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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
11 AT SEATTLE

12 ADA YEAGER, an individual,

13 Plaintiff,

14 v.

15 THE CITY OF SEATTLE, a municipal  
16 corporation,

17 Defendant.

Case No. 2:20-cv-01813-RAJ

ORDER

18 **I. INTRODUCTION**

19 This matter comes before the Court on Plaintiff's Motion for Emergency  
20 Temporary Restraining Order and Preliminary Injunction. Dkt. # 2. For the reasons  
21 below, the Court **DENIES** the motion.

22 **II. BACKGROUND**

23 Plaintiff Ada Yeager is an unhoused individual who has been living in Cal  
24 Anderson Park since early June 2020. Dkt. # 1-2 ¶¶ 2, 6. At Cal Anderson Park, she is  
25 part of a "protest encampment," a "staging ground for daily marches, political meetings,  
26 organizing, making art, growing food, and providing community-based solutions" to  
27 other homeless persons' medical and mental health needs. *Id.* ¶¶ 2, 4. Based on her  
28 estimate, until recently, there were about 50 people also living in the park. *Id.* ¶ 9.

ORDER – 1

1 In the morning of December 14, 2020, several police officers entered Cal  
2 Anderson Park and notified Ms. Yeager that she must remove all her personal property  
3 from the park. *Id.* Ex. 1. The notice of eviction provided a date and time (December 16,  
4 2020 at 7:30 a.m.) by which Ms. Yeager would have to remove her belongings. *Id.* If  
5 any of her materials remained after that date and time, they would “removed by the City,”  
6 and some materials “authorized for storage” would be “kept for 70 days at no charge.”  
7 *Id.* The notice provided the address of where her belongings would be stored. *Id.* It also  
8 stated that the City would deliver such belongings to her. *Id.*

9 Ms. Yeager refers to such an eviction as a “sweep.” *Id.* ¶ 11. She says that she  
10 has been present for four previous sweeps. In the past, she claims, police officers have  
11 ordered homeless residents of Cal Anderson Park off the premises and have seized and  
12 destroyed their property. *Id.* ¶¶ 11-21.

13 The sweep scheduled for December 16, 2020 at 7:30 a.m. (which the Court refers  
14 to as the “intended sweep”), however, was unlike the previous. After police officers  
15 distributed notices of eviction on December 14, 2020, some occupants left. *Id.* ¶ 9. But  
16 several individuals have since flocked to the encampment, supposedly “helping unhoused  
17 people” leave the park and supposedly “building barricades to defend against police  
18 violence.” Dkt. # 2 at 2. Now, besides the residents of Cal Anderson Park, there are  
19 about 200 civilians “in and around the barricades” who are “prepared to defend the  
20 encampment” from the intended sweep. *Id.*

21 Yesterday morning, the day of the intended sweep, Ms. Yeager filed this action  
22 and moved for a temporary restraining order (“TRO”) and preliminary injunction  
23 enjoining the City from executing the sweep. Dkt. ## 1, 2. Although the City had not  
24 been served with the complaint or motion, attorneys for the City appeared in this matter  
25 and attended a 3:30 p.m. telephonic hearing with the Court and Ms. Yeager’s counsel.  
26 Dkt. # 9. At the end of the hearing, the Court took Ms. Yeager’s motion under  
27

1 submission.<sup>1</sup>

### 2 III. LEGAL STANDARD

3 Like a preliminary injunction, issuance of a TRO is “an extraordinary remedy  
4 never awarded as of right.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).  
5 Under Federal Rule of Civil Procedure 65(b), a party seeking a TRO must make a clear  
6 showing (1) of a likelihood of success on the merits, (2) of a likelihood of suffering  
7 irreparable harm in the absence of preliminary relief, (3) that the balance of hardship tips  
8 in her favor, and (4) that a temporary restraining order in is in the public interest. *Winter*  
9 *v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (articulating standard  
10 for preliminary injunction); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d  
11 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining  
12 order standards are “substantially identical”).

### 13 IV. DISCUSSION

#### 14 A. *Ex Parte* Relief

15 Under Rule 65 of the Federal Rules of Civil Procedure, a court may issue a  
16 temporary restraining order without notice to the adverse party only if “specific facts in  
17 an affidavit or a verified complaint clearly show that immediate and irreparable injury,  
18 loss, or damage will result to the movant before the adverse party can be heard in  
19 opposition,” Fed. R. Civ. P. 65(b)(1)(A), and only if the movant’s attorney certifies “any  
20 efforts made to give notice and the reasons why it should not be required,” Fed. R. Civ. P.  
21 65(b)(1)(B).

22 Further, under the Local Rules, issuing TROs without notice is “disfavored.”  
23 Local Rules W.D. Wash. LCR 65. “Unless the requirements of Fed. R. Civ. P. 65(b) for  
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25 <sup>1</sup> This morning, the City submitted a declaration stating that Ms. Yeager “was given a  
26 referral for shelter at a tiny home community and was completing intake paperwork as of  
27 this morning.” Dkt. # 10 ¶ 3. The City has not updated the Court further on this matter.  
28 If Ms. Yeager has indeed relocated before the entry of this Order, this motion would be  
moot. The Court enters this Order under the assumption that she has not yet relocated.

1 issuance without notice are satisfied, the moving party must serve all motion papers on  
2 the opposing party before or contemporaneously with the filing of the motion and include  
3 a certificate of service with the motion.” *Id.* 65(b)(1). After a motion for a TRO is  
4 served, the opposing party normally has 48 hours to file a response. *Id.* 65(b)(5).

5 To the Court’s knowledge, at the time this Order is entered, the City has not yet  
6 been formally served with the TRO or the Complaint. At yesterday’s telephonic hearing,  
7 the City represented that it only learned of this matter through Twitter. Though Ms.  
8 Yeager may have specified her immediate and irreparable injury in an affidavit, Dkt. # 1-  
9 2, her counsel has not “certifie[d] in writing any efforts made to give notice and the  
10 reasons why it should not be required,” Fed. R. Civ. P. 65(b)(1)(B). Thus, putting the  
11 merits of the motion aside, the Court should not issue a TRO *ex parte* because it is  
12 unclear whether Ms. Yeager has satisfied the federal and local procedures required for the  
13 Court to do so.

14 In any event, at the telephonic hearing, both Ms. Yeager and the City described the  
15 events at Cal Anderson Park as urgent and imminent. The City agreed to argue the merits  
16 of the motion without the benefit of filing a written response. Both parties asked for a  
17 swift ruling from the Court. The Court will oblige.

## 18 **B. Likelihood of Success on the Merits**

19 Ms. Yeager claims that the City violated her constitutional rights under the First  
20 Amendment, Fourth Amendment, and Fourteenth Amendment. Dkt. # 1 ¶¶ 2.1, 4.2-4.4.  
21 She is not suing any individual officer or employee of the City. Rather, she is suing the  
22 City as a municipal corporation and is asserting her constitutional claims under 42 U.S.C.  
23 § 1983. *Id.* To that end, for each constitutional deprivation that she asserts, she must  
24 satisfy the demands of *Monell v. New York City Dep’t of Public Servs.*, 436 U.S. 658, 691  
25 (1978).

### 26 **i. *Monell***

27 Under *Monell*, a municipality cannot be held liable for constitutional injuries

1 inflicted by its employees on a theory of respondeat superior. 436 U.S. at 691. “Instead,  
2 it is when execution of a government’s policy or custom, whether made by its lawmakers  
3 or by those whose edicts or acts may fairly be said to represent official policy, inflicts the  
4 injury that the government as an entity is responsible under § 1983.” *Id.* at 694.

5 To establish municipal liability, a plaintiff must “prove that a city employee  
6 committed the alleged constitutional violation pursuant to a formal governmental policy  
7 or a longstanding practice or custom which constitutes the standard operating procedure  
8 of the local governmental entity.” *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir.  
9 1992) (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)) (internal  
10 quotation marks omitted).<sup>2</sup> Moreover, this municipal policy or custom must be the  
11 “moving force” behind the constitutional violation. *Van Ort v. Estate of Stanewich*, 92  
12 F.3d 831, 835 (9th Cir. 1996). In other words, plaintiff must show that the municipal  
13 policy or custom *caused* the constitutional violation. *Tsao v. Desert Palace, Inc.*, 698  
14 F.3d 1128, 1146 (9th Cir. 2012).

15 For Ms. Yeager to prove a likelihood of success on the merits, she must show that  
16 the City, as a municipality, is likely to be liable for at least one of her constitutional  
17 deprivations under *Monell*. The Court now turns to each alleged violation.

## 18 **ii. First Amendment**

19 Ms. Yeager claims that the intended sweep violates the First Amendment because  
20 “maintaining tents and temporary structures” in public fora, like parks, have expressive

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22 <sup>2</sup> A plaintiff may also prove municipal liability under other theories. For example, a  
23 plaintiff may show that the person who committed the constitutional tort was an official  
24 with “final policy-making authority,” making the challenged action itself an official  
25 government act. *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992). A plaintiff  
26 may also show that an official with final policy-making authority “ratified a subordinate’s  
27 unconstitutional decision or action and the basis for it.” *Id.*; *see also Rodriguez v. Cty. of*  
28 *Los Angeles*, 891 F.3d 776, 802 (9th Cir. 2018) (also articulating “failure to train” theory  
of municipal liability). Based on her motion, Ms. Yeager does not appear to invoke any  
of these theories. Instead, she claims that the City should be held liable for its “pattern  
and practice” of forcible evictions. Dkt. # 2 at 1.

1 speech value. Dkt. # 2 at 12. According to her, over the past several months, Cal  
2 Anderson Park has been the “undisputable hub of the recent civil rights uprising.” *Id.*  
3 She assures the Court—without any evidence—that the City is “obviously targeting” the  
4 Cal Anderson encampment for “special enforcement.” *Id.* at 13.

5 First Amendment claims are subject to a “forum analysis.” *Am. Civil Liberties*  
6 *Union of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1097-99 (9th Cir. 2003) (citing  
7 *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45-46 (1983)). First,  
8 the Court must determine whether the nature of the location where the speech is to take  
9 place is a “traditional public forum, a designated public forum, or a nonpublic forum.”  
10 *Id.* Then, it must determine the standard of scrutiny to decide whether the “restrictions in  
11 question pass constitutional muster.” *Id.* Here, the alleged speech is taking place in a  
12 park, a traditional public forum. *Id.* In such forums, the government may enforce  
13 regulations of the “time, place, and manner of expression which are content-neutral, are  
14 narrowly tailored to serve a significant government interest, and leave open ample  
15 alternative channels of communication.” *Id.*

16 Ms. Yeager’s First Amendment violation argument falls short for several reasons.  
17 First, her briefing does not challenge a statute or an ordinance or any policy, and thus she  
18 has hardly given the Court anything to scrutinize. Second, and more fundamentally, even  
19 if she had identified a policy, the evidence that she has offered to show that the City’s  
20 intended evictions are content-based is slim. She provides her own speculations and a  
21 blog post allegedly quoting Mayor Jenny Durkan as saying that the need to “restore” Cal  
22 Anderson Park is “urgent.” Dkt. # 2 at 13. Beyond that there is no evidence that the  
23 intended evictions are based on the content of Ms. Yeager’s supposed expressive speech,  
24 which she claims is aimed at “providing community-based solutions to [homeless  
25 persons] medical and mental health care needs.” Dkt. # 1-1 ¶ 4.<sup>3</sup>

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27 <sup>3</sup> At 2:36 P.M. today, Ms. Yeager’s counsel filed a declaration with the Court. Dkt. # 12.  
28 In his declaration, he claims that Mayor Jenny Durkan made yet another public comment,

1 At the telephonic hearing, the City represented that the public safety reasons for  
2 the evictions are overwhelming. According to the City, violence around the park has  
3 increased. Within the park, the City said, park employees and law enforcement officers  
4 have been met with threats of physical violence, and there have been at least five fires  
5 and two medical calls arising out of incidents in Cal Anderson Park. The City even cited  
6 some deaths that have occurred. Moreover, the City said that one individual punched a  
7 law enforcement officer, and another pushed an officer and was arrested. Since the  
8 notice of eviction was posted, new obstructions such as fences and barricades were  
9 installed limiting ingress and egress. These reasons provided are content-neutral, further  
10 undermining Ms. Yeager's argument.

11 Finally, she has not met her burden under *Monell*. Her declaration describes the  
12 actions of individual police officers. Dkt. # 1-2. Even if individual officers' actions had  
13 been motivated by the content of Ms. Yeager's speech, she has not shown that they were  
14 committed pursuant to a City policy or custom. For example, she has not shown that  
15 these actions were done under a "longstanding practice or custom which constitutes the  
16 standard operating procedure" of the City or that it is a custom "so persistent and  
17 widespread" that it constitutes well-settled policy. *Trevino v. Gates*, 99 F.3d 911, 918  
18 (9th Cir. 1996) ("Liability for improper custom may not be predicated on isolated or  
19 sporadic incidents; it must be founded upon practices of sufficient duration, frequency

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21 \_\_\_\_\_  
22 this time calling the Cal Anderson encampment "a political occupation" and stating that  
23 the City will not raid any other encampments. *Id.* ¶ 3. He also attaches correspondence  
24 between a non-party and the Superintendent's Office of Seattle Parks and Recreation  
25 saying that the City will not sweep other encampments. *Id.* ¶ 4. This eleventh-hour  
26 declaration does not change the analysis. Mayor Jenny Durkan's supposed statements are  
27 provided with no context, providing little to no probative value. And counsel's cribbing  
28 of the correspondence with the superintendent's office is self-serving. True, the  
representative conceded that parks other than Cal Anderson Park would not be swept.  
But the representative clearly stated that Cal Anderson Park was being singled-out  
because city employees "have been met with threats of physical violence." Dkt. # 12 at  
4. This evidence still fails to show that the City's actions are content-based.



1 and consistency that the conduct has become a traditional method of carrying out  
2 policy.”).

3 **iii. Fourth Amendment**

4 “The right of the people to be secure in their persons, houses, papers, and effects,  
5 against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend.  
6 IV. “A ‘seizure’ of property occurs when there is some meaningful interference with an  
7 individual’s possessory interests in that property.” *United States v. Jacobsen*, 466 U.S.  
8 109, 113 (1984).

9 Ms. Yeager relies principally on the Ninth Circuit’s ruling in *Lavan v. City of Los*  
10 *Angeles*, 693 F.3d 1022 (9th Cir. 2012). That case was set in the Skid Row district of Los  
11 Angeles, which hosted the highest concentration of homeless persons in the City. *Id.* at  
12 1024. Homeless residents often stored their personal possessions (such as, “personal  
13 identification documents, birth certificates, medications, family memorabilia, toiletries,  
14 cell phones, sleeping bags and blankets”) on sidewalks. *Id.* at 1025. On several  
15 occasions, when some homeless residents stepped away to shower, eat, use restrooms, or  
16 the like, City of Los Angeles employees “seized and summarily destroyed” their  
17 belongings. *Id.* The City of Los Angeles did not deny that it had a “policy and practice  
18 of seizing and destroying homeless persons’ unabandoned possessions.” *Id.*

19 As to the Fourth Amendment issue, the Ninth Circuit made at least two key  
20 findings. First, it determined that homeless persons had a protectable possessory interest  
21 in their “unabandoned legal papers, shelters, and personal effects.” *Id.* at 1030. Second,  
22 it determined that, because the City of Los Angeles meaningfully interfered with that  
23 possessory interest, it had to comply with the Fourth Amendment’s reasonable  
24 requirement. *Id.* The City of Los Angeles could not so comply, the court reasoned,  
25 because “collecting and destroying Appellees’ property on the spot” was unreasonable.  
26 *Id.*

27 Here, Ms. Yeager, no doubt, has a protectable property interest in her “tents,



1 blankets, tarps, medication, personal papers” and other personal belongings. Dkt. # 2 at  
2 5. *Lavan* plainly says so. But the facts of this case fundamentally diverge from *Lavan*’s  
3 holding in several ways.

4 First, there is hardly any evidence in the record to conclude that the City has, in  
5 fact, engaged in the type of on-the-spot destruction of property that the City of Los  
6 Angeles did. Ms. Yeager’s motion is supported by just two declarations. Dkt. ## 1-2, 1-  
7 3. Ms. Yeager declares that in past police sweeps, officers “seized and/or destroyed all  
8 property still in the park” after they ordered all homeless residents to leave. Dkt. # 1-2  
9 ¶¶ 11, 15-20. This single declaration is insufficient to establish extraordinary relief. And  
10 some of the evidence that Ms. Yeager does provide undermines her account. The notice  
11 of removal that was posted in Cal Anderson Park clearly states that “[a]ny materials left  
12 here will be removed by the City . . . , and belongings found by the City and authorized  
13 for storage will be kept for 70 days at no charge.” *Id.* Ex. 1. In short, based on the  
14 evidence provided, the City’s current procedure for dealing with homeless persons’  
15 belongings (whatever that may be) and the City of Los Angeles’s unreasonable on-the-  
16 spot destruction of belongings in *Lavan* are not the same.

17 Second, even if it were true that police officers engaged in the “wholesale  
18 destruction of plaintiffs’ [sic] personal belongings” as Ms. Yeager contends, Dkt. # 2 at 5,  
19 Ms. Yeager has failed to show that such destruction was pursuant to the City’s policy or  
20 custom. Thus, Ms. Yeager again fails to meet her *Monell* burden.

21 Setting *Lavan* aside and conducting the Fourth Amendment “reasonableness”  
22 analysis anew, the Court must carefully balance “the nature and quality of the intrusion  
23 on the individual’s Fourth Amendment interests” against the “countervailing  
24 governmental interests at stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). Because  
25 both parties have asked this Court to resolve this matter swiftly given the pressing nature  
26 of this motion, the Court does not have the benefit of the City’s response to Ms. Yeager’s  
27 claims. Therefore, the Court lacks evidence of “countervailing governmental interests at

1 stake.” Ms. Yeager hardly supplies any, other than to say that there are “general health  
2 and safety” concerns presented by the encampments. Dkt. # 2 at 6. At the telephonic  
3 hearing, however, the City represented that the governmental interests are great. Since  
4 late November, the City represented, there have been at least five fires and two medical  
5 calls arising out of incidents in Cal Anderson Park and members of the park have become  
6 increasingly violent. *See supra* Section IV.B.ii.

7 Based on the evidence presented, the Court determines that Ms. Yeager has not  
8 shown a likelihood of success on the merits that previous police sweeps or the intended  
9 police sweep has resulted or will result in an unreasonable seizures in violation of her  
10 Fourth Amendment rights.

#### 11 **iv. Eighth Amendment**

12 In her motion, Ms. Yeager argues that she is likely to succeed on her Eighth  
13 Amendment claim. Dkt. # 2 at 13-14. But she does not allege an Eighth Amendment  
14 violation in her complaint. Dkt. # 1 ¶¶ 4.1-4.4. Because she cannot possibly succeed on  
15 a claim that she has not pled, her likelihood of success on this ground is currently zero.

16 To be sure, even if Ms. Yeager did plead an Eighth Amendment violation the  
17 result would be the same. She bases this claim on a “clear violation” of *Martin v. City of*  
18 *Boise*, 920 F.3d 584, 616-17 (9th Cir.), *cert. denied sub nom. City of Boise, Idaho v.*  
19 *Martin*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). In *Martin*, the Ninth Circuit held that  
20 “‘so long as there is a greater number of homeless individuals in [a jurisdiction] than the  
21 number of available beds [in shelters],’ the jurisdiction cannot prosecute homeless  
22 individuals for ‘involuntarily sitting, lying, and sleeping in public.’” *Id.* at 617 (alteration  
23 in original). The majority, in no uncertain terms said, “Our holding is a narrow one.” *Id.*

24 Ms. Yeager concedes that there is no criminal statute here, like the one in *Martin*.  
25 Dkt. # 2 at 13-14. Instead, she asks the Court to see the “reality” that although the  
26 intended police sweep is not based on a criminal law, it still “criminaliz[es] survival  
27 under a government that does not provide sufficient resources to allow survival.” *Id.*

1 The Court will not stretch the self-professed “narrow” holding in *Martin* to now include  
2 non-criminal statutes. Thus, Ms. Yeager’s argument fails.

3 **v. Fourteenth Amendment**

4 The Fourteenth Amendment maintains that no State shall “deprive any person of  
5 life, liberty, or property, without due process of law.” U.S. Const. amend. XIV. The  
6 Court’s analysis is two-fold. First, it must ask whether the “asserted individual interests  
7 are encompassed within the Fourteenth Amendment’s protection of ‘life, liberty or  
8 property.’” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012) (quoting  
9 *Ingraham v. Wright*, 430 U.S. 651, 672 (1977)). If so, it must determine what procedures  
10 constitute “due process of law.” *Id.*

11 To determine whether Ms. Yeager has a protected property interest under the  
12 Fourteenth Amendment, the Court looks to “existing rules or understandings that stem  
13 from an independent source such as state law-rules or understandings.” *Id.* (quoting  
14 *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)). Ms. Yeager has failed to identify  
15 any “state law-rules or understandings” deeming the personal belongings here as  
16 protected property interests under the Fourteenth Amendment.

17 That aside, assuming such Washington rules or understandings indeed exist and  
18 that Ms. Yeager has simply failed to cite them, the Court must determine what constitutes  
19 due process. To that end, it turns to the factors outlined in *Mathews v. Eldridge*, 424 U.S.  
20 319, 334-35 (1976).

21 Due process is not a “technical conception with a fixed content unrelated to time,  
22 place and circumstances.” *Id.* at 334. It is “flexible” and “calls for such procedural  
23 protections as the particular situation demands.” *Id.* The Supreme Court has set forth  
24 three factors that the Court must consider:

25 First, the private interest that will be affected by the official action; second,  
26 the risk of an erroneous deprivation of such interest through the procedures  
27 used, and the probable value, if any, of additional or substitute procedural  
safeguards; and finally, the Government’s interest, including the function

1 involved and the fiscal and administrative burdens that the additional or  
2 substitute procedural requirement would entail.

3 Ms. Yeager requests that this Court measure the City's intended police sweep  
4 against this standard. Dkt. # 2 at 6-11.

5 The Court has one question: what is the City's policy or practice for taking a  
6 homeless person's possessions? Ms. Yeager's brief leaves the Court without an answer.  
7 Ms. Yeager claims that, in the past, the City has engaged in the "summary destruction of  
8 property, whether it is incident to an individual's removal, or when the individual is  
9 unable to move it during a sweep." Dkt. # 2 at 7. She claims that "Defendants regularly  
10 destroy property without any opportunity to challenge the basis for the destruction." *Id.*  
11 at 8. She claims that owners of seized property are often "given no notice where they can  
12 pick up their property," and when they are given notice, the notice is "inaccurate and  
13 does not outline the process actually required to get their property back." *Id.* at 9. For all  
14 these claims, Ms. Yeager cites no evidence. The Court simply cannot assess any of the  
15 City's "procedural safeguards" or "requirements" when Ms. Yeager has not explained  
16 what the City's procedure is in the first place. Hence, the Court cannot know whether  
17 any alleged taking has comported with due process.

18 As to the intended police sweep, the Court has some insight on what procedure is  
19 to be used. Specifically, the Court has what is stated in the notice of eviction. Dkt. # 1-2  
20 Ex. 1. On December 14, 2020, police officers entered Cal Anderson Park and notified  
21 Ms. Yeager to remove all her personal property within two days. *Id.* ¶ 1.<sup>4</sup> The notice  
22 named the time and place her personal belongings would be subject to removal. *Id.* It  
23 stated that any materials that remained after the date and time specified in the notice  
24 would be removed and that "belongings found by the City and authorized for storage

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25  
26 <sup>4</sup> At the telephonic hearing, the City represented that city employees tried to provide  
27 notice to all occupants of Cal Anderson Park but were forced to leave after the occupants  
28 threatened them. The City stated that the employees managed to distribute three notices.  
Ms. Yeager states that she received one of these notices. Dkt. # 1-2 ¶ 1.

1 w[ould] be kept for 70 days at no charge.” *Id.*

2 Looking at this stated process alone, the Court makes two points. First, Ms.  
3 Yeager claims that she seeks “only what *Lavan* commands,” Dkt. # 2 at 8—what *Lavan*  
4 commanded has no bearing on the Fourteenth Amendment analysis here. *Lavan*  
5 concerned the “on-the-spot destruction of seized property” with no notice to homeless  
6 persons at all. *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012).  
7 Unlike the plaintiffs in *Lavan*, Ms. Yeager plainly has notice. Dkt. # 1-2 Ex. 1. She may  
8 take all her belongings with her. The items that she leaves behind may not be destroyed  
9 on the spot but rather stored for 70 days. *Id.* The City notified her where her belongings  
10 will be stored, and the City will even deliver them to her. *Id.*

11 Second, Ms. Yeager has failed to show that this process is insufficient under  
12 *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). The Court does not doubt that the  
13 private interests affected by this action are substantial. “For many of us, the loss of our  
14 personal effects may pose a minor inconvenience. However, . . . the loss can be  
15 devastating for the homeless.” *Lavan*, 693 F.3d at 1032. And the City’s timing is  
16 regrettable—clearing the park during the winter season during a pandemic.

17 But the Court must examine the other two *Eldridge* factors. Ms. Yeager has not  
18 shown that there is a “risk of an erroneous deprivation” through the procedures set forth  
19 in the eviction notice and has not identified any “substitute procedural safeguards.”  
20 *Eldridge*, 424 U.S. at 334-35. She claims that the storage facility is a great distance  
21 away. Dkt. # 2 at 10. But the notice provides that the City will deliver any stored  
22 belongings to individuals. Dkt. # 1-2 Ex. 1. She suggests that some residents may be  
23 unable to move all their property in the “limited amount of time Defendants provide.”  
24 Dkt. # 2 at 11. She provides no evidence for this claim nor does she suggest an  
25 alternative, sufficient window of time. Finally, as the City represented at oral argument  
26 and as explained above, the government’s interest in the public health and safety is  
27 substantial. *See supra* Section IV.B.ii.

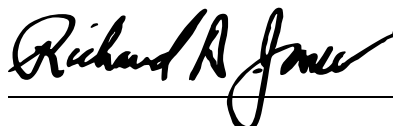
1 Balancing the three *Eldridge* factors, Ms. Yeager has failed to show by clear and  
2 convincing evidence that she is likely to succeed on her Fourteenth Amendment claim.

### 3 V. CONCLUSION

4 In sum, Ms. Yeager fails to show a likelihood of success on the merits. The Court  
5 also finds that he has not raised “serious questions going to the merits.” *All. for the Wild*  
6 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Failure to satisfy this prong is  
7 fatal to Ms. Yeager’s motion. *Winter* requires a plaintiff to establish all four prongs.  
8 *Haskell v. Harris*, 745 F.3d 1269, 1271 (9th Cir. 2014). The first prong, likelihood of  
9 success on the merits, is the “most important,” and when “a plaintiff has failed to show  
10 the likelihood of success on the merits, [courts] ‘need not consider the remaining three  
11 [*Winter* elements].’” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (second  
12 alteration in original) (quoting *Ass’n des Eleveurs de Canards et d’Oies du Quebec v.*  
13 *Harris*, 729 F.3d 937, 944 (9th Cir. 2013)). Because Ms. Yeager has failed to establish  
14 the first *Winter* prong, the Court declines to address the other three.

15 For the reasons stated above, Plaintiff’s request for a temporary restraining order  
16 is **DENIED**. Dkt. # 2. By December 28, 2020, the parties shall submit a joint statement  
17 to the Court, proposing a briefing schedule for a motion for preliminary injunction. That  
18 statement shall not exceed five pages. If the parties cannot agree on a schedule, they  
19 shall set forth their respective positions in the statement.

20  
21 DATED this 17th day of December, 2020.

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23 

24 The Honorable Richard A. Jones  
25 United States District Judge