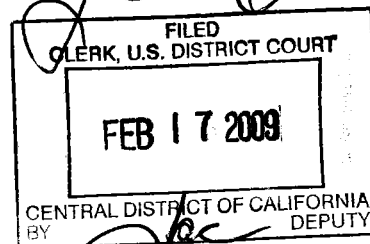


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22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 DONALD FITZGERALD et al.,
25 Plaintiffs,
26
27 vs.
28 CITY OF LOS ANGELES et al.,
Defendants.

Case No: CV 03-01876-DDP (SSx)
~~PROPOSED~~ SETTLEMENT AND
ORDER
The Honorable Dean D. Pregerson

NO
DATES

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Introduction

1. The present action involves a dispute over policing in the Skid Row area of downtown Los Angeles.

2. This action was first filed in March 2003, Case No. CV 03-1876 NM (RZx). On October 3, 2003, after the issuance by the district court of a temporary and then a preliminary injunction, the parties entered into a settlement, which included the entry of a permanent injunction by the district court. The permanent injunction provided for an expiration in 36 months, with the proviso that the plaintiffs could move for an extension of the injunction for an additional period of 36 months upon a showing of good cause. The settlement agreement was approved by the Court on December 9, 2003.

3. In late September, 2006, the City of Los Angeles announced the launch of the Skid Row Safer Cities Initiative, which placed an additional 50 patrol officers and 24 narcotics officers and supervisors on Skid Row.

4. While the parties disagree on the policing presently occurring on Skid Row, all concerned agree that the problem of homelessness on Skid Row is pressing and cannot be solved by policing alone. Although the City is presently attempting to address the services component through the Streets Or Services (SOS) diversion program, many homeless individuals are ineligible for various reasons. Additionally, both the SOS program and the presently available resources to which it directs participants are not to the scale required to reduce or eliminate homelessness on Skid Row for a variety of reasons, including the lack of facilities adequate to respond to a population presenting a variety of physical, developmental and psychological disabilities and substance addictions.

5. As the Court's order of November 9, 2007, reflects, there is now general agreement on the applicable law for nearly all of the issues challenged in this action. The points of agreement are set forth below.

1 **Searches Incident to Arrest**

2 6. A search incident to arrest is not permitted when a person is merely cited
3 and released in the field for an infraction or misdemeanor. An officer may search a
4 person if the officer has probable cause to believe the search will yield evidence of a
5 crime or, for a frisk, reasonable suspicion to believe the person is armed or dangerous,
6 or if the detainee voluntarily consents to the search.

7 7. For example, for suspected violations of L.A.M.C. § 41.18(d), which
8 prohibits sitting, sleeping or lying on the sidewalk or public right of way, no physical
9 search will produce additional evidence of such violation. Accordingly, where an
10 officer stops, cites, and releases an individual in the field for a violation of L.A.M.C.
11 § 41.18(d), the officer may not search the individual unless the officer has probable
12 cause independent of the § 41.18(d) violation or, for a frisk, reasonable suspicion that
13 the individual is armed or dangerous, or the person voluntarily consents to a search.
14 In other words, the probable cause for the search must be something more than the fact
15 that a person was sleeping on the street or sidewalk.

16 8. As another example, a person who is stopped or receives a citation for
17 jaywalking is not subject to search absent either independent probable cause to suspect
18 that such search would yield evidence of a crime or, for a frisk, reasonable suspicion
19 that the individual is armed or dangerous, or other search permissible under the Fourth
20 Amendment.

21
22 **Searches of Parolees and Probationers**

23 9. The parties agree that suspicionless searches of parolees are permissible
24 so long as searching officers have knowledge of a subject's parole status before
25 conducting the search and the search is not arbitrary, capricious or harassing.

26 10. The parties recognize the law is not entirely settled with respect to
27 searches of probationers. Without offering an opinion on the governing law, the City
28

1 will train officers according to the following standard: Searches of probationers
2 require (1) reasonable suspicion to believe (a) a search will reveal evidence of criminal
3 activity or a probation violation; or (b) the subject is committing or has committed a
4 crime; or (c) the subject has violated terms/conditions of probation, and (2) prior
5 knowledge not only of the subject's probation status, but of the fact that a search
6 condition is one of the subject's terms of probation. The City reserves the right to
7 change its policy or training on probation searches at any time, but will provide notice
8 to plaintiffs prior to making any such change. The fact the City is agreeing to teach the
9 more protective standard will not be used against the City in this or any subsequent
10 litigation as an admission as to the controlling legal standard regarding probation
11 searches.

12 11. Searches of parolees and probationers may also be consensual.

13 12. In a consensual encounter, police officers may ask an individual whether
14 s/he is on probation or parole. Police officers may not compel the individual to answer
15 the question. If an individual declines to answer whether s/he is on probation or
16 parole, refusal to answer does not alone provide reasonable suspicion to detain or
17 search the individual.

18 13. When an individual is lawfully detained, that individual's refusal to
19 answer whether he or she is on probation or parole provides no independent basis, in
20 and of itself, to prolong the detention or initiate a search.

21 14. LAPD will not engage in conduct related to parole or probation searches
22 that is arbitrary, capricious, or harassing.

23

24 **Handcuffing and Frisks**

25 15. Protective frisks of a person for weapons require, at a minimum,
26 reasonable suspicion that the person may be armed or dangerous. A protective frisk
27 conducted on this basis may only intrude so far as is necessary to find weapons that
28 might be used by the subject during the encounter.

1 16. Handcuffing of a subject is not appropriate absent reasonable suspicion
2 that a subject poses a physical threat to officers or others, may destroy evidence, flee,
3 or otherwise interfere with the officers' legitimate investigation, or other exceptions
4 permitted under the Fourth Amendment.

5

6 **Prolonged Detention for the Purpose of Running Wants/Warrants**

7 17. An officer may conduct a warrant check on a subject stopped for any
8 reason, but only if the time required to complete the warrant check does not exceed the
9 time reasonably required to complete the officer's other investigative duties.

10

11

General Provisions on Training

12 18. The Department agrees to conduct training on the issues contained in this
13 Settlement Agreement.

14 19. The Department will develop and implement scenario based training to
15 be conducted outside of roll call. This training, which will be approximately
16 one (1) hour in length and include handouts, will be delivered to all officers who are
17 assigned to patrol the Skid Row area (including those assigned to the Safer Cities
18 Initiative Task Force and Metropolitan Division mounted units). The first time this
19 training is delivered, it shall be delivered live to those officers then assigned to patrol
20 the Skid Row area. Additionally, the Department will develop an e-learning module
21 on the issues contained in this settlement agreement.

22 20. Following the delivery of the live training discussed in Paragraph 19,
23 above, the Department will provide training either live, by e-learning or a combination
24 of the two, to all officers subsequently assigned to patrol the Skid Row area (including
25 those assigned to the Safer Cities Initiative Task Force). As needed, the Department
26 will also provide recurring training to existing personnel either live, by e-learning or
27 a combination of the two.

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Attorneys' Fees

21. Defendant City of Los Angeles contends that all attorneys' fees for this lawsuit have been paid by the first settlement agreement in this case, including those connected with Plaintiffs' motions to extend the injunction. Defendants contend that the language from the first settlement agreement should govern this second Settlement Agreement with respect to attorneys' fees. Plaintiffs disagree and contend that no fees have been paid relating to Plaintiffs' motions to extend the injunction and that Plaintiffs are entitled to fees for all time spent enforcing the injunction. Notwithstanding, the parties will litigate entitlement to, and amount of, attorneys' fees. The parties reserve their right to seek appellate review of the Court's decision. The parties agree that any training set forth in this Settlement Agreement will not be a basis for asserting an entitlement or enhancement to attorneys' fees, nor will the agreement not to seek fees based on the requirement of training be a basis for asserting that plaintiffs are not entitled to fees. Nothing in this Agreement is intended to constitute a waiver of either party's rights on the issue of attorneys' fees.

Scope of Agreement and Future Modification

22. Nothing in this Agreement is intended to abrogate existing search and seizure law. Should the standard for detention and searches of parole or probationers be changed by the United States Supreme Court or the Ninth Circuit, this Settlement Agreement will be modified by operation of law accordingly to incorporate the current legal standard. While the parties have endeavored to set forth some discussion of the laws of search and seizure, nothing set forth herein is intended to, nor will it, limit or reduce the power of LAPD to conduct detentions, arrests, searches and seizures to the full extent of the law.

Dismissal, Disputes, and Continuing Jurisdiction

23. Upon execution and entry of this Settlement Agreement, the parties

1 stipulate to lift the injunction presently in effect in this case and to dismiss this
2 action.

3 24. In the event that plaintiffs allege that defendants are not conforming
4 with paragraphs 18-20 of this Agreement, plaintiffs shall, within ten court days of
5 discovering the alleged noncompliance, meet and confer with the defendants in
6 order to set forth the nature and basis of their concerns, and shall allow the
7 defendants a reasonable opportunity to respond by explaining why they are in
8 compliance with this Agreement or by taking corrective measures to come into
9 compliance. If the parties have been unable to resolve the objections within thirty
10 days of the parties' meeting, the objecting party may seek intervention of the Court
11 via a motion for contempt or other relief, after providing the opposing counsel ten
12 days' notice of its intent to file such a motion. Should any party wish to appeal a
13 ruling that they are in contempt, the Court will certify such ruling for interlocutory
14 appeal.

15 25. The Court will retain jurisdiction over this matter for the sole purpose
16 of enforcement of the terms of this final Settlement Agreement and adjudication of
17 any motion regarding attorneys' fees in this action.

18 **IT IS SO STIPULATED.**

19 DATED: ACLU OF SOUTHERN CALIFORNIA
20 LAW OFFICES OF CAROL A. SOBEL
HADSELL & STORMER, INC.

21
22 By: _____
Peter Bibring
Attorneys for Plaintiffs

23 DATED: By: _____
Cory Brente
Attorney for Defendants

26 **IT IS SO ORDERED.**

27 DATED: By: _____
Hon. Dean D. Pregerson
United States District Judge

28

1 stipulate to lift the injunction presently in effect in this case and to dismiss this
2 action.

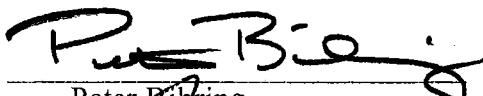
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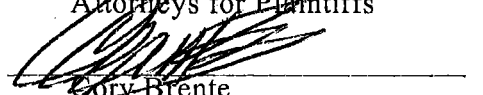
18 **IT IS SO STIPULATED.**

19 DATED: 2/2/2009

ACLU OF SOUTHERN CALIFORNIA
LAW OFFICES OF CAROL A. SOBEL
HADSELL & STORMER, INC.


21 By: 
Peter Bibring
Attorneys for Plaintiffs

23 DATED: 1-27-09

22 By: 
Cory Brente
Attorney for Defendants

26 **IT IS SO ORDERED.**

27 DATED: 2-17-09

28 By: 
Hon. Dean D. Pregerson
United States District Judge