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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 BLACK LIVES MATTER LOS  
12 ANGELES, *et al.*,

13 Plaintiff,

14 vs.

15 CIY OF LOS ANGELES, *et al.*,  
16 Defendant.  
17  
18  
19  
20

Case No.: CV 20-5027 CBM(ASx)

**AMENDED ORDER RE: RULING  
ON PLAINTIFFS' APPLICATION  
FOR TEMPORARY  
RESTRAINING ORDER [71][75]**

21 The matter before the Court is Defendants' Motion to Dissolve or Clarify  
22 pursuant to Fed. R. Civ. P. 65(b)(4), in the interim, Motion to stay the Temporary  
23 Restraining Order ("TRO"), or in the alternative, Motion to stay TRO pending  
24 emergency appellate relief. (Dkt. 75.) In this case, notice was given and  
25 Defendants had an opportunity to be heard during the April 15, 2021, hearing.  
26 Therefore, Rule 65(b)(4) does not apply. Accordingly, Defendants' Motion is  
27 denied. However, the parties have now met and conferred, and agreed that the  
28 Court's previous order should be modified.

## BACKGROUND

This putative class action concerns the response of the Los Angeles Police Department (“LAPD”) to protests and demonstrations which occurred throughout Los Angeles in the wake of the death of George Floyd. Subsequently, Plaintiffs’ filed a TRO on June 24, 2020, seeking to enjoin LAPD from using projectiles or baton strikes to disperse or control crowds, limit Defendants’ cite and release time frame to 15 minutes, limit detentions to no more than 30 minutes, and require Defendants to adhere to CDC guidelines when keeping protestors held in buses.

Plaintiffs’ filed this second TRO in light of recent protests in Echo Park that occurred on March 25, 2021. Plaintiffs allege LAPD “fired on non-violent protestors with 40 mm and 37 mm weapons.”<sup>1</sup> Two weeks prior, at the Breonna Taylor solidarity protest, Plaintiffs allege that LAPD struck a member of the press in the back and as a result, he was rendered unconsciousness and suffered a concussion. Plaintiffs seek to enjoin the LAPD’s use of 40mm and 37mm less-lethal launchers in public demonstrations except when deployed by officers that are properly trained. Plaintiff also seek to restrict LAPD from aiming the weapons at the upper bodies of demonstrators at close range within five feet.

On April 15, 2021, the Court held a status conference. Subsequent to the status conference, as ordered by the Court, Defendants submitted video evidence showing how to load and use the 40mm less-lethal launcher and a video of officers simulating a “skirmish line” while using the 37mm less-lethal launcher. Defendants also submitted LAPD’s Use of Force Tactics Directive, which includes the Department’s policy and protocols for using the 37mm and 40mm less-lethal launchers. (Dkt. 65.) The Court also considered Plaintiffs’ Supplemental filing, a

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<sup>1</sup> The 37mm Foam Baton Round consists of five foam rubber projectiles that are discharged at once. The 40mm Less-Lethal Launcher has a rifled barrel that uses a single foam projectile. (Exh. 3, p. 73.)

1 declaration of a journalist that who attended the Echo Park demonstration, that  
2 was submitted after the status conference. (Dkt. 68.)

### 3 JURISDICTION

4 The Court has jurisdiction over this action pursuant to 42 U.S.C. § 1983 and  
5 28 U.S.C. § 1343.

### 6 LEGAL STANDARD

7 The standard for issuing a TRO requires the party seeking relief to show (1)  
8 that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable  
9 harm in the absence of injunctive relief, (3) that the balance of equities tips in his  
10 favor, and (4) that injunctive relief is in the public interest. *See Winter v. Nat. Res.*  
11 *Def. Council*, 555 U.S. 7, 20 (2008). Under this standard, “serious questions  
12 going to the merits and a balance of hardships that tips sharply towards the  
13 plaintiff can support the issuance of a preliminary injunction, so long as the  
14 plaintiff also shows that there is a likelihood of irreparable injury and that the  
15 injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d  
16 1127, 1135 (9th Cir. 2011) (internal quotations omitted). Temporary restraining  
17 orders “should be restricted to serving their underlying purpose of preserving the  
18 status quo and preventing irreparable harm just so long as is necessary to hold a  
19 hearing, and no longer.” *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1131  
20 (9th Cir. 2006).

### 21 DISCUSSION

#### 22 A. Request for Judicial Notice

23 Plaintiffs’ request that this Court take judicial notice of three exhibits: 1) An  
24 Independent Examination report of the Los Angeles Police Department 2020  
25 Protest Response, 2) A report prepared by the National Police Foundation, titled  
26 “A Crisis of Trust,” and 3) A report issued by the Los Angeles Police Department  
27 titled “Safe LA 2020 Civil Unrest After Action Report.”  
28

1 Exhibit 1 is a report made available on the City of Los Angeles, City Clerk  
2 website that analyzed LAPD's crowd control tactics and compliance with existing  
3 departmental policies during the demonstrations resulting from the death of  
4 George Floyd. The report indicates that people were "struck in the face and head"  
5 by 37 mm and 40 mm munitions, which caused "significant injuries." Exhibit 2  
6 summarizes findings and recommendations of LAPD's tactics and policies and  
7 Exhibit 3 is a review of the LAPD's action after the June 2020 demonstrations.

8 The City of Los Angeles and Los Angeles Police Department are  
9 government entities and the documents Plaintiffs attach as exhibits are publicly  
10 available online. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir.  
11 2010) (holding that courts may take judicial notice of official information posted  
12 on a government website if its accuracy is undisputed). The Court **grants**  
13 Plaintiffs' request to take judicial notice of Exhibits 1, 2 and 3.

14 **B. Likelihood of Success on the Merits**

15 Fourth Amendment excessive force claims are analyzed under the  
16 framework outlined by the Supreme Court in *Graham v. Connor*, 490 U.S. 386  
17 (1989). *Donovan v. Phillips*, 685 Fed. App'x. 611, 612 (9th Cir. 2017). Under  
18 *Graham*, all claims of excessive force by law enforcement should be analyzed  
19 under the Fourth Amendment's "reasonableness" standard. *Davis v. City of Las*  
20 *Vegas*, 478 F.3d 1048, 1054 (9th Cir. 2007). "This analysis requires balancing the  
21 nature and quality of the intrusion on a person's liberty with the countervailing  
22 governmental interests at stake to determine whether the force used was  
23 objectively reasonable under the circumstances." *Id.* (internal quotation marks  
24 omitted).

25 "Reasonableness" of a given use of force must be measured from the  
26 perspective of a reasonable officer on the scene and must appreciate the "split-  
27 second judgments" that officers must often make. *Graham*, 490 U.S. at 396. The  
28 Ninth Circuit has held that it was unreasonable to use pepper spray and projectiles

1 against individuals “who were suspected of only minor criminal activity, offered  
2 only passive resistance, and posed little to no threat of harm to others.” *Nelson v.*  
3 *City of Davis*, 685 F.3d 867, 884-87 (9th Cir. 2012)

4 The Plaintiffs provide evidence in the form of declarations and videos that  
5 LAPD likely violated Plaintiffs’ Fourth Amendment rights by using less-lethal  
6 launchers (37mm and 40mm) against Plaintiffs who state that they were peacefully  
7 demonstrating (or reporting on the demonstrations) at Echo Park on March 25,  
8 2021, and the Breonna Taylor solidarity protest on or around March 11, 2021,  
9 when they suffered injuries from less-lethal projectiles.<sup>2</sup> Dkt. No. 58-7 ¶ 2, Exh.  
10 13, 14 (shot by a “less lethal projectile” in the right arm between the elbow and  
11 shoulder and partner was shot in the abdomen “at close range”); Dkt. No. 58-3 ¶¶  
12 2-3, Exh. 7 (shot by a “less-lethal munition” in the back while filming the  
13 demonstration and walking away from the area); Dkt. No. 58-4 ¶ 3, Exh. 8, 9  
14 (LAPD firing “less lethal projectiles” at “less than a two feet distance” of the  
15 protestors “aim[ed] directly at [their] upper body”); Dkt. No. 58-8 ¶ 2, Exh. 15  
16 (shot by a “less lethal projectile at the left side of my abdomen at close range”).

17 Defendant’s Use of Force policy states that Less-Lethal force options are  
18 only permissible when:

19 An officer reasonably believes that suspects or subjects in a  
20 crowd are *violently resisting* a lawful order to disperse or *poses an*  
21

22  
23  
24 <sup>2</sup> Exhibit 4 is a Declaration of Christina Astorga who participated in a demonstration that  
25 occurred on August 21, 2020, who received injuries as a result from the officers use of the less-  
26 lethal launchers and Exhibit 5, a video of the demonstration which depicts the officers using  
less-lethal projectiles.

27 The Declaration of Andrew Guerrero, who participated in a downtown Los Angeles protest on  
28 August 26, 2020, declares that he was injured from the officers’ use of the less-lethal munition  
and further states LAPD fired the launcher without “providing any opportunity to disperse.”  
(Dkt. No. 58-6 ¶ 3, 4)

1           *immediate threat of violence or physical harm. . . .* [M]ere non-  
 2           compliance do[es] not alone justify the use of Less-Lethal force. . . .

3           LAPD Use of Force-Tactics Directive.

4           The recommended deployment range for the 37mm launcher is 10 feet to 50  
 5           feet from the front of the crowd and the recommended deployment range for the  
 6           40mm is five feet (up to 110 feet for the effective deployment range). *Id.* The  
 7           video evidence shows that the less-lethal launchers were used in close range of the  
 8           Plaintiffs, which likely caused significant injuries. The Court finds Plaintiffs have  
 9           shown a likelihood of success on their Fourth Amendment claim.

### 10           **C. Irreparable Harm**

11           Plaintiffs must demonstrate that they are likely to suffer irreparable harm in  
 12           the absence of an injunction. Plaintiffs argue that an injunction is warranted “in  
 13           light of the potential for serious injuries the LAPD continues to cause” and the  
 14           “potential[] lethal injuries.”

15           Irreparable injury is not presumed by the Court upon a showing of a  
 16           likelihood of success on the merits. *Herb Reed Enters., LLC v. Fla. Ent. Mgmt.*,  
 17           736 F.3d 1239, 1248-49 (9th Cir. 2013). A party seeking injunctive relief must  
 18           proffer evidence sufficient to establish a likelihood of irreparable harm. *Id.* at  
 19           1251. “To demonstrate irreparable injury as to their Fourth Amendment injury  
 20           here, Plaintiffs must demonstrate a likelihood, not a mere possibility, of future  
 21           irreparable injury of the same character.” *Downes-Covington v. Las Vegas Metro.*  
 22           *Police Dep’t*, 2020 U.S. Dist. LEXIS 240330, at \*35 (D. Nev. Dec. 17, 2020).

23           Here, Plaintiffs provide evidence of past and recent demonstrations since  
 24           the death of George Floyd involving Officer Derek Chauvin, in which Defendants  
 25           used less-lethal munition on protestors who do not appear to be violently resisting  
 26           or posing an immediate threat of violence or physical harm. Plaintiffs state that  
 27           the trial of Derek Chauvin is expected to reach a verdict between April 19, 2021,  
 28

1 and April 23, 2021, and as a result, Plaintiffs will plan protest and demonstrations  
 2 that will likely be widespread and substantial. (Decl. Abdullah ¶ 3.) As of the  
 3 writing of this Order, closing arguments in the Derek Chauvin case are set for  
 4 today, Monday, April 19, 2021. It is reasonable to believe that demonstrations will  
 5 continue. The Court finds that Plaintiffs have shown a likelihood of irreparable  
 6 injury. *See, e.g., Abay v. City of Denver*, 445 F. Supp. 3d 1286, 1294 (D. Colo.  
 7 2020) (granting-in-part a TRO and enjoining officers from discharging Kinetic  
 8 Impact Projectiles (“KIPs”) and all other “non- or less-lethal projectiles” to target  
 9 the head, pelvis, or back, and from shooting KIPs indiscriminately into a crowd).

#### 10 **D. Balance of the Equities and the Public Interest**

11 In their Motion to Strike, Defendants argue that enjoining officers from  
 12 using crowd control tools to protect the rights of those who wish to lawfully  
 13 exercise their First Amendment rights, as well as the safety and security of the  
 14 public, is harmful. Plaintiffs assert the “balance of interest” tips strongly in their  
 15 favor because Defendants’ “indiscriminate” use of less-lethal launchers are  
 16 commonly fired on bystanders or non-violent and distant protestors.<sup>3</sup>

17 When the government is a party, these last two factors of the standard for  
 18 issuing a TRO merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th  
 19 Cir. 2014). Plaintiffs must identify the harm that a TRO might cause a Defendant  
 20 and weigh it against the injury to a Plaintiffs. *Lavan v. City of Los Angeles*, 2011  
 21 U.S. Dist. LEXIS 46030, at \*13 (C.D. Cal. Apr. 22, 2011). As to public interest,  
 22 “it is always in the public interest to prevent the violation of a party’s  
 23 constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)

24 Here, Plaintiffs’ TRO does not discuss potential harm to Defendants, but the  
 25 Court considered potential harm to Defendants in issuing this order. There is a  
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27 <sup>3</sup> *See* Los Angeles Times, LAPD Projectiles Fired at Lakers Crowd Causes Severe Injuries (Oct.  
 28 15, 2020), *available at*: <https://www.latimes.com/california/story/2020-10-15/lapd-projectiles-gruesome-injuries-lakers-celebration>.



1 strong interest in preserving a person's First Amendment rights, including the right  
2 of peaceful assembly. On balance, Plaintiffs' requested relief is tailored to  
3 restricting LAPD's use of less-lethal launchers on peaceful protestors and those  
4 who are documenting the demonstrations. Plaintiffs' tailored request does not  
5 seek to ban LAPD's crowd control tactics; their request limits LAPD's use of the  
6 launchers in order to ensure that the safety of the protestors and the officers can  
7 both be achieved.

### 8 CONCLUSION

9 Accordingly, Defendants' Request to Strike Plaintiffs' TRO and, in the  
10 alternative, additional time to file opposition is **DENIED**. The Court's previous  
11 Order is modified as follows:

12 1. LAPD is restricted from using the 40mm and 37mm launchers in public  
13 demonstrations except by officers who successfully completed Department  
14 training and meet all annual qualification requirements on the weapons;

15 2. An officer may use 40mm less-lethal munitions only when the officer  
16 reasonably believes that a suspect is violently resisting arrest or poses an  
17 immediate threat of violence or physical harm. The use of 40mm less-lethal  
18 munitions should be preceded by a warning, if feasible;

19 3. An officer may use 37mm less-lethal munitions as a crowd control tool  
20 only with the prior approval of the incident commander and only when a dispersal  
21 order has been issued, unless immediate action is necessary to stop violence, to  
22 ensure public safety and restore order. A warning to disperse must be given,  
23 consistent with all of the dispersal order requirements set forth in LAPD Use of  
24 Force – Tactics Directive No. 11.1, and then the officer may fire the 37 mm at the  
25 ground 5 to 10 feet in front of the crowd. The 37 mm may not be used as a target  
26 specific munition unless absolutely necessary to prevent imminent serious bodily  
27 injury to the officer or others.  
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