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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTI POLICE-TERROR PROJECT, et al.,
Plaintiffs,
v.
CITY OF OAKLAND, et al.,
Defendants.

Case No. 20-cv-03866-JCS

**ORDER DENYING PLAINTIFFS’
MOTION TO ENFORCE AND
MODIFY, AND GRANTING IN PART
DEFENDANT CITY OF OAKLAND’S
CROSS-MOTION TO MODIFY,
PRELIMINARY INJUNCTION**

Re: Dkt. Nos. 63, 66

I. INTRODUCTION

This case arises out of ongoing demonstrations in Oakland against police brutality and racial injustice in the United States. After being sparked by the killing of George Floyd by a Minneapolis police officer on May 25, 2020, these demonstrations were rekindled by the shooting of Jacob Blake by a Kenosha police officer on August 23 and the lack of a grand jury indictment of any Louisville police officers for the death of Breonna Taylor on September 25.

On June 11, Plaintiffs filed a complaint alleging that, between May 29 and June 1, the Oakland Police Department (“OPD”) “deployed constitutionally unlawful crowd control tactics including kettling, indiscriminately launching . . . tear gas and flashbangs into crowds and at individuals, and shooting projectiles at demonstrators.” Compl. (dkt. 1) ¶ 2. According to Plaintiffs, OPD “did not act alone[,]” “call[ing] on its mutual aid network of police departments from other municipalities to further carry out its constitutionally violative tactics.” *Id.* ¶ 8. Plaintiffs moved for a temporary restraining order (“TRO”) and a preliminary injunction. *Id.* at 17–18; dkt. 13 (motion for TRO and preliminary injunction); dkts. 14–28 (documents in support of motion for TRO and preliminary injunction). On June 18, based on the agreement of the parties, the Court entered a TRO that restricted the crowd control tactics and munitions that OPD

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1 was permitted to use. TRO (dkt. 34); *see* dkts. 31–33. On July 29, after receiving written and oral
 2 arguments and evidence from the parties, the Court entered a preliminary injunction (the
 3 “Injunction”). Injunction (dkt. 52). On August 10, the Court issued an opinion explaining its
 4 reasoning for granting the Injunction. Opinion (dkt. 54).¹

5 On October 7, Plaintiffs filed the present motion to enforce and modify the Injunction (the
 6 “motion”). Mot. (dkt. 63); *see* Plaintiffs’ Proposed Order (dkt. 73). On October 12, Defendant
 7 City of Oakland (City) filed the present cross-motion to modify the Injunction (the “cross-
 8 motion”). Cross-Mot. (dkt. 66); *see* Status Rpt. (dkt. 75). Given the potential for large-scale
 9 demonstrations related to the upcoming election, the Court received briefing on an expedited
 10 schedule and held a hearing on the motions on October 27, 2020 at 3:00 p.m. On Wednesday,
 11 October 27, the Court issued an amended injunction (the “Amended Injunction”), making some
 12 but not all of the modifications requested by the City.² Amended Injunction (dkt. 82). In this
 13 order, the Court denies Plaintiffs’ motion to enforce the Injunction and sets forth its reasons for
 14 denying Plaintiffs’ motion to modify the Injunction and for granting in part and denying in part the
 15 City’s cross-motion to modify the Injunction.³

16 II. BACKGROUND

17 A. Allegations in Plaintiffs’ Complaint and Evidence Previously Submitted

18 In the Court’s opinion explaining its reasoning for granting the Injunction, the Court
 19 described the allegations in Plaintiffs’ Complaint and the evidence previously submitted by the
 20 parties. *See generally* Opinion.

21 Plaintiffs allege that on May 29, 2020 and several days thereafter, “OPD and its mutual aid
 22 partners used a variety of impermissible tactics against peaceful protesters, often without adequate
 23 warnings, causing physical injuries and trauma and ‘discourag[ing] members of the Oakland

24
 25 ¹ *Anti Police-Terror Project v. City of Oakland*, __ F. Supp. 3d __, No. 20-cv-03866-JCS, 2020
 26 WL 4584185 (N.D. Cal. Aug. 10, 2020). For ease of reference, the Court uses the ECF page
 27 numbering when citing the contents of the opinion.

28 ² In this order, the Court uses the present tense when referring to provisions of the Injunction that
 remain unchanged in the Amended Injunction, and the Court only includes citations to the
 Amended Injunction when referring to provisions that have changed in some respect.

³ The parties have consented to the jurisdiction of the undersigned magistrate judge pursuant to 28
 U.S.C. § 636(c). Dkts. 7, 9, 11, 74.

1 community from participating in lawful protest activities.’ ” *Id.* at 3 (quoting Compl. ¶ 19); *see id.*
2 at 2–4; *see generally* Compl. They have brought “a putative class action on behalf of ‘[a]ll
3 demonstrators who participated and/or intended to participate in the protests beginning on May 29,
4 2020 in Oakland,’ against the City of Oakland (the “City”), OPD Police Chief Susan Manheimer,
5 OPD Sergeant Patrick Gonzales, and OPD Officers Maxwell D’Orso and Casey Fought,” asserting
6 claims under 42 U.S.C. § 1983 for violations of the First, Fourth, and Fourteenth Amendments.
7 Opinion at 3 (quoting Compl. ¶ 81); *see id.* at 26–28 (discussing claims).

8 In support of their motion for a temporary restraining order and preliminary injunction,
9 “Plaintiffs submitted numerous sworn declarations describing encounters they and other protestors
10 had with police while they were participating in protests in downtown Oakland between May 29
11 and June 1, 2020.” *Id.* at 5; *see id.* at 5–9; *see generally* dkt. 13-28. Additionally, Plaintiffs
12 presented a declaration by a specialist in pulmonary disease “addressing the health risks associated
13 with the use of chemical agents, including tear gas and pepper spray” and explaining the view that
14 “the use of tear gas and pepper spray is particularly dangerous during the COVID-19 pandemic.”
15 Opinion at 20–21, 21; *see id.* at 19–23; *see generally* Sporn Decl. (dkt. 23); *id.* ¶ 20 (quoting a
16 statement of the American Thoracic Society).

17 In opposition to Plaintiffs’ motion, Defendants offered two declarations, “one by their
18 attorney, David Pereda, and another by Darren Allison, Interim Assistant Chief of Police at OPD.”
19 Opinion at 9; *see generally* dkts. 36-1, 36-2. Although “[n]either declaration specifically
20 addresse[d] the incidents described by Plaintiffs in their complaint and in the declarations,”
21 Defendants also supplied the Court with activity logs for May 29 through June 8 that contained
22 “reports by OPD officers of activity related to demonstrations in Oakland, as well as reports of
23 looting, Molotov cocktails being thrown and other illegal activities.” Opinion at 9; *see id.* at 9–12;
24 *see generally* dkt. 36-10. Additionally, Defendants supplied the munitions logs for May 29
25 through June 4, which contained information about munitions deployed by OPD, but not by its
26 mutual aid partners. Opinion at 12; *see generally* dkt. 36-11.

27 According to Defendants’ declarations, “ ‘Especially during the first four days of
28 protests—May 29 through June 1—Oakland relied heavily on mutual aid from the Alameda

1 County Sherriff’s Office, the California Highway Patrol, the U.S. Marshals Service, and police
 2 departments from across the Bay Area and state.’ ” Opn. at 19–20 (quoting dkt. 36-1 at ¶ 11).
 3 “ ‘During these days, mutual aid partners reported that, among other force options, they deployed
 4 CS blasts, Sting balls, smoke, and projectiles.’ ” *Id.* at 20 (quoting dkt. 33-1 at ¶ 14).

5 Defendants also submitted Training Bulletin III-G, OPD’s Crowd Control and Crowd
 6 Management (“Training Bulletin III-G” or “Crowd Control Policy”) that is mandated under the
 7 settlement agreements and orders in *Spalding v. City of Oakland*, No. 11-cv-02867 TEH (N.D.
 8 Cal.), and *Campbell v. City of Oakland*, No. 11-cv-05498 JST (N.D. Cal.). Opinion at 12 n.5
 9 (describing settlement agreements and orders); *see* Training Bulletin III-G (dkt. 36-3). As the
 10 Court observed, “One of the stated policies that underpins the OPD Crowd Control Policy is to
 11 ‘uphold constitutional rights of free speech and assembly while relying on the minimum use of
 12 physical force and authority required to address a crowd management or crowd control issue.’ ”
 13 Opinion at 13 (quoting Training Bulletin III-G, § 1). To meet this objective, the policy contains
 14 specific provisions relating to crowd management and control, use of chemical agents and less
 15 lethal munitions, and mutual aid. *See id.* at 12–19. Defendants’ opposition also recognized that,
 16 on June 16, the Oakland City Council “passed a resolution urging OPD and mutual aid partners to
 17 stop using tear gas for crowd control during the COVID-19 pandemic.” *Id.* at 23 (quoting dkt. 36
 18 at 16); *see generally* dkt. 36-18.

19 **B. The Preliminary Injunction**

20 Even before the Court entered the Injunction, the parties agreed to many of its provisions.
 21 Opinion at 31 (citing July 26 Status Report (dkt. 47)). The parties’ primary disagreements
 22 included “the degree to which the mutual aid partners would be bound by the preliminary
 23 injunction” and “the substantive limits that would [be] placed on OPD tactics and munitions in
 24 conducting crowd control.” *Id.*

25 On July 29, after considering the parties’ arguments and evidence, the Court entered the
 26 Injunction. As is relevant here, Sections I, V, VI, and VIII of Injunction provide:

27 **I. TRAINING BULLETIN III-G**

28 Except as modified in this order, OPD shall adhere to Training Bulletin III-

1 G, OPD Crowd Control and Crowd Management (2013), attached as Exhibit
2 A. . . .

3 V. TACTICS AND LESS LETHAL MUNITIONS

- 4 1. OPD officers are prohibited from using stinger grenades, wooden bullets,
5 rubber or rubber- coated bullets, pepper balls, or similar munitions.
- 6 2. Chemical agents (including orthochlorobenzalmalononitrile), flashbang
7 grenades, and foam-tipped projectiles shall be deployed only when (a) there
8 is an imminent threat of physical harm to a person or significant destruction
9 of property; and (b) other techniques, such as simultaneous arrests or police
10 formations, have failed or are not reasonably likely to mitigate the threat. The
11 use of such munitions must be authorized by an OPD Operations Commander
12 or Incident Commander. None of these devices shall be deployed on peaceful
13 protestors or indiscriminately into a crowd. They may only be targeted at the
14 specific imminent threat justifying the deployment. Flash bang grenades and
15 gas canisters must be deployed at a safe distance from the crowd to minimize
16 the risk that individuals will be struck and injured by those devices. When
17 chemical agents are used, only the minimum amount of chemical agent
18 necessary to obtain compliance may be used, in accordance with OPD's
19 Department General Order K-3, USE OF FORCE.
- 20 3. Except where an immediate risk to public safety or of significant property
21 damage makes it impossible to do so, before any of the devices listed in
22 Section V(2) are deployed to disburse a crowd, OPD must have made at least
23 two announcements to the crowd asking members of the crowd to voluntarily
24 disperse and informing them that, if they do not disperse, they will be subject
25 to arrest. These announcements must be made using adequate sound
26 amplification equipment in a manner that will ensure that they are audible to
27 the crowd and must identify at least two means of escape/egress. OPD must
28 also allow the crowd sufficient time to disperse after making these
announcements before deploying any of the devices in Section V(2).

VI. MUTUAL AID

The OPD Incident Commander shall be responsible for ensuring that the requirements listed below are met by mutual aid agencies providing assistance to OPD under a mutual aid agreement, unless exigent circumstances prevent the fulfillment of these obligations:

- i. The Incident Commander shall ensure that the mutual aid agency has been briefed and is in agreement with OPD's Unit of Command structure under which only OPD Commanders may authorize the use of less lethal munitions for crowd control and dispersal;
- ii. The Incident Commander shall ensure that the mutual aid agency has been briefed on OPD's policy on prohibited weapons and force;
- iii. The Incident Commander shall ensure that the officers of the mutual aid agency who provide assistance to OPD do not bring or use any weapons

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or force prohibited under OPD’s policy;

- iv. The Incident Commander shall ensure that the mutual aid agency has been provided a copy of OPD’s Crowd Control Policy and Use of Force policies;
- v. The Incident Commander shall ensure that officers of the mutual aid agency who provide assistance to OPD are not assigned to front-line positions or used for crowd intervention, control or dispersal unless there is a public safety emergency;
- vi. The Incident Commander shall ensure that the officers of the mutual aid agency who provide assistance to OPD complete required reports prior to being released from duty. Agencies should provide the following documents/reports when they are applicable: Use of force report, arrest report, crime report, injury report, equipment damage report and list of responding personnel.

These provisions do not prohibit an OPD or mutual aid officer from taking reasonable action or using reasonable or necessary force as allowed by law against an individual in self-defense or in defense of another person or officer. OPD personnel shall endeavor to assume front line positions between mutual aid officers and demonstrators. . . .

VIII. FACE MASKS AND GLOVES

During the pendency of the state of emergency declared by either the President of the United States, or the Governor of the State of California, due to the COVID-19 pandemic, all OPD officers and employees deployed to demonstrations in Oakland must wear face masks and gloves whenever they interact with members of the public.

And, as is relevant to the City’s present cross-motion, the Court’s subsequent opinion explained:

Because no mutual aid partners have been named as defendants, the Court does not have the authority to issue injunctive relief that is binding on the mutual aid partners. Nonetheless, California law provides that when OPD requests assistance from mutual aid partners, OPD officers are to “remain in charge . . . including the direction of personnel and equipment provided him through mutual aid.” Cal. Gov’t Code § 8618. The evidence submitted by the parties shows that mutual aid partners played a significant role in crowd control in Oakland during the relevant period, with the number of officers from mutual aid partners sometimes outnumbering OPD officers. In light of this evidence, the effectiveness of the injunctive relief awarded by the Court will depend to a large degree on whether officers of mutual aid partners abide by the terms of the preliminary injunction that apply to OPD with respect to the crowd control tactics and munitions they use. Therefore, the Court has included in the Preliminary Injunction provisions designed to ensure that OPD officers will, in fact, remain in charge of the incident, including ensuring that the mutual aid partners do not use tactics or munitions that are inconsistent with the terms of the preliminary

1 injunction of Oakland’s Crowd Control Policy.

2 Opinion at 32.

3 **C. Plaintiffs’ Motion and Evidence**

4 **1. Plaintiffs’ Motion**

5 After the shooting of Jacob Blake by a Kenosha police officer on August 23 and the lack of
6 a grand jury indictment of any police officers for the death of Breonna Taylor on September 25,
7 large demonstrations were held in Oakland. On August 26, August 28, August 29, and September
8 25, Plaintiffs allege that “OPD responded to [the demonstrators’] calls for accountability” by
9 violating Sections I, V, and VII of the Injunction “by deploying chemical agents and projectiles in
10 a prohibited manner, kettling peaceful protestors, and failing to maintain safe social distancing
11 measures.” Mot. at 2.

12 In support of their motion, Plaintiffs offer declarations by several demonstrators who
13 participated in these events. Plaintiffs also supply the Court with links to tweets that include
14 photos and videos of the August 28, August 29, and September 25 demonstrations and with a link
15 to an article by the San Francisco Chronicle regarding the September 25 demonstration. Kim Decl
16 (dkt. 64). Finally, Plaintiffs submit a probable cause declaration that was filed by OPD in support
17 of a charge against a demonstrator who participated in the August 28 demonstration. PC Decl.
18 (dkt. 64-1). The Court summarizes these materials below.

19 **2. Events on Wednesday, August 26**

20 Plaintiffs allege that Defendants violated the Injunction on August 26 by kettling peaceful
21 demonstrators, by displaying their weapons to control demonstrators’ movements, and by failing
22 to wear face masks and gloves. Mot at 3, 8–9. In support of these allegations, Plaintiffs submit
23 declarations by Cat Sorokin and Ella Hansen, who participated in the demonstrations as medics to
24 provide aid to anyone who should need it. Sorokin Decl. (dkt. 63-2) ¶¶ 3, 8–10; Hansen Decl.
25 (dkt. 63-5) ¶¶ 3–6.

26 Around 7:00 or 7:30 p.m., demonstrators gathered for a march starting from Oscar Grant
27 Plaza. Hansen Decl. ¶ 5. Ms. Sorokin and Mx. Hansen drove behind the demonstrators in a van
28 visibly marked with “big ‘First Aid,’ letters above the windshield,” “big red crosses on the sides

1 and rear,” and the letters “ ‘QUICC,’ which stands for Queers United in Community Care.”
 2 Hansen Decl. ¶¶ 7–10; Sorokin Decl. ¶¶ 4–6. Ms. Sorkin declares that, during the demonstration,
 3 officers “kettled and closely followed protestors, including immersing themselves in the protest.”
 4 Sorokin Decl. ¶ 11. “Near the end of the night,” Mx. Hansen declares, the demonstrators “were
 5 blocked in by OPD and only had one way to go, which was into a residential neighborhood.”
 6 Hansen Decl. ¶ 13. Then, they “ended up at a ‘T’ intersection, but the police barricaded both
 7 exits.” *Id.* ¶ 14. When the demonstrators turned around, officers “rushed at the crowd.” *Id.* Mx.
 8 Hansen and the other occupants of the medic van “were trying to leave but the police targeted and
 9 surrounded the medic van” and “pulled” the occupants out. *Id.* ¶¶ 16, 18. Mx. Hansen was
 10 “tackled,” “shov[ed],” and “push[ed] . . . into the ground” by five OPD officers who “forc[ed] [Mx.
 11 Hansen] down.” *Id.* ¶ 19. Ultimately, Mx. Hansen was handcuffed and transported to the Santa
 12 Rita Jail. *Id.* ¶¶ 20, 44. “Throughout these events,” Mx. Hansen declares, “many officers were
 13 not wearing masks or practicing any social distancing.” *Id.* ¶ 49.

14 3. Events on Friday, August 28

15 Plaintiffs allege that Defendants also violated the Injunction on August 28 by deploying
 16 chemical agents without justification, without warning, and in an unsafe manner; by kettling
 17 peaceful demonstrators; by displaying their weapons to control demonstrators’ movements; by
 18 corralling demonstrators such that they could not keep physical distance from each other; and by
 19 failing to wear face masks and gloves. Mot at 3–4, 7–9. In support of these allegations, Plaintiffs
 20 submit declarations by the following demonstrators: Alex Lapierre, Chris Munevar, Ian
 21 McDonnell, Jennifer Li, and Killian Clancy. *See* Mot. at 3–4; Lapierre Decl. (dkt. 63-1); Munevar
 22 Decl. (dkt. 63-3); McDonnell Decl. (dkt. 63-6); Li Decl. (dkt. 63-7); Clancy Decl. (dkt. 63-9).

23 Between 7:00 and 8:00 p.m., demonstrators gathered at Oscar Grant Plaza. Munevar Decl.
 24 ¶ 2; McDonnell Decl. ¶ 4; Li Decl. ¶¶ 4–6; Clancy Decl. ¶ 5. From the declarations, it appears
 25 that many demonstrators marched west to the Federal Building, south to the Oakland Police
 26 Administration Building, and then north back to Oscar Grant Plaza, but it is not clear whether Mr.
 27 Lapierre, Mr. McDonnell, Ms. Li, and/or Mr. Clancy were marching in the same crowd the entire
 28 time. Lapierre Decl. ¶ 3; McDonnell Decl. ¶ 10; Li Decl. ¶¶ 8–12; Clancy Decl. ¶ 5. Meanwhile,

1 Mr. Munevar’s declaration indicates that he was in a crowd of demonstrators that marched “almost
2 to North Berkeley and . . . back.” Munevar Decl. ¶ 3.

3 According to Mr. Clancy, officers “surrounded the crowd and walked along the sidewalks
4 and the back of the crowd.” Clancy Decl. ¶ 9. “[F]ollow[ing] the back of the crowd closely,”
5 officers “t[old] people that they had to . . . keep moving,” and they “kept the crowd compact so
6 that physical distancing was not possible.” *Id.* ¶¶ 9, 10. They also “shov[ed] people off the
7 sidewalks into the street.” *Id.* ¶ 9. Similarly, Mr. Lapierre recalls that officers “walk[ed] on both
8 sides of the sidewalk” and “pushed some demonstrators back onto the street.” Lapierre Decl. ¶ 4.
9 Further, Mr. Munevar recalls that officers were “armed with really big guns,” told people to
10 “move faster or you will be arrested,” and “stepped on the back of [his] shoes and [his] girlfriend’s
11 shoes.” Munevar Decl. ¶¶ 4, 5, 6.

12 Sometime between 9:06 p.m. and 9:11 p.m., a crowd of demonstrators including Mr.
13 McDonnell and Ms. Li reached the intersection of Franklin Street and 15th Street, where officers
14 deployed “smoke bombs” without warnings audible to Ms. Li or Mr. McDonnell. McDonnell
15 Decl. ¶¶ 11–15; Li Decl. ¶¶ 17–18. Officers then grabbed and handcuffed two demonstrators
16 without explaining the causes for their arrests. McDonnell Decl. ¶¶ 16–19; Li Decl. ¶ 20.
17 Additionally, Ms. Li saw some OPD officers without face coverings, and she saw others remove
18 their face coverings, including one with an arrestee in his vehicle. Li Decl. ¶¶ 21–22. Shortly
19 after an officer kicked Mr. Lapierre’s bicycle near the Federal Building around 9:00 p.m., he also
20 observed officers “throw smoke bombs at the demonstrators.” Lapierre Decl. ¶ 3. Based on the
21 timing and location of the events in Mr. Lapierre’s declaration, it seems he witnessed the same
22 deployment as Ms. Li and Mr. McDonnell.

23 Mr. Clancy also states that after marching for 45 to 60 minutes, he “noticed the police
24 throw a smoke grenade into [a] crowd,” without warning. Clancy Decl. ¶¶ 12, 13. Based on the
25 timing and location of the events described in officer reports submitted by Defendants, it seems
26 that Mr. Clancy witnessed a different deployment than Mr. McDonnell, Ms. Li, and Mr. Lapierre.
27 While moving away from the smoke, Mr. Clancy tripped over a median into the middle of the
28 street and an officer “dove onto [him] and slammed [his] face into the ground, causing [him] to

1 bleed from [his] head” and leaving him with scrapes and bruises. Clancy Decl. ¶¶ 15, 17; *see id.*
 2 ¶ 18 (photos of dark red bruises across Mr. Clancy’s forehead). Mr. Clancy was arrested and
 3 transported to the Santa Rita Jail. *Id.* ¶¶ 20–21.

4 Plaintiffs also supply links to a tweet by the San Francisco Chronicle and a tweet by
 5 Ronald Li, a reporter for the Chronicle. Kim Decl. ¶ 3(a) (link to a tweet by the San Francisco
 6 Chronicle (“Chronicle Tweet”));⁴ *id.* ¶ 3(b) (link to a tweet by Roland Li (“Li Tweet”)).⁵ The
 7 Chronicle’s tweet includes four photos. Chronicle Tweet. One shows a demonstrator staring at a
 8 line of officers with a cloud of a substance that looks like smoke in the foreground. *Id.* Another
 9 shows an officer forcibly arresting a protestor; in the background are other officers and protestors
 10 and a cloud of a substance that looks like smoke. *Id.* Mr. Li’s tweet includes a video. Li Tweet.
 11 At the beginning, there are flashes and noises that seem to be from the explosion of munitions. *Id.*
 12 Several protestors face a line of officers, but they slowly retreat as a cloud of a substance that
 13 looks like smoke expands towards them. *Id.* The tweet reads, “Tear gas used as Oakland protest
 14 walks up Broadway.” *Id.*

15 4. Events on Saturday, August 29

16 Plaintiffs allege that Defendants again violated the Injunction on August 29 by deploying
 17 chemical agents without justification, without warning, and in an unsafe manner; by kettling
 18 peaceful demonstrators; by displaying their weapons to control demonstrators’ movements; and by
 19 declaring the demonstration an unlawful assembly without justification. Mot at 4–5, 8–9. In
 20 support of these allegations, Plaintiffs submit declarations by the following demonstrators: Mr.
 21 Lapierre, Ms. Sorokin, Mr. Munevar, Danielle Gaito, and Katherine Sugrue. Lapierre Decl.;
 22 Sorokin Decl.; Munevar Decl.; Gaito Decl. (dkt. 63-4); Sugrue Decl. (dkt. 63-8).

23 The demonstrators began with a candlelight vigil at Lake Merritt at the park across the
 24 street from Grand Lake Theater. Sorokin Decl. ¶¶ 18, 20, 22; Munevar Decl. ¶¶ 8, 10–11; Gaito
 25 Decl. ¶ 2; Sugrue Decl. ¶¶ 1–2. At the vigil, Ms. Gaito observed that “only a few officers were
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27 ⁴ San Francisco (@sfchronicle), TWITTER (Aug. 28, 2020, 9:53 PM),
<https://twitter.com/sfchronicle/status/1299570972169850880>.

28 ⁵ Roland Li (@rolandlisf), TWITTER (Aug. 28, 2020, 9:25 PM),
<https://twitter.com/rolandlisf/status/1299563796273324034>.

1 wearing masks, not all.” Gaito Decl. ¶ 8. Between 9:00 p.m. and 9:30 p.m., the demonstrators
 2 marched north up Grand Avenue. Lapierre Decl. ¶ 5; Munevar Decl. ¶ 12; Gaito Decl. ¶¶ 9–10;
 3 Sugrue Decl. ¶ 3. Officers were on both sides and behind the march “in a U shape.” Sorokin
 4 Decl. ¶ 25. They were “pushing the march at the tail end and on both sides,” being “aggressive to
 5 people who were slowly walking,” and telling demonstrators to “[w]alk faster or get out the way.”
 6 Munevar Decl. ¶¶ 13, 15, 17, 18; *see* Gaito Decl. ¶ 12. Officers kettled demonstrators into a
 7 residential neighborhood on Mandana Boulevard, making it “difficult to maintain physical
 8 distance.” Sugrue Decl. ¶ 3; *see* Munevar Decl. ¶¶ 15, 19–20; Gaito Decl. ¶¶ 10, 12. Suddenly,
 9 officers began “attacking” demonstrators; “running into” them; and “body checking” them.
 10 Sugrue Decl. ¶ 4; Gaito Decl. ¶ 13; Lapierre Decl. ¶ 5. Mr. Lapierre was “knocked down,” and
 11 Ms. Sugrue was shoved. Lapierre Decl. ¶ 5; Sugrue Decl. ¶ 3.

12 Without warnings audible to Mr. Lapierre or Ms. Gaito, OPD deployed cannisters with
 13 chemical agents⁶ directly at and into the crowd of demonstrators. Lapierre Decl. ¶ 5; Munevar
 14 Decl. ¶ 22–27; Gaito Decl. ¶ 14; Sugrue Decl. ¶ 4. Mr. Munevar specifically declared that he
 15 “saw police shoot [a] smoke grenade at [him] at close range, about 20 yards away,” and it “hit
 16 [him] in the head.” Munevar Decl. ¶¶ 23, 24; *see id.* ¶ 25 (photo of slightly discolored and slightly
 17 raised skin on forehead). Ms. Gaito also declared that cannisters were “shot at protestors” and
 18 “into the center of the crowd.”⁷ Gaito Decl. ¶ 14. Meanwhile, Ms. Sugrue observed officers hit
 19 demonstrators with batons and throw her friend to the ground to arrest him. Sugrue Decl. ¶¶ 3–5.
 20 OPD declared the demonstration an unlawful assembly, but continued to surround demonstrators,
 21 making it difficult to leave. Munevar Decl. ¶¶ 31–36; Gaito Decl. ¶¶ 17–18. As Mr. Lapierre was
 22 walking back toward the lake, “the police shoved [him] without warning” and hit him in the head
 23 several times with an officer’s face shield, causing a mild concussion and an enduring headache.

24
 25 ⁶ The demonstrators described the dispersal devices as “smoke cannisters,” Lapierre Decl. ¶ 5;
 26 “tear gas and smoke grenades,” Munevar Decl. ¶ 22; “tear gas cannisters,” Gaito Decl. ¶ 14; and
 “smoke bombs and flash bombs,” Sugrue Decl. ¶ 4.

27 ⁷ Ms. Gaito also saw “an OPD officer aim something that looked like a shotgun and shoot a
 28 projectile at a man’s torso,” causing him to “[f]all to the ground.” Gaito Decl. ¶ 16. OPD officers
 then “grabbed him and took him into an unmarked white vehicle.” *Id.* Plaintiffs do not mention
 this incident in their motion and, to the Court’s knowledge, it is not addressed anywhere else in the
 record.

1 Lapierre Decl. ¶ 6.

2 Plaintiffs supply links to one tweet by an Oakland resident and another tweet by OPD.
 3 Kim Decl. ¶ 3(c) (link to a tweet by Allison Brown (“Brown Tweet”));⁸ *id.* ¶ 3(d) (link to retweet
 4 of a tweet by OPD (“First OPD Tweet”)).⁹ The resident’s tweet includes a video taken from her
 5 balcony overlooking demonstrators marching and officers following on foot and in police
 6 vehicles. Brown Tweet. At the beginning, there is a cloud of a substance that looks like smoke,
 7 and there are noises that seem to be the explosion of munitions. *Id.* At the rear of the protest,
 8 there is a line of demonstrators who are holding shields and walking backwards. *Id.* A line of
 9 officers is walking forwards, and there are a series of clashes between the two lines. *Id.* The
 10 officers stop moving, and the demonstrators keep backtracking, which allows a gap to form. *Id.*
 11 A green laser pointer shines in the officers’ direction. *Id.* The tweet reads, “Tonight in #Oakland
 12 on my street in #LakeMerritt @oaklandpoliceca fired #teargas on approximately 150 peaceful
 13 protestors and arrested and cited 2 nonviolent civilians.” *Id.* OPD’s tweet also includes a video.
 14 First OPD Tweet. It depicts officers declaring the demonstration an unlawful assembly and
 15 instructing demonstrators to disperse northbound on Erie Street or eastbound on Mandana
 16 Boulevard. *Id.* Finally, Plaintiffs submit a probable cause declaration filed by OPD which states
 17 that officers “deployed smoke munitions in order to disperse the crowd” on August 29, 2020. PC
 18 Decl.

19 5. Events on Friday, September 25

20 Finally, Plaintiffs allege that Defendants violated the Injunction on September 25 by
 21 deploying chemical agents without justification, without warning, and in an unsafe manner. Mot.
 22 at 5, 8–9. In support of these allegations, Plaintiffs supply links to an article by the San Francisco
 23 Chronicle and to four tweets.

24 The Chronicle article includes “live updates” on the demonstrations. Kim Decl. ¶ 3(e)
 25 (link to Michael Williams and Lauren Hernández, *Live updates on Breonna Taylor case*:

26 _____
 27 ⁸ Allison Brown (@allisonbrown08), TWITTER (Aug. 29, 2020, 11:09 PM),
<https://twitter.com/alisonbrown08/status/1299952270864297985>.

28 ⁹ Oakland Police Department (@oaklandpoliceca), TWITTER (Aug. 29, 2020, 9:51 PM),
<https://twitter.com/oaklandpoliceca/status/1299932791254130688>.

1 *Hundreds of demonstrators march through Oakland*, S.F. CHRONICLE (Sep. 25, 2020, 11:21 PM),
 2 [https://www.sfchronicle.com/bayarea/article/Live-updates-on-Breonna-Taylor-case-Protest-](https://www.sfchronicle.com/bayarea/article/Live-updates-on-Breonna-Taylor-case-Protest-15592633.php)
 3 [15592633.php](https://www.sfchronicle.com/bayarea/article/Live-updates-on-Breonna-Taylor-case-Protest-15592633.php)) (“Chronicle Article”). The relevant updates are as follows:

4 9:20 p.m. Police appear to deploy irritant at crowd: Police appeared to deploy an
 5 irritant at the crowd at 14th and Harrison streets in Oakland shortly after
 6 protests moved construction barriers into the street.”

7 9:22 p.m. Oakland police says some in crowd “throwing bottles:” Oakland police
 8 said on Twitter that some people in the swelling crowd marching
 9 westbound on 14th street toward City Hall were “throwing bottles and
 10 other objects” at officers. “Please be mindful when traveling in and
 11 around our city,” police said.

12 9:55 p.m. One arrested in Oakland: At least one person was arrested by police in
 13 Oakland. About 15 minutes after deploying an irritant toward the
 14 crowd, a group of police officers ran toward a protester and detained
 15 them. Loud crowd-control devices and breaking glass could be heard as
 16 police deployed more smoke.

17 11:15 p.m. ‘Multiple people’ arrested for assault, police say: Oakland police said on
 18 Twitter that they arrested “multiple people arrested for assault on
 19 officers” on Friday night and deployed “minimal smoke” in response to
 20 conduct from people in the crowd. Police said there were no reports of
 21 damage to local businesses.

22 *Id.* Plaintiffs also submit two tweets from Michael Williams, one of the authors of the Chronicle
 23 article. Kim Decl. ¶ 4(g) (“Second Williams Tweet”);¹⁰ *id.* ¶ 4(h) (“First Williams Tweet”).¹¹ The
 24 tweet from 9:29 p.m. includes a video in which demonstrators move quickly to avoid a cloud of a
 25 substance that looks like smoke. First Williams Tweet. Two burning objects are seen in the
 26 center of the street. *Id.* The tweet reads, “More gas deployed. Not sure if tear gas, but definitely
 27 some sort of irritant. #Oakland.” *Id.* The 9:50 p.m. tweet includes a video in which officers and
 28 demonstrators move quickly, and a cloud of a substance that looks like smoke begins to rise from
 a munition on the street. Second Williams Tweet. A smoking object flies across the screen and
 there are sounds that seem to be gas being emitted from a cannister, a glass bottling hitting the

¹⁰ Michael Williams (@michaeldamianw), TWITTER (Sept. 25, 2020, 9:50 PM),
<https://twitter.com/michaeldamianw/status/1309716852386324480>.

¹¹ Michael Williams (@michaeldamianw), TWITTER (Sept. 25, 2020, 9:29 PM),
<https://twitter.com/michaeldamianw/status/1309711701164482560>.

1 ground, glass shattering, and the explosion of a munition. *Id.* Officers arrest a demonstrator. *Id.*
 2 The tweet reads, “First major confrontation, at least one arrest #Oakland.” *Id.* Lastly, Plaintiffs
 3 submit a tweet by OPD, which reads as follows:

4 250+ people took part in tonight’s protest. The group was immediately violent
 5 throwing bottles & cans at officers. OPD deployed minimal smoke. Multiple people
 6 arrested for assault on officers. No reports of damage to businesses. OPD continues
 our efforts to protect our community.

7 Kim Decl. ¶ 3(f) (“Second OPD Tweet”).¹²

8 6. Requested Relief

9 In their motion, Plaintiffs requested that the Court “grant [their] Motion for Enforcement
 10 and Modification of Preliminary Injunction and for Sanctions and Other Relief,” but their motion
 11 did not describe any proposed modifications to the Injunction, and Plaintiffs did not submit a
 12 proposed order with their motion as required by Civil Local Rule 7-2(c). Mot. at 9. At the order
 13 of the Court, Plaintiffs later filed a proposed order on October 21, after Defendants filed their
 14 opposition. *See* Prehearing Order (dkt. 68); Plaintiffs’ Proposed Order (dkt. 73). In their proposed
 15 order, Plaintiffs request that the Court order Defendants to pay \$100,000 in monetary sanctions
 16 and that the Court make several modifications to Section V of the injunction.¹³ Plaintiffs’
 17 Proposed Order.

18
 19 ¹² Oakland Police Department (@oaklandpoliceca), TWITTER (Sept. 25, 2020, 11:13 PM),
 20 <https://twitter.com/oaklandpoliceca/status/1309737750866714624>.

21 ¹³ Plaintiffs’ proposed modifications are as follows: (1) modify Section V(1) to add “flashbang
 22 grenades” and “stun grenades” to the list of items that OPD officers are prohibited from using;
 23 (2) modify Section V(2) to expressly include “hexachloroethane” as a chemical agent and to
 24 expressly reference “CS Blast grenades” alongside “chemical agents” as items that OPD officers
 25 may use only in the specified circumstances and alongside “gas cannisters” as objects that must be
 26 deployed at a safe distance from the crowd; (3) modify Section V(2) to replace “shall be deployed
 27 only when (a) there is an imminent threat of *physical harm to a person or significant destruction*
 28 *of property . . .*” with “shall be deployed only when (a) *individuals are engaging in conduct that*
poses an immediate threat of loss of life or serious bodily injury to themselves, officers, or the
general public or substantial destruction of property which creates an immediate risk to the lives
or safety of other persons . . .”; (4) add a new Section V(3) to provide that Section V.H.5 of
 Training Bulletin III-G applies to “CS Blast grenades and any similar devices that have an
 explosive or light and sound component”; (5) add a new Section V(4) to provide that Section
 VI.F.2 of Training Bulletin III-G applies to “form-tipped munitions as well as ‘bean bags’” and to
 require officers to adhere to the October 2013 Chief’s Memorandum; and (5) to modify current
 Section V(3) to replace references to “devices in Section V(2)” with “chemical agents.” Plaintiffs’
 Proposed Order.

1 **D. Defendants' Opposition and Evidence**

2 In their opposition to Plaintiffs' motion, Defendants argue that they have complied with
3 the Injunction and that "Plaintiffs' conclusory claims are not backed by clear and convincing
4 evidence." Opp'n (dkt. 69) at 1.

5 For support, Defendants submit a declaration by Michael Beaver, a lieutenant who serves
6 as Chief of Staff to the Chief of Police within OPD. *See* Beaver Decl. (dkt. 69-1). Lieutenant
7 Beaver was "on duty as a commander during protests" and "participated in crowd management"
8 on July 25, August 26, August 29, and September 25. *Id.* ¶ 4. He declares that "[f]or each event,
9 OPD attempted to communicate with apparent organizers and participants, hoping to facilitate
10 peaceful protests," but "[t]hese individuals declined to communicate with OPD officers." *Id.* ¶ 9.
11 Additionally, "OPD's tactics on the dates referenced . . . did not include encircling the crowd";
12 rather "OPD left egress routes for the crowd." *Id.* ¶ 15. In some cases, however, "officers
13 surrounded *individuals* they were attempting to arrest." *Id.* (italics added).

14 Lieutenant Beaver's declaration's is accompanied by numerous materials. First are copies
15 of electronic flyers for nighttime demonstrations in Oakland on the dates in question; the flyers
16 were circulated on social media websites such as Twitter and Instagram. Flyers (dkt. 69-2). In
17 their opposition, Defendants' state that these flyers "discouraged 'peace policing' and 'snitches.'"
18 Opp'n at 1. Second are various officers' "crime reports," which describe these officers' use of
19 munitions and/or force during the demonstrations.¹⁴ *See* Keating Rpt. (dkt. 69-3); Jimenez Rpt.
20 (dkt. 69-4); Langlais Rpt. (dkt. 69-5); Gonzales Rpt. (dkt. 69-6); Brown Rpt. (dkt. 69-7); Alaura
21 Rpt. (dkt. 69-8); Au Rpt. (dkt. 69-9); Thurston Rpt. (dkt. 69-10). Third are six videos from
22 officers' body-worn cameras. Aug. 26 Video (Ex. E); Aug. 28 Video (Ex. G); Aug. 29 Video (Ex.
23 K); Sept. 25-1 Video (Ex. M); Sept. 25-2 Video (Ex. N).¹⁵ Fourth is an e-mail chain of
24 contemporaneous operations reports made by officers in the field and officers and monitoring
25 video at the Emergency Activation Center on August 26, 2020. Operations Log (dkt. 69-11).

26 _____
27 ¹⁴ For ease of reference, the Court uses the ECF page numbering when citing the contents of these
reports.

28 ¹⁵ These videos are available at the following link:
<https://www.dropbox.com/sh/sew5qc7fdb78sjr/AAADvxAlbzHROA1FQoCBsN7a?dl=+0>.

1 Defendants also reference two declarations submitted in support of the City’s cross-
 2 motion, one by Officer David Pullen, who serves in OPD’s Information Technology unit, and
 3 another by Micah Hinkle, the Deputy Director of Oakland’s Department of Economic &
 4 Workforce Development. Pullen Decl. (dkt. 66-10); Hinkle Decl. (dkt. 66-11). Mr. Hinkle
 5 explains that the Department of Economic & Workforce Development has been “assisting local
 6 businesses, property owners, and tenants that have been impacted by vandalism and theft” during
 7 the ongoing demonstrations.” Hinkle Decl. ¶ 2.

8 1. Events on Saturday, July 25

9 First, Defendants address a nighttime demonstration that occurred on Saturday, July 25—
 10 although this demonstration occurred before the Court issued the Injunction on July 29 and
 11 Plaintiffs do not address it in their motion. Opp’n at 1.

12 The demonstration began shortly before 8:00 p.m. and drew up to 600 participants at its
 13 peak. Beaver Decl. ¶ 7. During the event, officers reported the following:

14 [C]rowd members shattered windows at the federal building, the Police
 15 Administration Building, apartment buildings, and businesses; protestors who
 16 attempted to stop this activity and call for peace were intimidated by other crowd
 17 members; a fire was set inside a county courthouse; crowd members threw rocks,
 18 bottles, and fireworks at officers; they also pointed lasers at officers’ faces.

18 *Id.* While policing the demonstration, however, “OPD officers were at a distance from the crowd
 19 when it traveled,” *id.*, and, according to OPD records, OPD “deployed no smoke, chemical agent,
 20 or less-lethal-impact munition,” *id.* ¶ 16.

21 2. Events on Wednesday, August 26

22 On August 26, another nighttime demonstration drew up to 700 participants after 8:00 p.m.
 23 Beaver Decl. ¶ 8. Although “many people engaged in peaceful protest,” Defendants state that, “as
 24 the record shows, this was far from a peaceful night.” Opp’n at 3.

25 First, Lieutenant Beaver declares that he and other officers “observed crowd members
 26 break several apartment building and business windows; set fires, including at a courthouse and
 27 construction site; and throw projectiles at officers.” Beaver Decl. ¶ 10. These activities are also
 28 described in the e-mail chain of contemporaneous reports made by officers, and some are depicted

1 in video footage supplied by Defendants. *See generally* Operations Log; Pullen Video (Pullen
 2 Decl., Ex. A).¹⁶ Further, Mr. Hinkle declares that, on August 26, the Department of Economic &
 3 Workforce Development received reports of “[s]everal fires, including a state courthouse and at a
 4 construction site,” “[s]eventy punctured or broken building windows,” “[t]welve broken doors,”
 5 and “theft and vandalism within businesses” at “local businesses and residential units, including
 6 affordable housing.” Hinkle Decl. ¶ 5. As with the July 25 event, however, “OPD officers were at
 7 a distance from the crowd when it traveled,” Beaver Decl. ¶ 10, and, according to OPD records,
 8 OPD “deployed no smoke, chemical agent, or less-lethal-impact munition,” *id.* ¶ 17.

9 Second, the City submits video footage of “various incidents that occurred within and
 10 around the protests” on August 26. Pullen Decl. ¶ 2; *see* Pullen Video. Although the footage does
 11 not contain a time stamp, the clips are compiled in “chronological order.” Pullen Decl. ¶ 2. In the
 12 clip that begins at one minute and 57 seconds, at the intersection of Harrison Street and Grand
 13 Avenue, an officer who identifies herself as Officer Rhodes makes unlawful assembly
 14 announcements over a public address system. *Id.* She states, “You have five minutes to disperse,
 15 eastbound or northbound.” *Id.* In the background, demonstrators are walking east on Grand
 16 Avenue, with officers following at a distance. *Id.* In the clip that begins at three minutes and two
 17 seconds, at the intersection of Park View Terrace and Grand Avenue, the same officer makes more
 18 unlawful assembly announcements over a public address system. *Id.* A line of officers walking
 19 east on Grand Avenue come upon several trash cans that have been set ablaze and laid across
 20 Grand Avenue. *Id.* In the clip that begins at three minutes and 46 seconds, at the intersection of
 21 Lee Street and Grand Avenue, Officer Rhodes makes more unlawful assembly announcements
 22 over a public address system. *Id.* She states, “You have two minutes to disperse, east or north.”
 23 *Id.* In the background, demonstrators are walking east on Grand Avenue and a large object has
 24 been set ablaze at the intersection of Perkins Street and Grand Avenue. *Id.*

25 Third, the Operations Log contains the following relevant entries. “[10:07 p.m.] Part of
 26

27 _____
 28 ¹⁶ This video is available at the following link:
<https://www.dropbox.com/s/6kuipwa6fsjhmno/ProtestVideoClips%2026Aug20%2020-042337%20%281%29.mp4?dl=0>

1 group is southbound on Harrison St[reet] and Grand Ave[nue]. Part of group is eastbound on
2 Grand Ave[nue]. TNT [i.e., Tactical Negotiations Team] requested to make unlawful assembly
3 announcements.” Operations Log at 4. “[10:09 p.m.] A debris field of trash cans and fires lit
4 across Grand Ave[nue] from the crowd going eastbound to block officers.” *Id.* at 3. “[10:23 p.m.]
5 Front [of group] is approaching Euclid [Avenue]. TNT is making continuous announcements.”
6 *Id.* “[10:53 p.m.] Someone threw a bottle towards officers at Grand Ave[nue].” *Id.* “[10:56
7 p.m.] TNT to make announcements, [Quick Reaction Force] to make arrests.” *Id.* “[10:57 p.m.]
8 Officers taking multiple bottles at Perkins [Street] and Belmont [Street].” *Id.* “[11:01] Arrests
9 being made at Belmont [Street and] Perkins [Street] and vehicle that was blocking officers
10 stopped.” *Id.*

11 Fourth, Defendants submit reports by Officers John Keating, Amanda Jimenez, and Sarah
12 Langlais. Keating Rpt.; Jimenez Rpt.; Langlais Rpt. Officer Jimenez’s report states that “[t]he
13 crowd was advised multiple times that their assembly was unlawful and subjects in the area would
14 be arrested if they failed to comply with the order to disassemble.” Jimenez Rpt. at 3; *see* Langlais
15 Rpt. at 3; Keating Rpt. at 3. Subsequently, around 11:00 p.m., officers observed the medic van,
16 which had “intentionally block[ed] and slow[ed] OPD officers and vehicles,” Keating Rpt. at 3,
17 and which had “consistently dr[iven] in the area with the crowd of protestors that was ordered to
18 disperse,” Jimenez Rpt. at 3. Officer Langlais saw “persons inside the van . . . handing out shields
19 and other unknown supplies” and other persons “throwing fireworks at officers after consulting
20 with persons inside the van.” Langlais Rpt. at 3; *see* Keating Rpt. at 3; Jimenez Rpt. at 3.
21 Additionally, Officer Keating’s report states that there were “unknown persons wearing black and
22 tactical gear hanging off the van,” and “[p]ersons in the crowd appeared to be coordinating with
23 the van, using the van as cover to throw objects at officers.” Keating Rpt. at 3.

24 At the intersection of Belmont Street and Perkins Street, Officer Jimenez, Officer Langlais,
25 and other officers ordered the van’s driver, Mx. Hansen, to stop, but Mx. Hansen “ignored [their]
26 commands.” Jimenez Rpt. at 4; *see* Langlais Rpt. at 3; Keating Rpt. at 3. Officer Jimenez
27 “observed [Mx. Hansen] continue to use her [*sic*] foot to push down on the gas and continue to
28 attempt to drive away,” Jimenez Rpt. at 4, and Officer Langlais observed Mx. Hansen “beg[in]

1 steering their vehicle in an apparent attempt to collide with parked vehicles,” Langlais Rpt. at 3.
2 “Due to other officers in the area, near and in front of [Mx. Hansen’s] vehicle,” Officer Jimenez
3 “elected to grab onto [Mx. Hansen’s] left leg with both [her] arms and pull [Mx. Hansen] out of
4 the vehicle,” Jimenez Rpt. at 4, while Officer Langlais “took hold of [Mx. Hansen’s] left arm” and
5 “exerted force to pull [Mx. Hansen] away from the driver’s seat,” Langlais Rpt. at 3. Officers
6 Jimenez and Langlais attempted to handcuff Mx. Hansen, with the former holding Mx. Hansen’s
7 left wrist and the latter holding their right wrist, but Mx. Hansen “resist[ed]” and “ignored . . .
8 commands.” Jimenez Rpt. at 4; *see* Langlais Rpt. at 4. At that point, other officers “conducted a
9 takedown.” Langlais Rpt. at 3; *see* Jimenez Rpt. at 4. Mx. Hansen was arrested for resisting
10 peace officers and evading police. Jimenez Rpt. at 4. Meanwhile, other officers also detained
11 “persons hanging outside and riding inside the van.” Keating Rpt. at 3. Officer Keating “elected
12 to detain [Ms. Sorokin] who was with the group in the van actively blocking OPD throughout the
13 protest . . . and for failing to leave after unlawful assembly was declared . . .” *Id.* Ms. Sorokin
14 “was compliant and offered no resistance” and was ultimately “released without further action.”
15 *Id.*

16 Fifth, Defendants have submitted video footage of the incident—apparently from Officer
17 Langlais’s body-worn camera, which was “knocked from [her] body to the ground” during the
18 “struggle” with Mx. Hansen. Langlais Rpt. at 3; *see* August 26 Video. The following can be
19 discerned. According to the timestamp, the footage begins at 10:56 p.m. *Id.* A voice yells “move
20 up, move up,” and officers suddenly begin to sprint. *Id.* After they sprint for more than 20
21 seconds, the medic van comes into view. *Id.* While officers close in on the van, the driver is
22 commanded to “stop the van.” *Id.* As the van continues to slowly roll forward, officers open the
23 driver door. *Id.* The driver says, “There’s nothing in here”; and an officer commands the driver to
24 “get out of the car.” *Id.* Officers then forcibly pull the driver from the vehicle. *Id.* One officer
25 (apparently, Officer Jimenez) holds the driver’s left arm and another officer (apparently, Officer
26 Langlais) holds the driver’s right arm. *Id.* The camera falls to the ground. *Id.*

1 **3. Events on Friday, August 28**

2 On August 28, the City had information that “there would be a protest that night involving
3 the same organizers or participants as two nights earlier.” Beaver Decl. ¶ 12. That night, a
4 demonstration drew hundreds of participants after 8:00 p.m. *Id.* ¶ 8; *see* Gonzales Rpt. at 2.

5 First, Defendants state that OPD’s prior practice of keeping a distance from the crowd
6 when it traveled had “prevented officers from making targeted arrests and minimizing harm to the
7 community.” Opp’n at 2. So, according to Lieutenant Beaver, OPD “deployed more officers” on
8 August 28 and “adjusted its tactics” in order to “facilitate free speech and minimize further harm
9 to the community.” Beaver Decl. ¶¶ 11, 13. Officers “stay[ed] closer to the crowd and
10 identif[ied] and arrest[ed] individuals who were committing crimes,” but “[w]hen the crowd
11 stopped moving, officers shrunk their presence and stood at a distance from the crowd.” *Id.* ¶ 13.
12 At the end of the night, there was “substantially less damage to the community than after the July
13 25 and August 26 protests.” *Id.*

14 Second, Defendants submit reports by Sergeant Patrick Gonzales and Officer Randall
15 Brown. Gonzales Rpt.; Brown Rpt. According to these reports, Sergeant Gonzales deployed
16 smoke at the intersection of 15th Street and Franklin Street around 9:08–9:10 p.m., and other
17 officers deployed tear gas and smoke at the intersection of 24th Street and Broadway around 9:15–
18 9:20 p.m.¹⁷ *See generally* Gonzales Rpt.; Brown Rpt.

19 Between 8:17 p.m. and 8:30 p.m., a crowd of protestors marched westbound on 14th Street
20 and, once they reached the Federal Building, southbound on Clay Street. Gonzales Rpt. at 3;
21 Brown Rpt. at 3. Sergeant Gonzales’s “Tango Team, accompanied by the rest of Bravo company,
22 formed a skirmish line behind the crowd and began to follow on foot in order to deter members in
23 the crowd from committing acts of vandalism.”¹⁸ Gonzales Rpt. at 3. At 9:00 p.m., Captain
24

25 _____
26 ¹⁷ Although Defendants do not address these deployments of tear gas and smoke in their
27 opposition, they are recorded in Sergeant Gonzales’ report. Gonzales Rpt. at 3. The Court also
28 observes that these deployments appear to be depicted in the video included in Mr. Li’s tweet and
one of the photos included in the Chronicle’s tweet. *See* Li Tweet; Chronicle Tweet.

¹⁸ Officer Au’s report explains that a “Tango Team is a team consisting of at least . . . [three]
officers and . . . [one] supervisor (Sergeant or above) specifically designated to utilize specialty
impact and chemical munitions during crowd control events.” Au Rpt. at 3.

1 Bolton “directed Charlie company to trail the protesters and help create the ‘U formation’ around
 2 the march.” Brown Rpt. at 4. Sergeant Gonzales observed individuals spray painting graffiti on
 3 the Federal Building and “pointing red and green laser lights in the faces of officers,” which can
 4 “cause permanent retinal damage and is a violation of [the California Penal Code].” Gonzales
 5 Rpt. at 3; *see* Brown Rpt. at 3–4 (multiple reports of a subject pointing a laser at officers).

6 Sergeant Gonzales describes the incident at the intersection of Franklin Street and 15th
 7 Street as follows:

8 At approximately [9:10 p.m.], we were in the 1500 Block of Franklin Street when
 9 officers moved in to arrest two individuals responsible for pointing laser lights in the
 10 faces of officers. As officers attempted to detain the two subjects, other individuals
 11 in the crowd turned and ran towards the officers making the detention. This was a
 12 clear attempt to interfere and remove the two suspects from police custody (violation
 13 of [the California Penal Code]). I deployed one (1) Saf-Smoke Han Ball munition
 14 in a clear area, on the street, next to the crowd attempting to free the two suspects
 15 from police custody. I did this to stop their action, to deter others from joining in,
 16 and to create distance between the crowd and the officers. The munition was
 17 effective, the crowd moved back, and the two individuals were safely detained. I
 18 attempted to recover the spent munition; however, it was picked up by a member of
 19 the crowd.¹⁹

20 Gonzales Rpt. at 3. Additionally, Lieutenant Beaver declares that, according to OPD’s records,
 21 “no *chemical agent* was deployed at Franklin Street and 15th Street—or within the immediate
 22 vicinity.” *Id.* ¶ 18 (italics added).

23 Third, Defendants have submitted video footage of the incident from an unidentified
 24 officer’s body-worn camera. Aug. 28 Video. The following can be discerned. According to the
 25 timestamp, the video begins at 9:08 p.m. *Id.* Officers walk closely behind demonstrators,
 26 northbound on Franklin Street, while loud music plays. *Id.* On the north side of the intersection
 27 with 15th Street, officers form a line on the west side of the street and instruct demonstrators to
 28

¹⁹ Similarly, Officer Brown’s report states:

[9:08 p.m.], Officers arrested a subject who was pointing a laser at Officers. The
 arrest was made in the 1500 [block] of Franklin St[reet]. [Sergeant] Gonzales
 deployed a hand thrown smoke han-ball in the area during the arrest. Multiple
 subjects from the crowd began to encircle officers as they were making the arrest.
 The smoke created enough distance between the protestors and the officers to allow
 the officers to make the arrest safely and without further incident.

Brown Rpt. at 4.

1 “back up.” *Id.* The music quiets, and it sounds like gas is being dispersed from a cannister. *Id.* A
 2 cloud of a substance that looks like smoke appears, and demonstrators move away. *Id.* An
 3 officer’s voice states, “One smoke round was deployed while we were making an arrest.” *Id.*
 4 Officers and demonstrations resume marching. *Id.*

5 The incident at the intersection of 24th Street and Broadway is also described in both
 6 officers’ reports. Between 9:15 and 9:20 p.m., the officers responded to a report of an individual
 7 with a bullhorn who was interfering with OPD’s “Video Team.” Gonzales Rpt. at 3; Brown Rpt.
 8 at 4. Officer Brown “moved towards” the suspect to make an arrest; when “[the suspect] started to
 9 run away,” Officer Brown “grabbed him by the back of his hoodie to stop his flight,” but he
 10 “continued to pull away . . . and tried to run.” Brown Rpt. at 4. After other officers grabbed the
 11 suspect, demonstrators “began to encircle [the officers],” *id.*, and “began attacking officers,”
 12 Gonzales Rpt. at 4. Officer Brown deployed one “smoke han-ball on the west sidewalk in clear
 13 area.” Brown Rpt. at 4; *see* Gonzales Rpt. at 4. Sergeant Gonzales observed other officers
 14 “deploy munitions in response”; afterwards, “Officer Albino advised [Sergeant Gonzales] that he
 15 had deployed one . . . CS Blast Munition,” and Sergeant Gonzales “recovered three expended Saf-
 16 Smoke Han-Bal munitions from the street.” Gonzales Rpt. at 4.

17 At this time, Officer Brown noticed other officers “on the ground attempting to arrest a
 18 resisting suspect.” Brown Rpt. at 4. A suspect later identified as Mr. Clancy was “hitting one
 19 officer in the back with his hands and a jacket that he was holding.” *Id.* Officer Brown
 20 “immediately pursued Clancy on foot.” *Id.* Mr. Clancy “stopped hitting the officers and began to
 21 run away,” but “tripped over the center median.” *Id.* Officer Brown caught up and “used both of
 22 [his] hands and pushed Clancy on his upper back, causing him to fall to the ground face first.” *Id.*
 23 When “Clancy tried to get back to his feet,” Officer Brown “held him on the ground with both of
 24 [his] hands near his upper back and head area.” *Id.* Other officers handcuffed Mr. Clancy, who
 25 was arrested for battery on a peace officer and resisting arrest. *Id.*

26 4. Events on Saturday, August 29

27 On August 29, a demonstration drew up to 200 participants after 8:00 p.m. Beaver Decl.
 28 ¶ 8; *see* Au Rpt. at 4. OPD believed that “the same organizers or participants” were involved, and

1 it used the same tactics as it did to police the August 28 demonstration. Beaver Decl. ¶ 14. Again,
2 there was “substantially less damage to the community than after the July 25 and August 26
3 protests.” *Id.*

4 First, Defendants submit reports by Sergeant Brian Alaura and Officer K. Au. Alaura Rpt.;
5 Au Rpt. Early in the evening, the officers were informed that demonstrators were planning on
6 “utilizing shields as a tactic against Officers.” Au Rpt. at 3; *see* Alaura Rpt. at 3. Around
7 7:48 p.m., approximately ten demonstrators with shields gathered at the Pergola at Lake Merritt,
8 and around 7:56 p.m., the Tactical Negotiations Team “attempted to make contact” with them, but
9 they “refused to cooperate.” Au Rpt. at 4. The group subsequently “practiced their movement[s]
10 [and] tactics,” and a speaker announced that they were “actively trying to recruit more people to
11 carry shields.” *Id.*; *see* Alaura Rpt. at 4. Around 9:25 p.m., the crowd began marching
12 northbound on Grand Avenue; around 9:35 p.m., some demonstrators within the crowd pointed
13 lasers at officers and others were “armed with sticks.” Au Rpt. at 4. “Officers formed a skirmish
14 line and followed the crowd. The intent was to maintain close distance in order to ensure no
15 violence or vandalism occurred.” *Id.*

16 Around 9:36 p.m., the crowd turned east on Mandana Boulevard. Au Rpt. at 4. Around
17 9:40 p.m., demonstrators “formed a line of shields facing towards Officers” and began
18 “intentionally walking at a slower pace to separate Officers from the majority of the crowd.” *Id.*;
19 *see* Alaura Rpt. at 4. The officers believed that this was a tactic to “prevent Officers from
20 identifying any subjects who intended to commit violations acts towards Officers and/or
21 vandalism.” Au Rpt. at 4; *see* Alaura Rpt. at 4. Despite orders to move out of the way, the
22 demonstrators refused; some “push[ed] officers with their shields,” Alaura Rpt. at 3; *see* Au Rpt.
23 at 4–5, while others “us[ed] lights to prevent Officers from seeing,” Au Rpt. at 5. Because this
24 part of the street was uphill, it “gave the crowd and shield holders an advantage over officers.”
25 Alaura Rpt. at 4. Sergeant Alaura directed officers to “pull” the shields’ holders to get them out of
26 the way, but some demonstrators began “grabbing onto officers, in an apparent attempt to release
27 shield holders” and others threw objects at officers. *Id.*

28 Sergeant Alaura “deployed one Hanball smoke in order to distract the members of the

1 crowd, who were attacking officers, so that [the officers] could gain an advantage. [He] rolled the
2 munition behind the shield holders which began releasing smoke.” *Id.* “Based on the immediate
3 threat of multiple subjects utilizing shields to push [and] strike Officers, the extreme close
4 proximity between the violent crowd [and] officers, [and] multiple subjects utilizing blinding
5 lights to prevent Officers from seeing which would prevent Officers from protecting themselves,”
6 Officer Au also “elected to deploy one . . . SAF-Smoke Han-Ball . . . directly in front of [him] on
7 the ground.” Au Rpt. at 5; *see* Alaura Rpt. at 4. When the officers continued eastbound on
8 Mandala Boulevard, Officer Au “observed a SAF-Smoke Han-Ball munition thrown back towards
9 the Officers,” as well as “multiple large glass bottles.” *Id.*; *see* Alaura Rpt. at 4. Consequently,
10 Officer Au then deployed one “CS Blast” in an area where he “did not see anyone who may have
11 been injured as a result of [the deployment].” Au Rpt. at 5; *see* Alaura Rpt. at 4. The deployment
12 “appeared to have a positive effect,” as Officer Au “did not see any additional dangerous items
13 being thrown.” Au Rpt. at 5. According to Officer Au’s report, at 9:48 p.m., the Tactical
14 Negotiations Team began making unlawful assembly announcements over a public address
15 system. *Id.* at 6. “Clear directions were given to the crowd to disperse by leaving [eastbound] on
16 Mandana [Boulevard] and [northbound on] Erie St.” *Id.*

17 Second, Defendants have submitted video footage of the incident—apparently from
18 Sergeant Alaura’s body-worn camera. Aug. 29 Video. The following can be discerned.
19 According to the timestamp, the video begins at 9:42 p.m. *Id.* A line of demonstrators holding
20 shields faces a line of officers. *Id.* One officer orders the demonstrators to “move back slowly”
21 and another orders the demonstrators to “back the fuck up”; as the demonstrators walk backwards,
22 the officers walk forwards. *Id.* The two lines clash, and the officers push against the shields. *Id.*
23 According to the time stamp, at 9:43:15 to 9:43:26, one device flies over the lines and Sergeant
24 Alaura rolls another device under the lines. *Id.* A cloud of a substance that looks like smoke
25 appears, and Sergeant Alaura yells, “Smoke deployed, smoke deployed.” *Id.* There is a noise that
26 sounds like a glass bottle shattering and officers’ voices yell, “Bottle, bottle.” *Id.* At 9:43:39,
27 another officer appears to throw an object over the lines and there is a flash and a loud bang. *Id.*
28 The two lines make contact; the officers push against the shields again; and Sergeant Alaura yells,

1 “Pull ’em back.” *Id.* Lights—apparently from demonstrators’ headlamps—shine in officers’ eyes,
 2 and an officer pulls a shield from away from a demonstrator. *Id.* An officer yells, “Get out of the
 3 way or you’re gonna be arrested.” *Id.* At 9:44:30, another officer (presumably Officer Au)
 4 informs Sergeant Alaura, “One smoke and one blast, Sergeant.” *Id.*

5 The officers stop moving, but demonstrators keep backtracking, which allows a gap to
 6 form. *Id.* Demonstrators chant, “Who keeps us safe? We keep us safe!” *Id.* A green laser
 7 pointer shines in the officers’ direction. *Id.* The officers begin moving again, with lights and the
 8 laser shining in their direction. *Id.* At 9:47:02, the lines again clash; Sergeant Alaura yells, “Get a
 9 smoke, smoke,” and a cloud of a substance that looks like smoke appears. *Id.* Sergeant Alaura
 10 makes a takedown arrest of an individual for “rushing another officer,” and other officers are
 11 conducting a separate arrest in the background. *Id.* At 9:48:01, the demonstration is declared an
 12 unlawful assembly and demonstrators are ordered to disperse over a public address system. *Id.*
 13 Sergeant Alaura and other officers discuss a demonstrator who threw a munition “back at [them].”
 14 *Id.*

15 5. Events on Saturday, September 25

16 On September, a demonstration drew up to 250 participants after 8:00 p.m. Beaver Decl.
 17 ¶ 8. Again, OPD believed that “the same organizers or participants” were involved, and it used
 18 the same tactics as it did to police the August 28 demonstration. *Id.* ¶ 14. And again, there was
 19 “substantially less damage to the community than after the July 25 and August 26 protests.” *Id.*

20 First, Defendants submit a report by Officer T. Thurston. Thurston Rpt. Around
 21 8:50 p.m., a crowd gathered at Lake Merritt Amphitheater and began marching. *Id.* at 2. While
 22 the crowd was marching near 14th Street and Madison Street, demonstrators “began moving
 23 orange traffic barricades behind them to block [officers’] movement.” *Id.* Some demonstrators
 24 threw items at officers, including “unopened, pressurized, full soda cans.” *Id.* at 3. At that time,
 25 Officer Thurston observed Sergeant Alaura “deploy a smoke han-ball munition,” which “land[ed]
 26 in a safe area,” but a demonstrator picked it up and “thr[ew] it hard directly at Officers, in an
 27 apparent attempt to hit an Officer.” *Id.* While officers were detaining the suspect, “several
 28 members of the crowd moved towards the Officer’s [*sic*] backs, in an apparent attempt to prevent

1 Officer's [*sic*] from detaining the subject." *Id.* While Officer Thurston was providing security, he
2 saw another smoke han-ball munition deploy, which "helped to encourage the crowd away from
3 Officers." *Id.* Subsequently, at the area of 14th Street and Harrison Street, officers recognized a
4 suspect "with an arrest warrant." *Id.* As the officers detained that suspect, Officer Thurston "was
5 tasked with protecting those officers." *Id.* Meanwhile, several officers were detaining another
6 suspect in a large crowd, and Officer Thurston "heard glass break close by." *Id.* As instructed by
7 Sergeant Alaura, he "deploy[ed] a smoke SKAT-shell . . . south of the crowd, clear of any
8 protestors." *Id.* The deployment appeared to be effective because "the majority of the crowd
9 fled . . . away from where the Officers detained the individuals." *Id.*

10 Second, Lieutenant Beaver declares that, according to OPD's records, "no *chemical agent*
11 was deployed on September 25." Beaver Decl. ¶ 19 (*italics added*).

12 Third, Defendants have submitted two videos; the first is from an unidentified officer's
13 body-worn camera, Sept. 25-1 Video, and second is apparently from Sergeant Alaura's body-worn
14 camera, Sept. 25-2 Video. In the first video, which begins at 9:24 p.m. according to the
15 timestamp, officers are walking behind and around demonstrators. Sept. 25-1 Video. Officers
16 suddenly rush into the crowd and grab a demonstrator. *Id.* There is commotion among officers
17 and demonstrators; a demonstrator grabs the arm of the officer wearing the body camera, but then
18 backs away immediately; and a cloud of a substance that looks like smoke appears. *Id.* Two
19 burning objects are seen on the street. *Id.* The officer wearing the body camera says, "1400 block
20 of Jefferson; 2125 hours." *Id.*

21 In the second video, which begins at 9:49 p.m. according to the timestamp, officers are
22 again walking behind and around demonstrators. Sept. 25-2 Video. Again, the officers suddenly
23 rush into the crowd and grab a suspect. *Id.* There is the is a noise that seems to be the deployment
24 of munitions, and a cloud of a substance that looks like smoke appears. *Id.* A smoking object
25 flies towards officers who then rush towards a second suspect. *Id.* A glass bottle crashes on the
26 street near the officers. *Id.* Sergeant Alaura yells, "Thurston, Thurston, deploy!" *Id.* There is a
27 large bang. *Id.* Sergeant Alaura again yells, "Get one more ready!" *Id.* Sergeant Alaura then
28 reports, "Alpha Tango, launch smoke deployed, 1400 block Harrison, during an arrest." *Id.* He

1 continues, “Alpha Tango, be advised, they’re throwing larger bottles at us as well as the smoke
2 munition.” *Id.*

3 **E. City’s Cross-Motion to Modify**

4 **1. City’s Motion**

5 In its cross-motion, the City stated that, after OPD informed its mutual aid partners of the
6 Injunction, the police agencies of Alameda County, Fremont, San Leandro, Union City, Newark,
7 and San Mateo County independently responded that they would no longer provide mutual aid
8 during demonstrations. Cross-Mot. at 1–5; *see* Yu Decl. (dkt. 66-2) ¶¶ 4–5. Excluding the
9 California Highway Patrol, which addresses activity on state highways, these agencies “supplied
10 approximately 55% of the mutual aid officers on May 29, 2020 and 40% of the mutual aid officers
11 on May 30, 2020.” Yu Decl. ¶ 6. Meanwhile, “[n]o agency ha[d] notified [OPD] that it would
12 provide its officers as mutual aid for protests and demonstrations.” *Id.* at ¶ 7.

13 The City is currently preparing for “significant, extended protests next month.” Cross-
14 Mot. at 8. Consequently, the City requested that the Court modify the Injunction (1) to strike or
15 suspend its mutual aid section (Section VI(i)–(vi)) to allow “Training Bulletin III-G . . . as it
16 stands to govern mutual aid requests,” and (2) to clarify that the Injunction does not bind OPD’s
17 mutual aid partners.²⁰ *Id.* at 1, 8–9; *see* Status Rpt. at 1.

18 **2. Plaintiffs’ Opposition**

19 In their opposition, Plaintiffs asserted that that state law requires mutual aid agencies to
20 (1) render mutual aid when such aid is requested and (2) to follow the local policies that govern
21 the host agency while rendering mutual aid. Opp’n to Cross Mot. (dkt. 67) at 2, 4–11. Plaintiffs
22 therefore contended that the mutual aid agencies were required to provide mutual aid in
23 accordance with the terms of the Injunction and Training Bulletin III-G. *Id.*

24
25 ²⁰ In its cross-motion, the City alternatively requested that the Court issue an order concluding
26 that (1) a “memorandum of agreement” between OPD and its mutual aid partners would not
27 violate the Injunction and (2) the Injunction does not bind OPD’s mutual aid partners. Cross-Mot.
28 at 1, 9. In a subsequent status report and at the hearing, the City did not mention this alternate
request—making clear that the City preferred modifications to the Injunction. *See generally*
Status Rpt. Because the Court has partially granted the City’s request to modify the Injunction,
the Court does not address the parties’ arguments regarding the City’s alternative request. *See*
generally Amended Injunction.

1 In support of their proposition that mutual aid agencies are required to render mutual aid
 2 when such aid is requested, Plaintiffs primarily relied on California Government Code sections
 3 8616 and 8617. Opp'n to Cross-Mot. at 2, 6. Section 8616, which governs the rendering of
 4 mutual aid during "any state of war emergency or state of emergency," provides, in relevant part,
 5 that "when the need arises for outside aid in any county, city and county, or city, such aid shall be
 6 rendered in accordance with approved emergency plans" and that "[i]t shall be the duty of public
 7 officials to cooperate to the fullest possible extent in carrying out such plans." Section 8617,
 8 which governs the rendering of mutual aid "[i]n periods other than a state of war emergency, a
 9 state of emergency, or a local emergency," provides that "state agencies and political subdivisions
 10 have authority to exercise mutual aid powers in accordance with the Master Mutual Aid
 11 Agreement and local ordinances, resolutions, agreements, or plans therefor." Regarding the
 12 former, Plaintiffs read the phrases "such aid shall be rendered" and "duty . . . to cooperate" to
 13 mean that mutual aid must be provided "when the need arises." Opp'n to Cross-Mot. at 6. With
 14 respect to the latter, Plaintiffs argued that any mutual aid rendered "must conform to the Master
 15 Mutual Aid Agreement and local rules."²¹ *Id.* Plaintiffs also referenced the following provisions
 16 of the Master Mutual Aid Agreement:

17 Each party agrees. . . to render services to each and every other party to the agreement
 18 to prevent and combat any type of disaster in accordance with the duly adopted
 19 mutual aid operational plans, whether heretofore or hereafter adopted, detailing the
 20 method and manner by which such . . . services are to be made available and
 furnished, . . . provided, however, that no party shall be required to deplete
 unreasonably its own . . . services in furnishing such mutual aid.

21 It is expressly understood that the mutual aid extended under this agreement and the
 22 operations plans adopted pursuant thereto shall be available and furnished in all cases
 23 of local peril or emergency and in all cases in which a *STATE OF EXTREME
 EMERGENCY* has been proclaimed.

24 Blue Book at 50, 51. Because OPD's mutual aid partners had not claimed that rendering mutual
 25 aid would unreasonably deplete their own services, Plaintiffs argued that they were withholding
 26

27 ²¹ The California Disaster and Civil Defense Master Mutual Aid Agreement ("Master Mutual Aid
 28 Agreement") is located on pages 50 through 55 of the Law Enforcement Mutual Aid Plan (2019)
 ("Blue Book," dkt. 50-1).

1 mutual aid in violation of these provisions. Opp’n to Cross Mot. at 1, 7.

2 Further, in support of their proposition that mutual aid agencies must follow the local
3 policies that govern the host agency while rendering mutual aid, Plaintiffs primarily relied on the
4 following authorities. Opp’n to Cross Mot. at 4–5. California Government Code section 8618
5 states: “Unless otherwise expressly provided by the parties, the responsible local official in whose
6 jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident,
7 including the direction of personnel and equipment provided him through mutual aid.” Plaintiffs
8 contended that the phrase “[u]nless otherwise expressly provided” did not apply because there
9 were no prior agreements between the City and its mutual aid partners that would have modified
10 the general rule of the section. Opp’n to Cross-Mot. at 5 (citing Opinion at 19). Further, as
11 Plaintiffs noted, the Master Plan also provides that “[i]t is expressly understood that . . . [t]he
12 responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall
13 remain in charge at such incident including the direction of such personnel and equipment
14 provided him through the operations of such mutual aid plans.” Blue Book at 51. Based on these
15 provisions and California Government Code section 8617 (discussed in the previous paragraph),
16 Plaintiffs argued that, in rendering mutual aid, OPD’s mutual aid partners were required to abide
17 by the local policies that governed OPD—including the Court’s Injunction and Training Bulletin
18 III-G. *Id.* at 6.

19 Finally, Plaintiffs argue that the City’s proposal—suspending the mutual aid section of the
20 Injunction—would violate the Mutual Aid section (Section IX) of Training Bulletin III-G. *Id.* at
21 8. That section provides that the “Incident Commander shall be responsible for ensuring to the
22 extent possible” that, among other things, mutual aid agencies: “(1) Are briefed and in agreement
23 with OPD’s Unity of Command structure under which only OPD Commanders may authorize the
24 use of less lethal munitions for crowd control and dispersal; (2) Are briefed on OPD’s policy on
25 prohibited weapons and force; [and] (3) Do not bring or use weapons or force that is prohibited
26 under OPD’s policy.” Training Bulletin III-G, § IX.1–3.

27 3. Parties’ Status Report

28 Prior to the hearing, the Court ordered the parties to meet and confer; the City to meet and

1 confer with its mutual aid partners; and the City to file a status report. Prehearing Order (dkt. 68).
 2 The City informed the Court that their mutual aid partners continued to have various concerns
 3 about the Injunction’s mutual aid section. Status Rpt. (dkt. 68). The City again requested that that
 4 the Court issue “a temporary suspension” of the Injunction’s mutual aid section and “expressly
 5 stat[e] that the preliminary injunction does not apply to mutual aid agencies or their officers during
 6 that time period.” *Id.* at 1. If the Injunction “continue[d] to apply to mutual aid agencies or their
 7 officers,” the mutual aid agencies’ decision to withhold aid was “unlikely to change.” *Id.*

8 In the status report, the City stressed that mutual aid is voluntary, citing OPD General
 9 Order L-3’s definition of mutual aid as “the voluntary of sharing of personnel and resources when
 10 an agency cannot sufficiently deploy its own resources to respond to an unusual occurrence.” *Id.*
 11 at 2 (quoting Gen. Order L-3 (dkt. 50-3), § II.A). While the Injunction “require[d] mutual aid
 12 officers to follow OPD policies and command structure” and OPD to “ensure that they in fact do
 13 so,” the City argued that no policy—including Training Bulletin III-G—“grant[ed] OPD authority
 14 over mutual aid agencies.” *Id.* To the contrary, the City argued, General Order L-3 provides that
 15 mutual aid “requests and deployments shall be made in accordance with” the Law Enforcement
 16 Mutual Aid Plan (2019) (“Blue Book,” dkt. 50-1) and the Law Enforcement Guide for Emergency
 17 Operations (2019) (“Red Book,” dkt. 50-2), and these documents state that mutual aid officers
 18 should follow *their own* agencies’ policies and command structure. *Id.* at 3 (citing Gen. Order
 19 L-3, § II). Specifically, the Blue Book provides:

20 Unless otherwise expressly provided, or later agreed upon, the responsible local
 21 law enforcement official of the jurisdiction requesting mutual aid shall remain in
 22 charge. It is operationally essential that the local law enforcement official
 23 coordinate all actions with responding law enforcement agencies to ensure an
 24 effective application of forces. [Cal. Gov. Code § 8618.]

25 *The integrity of responding forces and the policies and procedures of their
 26 departments must be maintained.* Exceptions will require approval of the
 27 concerned department. Refer to the [Red Book] for further policy guidance.

28 *Id.* (quoting Blue Book at 18) (italics added by the City). And, in turn, the Red Book states:
 “Individual officers are bound by use of force policies of their employing agency. However, use
 of less-lethal devices (e.g., chemical agents, Tasers, ARWEN, Sting balls, or Stun bags) should be

1 used decisively when the situation dictates.” *Id.* (quoting Red Book at 58) (City’s italics
 2 removed). The City asserted, “These are the terms our region’s agencies intend to govern their
 3 rendering of mutual aid.” *Id.*

4 The City acknowledged that Training Bulleting III-G “requires OPD to keep its officers on
 5 the frontlines to the extent possible” and to “make its best effort to brief mutual aid agencies on
 6 OPD’s policies and to request that these agencies do not bring or use tools prohibited under OPD
 7 policy.” *Id.* (citing Training Bulletin III-G, § 9). But it emphasized that “OPD has no power to
 8 force mutual aid officers to comply with its tactics and toolboxes to which they have not been
 9 trained”; it only has the power to “decline mutual aid—at the risk of officer and public safety.” *Id.*
 10 at 4.

11 In the Status Report, Plaintiffs observed that the Injunction “track[ed] the language of
 12 [Training Bulletin III-G] nearly verbatim, with slight alterations in that the Court command[ed]
 13 that the OPD Incident Commander fulfill his or her [mutual aid] obligations . . . ‘unless exigent
 14 circumstances prevent the fulfillment of these obligations’ rather than ‘to the extent possible.’ ”
 15 *Id.* at 5 (quoting Injunction, § VI and Training Bulleting III-G, § IX). In other words, the
 16 Injunction only directed OPD to fulfill its obligations under Training Bulletin III-G. *Id.* Finally,
 17 Plaintiffs restated their view that “[t]he rendering of mutual aid is mandatory when the need for
 18 such aid arises.” *Id.*

19 III. ANALYSIS

20 A. Plaintiff’s Motion to Enforce

21 1. Legal Standards

22 “ ‘Civil contempt . . . consists of a party’s disobedience to a specific and definite court
 23 order by failure to take all reasonable steps within the party’s power to comply.’ ” *Inst. of*
 24 *Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 945 (9th Cir. 2014)
 25 (quoting *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir.
 26 1993)). “ ‘The standard for finding a party in civil contempt is well settled: The moving party has
 27 the burden of showing by clear and convincing evidence that the [nonmoving party] violated a
 28 specific and definite order of the court. The burden then shifts to the contemnors to demonstrate

1 why they were unable to comply.’ ” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th
 2 Cir. 1999) (quoting *Stone v. City & Cty. of S.F.*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)).
 3 “ ‘Substantial compliance’ with the court order is a defense to civil contempt, and is not vitiated
 4 by ‘a few technical violations’ where every reasonable effort has been made to comply.” *Dual-
 5 Deck Video Cassette Recorder*, 10 F.3d at 695 (quoting *Vertex Distributing v. Falcon Foam
 6 Plastics, Inc.*, 689 F.2d 885, 891 (9th Cir. 1982); see also *General Signal Corp. v. Donallco, Inc.*,
 7 787 F.2d 1376, 1378-79 (9th Cir. 1986) (“If a violating party has taken ‘all reasonable steps’ to
 8 comply with the court order, technical or inadvertent [*sic*] violations of the order will not support a
 9 finding of civil contempt.”) (internal quotation omitted). Ninth Circuit authority suggests that the
 10 issues of “substantial compliance” and “reasonable efforts” are “interrelated, and reasonable
 11 efforts are in fact a necessary component of substantial compliance.” *Dep’t of Fair Housing &
 12 Employment v. Law School Admission Council, Inc.*, 12-cv-01830-JCS, 2018 WL 1156605, at *16
 13 (N.D. Cal. March 5, 2018).

14 **2. Whether Plaintiffs Have Shown that Defendants Violated the Injunction**

15 **i. “Kettling” and Unlawful Assembly Declaration**

16 First, Plaintiffs allege that Defendants violated the Injunction on August 26, August 28,
 17 and August 29 by indiscriminately kettling peaceful demonstrators without justification, without
 18 making required announcements, without providing routes for egress, and while displaying their
 19 weapons. Mot at 2, 3–5, 8–9. Plaintiffs also allege that Defendants violated the Injunction on
 20 August 29 by declaring the demonstration an unlawful assembly without justification. *Id.*
 21 Defendants respond that officers sometimes surrounded the individuals they were arresting, but
 22 their tactics “did not include encircling the crowd” of demonstrators, and they “always maintained
 23 egress routes for the larger crowd.” Opp’n at 3 (citing Beaver Decl. ¶ 15). According to
 24 Lieutenant Beaver’s declaration and Defendants’ opposition, officers kept “a distance from the
 25 crowd as it traveled” on August 26, Beaver Decl. ¶ 10, but this “prevented [them] from making
 26 targeted arrests and minimizing harm to the community,” Opp’n at 2 (citations omitted). So,
 27 during the August 28 and August 29 demonstrations, OPD “deployed more officers” who
 28 “stay[ed] closer to the crowd” in order to “identify[] and arrest[] individuals who were committing

1 crimes.” Beaver Decl. ¶ 13; *see id.* ¶ 14. “When the crowd stopped moving,” however,
 2 Lieutenant Beaver declares that “officers shrunk their present and stood at a distance from the
 3 crowd.” *Id.* ¶ 13; *see id.* ¶ 14.

4 As an initial matter, neither the Injunction nor Training Bulletin III-G use the term
 5 “kettling,” which is defined by Plaintiffs in their complaint as a “military term referring to an army
 6 that is completely surrounded by a much larger force.” Compl. ¶ 66. That said, Training Bulletin
 7 III-G does contain several relevant provisions governing crowd management, crowd control, and
 8 crowd dispersal.²² *See generally* Training Bulletin III-G, § III.C.7., V. For example, the “General
 9 Principles” section states in relevant part:

10 Even when some members of a crowd engage in violence or destruction of property,
 11 other members of the crowd are not participating in those acts. Once some members
 12 of a crowd become violent, the situation often turns chaotic, and many individuals in
 13 the crowd who do not want to participate in the violent or destructive acts may be
 14 blocked from leaving the scene because the crowd is so large or because they are
 15 afraid they will move into a position of heightened danger.

16 This understanding does not mean OPD cannot take enforcement action against the
 17 crowd as permitted under this policy, but OPD shall seek to minimize the risk that
 18 force and arrests may be directed at innocent persons.

19 *Id.* § III.C.7. Additionally, the bulletin provides that any use of force “shall be restricted to
 20 circumstances authorized by law and to the degree reasonably necessary in light of the
 21 circumstances confronting members,” but “[t]his directive does not preclude police officers from
 22 taking appropriate action to direct crowd and vehicular movement; enforce ordinances and
 23 statutes; and employ the physical force necessary to maintain the safety of the crowd, the general
 24 public, law enforcement personnel, and emergency personnel.” *Id.* § III.C.12. Further, officers
 25 are prohibited from displaying their weapons “in non-violent crowd situations” before “a dispersal
 26 order is given or other enforcement action is implemented.” *Id.* § III.C.10.

27 The “Permissible Crowd Control and Crowd Dispersal Techniques” section adds that the
 28

22 Again, Section I of the Injunction provides: “Except as modified in this order, OPD shall
 23 adhere to Training Bulletin III-G, OPD Crowd Control and Crowd Management (2013), attached
 24 as Exhibit A.” *See* Amended Injunction, § 1.

1 police “may not disperse a demonstration or crowd event before demonstrators have acted illegally
2 or before the demonstrators pose a clear and present danger of imminent violence.” *Id.* § V.F.1.
3 (citing Cal. Penal Code § 407). It also states:

4 When the only violation present is unlawful assembly, the crowd should be given an
5 opportunity to disperse rather than face arrest.

6 Crowd dispersal techniques shall not be initiated until OPD has made repeated
7 announcements to the crowd, asking members of the crowd to voluntarily disperse
and informing them that, if they do not disperse, they will be subject to arrest.

8 These announcements must be made using adequate sound amplification equipment
9 in a manner that will ensure that they are audible over a sufficient area.
10 Announcements must be made from different locations when the demonstration is
11 large and noisy. The dispersal orders should be repeated after commencement of the
12 dispersal operation so that persons not present at the original broadcast will
understand that they must leave the area. The announcements shall also specify
adequate egress or escape routes. Whenever possible, a minimum of two
escape/egress routes shall be identified and announced. . . .

13 Unless an immediate risk to public safety exists or significant property damage is
14 occurring, sufficient time will be allowed for a crowd to comply with police
15 commands before action is taken.

16 *Id.* § V.G.1, 2. “If the crowd has failed to disperse after the required announcements,” then
17 officers “may encircle the crowd or a portion of the crowd for purposes of making multiple
18 simultaneous arrests,” or they may “use squad or platoon formations (skirmish line, wedge,
19 echelons, etc.) to move the crowd along.”²³ *Id.* § V.H.2., 3.a. (citation omitted).

20
21
22
23 ²³ The Court acknowledges that several demonstrators have declared that officers used excessive
force again them and/or others. *See, e.g.*, Lapierre Decl. ¶ 6; Hansen Decl.; Gaito Decl. ¶ 16;
24 Sugrue Decl. ¶ 5; McDonnell Decl. ¶¶ 16–17. Additionally, Mx. Hansen declared that officers
discriminated against them on the basis of their non-binary gender. *See generally* Hansen Decl.
25 Although Plaintiffs reference many of these incidents in their motion, they have not alleged that
the relevant actions taken by officers violated any provision of the Injunction.

26 As the Injunction itself recognizes, its scope is limited; the Court was focused on the use of
27 “certain crowd control tactics and munitions” to police demonstrations, and it expressly stated that
it did not address “uses of force in specific instances,” which “may or may not be lawful
28 depending upon the circumstances at the time.” Injunction at 1; *see* Amended Injunction at 1.
The Court’s conclusion that these allegations of excessive force do not violate the Injunction is
without prejudice to any other claim Plaintiffs might assert.

1 **a. Wednesday, August 26**

2 For the demonstration on the night of August 26, Plaintiffs' allegations are supported by
3 Ms. Sorokin's declaration that officers "kettled and closely followed protestors, including
4 immersing themselves in the protest," Sorokin Decl. ¶ 11, and Mx. Hansen's declaration that
5 "[n]ear the end of the night," officers "blocked" demonstrators into a " 'T' intersection" in a
6 residential neighborhood where "police barricaded both exits" and "rushed at the crowd," Hansen
7 Decl. ¶¶ 13, 14.

8 Neither Ms. Sorokin nor Mx. Hansen describe the exact time or location of these events.
9 As described above, however, Defendants have submitted evidence that, shortly after 10:00 p.m.,
10 OPD made repeated unlawful assembly announcements over a public address system on Grand
11 Avenue, between at the intersection with Harrison Street and the intersection with Lee Street. *See*
12 Operations Log at 3–4; Pullen Video; Jimenez Rpt. at 3; *see also* Langlais Rpt. at 3; Keating Rpt.
13 at 3. In the video footage of these announcements, officers follow demonstrators at a distance, and
14 the announcements identify routes for egress. Pullen Video. Defendants have also submitted
15 evidence that approximately an hour later, at the nearby intersection of Perkins Street and Grand
16 Avenue, officers surrounded the medic van and ordered the driver, Mx. Hansen, to stop because
17 the van had obstructed officers, aided demonstrators who were throwing objects at officers, and
18 "consistently dr[iven] in the area with the crowd of protestors that was ordered to disperse."
19 Jimenez Rpt. at 3; *see* Operations Log at 3; *see generally* Keating Rpt.; Jimenez Rpt.; Langlais
20 Rpt.; Aug. 26 Video.

21 On this limited record, the Court finds that Plaintiffs have failed to prove by clear and
22 convincing evidence that Defendants violated any of the above-quoted provisions of Training
23 Bulletin III-G on August 26, or that any other provision of the Injunction or Training Bulletin
24 III-G prohibited the conduct asserted in Plaintiffs' declarations.

25 **b. Friday, August 28**

26 For the demonstration on the night of August 28, Plaintiffs' allegations are supported by
27 demonstrators' declarations that officers surrounded the crowd on three sides; blocked off roads;
28 ordered demonstrators to move quickly; threatened to arrest demonstrators if they walked too

1 Decl. ¶¶ 13, 15–19; Gaito Decl. ¶¶ 10, 12, Sugrue Decl. ¶ 3. Ms. Gaito, Ms. Sugrue, and Mr.
2 Lapierre also declared that, at the back of the march on Mandana Boulevard, officers began
3 “attacking” demonstrators; “running into” them; and “body checking” them. Gaito Decl. ¶ 13;
4 Sugrue Decl. ¶ 4; Lapierre Decl. ¶ 5. Additionally, an Oakland resident’s twitter video depicted
5 clashes between a line of demonstrators holding shields at the back of the march and a line of
6 officers following closely. Brown Tweet.

7 Defendants have submitted evidence that, around 9:40 p.m. on Mandana Boulevard,
8 demonstrators with shields formed a line at the back of the march. Alaura Rpt. at 3; Au Rpt. at 4;
9 Aug. 29 Video. According to Sergeant Alaura’s and Officer Au’s reports, despite officers’ orders
10 that these demonstrators either move faster or get out of the way, they continued to remain in
11 formation, walking slowly. Alaura Rpt. at 3; Au Rpt. at 4–5; Aug. 29 Video. Additionally, these
12 demonstrators pushed officers with their shields, while others shined bright lights in officers’ eyes.
13 Alaura Rpt. at 4; Au Rpt. at 4–5. The officers stated that they were concerned that these
14 demonstrators were preventing them from staying close to the crowd, where they could identify
15 and arrest individuals who had committed or who intended to commit unlawful acts. Alaura Rpt.
16 at 3; Au Rpt. at 4–5. These events led to a series of clashes between the line of officers and the
17 line of demonstrators with shields, as described above and below. Aug. 29 Video. Shortly
18 thereafter, OPD declared an unlawful assembly. *Id.*; see Au Rpt. at 6; see also OPD Tweet.

19 Again, on this limited record, the Court finds that Plaintiffs have failed to prove by clear
20 and convincing evidence that Defendants violated any provision of the Injunction or Training
21 Bulletin III-G on August 29 for the reasons explained in the section immediately prior and because
22 Plaintiffs have failed to prove by clear and convincing evidence that demonstrators had not acted
23 illegally or posed a threat of clear and present danger of imminent violence prior to the unlawful
24 assembly declaration.

25 ii. COVID-19 Precautions

26 Second, Plaintiffs allege that Defendants violated the Injunction on August 26 and August
27 29 by failing to wear face masks and gloves. Mot at 3, 5, 9. Defendants respond that, “contrary to
28 Plaintiffs’ claims, all the footage in the record shows officers wearing masks.” Opp’n at 9.

1 Under Section VIII of the Injunction, OPD officers are required “to wear face masks and
2 gloves whenever they interact with members of the public” at demonstrations during “the
3 pendency of the state of emergency declared by either the President of the United States or the
4 Governor of State of California.”

5 In support of Plaintiffs’ allegations, Mx. Hansen declared that throughout their interaction
6 with OPD officers on August 26, “many officers were not wearing masks,” Hansen Decl. ¶ 49,
7 and Ms. Li declared that she witnessed some OPD officers without face coverings and others
8 remove their face coverings, including one with an arrestee in his vehicle on August 28, Li Decl.
9 ¶¶ 21–22.²⁴ Plaintiffs have not submitted any video or photo evidence of any officers failing to
10 wear face masks or gloves, however, and the video footage submitted by Defendants does not
11 depict officers failing to wear masks or gloves while interacting with demonstrators. On this
12 limited record, the Court finds that Plaintiffs have failed to prove by clear and convincing
13 evidence that Defendant have violated the Injunction in this respect.²⁵

14 Plaintiffs also allege that Defendants violated the injunction by “corrall[ing] demonstrators
15 on each night of the demonstrations so that physical distancing was not possible.” Mot. at 9; *see*
16 *id.* at 2, 3–4. Although the Court previously observed that it is “concerned by the accounts of
17 numerous protestors that they were trapped by police officers and unable to either disperse or
18 maintain social distance,” the Injunction does not include any physical distancing requirements
19 related to the COVID-19 pandemic.²⁶ Opinion at 30. Plaintiffs’ allegations therefore do not state
20 a violation of the Injunction.

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24 ²⁴ Plaintiffs did not submit any evidence in support of their allegations that officers failed to wear
gloves.

25 ²⁵ The Court acknowledges that Mx. Hansen declares that officers took Mx. Hansen’s face mask
26 and “acted put out by [their] request” for a new mask. Hansen Decl. ¶ 50. Also, Mr. Clancy
27 declares that he was transported to the Santa Rita Jail in a van with other arrestees, but the
arrestees without face masks were not offered any. Clancy Decl. ¶¶ 20–21. Plaintiffs do not
expressly reference these incidents in their motion, however, and they have not alleged that the
relevant actions taken by officers violated any provision of the Injunction.

28 ²⁶ Additionally, Plaintiffs did not ask the Court to modify the Injunction to add physical
distancing requirements related to the COVID-19 pandemic. *See* Plaintiffs’ Proposed Order.

1 **iii. Chemical Agents**

2 Third, Plaintiffs allege that, on August 28, August 29, and September 25, Defendants
 3 deployed chemical agents in violation of the Injunction because (1) “there was no imminent threat
 4 of physical harm to a person or significant destruction of property at the time”; (2) OPD “did not
 5 exhaust other techniques to mitigate the threat”; (3) OPD “did not provide any warning prior to the
 6 deployment of the munitions”; and (4) OPD deployed the munitions directly into the crowd rather
 7 than at a safe distance.” Mot at 7; *see id.* at 1, 4–5, 7–8. In response, Defendants take the position
 8 that smoke is *not* a “chemical agent” for purposes of Section V(2) of the Injunction. *See generally*
 9 *Opp’n*. Defendants also argue that the deployments of smoke and tear gas complied with Training
 10 Bulletin III-G and the Injunction. *Id.* at 9.

11 Section V of the Injunction provides in relevant part:²⁷

- 12 1. Chemical agents (including orthochlorobenzalmalononitrile), flashbang
 13 grenades, and foam-tipped projectiles shall be deployed only when (a) there
 14 is an imminent threat of physical harm to a person or significant destruction
 15 of property; and (b) other techniques, such as simultaneous arrests or police
 16 formations, have failed or are not reasonably likely to mitigate the threat. The
 17 use of such munitions must be authorized by an OPD Operations Commander
 18 or Incident Commander. None of these devices shall be deployed on peaceful
 19 protestors or indiscriminately into a crowd. They may only be targeted at the
 20 specific imminent threat justifying the deployment. Flash bang grenades and
 21 gas canisters must be deployed at a safe distance from the crowd to minimize
 22 the risk that individuals will be struck and injured by those devices. When
 chemical agents are used, only the minimum amount of chemical agent
 necessary to obtain compliance may be used, in accordance with OPD’s
 Department General Order K-3, USE OF FORCE.
2. Except where an immediate risk to public safety or of significant property
 damage makes it impossible to do so, before any of the devices listed in
 Section V(2) are deployed to disburse a crowd, OPD must have made at least

23 ²⁷ Relatedly, Section V.H.4. of Training Bulletin III-G, which applies to the use “Non Hand-Held
 24 Crowd Control Chemical Agents,” also provides that such agents “shall be used only if other
 25 techniques, such as encirclement and multiple simultaneous arrest or police formations have failed
 26 or will not accomplish the policing goal as determined by the Incident Commander”; that officers
 27 “shall use the minimum amount of chemical agent necessary to obtain compliance in accordance
 28 with Department General Order K-3, USE OF FORCE”; that such agents “shall not be used in
 demonstrations or other crowd events without the approval of the Incident Commander”; that
 supervisors or commanders may only authorize the use of such agents “under exigent
 circumstances”; and that such agents “shall not be used for crowd control or dispersal without first
 giving audible warning of their imminent use and giving reasonable time to the crowd, media, and
 observers to disperse.” Training Bulletin III-G, § V.H.4.b., c., d., e., f.

1 two announcements to the crowd asking members of the crowd to voluntarily
 2 disperse and informing them that, if they do not disperse, they will be subject
 3 to arrest. These announcements must be made using adequate sound
 4 amplification equipment in a manner that will ensure that they are audible to
 5 the crowd and must identify at least two means of escape/egress. OPD must
 6 also allow the crowd sufficient time to disperse after making these
 7 announcements before deploying any of the devices in Section V(2).

8 Injunction, § V(2), (3); *see* Amended Injunction, § V(2), (3). Elsewhere, the Injunction also states
 9 that officers are not “prohibit[ed]” from “taking reasonable action or using reasonable or necessary
 10 force as allowed by law against an individual in self-defense or in defense of another person or
 11 officer.” Injunction § VI; *see* Amended Injunction, § VI.A.

12 Meanwhile, Section V.H.5. of Training Bulletin III-G, which governs the use of “[h]and-
 13 thrown chemical agents or pyrotechnic gas dispersal devices,” provides:

14 Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used
 15 for crowd control or crowd dispersal without the approval of the Incident
 16 Commander. Only under exigent circumstances may a supervisor or commander
 17 authorize the immediate use of hand-thrown chemical agents or pyrotechnic gas
 18 dispersal devices. The Incident Commander shall be immediately notified when an
 19 exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices has
 20 occurred.

21 Training Bulletin III-G, § III.H.5.a. Further, hand-thrown chemical agents or pyrotechnic gas
 22 dispersal devices “shall be deployed to explode at a safe distance from the crowd to minimize the
 23 risk of personal injury and to move the crowd in the direction that will accomplish the policing
 24 objective”; “shall not be used for crowd control without first giving audible warnings to the crowd
 25 and additional reasonable time to disperse”; and “shall be used only if other techniques such as
 26 encirclement and mass arrest or police formations have failed or will not accomplish the policing
 27 goal as determined by the Incident Commander.” *Id.* § III.H.5.b., c., d.

28 **a. Smoke Dispersal Devices**

Although the parties disagree whether smoke (including the hexachloroethane, or “HC,”
 devices used by OPD) is a “chemical agent” for purposes of Section V(2) of the Injunction, neither
 has offered arguments or evidence for their position. In support of their motion for a preliminary
 injunction, Plaintiffs previously submitted a declaration by a specialist in pulmonary disease that

1 addressed the effects of tear gas (e.g., chloroacetophenone (CN) or chlorobenzylidene
2 malononitrile (CS)) and pepper spray (oleoresin capsicum (OC)), *see generally* Sporn Decl., but
3 that declaration did not address the effects of smoke generally or hexachloroethane specifically.
4 Meanwhile, Defendants previously submitted Training Bulletin V-F.2, OPD’s training bulletin on
5 chemical agents, which states that smoke (e.g., hexachloroethane (HC)) “is *not* a chemical agent.”
6 Training Bulletin V-F.2 (dkt. 36-5), § I.D.3.b. (*italics added*).

7 Because Plaintiffs have not submitted any arguments or evidence regarding the intended
8 use or effects of smoke dispersal devices (containing, e.g., hexachloroethane), the Court at this
9 time concludes that smoke is not a chemical agent for purposes of Section V(2) of the Injunction.
10 That said, the Court concludes that hand-held smoke dispersal devices deployed by OPD officers
11 are “pyrotechnic gas dispersal devices” for purposes of § III.H.5.a Training Bulletin III-G.

12 **b. Friday, August 28**

13 As described in Plaintiffs’ declarations, shortly after 9:00 p.m. on August 28, at the
14 intersection of Franklin Street and 15th Street, officers deployed smoke without audible warnings.
15 McDonnell Decl. ¶¶ 11–15; Li Decl. ¶¶ 17–18; *see* Lapierre Decl. ¶ 3; Chronicle Tweet. Plaintiffs
16 have also submitted a declaration describing, and an image depicting, another deployment of
17 smoke and/or tear gas at the intersection of 24th Street and Broadway without audible warnings.
18 Clancy Decl. ¶¶ 12–14; Li Tweet. But Plaintiffs’ motion does not expressly differentiate these
19 two incidents. *See* Mot. at 3–4; 7–8.

20 Defendants first respond that they deployed one handheld “Saf-Smoke Han Ball
21 munition”—but no “chemical agents”—at the intersection of Franklin Street and 15th Street.
22 Opp’n at 4–5 (quoting Gonzales Rpt. at 3; Beaver Decl. ¶ 18). They argue that this smoke
23 deployment complied with Training Bulletin III-G because Sergeant Gonzales deployed the device
24 “ ‘in a clear area’ when he saw members of the crowd ‘attempting to free’ two people whom the
25 officers were arresting.” *Id.* at 9 (quoting Gonzales Rpt. at 3 and citing Brown Rpt.). According
26 to Sergeant Gonzales’s report, around 9:10 p.m. at the intersection of Franklin Street and 15th
27 Street, while officers were attempting to arrest two individuals responsible for pointing lasers in
28 officers’ faces, other individuals “ran towards the officers making the detention,” and he deployed

1 the device “in a clear area, on the street” to “stop [these demonstrators’] action, to deter others
2 from joining in, and to create a distance between the crowd and the officers.” Gonzales Rpt. at 3.
3 Similarly, Officer Brown’s report states that “[m]ultiple subjects” had “beg[un] to encircle officers
4 as they were making the arrest.” Brown Rpt. at 4.

5 Defendants do not directly respond to Plaintiffs’ evidence that officers deployed smoke
6 and/or tear gas at the intersection of 24th Street and Broadway without audible warnings. *See*
7 Opp’n at 4–5, 9. According to Officer Brown’s report, however, shortly after 9:15 p.m. at the
8 intersection of 24th Street and Broadway, when officers grabbed an individual who had interfered
9 with officers and was resisting arrest, other demonstrators “began to encircle” the officers. Brown
10 Rpt. at 4. So, Officer Brown deployed one “smoke han-ball on the . . . sidewalk in a clear area.”
11 *Id.* Likewise, Sergeant Gonzales’s report states that demonstrators had “beg[un] attacking
12 officers.” Gonzales Rpt. at 4. Other officers “deploy[ed] munitions,” including multiple “Saf-
13 Smoke Han-Bal munitions” and one “CS Blast Munition.” *Id.*

14 Regarding the deployments of smoke at the intersection of Franklin Street and 15th Street
15 and the intersection of 24th Street and Broadway, the Court finds that, on this limited record,
16 Plaintiffs have failed to prove by clear and convincing evidence that the handheld smoke dispersal
17 devices were *not* deployed “under exigent circumstances” or “a safe distance from the crowd,” or
18 that “other techniques” would have “accomplish[ed] the policing goal.” Training Bulletin III-G,
19 § III.H.5.a., b, d. Also, with respect to the deployment of tear gas at the intersection of 24th Street
20 and Broadway, the Court also finds that, on this limited record, Plaintiffs have failed to prove by
21 clear and convincing evidence that there was not “an imminent threat of physical harm to a
22 person” and that “other techniques” were “reasonably likely to mitigate the threat,” or that the
23 device was deployed “indiscriminately into a crowd.” Injunction § V(2).

24 Defendants have not argued or produced any evidence that officers gave audible warnings
25 and a reasonable amount of time to disperse prior the deployment of these smoke and tear gas
26 dispersal devices, however, and the Court finds that defendants have violated Training Bulletin
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28

1 III-G in this respect.²⁸ Training Bulletin III-G, § III.H.5.c.

2 **c. Saturday, August 29**

3 As described above, shortly after 9:40 p.m. on Saturday, August 29, there was a series of
4 clashes at the back of the march between a line of demonstrators carrying shields and a line of
5 officers.

6 According to Plaintiffs' declarations, officers then without warning deployed tear gas and
7 smoke dispersal devices directly into the crowd of demonstrators. Lapierre Decl. ¶ 5; Munevar
8 Decl. ¶¶ 22–27; Gaito Decl. ¶ 14; Sugrue Decl. ¶ 4. Mr. Munevar specifically declared that he
9 “saw police shoot [a] smoke grenade at [him] at close range, about 20 yards away,” and it “hit
10 [him] in the head.” Munevar Decl. ¶¶ 23, 24; *see id.* ¶ 25 (photo of slightly discolored and slightly
11 raised skin on Mr. Munevar's forehead). Ms. Gaito also declared that cannisters were “shot at
12 protestors” and “into the center of the crowd.” Gaito Decl. ¶ 14. Plaintiffs have also submitted a
13 video with a cloud of a substance that looks like smoke and noises that seem to the explosion of
14 munitions, *see* Brown Tweet, and a probable cause declaration filed by OPD which states that
15 officers “deployed smoke munitions in order to disperse the crowd,” *see* PC Decl.

16 Defendants respond that three officers “each deployed one handheld smoke (non-
17 flashbang) device” and another officer deployed a “CS Blast.” Opp'n at 7. They argue that the
18 smoke deployments were justified because “the group holding shields continued to block and push
19 against officers” and “officers saw people grabbing officers and throwing objects at officers,” *id.*
20 (citing Alaura Rpt.; Au Rpt.), and that the tear gas deployment was justified because officers were
21 “under attack—including by someone who threw a munition at officers,” *id.* at 9 (citing Au Rpt.).
22 Defendants do not directly address whether two of the three deployments of smoke dispersal
23 devices met the deployment requirements of Training Bulletin III-G, but they argue that there is
24 “no foundation or support for Mr. Munevar's claim that he was hit in the head by a smoke
25

26
27 ²⁸ Plaintiffs have not expressly alleged that defendants violated Section V(3) of the Injunction,
28 which requires at least two announcements of an unlawful assembly and sufficient time to disperse
prior to deploying any of the devices listed in Section V(2) to disperse a crowd, except where “an
immediate risk to public safety or of significant property damage makes it impossible to do so.”

1 grenade.”²⁹ *Id.* They also contend that the tear gas deployment complied with the deployment
 2 requirements of the Injunction because the officer “ ‘located a clear area in the street,’ ”
 3 “ ‘deployed the CS Blast . . . a safe distance from any person,’ ” and “ ‘did not see anyone who
 4 may have been injured as a result of [his] CS Blast deployment.’ ” *Id.* at 6 (quoting Au Rpt. at 5).

5 According to Sergeant Alaura’s report, around 9:40 p.m. on Mandana Boulevard, after he
 6 saw demonstrators “grabbing onto officers” and “throwing objects at officers,” he “rolled” a
 7 “Hanball smoke” munition behind the demonstrators holding shields. Alaura Rpt. at 3. According
 8 to Officer Au’s report, after observing demonstrators “actively pushing” officers and “utilizing
 9 blinding lights to prevent Officers from seeing,” he deployed one “SAF-Smoke Han-Ball”
 10 munition “directly in front of [him] on the ground” a “safe distance from any person,” and he did
 11 not see “anyone who appeared to be injured.” Au Rpt. at 5. After Officer Au saw a smoke
 12 munition and “multiple large glass bottles” thrown towards officers, he deployed one “CS Blast
 13 towards the direction of where the dangerous objects were coming from,” to “a clear area in the
 14 street” and a “safe distance from any person.” *Id.* He did not see anyone who may have been
 15 injured as a result. *Id.*

16 In the video footage that appears to be from Sergeant Alaura’s body-worn camera, at
 17 9:43 p.m., after a line of officers and a line of demonstrators holding shields clash, one device flies
 18 over the lines, and Sergeant Alaura rolls another device under the lines. Aug. 29 Video. Sergeant
 19 Alaura yells, “Smoke deployed, smoke deployed,” and a cloud of a substance that looks like
 20 smoke appears. *Id.* After a noise that sounds like a glass bottle shattering and officers’ voices
 21 yelling, “Bottle, bottle,” another officer appears to throw an object over the lines and there is a
 22 flash and a loud bang. *Id.* At 9:44 p.m., another officer (presumably Officer Au) informs
 23 Sergeant Alaura, “One smoke and one blast, Sergeant.” *Id.* And at 9:47 p.m., after another clash
 24 between officers and the demonstrators holding shields, Sergeant Alaura yells, “Get a smoke,
 25 smoke,” and a cloud of a substance that looks like smoke appears. *Id.*

26 Also, the Munitions Log does not indicate that any launched munitions were deployed on
 27

28 ²⁹ Defendants do not explain why Mr. Munevar’s declaration describing his personal experience
 would require “foundation.”

1 Defendants respond that around 9:25 p.m., one officer deployed a “handheld smoke (non-
2 flashbang) device when a group descended on officers attempting to make an arrest.” Opp’n at 6-
3 7 (citing Thurston Rpt.; Sept. 25-1 Video). Also, around 9:49 p.m., one officer deployed a
4 “handheld smoke (non-flashbang) device” when “[c]rowd members again impeded officers and
5 threw at least one glass bottle at officers,” and another officer “launched a (non-flashbang) smoke
6 shell after “someone threw the [smoke device] back at the officers.” *Id.* at 7 (citing Thurston Rpt.,
7 Sept. 25-2 Video). Additionally, they argue that their deployments complied with the deployment
8 requirements of Training Bulletin III-G and the Injunction because the officers deployed the
9 handheld smoke devices “in a clear area” in response to “articulated threats to others.” *Id.* at 9
10 (citing Thurston Rpt.; Sept. 25-1 Video; Sept. 25-2 Video).

11 According to Officer Thurston’s report, at some time after 9:00 p.m., near the intersection
12 of 14th Street and Madison Street, he observed demonstrators throw items at officers and Sergeant
13 Alaura “deploy a smoke han-ball munition.” Thurston Rpt. at 3. The munition “land[ed] in a safe
14 area,” but a demonstrator picked it up and “thr[ew] it hard directly at Officers.” *Id.* Around
15 9:25 p.m., while officers were detaining the suspect who had thrown the munition, “several
16 members of the crowd moved towards the Officer’s backs,” and Officer Thurston saw another
17 smoke han-ball munition deploy. *Id.* In Defendants’ video footage from an unidentified officer’s
18 body-worn camera, officers and demonstrators are walking when officers suddenly rush into the
19 crowd and grab a demonstrator. Sept. 25-1 Video. There is commotion among officers and
20 demonstrators; a demonstrator grabs the arm of the officer wearing the body camera, but then
21 backs away immediately; and a cloud of a substance that looks like smoke appears. *Id.*

22 Also according to Officer Thurston’s report, later in the evening and near the intersection
23 of 14th Street and Harrison Street, some officers were attempting to detain one suspect “with an
24 arrest warrant” while other officers were detaining a second suspect. Thurston Rpt. at 3. Officer
25 Thurston “heard glass break close by,” and, as instructed by Sergeant Alaura, he “deploy[ed] a
26 smoke SKAT-shell.” Officer Thurston directed the deployment “south of the crowd, clear of any
27 protestors.” *Id.* In Defendants’ video footage from Sergeant Alaura’s body-worn camera, officers
28 and demonstrators are walking when officers suddenly rush into the crowd and grab a

1 demonstrator. Sept. 25-2 Video. There is a noise that seems to be the deployment of munitions,
 2 and a cloud of a substance that looks like smoke appears. *Id.* A smoking object flies back towards
 3 officers who then rush towards a second suspect. *Id.* A glass bottle crashes on the street near the
 4 officers. *Id.* Sergeant Alaura yells, “Thurston, Thurston, deploy!” *Id.* There is a large bang. *Id.*
 5 Sergeant Alaura then reports, “Alpha Tango, launch smoke deployed, 1400 block Harrison, during
 6 an arrest.” *Id.*

7 Regarding the deployments of the hand-held smoke dispersal devices, the Court finds that,
 8 on this limited record, Plaintiffs have failed to prove by clear and convincing evidence that the
 9 handheld and launched³¹ smoke dispersal devices were *not* deployed “under exigent
 10 circumstances” or “a safe distance from the crowd,” or that “other techniques” would have
 11 “accomplish[ed] the policing goal.” Training Bulletin III-G, § III.H.5.a., b, d. Defendants have
 12 not argued nor produced any evidence that officers gave audible warnings and a reasonable
 13 amount of time to disperse prior the deployment of any of the smoke dispersal devices, however,
 14 and the Court finds that defendants have violated the Injunction in these respects.³² Training
 15 Bulletin, III-G § III.H.5.c.

16 **3. The Court Does not Hold Defendants in Contempt**

17 Although the Court finds that Defendants have committed some violations of the
 18 Injunction, these violations do not warrant a contempt order because the record indicates that
 19 Defendants have made all reasonable efforts to substantially comply. *See Dual-Deck Video*
 20 *Cassette Recorder*, 10 F.3d at 695; *Donallco*, 787 F.2d at 1378–79. Lieutenant Beaver declared
 21 that OPD “discussed [the Injunction] in detail with all its commanders, supervisors, specially
 22

23 ³¹ The Court acknowledges that Section III.H.5. refers to “*hand-held* pyrotechnic gas dispersal
 24 devices,” but it interprets that provision to also apply to *launched* smoke dispersal devices to avoid
 25 the absurdity that the deployment of *launched* smoke devices would be less restricted than the
 26 deployment of hand-held smoke devices. *See also* Training Bulletin III-G, § III.H.4. (restricting
 non-hand-held crowd control chemical agents), *id.* § IV.F. (prohibiting, among other weapons,
 “less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-
 directional non-target specific manner”).

27 ³² Again, Plaintiffs have not expressly alleged that defendants violated Section V(3) of the
 28 Injunction, which requires at least two announcements of an unlawful assembly and sufficient
 time to disperse prior to deploying any of the devices listed in Section V(2) to disperse a crowd,
 except where “an immediate risk to public safety or of significant property damage makes it
 impossible to do so.”

1 trained officers who are designated under [Training Bulletin III-G] to possess chemical agents and
2 less-lethal munitions, and all other officers before they were deployed to facilitate protests,” and
3 that the Injunction’s provisions are “included in protest operations plans.” Beaver Decl. ¶ 6. This
4 is reflected in several officers’ reports, which indicate that they briefed others, or were briefed by
5 others, on the Injunction and/or Training Bulletin III-G. *See* Gonzales Rpt. at 3; Brown Rpt. at 3;
6 Alaura Rpt. at 3; Au Rpt. at 4; Thurston Rpt. at 2. Further, while officers failed to issue warnings
7 prior to the deployment of smoke and tear gas and sometimes failed to deploy the dispersal
8 devices a safe distance from the crowd, Plaintiffs have not shown by clear and convincing
9 evidence that officers deployed smoke or tear gas in the absence of exigent circumstances,
10 Training Bulletin III-G, § III.H.5.a., or that officers deployed tear gas in the absence of an
11 imminent threat to physical harm to a person or significant property damage or where other
12 techniques were reasonably likely to mitigate the threat, Injunction § V(2). To the contrary,
13 Defendants have produced evidence that each time they deployed smoke and/or tear gas, there
14 some was threat to officers’ safety. The sporadic violations that Plaintiffs have identified
15 therefore do not warrant a sanction of contempt.

16 **4. The Court Denies Plaintiffs’ Proposed Modifications of the Injunction**

17 In their proposed order, Plaintiffs also requested that the Court make several modifications
18 to Section V of the Injunction. Plaintiffs’ Proposed Order. Plaintiffs did not reference or argue
19 for any such modifications in their motion, and they did not file their Proposed Order until the
20 Court ordered them to do so and after Defendants filed their opposition—pursuant to the briefing
21 schedule agreed to by Plaintiffs. *See* Prehearing Order; Order Adopting Parties’ Briefing Schedule
22 (dkt. 62). The Court has declined to make the modifications proposed by Plaintiffs.

23 **B. Defendant’s Cross-Motion to Modify**

24 **1. Legal Standards**

25 “ ‘[A] sound judicial discretion may call for the modification of the terms of an injunction
26 decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have
27 changed, or new ones have since arisen.’ ” *United States v. Washington*, 853 F.3d 946, 979 (9th
28 Cir. 2017) (quoting *Sys. Fed’n No. 91, Ry. Emp. Dep’t, AFL-CIO v. Wright*, 364 U.S. 642, 647

1 (1961)). Accordingly, a “district court has inherent authority to modify a preliminary injunction in
 2 consideration of new facts.” *A&M Records v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002).
 3 “A party seeking modification . . . of an injunction bears the burden of establishing that a
 4 significant change in facts or law warrants revision . . . of the injunction.” *Sharp v. Weston*, 233
 5 F.3d 1166, 1170 (9th Cir. 2000).

6 **2. Whether Defendants are Entitled to Modifications of the Injunction**

7 The Court has reviewed the provisions governing mutual aid within the California
 8 Government Code, the Master Mutual Aid Agreement, the Blue Book, the Red Book, OPD
 9 General Order L-3, and Training Bulletin III-G. As the parties agreed at the hearing, it is difficult
 10 to harmonize these overlapping provisions with respect to mutual aid agencies’ responsibilities, if
 11 any, (1) to provide mutual aid upon request and (2) to follow the host agency’s command structure
 12 and policies while providing mutual aid. More importantly, the parties also agreed that, *even if* the
 13 mutual aid partners do have such responsibilities, the Court cannot presently order the partners to
 14 fulfill them because no partners are parties to this case. *See* Opinion at 32 (“Because no mutual
 15 aid partners have been named as defendants, the Court does not have the authority to issue
 16 injunctive relief that is binding on the mutual aid partners.”).

17 At the same time, Plaintiffs acknowledged at the hearing the concern shared by the Court
 18 and by the City that OPD faces the potential of policing large-scale demonstrations without mutual
 19 aid, beginning next week. *See* Yu Decl. ¶ 7. Although OPD has policed several demonstrations
 20 without mutual aid since the Court issued the Injunction on July 29, the number of participants in
 21 those demonstrations—up to 700 on August 26—pales in comparison to the number of
 22 participants in the demonstrations earlier this year—up to 8,000 on May 29 and up to 15,000 on
 23 June 1—when OPD had the assistance of hundreds of mutual aid officers. Beaver Decl. ¶ 8;
 24 Allison Decl. (dkt. 36-1) ¶¶ 13, 16; Activity Logs (dkt. 36-10) at 2, 15. If OPD does not have an
 25 adequate number of officers for any upcoming election-related demonstrations, there is a risk not
 26 only to the safety of officers, but also to the safety of the general public and of the demonstrators
 27 themselves. Accordingly, the Court finds that the lack of mutual aid, combined with the potential
 28 for large-scale demonstrations related to the upcoming election, constitutes a significant change in

1 the facts that warrants revision of the Injunction to appropriately balance the equities of the parties
 2 and the public interest. *See Sharp*, 233 F.3d at 1170; *see generally Winter v. Nat. Res. Defense*
 3 *Council, Inc.*, 555 U.S. 7, 24 (2008) (discussing the factors relevant to granting a preliminary
 4 injunction).³³

5 As the Court recognized when issuing its original Injunction, however, if the City and
 6 OPD rely heavily on mutual aid partners to police demonstrations, “the effectiveness of the
 7 injunctive relief . . . will depend to a large degree on whether officers of mutual aid partners abide
 8 by the terms of the preliminary injunction that apply to OPD with respect to the crowd control
 9 tactics and munitions they use.” Opinion at 32. So, in amending the Injunction, the Court has
 10 endeavored to make the narrowest possible modifications that might satisfy the need of the City
 11 for assistance during large demonstrations, while also minimizing the potential that mutual aid
 12 officers use weapons or force against demonstrators in a manner inconsistent with the Injunction
 13 or Training Bulletin III-G.

14 At the hearing, the parties agreed that if OPD needs mutual aid, but it cannot secure it
 15 pursuant to the terms of the original mutual aid section of the Injunction (now Section VI(B) of the
 16 Amended Injunction), then it would be appropriate for OPD to instead obtain mutual aid pursuant
 17 to the terms of Training Bulletin III-G.³⁴ As the parties acknowledged, the terms of Training
 18 Bulletin III-G are very similar to those of the original mutual aid section of the Injunction;
 19 importantly, OPD officers are responsible for “ensuring to the extent possible” that mutual aid
 20 agencies are briefed on and agree with OPD’s command structure and OPD’s policies on
 21 prohibited weapons and force. Training Bulletin III-G, § IX.1.–3. And, as the Court noted in its
 22 Amended Injunction, Training Bulletin III-G was “mandated under the settlement agreements and
 23 orders in *Spalding v. City of Oakland*, No. 11-cv-02867 TEH (N.D. Cal.), and *Campbell v. City of*
 24 *Oakland*, No. 11-cv- 05498 JST (N.D. Cal.)”; it “has been in force for many years”; and “local law

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 26 ³³ The Court’s acknowledgment of the *effect* on the City of mutual aid partners’ refusal to provide
 27 aid should not be construed as an endorsement of the *reasons* those partners provided for their
 28 refusal, some of which appear to rest on a flawed reading of the original Injunction.

³⁴ Notably, the City only requested a temporary suspension of the mutual aid section of the
 Injunction (section VI)—not of section I, which incorporates the entirety of Training Bulletin
 III-G. *See* Cross Mot. at 1, 8–9; Status Rpt. at 1; *see also* Amended Injunction § 1.

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1 enforcement agencies, including the Alameda County Sheriff, have provided mutual aid to
2 Oakland under its terms.” Amended Injunction at 5 n.1.


3 Specifically, under the Amended Injunction, OPD must first “make reasonable efforts” to
4 obtain mutual aid pursuant the terms of the original mutual aid section—Section VI(B) of the
5 Amended Injunction. Amended Injunction, § VI.C. If the Chief of Policies certifies in writing
6 that those efforts “were not sufficient to meet OPD’s anticipated need for mutual aid,” however,
7 OPD may obtain mutual aid pursuant to the terms of Training Bulletin III-G. *Id.* As under the
8 original Injunction, OPD officers are required to “assume front line positions between mutual aid
9 officers and demonstrators,” to the extent possible. *Id.* § VI.A. Within 48 hours of the incident,
10 the Chief of Police must file a report with the Court explaining, among other things, the efforts
11 made to obtain mutual aid pursuant the terms of Section VI.B. of the Amended Injunction and the
12 results of those efforts, as well as the efforts made to obtain mutual aid pursuant to the terms of
13 Training Bulletin III-G and the results of those efforts. *Id.* § VI.C.iii.–iv.

14 **IV. CONCLUSION**

15 For the reasons stated above, Plaintiff’s motion is DENIED, and Defendant’s cross-motion
16 is GRANTED in part and DENIED in part.

17 **IT IS SO ORDERED.**

18 Dated: October 31, 2020

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21 JOSEPH C. SPERO
22 Chief Magistrate Judge
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