

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER
CARTER AND BERRY YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

**MOTION TO ENFORCE THE POTTINGER CONSENT DECREE AND TO HOLD THE
CITY IN CONTEMPT**

Plaintiffs, through undersigned counsel, pursuant to Federal Rule of Civil Procedure 7(b) and Sections X ¶ 25a and XIV ¶ 29 of the Settlement Agreement approved by this Court on October 1, 1998, DE 398, with modifications approved by this Court on March 10, 2014, DE 544 (referred to hereafter as the “Consent Decree”), and based on the City’s recent pattern of widespread and systematic violations of fundamental protections of the Consent Decree, move this Court to enforce the Consent Decree and for other relief specified below.¹ As grounds, the Plaintiffs state:

I. Introduction

1. Some twenty-six years ago, Judge Atkins issued his landmark decision condemning

¹ It’s no surprise that the City “beat the Plaintiffs to the punch” with its Motion for Termination, or, Alternatively, Modification of the Pottinger Consent Decree. Upon learning in late March of a series of suspected widespread violations of the Pottinger consent decree, Plaintiffs invoked the mandatory mediation provisions of the Consent Decree to seek enforcement of its provisions. The City broke from a second mediation session on May 17th for City representatives to “confer” with its clients. Plaintiffs heard nothing more from the City until they got notice the morning of May 30th from the mediator that the City had declared an “impasse.” Moments later, the Plaintiffs received electronic copies of the City’s Motion for Termination.

the City for its policy and practice of systematically violating the constitutional rights of homeless people in the City of Miami. ***Pottinger v. City of Miami***, 810 F. Supp. 1551 (S.D. Fla. 1992).

2. After appealing Judge Atkins' ruling, and in response to the Eleventh Circuit order to mediate, the City, over the course of some twenty months, negotiated a detailed settlement of all of Plaintiffs' claims against it. It agreed to, *inter alia*, (1) a policy of respecting the rights of homeless persons, (2) a protocol for making contact with or seeking to arrest homeless persons engaged in "life sustaining misdemeanor conduct" while living on the streets, and (3) a scheme to compensate homeless persons for the injuries they suffered as a result of being harassed, wrongfully arrested, and having their property destroyed. In 1998, after a "fairness" hearing, this Court accepted the parties' mediated settlement as a consent decree.

3. Five years ago, the City invoked provisions of the consent decree to modify it. Following two day-long mediation sessions, with all City stakeholders present, the Plaintiffs agreed to give up certain protections, and to loosen others in the City's favor. This Court again accepted the parties' compromises and entered the parties' amended settlement as a Consent Decree.

4. It has recently come to Plaintiffs' counsels' attention that, for the last approximately three to six months, the City has been systematically violating the Consent Decree by seizing and destroying the Plaintiffs' property, banishing Plaintiffs from certain areas of the City, and engaging and arresting Plaintiffs for "life sustaining misdemeanor conduct" without offering shelter or assistance as required by the Consent Decree. The City's actions are nearly identical to its actions and conduct that precipitated this lawsuit and formed the basis for Judge Atkins' condemnation of its anti-homeless policy and practices.

5. Plaintiffs have amassed nearly two dozen declarations from homeless persons who recently have had their property destroyed, have been ordered to leave public sidewalks while

committing no crime, or have been harassed by police and/or arrested without being offered shelter. Plaintiffs possess video evidence demonstrating that the City is collecting and destroying homeless persons' property *en masse*. They have video evidence of homeless persons being arrested without probable cause, and without any offer of shelter.

6. The City's conduct has persisted even after Plaintiffs contacted it to advise of these blatant transgressions. After learning of the City's systemic violations, Plaintiffs contacted the City informally, requesting a meeting, to avoid formal proceedings. This request was ignored. Plaintiffs then invoked Section X of the Consent Decree and requested a mediation, which took place on April 24 and May 17. These efforts were met by the City's mandate to its lawyers to dissolve the Pottinger consent decree, and the City's sudden declaration of an impasse on May 30. Because the Plaintiffs have been unable to resolve their claims through mediation, they seek the Court's assistance to enforce its the Consent Decree, order the City to cease and desist from its violative conduct, compensate them for the injuries they have suffered, pay their attorneys' fees, and provide such other and further relief as is necessary to protect their rights.

II. The City's Systematic Police Harassment of Homeless Persons and Destruction of Their Belongings

7. Beginning some three to six months ago or more, the City embarked upon a "clean-up" of various targeted areas throughout Miami. City employees, typically working under the supervision of the police, have seized what are clearly homeless people's belongings and hauled them off like trash – at times over the desperate pleadings of individuals trying to save them. Separately or in connection with these "clean-ups," City police officers have been threatening homeless persons with arrest – explicitly or implicitly in the form of orders to move on from an area – without offering shelter, and often without even citing any legal violation. On many occa-

sions, these threats have amounted to banishment from a given area, as the police admonish homeless persons to stay away from that area and not come back. Finally, City police have failed to document their interactions with homeless persons in the “clean-ups” and sweeps, as required by the Consent Decree.

8. These violations are City-wide. Many of them have taken place in a downtown area known as Lot 16, referring to a municipal parking lot a block east of the Miami River under the I-95 underpasses that span SW 2nd and 3rd Streets.² Many other violations have occurred in an Overtown neighborhood around the I-395 overpass, near NW 11th and 13th Streets, roughly between NW 1st and 2nd Avenues. But the violations have by no means been confined to those areas. The attached declarations document violations near the old Macy’s on Flagler, near the FedEx Ship Center on SW 2d Street, near the new BrightLine station on NW 1st Avenue at NW 6th Street, and in Peacock Park in Coconut Grove.

9. The “clean-up” operations follow a consistent pattern. Particularly in the Lot 16 area, the operations have begun with police arriving between 5 and 6 am, sounding loud buzzers and shining bright lights on homeless people in the area, telling them to move on because the area is going to be cleaned up. Declaration of Robert Rhodes, ¶¶ 6-9;³ Richardson ¶ 6; Villalonga ¶ 8. In some instances signs have been posted notifying people of clean-ups, but the operations do not necessarily follow the posted times. Haynes ¶¶ 11-12; Cauley ¶ 6; Blasko ¶ 6; Chibanguza ¶ 4. In some instances, a fleet of trucks is brought in – a water pressure cleaning truck, pick-up trucks,

² The Lot 16 area is roughly bounded by the Miami River on the West, SW 2d Avenue on the east, SW 2nd Street on the north, and SW 3rd Street on the South. the Map in Exhibit 1 gives the approximate location of the violations referred to in this Motion or in the attached declarations.

³ The Declarations are provided in the Appendix in alphabetical order by last name as Exhibits 2-24. In this motion, they are cited by last name and the paragraph number of the Declaration. An index to the Exhibits in the Appendix follows this motion.

and a street sweeper – and a team of City employees arrives to conduct the clean-up under police supervision. Archer ¶ 8; Bass ¶ 6; Donald ¶ 5; Rhodes ¶ 6. In other instances the operation is somewhat simpler, confined to the police, City employees, and a pick-up truck. Allen ¶ 5; Blasko ¶ 7.

10. The initiation of the clean-ups is hurried. People report being told by police or City employees (usually “Green Shirts” -- City of Miami NET employees) to move their belongings out of the way quickly, Richardson ¶ 7, or even “immediately,” Rhodes ¶ 6. The time between warning and commencement of the clean-up can be as little as five minutes. Archer ¶ 3; Bass ¶ 3. In Overtown, City employees woke up one individual known as Rhode Island Red and would not even give him a minute to gather his belongings; the City ended up seizing all his belongings except his backpack. Bass ¶ 8; Archer ¶ 9. Some people have been told by City employees that they can take only what they can move in 30 seconds. Archer ¶ 8; Bass ¶ 7. Individuals who haven’t left quickly enough have been sprayed with the power-washer. Archer ¶ 3; Bass ¶ 3.

11. City workers then move quickly to gather up for disposal belongings that are obviously those of homeless people – *i.e.*, which are neatly organized and stacked, out of the way so they do not block passage on the sidewalk. Every declarant who lost property to the City’s seizures describes how he or she or others had done so. Allen ¶ 4; Archer ¶ 3; Bass ¶ 3; Blasko ¶ 4; Cauley ¶¶ 5, 7; Chibanguza ¶ 2; Donald ¶ 5; Grant ¶¶ 8, 9; Haynes ¶ 9, 13, 14; Hill ¶¶ 6, 8, 14; King ¶ 4; Lane ¶ 5; Peery ¶ 13; Rhodes ¶ 5; Saluki ¶ 10; Self ¶ 4; Stanley ¶ 4; Winston ¶ 5. People’s belongings are kicked around and thrown into piles, Cauley ¶ 9, and then loaded into trucks to be carted away as trash. Individuals who see their property being piled up this way or who see it already in a truck plead to be allowed to retrieve it. Archer ¶ 8; Cauley 19; King ¶¶ 4-5; Saluki ¶ 5,

12. Either their requests are denied entirely – sometimes threateningly – or they are allowed to

retrieve a particular item, with the bulk of their belongings still being thrown away. Archer ¶ 8; Peery ¶ 13, and video, Exhibit 34.⁴

12. For example, Terry Fluker, who had been staying near Macy's saw City employees take his backpack and throw it into a truck. Mr. Fluker asked the employee "why he took my backpack and he said, 'we owe you no explanations,'" and would not let Mr. Fluker get his backpack back. He lost his clothes, personal items, his Florida identification card, and his social security card. Fluker ¶ 4. In Overtown, on April 17, David Peery saw a NET employee take a look at neatly organized stacks of homeless people's belongings and then tell the people in the vicinity, "Okay, now we're going to throw your shit away" and then began to kick them into one pile. A woman cried and screamed as her belongings were piled up; the NET employee allowed her to get back one thing – her purse or her shoes. The NET employee also threatened another man with his fist for trying to retrieve his belonging from the heap they'd been put into. These events are documented in Mr. Peery's Declaration and in the video he took that day, Exhibit 34.

13. As is described in a number of declarations, the property of anyone who happens to be away at the time of the operation is routinely disposed of. Allen ¶ 6,7; Archer ¶ 3; Bass ¶ 3; Blasko ¶¶6-7; Cauley ¶¶ 7-11; Chibanguza ¶¶ 5-6; Donald ¶ 9; Grant ¶ 10; Haynes ¶¶9, 13, 14, 19; Hill ¶¶ 9-12, 13-16, Lane ¶¶ 7-9; Rhodes ¶¶ 6, 7, 10, 12; Richardson ¶ 7, 9; Self ¶ 4; Stanley ¶ 6; Winston ¶¶ 6-8. This happens even though the individuals have left their belongings out of the way, neatly organized, in a form that makes it clear they are not abandoned. It happens even where they ask another individual to watch over it for them; the City workers do not allow people

⁴ As noted in the list of Exhibits attached to this motion, Plaintiffs will file video evidence pursuant to this Court's Local Rule 5.3.

watching another's belongings to save it from disposal. For example, Wilbert Hill, who has diabetes and other medical conditions including acid reflux and heart problems, left the area near the BrightLine station early one morning to seek a bed at Camillus. He left his belongings neatly organized and out of the way, and asked another person named Steve to watch over them while he was gone. When he returned, Steve told him that city workers and the police had come by and thrown everything away, and had refused to let people who were safeguarding others' belongings prevent them from being seized and removed. Hill ¶¶ 9-12. Willie Grant, homeless and in a wheelchair because of an accident that resulted in loss of a leg, left the area near Government Center where he was staying to wash up half a block away. He returned to find City employees throwing his belongings away. Even though he identified them as his, the City employee said they were "abandoned" and refused to let him get them back. Grant ¶¶ 9-10.

14. The City also treats returning in the midst of a clean-up operation as too late. When Markell King returned from a meal at Little Sisters of the Poor to the Overtown street on which he was staying, he witnessed City employees throwing his belongings in a truck. In response to his efforts to get them back, they said "it's clean up day" and told him he was too late: "These are the rules," they said. A police officer nearby said his hands were tied. King ¶¶ 8-9. The same thing happened to Eddie Fisher. Fisher ¶¶ 7-9.

15. The police role in these "clean-up" operations is pervasive and central. Nothing begins until the police arrive. Further, it is the police who order individuals to get out of the area. *E.g.*, Allen ¶ 5; Bass ¶ 3; Fluker ¶ 4; Lane ¶ 7.

16. Particularly in the Lot 16 area, but not only there, the police have ordered homeless individuals not just to move out of the way during the "clean-up," but to leave the area entirely and stay away. Haynes ¶ 13. The Lot 16 area, in which 20-60 homeless persons formerly stayed,

is now largely devoid of homeless people. Peery ¶¶ 8-10; Haynes ¶ 3. As Carl Winston said, “When the police tell us to move, I do what they say and relocate for the night.” Winston ¶ 11. Many others state that they have permanently moved to a different location after being ordered out. Allen ¶ 9; Blasko ¶ 8; Chibanguza ¶ 8; Fluker ¶ 5; Self ¶ 9; Villalonga ¶ 9.

17. Apart from these “clean-ups,” there have also been multiple instances of police officers ordering homeless individuals to move on or leave an area – without citing any claimed violation, and without offering shelter. Individuals who are subjected to these orders have no practical choice but to comply. To take one example, Java Houston’s declaration and video, Exhibit 34, document an arbitrary order by a police officer to leave the area near Macy’s where she was staying – arbitrary because the police cited no violation and she was not in fact blocking the sidewalk. She notes, “I complied with the order and moved, even though I had done nothing wrong.” Houston ¶ 7. Rafael Villalonga’s experience provides a second example. As he was sitting on the sidewalk alone in the Lot 16 area one evening in mid-March, a police officer drove up to him and told him, “You can’t stay here, you have to leave now!” Villalonga ¶ 4. He, too, complied even though the order was wrongful.

18. One constant in these clean-up operations and police orders to move on or leave an area is the fact that no one is offered shelter. Under Section VII.14.A of the Consent Decree, police officers are not permitted to approach a homeless person who is not engaged in any violation unless it is to offer shelter or other services. Yet police officers have ordered many homeless individuals to move on and stay away from an area, without offering any shelter. When Java Houston was arbitrarily ordered by police to move on, on two separate occasions, no shelter was offered. Houston ¶ 6. Further, the declarations document many instances of clean-ups with no offers of shelter – even though a threat of arrest is explicit or implicit. *E.g.*, Cauley ¶ 12; Self ¶ 6; Villalonga ¶ 4;

Winston ¶ 11.

19. Far from being isolated, these violations have been persistent over a considerable period of time. The bulk of the violations Plaintiffs have documented so far have taken place since March of 2018. But as the attached declarations show, there are documented instances of property seizures as far back as mid-October, 2017. Allen ¶ 5 (“The police would pull up in squad cars ..., tell people to move and the city workers would take their possessions from the street and throw them into the pick-up truck.”) Further, although Plaintiffs demanded that the City cease the violations during the time when the parties attempted to work things out through mediation, they have continued through the present: the most recent property seizure documented in the attached declarations took place on May 17, 2018. The seizure of Willie Grant’s belongings on that date, recounted above, is strikingly similar to the property seizures Stephen Allen describes back in mid-October in the Lot 16 area. Grant ¶¶ 8-10.

20. The City’s violations have affected many people. Plaintiffs’ counsel currently have declarations from twenty-three class members. The number of instances of violations described in these declarations far exceeds the number of declarants. Many declarants recount not only their own experiences but also having personally seen City and police conduct that violates others’ rights under the Consent Decree. E.g., Bass ¶¶ 3, 8, 9; Fisher ¶ 8; Haynes ¶¶ 9, 13, 14; Peery ¶¶ 13-16; Rhodes ¶ 6; Richardson ¶ 7. Moreover, many homeless persons are reluctant to be identified or seen as challenging the police. As noted earlier, areas where homeless people previously stayed are now cleared out, with individuals having gone to parts unknown because police have ordered everyone to move on and stay away.

21. Some of the declarants have been homeless for several years; others have been living on the streets for no more than a few months. E.g. Allen ¶ 2 (since February 2018); Blasko ¶ 2

(same); Donald ¶ 2 (past three and a half years). Regardless of how or when they became homeless, all face the same shortage of shelter – the number of homeless persons county-wide exceeds the number of available beds – and the same lack of affordable housing.

22. A number of homeless people have vulnerabilities going beyond those that are inherent in being forced to live on the streets. Physical and mental disability can lead to homelessness for some people; and homelessness can cause or exacerbate these disabilities. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1557, 1563 (S.D. Fla. 1992). As a result, homeless people are disproportionately likely to be disabled, sick and fragile. That is true of many of the declarants here: Tabitha Bass, struck by a car the day before her arrest for obstructing the sidewalk, dead ten days after being released from jail; Michael Cauley, a disabled army veteran, Cauley ¶ 2; Michael Donald, an army veteran/defense contractor severely injured in 2007 by an IED, leaving him with traumatic brain injury, post-traumatic stress disorder, and a bad leg with metal rods, Donald ¶¶ 2, 3; Willie Grant, who became homeless and wheelchair-bound after losing his leg, and suffers stress-triggered asthma which sent him to the hospital for three days following seizure and destruction of his property, Grant ¶¶ 2-4, 12; Ashley Self, a social security disability recipient who cannot walk well, Self ¶ 2; Jeffrey Stanley, who suffers from a bladder disorder that keeps him in diapers, Stanley ¶¶ 5, 7; and Wilbert Hill, who suffers from diabetes, a heart condition and acid reflux. Hill ¶ 12.

23. The property losses have had calamitous effects on Plaintiffs. The City has trashed homeless people's medicines, Florida ID cards, social security cards, birth certificates, phones, clothes, shoes, blankets, jackets, toiletries, food, cash, eyeglasses, sleeping bags, a bike, e.g., Archer ¶ 6, Bass ¶ 4; Blasko ¶ 7; Cauley ¶ 10; Chibanguza ¶ 5; Donald ¶ 9; Fisher ¶ 10; Fluker ¶ 4; Haynes ¶ 14; Hill ¶ 12; King ¶ 10; Lane ¶ 9; Saluki ¶¶ 8, 13; Self ¶ 4; Stanley ¶ 7; Winston

¶ 8 – the list of basic survival items people on the streets need, and which the City has seized, is endless. Sometimes the description is especially basic: “I lost everything I owned.” *E.g.*, Donald ¶ 9; Self ¶ 4. Even when the items aren’t somehow essential to survival, their loss is real – irreplaceable family photos, books, radios, head phones, board games, stuffed animals, an old iPad, personal papers or journals. *E.g.*, Archer ¶ 6; Cauley ¶ 10; King ¶ 10; Lane ¶ 9; Winston ¶ 8. Those who lost ID to the City’s seizures – some more than once – have enormous challenges in replacing it. Ashley Self believes she suffered identity theft as a result. Declaration of Ashley Self, ¶ 5. Some lost their clothes and bedding on a cold night. *E.g.*, Rhodes ¶ 11. The stress of the loss (including the loss of his asthma medicine) caused Willie Grant an asthma attack and sent him to the hospital for three days, Grant ¶ 12, and sentenced Michael Donald to suffer from his migraines without the benefit of his migraine medication Zomig. Donald ¶ 9. The City’s destruction of Jeffrey Stanley’s property on a day when he was in the hospital for removal of a cyst made his recovery from the procedure very difficult. Stanley ¶ 7.⁵

24. The injuries suffered by those who have been subjected to arbitrary orders to move on are of a different nature, but just as real. To be subjected to temporary or permanent banishment from an area of a City, simply because you are homeless, is a grievous denial of the most basic rights.

25. The conduct by police and City employees described in the preceding paragraphs

⁵ The devastating health impacts of class members’ losses are magnified by the City’s concerted efforts to shut down a number of private charitable food sharing programs. Haynes ¶ 16; Peery ¶ 12(b); Self ¶ 7; Villalonga ¶ 7. Police threats to individuals providing or receiving food in such programs are unlawful, and violate the requirements in Section V of the Consent Decree that the City “respect the rights of homeless people” and that it “prevent harassment of these persons,” Section VI. See also Section I.4 (“the CITY is committed to ensuring that the legal and constitutional rights of all homeless persons be fully respected by all city policies, rules, regulations, practices, officials and personnel”). The City’s actions are unlawful, as there is no statute or ordinance prohibiting food sharing.

is utterly inconsistent with the solemn commitments the City made to “respect the rights of homeless people,” Section V.7, and to “protect the constitutional rights” of all class members, Section VI.9. Strikingly, it is virtually identical to the conduct that Judge Atkins condemned in 1990 as “innately offensive and repulsive,” and “especially horrid.” Order on Plaintiffs’ Second Application for Preliminary Injunction, April 26, 1990, at 1-2. That conduct was a pattern of police sweeps in which City police and other employees systematically seized Plaintiffs’ belongings, “including identification, medication, and clothing” as well as “other personal belongings, which are vital to their survival,” piled them up, and then destroyed them. *Id.* at 2. In April 1990, he ordered the City to cease such activities. *Id.* at 4. Instead, the City continued to engage in them, and a year later Judge Atkins held the City in contempt. Order Finding City of Miami in Civil Contempt of Court’s April 26, 1990 Order and Providing Further Injunctive Relief, March 18, 1991 (“1991 Contempt Order”), at 23-24. He found that City police came to parks or other areas where homeless people stayed and sounded loud alarms to rouse them. The police were accompanied by dump trucks and front-end loaders. They ordered homeless people to leave immediately, giving them insufficient time to gather their belongings, and then proceeded to pile up and destroy what people had not been able to take with them. The property of anyone who was gone when the police and sanitation workers arrived was destroyed, even if it had been left neatly organized in a way that made clear it was not abandoned. Individuals who saw their property being destroyed, and who pleaded to be able to retrieve it, were threatened with arrest instead. 1991 Contempt Order, at 6-9, 13. Referring to a police officer’s testimony in court that the belongings “looked like junk,” Judge Atkins noted that “particularly under these circumstances, value is in the eyes of the beholder, as one man’s junk is another man’s treasure.” *Id.* at 14. He went on:

Any police officer or city worker assigned to the various areas where homeless persons congregate should be well aware that homeless persons use shopping carts, plastic bags

and cardboard boxes as means of transporting their possessions. Any asserted ignorance of this fact insinuates a narrow-minded attitude that this court will not tolerate.

Id. He acknowledged, as do Plaintiffs today, the City's "substantial interest in the effective cleaning and securing of its parks and other public areas." *Id.* at 20. But that interest was outweighed by "the more immediate harm to class members posed by the destruction of their personal belongings." *Id.* Indeed, he found that "the public has at least an equally important interest in ensuring that the less fortunate members of society are not deprived of their property rights under the Constitution. Moreover, the public has an interest in homeless persons' being physically able to seek employment," which they could not do if leaving their possessions exposed them to the City's destructive policies. *Id.*

26. The clean-ups systematically violate the property protections these commitments are meant to ensure. In Section VI.9, the City promised to "prevent ... the destruction of the[Plaintiffs'] property." This fundamental commitment is spelled out in Section VII.F.1: "The CITY shall respect the personal property of all homeless people." This commitment binds not only the police but all City employees. *Id.* The commitment entails several specific constraints on City conduct: One is that City departments must "follow their own internal procedures for taking custody of personal property." *Id.* Apart from those procedures, the City may virtually never destroy property that it knows belongs to a homeless person.⁶ Trashing someone's belongings over their anguished pleas is one example of such a violation; another is trashing someone's belongings even

⁶ "In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to CITY workers or to members of the public. Notwithstanding any language in the Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses." Section VII.F.1.

though an individual identifies them as belonging to another homeless person who is temporarily away from the site. Nor may the City treat as abandoned and then destroy homeless persons' property, if it is recognizable as such, simply because it is left unattended. Again, seizing and destroying property that a homeless person has left neatly organized and stacked, in a way that does not block passage on the sidewalk, is a clear-cut violation.

27. There are, as Section VII.F.1 of the Consent Decree makes clear, some exceptions to the City's duty. These involve any property that is contaminated or a health or obvious safety hazard. None of these exceptions applies to the ID, medicine, and other belongings described in the declarations. Indeed, there is no sign that the City makes the kind of individual inspections that would be needed to invoke the exceptions.

28. Another key commitment is that when an individual is arrested, the arresting officer is required to "secure personal items such as identification, medicines and eyeglasses and other small items identified by the arrestee, which are not large and bulky, in accordance with the police department's internal operating procedures." Section VII.F.2.a. With respect to large and bulky items, the police must ensure that they "are not abandoned at the point of arrest, but rather are secured by an outreach worker and maintained in accordance with existing outreach procedures." Section VII.F.2.b. This requirement was blatantly violated in the arrests of Chetwyn Archer and Tabitha Bass, set out below in ¶¶ 30-32 .

29. In conjunction with and also separately from the "clean-ups," the City has violated the police protocol provisions of the Consent Decree. A police order to anyone – homeless or not – to move on or clear out of an area is unlawful if the individual is lawfully present and not violating any statute or ordinance. The declarations document multiple such instances, which violate the City's obligation under the Consent Decree to "respect the rights of homeless people," Section

V.7, and to “protect the constitutional rights” of all class members, Section VI.9. Moreover, Section VII.14.A, an officer is not permitted to approach a homeless person not observed engaging in any criminal conduct except to advise them of “shelter, services, or assistance which are then currently available.” In none of the instances documented in the declarations was there an offer of shelter or other assistance. Moreover, even if somehow a police officer believed a homeless individual was violating one of the life sustaining conduct misdemeanors (LSCMs), but for some reason failed to say so, no warning or threat of arrest for such offenses is permissible unless shelter (not just services) that is currently available is offered to the homeless person and he or she refuses it. Section VII.10.C. Again, as the declarations make clear, City police have been ordering individuals to move on or clear out an area – both in conjunction with the clean-up operations and separately from them, and with an implicit and well understood threat of arrest – without making any offers of available shelter.

30. The arrests of Tabitha Bass and Chetwyn Archer are documented in their Declarations, arrest records, and the police body cams, all provided as Exhibits. They illustrate the City’s numerous violations. Ms. Bass and Mr. Archer were asleep in the morning of March 27, 2018, on a cracked sidewalk on NW Second Avenue, between 14th Terrace and 15th Street, that dead-ends into an expressway abutment, making it unusable for pedestrian traffic:



Archer ¶ 7. Furthermore, Bass and Archer were not obstructing the non-pedestrian sidewalk, because their bedding, the white mattress above, was pushed against the fence parallel to the sidewalk. Archer ¶ 7; Bass ¶ 5. Nevertheless, seconds after Officer H. Gonzalez arrived on the scene he arrested Mr. Archer for obstructing the sidewalk:



Archer ¶ 7. (Mr. Archer, who expressed great concern for Ms. Bass's condition, was also arrested for a misdemeanor drug paraphernalia offense (a crack pipe) after the officer asked him, "You're going to take it, right?") The police confiscated and destroyed all his property. *Id.* Archer pleaded with the police not to arrest Ms. Bass, hit by a car the day before, her face visibly injured:



Unheeding, Officer C. Gonzalez arrested Bass for obstructing the sidewalk. Bass ¶ 5.

31. The arrest record for Ms. Bass states that they had a mattress on the sidewalk that completely obstructed pedestrian passage. It did not. In any event, the Consent Decree requires the office to first warn the individual in cases where there is a complete obstruction. Only if the warning is disregarded does the violation become an LSCM under Section VII.14.C.3.d. (This is consistent with City of Miami Code § 54-2 (cited in the arrest records), which makes clear that that section is not violated – as to anyone – unless the individual “shall refuse to obey a request by a law enforcement officer to move on; mere refusal to move on is not enough to support the offense – there must be an actual blocking of free passage over, on or along said ... sidewalk.”) No warning

was given. The narrative in Ms. Bass's arrest record virtually admits this. It states that she was "given a warning in several occasions." Whether or not such warnings were in fact given, nothing in Section VII.14.C.3.d permits prior warnings to substitute for a contemporaneous warning. Finally, even if Ms. Bass were somehow considered to be partially obstructing the sidewalk, and even if that were sufficient to constitute a violation of CMC 54-2, the officer did not offer shelter as required under Section VII.14.C.3.d. Again, the body-cams show that no shelter was offered, and the arrest record essentially admits this, claiming that "the defendant *has been offered* homeless placement by the Miami Homeless Assistance Program Staff (the Green Shirts) but refused any assistance" (emphasis added). Past offers of shelter do not constitute "available shelter" under Section VII.11. The narrative in the arrest record for Mr. Archer shows the same violation of the Consent Decree, referring to past warnings and offers of shelter ("The Defendant has been given several warnings in regard to blocking the sidewalk and has been offered shelter. However, the defendant declined shelter and agreed that he would not block the sidewalk again.")⁷

32. Mr. Archer's case was dismissed at his first appearance. Archer ¶ 7. For Ms. Bass's arrest was resolved with a withhold of adjudication and a suspended sentence, by which time the City had confiscated and destroyed all her property. *Id.* Ms. Bass died ten days after her release from jail.

33. Finally, in many instances the City has systematically failed to comply with the documentation requirements. If a police officer approaches a homeless person who is not committing any crime to offer shelter or other assistance, that encounter must be documented in a Field Information Card (FIC). Section VII.14.A (either a new FIC or an update to a prior FIC if assistance was refused in the past 30 days). If the clean-ups are somehow intended to be assistance to

⁷ The arrest records are provided in Exhibits 25 and 26.

the persons living in the area, then the police who supervise each clean-up should document the encounter in FICs. Further, warnings or threats of arrest for committing an LSCM must be documented by an FIC. Section VII.14.C. To the knowledge of Plaintiffs' counsel, however, there are no FICs for the encounters described in the declarations.⁸

III. Conclusion and Prayer for Relief

34. Based on the City's grievous misconduct and the devastating injuries Plaintiffs have suffered as a result, Plaintiffs seek (1) enforcement of the amended consent decree, (2) compensatory damages, (3) attorney fees for filing this action and obtaining any relief, and (4) for this Court to hold the City in contempt and impose a punitive fine.

35. The preliminary showing Plaintiffs have made, and the evidence Plaintiffs will introduce at any evidentiary hearing, establish that the City is systematically violating the Consent Decree this Court entered in 1998, and the amendments to that consent decree to which the City agreed in 2013. At a minimum, this Court must enforce the Consent Decree by ordering the City, a party to it, to comply with each and every one of its provisions.

36. Plaintiffs also seek compensatory damages for injuries they have sustained as a result of the City's wrongful and violative misconduct. These injuries include (1) the destruction of their property, some fungible and some irreplaceable, (2) loss of time needed to replace identification, medication, and other property necessary to day-to-day living on the streets, (3) emotional pain and suffering caused by the ordeal of having all one's property destroyed, being wrongfully

⁸ Plaintiffs' counsel have received the FICs for December 2017 and January 2018, pursuant to Section VIII.15(f), which entitles Plaintiffs' counsel to the FIC in six-month batches. The most recent batch covers through January 2018. When Plaintiffs' counsel first began receiving reports from class members of widespread violations, they made a Public Records Request for the period March 17 through April 12, 2018. Plaintiffs' counsel do not currently have the FICs for February 1-March 16, 2018.

arrested, or being otherwise harassed and disturbed from one's peace and quiet, and (4) the violation of their First, Fourth, Fifth, Eighth, and Fourteenth Amendment rights.⁹

37. Consistent with the Consent Decree and the laws and policies supporting the award of attorney fees for lawyers who assist civil rights claimants to demonstrate violations of their rights and obtain compensatory damages, this Court should award Plaintiffs their attorney fees and costs based on the hours of time they have invested in securing this relief for Plaintiffs and their reasonable hourly rates for these legal services.

38. Lastly, this Court should hold the City in contempt and fine it for its blatant violations of the Consent Decree. The City promised its adherence to the consent decree when it settled all of Plaintiffs claims against it in 1998. It reaffirmed this promise when it benefitted from the modification of the settlement in 2013. The City has intentionally broken these promises by its recent concerted actions. Finding the City in contempt is necessary to vindicate this Court's authority and to deter the City from any future violations.

Wherefore, Plaintiffs request that this Court (1) order the City to abide by each and every provision of the Consent Decree, including ceasing its harassing conduct described herein, which continues to this day; (2) direct that Plaintiffs be compensated for their injuries resulting from the City's recent violations of the Consent Decree; (3) award Plaintiffs their reasonable attorneys' fees and costs; (4) hold the City in contempt and fine it for violating the Consent Decree and to deter any future violations; and (5) provide any and all other relief that this Court deems just and proper.

⁹ If the Court awards damages, Plaintiffs intend to propose damages appropriate to the class action status of this suit and the challenges in individual proof that Plaintiffs face because of their homelessness and the City's actions in proving exact losses. A pool of liquidated damages distributed among injured class members, with any residue devoted to homelessness-related services for all class members, would be a suitable approach.

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 7.1(a)(3), I hereby certify that I conferred with counsel for Defendant in a good faith effort to resolve by agreement the issues raised in this motion, and have been unable to do so. Specifically, Plaintiffs invoked Section XX of the Consent Decree, and contacted the City about a required mediation. After two mediation sessions, the City declared an impasse.

Respectfully submitted,

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BY: /s/ Benjamin S. Waxman
BENJAMIN S. WAXMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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Index to Exhibits in Appendix

1. Plaintiffs' Motion to Enforce--Violations Map
2. Declaration of Stephen Allen, 4/19/18
3. Declaration of Chetwyn Archer, 4/13/18
4. Declaration of Tabitha Bass, 4/13/18
5. Declaration of Michael Blasko, 4/17/18
6. Declaration of Wilbur Cauley, 5/14/18
7. Declaration of Guthrie Chibangza, 4/20/18
8. Declaration of Michael Donald, 4/18/18
9. Declaration of Eddie Fisher, 5/26/18
10. Declaration of Terry Fluker, 4/13/18
11. Declaration of Willie Grant, 5/23/18
12. Declaration of Ellis Haynes, 4/16/18
13. Declaration of Wilbert Hill, 5/21/18
14. Declaration of Java Houston, 4/19/18
15. Declaration of Markell King, 5/14/18
16. Declaration of Robert Lane, 4/30/18
17. Declaration of David Peery, 4/20/18
18. Declaration of Robert Rhodes, 4/13/18
19. Declaration of Willie Richardson, 4/13/18
20. Declaration of Malik Saluki, 5/14/18
21. Declaration of Ashley Self, 4/20/18
22. Declaration of Jeffrey Stanley, 5/24/18
23. Declaration of Rafael Villalonga, 4/13/18
24. Declaration of Carl Winston, 4/30/18
25. Arrest Records-Chetwyn Archer
26. Arrest Record-Tabitha Bass/Obstructing Sidewalk
27. Photo taken by David Peery of City operation, 4/17/18 (9:07 AM)
28. Photo taken by David Peery of City operation, 4/17/18 (9:45 AM)
29. Photo taken by David Peery of City operation, 4/17/18 (9:46 AM)
30. Photo taken by David Peery of City operation, 4/17/18 (9:46 AM)
31. Photo taken by David Peery of City operation, 4/17/18 (9:46 AM)
32. Photo taken by David Peery of City operation, 4/17/18 (9:47 AM)
33. Video taken by Java Houston, 4/12/18 (to be filed separately pursuant to Local Rule 5.3)
34. Video taken by David Peery of City operation, 4/17/18 (to be filed separately pursuant to Local Rule 5.3)
35. Body Cam of Chetwyn Archer/Tabitha Bass Arrests, 3/27/18 (12:42 PM) (to be filed separately pursuant to Local Rule 5.3)
36. Body Cam of Chetwyn Archer/Tabitha Bass Arrests, 3/27/18 (12:45 PM) (to be filed separately pursuant to Local Rule 5.3)