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DEC 07 2001

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT HICKEY, KENNETH HANKIN,  
JENNIFER HUDZIEC, STEPHANIE  
LANE, CARROLL JACKSON, DENISE  
COOPER, NICOLE PEARSON, and  
EMILY MALONEY, on behalf of  
themselves and all others  
similarly situated,

Plaintiffs,

v.

THE CITY OF SEATTLE, a  
municipality; PAUL SCHELL,  
Mayor of the City of Seattle;  
and NORM STAMPER, Chief of  
Police of the City of Seattle,

Defendants.

NO. C00-1672R

ORDER CLARIFYING  
CONSOLIDATED SUMMARY  
JUDGMENT ORDER

THIS MATTER comes before the court on the motion of  
plaintiffs Robert Hickey, Kenneth Hankin, Jennifer Hudziec,  
Stephanie Lane, Carroll Jackson, Denise Cooper, Nicole  
Pearson, and Emily Maloney ("plaintiffs") for clarification

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*Chal BJR*

and for entry of a dismissal order under Fed. R. Civ. P.  
54(b). Having reviewed the papers filed in support of and in  
opposition to this motion, the court rules as follows:

I. ANALYSIS

Plaintiffs seek a ruling whether the Consolidated Summary  
Judgment Order issued by this court on October 29, 2001,  
granted summary judgment "to defense on all claims of the  
Hickey plaintiffs, including all facial and 'as applied'  
claims under state and federal constitutional law." Dkt. #58,  
at 3. Plaintiffs argue that a separate summary judgment  
order, issued on November 1, 2001, in response to a different  
motion brought by individual plaintiffs and based on the facts  
of their individual arrests, raises questions about whether  
the Consolidated Order disposed of all claims brought against  
defendants. Plaintiffs want the court to clarify which claims  
remain at issue and to formally dismiss claims by plaintiffs  
arrested within the restricted zone.

To the extent clarification is necessary, the  
Consolidated Order, and the briefing that preceded it, solely  
addressed the constitutionality of Emergency Order No. 3 on  
its face and "as applied" in the creation of the restricted  
zone. The court did not rule on the lawfulness of police  
behavior when arresting individuals. In fact, the court  
denied defendants' motion for summary judgment on the issue of

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1 probable cause to arrest, because plaintiffs raised issues of  
2 fact that precluded summary judgment regardless of the  
3 constitutionality of Emergency Order No. 3 facially or "as  
4 applied" through creation of the restricted zone. The court  
5 declines to rule on the legality of these arrests now in the  
6 context of a motion to clarify without the benefit of briefing  
7 on individual cases.<sup>1</sup> Given that plaintiffs' individual claims  
8 have not been ruled on, the plaintiffs' request for an order  
9 under Fed. R. Civ. Proc. 54(b) is DENIED.

10 Plaintiffs also seek clarification that the Consolidated  
11 Order does not apply to plaintiffs arrested outside the  
12 restricted zone. Because the Consolidated Order ruled on the  
13 constitutionality of Emergency Order No. 3 and the restricted  
14 zone, it is unclear why plaintiffs need clarification on this  
15 issue. None of the parties sought a ruling on the legality of  
16 such arrests, and the court, therefore, did not rule on those  
17 arrests.

## 18 II. CONCLUSION


19 The court CLARIFIES the order issued on October 29, 2001.  
20 Given the court's ruling that individual plaintiffs' claims  
21 still remain, plaintiffs' request for entry of an order under  
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23 <sup>1</sup>In contrast, the four plaintiffs who brought the motion for  
24 summary judgment that resulted in the November 1, 2001, order  
25 had briefed the individual facts of their cases and sought  
26 rulings on their individual arrests.

Fed. R. Civ. P. 54(b) is DENIED.

1 DATED at Seattle, Washington this 7<sup>th</sup> day of December,  
2 2001.

3   
4 BARBARA JACOBS ROTHSTEIN  
5 UNITED STATES DISTRICT  
6 JUDGE

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