

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 16-01750 SJO (JPRx) DATE: September 25, 2017

TITLE: Carl Mitchell et al., v. City of Los Angeles, et al.

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**PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE**

Victor Paul Cruz Not Present  
Courtroom Clerk Court Reporter

**COUNSEL PRESENT FOR PLAINTIFFS:** Not Present  
**COUNSEL PRESENT FOR DEFENDANTS:** Not Present

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**PROCEEDINGS (in chambers): ORDER DENYING DEFENDANTS' MOTION FOR CLARIFICATION OF ORDER [Docket No. 58]**

This matter is before the Court on the City of Los Angeles' (the "City") Motion for Clarification ("Motion") filed May 11, 2016. In the Motion, Defendant's seek clarification of the Court's Temporary Restraining Order issued on April 13, 2013. Plaintiffs filed an Opposition to the Motion for Clarification ("Opposition") on August 21, 2017. Defendants filed their Reply in Support of the Motion to Dismiss ("Reply") on July 10, 2017. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for September 11, 2017. See Fed. R. Civ. P. 78(b). For the following reasons, the Court **DENIES** Defendants' Application.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Plaintiffs, a group of homeless individuals and organizations providing support services to the homeless, sue Defendants for purported violations of their constitutional and statutory rights. According to Plaintiffs, the City has undertaken a mass practice and policy of clearing Skid Row and its surrounding areas of homeless people. Since around December of 2015, the City and the Individual Defendants have allegedly seized and deprived Plaintiffs of property, without a pre- or post-deprivation hearing, in violation of the Fourth and Fourteenth Amendments to the Constitution and various federal and California state laws. (See generally First Am. Compl. ("FAC"), ECF No. 1).

Plaintiffs' FAC alleges as follows. Since around December of 2015, LAPD officers and City employees have used arrests for what Plaintiffs call "minor quality of life offenses," (Appl. P. & A. 1), as a pretext to seize and confiscate Plaintiffs' property. The City's arrests take place pursuant to two LA County ordinances, Los Angeles Municipal Code ("LAMC") Section 41.18(d), which prohibits sitting, sleeping, or lying on sidewalks, and LAMC Section 41.45, which prohibits the unauthorized use of shopping carts. (FAC ¶¶ 47-49.) During some arrests, LAPD officers allegedly cordon off areas where homeless people are located and contact the Department of

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Sanitation and Street Services ("Dep't of Sanitation"), which in turn deploys trash trucks and other personnel to clean and dispose of the homeless people's property. (FAC ¶¶ 51-53.)

The property confiscated during arrests and cleanups include tents, medications, personal items, and shopping carts provided by organizations for use by the homeless. (FAC ¶¶ 20-25, 32-38.) Plaintiffs claim that city workers do not use care in handling this property, and that the workers summarily dispose of tents, tarps, blankets, shoes, and clothing. (FAC ¶ 55.)

Plaintiffs additionally claim that they have not been able to recover property after seizures take place. Although the LAPD normally itemizes and tags property taken during an arrest, officers and city employees do not separately catalog property seized from different homeless individuals. (FAC ¶ 58.) According to Plaintiffs, the confiscated property is stored at various locations, including a "hard-to-identify spot in the middle of a parking lot across from the Roybal Federal Courthouse," which is only accessible between the hours of 8:00 am and 1:00 pm on Tuesday through Friday. (FAC ¶ 60.) As a result, property is lost after the City's arrests and cleanups. (FAC ¶ 58.)

B. Prior Proceedings

Plaintiffs brought eleven causes of action stemming from Defendants' arrests of homeless individuals and cleanups of areas where they are located. Plaintiffs claim that Defendants' confiscation and destruction of Plaintiffs' property, without a warrant or a pre- or post-deprivation hearing, violates the Fourth, Fifth and Fourteenth Amendments of the Constitution. (FAC ¶¶ 72-86). Plaintiffs also contend that Defendants falsely arrested certain Plaintiffs based on faulty allegations that they stole shopping carts, committed the tort of conversion by wrongfully seizing Plaintiffs' property, and contravened California state and federal laws protecting disabled individuals by depriving homeless people suffering from disabilities of necessary medications and medical equipment. (FAC ¶¶ 87-102, 106-110 119-21).

On March 30, 2016, Plaintiffs filed an Application for a Temporary Restraining Order ("TRO"), seeking to enjoin the City from confiscating property during arrests and cleanups of homeless areas. On April 13, 2016, the Court issued an order (the "Order") granting Plaintiff's application and enjoining Defendants from seven actions. On March 11, 2016, Defendants filed the instant motion seeking clarification of the Order.

II. DISCUSSION

The initial motion identified four issues for which it was seeking clarification by the Court. During the lengthy period for parties to meet and confer, two of these issues were resolved and the Court is now presented with only two requests for clarification: (1) Whether the Court intends the City to leave non-essential property of homeless arrestees on the street pursuant to Enjoined Action No. 1; and (2) Whether the Order prohibits the City from removing sofas, appliances, sheds, and

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CIVIL MINUTES - GENERAL

CASE NO.: CV 16-01750 SJO (JPRx)

DATE: September 25, 2017

other bulky items from City sidewalks, streets, and other public areas. The Court has determined that it need not provide clarification regarding either of these issues.

A. Legal Standard

The Federal Rules of Civil Procedure permit a court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.” F.R.C.P. 60(a). While a court should ordinarily not “withhold a clarification in the light of a concrete situation that left parties . . . in the dark as to their duty toward the court,” the issue must nonetheless be ripe for decision. *Regal Knitwear Co. V. NLRB*, 324 U.S. 9, 15 (1945). The court must not issue an advisory opinion, but must adjudicate “concrete legal issues, presented in actual cases, not abstractions.” *Montana Environmental Information Center v. Stone-Manning*, 766 F.3d 1184, 1188 (9<sup>th</sup> Cir. 2014).

B. Analysis

1. Treatment of Non-essential Property of Homeless Arrestees

Enjoined Action No. 1 orders the City to refrain from:

“Confiscating property in Skid Row or its surrounding areas, incident to an arrest or as part of a cleanup of an area where homeless people are located, absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, is evidence of a crime, or is contraband.”

As the City correctly observes, a literal reading of this order would result in a situation where the City must, upon arrest, leave all of an arrestees belongings on the street unless those belongings fall into one of the categories for which confiscation is permissible. This would seemingly clash with Enjoined Item No. 6 which requires the City to make available within 24 hours any seized medication, medical equipment, and other essential property. Defendants have therefore read the Order to allow police to seize and hold essential property and are seeking clarification as to whether they are permitted to also seize non-essential property pursuant to the City’s community caretaking function.

The community caretaking exception to the Fourth Amendment warrant requirement permits police officers to seize personal property of an arrestee in the name of protecting the community. The exception arose in the context of automobiles, which the Supreme Court has held are fundamentally different than homes in the search and seizure context due to “the[ir] ambulatory character . . . and [] the fact that extensive, and often noncriminal contact with automobiles will bring local officials in ‘plain view’ of evidence, fruits, or instrumentalities of a crime, or contraband”

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*Cady v. Dombrowki*, 413 U.S. 433, 442 (1973). This is not limited to only automobiles, however, and individuals have a reduced expectation of privacy in all mobile vehicles, even when those vehicles are also used as a residence, as is the case for motor homes. *California v. Carney*, 471 U.S. 386, 393 (1985).

Notably, the community caretaker exception stands apart from the issue of probable cause and depends solely on the “authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience.” *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). Nor is the exception limited only to situations posing a public safety concern; it also applies where there is a risk of the property “being a target for vandalism or theft.” *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9<sup>th</sup> Cir. 2005).

The community caretaking exception to the warrant requirement is an issue that disproportionately affects homeless individuals because, unlike those with homes in which to store their belongings, the homeless are more likely to carry the majority of their personal belongings with them at any given time. Plaintiffs contend that the City has, in the past, used the community caretaking function as a means to seize, examine, and destroy property without first obtaining a warrant, in violation of the Fourth Amendment. This claim is one of the primary bases for the current action. Plaintiffs claim that the current motion seeks an advisory opinion that would permit the “wholesale seizure” of an arrestee’s belongings. The City, for its part, asserts that it is not seeking a broad exception, but is simply seeking to exercise the same caretaking function in Skid Row and its surrounding area that it would in any other part of the city.

While the community caretaking exception is an issue with significant ramifications for the parties in this case, the question presented is not one that can be properly resolved by the Court at this time. Both parties agree that it is unreasonable to leave an arrestee’s property lying in the streets where it can be damaged or stolen. (Opp. 6; Mot. 6-7.) They also agree that there are situations where the community caretaking exception would permit the City to seize and store an individual’s belongings when taken into custody. (Opp. 6; Mot. 6-7.) The only dispute between the parties, then, is the scope of the community caretaking exception to the warrant requirement of the Fourth Amendment. This goes beyond simply clarifying the Order and instead asks the Court to rule on a complex issue of constitutional law. The Court declines to do so at this stage.

Under the Order, as understood by both parties, the City is permitted to hold the personal, non-essential property of arrestees consistent with its community caretaking function as defined by the relevant legal standards.

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CIVIL MINUTES - GENERAL

CASE NO.: CV 16-01750 SJO (JPRx)

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2. Treatment of "Bulky Items"

Defendants also request clarification regarding whether the City is permitted to confiscate and destroy "bulky items" pursuant to Los Angeles Municipal Code ("LAMC") § 56.11 which allows for the immediate removal and destruction of items—excluding tents, operational bicycles, operational walkers, crutches or wheelchairs—that cannot fit within a 60-gallon container with the lid closed. Defendants assert that the statute must be enforced to address the problem of large items accumulating in public areas and creating unsanitary or unsafe conditions. Plaintiffs argue that the provision applies an unnecessarily broad definition of "bulky items" and allows the City to summarily confiscate and destroy the property of homeless individuals. Plaintiffs further allege that the question of whether or not amended LAMC § 56.11 is enforceable under the Order is not ripe for determination by this Court. The Court agrees and finds that no clarification of the Order is necessary.

Defendants claim that failure to enforce LAMC § 56.11 would expose the City to litigation alleging that it is "deliberately indifferent to the health, safety, and welfare needs of its constituents" or that it is in violation of the Americans with Disabilities Act ("ADA"). (Mot. 9.) There is no reason for the Court to issue a clarification as these concerns are already appropriately addressed by the Order as it is currently written. Enjoined Action No. 1 clearly permits the confiscation of property that "presents an immediate threat to public health or safety." There is no additional exception for bulky items nor is one necessary. If a bulky item "presents an immediate threat to public health or safety" then it may be seized by the City and stored for the period of time designated in the Order. If a bulky item does not pose such a threat, then it must not be seized. To the extent that the City seeks a decision regarding the constitutionality of LAMC § 56.11, it must do so in a setting that squarely raises that issue.

In sum, the Court need not clarify its existing Order regarding either issue raised by Defendants. A clarification is appropriate when there is an error or oversight in an order. It is not the appropriate forum to decide heavily disputed constitutional issues or issues that are not squarely raised by the case at hand. The Court therefore **DENIES** Defendants' Motion for Clarification.

III. RULING

For the foregoing reasons, the Court **DENIES** Defendants' Motion for Clarification.

IT IS SO ORDERED.