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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

14 AURELLIANO SANTIAGO, ET
15 AL.,

16 Plaintiff(s),

17 vs.

18 CITY OF LOS ANGELES, ET AL.,

19 Defendant(s).

20 CASE NO. 2:15-cv-08444 BRO (Ex)

21 Hon. Beverly Reid-O’Connell

22 PLAINTIFFS’ OPPOSITION TO
23 DEFENDANT CITY OF LOS
24 ANGELES’S MOTION TO STRIKE
25 MATTERS FROM THE FIRST
26 AMENDED COMPLAINT

27 Date: November 21, 2016

28 Time: 1:30 p.m.

Place: Courtroom 14

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1 **I. INTRODUCTION**

2 Defendants filed a Motion to Strike two statements from Plaintiffs’ First
3 Amended Complaint:

4 1) ¶ 9, p. 3, ll. 19-22: “Each time his property is confiscated, it creates
5 a financial hardship for him and his family, who depend on Mr.

6 Santiago to provide for them, pay rent and bills, and contribute to his
7 daughter’s college tuition.”

8 2) ¶ 10, p. 3, ll. 27-28: “She relies on her income to support herself
9 and her two children.”

10 Defendants argue that the statements are immaterial and impertinent because
11 Plaintiffs are prohibited from seeking lost income resulting from illegal street
12 vending. However, Plaintiffs make no claim for lost income. They seek only
13 damages for the loss and destruction of property without either pre- or post-
14 deprivation due process. Because there is no claim for lost income, the sole basis
15 upon which the City Defendants’ motion is made, there is no ground to strike these
16 two sentences, and the motion should be denied.

17 **II. THE STANDARD ON A MOTION TO STRIKE**

18 Motions to strike should only be granted when the material to be struck is
19 redundant, immaterial, impertinent, or scandalous, and when the moving party can
20 show that it will suffer prejudice from the objectionable language.

21 “The court may strike from a pleading an insufficient defense or any
22 redundant, immaterial, impertinent, or scandalous matter.” Fed. Rule Civ. Pro.
23 12(f). “The function of a 12(f) motion to strike is to avoid the expenditure of time
24 and money that must arise from litigating spurious issues by dispensing with those
25 issues prior to trial” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973
26 (9th Cir. 2010). “It is generally accepted that motions to strike are not granted
27 freely and courts are cautious about disturbing the pleadings unless such action is
28 clearly warranted, and where harm will be suffered by the adverse party.” *Wilson v.*

1 *Wal-Mart Stores*, 2005 U.S. Dist. LEXIS 40099, *3, 05 CV1216 BEN (S.D. Cal.
2 2005) (internal citation omitted). *See also Alco Pacific*, 217 F. Supp. 2d at 1033
3 (showing of prejudice by moving party often required before granting motion to
4 strike).

5 “Motions to strike are generally regarded with disfavor because of the
6 limited importance of pleading in federal practice, and because they are often used
7 as a delaying tactic.” *Cal. Dep’t of Toxic Substances Control v. Alco Pacific, Inc.*,
8 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002). A motion to strike “should not be
9 granted unless it is clear that the matter to be stricken could have no possible
10 bearing on the subject matter of the litigation.” *Neveau v. City of Fresno*, 392 F.
11 Supp. 2d 1159, 1170 (E.D. Cal. 2005). “[I]f there is any doubt as to whether under
12 any contingency the matter may raise an issue, the motion may be denied . . .”
13 *Wailua Assocs. v. Aetna Casualty and Surety Co.*, 183 F.R.D. 550, 553-54 (D.
14 Haw. 1998).

15 The decision to grant or deny a motion lies within the sound discretion of the
16 district court. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1528 (9th Cir. 1993), *rev’d*
17 *on other grounds*, 510 U.S. 517 (1994). “In exercising its discretion, the court
18 views the pleadings in the light most favorable to the non-moving party.
19 Ultimately, the court “resolves any doubt as to the relevance of the challenged
20 allegations or sufficiency of a defense in [the non-moving party’s] favor.” *Id.*
21 This is particularly true if the moving party fails to demonstrate sufficient
22 prejudice. *Alco Pacific*, 217 F. Supp. 2d at 1033.

23 **III. DEFENDANTS FAIL TO SUPPORT STRIKING THE TWO** 24 **CHALLENGED SENTENCES**

25 Defendants have failed to meet their burden to show that the challenged
26 statements are immaterial or impertinent, or that they will suffer *any* prejudice as a
27 result of their inclusion in the First Amended Complaint. Defendants argue that
28 the challenged statements are immaterial and impertinent because plaintiffs cannot

1 recover lost earnings resulting from alleged illegal street vending and therefore
2 cannot use the allegations to prove damages against the defendants. Defendant’s
3 Motion to Strike, Pgs 2-3.¹ This argument rests on the erroneous assertion that
4 Plaintiffs claim damages for lost earnings. There is no such claim in the First
5 Amended Complaint.

6 There is, however, a claim for damages based on the loss of the Plaintiffs’
7 personal property. The gravamen of Plaintiffs’ due process claim is that the
8 Defendants may not impose street justice and short-circuit due process guarantees
9 in the Constitution and codified in their own policies regarding seizure and
10 maintenance of property, including property taken as evidence. First Amended
11 Complaint (FAC) ¶¶28-33. Moreover, because the property in question includes
12 items that are not contraband and can be used for lawful purposes—e.g., umbrellas,
13 carts, kitchen utensils, carts, tableware—Defendants’ seizure of the property
14 without due process prohibits the individual plaintiffs from using it for lawful
15 purposes. Therefore, information regarding Plaintiffs’ financial hardships that
16 result from Defendants’ illegal seizures is unquestionably relevant to their claims.

17 It is immaterial to Plaintiffs’ entitlement to due process that Defendants
18 allege the Plaintiffs were using the items in violation of a municipal ordinance. *See*
19 *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012). And even if
20 the property were actual contraband, the seizure of it would still be subject to
21 Fourth Amendment analysis. *See United States v. Jacobsen*, 466 U.S. 109, 124-25
22 (1984) (“by destroying a quantity of the [seized cocaine, the government]
23 converted what had been only a temporary deprivation of possessory interests into
24

25
26 ¹ Immaterial matter is “that which has no essential or important relationship to the
27 claim for relief or the defenses being pleaded.” *Whittlestone*, 618 F.3d at 973.
28 Impertinent matter “consists of statements that do not pertain, and are not
necessary, to the issues in question.” *Fogerty*, 984 F.2d at 1527.

1 a permanent one.”); *Maldonado v. Fontanes*, 568 F.3d 263, 270 (1st Cir. 2009)
2 (tenants of public housing project had a property interest in their pets under the
3 Fourth and Fourteenth Amendments even when in violation of promulgated
4 municipal policy forbidding pets). Thus, even if Plaintiffs are alleged to have
5 violated Los Angeles Municipal Code Section 42.00(b), that does not lessen their
6 interest in their property or obviate the due process protections required.

7 Moreover, Defendants have not and cannot show any prejudice from the
8 inclusion of the two challenged sentences in the First Amended Complaint. This
9 alone is fatal to their Motion. See *Alco Pacific*, 217 F. Supp. 2d at 1033.

10 **IV. CONCLUSION**

11 Defendants do not attempt to make any showing of prejudice or meet their very
12 high burden of demonstrating that the paragraphs add nothing to Plaintiffs’ claims.
13 Therefore, this Court should deny Defendants’ motion to strike.

14
15 Dated: October 24, 2016

ACLU of Southern California
Legal Aid Foundation of Los Angeles
National Lawyers Guild-Los Angeles
Schonbrun Seplow Harris & Hoffman, LLP

18 By: _____/s
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