No. 25-6331

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LOS ANGELES PRESS CLUB, et al.,
Plaintiff-Appellee

v.

CITY OF LOS ANGELES and JIM MC DONNELL
Defendants-Appellants.

Appeal from the United States District Court
Case No. 25-cv-05423-HDV-E
Hon. Hernan D. Vera

APPELLANTS OPENING BRIEF

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I. INTRODUCTION

Everyone, including Appellants the City of Los Angeles, the Los Angeles Police Department, and Jim McDonnell (collectively "the LAPD" or "the City") agrees that police should not use force against or obstruct the newsgathering activities of journalists reporting on the news of the day. Everyone also agrees that "duly authorized" members of the press, as the California Legislature understands and intended that term, should have access to areas closed to the public during protests, including after police issue dispersal orders, to complete their newsgathering activities. However, the district court issued a preliminary injunction in this case that goes beyond state law requirements, differs from at least one other district court injunction on the standard for using less lethal force, and conflicts with both federal and California state law.[1]

This Court should vacate the preliminary injunction the district court entered in favor of Appellees LA Press Club and Status Coup for three reasons. First, LAPD policies already comply with federal and California state law, so to the extent the preliminary injunction orders LAPD to comply with the law, it is not necessary. An injunction that simply restates obligations the law already imposes does nothing to provide any additional relief for the Plaintiffs. Instead, orders and

[1] See, *Black Lives Matter Los Angeles, et al. v. City of Los Angeles, et al.*, U.S.D.C. Case No. CV20-5027-CBM. The preliminary injunction in that case is at Docket No. 102.

injunctions such as the one at issue simply create an incentive for plaintiffs and their counsel to move for contempt, seek sanctions and receive attorneys' fees awards. Second, the injunction sets different standards than what state and federal law require, conflicting with California state law at least by defining a journalist in a way the California Governor and Legislature explicitly rejected, and conflating the standards for deadly and nondeadly force, in effect limiting the LAPD's options for deescalating a conflict before it reaches the point where there is an "*imminent* threat to life or serious bodily injury to any individual, including any peace officer…" 1-ER-32. The presence of an imminent threat is the standard for when use of deadly force is appropriate. Third, this injunction complicates the City's ability to call for mutual aid from surrounding law enforcement agencies, as it holds the City financially liable for any violation of the injunction other agencies commit who are (1) not subject to the injunction, and (2) not trained to comply with its provisions.

The preliminary injunction is predicated on issues of first impression involving newly enacted provisions of the California Penal Code regarding news media access to closed areas and law enforcement's use of kinetic energy projectiles and chemical agents at protests. The injunction then adds to that state law and mandates new policies, restrictions, use of force standards, access requirements, and other actions that California expressly rejected when enacting

these statutes. Unlike the provisions of state and federal law that it professes to follow, this preliminary injunction is an order to the LAPD alone and to no other law enforcement agencies either in Los Angeles County or in the State of California. Yet the injunction also says it applies to "any person in active concert or participation" with the LAPD (1-ER-31), which could subject the LAPD to contempt for conduct by third party mutual aid law enforcement agencies even if that conduct is lawful and complies with all applicable federal and California law.

In addition to the judicial extension of the state law standards, the district court erroneously imposed mandatory injunctive provisions without analyzing whether the law and facts of this case meet the standards for a mandatory injunction. The injunction requires LAPD to alter the way the LAPD manages protests and to take affirmative actions to comply with its provisions over and above the requirements under California or federal law. If the Court leaves the injunction as is, then certain LAPD officers' conduct could be reasonable under both state and federal law, but still violate the injunction. This result means that LAPD officers are held to stricter standards a district judge imposed that are not applicable to any other law enforcement agency in the State of California.

II. JURISDICTION

Appellees' lawsuit alleges causes of action for violations of 42 U.S.C. § 1983 and for a preliminary injunction and declaratory relief under the Declaratory

Judgments Act, 28 U.S.C. §§ 2201(a) and 2202. The district court has jurisdiction over the section 1983 claims pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiffs also allege state law claims. This Court has appellate jurisdiction over the federal claims pursuant to 28 U.S.C. § 1292(a)(1), and supplemental jurisdiction to the same extent as the district court over the state law claims pursuant to 28 U.S.C. § 1367.

III. STATEMENT OF ISSUES

a. Did the district court err by including mandatory injunctive provisions such as requiring specific annual training and providing Plaintiffs and their counsel with direct access to high level supervisory LAPD officers without an attorney present?

b. Did the district court abuse its discretion by imposing a preliminary injunction that differs from the requirements of federal and state law?

c. Do the terms of the injunction which make LAPD and the City responsible and liable for the actions of outside law enforcement agencies, over whom the City has no control, hamper the City and LAPD's ability to request aid from those agencies and violate *Monell*, and the prohibition against respondeat superior liability?

IV. STATEMENT OF THE CASE

A. Factual and Procedural Background

Appellees Los Angeles Press Club and Status Coup filed this lawsuit on June 16, 2025 challenging LAPD's alleged conduct during mass protests in June 2025. (Dkt. 1 at 2.) Appellees contend that during the June 2025 protests LAPD officers denied journalists access to closed off areas in violation of California law and that LAPD officers targeted journalists with less-lethal munitions in violation of the First Amendment and California law. (*See generally*, Dkt. 1.)

On July 3, 2025, Appellees moved for a temporary restraining order and order to show cause why a preliminary injunction should not issue. (Dkt. 16.) The district court issued a temporary restraining order and set a briefing schedule for the preliminary injunction. (Dkt. 44.).

The City opposed on numerous grounds including that LAPD's policies comply with state and federal law and that when the protests turned violent, LAPD needed to act to restore calm. Defendants submitted several declarations of LAPD supervisors and 42 separate exhibits of separate officer body worn camera footage. 2-ER-36-118; Motion to Transmit Physical Exhibits. The evidence submitted made clear the concentrated crowd violence that occurred toward officers during this protest, including throwing rocks, concrete, Molotov cocktails, and

construction site debris at law enforcement, launching commercial grade fireworks, and driving of motorcycles into skirmish lines. (2-ER-45-49.)

LAPD's Public Information Director, Jennifer Forkish, submitted a declaration that attached three exhibits: LAPD's Media Relations Guide and two contemporaneous comments from news media complimenting LAPD's conduct toward journalists during the protests. One comment was a text message sent to Ms. Forkish and Chief McDonnell from an ABC News Radio correspondent on June 15, 2025: "Just want to say a thank you to your teams last night in the height of the mess treating us fairly and professionally as things were unfolding. Same all week. I know we can be a pain in the booty to your field teams but they have been fair. And once things calmed down they were all smiles. Anyway thank you for keeping us safe and not hitting us with less lethal." 2-ER-68-69, 106. The second comment was from a KCAL 9 News segment, commenting that LAPD "have been good to just try to get us media out of the way safely." 2-ER-69; Dkt. 67, Ex. C, Motion to Transmit.

On September 10, 2025, the district court issued a preliminary injunction against the LAPD. 1-ER-1-34.

B. The Terms of the Preliminary Injunction

The preliminary injunction bars LAPD from arresting, detaining or interfering with, or assaulting journalists activity covering protests, including those

who fail to follow dispersal orders or are in closed areas "unless access will interfere with emergency operations" but only for the short duration of the emergency. 1-ER-31-32. The injunction confers the right upon anyone who is arrested or detained and who claims to be a journalist to speak to a supervisor at the rank of captain or above. 1-ER-32. The injunction also requires the LAPD to staff its deployments at protests to have an officer at the rank of lieutenant or above, readily available "to ensure compliance with the terms of this Order and the [LAPD's] legal obligations", and to provide Plaintiffs with the name and contact information of that officer "to allow reporting and resolution of any possible violations of this Order." 1-ER-34.

The preliminary injunction allows journalists to remain in an area where LAPD will use the munitions and crowd control weapons and removes the LAPD's ability to move journalists out of harm's way. The preliminary injunction also prevents LAPD from using these tools generally against a crowd "except when objectively reasonable to defend against an *imminent* threat to life or serious bodily injury" to an officer or someone else. 1-ER-32 (emphasis added). If LAPD does use crowd control weapons, they first must make "repeated, audible announcements, announcing the intent to use kinetic energy projectiles and chemical agents" in multiple languages. 1-ER-32. LAPD is directed not to use crowd control weapons for curfew violations, verbal threats or "noncompliance

with a law enforcement directive." 1-ER-33. "LAPD does not violate this Order if a journalist is incidentally exposed to crowd control devices after remaining in the area where such devices were deployed and LAPD has otherwise complied with the terms of this injunction, including legally sufficient advanced notice that [less lethal munitions] will be deployed." 1-ER-33.

The injunction redefined and expanded the term "journalist" well beyond the "duly authorized representatives" provided for under California Penal Code section 409.7. The preliminary injunction does not provide for credentialing or define the term "journalist" in a manner that can be reasonably applied in the field. Rather "indicia of being a journalist" includes not only credentials or evidence that a person has been duly authorized with a press pass or badge, but also includes anyone with "professional photographic equipment," or distinctive clothing as well as someone without any "indicia" other than the person "is standing off to the side of a protest, not engaging in protest activities and not intermixed with persons engaged in protest activities, although these are not requirements. These indicia are not exclusive and a person need not exhibit every indicium to be considered a Journalist under this Order." 1-ER-33. The paragraph defining journalist concludes by stating "Defendants shall not be liable for unintentional violations of this Order in the case of an individual who does not carry or wear a press pass, badge, or other official press credential, professional gear, or distinctive clothing that

identifies the person as a member of the press." 1-ER-33. Journalists are not required to comply with dispersal orders. 1-ER-33-34.

The injunction requires LAPD to provide notice to all officers and incorporate the orders into its policy bulletins, manuals, and training materials. 1-ER-34. The preliminary injunction also requires LAPD to have an officer at the rank of lieutenant or above present at the protests "whose primary assignment shall be to ensure compliance with the terms of this Order and the Department's legal obligations as to journalists" and provide the contact information of that person to Appellees "to allow reporting and resolution of any possible violations of this Order." 1-ER-34. The injunction by its terms applies to "any person in active concert or participation with" the LAPD. 1-ER-31.

C. Subsequent Proceedings and the Appeal

Following issuance of the Preliminary Injunction, Plaintiffs filed a First Amended Complaint, which generally adds allegations regarding incidents on August 8, 2025. (Dkt. 87.) Defendants answered the First Amended Complaint. (Dkt. 105.)

Defendants timely appealed the order issuing the Preliminary Injunction on October 7, 2025. (Dkt. 89.)

V. SUMMARY OF ARGUMENT

Although the Appellees' factual assertions appear to be inaccurate and incomplete, those disputes are best left for trial and any appeal from a final judgment in this matter. For purposes of this brief, even if the Court assumes the truth of Appellees' allegations, the Court should vacate the preliminary injunction as a matter of law because it fails to meet the standards required for the issuance of a mandatory injunction. The mandatory provisions are multiple and actually conflict with the state laws on which the district court based them. The City specifically objects to at least the following provisions:

1. Making the LAPD and the City responsible for the actions of other law enforcement agencies for alleged violations of the injunction (which is not binding on those other agencies), by ordering that LAPD is responsible for "any person in active concert or participation with" LAPD (1-ER-31);
2. Broadening the definition of journalist beyond the state law standard of "duly authorized representative" of news media outlets and organizations, potentially requiring the LAPD to permit anyone (or potentially many) with a camera, clothing, or cell phone or other "indicia" of being a journalist to stay in areas that could compromise officers or public safety (including behind a police skirmish line);

3. Limiting the use of less lethal crowd control tools and devices to situations where deadly force would be appropriate because it will be less safe not only for members of the media but for protestors and police officers as well; and
4. Requiring that the LAPD dedicate high ranking command staff to respond to a private plaintiff or a private lawyer with whom the City is in litigation, a requirement that has no basis in law, and in the case of the lawyer, conflicts with the rules of professional responsibility and impermissibly intrudes into the City's future operations and finances.

No provision of California or federal law, or any reported case prohibits the issuance or enforcement of dispersal orders against a crowd that includes protestors, journalists, and bad actors. This case is not one where the declarations of an unlawful assembly or the orders to disperse are challenged as unconstitutional or without basis or where the claim is that LAPD carried out dispersal orders selectively or based on content. Rather, the district court relied upon supplemental jurisdiction over Appellees' California law claims of first impression to anchor an otherwise dismissable federal claim. (1-ER-13-14.)

VI. ARGUMENT

A. Standard of Review on A Preliminary Injunction

In reviewing a preliminary injunction, the court of appeals "review[s] the district court's legal conclusions de novo, the factual findings underlying its decision for clear error, and the injunction's scope for abuse of discretion." *K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962, 969 (9th Cir. 2015). "[A] district court abuses its discretion by basing its decision on either an erroneous legal standard or clearly erroneous factual findings." *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 730 (9th Cir. 1999) (citing *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999)); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 386 (1990) ("If the district court based its conclusion on an erroneous view of the law, the appellate court would be justified in concluding that it had abused its discretion.").

"A district court that applied the incorrect legal standard necessarily abused its discretion." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ.*, 600 F.3d 1104, 1111 (9th Cir. 2010) (citing *United States v. Hinkson,* 585 F.3d 1247, 1262 (9th Cir.2009)). "Thus, the first step of our abuse of discretion test is to determine de novo whether the trial court identified the correct legal rule to apply to the relief requested. If the trial court failed to do so, we must conclude it abused its discretion." *United States v. Hinkson*, 585 F.3d 1247, 1261–62 (9th Cir. 2009). "Legal issues underlying a decision to grant an injunction are reviewed *de novo,* as is a district court's finding that plaintiffs are likely to succeed on the

merits of those issues." *Int'l Molders' & Allied Workers' Loc. Union No. 164 v. Nelson*, 799 F.2d 547, 551 (9th Cir. 1986).

"A plaintiff seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689-690 (2008)). "A 'plaintiff (must) make a showing on *all four prongs*' to obtain a preliminary injunction." *A Woman's Friend Pregnancy Res. Clinic v. Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018) (original emphasis) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). "The first factor under *Winter* is the most important—likely success on the merits." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C.Cir. 2014)).

"Alternatively, a court may grant the injunction if the plaintiff 'demonstrates *either* a combination of probable success on the merits and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in his favor.'" *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1298 (9th Cir. 2003) (original emphasis) (quoting *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir.1995)). Injunctive relief is not available

for injuries where damages provide an adequate remedy. *Schroeder v. United States*, 569 F.3d 956, 963 (9th Cir. 2009) ("equitable relief is not appropriate where an adequate remedy exists at law".

B. The District Court Abused Its Discretion in Granting the Injunction

1. The District Court's Injunction Was Mandatory Because It Compels the City to Take Action.

The district court improperly imposed a mandatory injunction on the City that changes the status quo, and instead of merely prohibiting the City from acting. The injunction requires the City to take particular actions to communicate with Appellees and administer, educate, staff, and deploy officers in a particular manner.

"A prohibitory injunction prohibits a party from taking action and 'preserve(s) the status quo pending a determination of the action on the merits.'" *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009) (quoting *Chalk v. U.S. Dist. Court,* 840 F.2d 701, 704 (9th Cir.1988)). "The status quo means 'the last, uncontested status which preceded the pending controversy.'" *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ.*, 600 F.3d 1104, 1112 fn. 6 (9th Cir. 2010) (quoting *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879).

"[A] mandatory injunction . . . orders a responsible party to 'take action.'" *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996). Accordingly, "[a] mandatory injunction 'goes well beyond simply maintaining the status quo *pendente lite* (and) is particularly disfavored.'" *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States,* 612 F.2d 1112, 1114 (9th Cir.1979)). Because a mandatory injunction changes the status quo, "courts should be *extremely* cautious about issuing [such] a preliminary injunction." *Stanley*, 13 F.3d at 1319 (emphasis added) (quoting *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir.1984)).

Here, the district court ordered a mandatory injunction that requires the City to not merely refrain from acting but instead to "take action." *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996). Specifically, paragraphs 2, 7, 8, and 9, of the preliminary injunction require: (1) the City to let in "Journalists" as the Order defines, behind police lines even if LAPD gave a lawful order to disperse and closed the area, and even if the individuals are not "duly authorized representatives" of news services as state law requires; (2) that the City create, notify, and provide a summary of the injunction to all sworn officers; (3) that the City incorporate the injunction into all appropriate LAPD Manual sections and Crowd Control training materials and provide Plaintiffs with copies of those materials; (4) that the City, at least annually, re-issue its policies on policing

protests, including the injunction, to all officers and require officers' acknowledgment that they reviewed these materials; (5) that the City deploy only officers who acknowledge they reviewed the policies on policing protests and the injunction within the previous year; (6) that the City appoint at least one LAPD member at the rank of lieutenant or above at every protest, whose primary assignment is to ensure compliance with the injunction's terms and the LAPD's legal obligations to journalists; and (7) that the City provide Appellees with the name, and contact information for that officer. 1-ER-31-32, 34. The provision that requires a lieutenant or other senior officer to consult with plaintiffs or their counsel in this (or any other) case is also problematic. The injunction also dictates which officers the LAPD may deploy and how they must conduct operations and forces the LAPD to reserve scarce resources and personnel for the sole purpose of communicating with Appellees and their counsel. 1-ER-31-32, 34. These provisions mean that the district court issued a mandatory injunction because it "order[ed] a responsible party to 'take action.'" *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996).

While the City and LAPD already complied with certain of these requirements to avoid the possibility of a contempt motion and attorneys fees, this Court should nevertheless strike these mandatory provisions to prevent competing injunctions, disputes about whether the training or notification was sufficient,

future contempt proceedings and legal fees, and future mandates that improperly interfere with law enforcement operations. If the City or LAPD violates someone's rights, the remedy for that violation is a claim for damages under either state or federal law, including 42 U.S.C. §1983. Protests often turn chaotic or violent very quickly, jeopardizing the public safety of participants, bystanders, and officers. Law enforcement often needs to make decisions and take action very quickly. The balancing of harms requires that the Court allow LAPD to take action that complies with state and federal law to promote public safety, to deescalate a situation and protect us all. LAPD and other law enforcement personnel are specially trained to meet statewide standards in these situations and those uniform standards and training provide the common basis for mutual assistance operations. Thus, the district court erred in issuing the preliminary injunction.

These directives make the injunction mandatory because it no longer "prohibits a party from taking action and 'preserve(s) the status quo pending a determination of the action on the merits'" as a prohibitory injunction would but instead changes the status quo by forcing the City to take new, affirmative actions which change how the City operates. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009) (quoting *Chalk v. U.S. Dist. Court,* 840 F.2d 701, 704 (9th Cir.1988)). These new measures did not exist before the district court issued the injunction or before the current

controversy arose between the parties. Thus, the mandatory injunction requires the City to take action and change the status quo.

The injunction stands in stark contrast to a prohibitory injunction that "prohibits a party from taking action." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). Instead, the injunction requires that the City "take action," akin to the mandatory injunctions that this Court previously has rejected. *See*, *Stanley v. Univ. of S. Calif*, 13 F.3d 1313, 1318-20 (9th Cir. 1994) (reversing an injunction that required USC to take action: "it would have forced USC to hire a person."); *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1979) (reversing a preliminary injunction the plaintiff obtained requiring the United States Air Force to transfer plaintiff to a promotional position for which she was not selected, "interfer[ing] with Air Force internal affairs by dictating which candidate it must hire.").

2. The District Court Applied the Wrong Standard of Review.

The district court abused its discretion (1) because it granted a mandatory injunction without applying the correct, heightened legal standard for the injunction and (2) because the district court did not make the required findings for a mandatory injunction: that the facts and law *clearly* favor Appellees *and* that extreme or very serious damage *will* occur in the absence of a mandatory

injunction. The failure to make any one of the required findings constitutes a separate and independently sufficient basis for reversal.

"In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011) (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,* 571 F.3d 873, 879 (9th Cir.2009)). Thus, to obtain a mandatory injunction, the moving party must meet a high burden: "Because [the moving party] is seeking a mandatory preliminary injunction, the district court must deny such relief 'unless the facts and law clearly favor the moving party.'" *Irvin v. Khaury*, 26 F.3d 130 (9th Cir. 1994) (citing *Stanley v. University of S. Cal.,* 13 F.3d 1313, 1320 (9th Cir.1994)). This "burden here is doubly demanding" because the moving party "must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

The district court applied the incorrect, lower, standard for a prohibitory injunction instead of the more demanding standard for a mandatory injunction. Specifically, the "Legal Standard" section in the injunction order briefly recites the normal *Winter* factors for a prohibitory preliminary injunction; notes that the *Winter* factors operate on a sliding scale; and references the "serious questions"

standard related to the issuance of a prohibitory injunction. 1-ER-012. Significantly, the Order ignores the standards for a mandatory injunction, including whether the facts and law *clearly* favor Appellees. 1-ER-012; *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The Order also neither addresses nor applies the requirement that Plaintiffs must show that "extreme or very serious damage will result" before obtaining a mandatory injunction. *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011) (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,* 571 F.3d 873, 879 (9th Cir.2009)). The district court does not acknowledge that a mandatory injunction "is particularly disfavored" or that "courts should be extremely cautious" about issuing a mandatory injunction. *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319-20 (9th Cir. 1994).

Because the district court applied the wrong legal standard and did not consider or apply the mandatory injunction standards as this circuit's precedents require, the district court abused its discretion. This abuse of discretion is grounds for reversal: "A district court that applied the incorrect legal standard necessarily abused its discretion." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ.*, 600 F.3d 1104, 1111 (9th Cir. 2010) (citing *United States v. Hinkson,* 585 F.3d 1247, 1262 (9th Cir.2009)).

The Order fails to include required findings that Appellees met their "burden of establishing a clear likelihood of success on the merits." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1316 (9th Cir. 1994). Instead, the district court observed that Appellees merely "raised serious questions" on their First Amendment claims. 1-ER-24, 26. But the Ninth Circuit already determined that "the serious questions standard is 'a lesser showing than likelihood of success on the merits.'" *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th Cir. 2024) (quoting *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017)). Similarly, the district court concluded that Appellees demonstrated "a likelihood of prevailing on their *Monell* claims" (1-ER-027), but this does not meet the "doubly demanding" standard for a mandatory injunction that "that the law and facts *clearly favor* her position, not simply that she is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (original emphasis).

Finally, the district court concluded that Appellees demonstrated "a strong likelihood of success" on their state law claims (1-ER-023), but this circuit almost universally applies the "strong likelihood of success" standard to prohibitory injunctions – not mandatory injunctions. The Ninth Circuit has long held that under the traditional test for a prohibitory preliminary injunction, plaintiffs must show a "strong likelihood of success on the merits." *Nat. Res. Def. Council, Inc. v. Winter*, 502 F.3d 859, 862 (9th Cir. 2007); *Taylor v. Westly*, 488 F.3d 1197, 1200 (9th Cir.

2007); *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1092 (9th Cir. 2005); *Harris v. Bd. of Supervisors, Los Angeles Cnty.*, 366 F.3d 754, 759 (9th Cir. 2004); *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009).

C. The Terms of the Preliminary Injunction Conflict with Federal and State Law[2]

1. The District Court's Orders Conflict with the Plain Meaning, Legislative History, and Practical Considerations of Penal Code Section 409.7

Penal Code section 409.7 provides that a "duly authorized representative of any news service, online news service, newspaper, or radio or television station or network" has certain privileges and protections. These include (1) access to areas

[2] California Penal Code sections 409.7 and 13652 went into effect on January 1, 2022. Both are new laws that for the first time attempt to regulate the time, place and manner of media access to closed protest areas (Pen. Code § 409.7), and of law enforcement's response to protests and use of certain less lethal crowd control devices, including the circumstances under which law enforcement agencies may use kinetic impact weapons and chemical agents during protests (Pen. Code § 13652). Since neither the California Supreme Court nor any California Court of Appeal has considered or otherwise interpreted these brand new statutes, if this Court is not inclined to overturn the injunction outright, this Court may instead certify the question about the meaning and interpretation of these statutes to the California Supreme Court. *See* Cal. R. Ct. 8.548(a) ("On request of . . . a United States Court of Appeals . . . the Supreme Court may decide a question of California law if: (1) The decision could determine the outcome of a matter pending in the requesting court; and (2) There is no controlling precedent."); see e.g. *Himes v. Somatics, LLC*, 29 F.4th 1125, 1127 (9th Cir. 2022) (certifying question to California Supreme Court to determine proper causation standard for claim of failure to warn of risks for prescription product) certified question answered, 16 Cal. 5th 209 (2024)

otherwise inaccessible to the public during protests or other emergency situations, (2) restrictions against peace officers intentionally obstructing newsgathering work, and (3) prohibitions against citation of such representatives for "failure to disperse, a violation of a curfew," or obstructing a peace officer in their newsgathering activities. Pen. Code, § 409.7(a) subd. (1)-(3).

In defining the scope of the preliminary injunction, the district court redefined the category of individuals to which section 409.7 applies, to include "Journalists" as defined in the injunction. 1-ER-033 ("Journalists" are identified by "indicia of being a Journalist" as the district court defined). While the district court may have intended to use the definition in section 409.7 as the basis for the scope of injunctive relief, the district court erroneously extended the scope of coverage far broader than the Legislature and Governor intended, as borne out in the plain reading of the statute and in the legislative history of section 409.7. In doing so, the district court adopted a definition that the California Governor expressly rejected in an earlier, vetoed, version of the law and that had it been enacted by the legislature would be constitutionally infirm for vagueness, overbreadth and ambiguity.

a. The Preliminary Injunction Directly Conflicts with the Plain Reading of Penal Code section 409.7

When interpreting California law, federal courts must apply California's rules of statutory construction. *See CPR for Skid Row v. City of Los Angeles*, 779

F.3d 1098, 1104 (9th Cir. 2015). As the California Supreme Court stated, the "fundamental task" is to "determine the Legislature's intent so as to effectuate the law's purpose." *Brown v. City of Inglewood*, 18 Cal. 5th 33, 40 (2025). In interpreting a statute, the Court must look to the "statutory language, giving it a plain and commonsense meaning" but also examine it "in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." *Id.* When the meaning is clear, that meaning governs, but if "the statutory language permits more than one reasonable interpretation, we may consider other aids, such as the statute's purpose, legislative history, and public policy." *Id*.

In deciding what a "duly authorized representative of any news service, online news service, newspaper, or radio or television station or network" means, this Court must look to the commonsense meaning and the statutory framework. Pen. Code § 409.7. The plain reading clearly provides that a person must be (1) duly authorized, and (2) representing some type of organization, station, newspaper, or news network. With these two elements, California limited its protections *only* to individuals who perform newsgathering activities on behalf of an organization, and that the organization must contact the police department to designate any duly authorized representative. The plain reading does not describe protections for people based on "indicia" of being a journalist, which "indicia" are

subjective as the preliminary injunction defines, and subject to the vagaries of different observations.

The statutory framework surrounding section 409.7 does not assist in understanding of the definition of a "duly authorized representative." Penal Code sections 409.5 and 409.6 use the term in the same manner to discuss access for duly authorized representatives of media organizations, but no case questions the scope of the term.[3] The remainder of the California Penal Code does not provide information nor define the term "duly authorized representative." *See* Pen. Code, §§ 602.4, 602.7, 640, 1203.2a, and 11193 (The words "duly authorized representative" appear, but do not clarify its use). Nor does any other California statute or case clearly define a "duly authorized representative" under the Penal Code.

b. The Preliminary Injunction Directly Conflicts with the Legislative Intent in Enacting Penal Code Section 409.7

The California Legislature initially introduced section 409.7 in the 2019-2020 Legislative Session as Senate Bill 629. RJN-08-15. Senate Bill 629 specifically defined "a duly authorized representative of a news service, online

[3] The parties and the district court all cite to *Leiserson v. City of San Diego*, 184 Cal. App. 3d 41 (1986). But *Leiserson* did not address the definition of a duly authorized representative, it only noted that all parties agreed that Leiserson *was* a duly authorized representative. *Id.* at 49.

news service, newspaper, or radio or television station or network" to include "a person who appears to be engaged in gathering, receiving, or processing information, who produces a business card, press badge, other similar credential, or who is carrying professional broadcasting or recording equipment." RJN-10-11. The Legislature approved and presented the bill to the Governor, which the Governor vetoed, in part, because:

> I am concerned that this legislation too broadly defines a "duly authorized representative of a news service, online news service, newspaper, or radio or television station or network." As written, this bill would allow any person who appears to be engaged in gathering, receiving or processing information, who produces a business card, press badge, other similar credential, or who is carrying professional broadcasting or recording equipment, to have access to a restricted law enforcement area. This could include those individuals who may pose a security risk - such as white nationalists, extreme anarchists or other fringe groups with an online presence.
>
> RJN-17.

Thus, the version of section 409.7 in S.B. 629 did *not* become law.

In response to the Governor's concerns, when the California Legislature reintroduced section 409.7 as Senate Bill 98 in the 2020-2021 legislative session,

the Legislature expressly excluded the definition from S.B. 629. RJN-53. Analyzing the changes from S.B. 629 to S.B. 98, the Legislature described the Governor's veto as the reason for removing the definition included in the prior bill. *See* RJN-20-31, RJN-48-56.

The Assembly Committee on Public Safety's report substantively discussed the purpose in removing the S.B. 629's definition when enacting section 409.7 in the new bill:

> This bill is the second iteration of SB 629. This time around, the language expanding who would qualify as "a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network" has been removed. This bill, unlike SB 629, is analogous to existing law in terms of who would qualify as media for purposes of its access and protection provisions. (*See e.g.* Pen. Code, § 409.5, subd. (d).) In that sense, *this bill appears to respond to the Governor's veto message by using a definition that is narrower than the one advanced in SB 629*.
>
> RJN-53 (emphasis added).

In S.B. 98, California narrowed the scope of who qualifies as a "duly authorized representative" of a news organization. The Legislature enacted S.B. 98, and the Governor signed the bill into law. *See* Pen. Code, § 409.7.

The Governor's veto of S.B. 629 expressly rejected the definition of "duly authorized representative" that the district court in this case adopted. A near one-to-one match exists between the rejected language and the district court's definition:

- The district court included: "wearing a professional or authorized press badge or other official press credentials, or distinctive clothing, that identifies the wearer as a member of the press";
- California rejected: "produc[ing] a business card, press badge, [or] other similar credential."
- The district court included: "standing off to the side of a protest, not engaging in protest activities, and not intermixed with persons engaged in protest activities";
- California rejected: "appears to be engaged in gathering, receiving, or processing information."
- The district court included: "carrying professional gear such as professional photographic equipment";
- California rejected: "carrying professional broadcasting or recording equipment."

By ordering the City to offer the privileges provided in section 409.7 to anyone displaying "indicia" of being journalists, the district court effectively and improperly overrides the Governor's veto of S.B. 629. That power is reserved to the Legislature. Cal. Const. Art. IV, § 10(a).

c. The Preliminary Injunction Imposes Impractical and Dangerous Requirements on Law Enforcement

Assuming arguendo, a valid legal basis exists for upholding the expansive definition of a "duly authorized representative" to include "indicia" of being journalists, significant practical challenges remain with complying with such a broad definition. The problem is that anyone can claim they are a journalist. All a person needs to do is print out a badge that says "Press", or carry camera equipment, and the injunction compels the LAPD to allow them behind the police lines and into restricted areas. At a minimum, LAPD should be able to order someone to produce valid proof that they are a "duly authorized representative" before they are required to allow them into closed areas, especially to the back of a skirmish line.

Section 409.7 also provides if an officer detains a "duly authorized representative" the "representative shall be permitted to contact a supervisory officer" to challenge the detention. Pen. Code, § 409.7 subd. (a)(3). In the LAPD, a supervisor is defined as an officer who holds the rank of sergeant I or detective II or higher. Yet, the injunction goes further than the law requires in three ways.

First, the injunction requires the LAPD to allow the journalist to contact a supervisory officer at the rank of captain or above, if the journalist is detained or arrested. 1-ER-032. This is more onerous than the law requires. Second, at any protest to which LAPD deploys, the injunction requires LAPD to appoint an officer at the rank of lieutenant or above to ensure compliance with the terms of the injunction and LAPD's "legal obligations as to journalists. 1-ER-034. Third, it requires LAPD to provide Appellees "with the name, email, and a cell phone number" for the assigned officer "to allow reporting and resolution of any possible violations of this Order." *Id*. The problem with the second and third requirements is that nothing in section 409.7 requires a law enforcement agency to appoint a liaison officer to attend each protest and section 409.7 does not require that a law enforcement agency provide the media or a private party or counsel for a private party with the contact information of such an officer.[4]

[4] While permissible pursuant to a court order, as is the case here, California's Rules of Professional Responsibility generally prohibit direct or indirect communications between parties represented by attorneys for either side. *See* Cal. Rules of Prof. Resp., Rule 4.2(a), (b). This rule exists in part to "protect the represented person against (i) possible overreaching by the prohibited lawyer, (ii) interference by the prohibited lawyer with the client-lawyer relationship, and (iii) the uncounseled disclosure of privileged or other confidential information." Cal. Rules of Prof. Resp., Rule 4.2, Executive Summary, p. 4. In requiring communications pursuant to the preliminary injunction, the district court opens the door to the problems the Rules of Professional Responsibility identify insofar as it requires LAPD officers to potentially disclose privileged, confidential, or otherwise sensitive information to the other party without the involvement of counsel for the City, the LAPD or the officer.

d. The City Has Procedures to Recognize Duly Authorized News Services Representatives

The City has longstanding procedures in place for working with the media to identify duly authorized representatives in a manner that complies with all applicable law, including section 409.7. Los Angeles Municipal Code section 52.16, delegated authority to the Board of Police Commissioners and the LAPD to implement procedures to determine who "actual news-gathering representatives" of news services are for the purposes of section 409.7. LAMC § 52.16 subd. (A). The injunction neither considers nor inquires whether any of the people claiming alleged violations of section 409.7 possessed the "news media identification cards" readily available to any news service's duly authorized representatives.

The procedures the Municipal Code describes, and the processes the Board of Police Commissioners and the LAPD developed, are the longstanding legislative and regulatory enactments of the City. The City enacted the current version of LAMC section 52.16 in 1977, and most recently amended it in 2020. Anyone can apply for a news media identification card through a publicly available website. *See* LAPD News Media Identification Card Guidelines, Media / Press Pass Policy (Oct. 30, 2025) <https://www.lapdonline.org/public-communications-group/media-relations-division/press-pass-policy/>. The City's procedures extend beyond what the law requires, and allows self-employed, freelance, and employees of non-LAPD identified news organizations, to apply for and receive news media

identification cards but also provide a process to credential and confirm "duly authorized" representatives. *Id.*

The LAPD's Media Relations Guide describes how the LAPD implements its policy with regards to section 409.7. It interprets the "exclusive purpose of a news media identification card" issued under LAMC section 52.16 to "enable the bearer to pass through established police and fire lines in order to cover news events occurring behind such lines." 2-ER-085 (LAPD will also honor news media identification cards other law enforcement agencies issue). It further describes that the LAPD's policy regarding detained individuals who identify as members of the press, with or without a news media identification card, is to notify a supervisor if feasible, and allow the supervisor to investigate whether the individual is a member of the press. *Id.* The LAPD's policies already go beyond what section 409.7 requires, which only obligates officers to contact supervisors of detained individuals when those individuals are a "duly authorized representative" of a news service. In the City, that means applying for and receiving a news media identification card. The injunction improperly goes beyond the policies the City adopted, and far beyond the requirements of section 409.7.

e. Alleged violations of Penal Code section 409.7 require individualized determinations, not overbroad injunctive relief

The injunction is not narrowly tailored for the injuries Plaintiffs allege, because each putative example of a violation under section 409.7 will require a

fact-specific inquiry into the different circumstances, different allegations, different alleged violations, and different individuals involved in each alleged instance of injury. In each instance, a court needs to determine (1) whether the putative member of the press was a "representative" of a news service in the first instance, (2) whether their status as a representative was "duly authorized" such that the LAPD was on notice of their status, (3) whether, regardless of their status as a "duly authorized representative" the individual was engaged in other unlawful activity such that detention or denial of access was warranted, (4) whether the peace officer's obstruction of newsgathering activities was "intentional" under section 409.7(a)(2), or unintentional, and (5) whether a "duly authorized representative" petitioned for supervisory review of any detention, whether LAPD granted or denied such review, and whether circumstances made supervisor review "impossible" under section 409.7(a)(3). Additionally, since damages will adequately remedy any alleged injury, injunctive or other equitable relief was and is inappropriate. Thus, the Court should vacate the injunction.

2. The Injunction Conflicts with the Plain Meaning, Legislative History, and Practical Considerations of Penal Code Section 13652

Penal Code section 13652(a) prohibits law enforcement agencies from using "kinetic energy projectiles and chemical agents" to disperse "any assembly, protest, or demonstration." Subdivision (b) describes the limited exceptions to the

prohibition when "the use is objectively reasonable to defend against a threat to life or serious bodily injury … or to bring an objectively dangerous and unlawful situation safely and effectively under control." Pen. Code, § 13652 subd. (b). Subdivisions (b)(1)-(11) outline the additional steps and circumstances that a peace officer deploying such projectiles or agents must observe prior, during, and after their use. Relevant to the injunction are: (1) de-escalation techniques; (2) announcements prior to using projectiles and chemicals when objectively reasonable to do so; (3) giving people an objectively reasonable opportunity to disperse or leave the area; (4) making an objectively reasonable effort to identify and target individuals engaged in violent acts; (6) minimizing "possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, *journalists*, or other unintended targets" (Pen. Code, § 13652 subd. (b)(6) (emphasis added)); and (9) prohibition on intentionally aiming projectiles at the "head, neck, or any other vital organs." (Pen. Code, § 13652, subd. (b)(a)).

This standard comports with both federal and state law. "Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham v. Connor*, 490 U.S. 386, 396 (1989). In

determining whether a totality of the circumstances justifies the amount of force the officer used, courts look at "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Id.* Courts also analyze "the type and amount of force inflicted." *Doerle v. Rutherford*, 272 F.3d 1272, 1279 (9th Cir. 2001). "The 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. at 397. The standard under state law is similar. *Chaudry v. City of Los Angeles*, 751 F.3d 1096, 1105 (9th Cir. 2014) ("a successful claim for excessive force under the Fourth Amendment provides the basis for a successful claim under" the California Bane Act, Code Civ. Proc. § 52.1.); *Edson v. City of Anaheim*, 63 Cal.App.4th 1269, 1273 (Cal.Ct.App. 1998) ("a prima facie battery is not established unless and until plaintiff proves unreasonable force was used.").

a. The Injunction Impermissibly Expands the Scope of Section 13652 to Include "Crowd Control Weapons" Not in the Code

The injunction prohibits the City from using "other crowd control weapons (including kinetic impact projectiles ("KIP"s), chemical irritants, batons, and flash-bangs)" under the circumstances described in section 13652(b). 1-ER-032. Nothing

in section 13652 supports expanding the narrow application of the law to "kinetic energy projectiles and chemical agents." *See* Pen. Code § 13652 subds. (d)(1) & (d)(2). The statute's plain language shows the intent of the Legislature to apply the prohibition only to a narrow subset of weapons clearly defined in the statute, and not the unlimited set of "crowd control weapons" in the district court's injunction.

The Legislature did not require the same strict standards for using batons, flash-bangs, or other "crowd control weapons" because the statute remedies a particular harm from kinetic impact weapons and chemical agents. As section 13652's author stated, the purpose was to control the use of "rubber bullets and beanbag rounds" causing injury to people exercising their First Amendment rights. RJN-38. The Legislature identified the elevated risks of severe injuries from kinetic impact weapons and chemical agents, and sought to "establish minimum statewide standards and policies for their use." RJN-41.

b. The Injunction Imposes the Same Standard for Using "Crowd Control Weapons" as for Using Deadly Force, Contravening the Legislative Intent

The injunction adopts a use of force standard precluding LAPD from deploying "crowd control weapons" against any "Journalist" unless the peace officer determines that the journalist poses a "threat of imminent harm to an officer or another person." 1-ER-032. The district court similarly enjoined the LAPD from using *any* "crowd control weapon" against *anyone* unless there was "an imminent

threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control." *Id* (emphasis added). These limitations fall outside the scope of section 13652's clearly defined limitations, violate the Legislature's intent when enacting section 13652, and have the pernicious effect and unintended consequence of making it less burdensome for a peace officer to use deadly force than to use less lethal crowd control weapons during riots or unlawful assemblies. That is an anomalous result which no one desires.

c. The Statutory Framework Shows that the Legislature Purposefully Omitted the Word "Imminent" from the Statute

A well-settled principle is that "where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." *Los Angeles Cnty. Metro. Transportation Auth. v. Alameda Produce Mkt., LLC*, 52 Cal. 4th 1100, 1108 (2011) (*Alameda Produce*) (quoting *In re Jennings,* 34 Cal.4th 254, 273, (2004)) (Legislature's use of the phrase "the benefit of" in one section, and the omission of the phrase in a separate section reflected the Legislature's intent to impart different meanings to the separate sections). Section 13652 does not include the word "imminent." Several statutes that are part of the same statutory framework *do* contain the term "imminent."

Title 4.7 of the Penal Code includes sections 13650 through 13670, all of which address regulation of law enforcement agencies throughout California. Penal Code section 13665 prohibits releasing photographs of criminal suspects under subdivision (a), while subdivision (a)(1) exempts releases when a department determines that the suspect is an "*imminent threat* to an individual or to public safety" such that releasing the image will reduce or eliminate their threat. Pen. Code § 13665 subd. (a)(1) (emphasis added). Forthcoming Penal Code section 13654, (operative January 1, 2026), will require all officers engaged in enforcement activities in California to display their agency, and their name or badge number. Subdivision (b)(4), exempts this requirement when "[e]xigent circumstances, involving an *imminent danger* to persons or property" exist. Pen. Code, § 13654 subd. (b)(4) (emphasis added).

Comparing the language in section 13652, the California Legislature limited the use of kinetic impact weapons and chemical agents to circumstances where their use is "objectively reasonable to defend against a threat to life or serious bodily injury." Pen. Code, § 13652, subd. (b). Notably, the Legislature did not require the threat to be "imminent" prior to weapon use. As with *Alameda Produce*, the intent to omit the requirement of an "imminent" threat in section 13652 is clear from the statutory framework. Accordingly, the use of kinetic impact weapons and chemical agents are permitted under the law when there is an

objectively reasonable threat justifying its use, even if that threat is not "imminent."

d. The Legislative History Shows that the Legislature Purposefully Omitted the Word "Imminent" to Distinguish it from the Standard for the Use of Deadly Force

The legislative history shows that the Legislature intentionally omitted the requirement that threat need be "imminent" prior to using kinetic impact weapons and chemical agents. The Assembly Public Safety Committee report for A.B. 48 directly referred to the then recent change in California law where "AB 392 (Weber), Chapter 170, Statutes of 2019, provided that an officer *may use deadly force* in order to prevent an *imminent threat* of death or serious bodily injury to the officer or to another person." RJN-39 (emphasis added). With the use of deadly force requiring "an imminent threat of death or serious bodily injury," the Legislature's adoption of "objectively reasonable to defend against a threat to life or serious bodily injury" as the standard for the use of kinetic impact weapons and chemical agents, the Legislature clearly intended a difference between use of deadly force, and use of kinetic impact weapons and chemical agents.

The Legislature also describes the purpose for the different standards. In the Assembly Public Safety Committee report, the authors noted that "[a]s drafted, this bill would require police to take more mitigating actions prior to using less-lethal force, such as tear gas and rubber bullets, to respond to an *imminent* threat or death

or serious bodily injury, than they would if they were to simply respond with deadly force. In other words, this proposal may make it simpler and easier for officers to respond to a threat by firing lethal, lead ammunition from their service weapon, instead of taking the appropriate steps to fire ammunition designed to be less lethal, such as KIPs." RJN-41-42 (emphasis added). Because of this concern, the Legislature did *not* adopt the use of force standard requiring an "imminent" threat.

By vastly expanding the scope of prohibited weaponry to include any conceivable "crowd control weapon", importing the identical standard for use of deadly force, and requiring "repeated" warnings in multiple languages for use of less lethal and other crowd control weapons, the injunction has the pernicious, albeit unintended, consequence of facilitating the use of deadly force and leaving peace officers to use weapons that are *not* designed for crowd control. In effect, the preliminary injunction guarantees the very danger the Legislature foresaw could come to pass by making "it simpler and easier for officers to respond to a threat by firing lethal, lead ammunition from their service weapon." RJN-41-42. Of course, if there is in fact an imminent threat to life or serious bodily injury, the need for intervention by officers also is imminent, leaving them with no time to make any announcements, much less repeated ones in multiple languages.

Under the preliminary injunction, a peace officer would need to recognize an objectively reasonable, imminent, threat to life or serious bodily injury, issue warnings that are documented (and potentially in several languages), warn the crowd of the area where they intend to deploy kinetic impact weapons and chemical agents, and give "Journalists" and others a reasonable opportunity to leave before using less lethal munitions. Meanwhile, if an officer recognizes an objectively reasonable, imminent, threat to to life or serious bodily injury and pulls out their service weapon, they would only need to fire it. While the district court likely did not intend to craft an order making it easier for a peace officer to kill protesters than to disperse them, this preliminary injunction has that effect.

e. The Injunction Creates Impracticable Requirements That Create Risk for the City Where None Would Otherwise Legally Exist

Under the injunction, officers could be in violation of the order, even if their actions are objectively reasonable and lawful under both state and federal law and even if no one is hurt unlawfully. Both section 13652 and the preliminary injunction require LAPD to "make repeated, audible announcements, announcing the intent to use kinetic energy projectiles and chemical agents without incorporating the necessary limitation under state law qualifying that announcements are required only "when it is objectively reasonable to do so." Pen. Code § 13652, subd. (b)(2); 1-ER-032.

In addition, the injunction requires LAPD to allow "Journalists" to remain in areas where LAPD intends to use 'crowd control weapons' or allow them to move outside the area of the target area at the discretion of the "Journalist." 1-ER-032. Section 13652 subdivision (b) requires that law enforcement personnel: (3) permit all people to have an "objectively reasonable opportunity to disperse and leave the scene," (4) make an objectively reasonable effort to identify and only target individuals "engaged in violent acts" with kinetic energy projectiles and chemical agents, and (6) "minimize the possible incidental impact… on bystanders, medical personnel, journalists, or other unintended targets." Under the preliminary injunction, even an officer who fully complies with the law may nevertheless violate the additional terms that the preliminary injunction imposes. For example, if protesters throw rocks at officers, but journalists stand between the protesters and the officers, the injunction prevents the officers from ordering the journalists to move out of the way, even if by doing so they comply with section 13652 subdivision (b)(3), in providing an "objectively reasonable opportunity to disperse and leave the scene." Since the injunction's provisions regarding the use of less lethal crowd control devices conflict with federal and California law, this Court should vacate the injunction.

D. The Provision Making LAPD Liable for an Outside Law Enforcement Agency's Actions Affects LAPD's Ability to Request Assistance from Other Agencies and violates the Prohibition Against Respondeat Superior Liability

As set forth above, the injunction applies to "any person in active concert or participation with" the LAPD. 1-ER-031. Since the injunction applies only to the one named law enforcement agency – the LAPD – and not to any of the City's law enforcement partners, it will be difficult for the City to ask its law enforcement partners for mutual aid in mass protest situations. In chaotic mass protest situations, LAPD often calls other regional law enforcement agencies for assistance and those agencies are in command of their own resources, none of which are bound by or trained in the requirements of this injunction. The City's law enforcement partners will follow state and federal law, which is less restrictive and onerous than the terms of the injunction. The City does not control how its law enforcement partners train their officers, but if they assist LAPD at a violent protest, the City could potentially be liable for its law enforcement partners' actions if they act in a manner inconsistent with the terms of the injunction, creating potential liability where none would otherwise exist.

None of the other agencies (e.g., Los Angeles Sheriff's Department, California Highway Patrol, or neighboring police departments such as Pasadena, Glendale, Long Beach, Culver City, Burbank, Santa Monica, or Beverly Hills), are bound by the injunction. They will not have the training required under the

injunction, nor are within the command or control of the LAPD or the City. This provision could result in the inability to request needed assistance or to make the City or the LAPD liable for conduct of third parties who the injunction does not bind.

Requiring the City to be liable for other jurisdiction's alleged violations of the injunction violates the long-standing federal rule against *respondeat superior* liability. To establish liability against a city for a violation of 42 U.S.C. § 1983, it is insufficient to allege a constitutional violation occurred. Instead, a plaintiff must allege the city engaged in a custom, policy, or practice of violating someone's constitutional rights. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978) (To establish municipal liability, plaintiff must allege that "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.") "A municipality may not be held liable under § 1983 solely because it employs a tortfeasor." *Bd. of the County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 403 (1996). Supervisors "may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior" in section 1983 cases. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); *Lewmire v. California Department of Corrections & Rehabilitation*, 726 F.3d 1062, 1074 (9th Cir. 2013) ("Vicarious liability may not be imposed on a

supervisor for the acts of lower officials in a § 1983 action."). "A supervisor is only liable for the constitutional violations of his subordinates if [the supervisor] … directed the violations or knew of the violations and failed to act to prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

If a plaintiff seeks to hold a municipality liable for a policy or custom that the appropriate policy or decision maker has not officially approved, plaintiff must prove "that the relevant practice is so widespread as to have the force of law." *Bd. of the County Comm'rs of Bryan County v.Brown*, 520 U.S. at 404 (citing *Monell*, 436 U.S. at 690-91). Here, LAPD's policies both comply with sections 409.7 and 13652, and go further than what the law requires. 2-ER-071-103. But, again, LAPD has no control over any other law enforcement agency's policies. Thus, the Court should reverse the term requiring that LAPD is responsible for anyone acting in concert with it.

VII. CONCLUSION

For the foregoing reasons Defendants respectfully request this Court to dissolve the preliminary injunction.

Dated: November 12, 2025

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Certificate of Compliance

Counsel of Record hereby certifies that the enclosed APPELLANTS OPENING BRIEF produced using 14-point Roman type, including footnotes; that contains 10,379 words; and that its form and length complies with all aspects of FRAP 32 (a)(5) and (a)(7). Counsel relies on the word count of the computer program used to prepare the brief.

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