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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD FITZGERALD, DELBERT) Case No. CV 03-01876 DDP (RZx)
EUGENE HUDSON, DILWORTH)
MENEFELE and MARIO) **ORDER GRANTING MOTION TO EXTEND**
YOUNGBLOOD, as individual) **INJUNCTION**
plaintiffs and as)
representatives of the) [Motion filed on December 13,
classes,) 2006]
Plaintiff,)
v.)
CITY OF LOS ANGELES, CHIEF)
OF POLICE WILLIAM BRATTON)
and CAPTAIN CHARLIE BECK, in)
their individual and)
official capacities, and)
DOES 1-10, in their)
individual and official)
capacities,)
Defendants.)

ENTERED
CLERK, U.S. DISTRICT COURT
APR 23 2007
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

This matter is before the Court on Plaintiffs' motion to extend an injunction entered into between Plaintiffs and the City of Los Angeles pursuant to a settlement agreement. After reviewing the papers submitted by the parties and hearing oral argument, the Court grants the motion in the manner outlined below.

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

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1 I. BACKGROUND

2 A. Settlement History

3 Plaintiffs are residents of Los Angeles who live in downtown
4 Los Angeles in the area of the Central City known as Skid Row.¹ On
5 March 18, 2003, Plaintiffs Donald Fitzgerald, Delbert Eugent
6 Hudson, Dilworth Menefele and Mario Youngblood filed a complaint on
7 behalf of themselves and similarly situated individuals challenging
8 the conduct of the Los Angeles Police Department. (Declaration of
9 Anne Richardson ("Richardson Decl."), Ex. 1.) Plaintiffs alleged
10 that they were subjected to an unlawful policy, practice and custom
11 of harassment on the pretext that the police were seeking probation
12 and/or parole violators or absconders. Plaintiffs further alleged
13 that the policy was intended to, and did, create a climate of fear
14 and intimidation among the poorest residents of Los Angeles in
15 violation of their Fourth Amendment rights.

16 The matter was assigned to the Honorable Nora Manella, who
17 issued a Temporary Restraining Order ("TRO") on March 31, 2003,
18 enjoining Defendants from engaging in the conduct alleged by
19 Plaintiffs and setting a hearing for a preliminary injunction. On
20 April 14, 2003, Judge Manella issued a Preliminary Injunction
21 identical to the TRO. Thereafter, the parties settled the case,
22 and, on December 9, 2003, Judge Manella approved the settlement.

23 The settlement agreement constituted a stipulation to a
24 permanent injunction as follows:

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27 ¹ The Settlement defines Skid Row as "that fifty-block area
28 east of Downtown Los Angeles bordered by Third Street and Seventh
Street, and Alameda and Spring Streets." (Richardson Decl., Ex.
2.)

1 1. Officers will not conduct detentions or "Terry" stops
2 without reasonable suspicion that a person is involved
3 in criminal activity or has committed a crime or
4 violated parole or probation. However, officers may
5 continue to engage in consensual encounters with
6 persons, parolees, probationers, or others residing in
7 or otherwise present in the "Skid Row" area of Los
8 Angeles.

9 2. Officers will not search the persons and/or
10 possessions of those individuals stopped on the public
11 streets and sidewalks of the "Skid Row" area of Los
12 Angeles without probable cause and/or reasonable
13 suspicion that the person has committed a crime or
14 violated parole or probation. However, nothing shall
15 prohibit officers from performing "pat-down" searches
16 in accordance with the law.

17 3. Officers will not search residences of persons
18 residing or otherwise present in the "Skid Row" area
19 of Los Angeles except with a valid warrant, other
20 legal justification, or with reasonable suspicion that
21 they are on parole or probation and have violated the
22 terms of their parole or probation.

23 (Richardson Decl., Ex. 2 at 2-3.) The settlement also provided
24 that the injunction would remain in force for 36 months from the
25 date on which it was signed by the court, and that:

26 Plaintiffs may move for an extension of the injunction upon
27 a showing of good cause presented by way of motion filed
28 within the last 120 days prior to expiration. The duration

1 of the extension granted by the Court will be subject to
2 the Court's discretion, but in any case will not exceed 36
3 months.

4 (Id. at 3.)

5 Finally, the settlement stated:

6 Notwithstanding this injunction, defendants will continue
7 to be permitted to engage in law enforcement and other
8 conduct necessary and appropriate measures to protect and
9 promote the public safety and welfare and enforce and
10 promote the laws of the State of California, the United
11 States, and the City of Los Angeles. Nothing in this
12 Agreement is intended to abrogate existing search and
13 seizure law. . . . should the standard for detention and
14 searches of parole or probationers be changed by the United
15 States Supreme Court or the Ninth Circuit, this injunction
16 will be modified by operation of law accordingly to
17 incorporate the current legal standard.

18 (Id. at 3-4.)

19 B. Instant Motion

20 In November 2006, counsel for Plaintiffs allegedly learned
21 that the police were purportedly engaging in a widespread practice
22 of searching the residents of Skid Row, and that the police were
23 arbitrarily stopping, detaining, and searching individuals and
24 groups of individuals who appeared to be homeless or to be
25 residents of Skid Row, without any prior knowledge whether the
26 person was on parole or probation and without any reasonable
27 suspicion that the individuals were engaged in criminal activity.
28 (Mot. 4:7-13.) Counsel for Plaintiffs also allegedly learned that,

1 although such stops often included asking the subject whether he or
2 she was on parole or probation, the search often continued
3 regardless of how the person responded. (Id. 4:14-16.) Plaintiffs
4 claim that police frequently detain and begin to search the subject
5 before the subject is asked whether he or she is on probation.
6 (Id. 4:16-18.)

7 Plaintiffs now move the Court to extend the injunction entered
8 into as part of the prior settlement agreement.

9

10 **II. DISCUSSION**

11 A. Timeliness of Plaintiffs' Motion

12 As an initial matter, Defendants argue that Plaintiffs' motion
13 was untimely filed. Pursuant to the terms of the injunction,
14 December 9, 2006 was the latest date Plaintiffs could seek to
15 extend the injunction. Plaintiffs submitted their motion to the
16 Clerk's office on Friday, December 8, 2006. The motion was marked
17 "lodged" and was not filed until Wednesday, December 13, 2006.

18 Plaintiffs did not fail to meet the deadline. The Clerk's
19 office likely marked the motion as "lodged" instead of "filed"
20 either because Judge Manella, who previously presided over the
21 case, is no longer with the Central District, or because the case
22 was technically "closed" at the time of the entry of the permanent
23 injunction. But for the administrative procedures of the Clerk's
24 Office, the motion would have been timely filed. Thus, the Court
25 deems the motion timely.

26 B. Procedural Filing Requirements

27 Defendants also contend that Plaintiffs failed to comply with
28 Local Rule 7-3, which requires parties to meet and confer before

1 filing a motion. Plaintiffs claim that they did attempt to contact
2 Defendants several times as soon as they decided to file the
3 motion, and that they were given oral permission from Defendants to
4 file their motion by the December 8, 2006 deadline. (Richardson
5 Decl. ¶¶ 2-5.) They also argue that they could not have met and
6 conferred any earlier because they only learned of the alleged
7 violations in late November. (Id. ¶ 3.) Finally, Plaintiffs argue
8 that, to the extent the purpose of Local Rule 7-3 is to allow
9 nonmovants time to evaluate proposed motions and oppose or reach
10 agreement in a considered fashion, Defendants have not been
11 prejudiced because the Court's briefing schedule gave Defendants'
12 more than adequate time to respond to Plaintiff's motion.

13 The Court understands that the unique time constraints in this
14 case prevented Plaintiffs from meeting and conferring the required
15 twenty days prior to the filing of the motion. The Court also
16 understands that Plaintiffs' late notice to Defendants gave
17 Defendants little time to familiarize themselves with this case
18 before the December 8, 2006 deadline. (See generally Declaration
19 of Kelly N. Kades.) However, due to the Court's management of its
20 docket, Defendants had one month to respond to Plaintiffs' motion.
21 Defendants took the full month to respond.² Accordingly, the Court
22 finds that they have not been prejudiced by the Plaintiffs'
23 actions.

24 Therefore, while the Court has the power to strike Plaintiffs'
25 motion for failure to comply with Local Rule 7-3, see, e.g., Green

27 ² Upon receiving Plaintiffs' motion, the Court moved the
28 original hearing date from January 8, 2007 to January 29, 2007.
Defendants filed their opposition on January 12, 2007.

1 v. Baca, 226 F.R.D. 624, 656 n. 62 (C.D. Cal. 2005), in the
2 interest of deciding this case on the merits, it elects to hear the
3 motion.

4 C. Plaintiffs' Burden: "Good Cause"

5 By the terms of the settlement, a court may extend the
6 injunction for up to thirty-six months upon Plaintiffs' showing of
7 "good cause." The term "good cause" is not defined in the
8 injunction. Unsurprisingly, Plaintiffs and Defendants dispute the
9 meaning of term "good cause" and the burden it requires Plaintiffs
10 to satisfy before the Court may extend the injunction.

11 Defendants argue that the "good cause" showing is the same as
12 that which would be required by Plaintiffs to obtain a permanent
13 injunction in the first instance. By contrast, Plaintiffs contend
14 that, had the parties intended to allow for an extension only upon
15 a showing sufficient to justify a permanent injunction in the first
16 instance, they would have stated so in the settlement agreement.
17 Plaintiffs also argue that where a party is subject to an
18 injunction, a single violation of that injunction can subject that
19 party to contempt. Thus, Plaintiffs argue, it is logical that
20 "good cause" for an extension is satisfied by a showing that
21 Defendants have "engaged in anything more than an isolated instance
22 or two of violations of the injunction." (Mot. 4:5-7.)

23 The Court finds that the requisite burden is less than that
24 needed for a permanent injunction. By including the extension
25 provision in the injunction, the parties likely intended that the
26 "good cause" burden would not be the same as that required to
27 obtain an injunction in the first instance.

28 ///

1 At oral argument, the parties discussed the "good cause"
2 requirement in more detail. Plaintiffs argued that the evidence
3 submitted by Defendants undisputably proves that violations of the
4 injunction have occurred. Defendants disagreed with this
5 characterization of their evidence. After listening to the
6 parties' arguments, the Court suggested that the best way to
7 resolve the dispute would be to treat the motion as if it were a
8 motion for summary judgment. The parties agreed to this
9 interpretation of the good cause standard.

10 Thus, the Court will apply the same standard it would apply
11 had the Plaintiffs moved for summary judgment: viewing the
12 evidence in the light most favorable to Defendants, have violations
13 of the injunction occurred? If so, the Court will extend the
14 injunction for the amount of time it deems reasonable in light of
15 the seriousness of these violations.

16 D. Whether The Evidence Establishes That Violations of the
17 Injunction Have Occurred

18 Plaintiffs contend that the evidence they have submitted
19 establishes that Defendants have violated the terms of the
20 Settlement Agreement and the Fourth Amendment by conducting
21 suspicionless detentions and searches of pedestrians in Skid Row
22 without legal justification. Defendants disagree with Plaintiffs'
23 characterization of current Fourth Amendment law and object to
24 Plaintiffs' evidence. The Court will first discuss the current
25 state of Fourth Amendment search and seizure law and then examine
26 whether Plaintiffs' have proven, under a summary judgment standard,
27 that Defendants have violated that law and the settlement terms.

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1 1. Search and Seizure Law Generally

2 The Fourth Amendment gives all citizens the right "to be
3 secure in their persons . . . against unreasonable searches and
4 seizures. . . ." U.S. Const. Amend. IV. A warrantless search is
5 only lawful under the Fourth Amendment if supported by probable
6 cause. "Probable cause exists when, under the totality of the
7 circumstances known to the arresting officers, a prudent person
8 would have concluded that there was a fair probability that [the
9 defendant] had committed a crime." United States v. Buckner, 179
10 F.3d 834, 837 (9th Cir. 1999) (quoting United States v. Garza, 980
11 F.2d 546, 550 (9th Cir. 1992)).

12 By contrast, a "Terry" stop or investigative detention
13 requires only reasonable suspicion that the detainee is engaged in
14 criminal activity. Berkemer v. McCarty, 468 U.S. 420, 439 (1984).
15 "To detain a suspect, a police officer must have reasonable
16 suspicion, or 'specific, articulable facts which, together with
17 objective and reasonable inferences, form the basis for suspecting
18 that the particular person detained is engaged in criminal
19 activity.'" United States v. Micheal R., 90 F.3d 340, 346 (9th
20 Cir. 1996) (quoting United States v. Garcia-Camacho, 53 F.3d 244,
21 245 (9th Cir. 1995). To determine whether reasonable suspicion
22 existed, the court must consider the totality of the circumstances
23 surrounding the stop. Id. (citing United States v. Hall, 974 F.2d
24 1201, 1204 (9th Cir. 1992)).

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1 2. Stops and Searches of Parolees and Probationers
2 without Advance Knowledge of Their Parole or
3 Probation Status

4 Courts have recognized that probationers and parolees have a
5 reduced expectation of privacy by virtue of search conditions
6 imposed on them as a result of their probation or parole status.
7 Indeed, in Samson v. California, --U.S.--, 126 S.Ct. 2193 (2006),
8 the Supreme Court addressed the very issue giving rise to this
9 motion - the legality of suspicionless parolee searches. After
10 reviewing the legislative rationale for reducing parolees'
11 expectations of privacy, the Supreme Court held that "the Fourth
12 Amendment does not prohibit a police officer from conducting a
13 suspicionless search of a parolee." Samson, 126 S.Ct. at 2202.

14 However, Samson did not provide that all suspicionless
15 searches of parolees are reasonable. Instead, the Supreme Court
16 specifically noted that, "[u]nder California precedent . . . an
17 officer would not act reasonably in conducting a suspicionless
18 search absent knowledge that the person stopped for the search is a
19 parolee." Id. (citing People v. Sanders, 31 Cal. 4th 318, 332-32
20 (2003)) (emphasis added). In Sanders, the California Supreme Court
21 explained that "a knowledge-first requirement is appropriate to
22 deter future police misconduct and to effectuate the Fourth
23 Amendment's guarantee against unreasonable searches and seizures."
24 Sanders, 31 Cal.4th at 331-32.

25 Since the Samson decision, the California Supreme Court has
26 had the opportunity to revisit its "knowledge-first" requirement.
27 In In re Jaime P., 40 Cal.4th 128, 139 (2006), the California
28 Supreme Court held that where the "arresting officer had neither

1 reasonable suspicion of criminal activity nor advance knowledge of
2 a search condition that might have justified the search . . . the
3 totality of the circumstances amounts to very little and does not
4 justify the officer's search." (emphasis added). With regard to
5 the Supreme Court's Samson decision, the In re Jaime P. Court
6 stated:

7 Samson also appears to support minor's view that the high
8 court approves of our Sanders holding requiring prior
9 knowledge of the search condition as a protection against
10 harassing searches. In Samson, Justice Stevens in dissent
11 accused the majority of allowing law enforcement officers
12 in California "unfettered discretion" to conduct parolee
13 searches. (Samson, supra, 547 U.S. at p. ----, 126 S.Ct. at
14 p. 2207 (dis. opn. of Stevens, J.)) The Samson majority
15 disagreed, responding that, under California law,
16 suspicionless searches of parolees could not be conducted
17 without prior knowledge of the person's parole status.
18 (Samson, supra, 547 U.S. at p. ----, fn. 5, citing Sanders,
19 supra, 31 Cal.4th at pp. 331-332, 2 Cal.Rptr.3d 630, 73
20 P.3d 496.) This language could reasonably be read as
21 approving Sanders as a protection against arbitrary parolee
22 searches.

23 Id. at 137.

24 These decisions make it clear that advance knowledge of a
25 parolee's status is critical to the constitutionality of a
26 suspicionless search of a parolee. Thus, before a suspicionless
27 search begins, an officer must have knowledge of the individual's
28

1 probation or parole status.³ If the officer learns of this status
2 after the suspicionless search has commenced, the search is in
3 violation of the Fourth Amendment.

4 3. Stops and Searches of Parolees and Probationers With
5 Advance Knowledge of Their Parole or Probation
6 Status

7 Both California and Fourth Amendment law prohibit all
8 arbitrary or harassing searches - even of parolees and
9 probationers. The California Supreme Court articulated this rule
10 in People v. Reyes, 19 Cal.4th 743, 753-54 (1998):

11 [O]ur holding that particularized suspicion is not required
12 in order to conduct a search based on a properly imposed
13 search condition does not mean that parolees have no
14 protection. As explained in People v. Clower (citation
15 omitted), "a parole search could become constitutionally
16 'unreasonable' if made too often, or at an unreasonable
17 hour, or if unreasonably prolonged or for other reasons
18 establishing arbitrary or oppressive conduct by the
19 searching officer."

20 Accordingly, even when an officer knows the parole or probation
21 status of the subject before beginning the search, that search may
22 still be unconstitutional if the search is made at the "whim or
23 caprice" of the law enforcement officer. Reyes, 19 Cal.4th at 754.

24 A search of a California parolee must not only comport with
25 California law, but - as in all jurisdictions within the United

27 ³ As discussed below in further detail, the officer must also
28 be aware that the probationer or parolee is subject to a search
condition.

1 States and its territories - with the demands of the federal
2 Constitution as well. United States v. Crawford, 323 F.3d 700, 708
3 n.4 (9th Cir. 2003). In Samson, the Supreme Court addressed the
4 legality of arbitrary searches when explaining the limits of its
5 holding:

6 The concern that California's suspicionless search system
7 gives officers unbridled discretion to conduct searches,
8 thereby inflicting dignitary harms that arouse strong
9 resentment in parolees and undermine their ability to
10 reintegrate into productive society, is belied by
11 California's prohibition on "arbitrary, capricious or
12 harassing" searches. . . . The dissent's claims that
13 parolees under California law are subject to capricious
14 searches conducted at the unchecked "whim" of law
15 enforcement officers . . . ignores this prohibition.

16 126 S.Ct. at 2202. Thus, the Samson Court relied on the limitation
17 against arbitrary searches in upholding California's system of
18 parolee searches. This reliance indicates that a scheme permitting
19 searches conducted at the whim of law enforcement officers would
20 violate the Fourth Amendment. Accordingly, the Court holds that
21 both federal and California law prohibit arbitrary, capricious or
22 harassing searches of all individuals, regardless of their
23 probation or parole status.

24 4. Whether the Terms of the Injunction Comport with
25 Current Search and Seizure Law

26 Defendants argue that the injunction holds the LAPD to a
27 higher standard than current search and seizure law because "it
28 forbids officers to detain or search persons or property without

1 probable cause or reasonable suspicion of criminal activity or
2 probation or parole violation, regardless of the officers'
3 knowledge of the person's probation or parole status." (Opp. 48:10-
4 15). The Court agrees that the cited language does not accurately
5 reflect current search and seizure standards. However, the
6 injunction provides for the incorporation of changes to search and
7 seizure law: "[s]hould the standard for detention and searches of
8 parolees or probationers be changed by the United States Supreme
9 Court or the Ninth Circuit," then "the injunction will be modified
10 by operation of law accordingly to incorporate the current legal
11 standard." (Richardson Decl., Ex. 2 at 3-4.) Accordingly, the
12 language in the injunction that Defendants argue is contrary to
13 current law has been automatically modified to permit suspicionless
14 searches of parolees -- providing, as outlined above, that the
15 officer has advance knowledge of parolee status and that the search
16 is not arbitrary, capricious, or harassing. In other words, the
17 Court reads the injunction merely as an order that Defendants
18 conduct legal searches of Skid Row residents; it finds nothing in
19 the injunction inconsistent with California or federal search and
20 seizure standards.

21 5. Evidence

22 The Court now turns to the evidence presented in the parties'
23 papers to determine whether Plaintiffs have met their burden of
24 proving that the LAPD's current practices violate both the terms of
25 the settlement injunction and search and seizure law. Defendants
26 raise several evidentiary objections to Plaintiffs' evidence;

27

28

1 Plaintiffs do likewise. Before considering this evidence on the
2 merits, the Court will address some of Defendants' objections.⁴

3 a. Evidentiary Issues

4 As an initial matter, Defendants argue that there is no means
5 of contacting the majority of Plaintiffs' declarants and that this
6 absence of contact information prejudices the Defendants' ability
7 to counter the allegations contained within the declarations.
8 While the Court understands Defendants' concerns about the
9 declarants' availability to testify, the Court notes that many of
10 the declarants are homeless or do not have permanent addresses.
11 The Court is not inclined to bar these declarations merely because
12 the declarants are difficult to contact.

13 Defendants further argue that two of Plaintiffs' declarants
14 alleged stops did not occur within the geographical area defined by
15 the settlement.⁵ Moreover, one declaration does not give any date
16 or location for the LAPD encounter.⁶ Thus, Defendants argue, these
17 declarations fail to provide support for Plaintiff's contention
18 that LAPD is not honoring the settlement terms. Defendants also
19 argue that these three declarants have no standing to support this

21 ⁴ Both Defendants and Plaintiffs have made several generic
22 objections to portions of each others' declarations: hearsay, lack
23 of foundation, lack of personal knowledge, speculation, etc.
24 Without addressing every line of the dozens of declarations
submitted, the Court notes that it has reviewed the parties'
objections and will rely only on statements it deems admissible.

25 ⁵ Michael Murphy claims he was stopped at 10th and Los Angeles
26 Streets (Declaration of Michael Murphy ¶ 2); Frank Cesar alleges he
was stopped at Stanford between 9th and 10th streets. (Declaration
of Frank Cesar ¶ 4.)

27 ⁶ The Declaration of Berisford D. Willoughby, Jr. does not
28 give any date or location for his alleged encounter with LAPD
officers.

1 motion as Plaintiffs. The Court notes, however, that these
2 declarants are not being proffered as Plaintiffs, but as witnesses.
3 The Court also notes that evidence of potentially illegal searches
4 occurring outside the boundaries of Skid Row does not weigh in
5 Defendants' favor; it arguably provides additional proof that the
6 searches described by Plaintiffs are part of LAPD policy, custom,
7 and practice.⁷ Thus, the Court admits these declarations.

8 Defendants also contend that one of Plaintiffs' declarants,
9 Louis McLeod, misrepresented facts by stating he was not on parole
10 or probation at the time of the alleged search, when he in fact is
11 on summary probation. To prove McLeod's probation status,
12 Defendants have requested that the Court take judicial notice of
13 the criminal docket from People v. Louis McLeod BA 259771. (Defs.'
14 Req. for Judicial Notice.) However, whether or not McLeod was
15 actually on probation at the time of the search is irrelevant
16 because his declaration indicates that the officers who allegedly
17 stopped and searched him were unaware of his probation status.
18 (Declaration of Louis McLeod ("McLeod Decl.") ¶¶ 2-9.)

19 Finally, Defendants also object to the declarations Plaintiffs
20 submitted in conjunction with their Reply - specifically the
21 declarations of Alice Callaghan and Casey Horan - because they
22 could have been filed with Plaintiffs' original motion. See, e.g.,
23 Lujan v. National Wildlife Fed., 497 U.S. 871, 894-95 (1990). As
24 it appears that most of the information contained in these
25 declarations was available to Plaintiffs at the time they

26
27 ⁷ As one of Defendant's declarants indicates, it is possible
28 that the boundaries of Skid Row have changed in the past three
years. (Declaration of Greg McManus ¶ 8.) Therefore, the
injunction may need to be modified to account for that change.

1 originally filed their motion, the Court will not consider these
2 declarations in deciding the motion.

3 b. Merits

4 Plaintiffs have submitted the declarations of sixteen search
5 subjects in conjunction with their motion. Although the
6 declarations are not identical, they each tell a similar story: A
7 Skid Row resident⁶ (typically a black male) is stopped by LAPD
8 officers patrolling the area on foot or in a police car. The
9 resident contends that he is not engaged in illegal activity. The
10 LAPD officer either: (1) asks him if he is on parole or probation
11 and then begins to search him - even after receiving a negative
12 response; or (2) begins to search him and then asks about his
13 parole and/or probation status during the search. The search lasts
14 between ten and thirty minutes. During the search, the resident is
15 placed in handcuffs and ordered up against a wall. When the search
16 is finished, the resident is released. He is stopped and searched
17 in a similar manner several times over the following months.

18 Defendants have also submitted several declarations in
19 opposition to the motion. Several are made by police officers
20 assigned to the Skid Row area. These officers claim that they are
21 trained to search individuals only when: (1) they have probable
22 cause to effectuate an arrest; (2) when they can articulate facts,
23 based upon a totality of the circumstances; (3) that the person
24 consents to the search during a lawful consensual encounter; or (4)
25 when the officer is aware the person is on probation or parole.

26
27 _____
28 ⁶ The Court uses the term "resident" to include those
declarants who are homeless and those who primarily reside in Skid
Row shelters.

1 They deny that any behavior similar to that described by Plaintiffs
2 would have occurred, and emphasize that the officers are trained to
3 handle encounters with Skid Row residents in a non-confrontational
4 manner. Defendants have also submitted several declarations from
5 individuals who own businesses or work on Skid Row. These
6 individuals claim that the officers who work in the Skid Row area
7 are extremely helpful to Skid Row residents. They also claim that,
8 as a result of the Safer Cities Initiative, Skid Row is safer and
9 cleaner.

10 In essence, Plaintiffs' evidence and Defendants' evidence tell
11 two different stories about the searches that occur on Skid Row.
12 Although the Court may find certain accounts more plausible than
13 others, it cannot say, as a matter of law, that one version of the
14 facts must be believed over the other. During oral argument,
15 however, Plaintiffs identified certain portions of Defendants'
16 evidence which they contend demonstrate, as a matter of law, that
17 Defendants have violated the injunction on at least a few
18 occasions. The Court will now address those specific pieces of
19 evidence to determine whether, even viewing the evidence in the
20 light most favorable to Defendants, violations of the settlement
21 and the law have in fact occurred.⁹

22 1. Detention of Paul Johnson

23 Plaintiffs argue that Defendants have conceded that Declarant
24 Paul Johnson was detained unconstitutionally. In support of this

25
26 ⁹ In conducting this analysis, the Court is only addressing
27 certain arguments made in the papers. Both parties make several
28 other credibility and policy arguments in support of their motion.
The Court does not discount these arguments; it merely intends to
resolve this motion based on the undisputed evidence it has before
it.

1 argument, Plaintiffs point to the declaration of Officer Sucha
2 Singh, the patrol officer who detained Paul Johnson. In his
3 declaration, Officer Singh states that he was working Central
4 Division patrol when he "came upon a Paul Johnson." He does not
5 recall why he stopped Paul Johnson: "At this time, I cannot
6 independently recall the basis for detaining Paul Johnson.
7 However, I cannot and would not place an individual up against a
8 wall without a legal basis for doing so."¹⁰ (Declaration of Sucha
9 Singh ("Singh Decl.") ¶ 3.) Singh states that he ran Mr. Johnson's
10 name for wants and warrants on the Mobile Digital Terminal. (Id.)
11 When a possible felony warrant was revealed for the name "Paul
12 Johnson," Singh transported him to Central Division for further
13 investigation.¹¹ (Id. ¶ 4.) After Singh determined that the
14

15 ¹⁰ In his declaration, Paul Johnson describes the incident as
16 follows:

17 About two weeks ago, I was walking on 6th Street near San
18 Pedro when two LAPD officers in a car stopped me. They
19 pulled up alongside me and one of them yelled out of the
20 window, "Are you on probation or parole?" I am not on
21 probation or parole, and I told him so. Then I asked why
22 he asked me and said that he couldn't ask anybody that
23 question. They told me to get up against the wall. I did
24 so, and they handcuffed me. They asked my name, and I gave
25 it to them. While they ran my name, they searched me.
26 They put their hands in my pockets and took the stuff in my
27 pockets to examine it. When my name came back and showed
28 I wasn't on probation or parole, they said they didn't
believe it was my real name. They told me, "Everybody down
here is on probation or parole." They put me in the back
of the car and took me in to the Police Station at 6th and
Wall. I was handcuffed to a bench for between thirty
minutes and one hour at the station, then they let me go
without issuing me any kind of citation. I had been
handcuffed on the street for about half an hour while they
searched me and ran my name.

(Declaration of Paul Johnson, ¶ 4.)

27 ¹¹ There has been no evidence that the description of Paul
28 Johnson associated with the possible felony warrant was a match for
the Paul Johnson detained by Officer Singh.

1 warrant did not belong to the Paul Johnson he had detained, he
2 released him. (Id.)

3 Singh has stated that he cannot currently recall the basis for
4 detaining Paul Johnson. Plaintiffs argue that, pursuant to the
5 Ninth Circuit decision in Dubner v. City and County of San
6 Francisco, 266 F.3d 959 (9th Cir. 2001), Defendants have undeniably
7 failed to meet their burden of production on the issue of whether
8 the warrantless arrest of Paul Johnson was in fact lawful. In
9 Dubner, the court explained the burden-shifting analysis on the
10 issue of unlawful arrests:

11 Although the plaintiff bears the burden of proof on the
12 issue of unlawful arrest, [he] can make a prima facie case
13 simply by showing that the arrest was conducted without a
14 valid warrant. At that point, the burden shifts to the
15 defendant to provide some evidence that the arresting
16 officers had probable cause for a warrantless arrest. The
17 plaintiff still has the ultimate burden of proof, but the
18 burden of production falls on the defendant. If the
19 defendant is unable or refuses to come forward with any
20 evidence that the arresting officers had probable cause and
21 the plaintiff's own testimony does not establish it, the
22 court should presume the arrest was unlawful.

23 Dubner, 266 F.3d at 965 (internal citations omitted) (emphasis
24 added).

25 It is clear from Singh's declaration that he did not have a
26 warrant for Paul Johnson's arrest.¹² Therefore, under Dubner, the

27
28 ¹² Singh's and Johnson's declarations indicate that the
(continued...)

1 burden shifts to Defendants to provide some evidence that Singh had
2 probable cause to arrest Johnson. Singh's declaration reveals that
3 he cannot independently recall the basis for detaining Paul
4 Johnson. Moreover, Defendants did not produce any additional
5 evidence indicating a basis for stopping Johnson or for bringing
6 him to Central Station. Finally, Johnson's own testimony (see
7 footnote two supra) does not establish probable cause for the
8 search. Accordingly, even viewing the evidence in the light most
9 favorable to Defendants, the Court must presume that the detention
10 of Paul Johnson was unconstitutional.

11 2. Los Angeles Municipal Code ("LAMC")
12 Section 41.18(d)

13 Plaintiffs also argue that the only evidence of criminal
14 activity that Defendants have submitted to justify the detentions
15 and searches are the alleged violations by declarants Chester Cox
16 and Shawn Robertson of LAMC 41.18(d).¹³

17 _____
18 (...continued)
19 detention of Paul Johnson was not an investigatory stop but rather
20 a custodial arrest. Singh placed Johnson in handcuffs and
21 transported him to Central Station. The objective circumstances of
22 being placed in handcuffs and transported to a police station would
cause a reasonable innocent person to believe that he was not free
to leave. See, e.g., United States v. Bravo, 295 F.3d 1002, 1009
(9th Cir. 2002). Accordingly, Singh needed probable cause to
arrest Johnson. Pierce v. Multnomah County, 76 F.3d 1032, 1038
(9th Cir. 1996).

23 ¹³ LAMC § 41.18(d) provides:

24 No person shall sit, lie or sleep in or upon any
street, sidewalk or other public way.

25 The provisions of this subsection shall not apply
26 to persons sitting on the curb portion of any sidewalk
27 or street while attending or viewing any parade
permitted under the provisions of Section 103.111 of
28 Article 2, Chapter X or this Code; nor shall the
provisions of this subsection supply [sic] to persons
sitting upon benches or other seating facilities

(continued...)

1 In his declaration, Officer David Azevedo gives the following
2 account of his detention of Shawn Robertson:

3 On November 26, 2006, I and my partner Officer Issa were
4 working bike patrol assigned to Safer Cities Task Force in
5 Central Division.

6 At approximately 9:20 a.m., I and my partner were
7 patrolling Crocker near 5th Street. We conducted a
8 pedestrian stop of an individual by the name of Shawn
9 Robertson. Mr. Robertson was either sitting, lying, or
10 sleeping on the sidewalk. We began an investigation for a
11 possible violation of [LAMC § 41.18(d)] which prohibits
12 people lying, sleeping, or sitting upon any street,
13 sidewalk, or other public way.

14 Based on Mr. Robertson's possible violation of LAMC
15 41.18(d), we ran a check for wants and warrants over the
16 radio. No wants or warrants came back for Mr. Robertson.
17 The total time of our investigation was approximately 5-10
18 minutes.

19
20 ¹³ (...continued)

21 provided for such purpose by municipal authority or
22 permitted by this Code.

23 Interestingly, the Ninth Circuit has recently held, with respect
24 to § 41.18(d), that "just as the Eighth Amendment prohibits the
25 infliction of criminal punishment on an individual for being a drug
26 addict . . . [it] prohibits the City from punishing involuntary
27 sitting, lying, or sleeping on public sidewalks that is an
28 unavoidable consequence of being human and homeless without shelter
in [] Los Angeles." Jones v. City of Los Angeles, 444 F.3d 1118,
1138 (9th Cir. 2006). The challenge in Jones, however, was not a
facial challenge to § 41.18(d); the plaintiffs in that case made an
"as-applied" challenge to the nighttime enforcement of 41.18(d),
arguing that sleeping on the sidewalk becomes an essentially
"involuntary" act for the homeless at night. The Court does not
resolve here whether § 41.18(d) is facially unconstitutional; it
merely notes that its constitutionality appears dubious.

1 Based on the lack of wants or warrants for Mr.
2 Robertson, we verbally warned him against violating LAMC §
3 41.18(d). We did not cite Mr. Robertson for violating LAMC
4 § 41.18(d).

5 (Declaration of David Azevedo ("Azevedo Decl.") ¶¶ 2-5.)

6 Officer Donna Shoates gives a very similar account of her
7 detention of Chester Cox:

8 On December 1, 2006, I was working the mounted patrol on
9 horseback assigned to work Central Division, specifically
10 within the geographic area of the Safer Cities Initiative.

11 . . .

12 At approximately 4:00 p.m., I and my partner were
13 patrolling the area around 6th and San Julian Streets, near
14 the Union Rescue Mission. We conducted a pedestrian stop
15 of an individual with the name of Chester Cox. Mr. Cox was
16 not standing on the sidewalk. He was either sitting,
17 lying, or sleeping on the sidewalk. We began an
18 investigation for a possible violation of [LAMC § 41.18(d)]
19 which prohibits people lying, sleeping, or sitting upon any
20 street, sidewalk, or other public way.

21 Based on Mr. Cox's violation of LAMC § 41.18(d), we
22 ran a console check to determine whether there were any
23 outstanding wants or warrants for him at 15:49 hours or at
24 3:49 p.m. A console check is a request in the field with
25 dispatch to look for an individual's parole or probation
26 status or whether any outstanding warrants exist for an
27 individual. No wants or warrants came back for Mr. Cox.
28 The total time of our investigation was 15 minutes. . . .

1 Based on the lack of wants or warrants for Mr. Cox, we
2 verbally warned him against violating LAMC § 41.18(d). We
3 did not cite Mr. Cox for violating LAMC § 41.18(d).
4 (Declaration of Donna Shoates ("Shoates Decl.") ¶¶ 2-5.)

5 As an initial matter, the Court notes that neither officer
6 states that Cox or Robertson were, in fact, sitting, sleeping, or
7 lying on the sidewalk; rather, they both state that the declarants
8 were "either" sitting, sleeping, or lying on the sidewalk. The
9 fact that neither officer directly states exactly how Cox or
10 Robertson were violating § 41.18(d) casts doubt on whether the
11 officers independently recall the incidents. Accordingly, pursuant
12 to Dubner, the Court will not credit their accounts where they
13 diverge from Cox's and Robertson's.

14 The Court also notes that Officer Azevedo does not indicate
15 whether he actually searched Robertson. This is curious
16 considering that Robertson describes being handcuffed and searched
17 by Azevedo's partner in his declaration.¹⁴

18 _____
19 ¹⁴ While Cox claims that the Shoates only stopped him and ran
20 his name for warrants (Declaration of Chester Cox ¶ 5), Robertson
21 states that he was handcuffed and searched:

22 On November 29, 2006, I was packing up my tent on Crocker
23 between 5th and 6th, by Emmanuel Baptist Mission, because
24 7:30 a.m., when I approached by two LAPD officers on
25 bicycles - a man and a woman who were both white. I was
26 standing by my tent when they approached. The first thing
27 the officers said to me was to tell me to step over to the
28 wall and place my hands on top of my head. The woman told
me that, then she took my hands and handcuffed me behind my
back. As I was being handcuffed, they asked me whether I
was on probation or parole. I told them I was not. . . .
After I told the officers I was not on probation or parole,
the woman officer searched my person - patted me down and
looked in my pockets - and searched my tent and
possessions. While she was searching, the male officer ran
my name by calling it over the radio. The woman officer
didn't find anything so she released me from the handcuffs.

(continued...)

1 Finally, the Court notes that Azevedo's declaration describes
2 stopping a Mr. Robertson on November 26, 2007. By contrast, the
3 Mr. Robertson who filed a declaration in this case describes a
4 search that occurred on Wednesday, November 29, 2007. Thus, it is
5 possible that the search described by Azevedo did not involve the
6 Mr. Robertson who filed a declaration.

7 Assuming that the Azevedo did search Robertson for violating §
8 41.18(d), it is relatively clear that those searches were
9 unconstitutional. The United States Supreme Court has noted that
10 police may not conduct a search based on probable cause to believe
11 a crime has been committed when no physical evidence exists for
12 that crime. See Knowles v. Iowa, 525 U.S. 113, 118 (1998) ("Once
13 Knowles was stopped for speeding and issued a citation, all the
14 evidence necessary to prosecute that offense had been obtained. No
15 further evidence of excessive speed was going to be found either on
16 the person of the offender or in the passenger compartment of the
17 car."). There is no physical evidence necessary to prove a
18 violation of § 41.18(d). Therefore, even presuming that the
19 declarants were violating § 41.18(d), it was unconstitutional to
20 search them in connection with that offense.

21 Additionally, Azevedo specifically stated that he "did not
22 cite Mr. Robertson for violating LAMC § 41.18(d)." (Azevedo Decl.
23 ¶ 5.) Accordingly, Plaintiffs argue that Defendants cannot justify
24 the search of Robertson as a "search incident to an arrest" because
25 Azevedo did not arrest Robertson. In Menotti v. City of Seattle,

26
27 ¹⁴ (...continued)

28 I was handcuffed for about twenty minutes.

(Declaration of Shawn A. Robertson, III ("Robertson Decl.") ¶¶ 2-7.)

1 409 F.3d 1113, 1153 (9th Cir. 2005), the Ninth Circuit addressed
2 whether a warrantless search or seizure could be justified as a
3 "search incident to arrest" where no arrest was made:

4 Smith contends that his seizure of Skove's sign was lawful
5 because Smith had probable cause to arrest Skove for being
6 in the restricted zone and not within Order No. 3's
7 exemptions. We agree that Smith had probable cause to
8 arrest Skove because, by engaging in protest inside the
9 restricted zone without evidence that he was exempt, Skove
10 had violated Order No. 3. However, it is uncontested that
11 Smith did not arrest Skove. Had Skove been arrested, ample
12 precedent would permit a search or seizure "incident to
13 arrest." We decline to extend to doctrine of "search
14 incident to arrest" to give protection for a warrantless
15 search or seizure when no arrest is made. . . . Whatever
16 Officer Smith's reason for not making the arrest, the
17 seizure cannot be justified as incident to an arrest. Had
18 an arrest been made,

19 The Ninth Circuit also explained the policy considerations of its
20 reasoning:

21 There is some merit to the argument that where there is
22 probable cause to arrest, evidence of the crime may be
23 seized and the seizure considered valid even if the arrest
24 is not completed. . . . Yet, we reject this position
25 because, if police aims to arrest are so weak that they do
26 not detain a suspect, then it seems incongruous to say that
27 a seizure of evidence can be lawfully made without a
28 warrant. We decline to extend the exception to warrant

1 requirements for seizures incident to arrest to instances
2 in which a police officer seizes evidence of a crime, but
3 makes no arrest.

4 Id.

5 As in Menotti, Azevedo did not arrest Robertson. Therefore,
6 Azevedo's stop of Robertson for § 41.18(d) cannot have provided
7 grounds for the full search of Robertson and his belongings that
8 Robertson alleges occurred and that, pursuant to Dubner, this court
9 must believe occurred. Thus, even viewing the evidence in the
10 light most favorable to Defendants, the Court finds that Plaintiffs
11 have met their burden of proving that certain unconstitutional
12 searches and seizures occurred.

13 3. Whether California Law Permits
14 Suspicionless Searches of All Parolees or
15 of Any Probationers

16 Plaintiffs argue that California law prohibits suspicionless
17 searches of all probationers. Plaintiffs also argue that
18 California law prohibits suspicionless searches of some parolees.
19 Because Plaintiffs contend that Defendants have admitted they have
20 a policy of conducting suspicionless searches of any individual who
21 they know to be on probation or parole, Plaintiffs believe that
22 Defendants have admitted to an unconstitutional policy.

23 In Samson, the question before the Supreme Court was whether a
24 suspicionless search, conducted under the authority of [California
25 Penal Code § 3067(a)], violated the United States Constitution.
26 Samson, 126 S.Ct. at 2196. In holding that it did not, the Court
27 accounted for the California Legislature's § 3067(a) requirement
28 that every prisoner eligible for release on state parole in

1 California "shall agree in writing to be subject to search or
2 seizure by a parole officer or other peace officer at any time of
3 the day or night, with or without a search warrant and with or
4 without cause." Id. at 2199. The Court considered the mandatory
5 search condition for parolees as a factor that weighed in favor of
6 its finding that the suspicionless search of the California parolee
7 did not violate the Fourth Amendment.¹⁵ Id.

8 Because the Samson court relied on § 3067 to justify its
9 holding, this Court has examined the California Penal Code to
10 determine what the California Legislature actually requires of
11 parolees and probationers. As noted above, § 3067 addresses
12 parole. Read in isolation, § 3067(a) imposes a mandatory search
13 condition on all parolees. However, § 3067(c) states that the
14 mandatory search provisions of § 3067(a) only apply to those
15 "eligible for release for an offense committed on or after January
16 1, 1997." Thus, the statutory authority to conduct suspicionless
17 searches of parolees does not automatically apply to those on
18 parole for a crime committed before 1997.

19 Probation is addressed in a separate statute, California Penal
20 Code § 1203.1. In contrast to § 3067, § 1203.1 does not impose an
21 explicit search condition on probationers. Instead, it gives trial
22 judges discretion to impose probation conditions. See generally §
23 1203.1.

24

25 ¹⁵ Notably, the Samson court did not reach the issue whether
26 acceptance of the search condition by the parolee constituted
27 consent in the sense of a complete waiver of Fourth Amendment
28 rights. Id. at 2199 n.3. The Court observed that the California
Supreme Court had not yet addressed the issue and that it was
unclear whether the State had raised the consent theory in the
lower courts. Id.

1 Thus, on its face, § 1203.1 does not impose a mandatory search
2 condition on all probationers. Defendants contend, however, that
3 California case law expressly permits suspicionless probationary
4 searches of all probationers. Plaintiffs argue that this
5 contention is not true and that Defendants overstate and
6 mischaracterize the authority on which they rely: People v. Reyes,
7 19 Cal.4th 743 (1998), People v. Woods, 21 Cal.4th 668 (1999),
8 People v. Sanders, 31 Cal.4th 318, 333-35 (2003), and In re Jaime
9 P., 40 Cal.4th 128 (2006).

10 The Court now turns to these cases to resolve the dispute.
11 In 1998, the California Supreme Court decided Reyes. The Reyes
12 court did not discuss the permissibility of suspicionless searches
13 of probationers generally; rather, it held that "particularized
14 suspicion is not required in order to conduct a search based on a
15 properly imposed search condition." Reyes, 19 Cal.4th at 753. One
16 year later, in Woods, the California Supreme Court explained that
17 "[i]n California, probationers may validly consent in advance to
18 warrantless searches in exchange for the opportunity to avoid
19 service of a state prison term." Woods, 21 Cal.4th at 674-75. The
20 Woods court upheld a suspicionless search of the probationer, but
21 specifically noted that "in all cases, a search pursuant to a
22 probation search clause may not exceed the scope of the particular
23 cause relied on." Id. at 682. (emphasis added).

24 In 2003, the California Supreme Court revisited this issue in
25 Sanders:

26 We recognized in Reyes that whether the parolee has a
27 reasonable expectation of privacy is inextricably linked to
28 whether the search was reasonable. A law enforcement

1 officer who is aware that a suspect is on parole and
2 subject to a search condition may act reasonably in
3 conducting a parole search even in the absence of a
4 particularized suspicion of criminal activity, and such a
5 search does not violate any expectation of privacy of the
6 parolee. . . . But our reasoning in Reyes does not apply if
7 the officer is unaware that the suspect is on parole and
8 subject to a search condition. Despite the parolee's
9 diminished expectation of privacy, such a search cannot be
10 justified as a parole search, because the officer is not
11 acting pursuant to the conditions of parole.

12 Id. at 333. With respect to suspicionless probationer searches,
13 the Court also noted that "if an officer is unaware that a suspect
14 is on probation and subject to a search condition, the search is
15 not justified by the state's interest in supervising probationers
16 or by the concern that probationers are more likely to commit
17 criminal act." Id. (emphasis added). The Sanders court held that
18 the otherwise unlawful search of the residence of an adult parolee
19 may not be justified by the circumstance that the suspect was
20 subject to a search condition of which the law enforcement officers
21 were unaware when the search was conducted. Id. at 335.

22 Finally, on November 30, 2006, the California Supreme Court in
23 In re Jaime P. reiterated and clarified its position on
24 suspicionless searches in light of the Samson decision. The Court
25 overruled its earlier decision in In re Tyrell J. that an officer's
26 prior knowledge of a probation condition was not necessary in a
27 juvenile case. In re Jaime P., 40 Cal.4th at 139. In so doing,
28 the Court observed that "Samson involved a parolee search conducted

1 by officers aware of the parolee's consent-to-search condition."
2 Id. at 136. The Court further noted that "Samson appears to
3 support [the] view that the high court approves of our Sanders
4 holding requiring prior knowledge of the search condition as a
5 protection against harassing searches." Id. at 137. Thus, the
6 Court concluded, where an arresting officer has neither reasonable
7 suspicion of any criminal activity nor advance knowledge of a
8 search condition that might justify a search, the officer's search
9 is not justified. Id. at 139.

10 In sum, it is clear from the case law that Defendants are
11 incorrect: the California Supreme Court has not endorsed all
12 suspicionless probationary searches. Instead, the California
13 Supreme Court has explicitly and repeatedly held that an officer
14 conducting a suspicionless search of an adult must be aware of a
15 search condition before conducting the search. Accordingly, if, as
16 Plaintiffs argue, Defendants have in fact admitted a policy of
17 searching all probationers based on their probationer status alone,
18 then they have admitted to an unconstitutional policy.

19 Here, there is evidence that Defendants have a policy of
20 searching Skid Row residents when they are aware of their parolee
21 or probationer status. Defendants have submitted the declaration
22 of Michael O'Donnell, the LAPD officer assigned as the "Officer in
23 Charge of Central Area Safer Cities Initiative." (Declaration of
24 Michael O'Donnell ("O'Donnell Decl.") ¶ 1.) O'Donnell's duties
25 include directing the activities of the officers assigned to the
26 Safer Cities Initiative and providing training to officers in the
27 field. (O'Donnell Decl. ¶¶ 1-2.) In describing officer training
28 on constitutional searches, O'Donnell states the following:

1 Officers are trained that they may search individuals when,
2 among other situations, (1) they have probable cause to
3 effectuate an arrest, (2) they can articulate facts, based
4 upon a totality of the circumstances, that the person may
5 be armed with a weapon, (3) the person consents to the
6 search during a lawful consensual encounter, or (4) when
7 they are aware the person is on probation or parole.

8 (O'Donnell Decl. ¶ 5.) (emphasis added). This is a direct
9 admission, from the Officer in Charge of the Safer Cities
10 Initiative, that Defendants have a policy of searching Skid Row
11 residents solely on the basis of the resident's parolee or
12 probationer status without knowledge of any search conditions
13 imposed. The law does not allow such searches. Accordingly, the
14 Court finds that, even viewing the evidence in the light most
15 favorable to Defendants, they have admitted to an unconstitutional
16 policy.

17
18 **III. CONCLUSION**

19 Based on the evidence submitted by the parties, the Court
20 finds that Plaintiffs have established that some violations of the
21 injunction have occurred and are likely still occurring. In light
22 of this evidence, the Court grants the motion to extend the
23 injunction for a period of four months (120 days) from the issuance
24 of this order. This should provide the LAPD ample time to review
25 its policies and practices to ensure that they comply with current
26 Fourth Amendment law as outlined in this order.

27 If, at the end of the four month period, Plaintiffs believe
28 that violations of the injunction are still occurring, they may

1 move for another extension of the injunction and the Court will
2 consider their evidence. Similarly, if Defendants believe that
3 there is cause to vacate the injunction before the four month
4 period has expired, they may move accordingly.

5

6

7 IT IS SO ORDERED.

8

9

10 Dated:

4-20-07



DEAN D. PREGERSON
United States District Judge

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