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14  
15 UNITED STATES DISTRICT COURT

16  
17 EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION

18  
19 Pamela Kincaid, Doug Deatherage, Charlene  
Clay, Cynthia Greene, Joanna Garcia, Randy  
20 Johnson, Sandra Thomas, Alphonso Williams,  
and Jeannine Nelson, Individually on Behalf of  
21 Themselves and All Others Similarly Situated,

22 Plaintiff,

23 v.

24 City of Fresno, Alan Autry, Jerry Dyer, Greg  
Garner, Reynaud Wallace, John Rogers, Phillip  
25 Weathers, Will Kempton, James Province, Daryl  
Glenn, Individually and in Their Official  
Capacities; DOES 1-100, inclusive,

26 Defendant.  
27  
28

Civil Action No.: 06-CV-1445-OWW

CLASS ACTION

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT AS TO LIABILITY  
AGAINST THE CITY  
DEFENDANTS**

1  
2 Plaintiffs' motion for summary judgment came before this Court for hearing in Courtroom 3  
3 on April 25, 2008 at 2:00 p.m. Paul Alexander, Michael T. Risher and Elisa Della-Piana appeared  
4 on behalf of Plaintiffs and the Plaintiff Class. Joseph D. Rubin appeared on behalf of defendants  
5 the City of Fresno, Jerry Dyer, Greg Garner, Reynaud Wallace, John Rogers and Phillip Weathers  
6 (collectively the "City Defendants"). David P. Harris appeared on behalf of defendants James  
7 Province and Daryl Glenn.

8 Having fully considered the evidence and the written and oral submissions by the parties,  
9 Plaintiffs' motion for summary judgment as to liability against the City Defendants is GRANTED  
10 IN PART AND DENIED IN PART:

11 (1) Plaintiffs' motion is GRANTED as to Defendant the City of Fresno in that the 14  
12 sweeps identified at pages 6-7 of the Court's May 12, 2008 Memorandum Decision and Order were  
13 conducted pursuant to an official policy and practice of the City that was in violation of the Fourth  
14 Amendment of the U.S. Constitution;

15 (2) Plaintiffs' motion is GRANTED as to Defendant the City of Fresno in that Plaintiffs will  
16 establish a violation of the Fourth Amendment of the U.S. Constitution as a matter of law by  
17 demonstrating at trial that the City Defendants seized and immediately destroyed the personal  
18 property of Plaintiffs;

19 (3) Plaintiffs' motion is GRANTED as to Defendant the City of Fresno in that Plaintiffs  
20 will establish a violation of equal protection under the Fourteenth Amendment by demonstrating at  
21 trial that homeless persons' personal property was seized and immediately destroyed while the  
22 personal property of others outside the class was not;

23 (4) Plaintiffs' motion is GRANTED as to Defendant the City of Fresno in that California  
24 Civil Code § 2080.2 is determined to provide a private right of action against Defendant the City of  
25 Fresno;

26 (5) Plaintiffs' motion is DENIED in all other respects.

27 **IT IS SO ORDERED.**

28 **Dated: May 19, 2008**

**/s/ OLIVER W. WANGER  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF CALIFORNIA**