

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**JAMES MORROW, ET AL.,
Plaintiffs,**

v.

**CITY OF TENAHA DEPUTY CITY
MARSHALL, ET AL.,
Defendants.**

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Civil Action No. 2:08-cv-288

JUDGE: RODNEY GILSTRAP

**JOINT MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT
ON ADDITIONAL DURATION OF CONSENT DECREE AND APPROVAL
OF CLASS NOTICE.**

TO THE HONORABLE JUDGE OF SAID COURT:

This Joint Motion for Approval of the Settlement Agreement on Additional Duration of Consent Decree and Approval of Notice is respectfully filed, through counsel, by Plaintiffs and Defendants.

I.

As the Court is well aware, the parties previously negotiated and agreed to a Consent Decree (Doc. 261, 261-1 through -7), which was approved and ordered by the Court on August 8, 2013 (Doc. 278, 278-1). Subsequently, on August 7, 2017, Plaintiffs sought an extension of the duration of the Decree (Doc. 315). On November 1, 2018, a hearing was held regarding the Plaintiffs' requested extension and the Defendants' opposition to same. The parties have negotiated since the time of the hearing and have now agreed to a proposed Settlement Agreement on Additional Duration of Consent Decree (a copy of which is attached as Exhibit "1"). Contained within the proposed

Settlement Agreement are only two disputed terms (more fully described in Section III. I. 5. and Section VI. C. of the Settlement Agreement on Additional Duration of Consent Decree, attached hereto) and a separate issue that the parties seek assistance of the Court to resolve (as noted on page 27, footnote of Settlement Agreement on Additional Duration of Consent Decree).

II.

The parties respectfully request that the Court:

- (a) Determine whether it is likely that the Court will be able to approve of the proposed Settlement Agreement on Additional Duration of Consent Decree (attached hereto as Exhibit "1") as provided in Rule 23(e)(1), F. R. C. P., and if so to approve the Notice to the Certified Class about the proposed Settlement Agreement (attached as Exhibit "2") and the method of notifying the class of the proposed Settlement Agreement, as also provided the Rule;
- (b) Scheduling a hearing on this Joint Motion, if the Court deems it appropriate;¹
- (c) Set a schedule for the Fairness Hearing as provided in Rule 23(e)(2), F. R. C. P., and any other appropriate date(s); and,
- (d) After the Fairness Hearing, grant final approval to the proposed Settlement Agreement on Additional Duration of Consent Decree, Approval of Notice, and Fairness Hearing as provided in Rule 23(e)(2).

III.

The purposes animating the Additional Duration on Consent Decree sought include efficiency, avoiding uncertainty, ending alleged racial profiling (including any alleged incentives and alleged practices that may result in alleged racial profiling), and concluding the litigation. The additional duration provides Plaintiffs and the Certified Class with

¹ There are a minimum number of disputed issues which the parties have or will brief, but counsel would of course be willing to participate in any hearing set by the Court.

an opportunity for complete injunctive relief and to achieve the purposes of the original Decree and confers significant benefits on the Plaintiffs and the Certified Class. The additional duration also benefits Defendants by requiring accurate records of traffic stops that will readily contradict any false accusations that an officer abused his or her authority or violated constitutional rights.

IV.

Pursuant to Rule 23(e)(3), the parties hereby notify the Court that, other than as stated in the Settlement Agreement on Additional Duration of Consent Decree, there are no agreements requiring disclosure that were “made in connection with the propos[ed] [settlement].” See FED. R. CIV. P. 23(e)(3).

V.

The proposed notice form (the “Notice”) is attached as Exhibit 2. The Notice contains information about the proposed settlement, a description of the Certified Class, instructions on how to obtain further information about the Consent Decree, and procedures for objecting and appearing at the fairness hearing. The Notice (in both English and Spanish) will be prominently displayed at the Tenaha City Office, located at 122 North Center Street, Tenaha, Texas, and the Shelby County Courthouse, located at 200 San Augustine Street, Center, Texas. In addition, the Notice will be digitally posted on the websites for the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People (“NAACP”).

The Court has complete discretion in determining what constitutes reasonable

notice of a class settlement under Rule 23(e), in form as well as method, particularly in a Rule 23(b)(2) class. *Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1059 (5th Cir. 1979); 7B FED. PRAC. & PROC. CIV. § 1797.6 (2009). “A class settlement notice need only properly identify the plaintiff class and generally describe the terms of the settlement so as to alert members ‘with adverse viewpoints to investigate and to come forward and be heard.’” *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 298 (W.D. Tex. 2007) (citation omitted).

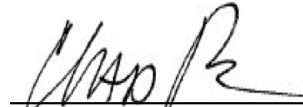
Here, the proposed notice procedures involve prominently displaying the Notice at the Tenaha City Office and the Shelby County Courthouse; and posting it on the ACLU’s and NAACP’s websites. These notification procedures are specifically tailored to provide notice to members of the Class in a reasonable manner.

VI.

The Court should determine whether it is likely that the Court will be able to approve of the proposed Settlement Agreement, approve the form and method of notice, and schedule appropriate dates for a fairness hearing and other proceedings necessary to give final approval to the Settlement Agreement on Additional Duration of Consent Decree.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on December 13, 2018, in the following manner:

X Via ECF



CHAD C. ROOK

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**JAMES MORROW, STEPHEN §
STUART WATSON, AMANEE §
BUSBY, YUSELFF DISMUKES, §
LINDA DORMAN, MARVIN §
PEARSON, JENNIFER BOATWRIGHT, §
RONALD HENDERSON, JAVIER §
FLORES, WILLIAM PARSONS and §
a Certified Class of Other Similarly §
Situated Persons, §
Plaintiffs §**

vs. §

CIVIL ACTION NO. 2:08-cv-288

**CITY OF TENAHA DEPUTY CITY §
MARSHALL, BARRY WASHINGTON, §
In his Individual and Official Capacity; §
CITY OF TENAHA MAYOR GEORGE §
BOWERS, In his Individual and §
Official Capacity; SHELBY COUNTY §
DISTRICT ATTORNEY LINDA KAY §
RUSSELL, In her Individual and §
Official Capacity; SHELBY COUNTY §
DISTRICT ATTORNEY §
INVESTIGATOR DANNY GREEN, §
In his Individual Capacity only; and §
SHELBY COUNTY PRECINCT 4 §
CONSTABLE RANDY WHATLEY, §
In his Individual and Official Capacity, §
Defendants**

JUDGE: RODNEY GILSTRAP

**SETTLEMENT AGREEMENT ON ADDITIONAL DURATION OF
CONSENT DECREE**

I. Introduction

A. Description of the case

Plaintiffs filed this case in 2008 to challenge the Defendants’ alleged illegal “stop and seize” practice of targeting, stopping, detaining, searching, and often seizing property

from individuals who are, or appear to be, members of a racial or ethnic minority and their passengers. (Class Certification Opinion and Order, Dkt. 233, p. 2.) The evidence demonstrates that this “interdiction program” began in 2006, and Plaintiffs allege that it is ongoing. (*Id.* at 3.) According to Plaintiffs, Defendants targeted members of the proposed class for traffic stops because of their race or ethnicity and then subjected them to detention, arrest, or search and seizure without legal justification and in violation of their constitutional rights. (*Id.*) Plaintiffs further allege that Defendants instituted the interdiction program, not for legitimate law enforcement purposes, but in order to enrich their offices and themselves by seizing and converting cash and other valuable personal property they could find during the course of the illegal stop and seize practice. (*Id.*)

The Defendants deny these allegations and deny that they violated the constitutional rights of the named Plaintiffs or the class as a whole.

Plaintiffs initially sought class treatment of Fourth Amendment search and seizure claims, Fourteenth Amendment Equal Protection claims, and claims for monetary relief. The Court only certified the plaintiff class for Fourteenth Amendment Equal Protection claims for injunctive and declaratory relief. (*Id.* at 57.) The Defendants sought a discretionary interlocutory appeal of the class certification pursuant to Federal Rule of Civil Procedure 23(f) which was denied, and then denied again when the Defendants asked the Fifth Circuit Court of Appeals to rehear the request. The parties then negotiated and agreed to a Consent Decree (Doc. 261-1 through -7) which was approved and ordered by the Court on August 8, 2013 (Doc. 278, 278-1).

On August 7, 2017, Plaintiffs filed an Opposed Motion to Extend Duration of Decree. (Doc. 315). A hearing on Plaintiffs Motion was initially set on September 25, 2018, and was continued until November 1, 2018. Since the hearing on November 1, 2018, the parties negotiated and agreed to this proposed Settlement Agreement On Additional Duration of Consent Decree, which includes two disputed issues for the Court's determination. The first issue is the term of the additional duration of the Decree. While the parties are in agreement that an additional term of duration is appropriate, Plaintiffs propose the additional term be for not less than 2 years and the Defendants propose a twelve-month term. The proposed language of the parties is denoted in the section addressing duration, Section VI. C. The second issue is language proposed by the City of Tenaha to address the use of revenues from forfeitures. The City's proposed language is set forth in the section addressing use of revenues from forfeitures, Section III. I. 5. Plaintiffs propose the language of said section remain unchanged from the original Consent Decree (Doc. 278-1). The parties are in agreement not to object to additional briefing on these remaining issues, not to exceed 10 pages and to be filed by any party not later than December 13, 2018.

B. Parties:

1. The Plaintiffs are James Morrow, Javier Flores and William Parsons, the Court designated class representatives, and the certified class as defined below in Sections I.E and I.F.
2. The originally named Defendants include: the City of Tenaha Deputy City Marshal Barry Washington, in his individual and official capacities (who has since resigned from office); the City of Tenaha Mayor George Bowers, in his official capacity only (who is the former mayor); the Shelby County

District Attorney Lynda K. Russell, in her individual and official capacities (who has since resigned from office); the Shelby County District Attorney Investigator Danny Green, in his individual and official capacities (who has since retired); and the Shelby County Precinct 4 Constable Randy Whatley, in his individual and official capacities (who has since resigned from office).

3. The parties agree to realign the defendants as follows: Shelby County will be bound as a Defendant via the current County Judge Allison Harbison, or her successor, in her official capacity; the City of Tenaha is bound as a Defendant via its current Mayor Michael Baker, or his successor, in his official capacity; and the Shelby County District Attorney's Office is bound as a Defendant via Shelby County current District Attorney Stephen Shires, or his successor, in his official capacity. Original Defendant Russell resigned from the Shelby County District Attorney's Office on July 19, 2011 effective December 31, 2011. As of the date the parties sign this Settlement Agreement on Additional Duration of Consent Decree and submit it to the Court for approval, Stephen Shires serves as Shelby County, Texas, District Attorney. Shires is a Defendant in his official capacity on behalf of the Shelby County District Attorney's Office only to the extent permitted by the Texas Constitution and Texas law.
4. For purposes of this Consent Decree, the term "Defendants" shall include the aforementioned Defendants, their successors, employees, agents, and/or contractors. Where this Consent Decree uses the terms officer or officers, such terms refer to certified law enforcement officers employed

by, contracted by, or otherwise working on behalf of Defendants to conduct traffic stops.

5. Defendants Washington, Green, and Whatley remain defendants in their individual capacities solely for purpose of Section VI.F of this Decree.

- C. Plaintiffs' claims: Plaintiffs claim that Defendants' conduct violates Plaintiffs' Fourteenth Amendment rights to equal protection and due process. (Dkt. 233, p. 2-3.) Plaintiffs seek classwide declaratory and injunctive relief. (*Id.* at 3.)
- D. Defendants' claims: Defendants deny the allegations made by the Plaintiffs, both individually and as a Class. Defendants settle this case without an admission of liability and to avoid the further time and expense associated with protracted litigation of this nature
- E. Certified Class: The parties acknowledge that by Order dated August 29, 2011, the Court certified the plaintiff class pursuant to Federal Rule of Civil Procedure 23(b)(2), to include:
1. People who are, or appear to be, members of racial or ethnic minority groups and those in their company, and
 2. Were, or will be, traveling in, through, or near Tenaha at any time after November 1, 2006, and
 3. Were, or are, subject to being stopped by one or more Defendant for an alleged traffic violation.
- F. The Court limited the claims for class treatment to whether the Defendants' interdiction program targeted apparent non-Caucasians for traffic enforcement in violation of the Equal Protection Clause of the Fourteenth Amendment, and

limited the available relief to injunctive and declaratory relief. (Dkt. 233, p. 42-43.)

G. Mutual recognition of principles

All parties to this Settlement Agreement on Additional Duration of Consent Decree recognize the need for (1) diligent law enforcement, (2) the proper use and implementation of legitimate police practices, and (3) compliance with the requirements and mandates of the Equal Protection clause of the Fourteenth Amendment.

II. Purpose of Consent Decree

- A. Efficiency: The parties' agreement to this Consent Decree provides efficiencies for the parties and the Court. The parties avoid the considerable costs and efforts of pretrial preparations, trial presentations, and possible appeals. The Court avoids expending considerable effort to resolve all of the disputes associated with the parties' efforts and the difficult task of determining liability and possibly formulating injunctive relief that would grant the plaintiff class relief balanced with the governmental interests claimed by the Defendants.
- B. Avoiding uncertainty: The parties avoid the uncertainty of trial and any subsequent appeals. With this Consent Decree, the parties have greater input and control over the settlement than would be possible with court-ordered injunctive relief resulting from trial.
- C. Ending alleged racial profiling: The parties seek to prohibit alleged racial profiling that allegedly violates the Equal Protection Clause of the Fourteenth Amendment. The parties agree that the Defendants will prohibit any alleged

incentives and alleged practices that may result in alleged racial profiling, in a manner that can be verified by the parties, the Monitor, and the Court.

- D. Concluding litigation: The parties seek to resolve all remaining issues in this class action by entry of this enforceable Consent Decree.

In furtherance of these purposes, the parties have agreed to the following binding and enforceable prescriptions, which shall be enforced by this Court, and are hereby ORDERED:

III. Provisions Regarding Traffic Stops and Practices Incident to Traffic Stops:

- A. Impartial policing policy: On the date this Order is entered, the Defendants will implement written policies and practices, requiring that the Defendants comply with all federal and state laws, rules, and regulations relating to alleged racial profiling and the prohibition of alleged racial profiling to ensure that traffic stops, searches, and seizures are not conducted on the basis of the apparent race or ethnic origin of the suspect, except where the law permits race or ethnic origin to be considered in determining whether a person shall be stopped (e.g., where a suspect has been described by his or her race). These policies shall include the information in the model set forth in Appendix A to this Consent Decree.

B. Provisions for traffic stops:

1. Definition: A traffic stop occurs whenever an officer observes a reason to initiate the stop of a vehicle based on an alleged violation of traffic laws or any other violation alleged to have been observed by the officer conducting the stop, and continues until the person stopped is free to leave

or, if arrested, until the person is presented to a jail for booking.

2. "Person" or "persons," as used in this Consent Decree, refers to the drivers and passengers subject to traffic stops by an officer.

Any traffic stop that does not strictly comport with all applicable state and federal laws and the provisions of this Consent Decree is prohibited. Any evidence gathered as a result of a non-compliant stop, made after the entry of this Consent Decree, shall be presumptively inadmissible as evidence in any court or other proceeding adverse to the person stopped. If such evidence is submitted, it must be accompanied by an explanation of this provision. In considering whether to admit evidence from a non-compliant stop, the relevant tribunal may consider the facts surrounding the non-compliant nature of the traffic stop in determining whether the evidence should be admitted. Among the factors considered are the fact and purposes of this provision, whether the non-compliance could have been avoided, and whether the officer took immediate steps to correct the situation or repair the malfunction.

3. Equipment required: All vehicles used by Defendants to conduct traffic stops shall be equipped with appropriate video and audio recording devices that have pre-event features and other capabilities necessary to make the recordings required by this Consent Decree.
4. Audio and video recording requirements: All traffic stops conducted by Defendants shall be mechanically recorded by both video and audio recordings, including: the use of the pre-event capabilities to capture the reason for the stop, and record the location, time, date, speed, the identity

of the officer(s) and agency operating the vehicle, and any radar readings pertinent to the stop. The recordings shall also capture any canine sniffs, searches, seizures, detentions, and to the extent reasonable, arrests, resulting from a traffic stop. All oral communication and interaction with the person being stopped must be captured in the recordings. If a stop results in an arrest, the recordings shall continue until the subject is transported inside the jail. During the stop, the officer shall contemporaneously orally state on the recording his or her reason for the stop, the basis for any suspicion of any other criminal activity or probable cause to believe an offense has been or is being committed, including the offense suspected, and any reason to believe any currency or property constitutes contraband or that there is probable cause for a seizure. The recordings must not be obscured by conducting matters outside of the range of the recording device(s) or in any other avoidable manner. If the officer has made a good faith attempt to comply with this provision, and the audio and video recordings are obscured or impaired due to unforeseeable and unavoidable events, the officer shall document in writing the reason for the failure to record all relevant events. All video and audio recordings shall be preserved unedited and in their native format, or in some other form that can be readily authenticated as valid and unaltered, until this case is dismissed.

5. Documentation required, including profiling information: An officer shall prepare a report under his or her name and badge number that complies with Texas Code of Criminal Procedure Article 2.133 and this Consent

Decree. This written documentation shall be preserved unedited, or in some other form that can be readily authenticated as valid and unaltered, until this case is dismissed.

Whenever an officer documents the race or ethnicity of a person in accordance with this Consent Decree, he or she must do so on the basis of the officer's perception of the person's race or ethnicity to the best of the officer's ability.

6. Reporting of traffic stops: All traffic stops shall be orally reported on the mechanical recordings before the officer makes contact with the driver, except in emergency situations. Except in emergency situations, the officer's report on the mechanical recordings shall include the identity of the officer, the location of and reason for the stop, and a description of the vehicle including its license number.
7. Pretext stops prohibited: All pretextual stops are prohibited.
8. Duration of stop: A stop must be no longer than necessary to accomplish the purpose of the stop, presumptively 15 minutes or less for a traffic violation punishable by issuance of a traffic ticket. For other situations, such as a driver possibly impaired by alcohol or drugs, the presumptive 15 minute time limit need not apply.

C. Provisions for detentions incident to traffic stops

1. Reporting detentions: All detentions resulting from traffic stops shall be orally reported on the mechanical recordings, along with the officer's claimed reason(s) for the detention, as soon as reasonably possible after the initiation of the detention(s). The term "reasonably possible" is meant

to take into account the surrounding circumstances at the time and should take into account officer, suspect and public safety.

2. Any detention resulting from a traffic stop must be properly documented according to Texas Code of Criminal Procedure Article 2.133 and this Consent Decree.

D. Provisions for canine sniffs incident to traffic stops

1. The Defendants to this Consent Decree will stipulate that they currently do not utilize canines for any aspect of traffic stops.
2. Definition: The term “canine sniff” means any situation in which a canine is called upon to smell the area of a vehicle or person for the purpose of detecting contraband as the result of a traffic stop.
3. Requires reasonable suspicion of criminal activity: A canine sniff shall only be initiated when it is supported by reasonable suspicion that a crime has been or is in the process of being committed.
4. Reporting canine sniffs: At the time the officer requests a “canine sniff,” he or she shall orally report the request, and basis for the request on the mechanical recordings.
5. Explanation for person: Before the initiation of any canine sniff, an officer shall provide written notice to the person whose property or person will be subject to the sniff. This written notice shall be in both English and Spanish and substantially similar to the model set forth in Appendix B to this Consent Decree.

6. Audio and video recording requirements: Any canine sniff shall be mechanically recorded as required by this Consent Decree and any applicable state and federal law.
7. Documentation required: For any traffic stop in which a canine sniff is conducted, the officer conducting the stop shall make a written report, including: the name, identification number, and agency of the dog handler; identification information for the canine; a description of the circumstances that prompted the canine sniff; whether any alerts were made by the canine; whether the proximity of the canine sniff was physically searched and whether any contraband was located; a thorough narrative description of the use of the canine, including, if an alert was given, a detailed description of where and how the alert was given, how many times the canine circled the vehicle or other property or person searched, how long it took for the canine to alert, and whether the canine exhibited any behaviors inconsistent with its training or otherwise unusual. These reports shall be preserved unedited, or in some other form that can be readily authenticated as valid and unaltered, in a Canine Performance Log kept by the pertinent agency and retained until this case is dismissed. The Canine Performance Log shall also include records of any complaints about the canines used for sniffs and the responses to those complaints; these records shall be preserved until this case is dismissed.

8. Certification and training requirements:
 - a. All canines used in canine sniffs shall meet Scientific Working Group on Dog and Orthogonal Detector Guidelines (“SWGDOG”) certification guidelines before being utilized in any canine sniff. All canine handlers must be certified in accordance with SWGDOG guidelines prior to participating in a canine sniff. Training shall be required for all officers and canines in accordance with SWGDOG guidelines and the requirements set forth in this Consent Decree. The SWGDOG guidelines referred to in this Consent Decree are available at www.swgdog.org and included in Appendix C to this Consent Decree.
 - b. The Defendants shall conduct an annual review of the utilized certification and training guidelines and update their guidelines in accordance with industry standards, provided that those standards do not fall below the standards set out for the protection of individuals in the SWGDOG guidelines. Defendants conducting canine sniffs shall annually certify their review, including a description of any updates, to the Court and other parties during the duration of the Consent Decree.
9. Performance records for canine handlers: Any Defendant(s) using a canine shall document, monitor and investigate all complaints regarding the use of canines by that agency. Such Defendant shall produce a quarterly performance report, compiling information from written reports

and mechanical recordings and complaints, to the designated officer with final decision-making authority over the use of canines. Such Defendant shall provide copies of these reports to the Monitor on a quarterly basis during the duration of the Consent Decree.

10. Certification of compliance: On the date this Order is entered, the Defendants will certify to the Court that they are not using canines for any aspect of traffic stops. Each Defendant's certification will constitute that Defendant's compliance with all the canine-related provisions of this Consent Decree. Should any Defendant seek to use a canine for any aspect of traffic stops, that Defendant shall first notify the Monitor and Plaintiffs' Counsel.

E. Provisions for searches incident to traffic stops

1. Reporting searches and request for back-up: Before any officer conducts a search resulting from a traffic stop, the officer will orally report the event and his or her intention to search on the mechanical recordings. The officer will also request back-up officers, if available, to the scene to observe any search resulting from a traffic stop. This will also be captured on the mechanical recordings
2. For all consent searches, officers must first orally and in writing advise a person of his or her right to refuse consent to search and obtain written consent for that search using a Consent to Search form. That Consent to Search form shall be in both English and Spanish and substantially similar to the model provided in Appendix D to this Consent Decree.

3. Audio and video recording requirements: Any search resulting from a traffic stop and the basis therefor shall be mechanically recorded, as required by Section III.B.5. If a search is allegedly based on consent, the officer's request to search and the person's consent to the same must be captured on the mechanical recording required by Section III.B.5 and in writing. The consent recorded under this section shall include: (a) a statement that the person subject to search fully understands that he or she may refuse to give the officer consent to search; (b) a statement that the person subject to search is freely and voluntarily giving the officer consent to search; and, (c) a statement that the person subject to search may withdraw the consent at any time during the search.
4. Any search incident to a traffic stop must be documented consistent with Texas Code of Criminal Procedure Article 2.133 and this Consent Decree.
5. Duration: No search shall prolong the detention any longer than necessary to effectuate the search based on the reasons for the search.
6. Responsibility for damage: The responsible Defendant(s) shall pay a person for the full costs and expenses of any property damage that may result from a search as required by state law. This provision shall not apply to any damage reasonably caused during a search that results in the discovery of contraband. The responsible Defendant(s) shall pay or reimburse the costs and expenses resulting from a search within thirty (30) days of receipt of written notice and reasonable substantiation of such damage. If a Defendant contests that the damage was the result of a search, the Monitor shall be the final arbiter of disputes under this

provision, utilizing a preponderance of the evidence standard. All persons subject to a search will be provided with written notice of this provision at the time of the search. That written notice shall be in both English and Spanish and substantially similar to the model provided in Appendix E to this Consent Decree.

F. Provisions for seizures incident to a traffic stop

1. “Property” refers to any tangible thing, including currency or other monetary instrument. No property shall be seized unless the seizing officer advises the person of the basis for believing the property is subject to seizure. Prior to seizing any property, an officer must orally report the intended seizure on the mechanical recordings.
2. Audio and video recording requirements: Any seizure shall be mechanically recorded, as required by Section III.B.5.
3. Any seizure must also be documented in accordance with Texas Code of Criminal Procedure Article 2.133 and this Consent Decree. If a safety issue prevents an officer from reciting the basis for a seizure, the officer shall promptly, and as soon as reasonably possible, provide a detailed written narrative description of the search which resulted in the seizure, the safety concern that prevented an oral recitation of why the officer thought that seizure was legal, and a description of the property seized.
4. Before an officer seizes any property during a traffic stop, the officer must provide written notice to the person subject to seizure of his or her rights and the procedures for return of the seized property. The written notice shall be in both English and Spanish and substantially similar to the model

provided in Appendix F to this Consent Decree.

5. Documentation required: Any Defendant(s) seizing property or in control of seized property shall keep and maintain full and complete records of any property seized, including the officer(s) who seized the property; the name of the person from whom the property was seized; a description of the property seized, including the exact kinds, quantities, and forms of the property; if the property is deposited in an interest-bearing account, the location of the account and the amount of interest; the judicial order or statute allowing the disposal of the property; to whom the property was delivered; and the state and manner of the destruction or disposition of the property, if any.
6. Provide inventory: For all traffic stops that result in the seizure of any property, the officer must record the exact location from which the assets were obtained; a description of the property, including the exact kinds, quantities, and forms of the property. Upon the seizure of property, the officer shall supply the person with an inventory of all property seized.
7. Safekeeping: Safe storage of all seized property shall be governed by Texas Code of Criminal Procedure Article 59.
8. Return of Property: If a determination is made that seizure is improper, the Defendant(s) in possession of the property shall return to a person all property seized within thirty business days.

G. Provisions for arrests incident to traffic stops

1. Back-up: Before any arrest incident to a traffic stop, to the extent possible, the officer shall orally report the intent to arrest and request

back-up, if back-up is available, on the mechanical recordings.

2. Audio and video recording requirements: To the extent reasonably possible, any arrest resulting from a traffic stop shall be mechanically recorded as required by Section III.B.5.
3. Documentation required, including profiling information: For any arrest resulting from a traffic stop, the officer must record all information as required by Texas Code of Criminal Procedure Article 2.133 and this Consent Decree. All records of arrests shall be preserved unedited and in their native format, or in some other form that can be readily authenticated as valid and unaltered, until this case is dismissed.
4. *Miranda* rights: If *Miranda* rights are required in a specific situation by federal law, the recitation of his or her *Miranda* rights shall be mechanically recorded as required by Section III.B.5.

H. Provisions for forfeitures incident to traffic stops:

1. A sworn statement shall be made by the seizing officer as required by Texas Code of Criminal Procedure Article 59.03, including stating with particularity which provisions of the Penal Code are violated.
2. No person with an interest in any asset subject to a forfeiture proceeding can be requested to waive formal service of the forfeiture action or compromise his or her interest in such an asset until after a response to formal service is due, unless the person is being represented by counsel regarding the matter.
3. In addition to the requirements of CCP Art. 59.03(d), an officer shall not induce or accept a person's waiver, in any form, of interest in seized

property unless the person is represented by counsel in the matter or until the person has had a meaningful opportunity to seek counsel and more than thirty (30) days have passed after the due date for a response to the properly served notice of forfeiture.

4. No unrepresented defendant may sign an agreed judgment in any asset forfeiture case until at least thirty days after service.
5. No unrepresented defendant may waive service or any interest in any asset forfeiture case in exchange for an agreement not to prosecute a criminal matter unless represented by counsel or the waiver occurs in the presence of a judicial officer.

I. Provisions for use of forfeited property seized incident to a traffic stop:

1. The Defendants will strictly abide by Texas Code of Criminal Procedure Article 59.06.
2. Defendant(s) in receipt of asset forfeiture revenue incident to a traffic stop agrees to track such revenue and donations.
3. The Shelby County Auditor shall confirm Shelby County's and its District Attorney's compliance with Texas Code of Criminal Procedure Article 59.06. Before expenditure of any forfeiture revenue incident to traffic stops, the Auditor shall confirm whether such expenditure is compliant with Texas Code of Criminal Procedure 59.06. If the Auditor determines that an expenditure is not compliant with the Texas Code of Criminal Procedure, the Auditor shall notify the Shelby County Commissioner's Court and the Monitor.

4. The Tenaha City Council, before the expenditure of any forfeiture revenue incident to traffic stops, shall confirm compliance of such expenditure with Texas Code of Criminal Procedure 59.06.
5. All asset forfeiture revenue incident to traffic stops, including any such revenue presently existing in any Defendants' asset forfeiture account, shall be (1) donated to non-profit organizations that provide mental health, drug, or rehabilitations services, or services for victims or witnesses of criminal offenses, in accordance with Texas Code of Criminal Procedure Article 59.06; or (2) used for the audio and video equipment necessary to comply with this Consent Decree and/or to pay the costs of law enforcement training to meet the educational requirements of this Consent Decree. Defendants and/or Plaintiffs' Counsel may suggest recipient organizations for donations under this provision. The Monitor shall approve each recipient organization before any donations are made.

[Defendant City of Tenaha's Proposed Language]

5. All asset forfeiture revenue incident to traffic stops shall be spent in accordance with Texas Code of Criminal Procedure Article 59.06, with such expenditures being subject to the approval of the Monitor.

- J. Training: Defendants' officers shall undergo 4 hours of agreed upon/appropriate training within ninety (90) days of the entry of this Consent Decree and 4 hours of training per calendar year. The training shall cover compliance with racial profiling laws, search and seizure law, and provisions set forth in this Consent Decree.

K. Internal review procedures: Within sixty (60) days of the entry of this Consent Decree, each Defendant shall establish and enforce policies and procedures governing quarterly supervisory review of traffic stops including (1) a review of all records made in accordance with Texas Code of Criminal Procedure Article 2.134; (2) a review of all written and mechanical records of stops involving searches, seizures, or arrests to determine whether they state legal grounds for a stop and actions incident to a stop; (3) review of relevant data to determine whether there are impermissible racial disparities in stops; and (4) use of canine forms and data, if any, and other relevant data or documentation. These reviews and audits shall be made available to the Monitor, who shall provide copies of such reviews and audits to the Plaintiffs' attorneys. The purpose of these procedures shall be to ensure compliance with the terms of this Consent Decree and all other pertinent constitutional and state legal standards.

IV. Monitoring and Compliance

- A. Monitor: John Malcolm Bales was appointed Monitor pursuant to this Court's order of November 7, 2018. (Doc 350)
- B. Defendants' duty of disclosure: During the term of the Additional Duration of Consent Decree, each Defendant shall quarterly make available to the Monitor all written documentation required by Texas Code of Criminal Procedure Articles 2.133, 2.134, 59.03, and 59.06, and this Consent Decree. Each Defendant also shall quarterly make available to the Monitor all unedited audio, video, and written records of any traffic stops as requested by the Monitor. Each Defendant shall provide the Monitor with any other relevant and necessary information, data analysis, and documents within thirty days of receiving a written request from the

Monitor for the same.

- C. Monitor's duties: The Monitor shall, at a minimum, review a random sample of ten percent of all stops in a given month, or ten stops, whichever is greater, unless there are fewer than ten stops in which case all stops will be reviewed. The Monitor shall review all searches and seizures that result from traffic stops in a given month to assess each Defendant's compliance with this Consent Decree and the Fourteenth Amendment; these reviews will be credited toward the ten percent, or ten stop, minimum review requirement. The Monitor may review the records generated in compliance with Texas Code of Criminal Procedure Articles 2.133, 2.134, 59.03, and 59.06, and this Consent Decree. The Monitor may conduct an independent analysis and review of vehicular stops resulting in searches, seizures or arrests as a basis for the Monitor's Report and Recommendations. The Monitor shall provide a quarterly Report and Recommendation to the Court during the term of this Consent Decree. The Monitor shall have the authority to recommend to the parties and to the Court practices, policies and other measures that are appropriate or necessary to ensure that each Defendant's stop, search, and seizure practices and policies are in compliance with this Consent Decree, the Fourteenth Amendment, and Articles 2 and 59 of the Texas Code of Criminal Procedure. The Monitor shall bring to the attention of the Court any policies, practices, and other measures necessary for each Defendant's compliance with this Consent Decree only after the Monitor first brings such policies, practices, and other measures to the attention of each Defendant pursuant to Section IV.D of this Consent Decree. The Monitor shall review any Complaints (as defined by Section 614.021 of the Texas Code of Criminal Procedure) or reports of non-

compliance, investigate the same, and report the Monitor's findings of non-compliance, if any, to the Court.

D. Filing of and Responses to Monitor's reports: The Monitor will circulate preliminary drafts of each Quarterly Report and Recommendations among the parties as soon as practical and not later than 21 days after the conclusion of the period covered by the report. The parties shall then have ten (10) days, to review and confer regarding any aspect of the draft Report and Recommendations, and to provide comments regarding same to the Monitor. Within seven (7) days after the deadline for any comments from the parties the Monitor will consider any comments, confer with the pertinent party or parties as appropriate, and file his final draft of the Report and Recommendations. If there are any extensions or delays in these deadlines the reasons therefore will be included in the report submitted to the Court. Following the Monitor's submission of each final draft of a quarterly Report and Recommendation to the Court, the parties shall have an additional thirty (30) days to provide comments, including formal objections, if any, to the Court on that Report and Recommendation.

E. Benchmarks: In determining whether the Defendants are in compliance with constitutional standards with respect to stop, search, and seizure policies and practices, the Monitor and the Court may consider among other factors, (1) the number and nature of stops, searches, and seizures that do not comply with constitutional standards under the Fourteenth Amendment; (2) all information regarding the reasons provided for stops, searches, and seizures, the resultant hit rates (i.e., the rate at which stops, searches, and seizures result in the identification of contraband) and arrest data; and (3) racial disparities in stops, searches, and

seizures. Non-compliance under the Fourteenth Amendment may be found where the evidence proves that there are substantial racial disparities in stops, searches, and/or seizures that are not explained by non-racial factors for such disparities, including but not limited to crime rates, suspect-descriptions that have been relied on for stops, police deployment patterns, racial percentages of the underlying population or other non-racial factors.

V. Fees and Costs

- A. The Defendants shall be responsible for reasonable costs and fees of the Monitor. Each Defendant shall be responsible for the costs attributable to that Defendant. The Monitor will not bill twice for the same work.
- B. The Defendants shall pay counsel fees and costs to the Plaintiffs' attorneys as previously agreed to by the parties.

VI. Miscellaneous

- A. The parties jointly agree to defend the certification of this class and this Consent Decree against collateral attack in this case and in any appeal taken from this case. The parties further jointly agree that the certification of this class in this specific case is not admissible for any purpose in any other litigation.
- B. All parties agree to exercise their best efforts and to take all reasonable steps necessary to effectuate the Consent Decree.
- C. **DEFENDANTS' PROPOSED LANGUAGE: This Consent Decree shall remain in effect for twelve (12) months from the date of entry of the Order entering said Decree; however, upon motion of a Party or request of the Monitor, the Court may extend or shorten the twelve-month period. In connection therewith, the Court shall conduct a status**

conference on _____ to address the status of this case and the Monitor's reports.

PLAINTIFFS' PROPOSED LANGUAGE: The term of the additional duration of the Consent Decree shall be not less than two years from the date of entry of the Court's entry of this agreement. However, upon motion of a party the Court may extend or shorten the two year term. Also within 30 days after the filing of the fourth Quarterly Report and Recommendation required during the additional term of the duration of this Consent Decree, the parties shall file a joint status report, and/or motion for status conference with the Court. The purpose of the report or conference, will be to advise the Court regarding perceived compliance, or problems with compliance. This provision does not prevent the parties or Monitor from otherwise reporting any perceived problems to the Court, if appropriate.

- D. Reports and recommendations of the Monitor and any Orders of the Court shall be filed of public record with the Court. All filings will redact personal information of any law enforcement officers and any persons subject to stops, searches, and seizures in this proceeding and the parties agree to keep information regarding the identities of the officers or persons stopped, searched, or subject to seizures in this proceeding confidential, unless the Court orders otherwise or unless otherwise required by the Texas Open Meetings and Records Act or the Federal Freedom of Information Act.

- E. This Consent Decree may not be introduced as evidence for any purpose in any other proceeding other than the enforcement of the Consent Decree.
- F. The defendants originally sued in their individual capacities—namely Barry Washington, Lynda K. Russell, Danny Green, and Randy Whatley—shall each provide a copy of the original Consent Decree to any and all future employers for whom they may carry out law enforcement duties during the term of this Consent Decree.
- G. Any notice, request, instruction, or other document to be given under this Consent Decree by any Party or by the Monitor to the Plaintiffs shall be in writing and delivered personally or sent registered or certified mail, postage prepaid, or email to the Parties as follows:

To: Class Counsel and Plaintiffs or class members:

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Stephen Shires
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H. ¹To further serve the purposes of this Decree, the Shelby County Commissioner's Court has entered into an interlocal agreement with Shelby County Precinct Constables Zack Warr (Pct. 1), Shad Sparks (Pct. 2), Billy Hearnberger (Pct. 3) and Stanley Burgay (Pct. 5), and their offices. The Plaintiffs have not made any allegations of racial profiling or other allegations of improper conduct against these non-parties or any of their employees. Section VI.H is the only section of this Consent Decree that is applicable to the aforementioned non-parties or any of their employees. In the interest of resolving this litigation, saving the Shelby County Tax Payers additional costs and fees, and instilling confidence in law enforcement among the general public, these elected officials have agreed to enter into the interlocal agreement. The Parties to this litigation thank these public officials for their cooperation. The interlocal agreement will provide that these

¹ The Shelby County Defendants dispute the inclusion of the entire provision regarding an interlocal agreement, but they and the Plaintiffs anticipate approaching the Court to explore a resolution of this dispute.

elected officials and their offices will:

1. Adopt an Impartial Policing Policy that includes a written Consent to Search form;
2. Use mechanical recording equipment for traffic stops and maintain the recordings of such stops for four years;
3. Comply with Art. 2.133 of the Texas Code of Criminal Procedure and Chapter 59 of the Texas Code of Criminal Procedure;
4. Affirmatively state that they are not presently utilizing a canine for vehicle searches and provide the Shelby County Commissioner's Court with 90 days' notice if they intend to start using such a canine;
5. Attend training furnished by Shelby County on search and seizure and forfeitures that the County has agreed to furnish pursuant to Section III. J of this Decree;
6. Allow the Monitor appointed under this Decree to review the documents and mechanical recordings of all traffic stops.

Dated: December 13, 2018

**Counsel for Plaintiffs
and Plaintiffs' Class**

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Appendix A

Policy for Addressing Racially Biased Policing
and the Perceptions Thereof¹

Purpose: This policy is intended to reaffirm this department's commitment to unbiased policing, to clarify the circumstances in which officers can consider race/ethnicity when making law enforcement decisions, and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.

Policy:

A) Policing Impartially

1. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrests, nonconsensual searches, and property seizures.

Except as provided below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

2. Except as provided above, race/ethnicity shall not be motivating factors in making law enforcement decisions.

B) Preventing Perceptions of Biased Policing

In an effort to prevent inappropriate perceptions of biased law enforcement, each officer shall do the following when conducting pedestrian and vehicle stops:

- Be courteous and professional.
- Introduce him- or herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer

¹ Source: Lorie Fridell, et al., Police Executive Research Forum, Racially Biased Policing: A

Principled Response 51-53 (2001).

or public safety. In vehicle stops, the officer shall provide this information before asking the driver for his or her license and registration.

- Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the citizen understands the purpose of reasonable delays.
- Answer any questions the citizen may have, including explaining options for traffic citation disposition, if relevant.
- Provide his or her name and badge number when requested, in writing or on a business card.
- Apologize and/or explain if he or she determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).

Compliance:

Violations of this policy shall result in disciplinary action as set forth in the department's rules and regulations.

Supervision and Accountability:

Supervisors shall ensure that all personnel in their command are familiar with the content of this policy and are operating in compliance with it.

Appendix B

NOTICE OF USE OF A POLICE DOG

A police officer has determined that there is reason to conduct a “canine sniff,” during which a dog will be permitted to sniff the perimeter of your person, your vehicle, and/or your property to detect contraband.

A police officer may only initiate this canine sniff if he or she has reasonable suspicion to believe that a crime has been committed or is in the process of being committed.

AVISO SOBRE EL USO DE PERROS POLICÍA

Un oficial de policía ha determinado que hay razón para realizar un “olfateo por canino adiestrado,” durante el cual se le permitirá a un perro oler alrededor del perímetro de su persona, su vehículo, y/o sus bienes para detectar contrabando.

Un oficial de policía sólo puede iniciar este “olfateo por canino adiestrado” si él o ella tiene una sospecha razonable de que un delito se ha cometido o está en proceso de cometerse.

Appendix C

SWGDOG SC2 - GENERAL GUIDELINES

Posted for public comment 12/16/06 – 2/16/06. Approved by the membership 4/2/2006.
1st - Revision - Posted for Public Comment 6/24/09 – 8/22/09. Approved by the membership
9/15/2009.

Statement of Purpose: To establish consensus-based best practice general guidelines for training, certification, and documentation pertaining to all canine disciplines. Discipline specific guidelines are found within the corresponding subcommittee documents.

1. INITIAL TRAINING

- 1.1. The handler training shall be conducted by a competent trainer from an entity that utilizes a structured curriculum with specific training and learning objectives.
- 1.2. The canine training shall be conducted by a competent canine trainer from an entity that utilizes a structured curriculum with specific training and learning objectives.
- 1.3. Initial training shall include sufficient obedience training to ensure the canine will operate effectively based on mission requirements.
- 1.4. The canine shall be trained to perform an effective and controlled search.
- 1.5. The initial training of the canine shall include training of a determined specific final response (active or passive alert).
- 1.6. Initial training shall include exposing the canine team to a variety of locations, expected situations and searches.
- 1.7. The training shall be structured to meet the typical mission requirements of the canine team's department/organization.
- 1.8. The canine team's training shall be continued to achieve a level of operational proficiency until certification evaluation.

2. CANINE TEAM ASSESSMENTS

- 2.1. Assessments are part of certification, maintenance training and proficiency testing.
- 2.2. Each assessment is the evaluation of a search.
- 2.3. The canine team shall be assessed in the following ways:
 - 2.3.1. Odor recognition assessment.
 - 2.3.1.1. The handler shall be advised of the parameters of the search.

- 2.3.1.2. The handler may know the number of target objects, but not the placement.
- 2.3.1.3. The evaluating official shall know the desired outcome of the search.
- 2. 3.2. Comprehensive assessment (single-blind assessment).
 - 2.3.2.1. The handler shall be advised of the parameters of the search, yet shall not know the desired outcome.
 - 2.3.2.2. The handler shall not know the number or placement of the target objects.
 - 2.3.2.3. The evaluating official shall know the desired outcome of the search.
 - 2.3.2.4. The assessments shall include a blank search.
- 2. 3.3. Double-blind assessment.
 - 2.3.3.1. The handler shall be advised of the parameters of the search.
 - 2.3.3.2. No participant or observer present at the assessment location(s) shall be aware of the desired outcome of the search.
 - 2.3.3.3. The assessments may include a blank search.
- 2.4. Each assessment will address the following areas:
 - 2. 4.1. Demonstration of the canine's ability to perform a systematic search.
 - 2. 4.2. Demonstration of the handler's control of the canine during the execution of a systematic search.
 - 2. 4.3. Demonstration of the handler's ability to accurately interpret the canine's changes in behaviors associated with odor detection and identification.
 - 2. 4.4. Demonstration of the handler's ability to determine whether or not the canine has made a final response.
 - 2. 4.5. In a double blind assessment it may not be possible to include all of the handler and canine assessment areas listed above.

3. CANINE TEAM CERTIFICATION

- 3.1. Certification for the named canine team shall be valid for one year.
 - 3.1.1. Certification does not relieve the canine team from regular maintenance training, periodic proficiency assessments, and following other recommended SWGDOG guidelines.
 - 3.1.2. The certifying official(s) shall not be routinely involved in the day to day training of the canine team being evaluated.
 - 3.1.3. For successful certification, the canine team shall achieve at least a 90 % positive alert rate, unless otherwise dictated by the specific discipline, combined with a false alert rate as identified by the sub-disciplines (distinct objects search versus continuous area search). Positive and false alerts are defined and calculated as follows:
 - 3.1.3.1. A positive alert is defined as the trained detection alert in the presence of the target odor. The rate is calculated as the number of positive alerts divided by the number of available targets. For example, if the certification has ten target odors and the canine team identifies nine odors, it will have achieved a 90 % positive alert rate.

- 3.1.3.2. A false alert is defined as an alert in the absence of the target odor. This is determined in one of 2 ways and shall be defined before the evaluation, depending upon the nature of the detection task involved in the certification (distinct objects search versus continuous area search):
 - 3.1.3.2.1. In sub-disciplines in which certification involves searching a defined number of distinct objects (i.e., pieces of luggage, odor recognition cans, scent boxes, parcels, persons, vehicles) the false alert rate is calculated as the number of false alerts divided by the number of non-target objects, not to exceed 10 %. For example, if the certification test involves searching a set of 24 pieces of luggage in which 4 pieces contain targets and 20 are non-target objects, and the canine team exhibits one false alert on a non-target piece of luggage, then the team's false alert rate is calculated as 1/20, or 5 %.
 - 3.1.3.2.2. In sub-disciplines in which certification primarily involves searching continuous areas (i.e., warehouses, vehicle lots, aircraft, buildings) the number of distinct search objects within the continuous search area is immeasurable. The number of false alerts should not exceed one per continuous searchable area as defined by the specific discipline (refer to SC8 and SC9 documents).
- 3.1.4. Handler errors, when excessive may result in failure of the team.
- 3.1.5. A mission oriented test environment shall be used.
- 3.2. Certification shall consist of a number of assessments that together form the full test.
 - 3.2.1. Each assessment is the evaluation of a search.
 - 3.2.2. Aids and/or targets used in the day to day training activities of the team being certified should not be used in the certification process.
 - 3.2.3. The certification shall be comprised of a comprehensive assessment together with either an odor recognition assessment or a double-blind assessment, or both.
- 3.3. A canine team that fails the certification process shall complete a corrective action plan before making another attempt to certify.

4. MAINTENANCE TRAINING

- 4.1. The canine team shall conduct regular objective-oriented training sufficient to maintain and enhance operational proficiency. Maintenance training shall include the following:
 - 4.1.1. Correcting identified deficiencies or operational concerns.
 - 4.1.2. A variety of search locations, location sizes and environmental conditions.
 - 4.1.3. Varied duration of search times.
 - 4.1.4. Varied times of day/night.
 - 4.1.5. A variety of blank searches.
 - 4.1.6. A variety of distractions in the search area.
 - 4.1.7. A variety of set times.
 - 4.1.8. A variety of target odors, amounts, number of targets and different sources of targets where applicable.

- 4.1.9. A variety of methods of concealment.
- 4.2. Training conducted solely by the handler to maintain the canine's proficiency is acceptable, but should be periodically combined with supervised training.
 - 4.2.1. Supervised training, by a qualified trainer/instructor, is recommended in order to monitor and improve performance, identify and correct training deficiencies, and perform proficiency assessments.
- 4.3. A canine team shall complete a minimum of sixteen (16) hours of training per month to maintain and improve the proficiency level of the team.
- 4.4. The canine team shall undergo periodic proficiency assessments as outlined in section 2 of the Canine Team Assessments. These assessments should include a variety of odor recognition assessments, comprehensive assessments and/or double-blind assessments.

5. RECORD KEEPING AND DOCUMENT MANAGEMENT

- 5.1. The handler/department/organization shall document training, certification, proficiency assessments and discipline-related deployment data.
 - 5.1.1. Training and proficiency assessment records may be combined or maintained separately.
 - 5.1.2. Discipline-related deployment records shall be maintained separately from training, certification and proficiency assessment records.
 - 5.1.3. Training and discipline-related records should be standardized within the department/organization.
- 5.2. Training records may include, but are not limited to, the following data:
 - 5.2.1. Name of handler and canine.
 - 5.2.2. Name(s) of individual(s) conducting/assisting training.
 - 5.2.3. Time and date training took place.
 - 5.2.4. Location and environmental conditions.
 - 5.2.5. Training design (non-blind, single-blind or double-blind).
 - 5.2.6. Description and number of target(s).
 - 5.2.7. Location of target(s).
 - 5.2.8. Set time.
 - 5.2.9. Size of search area.
 - 5.2.10. Length of session.
 - 5.2.11. Search results.
 - 5.2.12. Deficiencies and corrective measures implemented.
 - 5.2.13. Other information required by department/organization.
- 5.3. Certification records shall be maintained by the certifying authority and the handler, and include the following information:
 - 5.3.1. Name of canine and handler.
 - 5.3.2. Date team certified.

- 5.3.3. Certification authority, i.e., agency, professional organization, and/or individual(s).
 - 5.3.4. The standard or guideline under which the canine team is certified.
 - 5.3.5. Name of individual(s) awarding certification.
 - 5.3.6. Search area types included in certification assessment.
 - 5.3.7. Type and amount of materials included in certification assessment.
 - 5.3.8. Location of certification.
 - 5.3.9. Set time.
- 5.4. Proficiency assessment records maintained by the handler/department/organization may include, but are not limited to, the following data:
- 5.4.1. Name of handler and canine.
 - 5.4.2. Name(s) of individual(s) conducting assessment.
 - 5.4.3. Time and date assessment took place.
 - 5.4.4. Location and environmental conditions.
 - 5.4.5. Assessment design (single-blind or double-blind).
 - 5.4.6. Search area types included in the proficiency assessment.
 - 5.4.7. Type(s) and amount(s) of material included in the proficiency assessment.
 - 5.4.8. Set time.
 - 5.4.9. Size of search area.
 - 5.4.10. Proficiency assessment results.
 - 5.4.11. Other information required by department/organization.
- 5.5. Supervisory review of all records is recommended.
- 5.6. Digital format is recommended to facilitate compiling and analyzing data.
- 5.7. Records may be discoverable in court proceedings and may become evidence of the canine team's reliability. Record retention policy shall be determined by department/organization guidelines.
- 5.8. Training records are necessary to illustrate the type and amount of training that the team has experienced before and after certification.
- 5.9. Confirmed operational outcomes can be used as a factor in determining capability.
- 5.10. Unconfirmed operational outcomes shall not be used as a factor in determining capability in that they do not correctly evaluate a canine team's proficiency, i.e., residual odor can be present or concealment may preclude discovery.
- 5.11. Training Aid Records
- 5.11.1. Training aids shall be clearly labeled in a manner to support accountability.
 - 5.11.2. Appropriate records shall be maintained by the handler/department/organization in accordance with federal/state/local requirements.
- 5.12. Veterinary Records

- 5.12.1. Veterinary records shall be maintained in a manner such as they are accessible to the handler/department/organization.
- 5.12.2. Vaccinations required by state or local law should be documented in the veterinary record of the canine.

SWGDOG SC8– SUBSTANCE DETECTOR DOGS

Narcotics Section

Posted for Public Comment 5/10/07 – 7/8/07. Approved by the membership 8/15/2007.

Statement of purpose: To provide recommended guidelines for training, certification and documentation pertaining to **narcotic** detector canines.

1. Initial Training

- 1.1. Training shall be conducted by a competent, qualified narcotic detector canine trainer from an entity which utilizes a structured curriculum with specific training and learning objectives.
- 1.2. The narcotic detection training course shall include training the canine to detect marijuana, cocaine, heroin, methamphetamine and other substances as required to meet the mission, regional and operational deployment needs.
- 1.3. Training shall include varying quantities (typically varying by factors of ten) of the substances listed in 1.2.
- 1.4. Training shall include exposing the canine to a variety of different types of searches and locations.
- 1.5. The initial training should continue until the narcotic detection canine team is certified or deemed not certifiable.
- 1.6. Initial training shall represent all conditions that could be encountered during a certification process.

2. Canine/Handler Team Certification

- 2.1. Parameters of test
 - 2.1.1. The narcotic detector canine shall be tested on the substance odors for which it is trained.
 - 2.1.2. All odors for which the dog will be certified must be tested.
 - 2.1.3. The test shall be designed to resemble normal operational searches by using vehicles, buildings, parcels, luggage, etc. to conceal substances.
 - 2.1.4. Certification testing shall be conducted with no less than 5 grams of the actual substance to be detected.
 - 2.1.5. The test shall include a variety of searches designed to evaluate the canine's ability to recognize the odor, respond to the odor and the handler's ability to recognize this response.
 - 2.1.6. The test shall include scenarios resembling searches within the normal operational environment and include at least 3 different searches (see categories below) designed to evaluate the canine's ability to recognize

the odor, respond to the odor and the handler's ability to recognize this response. Not all odors will necessarily be in each type of search and some search areas shall contain no odors (blanks). Types of searches and suggested maximum search times are listed below:

- 2.1.6.1. Parcels searches with 2-6 articles per odor should take 1 minute to search 2-6 parcels.
 - 2.1.6.2. Baggage searches with 2-6 articles per odor should take 1 minute to search 2-6 bags.
 - 2.1.6.3. Person/crowd searches: as permitted by state and federal law, with 2 persons per odor should take 1 minute per person.
 - 2.1.6.4. Building/room searches (the room may contain zero to three aids depending upon the size and environmental conditions. Rooms that are 18.6 – 111.5 m² (200-1200 sq. ft.) with furniture should take 1.5 minute per 9.3 m²/ 28 m³ (100 sq.ft./1000 cu. ft.).
 - 2.1.6.5. Motor vehicle searches including interiors and exteriors (3-6 vehicles per search using passenger cars and trucks, 3 minutes per vehicle).
 - 2.1.6.6. Open area/perimeter searches of 93 – 930 m² (1,000-10,000 sq. ft.) per search, should take 1-3 minutes per 93 m² (1000 sq. ft.).
 - 2.1.7. The dog/handler team must demonstrate the ability to detect all trained odors.
 - 2.1.8. For successful certification, the canine/handler team shall achieve at least a 90% confirmed alert rate for certification, and a false alert rate not to exceed 10%, as defined and calculated in SC 2.
 - 2.1.9. Excessive handler errors, as defined by the certifying authority, shall result in failure of the team.
 - 2.1.10. Disqualification due to time should be left to the discretion of the certifying authority. The test should end if the certifying authority determines that the dog/handler team is no longer working (e.g., Observable behaviors to be added in final annotated version).
- 2.2. Use of distracters
 - 2.2.1. Natural distracters are normally present in the testing area.
 - 2.2.2. Placement of distracters in the certification area is required when no natural distracters are present.
 - 2.2.3. Care must be taken not to place artificial distractions in a manner that causes contamination of the test substance odor.
 - 2.3. Proofing/Verification of certification area should be conducted prior to the actual certification using a certified canine team who is not participating in the certification. This practice is designed to show that the trained odor is present in the target locations and nowhere else, including the blank areas.
 - 2.4. Certification should not be conducted in areas in which narcotics detection canine teams have recently trained or certified.

- 2.5. Certification for narcotic detection dogs should be comprised of a comprehensive assessment, which includes elements of odor recognition as outlined in SWGDOG General Guidelines.
 - 2.5.1. Odor recognition assessment
 - 2.5.1.1. The handler shall be advised of the parameters of the search.
 - 2.5.1.2. The handler shall know the number of target objects, but not the placement.
 - 2.5.1.3. The evaluating official shall know the desired outcome of the search.
 - 2.5.2. Comprehensive assessment
 - 2.5.2.1. The handler shall be advised of the parameters of the search, yet shall not know the desired outcome.
 - 2.5.2.2. The handler shall not know the number or placement of the target objects.
 - 2.5.2.3. The evaluating official shall know the desired outcome of the search.
 - 2.5.2.4. The assessments shall include a blank search.
 - 2.5.3. Double-blind assessment
 - 2.5.3.1. No participant or observer present at the assessment location(s) shall be aware of the parameters of the search.

3. Maintenance Training

- 3.1. The canine team shall conduct regular objective-oriented training sufficient to maintain operational proficiency on all trained odors.
- 3.2. Training is meant to sustain and enhance the performance of the handler, canine and the canine team.
- 3.3. In training, situations are purposely sought where the capabilities of the canine team is challenged within the operational environments for which the team may be deployed.
- 3.4. Teams shall be challenged to improve and enhance their abilities.
- 3.5. Training shall include:
 - 3.5.1. A variety of locations.
 - 3.5.2. A variety of training material amounts (no less than 1 gram).
 - 3.5.3. A variety of heights, depths, containers and distraction odors.
 - 3.5.4. Various types of searches (e.g., vehicles, building, parcels, luggage, blank areas and persons depending on local, state and federal law).
 - 3.5.5. A varied duration of set times.
 - 3.5.6. Varied duration of search times.

- 3.6. The canine team shall spend an average of 4 hours per week in routine training to maintain the proficiency level of the team.
- 3.7. Routine training, conducted by the handler to maintain the dog's proficiency and to reinforce odor recognition, is an acceptable form of training but shall be combined with supervised training on a regular basis. Supervised Training is conducted by a qualified trainer other than the handler, in order to improve performance, identify and correct training deficiencies. Performing proficiency assessments is considered a best practice.

4. Training Materials

- 4.1. The training materials shall be packaged in a manner safe for the canine throughout training.
- 4.2. The training materials shall be maintained in a manner to avoid loss or destruction.
- 4.3. Materials shall be stored in a manner that prevents odor contamination or physical contamination, i.e., the materials shall be stored in separate labeled containers.
- 4.4. Training materials shall be obtained from a reliable and documented source such as the DEA lab.
- 4.5. Required security procedures pertaining to the training materials shall be followed according to local, state and federal laws.
- 4.6. Required substance registrations shall be current and accurate records maintained.
- 4.7. Training materials shall be replaced every 1-3 years, sooner if contaminated or compromised.
- 4.8. Disposal/destruction of the training aids shall follow local, state and federal guidelines.

5. Documentation

- 5.1. The handler, department and organization shall maintain training records, certification records, proficiency assessments and seizure records.
- 5.2. Deployment/utilization records may be kept in accordance with agency policy.

- 5.3. Records shall contain discipline-related specifics.
- 5.4. Records shall be standardized within the department, agency and/or organization.
- 5.5. Documents shall be retained in accordance with state and federal and unit guidelines. Records shall contain but are not limited to the following:
 - 5.5.1. Training records kept by the handler and/or the department shall contain the following information:
 - 5.5.1.1. Date training held.
 - 5.5.1.2. Name of individual conducting training.
 - 5.5.1.3. Type and amount of training aid used.
 - 5.5.1.4. Length of training session
 - 5.5.1.5. Location of training.
 - 5.5.1.6. Type of training (e.g., vehicle, luggage, building, open area).
 - 5.5.1.7. Number of searches and results.
 - 5.5.1.8. Name of canine and handler.
 - 5.5.2. Seizure records kept by the handler shall include:
 - 5.5.2.1. Date of seizure.
 - 5.5.2.2. Location of seizure.
 - 5.5.2.3. Length of search
 - 5.5.2.4. Description of activity.
 - 5.5.2.5. Results of search
 - 5.5.2.6. Name of canine and handler.
 - 5.5.2.7. Non-productive responses (i.e., dog alerts with no detectable or seizable amounts of narcotics).
 - 5.5.2.8. Seizure substance type.
 - 5.5.2.8.1. Narcotics.
 - 5.5.2.8.2. Currency.
 - 5.5.2.8.3. Currency non-seizures.
 - 5.5.2.9. Other information as required by the organization and/or agency.
 - 5.5.3. Certification records kept by the certifying authority and handler shall include the following information.
 - 5.5.3.1. Date team was certified.
 - 5.5.3.2. Certification authority i.e., agency or professional organization.
 - 5.5.3.3. Name of certified individual.
 - 5.5.3.4. Type of materials.
 - 5.5.3.5. Location of certification.
 - 5.5.3.6. Name of canine and handler.
- 5.6. Deployment/utilization/seizure information shall be kept separate from training and testing information.
- 5.7. Supervisory review is recommended.

5.8. Digital format is recommended to facilitate compiling and analyzing data.

6. Use of records/documentation

- 6.1. Reliability of the canine team shall be based upon the results of certification and proficiency assessments.
- 6.2. Training records do not necessarily reflect reliability of the team.
- 6.3. Training records are necessary to illustrate the type and amount of training that the team has experienced before and after certification.
- 6.4. Confirmed operational outcomes may be used to determine capability.
- 6.5. Unconfirmed operational outcomes shall not be used to determine capability in that they do not correctly evaluate a canine team's proficiency.

Appendix D

NOTICE OF RIGHTS – CONSENT SEARCH

If an officer asks for your permission to conduct a search during a traffic stop:

- **YOU HAVE THE RIGHT TO REFUSE A SEARCH.**
- If you allow an officer to search your vehicle, your property, or yourself, you may withdraw your consent to the search at any time.
- If you give your consent today, it cannot be used to conduct a search at a later time.
- If you agree to a search of your vehicle and/or property, the [insert agency name] is required to pay you for the costs to repair any damage caused by the search if the search does not result in the seizure of contraband. In order to receive compensation, you must provide written notice of any damage to the [insert agency name] at [insert address to send notice].

I, _____, have received notice of my rights and

___ I CONSENT TO A SEARCH.

Driver's Signature: _____ Date: _____

OR

___ I DO NOT CONSENT TO A SEARCH.

Driver's Signature: _____ Date: _____

Driver's Name: _____

Driver's License No.: _____

Vehicle License No.: _____

Officer's Signature: _____ Date: _____

Certifying that you orally explained and obtained consent in addition to the submission of this form.

Officer's Name (printed): _____ ID# _____

Agency of Affiliation: _____

Appendix D
Spanish Translation

AVISO DE DERECHOS – CONSENTIMIENTO PARA UN REGISTRO

Si un oficial le pide permiso para realizar un registro durante una parada de tráfico:

- **USTED TIENE EL DERECHO DE NEGARSE A SER REGISTRADO.**
- Si usted deja que un oficial revise su vehículo, sus bienes, o su persona, puede revocar su consentimiento en cualquier momento.
- Si da consentimiento hoy, éste no se puede usar para realizar un registro en otro momento.
- Si accede a un registro de su vehículo y/o sus bienes, [inserte el nombre de la agencia] está obligada a pagar todos los costos necesarios para reparar cualquier tipo de daño causado por el registro si este no resulta en la incautación de contrabando. Para solicitar esta indemnización, hay que redactar un informe escrito detallando cualquier tipo de daño y entregarlo al [inserte el nombre de la agencia], ubicada en [inserte dirección de la agencia donde hay que enviar el informe].

Yo, _____, he recibido un aviso sobre mis derechos y

_____ **CONSIENTO A SER REGISTRADO.**

Firma del/de la conductor/a: _____ Fecha: _____

O

_____ **NO CONSIENTO A SER REGISTRADO.**

Firma del/de la conductor/a: _____ Fecha: _____

Nombre del/de la conductor/a: _____

Número de licencia de conductor: _____

Número de licencia del vehículo: _____

Firma del oficial: _____ Fecha: _____

Certificando que usted explicó verbalmente y obtuvo consentimiento además de entregar este formulario.

Nombre del oficial (letra de imprenta): _____ # de Cédula _____

Agencia de afiliación: _____

Appendix E

NOTICE OF RIGHTS
FOR PROPERTY DAMAGE INCIDENT TO SEARCH

A police officer has determined that there is reasonable suspicion of criminal activity requiring a search of your vehicle and/or property.

The [insert agency name] is required to pay you for the costs to repair any damage caused by the search if the search does not result in the seizure of contraband.

In order to receive compensation, you must provide written notice of any damage to [insert name of the agency] at [insert appropriate address].

You are entitled to receive reimbursement within 30 days of a determination that the [insert agency name] is liable for damaging your vehicle and/or property.

[Translate to Spanish.]

AVISO SOBRE DERECHOS
A INDEMNIFICACIÓN POR DAÑOS A BIENES CAUSADOS DURANTE
UN REGISTRO

Un oficial de policía ha determinado que existe una sospecha razonable de actividad criminal, la cual requiere un registro de su vehículo y/o sus bienes.

La agencia [insertar el nombre de la agencia] está obligada a pagar los costos necesarios para reparar cualquier daño causado por el registro si el registro no resulta en la incautación de contrabando.

Para recibir esta indemnización, usted debe proveer un informe escrito del daño causado a [insertar el nombre de la agencia], ubicada en [insertar dirección correspondiente].

Usted tiene el derecho a recibir esta indemnización dentro de un plazo de 30 días desde el momento que se establezca que [insertar el nombre de la agencia] es responsable de dañar su vehículo y/o sus bienes.

Appendix F

NOTICE OF SEIZURE OF PROPERTY AND POSSIBLE FORFEITURE

This is to serve as official notice that the items of property listed below have been seized from your possession, and may potentially be subject to forfeiture under Texas Code of Criminal Procedure (“TXCCP”) Art. 59.03.

An officer may seize your property ONLY if the officer has reason to believe it has been used in, is intended to be used in, or was gained from the commission of a criminal offense. TXCCP Art. 59.01(2). The officer must explain to you the basis for seizing your property.

- Before seizing your property, an officer must provide ALL the information included in this form for each and every item of property seized (including currency) before you review and sign this notice.
- You are entitled to a formal notice that forfeiture proceedings are being instituted against you within 30 days of the seizure. TXCCP Art. 59.04.
 - An officer cannot ask you to waive formal notice unless you are represented by an attorney.
 - An officer cannot ask you to waive any interest in any asset forfeiture case in exchange for an agreement not to prosecute you for a criminal violation unless a judge is present.
 - An officer cannot accept a voluntary waiver from you (if you are not represented by an attorney) until 30 days have passed after proper service of a notice of forfeiture.
- State law requires that your seized property be stored safely pending a final forfeiture verdict. If it is determined that seizure was improper, you are entitled to have your property returned to you within 30 business days of a decision not to prosecute a forfeiture claim or a forfeiture verdict in your favor, whichever occurs first.

Description of Item (including quantity)	Location of item upon seizure	Basis for seizure	Was the item seized for evidence or for forfeiture?

Name of property owner

Seizing officer’s name and identification #

Date

Seizing officer’s signature

Appendix F
Spanish Translation

AVISO DE INCAUTACIÓN DE BIENES Y SU POSIBLE DECOMISO

Este sirve como aviso oficial de que los bienes detallados abajo han sido incautados de su posesión, y podrían ser sujetos a un decomiso bajo el Código de Procedimiento Criminal de Texas (“TXCCP”) Art. 59.03.

Un oficial puede incautar sus bienes SÓLO si el oficial tiene razón para creer que han sido usados en, están destinados para ser usados en, o fueron adquiridos en la comisión de un delito. TXCCP Art. 59.01(2). El oficial debe explicarle la razón por la cual ha incautado sus bienes.

- Antes de incautar sus bienes, un oficial debe proveer TODA la información contenida en este formulario para cada uno de sus bienes incautados (incluyendo dinero) antes de pedir que usted revise y firme este aviso.
- Usted tiene el derecho a un aviso formal de que un procedimiento de decomiso será aplicado contra usted dentro de un plazo de 30 días del momento de la incautación. TXCCP Art. 59.04.
 - Un oficial no le puede pedir renunciar a su derecho a un aviso formal a menos que usted esté representado legalmente por un/a abogado/a.
 - Un oficial no le puede pedir que renuncie a ningún interés en ningún caso de decomiso de bienes a cambio de un acuerdo de que no será procesado legalmente por una infracción penal a menos que esté presente un/a juez/a.
 - Un oficial no puede recibir una renuncia voluntaria de sus derechos (si usted no está representado por un/a abogado/a) hasta que hayan pasado 30 días después de que haya sido presentado, de manera adecuada, con la notificación de decomiso.
- La ley estatal dicta que sus bienes incautados deben ser guardados de manera segura hasta que se reciba una decisión final sobre su decomiso. Si se decide que la incautación fue ilegal, tiene derecho a que se le devuelvan sus pertenencias dentro de 30 días hábiles desde que se decida no continuar con el procedimiento de decomiso o desde una decisión judicial en favor suyo, lo que suceda primero.

Descripción del artículo (incluyendo la cantidad)	Ubicación del artículo cuando fue incautado	Razón por la incautación	Fue confiscado el artículo como evidencia o para ser decomisado

Nombre del dueño de los bienes

Nombre y numero de identificación del oficial que realizó la incautación

Fecha

Firma del oficial que realizó la incautación

NOTICE TO ALL PLAINTIFF CLASS MEMBERS IN *MORROW, et al v. CITY OF TENAHA, et al.*, NO. 2-08-CV-288-JRG UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, MARSHALL DIVISION, OF PROPOSED SETTLEMENT AGREEMENT ON ADDITIONAL DURATION OF CONSENT DECREE

TO: All class members, to wit, persons who (1) are, or appear to be, members of racial or ethnic minority groups and those in their company, and; (2) were, or will be, traveling in, through, or near Tenaha at any time after November 1, 2006, and; (3) were, or are, subject to being stopped by one or more Defendant for an alleged traffic violation.

You are hereby notified that on December 13, 2018, a Proposed Settlement Agreement on Additional Duration of Consent Decree was filed with the Court, Document 354-1 in this case. The proposed Settlement Agreement seeks to extend the duration of the original Consent Decree that was entered by the Court on August 8, 2013.

On or before 20 days from the posting of this Notice, any plaintiff class member wishing to comment or object to the proposed Settlement Agreement must do so in writing, referencing the name and number of this case as listed above, and filed with the U.S. District Court for the Eastern District of Texas, Room 125, 100 East Houston Street, Marshall, Texas 75670. After that deadline the Court will proceed to consider and act on the proposed Settlement Agreement without further notice to the class.

This notice is intended to comply with an Order of the Court entered on _____, 2018.

Any questions or information about this notice can be requested from Plaintiffs' class counsel.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**JAMES MORROW, ET AL.,
Plaintiffs,**

v.

**CITY OF TENAHA DEPUTY CITY
MARSHALL, ET AL.,
Defendants.**

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Civil Action No. 2:08-cv-288

JUDGE: RODNEY GILSTRAP

ORDER

Pending before the Court is the Joint Motion for Approval of the Settlement Agreement on Additional Duration of Consent Decree and Approval of Notice (Dkt. No. 354). The Court has determined that Notice of the Motion and an opportunity to object to same should be directed to class members and that a reasonable manner for such notice to be given is as follows:

1. Parties are directed to post written Notice at the Center City Hall of Tenaha, Texas.
2. Parties are directed to post written Notice at the Shelby County Courthouse in Center, Texas.
3. Parties are directed to digitally post Notice on the publically available website of the National Association for the Advancement of Colored People (“NAACP”).
4. Parties are directed to digitally post Notice on the publically available website of the American Civil Liberties Union (“ACLU”).

“Notice” as used herein shall consist of a concise statement to all class members that the Joint Motion was filed with the Court on December 13, 2018; that on or before 20

days after such notice, any class member wishing to comment or object to the Motion must do so in writing and filed with the Court; and that after such notice period is complete, the Court will proceed to consider and act on the Motion without further notice to the class. After such notice has been given as directed above, Plaintiffs' counsel shall file a declaration with the Court evidencing that this directive has been complied with and shall attach a copy of the Notice as given.