

1 MICHAEL N. FEUER, City Attorney
 2 THOMAS H. PETERS, Chief Assistant City Attorney
 3 ERIC BROWN, Deputy City Attorney (SBN 170410)
 4 SUREKHA PESSIS, Deputy City Attorney (SBN 193206)
 5 200 North Main Street, 6th Floor
 6 Los Angeles, California 90012
 7 Telephone: 213.978.7508
 8 Facsimile: 213.978.7011
 9 Eric.Brown@lacity.org
 10 Sureka.Pessis@lacity.org

11 Attorneys for Defendants CITY OF LOS ANGELES, LT. ANDREW MATHES,
 12 and SGT. RICHTER

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 CARL MITCHELL, MICHEAL
 16 ESCOBEDO, SALVADOR ROQUE,
 17 JUDY COLEMAN, as individuals; LOS
 18 ANGELES CATHOLIC WORKER,
 19 CANGRESS, as organizations,

20 PLAINTIFFS,

21 v.

22 CITY OF LOS ANGELES, a municipal
 23 entity; LT. ANDREW MATHIS, SGT.
 24 HAMER and SGT. RICHTER, in their
 25 individual and official capacities,

26 DEFENDANTS.

CASE NO. CV16-01750 SJO (JPRx)
 [Assigned to the Honorable S. James
 Otero, Courtroom 1]

CITY OF LOS ANGELES' NOTICE
 OF MOTION AND MOTION FOR
 CLARIFICATION OF ORDER
 [F.R.Civ.P 60(a)]

Date: June 27, 2016
 Time: 10 a.m.
 Place: Courtroom 1

Meet and confer under L.R. 7-3
 conducted on May 4 & 9, 2016

27 ///
 28 ///
 ///
 ///

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on June 27, 2016 at 10 a.m., or as soon
3 thereafter as this matter may be heard in Courtroom 1 of the above-entitled court,
4 located at 312 N. Spring Street, Los Angeles, California, 90012, Defendants CITY
5 OF LOS ANGELES, LT. ANDREW MATHES, and SGT. RICHTER (collectively
6 “the City”) will move the Court for clarification of the Court’s Order Granting
7 Plaintiffs’ Application for Preliminary Injunction (Dkt. No. 13) (hereinafter “the
8 Order”). Specifically, the City seeks clarification of the following:

- 9 1) Whether the City may understand the phrase “Skid Row or its surrounding
10 areas” to mean the definition of Skid Row given in *Jones v. City of L.A.*, 444
11 F.3d 1118 (9th Cir. 2006) *vacated pursuant to settlement Jones v. City of L.A.*,
12 505 F.3d 1006 (9th Cir. 2007), plus an additional buffer zone around those
13 boundaries as suggested herein;
- 14 2) Whether the Court intends the City to leave non-essential property of homeless
15 arrestees on the street pursuant to Enjoined Action No. 1;
- 16 3) Whether confiscating property after 24 hours advance notice in compliance
17 with Enjoined Action No. 7 is allowed under Enjoined Action No. 1; and
- 18 4) Whether the Order prohibits the City from removing sofas, appliances, sheds,
19 and other bulky items from City sidewalks, streets, and other public areas.

20 The City has made a good faith effort to understand the Order. The City has
21 also met and conferred with Plaintiffs’ counsel in an effort to reach a mutual
22 understanding of the Order. However, the City is still unable to reconcile certain
23 portions of the Order with others, and with City practices that seem to already be in
24 compliance with the Order and with federal law.

25 This motion will be based upon this Notice, the accompanying Memorandum
26 of Points and Authorities, the papers filed in support of and against the application
27 which resulted in the Order, all pleadings and papers on file in this action, and upon
28

1 such further evidence or argument as may be presented to the Court at the time of the
2 hearing.

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
28

DATED: May 11, 2016

MICHAEL N. FEUER, City Attorney
THOMAS H. PETERS, Chief Asst. City Attorney
ERIC BROWN, Deputy City Attorney
SUREKHA PESSIS, Deputy City Attorney

By: _____/S/_____
ERIC BROWN
Deputy City Attorney

Attorneys for Defendants
CITY OF LOS ANGELES, LT. ANDREW
MATHES, and SGT. RICHTER

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
28

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

The City respectfully requests clarification of the Court’s order of April 13, 2016 (“the Order”), in order to comply fully with the Order and avoid potential unintended violations. City personnel interact with the homeless population in Skid Row on a daily basis. The Los Angeles Police Department (“LAPD”) patrols this crime-ridden area in which homeless individuals are too often targets. The City’s Bureau of Sanitation routinely clears debris and cleans in Skid Row to ensure public areas are sanitary and accessible by residents (including the disabled, as required by the Americans with Disabilities Act), and patrons of businesses in the area.

This motion seeks clarification of the effect of the Order on these activities, and whether and to what extent the Order precludes or limits them. The City is not challenging or seeking reconsideration of the Order. However, to effectively comply with the Order, the City must be able to give clear direction to its employees who provide service to the Skid Row area and its citizens. Certain terms of the Order are vague, and certain portions could be read to conflict with other portions of the Order. To the extent the Order intersects with the City’s already existing and constitutionally appropriate treatment of property in public areas, inconsistency would result in paralyzing confusion and could result in unintended violations of the Order. Moreover, the City would be unable to balance of all of its residents’ needs, expectations, and rights in the Skid Row area.

Authorities for Request for Clarification

The City has made a good faith attempt to determine the Court’s intent as to each of the actions it enjoins (the “Enjoined Actions” itemized on page 11 of the Order), and to discern whether the Enjoined Actions could be implemented without further clarification. The City has an honest inability to reconcile certain portions of the Order with other portions, or with practices in which the City was engaging which seemed to be in compliance with the Order before it was issued. Thus, for the

1 purpose of directing the City as to how to implement the Order on those fronts,
2 clarification is appropriate.

3 The purpose of an injunction is to preserve the status quo. *Welchen v. Harris*,
4 2016 U.S. Dist. LEXIS 14517 at 3 (E.D. Cal. 2016); *Stanley v. University of*
5 *Southern California*, 13 F.3d 1313, 1320 (9th Cir. 1994). “The status quo is the last
6 uncontested status which preceded the pending controversy.” *Tanner Motor Livery,*
7 *Ltd. v. Avis, Inc.*, 316 F.2d 804 (9th Cir. 1963). Here, it is unclear whether the Court
8 intended a significant departure from the status quo, because the Order could be read
9 to enjoin practices regularly engaged in by the City which presumptively were in
10 compliance with federal law.

11 “The court may correct a clerical mistake or a mistake arising from oversight
12 or omission whenever one is found in a judgment, order, or other part of the record.
13 The court may do so on motion or on its own, with or without notice.” F. R. Civ. P.
14 60(a). Generally, “courts would not be apt to withhold a clarification in the light of a
15 concrete situation that left parties . . . in the dark as to their duty toward the court.”
16 *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945).

17 Requests for Clarification

18 **1) Whether the City may understand the phrase “Skid Row or its**
19 **surrounding areas” to mean the definition of Skid Row given in *Jones v.***
20 ***City of L.A.*, plus an additional buffer zone around those borders.**

21 While “Skid Row” has been defined in previous litigation involving Los
22 Angeles’s homeless population, the “surrounding areas” of Skid Row has not. The
23 City needs to give its employees clear and specific instructions on where the Order
24 applies so they can perform their job duties in compliance with the Order.

25 The City believes a workable definition of “Skid Row and its surrounding
26 areas” is the geographic definition given in *Jones v. City of L.A.*, 444 F.3d 1118 (9th
27 Cir. 2006) *vacated pursuant to settlement Jones v. City of L.A.*, 505 F.3d 1006 (9th
28 Cir. 2007), plus an additional buffer zone around three of those four streets. *Jones*

1 defined Skid Row as “the area bordered by Third Street to the north, Seventh Street
2 to the south, Alameda Street to the east, and Main Street to the west.” 444 F.3d at
3 1121. In order to define the parameters of “Skid Row and its surrounding areas,” the
4 City would expand those borders to Second Street to the north, Eighth Street to the
5 south, and Spring Street to the west.¹ (A map of the boundaries of this proposed area
6 is attached.)

7 The City requests clarification as to whether “Skid Row and its surrounding
8 areas” may be defined as “the area bordered by Second Street to the north, Eighth
9 Street to the south, Alameda Street to the east, and Spring Street to the west.”

10 **2) Whether the Court intends the City to leave non-essential property of**
11 **homeless arrestees on the street pursuant to Enjoined Action No. 1.**

12 Enjoined Action No. 1 allows the City to take property of a homeless arrestee
13 only if that property is abandoned, an immediate threat to health or safety, evidence
14 of a crime, or contraband. Otherwise, it must be left on the street, unguarded. This
15 runs contrary to LAPD’s community caretaking function, long recognized under
16 federal and state law. *See, e.g., South Dakota v. Opperman*, 428 U.S. 364, 369-371
17 (1976); *People v. Ray*, 21 Cal. 4th 464, 473-474 (1999). Unattended property could
18 be stolen or damaged, which could cause more harm to the homeless arrestee than
19 having the property confiscated and stored until he or she is released. In addition,
20 leaving an arrestee’s property on the street may lead to claims and lawsuits against
21 the City for any loss of or damage to unattended property. Thus, under the
22 community caretaking function, where a police department has a policy to store an
23 arrestee’s property pending his or her release from custody, courts have upheld the
24 policy of impounding that property to prevent it from being damaged or stolen. *See*
25 *Id.*

26 The Fourth Amendment protects against unreasonable searches and seizures,
27 but storing an arrestee’s property pending that person’s release has been deemed

28 _____
¹ There are little to no enforcement actions in the industrial area east of Alameda.

1 reasonable. Defendants therefore request clarification as to whether the Court intends
2 that the City abrogate its community caretaking function and leave homeless
3 arrestee's property on the street in order to comply with Enjoined Action No. 1.

4 **3) Whether confiscating property after 24 hours advance notice in**
5 **compliance with Enjoined Action No. 7 and Los Angeles Municipal**
6 **Code § 56.11 is allowed under Enjoined Action No. 1.**

7 Enjoined Action No. 7 allows the City to confiscate property as part of a
8 cleanup after 24 hours advance notice and failure of the owner to remove the
9 property. Similarly, the City has an ordinance which allows for the removal of
10 property from a public area after 24 hours advance notice. LAMC § 56.11(4). This
11 ordinance is consistent with Enjoined Action No. 7, but could be read to conflict with
12 Enjoined Action No. 1.

13 LAMC § 56.11 was amended in light of *Lavan v. City of L.A.*, 693 F.3d 1022
14 (9th Cir. 2012). At the time this case was filed, the City was completing a lengthy
15 and comprehensive process to develop a precise ordinance and operational guidelines
16 to humanely and constitutionally manage the property of homeless individuals while
17 protecting public health and assuring that public areas are accessible by all citizens.
18 As amended, LAMC § 56.11, which became effective on April 11, 2016, is
19 remarkably consistent with the Order. (A copy of the current ordinance is attached
20 for the Court's convenience.²)

21 The City Council enacted the ordinance as a method of balancing the interests
22 of the homeless who have nowhere to live except on city streets, of businesses and
23 pedestrians in accessing those streets, and of the City in protecting the health and
24

25
26 ² The new ordinance may be found online at [http://clkrep.lacity.org/onlinedocs/2014/14-1656-](http://clkrep.lacity.org/onlinedocs/2014/14-1656-s1_ORD_184182_4-11-16.pdf)
27 [s1_ORD_184182_4-11-16.pdf](http://clkrep.lacity.org/onlinedocs/2014/14-1656-s1_ORD_184182_4-11-16.pdf), last accessed April 28, 2016. The City Council file showing
28 § 56.11's legislative history may be located at the City Clerk's website, Council File No. 14-1656-
[https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=14-](https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=14-1656-S1)
[1656-S1](https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=14-1656-S1), last accessed April 28, 2016.

1 safety of its citizens by preventing the accumulation of trash and hazardous materials
2 on its streets. The Council found:

3 On the one hand, the unauthorized use of public areas for the
4 storage of unlimited amounts of personal property interferes with
5 the rights of other members of the public to use public areas for
6 their intended purposes and can create a public health or safety
7 hazard that adversely affects those who use public areas. On the
8 other hand, the City’s large and vulnerable homeless population
9 needs access to a manageable amount of essential property for
10 their personal use and well-being. This section attempts to balance
11 the needs of all of the City’s residents.

12 LAMC § 56.11(1). Accordingly, the ordinance includes various provisions to balance
13 these competing interests, including recognizing the need of homeless individuals to
14 maintain essential and necessary personal belongings (§ 56.11(2)(f),3(b)); allowances
15 for access by disabled individuals (§ 56.11(3)(d)); bans against blocking building
16 entrances (§ 56.11(3)(e)); and requiring 24 hours advance notice before the City may
17 remove property which it then stores for 90 days (§ 56.11(4)). Furthermore, it places
18 self-imposed limits on the City by permitting collection only if 90 days of storage
19 space is available. (The version of § 56.11 in effect when the TRO was filed and
20 referenced in the opposition similarly declared the statute’s purpose as a balance of
21 the competing interests of access to and storage on city streets, and provided for 24
22 hours advance notice before confiscating property stored in public areas.)

23 There is a tension between Enjoined Action No. 7, which allows property to be
24 confiscated after 24 hours advance notice (which is the City’s current practice under
25 LAMC § 56.11), and Enjoined Action No. 1, which prohibits confiscating property
26 “absent an objectively reasonable belief that it is abandoned, presents an immediate
27 threat to public health or safety, is evidence of a crime, or is contraband.” If the City
28 confiscates property after 24 hours advance notice, a homeless property owner may
argue that the City violated the injunction by confiscating property without evidence

1 that “it is abandoned, presents an immediate threat to public health or safety, is
2 evidence of a crime, or is contraband.”

3 The City requests clarification whether confiscating property after 24 hours
4 advance notice in compliance with Enjoined Action No. 7 and LAMC § 56.11 is
5 consistent with, and not a violation of, Enjoined Action No. 1.

6 **4) Whether the Order prohibits the City from removing sofas, appliances,**
7 **sheds, and other bulky items from City sidewalks and streets.**

8 As discussed above, the City has a need for certain enforcement actions in
9 order to balance the interests and rights of the homeless with the interests and rights
10 of other citizens. The City Council found that property stored on a public sidewalk or
11 street must not be “unlimited” so as to create a health or safety hazard. In addition,
12 the City must enforce the laws against illegal dumping of bulky items and other
13 discarded property in public areas. *See, e.g.*, Cal. Penal Code § 374.3; LAMC
14 § 190.02. The City also must keep sidewalks accessible for those pedestrians with
15 disabilities pursuant to the Americans with Disabilities Act (“ADA”). *See, e.g.*, 28
16 C.F.R. § 35.150(a), (d); *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir.
17 2002). The City is required to enforce these statutes or face litigation claiming it is
18 deliberately indifferent to the health, safety, and welfare needs of its constituents.
19 One such suit is currently pending in this District (*Willits v. City of Los Angeles*, Case
20 No. CV 10-05782 CBM (RZx)).

21 Accordingly, LAMC § 56.11 allows for immediate removal and destruction of
22 “bulky items” that cannot fit within a 60-gallon container with the lid closed. LAMC
23 § 56.11(2)(c), (3)(i). This provision is designed to address the problem of oversized
24 items as large as sofas, mattresses, and appliances being kept on city sidewalks,
25 streets, and in other public areas. The City adopted these procedures in order to
26 prohibit the accumulation of such items which, due to their size, provide places for
27 rodents to live and breed, create traps or hazards for pedestrians, impose access
28

1 problems for the disabled, and significantly limit the overall access and use of the
2 City's public areas for their intended purposes.

3 Some bulky items are designed for use as living quarters. A prime example is a
4 small shed or similar structure sometimes seen on the sidewalk. These non-permitted
5 structures are deemed *per se* unsafe and subject to deconstruction under the City and
6 County Building Codes, as they often lack proper building, ventilation, and hygienic
7 safeguards. Also, these structures are often large enough to block an entire sidewalk.
8 They then violate the ADA and its predecessor the Rehabilitation Act (which outlaws
9 discrimination based on disability in programs receiving federal funds), as both
10 statutes follow the same analytic framework for determining violations. *See* 29
11 U.S.C. § 794(d). The City's ordinance requires 24 hours advance notice before
12 removing these shed-like bulky items, but if the item is not removed by the owner
13 and is seized by the City, it may be discarded immediately. LAMC § 56.11(3)(i).

14 The City requests clarification as to whether the Order prohibits the City from
15 removing sofas, appliances, sheds, and other bulky items from City sidewalks and
16 streets.

17 CONCLUSION

18 The City wants to comply fully with this Court's Order. Indeed, the City is
19 already in compliance with much of the Order through the protocols developed to
20 implement the newly-amended LAMC § 56.11. There are a few instances, however,
21 where the Order may cause consequences that were not intended by this Court:

- 22 • The Order enjoins the City from engaging in community caretaking functions
23 and other municipal obligations whose constitutionality has been confirmed.
- 24 • It is unclear whether compliance with one Enjoined Action may be a violation
25 of another.
- 26 • The boundaries of the area covered by the Order are unclear.

27 ///

28 ///

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
28

For all of the foregoing reasons, and for any additional reasons that may be discussed at the hearing on this matter, the City respectfully requests clarification of the Court's Order.

DATED: May 11, 2016

MICHAEL N. FEUER, City Attorney
THOMAS H. PETERS, Chief Asst. City Attorney
ERIC BROWN, Deputy City Attorney
SUREKH PESSIS, Deputy City Attorney

By: _____/S/_____
ERIC BROWN
Deputy City Attorney

Attorneys for Defendants
CITY OF LOS ANGELES, LT. ANDREW
MATHES, and SGT. RICHTER