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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17 BLACK LIVES MATTER LOS
18 ANGELES, CANGRESS (DBA LA
19 CAN), STEVEN ROE, NELSON
20 LOPEZ, TINA CRNKO, JONATHAN
21 MAYORCA, ABIGAIL RODAS,
22 KRYSTLE HARTFIELD, NADIA
23 KHAN, CLARA ARANOVICH,
24 ALEXANDER STAMM, MAIA
25 KAZIM, ALICIA BARRERA-
26 TRUJILLO, SHANNON LEE MOORE,
27 DEVON YOUNG, LINUS SHENTU,
28 individually and on behalf of a class of
similarly situated persons,

PLAINTIFFS,

v.

CITY OF LOS ANGELES, a
municipal entity, CHIEF MICHEL
MOORE, and DOES 1-10 inclusive,

DEFENDANTS.

Case No.: 2:20-cv-05027 CBM-AS

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS’
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND FOR AN OSC RE:
PRELIMINARY INJUNCTION**

Date and Time: TBA
Courtroom: 8B

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1 **INTRODUCTION**

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3 This Court declined to issue injunctive relief last spring to enjoin the
4 unconstitutional actions of the Los Angeles Police Department (“LAPD”) against
5 peaceful protestors seeking an end to systemic racism in policing after the murder
6 of George Floyd in Minneapolis. The LAPD made assurances to this Court in
7 response to Plaintiffs’ request at that time which they have not fulfilled. In recent
8 days the LAPD has engaged in the same unlawful use of force, causing serious
9 injuries to peaceful protestors. *See generally* Compendium of Evidence (“Comp.”)
10 Vol. III Declarations.¹ Moreover, the LAPD’s internal reports about the
11 Department’s response to the protests last spring reveal long-standing problems
12 with the LAPD on these issues. *See, e.g.*, Comp. Vol. I, Ex. 1, An Independent
13 Examination of The Los Angeles Police Department 2020 Protest Response
14 (“Chaleff Report”) at 8, 51-53, 61-62, 68-70 and Request for Judicial Notice.

15 The LAPD responded to recent protests in Echo Park on March 25, 2021 with
16 brutality. They fired on non-violent protestors with 40 mm and 37 mm weapons at
17 extremely close range, and aimed at the upper bodies of their targets, where doing
18 so risks killing and permanently injuring them and is wholly unjustifiable. *See, e.g.*,
19 Vol. III, Kim Decl. (struck in rib cage) and Ex. 15; Vol. III, Monterrosa Decl. (press
20 person shot in abdomen) and Exs. 16, 17; Vol. III, Kanegawa Dec. (struck in upper
21 arm), Exs. 13,14; Vol. III, Barbadillo Dec., Exs. 8, 9 (video showing LAPD officers
22 aiming directly at protestors’ upper bodies, and firing less-lethal projectiles at close
23 range) (manually filed).

24
25
26 ¹ Here and unless otherwise designated, citations to exhibits refer to those filed
27 concurrently with this motion. Plaintiffs continue to rely on their prior submissions.
28 Where citations reference previously submitted declarations or other evidence, this
is designated by a docket number.

1 The use of force at Echo Park against persons engaged in First Amendment
2 activity and posed no imminent, specific threat of violence was not an isolated
3 incident. For example, at the Breonna Taylor solidarity protest two weeks before
4 the Echo Park events, the LAPD shot a member of the press in the back, striking him
5 in the shoulder/neck area, as he walked on a sidewalk away from the skirmish line
6 and filmed the scene. When shot, he was about 50-feet from the LAPD skirmish
7 line and posed no threat to officers at all. The impact of the projectile knocked him
8 to the ground, rendered him unconsciousness and caused a concussion. Vol. III,
9 Baffa Decl. and Ex. 6 (video) and 7. Late last summer, the LAPD shot an anti-Trump
10 protestor at a demonstration in Tujunga when she started filming an officer strike a
11 nearby protestor with a baton. The LAPD officer shot her point blank in the chest
12 from a distance of approximately three feet, causing an injury requiring plastic
13 surgery to repair. Vol. III, Astorga Decl. and Ex. 4, 5 (manually filed video).

14 These abuses reflect a longstanding problem in LAPD culture and training
15 further documented by a recent report requested by the City Council on LAPD
16 conduct concerning the demonstrations that gave rise to this case. This report, the
17 Chaleff Report, indicated a significant lack of training for officers on deploying
18 these weapons – indeed, any for current officers over the last three years – which
19 has contributed to LAPD officers injuring peaceful protestors. *See* Comp. Vol. I, Ex.
20 1 at 8.² It is a certainty that such misconduct will continue unless this Court
21 intervenes.

22 Plaintiffs, who intend to continue protesting on these crucial public issues,
23 face a likelihood of being subjected to such violent actions again. In this motion
24

25
26 ² Many of the same conclusions about deficiencies in the LAPD response to protests
27 were also made by the report commissioned by the Los Angeles Police Commission.
28 *See* Vol. I, Ex. 2 (“A Crisis of Trust,” prepared for the Los Angeles Police
Commission), and Request for Judicial Notice.

1 Plaintiffs request an injunction to protect them and the exercise of their first
2 amendment rights to protest without risk of serious injury.

3 This request is urgent. The trial of Derek Chauvin for the murder of George
4 Floyd is currently underway and expected to reach a verdict before the end of the
5 month. The judgment will likely be taken as one on longstanding claims of racism
6 and police brutality in the country. Whether or not Mr. Chauvin is – and especially
7 if he is – acquitted, convicted of a lesser charge, or there is a hung jury, Plaintiff
8 BLM plans protests and demonstrations that will likely be widespread and
9 substantial. Vol. III, Abdullah Decl. ¶¶ 2-3. They are fearful that large public
10 assemblies aimed at police misconduct will subject them to the same brutality and
11 indiscriminate force from the LAPD that similar protests concerning the same matter
12 did in May and June – consistent with Defendants’ recent responses to protestors.
13 *Id.* ¶ 4. These recent events and the LAPD’s internal reports demonstrate the
14 imminence of the threats Plaintiffs face.

15 Plaintiffs bring this application to enjoin the LAPD’s use of 40 mm and 37
16 mm weapons in public demonstrations. These weapons are target specific and likely
17 to produce serious injury when used at close range as a crowd control mechanism.
18 The 40 mm, in particular, is specifically intended to incapacitate an individual who
19 poses an imminent threat, not disperse a largely peaceful assembly.³ As past use
20 demonstrates, the LAPD repeatedly deployed these weapons in a manner that caused
21 serious injuries. The LAPD continues to use these weapons improperly and
22 indiscriminately. For reasons addressed above and in greater detail below, Plaintiffs
23 are likely to prevail on the merits of their claims; absent injunctive relief, are likely
24 to suffer irreparable harm, and the balance of equities and interests also tip in their
25 favor.

26
27 ³ The After Action Report issued by the LAPD on April 9, 2021 recognized that
28 most of the protestors were peaceful. *See* Vol. II, Ex. 3 at 5-56.

1 **NEW DEVELOPMENTS**

2 **I. MARCH 2021 AND PRIOR PROTESTS.**

3 On March 24 and 25, 2021, LAPD officers responded to persons gathered
4 near Echo Park to protest the City’s forced removal of unhoused persons from the
5 area. Officers fired on peaceful protestors with 40 mm and 37 mm weapons at
6 close range, aiming at the upper bodies of their targets, where doing so risks
7 permanently disabling them or even killing them. *See* Dkt. 15-1, Haar Decl. ¶¶ 9-
8 13 (describing significant injuries caused by kinetic impact projectiles); *infra*, pp.
9 11–15.⁴

10 For example, Christian Monterrosa, a journalist with LAPD media
11 credentials, was shot at close range below his pectoral muscle less than four feet
12 from the muzzle. *Comp. Vol. III, Monterrosa Decl. ¶ 2.* The LAPD shot Nara
13 Kim with a “less lethal” in the left side of her abdomen from less than three feet
14 away, *Vol. III, Kim Decl. ¶ 2,* and then shot her partner from about three feet away
15 as he tried to move them away from the line of fire. *Vol. III, Kanegawa Decl. ¶ 2.*
16 Some of the instances of LAPD targeting and firing on non-violent protestors was
17 also captured on video. *See Vol. III, Barbadillo Decl. ¶ 3 & Ex. 7.*

18 These recent events are not isolated. At the Breonna Taylor solidarity
19 protest two weeks before the Echo Park events, the LAPD shot a member of the
20 press in the back, inches from where his spine connects to his skull. *Vol. III, Baffa*
21 *Decl.* When shot, he was about 50-feet from the LAPD skirmish line and posed
22 no threat. *Id.* The impact rendered him unconscious and caused a concussion,
23 bruises and swelling at the site the munition struck. *Id.* and Ex. 7.

24
25 _____
26 ⁴ The uses of these weapons, including by the LAPD in the spring of 2020, and the
27 injuries they cause were also recently documented by Physicians for Human Rights
28 in a recent report. *See* Physicians for Human Rights, *Shot in the Head*, Sept. 14,
2020, *available at:* <https://phr.org/our-work/resources/shot-in-the-head/>. Los Angeles was one of three cities discussed at length.

1 Last summer, the LAPD shot an anti-Trump protestor at a demonstration in
2 Tujunga when she started filming an officer strike a nearby protestor with a baton.
3 Vol. III, Astorga Decl. Just moments after she did so, an LAPD officer shot her
4 point blank in the chest, from a distance of approximately three feet, causing an
5 injury requiring plastic surgery to repair. *Id.* and Ex. 4, 5.

6 Additionally, on August 26, 2020, the LAPD blocked persons peacefully
7 protesting the police shooting in Wisconsin of Jacob Blake seven times in the back,
8 paralyzing him. The protestors were marching through the 3rd Street tunnel when
9 they were kettled by the police, provided no opportunity to disperse, and fired upon
10 with large kinetic projectiles. See. Vol. III, Guerrero Decl. ¶¶ 3,4 and Ex. 10, 11,
11 12.

12 As these events show, the LAPD's use of projectiles in demonstrations, and
13 particularly 40 mm and 37 mm projectiles, poses an ongoing risk of serious injury
14 to protestors such as Plaintiffs.

15 **II. THE CHALEFF REPORT.**

16 On March 10, 2021, a report was released concerning the LAPD's responses
17 to the May 29 to June 2, 2020 protests, commissioned by the City and led by retired
18 LAPD commander Gerald Chaleff and Assistant Chief Sandy Jo MacArthur. *See*
19 *Comp.* Vol. I, Ex. 1. The report revealed serious longstanding problems in the
20 LAPD, as relevant here, in the misuses, inadequate supervision and lack of training
21 concerning 40 mm and 37 mm projectiles. As the Report underscored, these
22 weapons are only to be used in circumstances where an individual is resisting arrest
23 or presents an imminent threat to an officer, not to disperse peaceful protestors.⁵ *Id.*
24 at 41. The Report also further documents how widespread the LAPD's abuses and
25

26 ⁵ Less lethal force is only permissible when there is reasonable belief that a suspect
27 is *violently* resisting arrest or presents an immediate threat of violence or physical
28 harm. Ex. 1 at 41.

1 uses of the 40 mm and 37 mm projectiles have been; and, indeed, approximately
2 10,000 rounds of 40 mm and 37 mm rounds were not returned to the LAPD’s armory
3 following these protests. *Id.* at 43, 44.

4 As the Report also demonstrates, there has been no training for officers on the
5 40 mm, other than those going through basic training, since 2018. *Id.* at 45. Before
6 2018, outside of the Metropolitan Division, the LAPD’s only training for the weapon
7 – patrol training – consisted of a two-hour tutorial amounting to a demonstration of
8 how the weapon is manipulated where an officer then fired at a stationary target. *Id.*
9 at 8, 52. The previous training did not, when it did occur, even address using the 40
10 mm beyond this, or in crowd situations at all. *Id.*⁶ Even the LAPD’s directive
11 authorizing the use of the 40 mm has no guidance for use in public order policing
12 situations. *Id.* at 45. Nor are officers adequately supervised. *See, e.g., Id.* at 61-62
13 (officers were “left to deploy less lethal tools, including the 40 mm, with no direction
14 or coordination.”)

15 There also appears to be no credible LAPD commitment to monitor the use of
16 these projectiles. The LAPD’s inability or refusal to account for approximately
17 10,000 rounds officers expended during the demonstrations in the spring of 2020 is
18 further evidence of indiscriminate use. The LAPD was asked for and refused to
19

20 ⁶ As the Chaleff Report shows, the LAPD appears to have a longstanding
21 institutional resistance to securing the rights of protestors. The LAPD has been
22 repeatedly sued for violation of the rights of protestors. As a result of multiple
23 settlements, LAPD was required to provide adequate training. It has ceased to,
24 which the Chaleff Report also criticized the LAPD for. Ex. 1 at 11 (“The LAPD’s
25 training in public order policing has declined in the past several years and was
26 identified as problem in 2007 after the MacArthur Park May Day demonstrations.
27 As a result, the LAPD command staff were required to receive annual training on
28 public order policing. This training had not occurred for several years prior to 2020.
There had been minimal crowd control and mobile field force training in the past
five years This lack of training caused problems in 2020. . . . The 2007
MacArthur Park lawsuits required every officer above the rank of sergeant to
undergo training in crowd control and use of force policies at a minimum of every
two years, and command staff to be trained annually. It is recommended that this
requirement be followed.”)

1 provide investigators the number of less lethal munitions it used. *Id.* at 43 (“The
2 Department was asked for but did not provide the number of less lethal munitions
3 used between May 27 and June 7. . . . As of this writing, no accounting of less lethal
4 munitions has been received.”). In the LAPD’s own recently issued After Action
5 Report, there is not a single recognition or recommendation that addresses these well
6 documented violations of department policy and misuse of these potentially lethal
7 munitions against individuals who posed no imminent threat and were not resisting
8 arrest. *See generally* Vol. II, Ex. 3.

9 As the Chaleff Report emphasized, “[t]he use of the 40 mm weapon to fire at
10 individuals who are in a crowd situation requires well-trained, experienced, and
11 highly skilled individuals.” Vol. I, Ex. 1 at 8. The LAPD lacks that training, as the
12 report also concluded. *Id.* This causes injuries, sometimes significant, to non-violent
13 protestors, and did in the May and June protests. *Id.* (acknowledging significant
14 reports of injuries to protestors, including those not engaged in criminal behavior,
15 and that this was due to “a lack of adequate training on the 40 mm system.”).

16 The LAPD’s violent use of projectiles against peaceful protestors reflects
17 officers who behaved unreasonably and without proper training. Vol. III, Clark
18 Decl. ¶ 15. The Chaleff Report findings underscore Clark’s opinion that there is an
19 absence of any adequate or reasonably specific LAPD training concerning the 40
20 mm and 37 mm projectiles. *Id.* ¶ 21. Absent such trainings and adequate supervision,
21 LAPD officers confronted with similar protests are likely to misuse these weapons
22 and cause protestors serious injuries.

1 **ARGUMENT**

2 **I. PLAINTIFFS MEET ALL THE REQUIREMENTS FOR**
3 **INJUNCTIVE RELIEF.**

4 **A. Introduction.**

5 Injunctive relief is warranted and necessary to protect Plaintiffs and the
6 classes they represent from being prevented from protesting, and from serious,
7 potentially permanent or even lethal injuries just for exercising their First
8 Amendment Rights. Plaintiffs meet all the requirements for injunctive relief because
9 they are (1) likely to succeed on the merits, (2) are likely suffer irreparable harm in
10 the absence of preliminary relief, (3) the balance of equities tips in their favor, and
11 (4) an injunction is in the public interest. *Shell Offshore, Inc. v. Greenpeace, Inc.*,
12 709 F.3d 1281, 1289 (9th Cir. 2013).⁷ The same factors apply to an application for
13 a temporary restraining order, but a court may grant a temporary restraining order
14 when irreparable injury may occur before the hearing for a preliminary injunction
15 can be held. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839
16 n.7 (9th Cir. 2001) (explaining that the Ninth Circuit’s “analysis is substantially
17 identical for the injunction and the TRO”); *see also* FRCP 65(b) (allowing TRO to
18 be granted without notice). That is the case here because the Chauvin verdict may
19 come down at any time in the next 10 days.

20 Plaintiffs are likely to succeed on the merits of their claims regarding the
21

22 ⁷ The Ninth Circuit evaluates these factors on a “sliding scale” approach
23 meaning that a stronger showing in one area may offset a weaker showing in another.
24 *hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 992 (9th Cir. 2019). For example,
25 even where there is not a likelihood of success on the merits, but only “serious
26 questions” going to them a preliminary injunction is appropriate, provided that the
27 balance of hardships favors the plaintiff. *Id.*; *All. for the Wild Rockies v. Cottrell*,
28 632 F.3d 1127, 1133 (9th Cir. 2011) (“[T]he more net harm an injunction can
prevent, the weaker the plaintiff’s claim on the merits can be while still supporting
some preliminary relief.”)

1 misuse of 40 mm and 37 mm projectiles. They are likely to suffer harm, and the
2 balance is sharply in their favor based on the LAPD's continued misuse of 40 mm
3 and 37 mm munitions, as the LAPD did recently at Echo Park. Each of the recent
4 investigative reports of the LAPD's response to the Floyd protests last spring reveal
5 the inadequacies of Defendants' training, supervision, and policies concerning the
6 use of these munitions. *E.g.* Vol. III, Clark Decl. ¶ 21; Vol. I, Ex. 1 at 8, 53; Vol. II,
7 Ex. 3.

8 Plaintiffs amply meet the requirements for a temporary order restraining the
9 Defendants' use of 40 mm and 37 mm projectiles. Plaintiffs show a strong likelihood
10 of success on the merits, and of severe threatened harm. Defendants have responded
11 to protests about police brutality by baselessly shooting peaceful protestors,
12 including point blank and/or in their heads, faces, and torsos where doing so inflicted
13 serious injury. The LAPD continues to employ large munitions intended to
14 incapacitate the target, rather than disperse an unlawful assembly. Defendants
15 continue to fire on protestors this way, including as recently as three weeks ago at
16 Echo Park. While City officials just received reports of investigation into the
17 LAPD's past actions, the police continue to employ 40 and 37 mm weapons at the
18 front line of their deployments against individuals who pose no imminent threat in
19 crowd control situations.

20 There are substantial grounds to find that the LAPD, if not restrained, will
21 continue to misuse these potent and dangerous weapons. They have continued to do
22 so. In fact, the two most recent uses of force occurred *after* issuance of the Chaleff
23 report, criticizing the LAPD for these uses of force. The LAPD appears undeterred
24 in their dangerous and unconstitutional use of these projectiles. Indeed, the Chaleff
25 report shows that the LAPD has a disturbing tendency to ignore past settlements
26 restraining similar protest-related misconduct. *E.g.* Vol. I, Ex. 1 at 11, 16-17, 52-53.
27 In the face of widespread protests expected with the impending Chauvin verdict,
28

1 coupled with the LAPD’s failure to address the misuse of kinetic impact projectiles
2 against individuals who posed no imminent threat, the need for immediate relief by
3 the Court is strong.

4 In light of the nature of the risk to Plaintiffs, the balance of interests also tips
5 strongly in their favor in restraining the LAPD’s use of these projectiles.⁸ Without
6 this Court’s intervention Plaintiffs and other protestors must risk serious injuries just
7 to protest peacefully.

8 **B. The LAPD Continues to Use Large 40 mm and 37 mm Kinetic Projectiles**
9 **in Dangerous, Potentially Lethal Ways that Violate Its Own Policies and**
10 **the Fourth Amendment.**

11 **1. The Fourth Amendment Forbids Officers from Using Serious,**
12 **“Less-Lethal” Force Unreasonably Against Peaceful Protestors.**

13 The Fourth Amendment governs law enforcement’s use of force against
14 protesters, even when the officers’ broader goal is to disperse a crowd. *See, e.g.,*
15 *Nelson v. City of Davis*, 685 F.3d 867, 877-78 (9th Cir. 2012) (“Regardless of [the
16 officers’] motives, their application of force was a knowing and willful act that
17 terminated Nelson’s freedom of movement. It unquestionably constituted a seizure
18 under the Fourth Amendment.”). The Fourth Amendment guarantees the right to be
19 free from excessive force, which is determined under an objective reasonableness
20 standard, in which the nature of the force is balanced against countervailing
21 governmental interests. *See Graham v. Connor*, 490 U.S. 386, 395 (1989). Any
22 government interest in using less lethal projectiles must be substantial. *Nelson*, 685
23 F.3d at 879; *see also Deorle v. Rutherford*, 272 F.3d 1272, 1285 (9th Cir. 2001)

24 ⁸ The LAPD also used these projectiles to shoot indiscriminately in the general area
25 of individuals celebrating championships by the Los Angeles Lakers and the
26 Dodgers. The Los Angeles Times reported on some injuries of those struck by “less-
27 lethal” projectiles at these two incidents, including a bystander who lost an eye. *See*
28 *Los Angeles Times, LAPD Projectiles Fired at Lakers Crowd Causes Severe Injuries*
(Oct. 15, 2020), *available at*: <https://www.latimes.com/california/story/2020-10-15/lapd-projectiles-gruesome-injuries-lakers-celebration>.

1 (“Less than deadly force that may lead to serious injury may be used only when a
2 strong governmental interest warrants its use, and in such circumstances should be
3 preceded by a warning, when feasible.”); *id.* at 1284 (so holding for a “cloth-cased
4 shot, which is something akin to a rubber bullet.”).

5 The reasonableness of an officer’s conduct must be assessed “from the
6 perspective of a reasonable officer on the scene,” recognizing the fact that the officer
7 may be “forced to make split-second judgments.” *Id.* at 396–97. The *Graham*
8 standards consider the particular factual circumstance of each use of force. *See id.*
9 at 396–97. The analysis considers whether it was reasonable to fire on a specific
10 person and a substantial government interest justified doing so, even when they were
11 in a crowd the government had a right to disperse. *E.g. Nelson*, 685 F.3d at 880-81.⁹

12 The most important factor in this analysis is whether the person shot posed a
13 threat to officers or others. *Nelson*, 685 F.3d at 880. Others include the severity of
14 the target’s crime, the suspect’s attempts to resist or evade arrest, and the availability
15 of less intrusive force. *See id.*; *see also, e.g., Vos v. City of Newport Beach*, 892 F.3d
16 1024, 1033–34 (9th Cir. 2018); Ninth Circuit Model Jury Instruction No. 9.25
17 (listing various factors including “the amount of time the officer had to determine
18 the type and amount of force that reasonably appeared necessary, and any changing
19 circumstances during that period; the type and amount of force used; and the
20 availability of alternative methods [to take the plaintiff into custody].”).

21 The LAPD has used 40 mm and 37 projectiles to cause serious and potentially
22 lethal injuries against peaceful protestors in the protests at issue in the complaint,
23 and in subsequent ones as recent as March 25, targeting or indiscriminately firing on
24 such protestors. This puts Plaintiffs at risk of significant injury or death and, as
25 addressed below, the force is excessive.

26 ⁹ As the LAPD’s own policies acknowledge, the use of force in crowd control must
27 be limited to that which is reasonable. *See, e.g., Dkt. 15-1, Ex. 27, LAPD Directive*
28 *No. 11 form June 2011, “Crowd Management, Intervention, and Control.”*

1 **2. The LAPD Is Engaging in Widespread Use of “Less-Lethal” 40 mm**
2 **and 37 mm Projectiles in an Objectively Unreasonable Manner and**
3 **Putting Peaceful Protestors’ Safety and Lives at Risk.**

4 The LAPD uses “less lethal” projectiles to fire on peaceful protestors,
5 including at point blank range, subjecting them to a risk of serious injuries and
6 possibly even death. The LAPD has continued to do so, in protests following as
7 recently as March 25, 2021. *See supra*, pp. 3-5.

8 The use of 40 mm and 37 mm projectiles is part of LAPD’s arsenal of many
9 weapons known as “less-lethals.” The projectiles seriously injure protestors, and
10 have the capacity even to kill them. Recent studies show that of those injured by
11 kinetic projectiles, 70% of the 1,925 injured suffered severe injuries, 295 were
12 permanently disabled by the projectiles, and 53 were killed by them. Dkt. 15-1, Haar
13 Decl. ¶ 11; *see also* Physicians for Human Rights, *Shot in the Head*, *supra* note 4
14 (describing injuries from kinetic impact projectiles including from the LAPD during
15 the spring Floyd protests). These weapons can blind protestors; cause traumatic brain
16 injuries, cause injuries to the spinal cord; deflate and injure lungs, and many other
17 serious injuries. Dkt. 15-1, Haar Decl. ¶ 12. Severe injuries are more common when
18 fired at close range, though indiscriminate firing at longer distances still risks
19 striking protestors in vulnerable locations and cause such severe injuries. *Id.* ¶ 13;
20 *see also, e.g., id.* ¶ 12(A) (“Direct trauma to the eye from KIPs nearly always causes
21 . . . total blindness in that eye, due to ruptured globe (eyeball). KIPs have also
22 entered the brain through the eye socket and caused extensive and irreversible
23 damage.”).

24 If such weapons are to be used at all,¹⁰ they may only be used when subjected
25 to significant limitations and only then after the officers who use them have
26 necessary training and adequate supervision. As the Chaleff Report emphasized,

27 ¹⁰ There are significant doubts as to whether these large kinetic impact projectiles—
28 even used as directed, let alone as the LAPD has done here – can ever be used in a
manner that is safe and effective. Dkt. 15-1, Haar Decl. ¶ 13.

1 “[t]he officer operating the 40mm must be very precise to strike the intended target
2 and minimize the risk to potential bystanders.” Vol. I, Ex. 1 at 44. 40 mm rounds
3 “cannot be used to disperse a crowd.” *Id.* at 42. The 40 mm should not, for example,
4 be used to fire at the head, neck, face, eyes or spine, unless the intention is to kill the
5 target. *Id.* at 41. They should also not be aimed at the chest. Comp. Vol. III, Clark
6 Decl. ¶ 14. When aimed at the chest, impact projectiles bruise the lungs and heart,
7 causing serious or even fatal injuries. Dkt. 15-1, Haar Decl. ¶ 12(D); Vol. III, Ex. 1
8 at 94. The LAPD’s own regulations show that the 40 mm should not be used on a
9 subject, even when otherwise targeted appropriately, unless the person is violently
10 resisting arrest or poses an immediate threat of violence or physical harm. Vol. III,
11 Ex. 1 at 94. The minimum safe range for firing the weapon is 5 feet. *Id.* Officers
12 deploying 37 mm foam baton rounds are limited to firing at the ground to absorb the
13 kinetic energy and skip toward persons, rather than ever directly at a person. *Id.* at
14 9, 94. The evidence before this Court demonstrates that the LAPD does not abide
15 by these restrictions.

16 The officers here engaged in widespread, indiscriminate and deliberate firing
17 on peaceful protestors. Even the City’s report acknowledged that officers were
18 quickly firing 40 mm rounds at distant targets and that LAPD officers fired
19 numerous less-lethal rounds during the protests, with approximately 10,000 such
20 rounds not returned to the armory or otherwise accounted for after the protests. *Id.*
21 at 43, 44.

22 The LAPD continues to indiscriminately fire on peaceful protestors and target
23 specific non-violent demonstrators, contrary to the Chaleff Report’s clear findings
24 on the matter, contrary to longstanding recommendations from the manufacturer,
25 and to even their own general guidelines. Vol. III, Clark Decl. ¶¶ 12-15, 18-20. In
26 August of last year for example, an LAPD officer aimed directly at and fired on
27 Christina Astorga’s chest from no more than three feet away, causing necrosis in her
28

1 breast, and requiring plastic surgery. Vol. III, Astorga Decl. ¶ 4, Ex. 4, 5. This is
2 just one of many examples; however, the Astorga incident illustrates the serious
3 injuries inflicted by the misuse of the 37mm less-lethal munitions, the weapon used
4 to injure Astorga. According to an LAPD Directive noted in the Chaleff Report, the
5 37 mm “foam baton round consists of five foam rubber projectiles that are
6 discharged at once. . . . The LAPD only allows the foam baton rounds to be skip
7 fired.” Vol. I, Ex. 1 at 42 & n. 21. As the video of Astorga being shot demonstrates,
8 the officer’s weapon is pointed directly at her torso, not at the ground for a skip shot,
9 significantly increasing the force at which the projectiles struck her chest. Moreover,
10 it is highly unlikely that the munitions could be skip-fired in such close proximity in
11 the manner intended by the manufacturer. *Id.*

12 In the recent March 25 protests in Echo Park, officers fired 40 mm and 37 mm
13 projectiles into the assembly, just a few feet from them. Protestors and members of
14 the press were struck in the upper body by these munitions shot at extremely close
15 range. Vol. III, Kim Decl. ¶ 2 and Ex.15; Vol. III, Kanegawa Decl. ¶ 2 and Ex. 13-
16 14; Vol. III, Monterossa Decl. ¶ 2 and Ex. 16 and 17. As the video taken by Diana
17 Barbadillo demonstrates, the LAPD officers in the front line were pointing weapons
18 directly at the assembled persons, in some instances with just inches between the
19 officers armed with these larger projectiles as the officers forced the group to move
20 backwards. Vol. III, Ex. 8 and 9 (manually filed). Just a few days earlier, at the
21 Breonna Taylor protest, another press person was shot in the back, inches to the side
22 of the base of where his skull and spine connect. Vol. III, Baffa Decl. ¶ 4-7 and Ex.
23 7.

24 Thus, it is highly likely that the LAPD will continue to use these munitions in
25 a highly dangerous and unconstitutional manner, causing the same injuries that
26 Plaintiffs and others sustained during the spring 2020 George Floyd Protests and in
27 more recent protests. *See, e.g.*, Dkt. 15, Ex. 13, Rodas Decl. ¶¶ 3–6, 8–9 (peaceful
28

1 protestor was shot in the face with a rubber bullet as she attempted to return to her
2 car, lost consciousness and fractured her mandible, requiring her jaw to be reinforced
3 with a steel plate); Dkt. 15, Ex. 14, Črnko Decl. ¶¶ 2, 9–10 (peaceful protestor was,
4 without warning, shot with rubber bullets on her arm, ribcage, and then, in the
5 forehead causing temporary loss of hearing profuse bleeding, and permanent nerve
6 damage); Dkt. 15, Ex. 17, Trotter Decl. ¶¶ 4–6, 9 (LAPD officer needlessly shot 51-
7 year-old man in the chest and hand from only a few feet away, tearing off his skin);
8 Dkt. 15, Ex. 14, Roe Decl. ¶ 4 (LAPD aimed at and shot a non-violent protestor in
9 the stomach as he was backing away); Dkt. 15, Ex. 2, Aranovich Decl. ¶11 (peaceful
10 protestor shot with a rubber bullet from behind as she was trying to leave); Dkt. 15,
11 Ex. 16, Stamm Decl. ¶¶ 2, 5 (protestor witnessed officers firing on peaceful
12 protestors fired on with rubber bullets); Dkt. 15, Ex. 8, Lessac-Chenen Decl. ¶¶ 6, 8,
13 11–12, 14, 16 (officers fired projectiles into crowd, hitting some persons multiple
14 times and tearing skin, with an officer laughing as he shot at protestors and asking
15 “who else wants one?”); Dkt. 15, Ex. 11, Moore Decl. ¶¶4–6 (officer aimed directly
16 at plaintiff and shot her in the head with pellets); Dkt. 15, Ex. 20, Hinkston Decl. ¶¶
17 4–5 (plaintiff and bystander who was trying to escape in his wheelchair from police
18 firing on protestors was forcefully shot from behind in his shoulder blade); Dkt. 15-
19 1, Haar Decl. ¶¶ 8–13 (describing severe injuries such weapons cause).

20 There is no legitimate justification for the way the LAPD misuses these
21 munitions. Indeed, it was and continues to be contrary to well-accepted general
22 police practices and training, including the LAPD’s own purported policies. Vol.
23 III, Clark Decl. ¶¶ 12-15, 18-20; Ex. 1 at 41-45.

24 As the parties previously addressed and Defendants effectively conceded, firing
25 on non-violent protestors with targeted munitions that may seriously injure or kill
26 them is excessive force. *See generally* Dkt. 14 at 6 –11; Dkt. 24 at 10 (“[C]ertain
27 individual Plaintiffs may be entitled to damages [but] that doesn’t mean they would
28

1 be entitled to any permanent equitable remedy”). In short, police use of
2 projectiles that seriously injure peaceful protestors require a serious governmental
3 interest before such force can be deployed, and there is no such interest in firing
4 indiscriminately on or targeting non-violent protestors.¹¹ Dkt. 14 at 9-11 & n.5, *see*
5 *also, e.g., Nelson v. City of Davis*, 685 F.3d 867, 877-78 (9th Cir. 2012) (the firing
6 of even a pepperball, significantly less dangerous than the munitions here, on
7 protestors who do not pose a threat is unconstitutional, and indeed, this is clearly
8 established). The shootings at issue here are patently unconstitutional.

9
10 **C. A TEMPORARY RESTRAINING ORDER AND PRELIMINARY**
11 **INJUNCTIVE RELIEF ARE URGENTLY NEEDED AND WELL**
12 **JUSTIFIED TO PREVENT THESE UNCONSTITUTIONAL AND**
13 **LIFE-THREATENING PRACTICES.**

14 **1. Plaintiffs Will Likely Suffer Irreparable Harm if the Injunction is**
15 **not Granted.**

16 The second requirement for a temporary restraining order is a likelihood of
17 irreparable harm. *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1289 (9th
18 Cir. 2013). Plaintiffs amply meet this here.

19 As demonstrated above, Plaintiffs are highly likely to succeed on the merits
20 of their claims. The LAPD’s use of 40 mm and 37 mm projectiles on non-violent
21 protestors violates their constitutional rights. Throughout the country courts have
22 ordered such relief to protect the constitutional rights and lives of citizens. *See, e.g.,*
23 *Abay v. City of Denver*, 445 F. Supp. 3d 1286, 1294 (D. Colo. 2020) (granting
24 preliminary injunction enjoining Denver police from using “less-lethal” projectiles
25 to target the head, back or pelvis area and ordering that “non-lethal or less-lethal

26 ¹¹ Indeed, as the LAPD’s own policies confirm, there is no justification in firing on
27 even violent protestors in the areas the LAPD has targeted them, including their
28 face and backs, unless the LAPD has been intending to kill these protestors with
these “less lethals.” Ex. 1 at 41.

1 projectiles shall not be shot indiscriminately into a crowd.”); *Black Lives Matter*
2 *Seattle-King Cty. v. City of Seattle, Seattle Police Dep’t*, No. 2:20-CV-00887-RAJ,
3 2020 U.S. Dist. LEXIS 135583, 2020 WL 3128299, at *5 (W.D. Wash. June 12,
4 2020) (granting TRO to enjoin Seattle police from employing “projectiles of any
5 kind [including h-bang grenades, “pepper balls,” “blast balls,” rubber bullets, and
6 foam-tip projectiles] against persons peacefully engaging in protests or
7 demonstrations.”); *Anti Police-Terror Project, et al. v. City of Oakland, et al.*, 2020
8 U.S. Dist. LEXIS 135607, 2020 WL 4346828, No. 3:20-cv-03866-JCS (N.D. Cal.
9 June 18, 2020) (enjoining, *inter alia*, firing rubber bullets or similar projectiles at
10 protestors); *Don't Shoot Portland v. City of Portland*, 465 F. Supp. 3d 1150, 1157
11 (D. Or. 2020) (enjoining police from using tear gas unless in accordance with police
12 practices and limiting the use of tear gas to situations where lives or safety were at
13 risk); *Breathe v. City of Detroit*, 484 F. Supp. 3d 511, 520 (E.D. Mich. 2020), *order*
14 *clarified*, No. 20-12363, 2020 U.S. Dist. LEXIS 250308, 2020 WL 8575150 (E.D.
15 Mich. Sept. 16, 2020).

16 An injunction is particularly warranted here, in light of the potential for
17 serious injuries the LAPD continues to cause, and the unnecessary and potentially
18 lethal injuries they are likely to continue to cause. Such harm is clearly irreparable.
19 *Cf., e.g., Black Lives Matter Seattle-King Cty*, 2020 U.S. Dist. LEXIS 135583, 2020
20 WL 3128299, at *4 (“Plaintiffs have established a threat of immediate, irreparable
21 harm in the absence of a TRO. They have shown a likelihood of success on their
22 First and Fourth Amendment claims, demonstrating that irreparable injury has
23 already occurred.”); *Abay*, 445 F. Supp. 3d at 1293 (“Indeed, irreparable harm has
24 already occurred in the form of physical injury and the suppression of speech.”);
25 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“[T]he deprivation of
26 constitutional rights ‘unquestionably constitutes irreparable injury.’”).
27
28

1 The Chaleff Report acknowledges these problems and puts them in the larger
2 context of all the LAPD's deficiencies in responding to the spring 2020 protests.
3 *See, e.g.*, Vol. I, Ex. 1 at 44 (noting the majority of reported injuries at the protests,
4 including as to peaceful protestors, were the result of these munitions); *id.* at 8, 42,
5 55 (noting the lack of adequate and relevant training on the use of 40 mm and 37
6 mm projectiles, and any at all over the last three years, and that it has contributed to
7 injuring protestors); *see also, e.g., id.* at 58 (describing deficiencies in planning,
8 including failing to follow basic principles of the incident command system); *id.* at
9 58-60 (describing deficiencies in command and control, including a lack of a known
10 or clear chain of command or training concerning command); *id.* at 60-61
11 (describing lack of training for commanding officers concerning managing large
12 crowds); *id.* at 62-63 (describing the LAPD's errors in detaining people for excessive
13 amounts of time, without being provided access to restrooms, water, or masks, and
14 that the LAPD has not corrected the issues related to the Occupy LA or the Ferguson
15 cases).

16 As the Chaleff Report acknowledged, the majority of reported injuries
17 protestors, including non-violent ones, were the result of projectile munitions, Ex. 1
18 at 44, and the LAPD's absence of training on the weapons contributed to this. *Id.* at
19 8, 42, 5. The Report also itself emphasized that if LAPD officers were to use 40 mm
20 and 37 mm weapons they would be limited to using them in the manners discussed
21 above, including not using 40 mm to disperse crowds, not using them at short range,
22 hitting protestors in potentially dangerous areas, or ever, unless they were an
23 immediate threat of violence or physical harm. *See* § B(2), *supra*. There is no basis
24 to believe that the LAPD will implement these limitations in any upcoming
25 demonstrations.

26 The declarations, photos and videos show that LAPD officers have and
27 continue to target and indiscriminately fire on non-violent protestors with these
28

1 potentially lethal weapons. *See supra*, pp. 3–5, 14–15. Moreover as the Chaleff
2 Report and Plaintiffs’ declarations demonstrate the LAPD simply does not have the
3 necessary training or supervision to use these weapons. *E.g.* Comp. Vol. I, Ex. 1 at
4 8.

5 There has been no training for officers on the 40 mm, other than those going
6 through basic training, since 2018. *Id.* at 45. Before 2018, the LAPD’s training for
7 the weapon, for a patrol context, consisted of a two-hour tutorial which amounted to
8 a demonstration of how the weapon is manipulated, with an officer permitted to fire
9 it a few times at a stationary target. *Id.* at 52, 8. The previous training did not, when
10 it occurred, even address using the 40 mm beyond this or in crowd situations at all.
11 *Id.*

12 The LAPD’s directive authorizing the use of the 50 mm also has no detailed
13 guidance for use in public order policing situations. Vol. I, Ex. 1 at 45. As the
14 Chaleff Report found, “[t]he use of the 40 mm weapon to fire at individuals who are
15 in a crowd situation requires well-trained, experienced, and highly skilled
16 individuals.” *Id.* at 8. The LAPD lacks such training – indeed any, currently – and
17 this caused injuries to protestors, including non-violent ones, as even the Chaleff
18 Report found. *Id.* at 8 (acknowledging significant reports of injuries to protestors,
19 including those not engaged in criminal behavior, and that this was due to “a lack of
20 adequate training on the 40 mm system.”). The LAPD simply lacks the specific (or,
21 really, any) training to otherwise properly wield these weapons in the context of
22 demonstrations or crowd control. The Chaleff Report and the new evidence before
23 the Court demonstrate the essential need for such training and the need for
24 experienced and informed supervision over the use of these potentially lethal
25 weapons. Until that exists this Court should enjoin the LAPD’s use of the weapons
26 for crowd control purposes.

1 Since this action was started in June 2020, the LAPD has used 40 mm and 37
2 mm projectiles multiple times to directly fire on peaceful protestors, including
3 intentionally at close range, or indiscriminately into crowds. *See supra*, pp. 3–5.
4 Without the Court’s intervention, future protestors exercising their First Amendment
5 rights will only do so if they are willing to risk serious injury or even death.

6 In response to Plaintiffs’ initial request for injunctive relief, Defendants
7 assured that they were not authorizing kinetic projectiles following June 3, 2020,
8 and Plaintiffs’ concerns were unfounded. *E.g* Dkt. 24-3, Rimkunas Decl. ¶ 34. In
9 fact, just days later, this was proven false. These assurances cannot be accepted any
10 longer in light of subsequent and repeated events, with two incidents at protests in
11 the last four weeks, and the Chaleff report.

12 **2. Plaintiffs’ Interests Weigh Heavily in Favor of Enjoining** 13 **Defendants’ Use of 40 mm and 37 mm Weapons.**

14 The last necessary factors for a temporary restraining order and preliminary
15 injunction are that the balance of equities tips in favor of an injunction, and an
16 injunction is in the public interest. *Shell Offshore, Inc.*, 709 F.3d at 1289.

17 Notably, “[w]hen the government is a party, these last two factors merge.” *Drakes*
18 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v.*
19 *Holder*, 556 U.S. 418, 435 (2009)). Moreover, “it is always in the public interest
20 to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*,
21 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First Judicial District*
22 *Court*, 303 F.3d 959 (9th Cir. 2002)); *see also Abay*, 445 F. Supp. 3d at 1293
23 (“Here, it is clearly in the public interest to protect plaintiffs’ right to demonstrate,
24 the media’s ability to document that demonstration, and third parties’ ability to
25 render aid to demonstrators without threat of excessive force by police.”).

26 To the extent Defendants claim the use of 40 mm and 37 mm projectiles is
27 and has been necessary for self-defense, and this is purportedly why they need to
28 deploy such weapons against protestors, this is refuted by the facts. Defendants have

1 not used these projectiles as a tool for self-defense purposes. Defendants instead
2 fired on non-violent and distant protestors, as the videos and declarations show. The
3 use of these munitions in the way the LAPD has used them is unconstitutional, and
4 not justified by any legitimate state interest.

5 Temporarily enjoining the use of the 40 and 37 mm weapons – which the
6 LAPD’s own commissioned report indicates officers are not reliably trained to
7 accurately or appropriately use anyway – in this way is appropriate, as it has been in
8 the numerous other cities where such weapons have been enjoined the waeapons
9 more broadly or limited them for nearly a year. The LAPD also has numerous other
10 and adequate options for crowd control if the requested order is issued. *See, e.g.,*
11 Vol. III, Clark Decl. ¶ 22; *Abay*, 445 F. Supp. at 1293 (assertion of officer safety “is
12 a hypothetical harm, especially given the fact that officers have access to many other
13 types of non-lethal weapons that they use on a daily basis, including tazers. The
14 unlikelihood of such harm to officers is outweighed by the very real harm that has
15 already been caused to plaintiffs.”).

16 Moreover, the aggressive and improper use at issue here, established by the
17 videos and declarations, particularly when employed by unskilled and untrained
18 officers, risks escalating situations, rather than controlling them. Vol. III, Clark
19 Decl. ¶ 20.

20 **REQUESTED RELIEF**

21 Plaintiffs seek the proposed order submitted herewith, which would prohibit
22 the LAPD from firing 40mm and 37 mm projectiles, only, for the purposes of
23 crowd control.

24 **CONCLUSION**

25 The abuse of these munitions in the Spring of 2020 was not an aberration. The
26 Chaleff Report establishes a deep, longstanding problem in LAPD culture and
27 actions in response to demonstrations. The March 2021 events in Echo Park reveal
28

1 what would happen if protest over a Chauvin verdict occur. This Court should grant
2 this request for a temporary restraining order, and grant a preliminary injunction
3 prohibiting the use of these dangerous munitions in public demonstrations.

4 Respectfully submitted,

5
6 DATED: April 13, 2021

7 By: /s/ Paul Hoffman

8 Paul Hoffman

9 John Washington

10 Carol Sobel

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Attorneys for Plaintiffs.