her truck with the wood splitting equipment was stolen and never
22 recovered by police. She has experienced four sweeps in the last six months. In
23 November of 2020, Ms. Bryant was living in a tent in the area around Laurelhurst
24 Park. She had been there for about two months. A few days before Thanksgiving,
25 around 7-8am, a person began screaming that the police were there and that the
26 residents were being swept. A notice of a sweep had been posted previously. Police
27 put up a barricade at SE 37th and Oak. St., barricading both 37th and Oak.
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2 **34.**

3 She could see the police lights at the end of 37th. She cried and she started
4 packing. She placed her things that she was planning to pack on a tarp. She walked
5 away to get supplies to help pack, and, when she came back, many of her possessions
6 were gone. The other residents and others helping the residents move confirmed that
7 they had not taken her possessions. Around her Ms. Bryant saw Rapid Response
8 taking and bagging other people's belongings. Ms. Bryant believes that Rapid
9 Response took thousands of dollars of her clothing, including all of her professional
10 attire, boots and shoes, and household goods. She could not understand what was
11 happening and started crying again. Suddenly, the Rapid Response and police left,
12 taking the barricades and aborting the sweep.
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16 **35.**

17 About a week later, Rapid Response put up another sweep notice. She had
18 moved down the block and was in a different tent because her other tent had been
19 ruined during the previous sweep. Around 9 or 10am, she returned to the area and
20 found that sweep was happening. When she got back, her tent was gone. Another
21 resident told her that Rapid Response had told everyone to put their belongings on
22 the sidewalk and then Rapid Response took those things that were laid on the
23 sidewalk along with everything else, including her tent and his tent. In the tent, she
24 had a laptop she had recently purchased and that she was using to help her get a
25 job.
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2 **36.**

3 Rapid Response took the rest of her clothes, her sleeping bag, blankets, foam
4 flooring that she had just bought for the interior of her tent, rechargeable lights, and
5 all of her basic necessities and hygiene products. She tried to find her tent and
6 belongings and she asked Rapid Response where she could find her possessions, but
7 she got no answers. She didn't get anything back that day. And she was not told that
8 Rapid Response was supposed to keep her belongings at the warehouse or how to get
9 them back. She was new to being homeless and did not know and was not told by
10 Rapid Response how she could get her belongings back.
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13 **37.**

14 The next time Ms. Bryant was swept was near Sunnyside School, where she
15 had moved with many others after they were swept from Laurelhurst. In January
16 2021, a notice was posted, then it was taken down, and then Rapid Response put it
17 back up. During that sweep, Rapid Response took her pop up, which she had
18 purchased new for \$150; tarps; her bike; and the new bedding she had bought after
19 the Laurelhurst sweep for \$200. They took all of her clothing that she had recently
20 bought. She watched them take everything. She then moved to a grass area outside
21 of Lone Fir Cemetery. She lived there with two other people and they did everything
22 they could to keep their small area neat and tidy and clean. In February 2021, a
23 week before a big winter storm, Rapid Response came and swept their small camp.
24 She had just bought a 10-person tent from Fred Meyer. Rapid Response destroyed it
25 during the sweep.
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2 **38.**

3 Rapid Response took her tarps, hundreds of dollars of new bedding she had
4 once again bought after the previous sweep, the new clothing she had bought to
5 replace the clothing that had been taken in the previous sweep. They also took her
6 gear that she bought to start a job as a flagger, which she was certified to be in
7 November 2020. The sweeps not only set her back by having to constantly pay and
8 work to replace the possessions that are taken and destroyed by Rapid Response,
9 but the sweeps also prevent her and others from getting jobs because of the constant
10 fear of being swept and having to stay with her possessions or lose them in a sweep,
11 the loss of which has caused her to be unable to work the job and greater instability.
12 She has never seen or heard of Rapid Response taking pictures of people's belongings
13 before bagging them up and taking them or before throwing anything away. Ms.
14 Bryant currently lives on City property and is worried that she will be swept soon
15 and will again lose all of her possessions and the little bit of stability that she now
16 has.
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3 **CAUSES OF ACTION**

4 **- Claim One -**

5 **42 U.S.C. § 1983 – Due Process – Substantive – Property Destruction**

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7 This claim is not a request for damages at this time, only equitable and
8 injunctive relief. The Fourteenth Amendment to the U.S. Constitution protects the
9 rights of any person from unlawful deprivations of property and liberty without due
10 process of law. Contrary to the U.S. Constitution, Oregon state law, internal
11 directives, and the Anderson settlement, the City has confiscated the property of
12 unhoused people like plaintiffs, then either failed to catalogue the property or
13 improperly catalogued the property, resulting in its loss and destruction. Illegally
14 losing or destroying plaintiffs’ property and the property of those similarly situated
15 to plaintiffs violates their substantive right in not having property taken by the State
16 without due process of law when conducting sweeps of their homes. The City has
17 engaged in a pattern, practice, and custom of depriving individuals subject to their
18 sweeps of houseless encampments of their property and liberty. Plaintiffs and those
19 similarly situated have been harmed by the City’s pattern, practice, and custom
20 described in this complaint. The City’s actions and inactions are the proximate
21 causes of plaintiffs’ injuries. Plaintiffs are entitled to injunctive and declaratory
22 relief, as outlined below.
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3 - Claim Two -

4 **42 U.S.C. § 1983 – Due Process – Procedural – Vagueness**

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6 The Fourteenth Amendment to the U.S. Constitution protects the rights of
7 any person from unlawful deprivations of property and liberty without due process
8 of law. The City has announced a new policy of conducting sweeps of encampments
9 that does not give adequate notice to putative class members as to how to avoid
10 having their property lost or destroyed. There is an insufficient number of shelter
11 beds in Portland and the City does not maintain adequate available housing for
12 people without means to pay rent. The City have not complied with the laws
13 surrounding property loss and destruction during its sweeps.⁶ The City’s plan to
14 conduct sweeps is silent on ameliorating the current pattern, practice, and custom
15 of illegally losing and destroying property. Taken together, this plan is unenforceable
16 and illegally deprives plaintiffs and those similarly situated an opportunity to avoid
17 punishment, violating their due process rights. The City’s actions and inactions are
18 the proximate causes of plaintiffs’ injuries. Plaintiffs are entitled to injunctive and
19 declaratory relief, as outlined below.
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25 ⁶ The City plans to conduct sweeps with vague and arbitrary rules that rely on the
26 discretion of law enforcement officers to assess “credible reports of criminal
27 behavior.” The City’s plan also loosely describes encampments with “eight or more
28 structures” as being subject to sweeps, but is silent on how or when structures will
be counted as being a part of an encampment rather than just adjacent. Additionally,
tying the “eight structure” rule to CDC guidelines is unavailing. COVID-19 is
transmitted by persons, not structures, being in close proximity to one another.

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2 41.

3 - Claim Three -

4 **42 U.S.C. § 1983 – Unlawful Seizure**

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6 The Fourth Amendment to the U.S. Constitution protects the rights of any
7 person from unlawful seizures of their property and affects. The City has unlawfully
8 confiscated the property of unhoused people like plaintiffs, then either failed to
9 catalogue the property or improperly catalogued the property, resulting in its loss
10 and destruction. Illegally losing and destroying plaintiffs' property and the property
11 of those similarly situated to plaintiffs violates their rights to be free from unlawful
12 seizures. Plaintiffs are informed and believe that the acts of the City and their
13 employees and agents were intentional in failing to protect and preserve plaintiffs'
14 property and that, at minimum, the City was deliberately indifferent to the likely
15 consequence that the property would be seized and lost or destroyed unlawfully,
16 based on the past circumstances of similar constitutional and statutory violations of
17 the law. The City has engaged in a pattern, practice, and custom of depriving
18 individuals subject to its sweeps of houseless encampments of their property and
19 liberty. Plaintiffs and those similarly situated have been harmed by the City's
20 pattern, practice, and custom described in this complaint. The City's actions and
21 inactions are the proximate causes of plaintiffs' injuries. Plaintiffs are entitled to
22 injunctive and declaratory relief, as outlined below.
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2 **42.**

3 **- Claim Four -**

4 **Declaratory Relief**

5
6 Plaintiffs respectfully request that this Court declare that the conduct
7 described in Claims 1 through 3 as alleged in this complaint violated plaintiffs'
8 respective Constitutional rights.

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10 **43.**

11 **- Claim Five -**

12 **Injunctive Relief**

13 Plaintiffs request that this Court order the City, their agents, contractors, and
14 their successors to:

- 15
16 **a.** Comply with ORS 203.079(d)'s requirements to not discard personal property
17 with apparent utility;
- 18 **b.** Comply with Portland Police Directive 0835.20, including and not limited to
19 its requirements that the City photograph and list on an itemized inventory
20 the personal property seized at sweeps, noting the location of the seizure, time
21 of the seizure, and description of the item seized;
- 22 **c.** Comply with the terms of the Anderson settlement agreement; and
- 23
24 **d.** Cease enforcement of the City's "REVISED Homelessness and Urban
25 Camping Impact Reduction Program COVID-19 Protocol" until it is no
26 longer ambiguous, arbitrary, and unlawful.
27
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2 44.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiffs respectfully request a trial by jury on any issue to which they have
5 the right to request a jury to resolve.
6

7 45.

8 **PRAYER FOR RELIEF**

9 Plaintiffs respectfully request relief against the City as sought above, and any
10 other relief the Court may deem appropriate, and an order appointing interim class
11 counsel and an order certifying this case as a class action.
12

13
14 May 24, 2021

15 **RESPECTFULLY FILED,**

16 /s/ Michael Fuller

17 **Michael Fuller, OSB No. 09357**

18 Lead Trial Attorney for Plaintiffs

19 OlsenDaines

20 US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

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22 Direct 503-222-2000

23 **Juan Chavez, OSB No. 136428**

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Oregon Justice Resource Center

25 PO Box 5248

Portland, Oregon 97208

26 Phone 503-563-3357

27 **Kelly Donovan Jones, OSB No. 074217**

28 The Law Office of Kelly D. Jones

Phone 503-847-4329

1
2 **CERTIFICATE OF SERVICE**

3 I certify that on the date below I caused this document and the attached ORCP
4 32 notice to be served on the following:

5
6 **City of Portland**
7 **1221 SW 4th Avenue, Suite 430**
8 **Portland, Oregon 97204**
9 **robert.taylor@portlandoregon.gov**

10 May 24, 2021

11 /s/ Michael Fuller
12 **Michael Fuller, OSB No. 09357**
13 Lead Trial Attorney for Plaintiffs
14 OlsenDaines
15 US Bancorp Tower
16 111 SW 5th Ave., Suite 3150
17 Portland, Oregon 97204
18 michael@underdoglawyer.com
19 Direct 503-222-2000
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May 22, 2021

City of Portland
1221 SW 4th Avenue, Suite 430
Portland, Oregon 97204
robert.taylor@portlandoregon.gov

**RE ORCP 32 Notice
In re ORS 203.079(d) Compliance Class Action**

When removing a homeless person from a camping site, Oregon law requires the City of Portland to store any property left by the person and to make the property reasonably available for the person to recover for at least 30 days. Upon removal of a homeless person from a camping site, Oregon law permits the City to discard the person's property only after determining that the property is useless or unsanitary.

We have been retained as volunteer attorneys for a group of homeless people who have had their rights under ORS 203.079(d) violated by the City's Rapid Response contractors within the past six months. Specifically, the City's contractors took property from our clients without providing an itemized inventory and without sorting the property, thus failing to make the property reasonably available for our clients to recover as Oregon law requires. Further, the City's contractors discarded property belonging to our clients without their permission and outside their presence without taking inventory of the property and without taking documentation of the property, so no person (nor any court) could have any meaningful opportunity to assess whether the discarded property was in fact useless or unsanitary, as Oregon law requires.

The City's systematic failure to comply with ORS 203.079(d) as alleged above also failed to comply with promises made by the City in the Anderson Agreement and in Portland Police Directive 0835.20.

On May 19, 2021, the City released a memo announcing that it was changing the rules around when its contractors can disburse homeless encampments, in favor of a more assertive approach.

The City stated in a press release that it will prioritize sweeping campsites that have eight or more structures or block public sidewalks. Our clients remain homeless, currently live in these prioritized campsite areas, and face a substantial likelihood of wrongfully losing their property again in the future unless the City adopts policies and procedures to ensure that its contractors comply with ORS 203.079(d) moving forward.

Under ORCP 32, we formally request that the City cease and desist from engaging in the practices described in this letter alleged to be violative of the rights of our clients and the putative class members, and we request that the City promptly confirm that it has adopted policies and procedures to ensure that its contractors comply with ORS 203.079(d) during the more assertive approach to sweeps threatened in the City's May 19 memo.

At this time, we are not asking for any damages or money from the City – not even attorney fees. We are hopeful that the City and the Mayor will spare the taxpayers the expenses of litigation by simply confirming that policies and procedures have been adopted to ensure that its contractors begin complying with ORS 203.079(d).

Thank you.

Sincerely,

s/ Michael Fuller
Partner

cc: Juan Chavez, Attorney
Franz Bruggemeier, Attorney
Tristia Bauman, Attorney
Kelly Donovan Jones, Attorney