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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 MONA ALLEN; CARL RAY HARRIS;)
11 SHAUN JONES; SCOTT OUTHOUT;)
12 ELVIN SIKES; NINA FAYE SIKES; NICOLE)
13 VAN SCHIACK; PRESTON WARREN;)
14 CALIFORNIA CHAPTER OF THE)
15 NATIONAL ORGANIZATION FOR THE)
16 REFORM OF MARIJUANA LAWS, and)
17 DOES 1-200,)

18 Plaintiffs,)

19 v.)

20 COUNTY OF LAKE, a municipal corporation;)
21 FRANCISCO RIVERO, in his individual and)
22 official capacities; CHRIS MACEDO, in his)
23 individual and official capacities; LOREN)
24 FREEMAN, in his individual and official capacities;)
25 RICHARD COEL, in his individual and official)
26 capacities, and DOES 1-50.)

27 Defendants.)
28

Civil Action No.3:14-cv-03934

**SUPPLEMENTAL BRIEFING IN
SUPPORT OF *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION**

1
2 **INTRODUCTION**

3 At the September 2, 2014, hearing on this matter, this Court granted plaintiffs an opportunity
4 to file supplemental briefing regarding their fear of future harm and whether this fear is sufficient to
5 warrant declaratory and injunctive relief. Plaintiffs have filed this brief accordingly.
6

7 **ARGUMENT**

8 **UNLESS INJUNCTIVE RELIEF IS GRANTED, PLAINTIFFS WILL CONTINUE TO**
9 **SUFFER FEAR OF CONSTITUTIONAL VIOLATIONS AND THE COLLATERAL**
10 **CONSEQUENCES THAT FLOW FROM THEM**

11 As a general matter, “the deprivation of constitutional rights ‘unquestionably constitutes
12 irreparable injury.’” *Melendes v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
13 *Burns*, 427 U.S. 347, 373 (1976)); *see also Rent-A-Center, Inc. v. Canyon Television & Appliance*
14 *Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (intangible injuries, such as damage to . . . goodwill
15 qualify as irreparable harm”). While past exposure to illegal conduct does not present a case or
16 controversy regarding injunctive relief “if unaccompanied by any continuing, present adverse
17 effects,” *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (quotation omitted), such adverse
18 effects may be demonstrated by allegations and proof of a pattern or practice of unconstitutional
19 behavior, which was not present in *Lyons*. *See LaDuke v. Nelson*, 762 F.2d 1318, 1324 (9th Cir.
20 1985) (distinguishing *Lyons* and affirming the grant of an injunction on the basis that the plaintiff in
21 *LaDuke* had shown an officially sanctioned pattern of behavior that was distinctly lacking in *Lyons*);
22 *see also Thomas v. County of Los Angeles*, 978 F.2d 504, 508 (9th Cir. 1992) (“A state law
23 enforcement agency may be enjoined from committing constitutional violations where there is proof
24 that officers within the agency have engaged in a persistent pattern of misconduct.”).

25 Here, plaintiffs have alleged that the unconstitutional violations implicated by this suit --
26 warrantless seizures without notice, in violation of the Fourth and Fourteenth Amendments -- were
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1 conducted pursuant to a practice and policy of Lake County and its Sheriff's Department, which has
2 instilled fear in the plaintiffs and all citizens of Lake County. *See* Amended Complaint (Dkt. No. 4)
3 at ¶¶2 & 26. And the defendants effectively admitted that they do, in fact, maintain such practice at
4 the September 2, 2014, hearing.

5
6 The Ninth Circuit held in *Melendes v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), that a plaintiff
7 may demonstrate that a constitutional injury is likely to recur by pointing to an officially sanctioned
8 pattern or practice of the defendants. *Id.* at 997 (citing *Armstrong v. Davis*, 275 F.3d 849, 861 (9th
9 Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2002); quoting
10 *LaDuke*, 762 F.2d at 1323). And, as the Declaration of Leonard Jankowski (Dkt. No. 11) illustrates,
11 these raids can occur with respect to any of the individually named plaintiffs or the members of the
12 California Chapter of the National Organization for the Reform of Marijuana Laws, even if the
13 individual is not cultivating marijuana. Under *Melendes*, *LaDuke*, and the other authorities cited,
14 plaintiffs are entitled to injunctive relief under these circumstances.¹

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17 Furthermore, the harm suffered by the named plaintiffs, due to the constitutional violations of
18 the defendants, may very well not yet be complete. Section 72.7 of Lake County Ordinance No. 2997
19 (Dkt. No. 4-1) authorizes the defendants to impose administrative penalties on the defendants for
20 what may amount to unconstitutional abatement actions. Because this possible injury stemming from
21 the unconstitutional actions of the defendants is not speculative, injunctive relief is necessary to
22 prevent the defendants from “taking continued action against anyone under the Ordinance where
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26 ¹ The procedural posture of *Lyons* is also relevant, as it was a case decided after discovery and the
27 defendants had the opportunity to test the allegations of the complaint regarding their entitlement to
28 injunctive relief by a motion for summary judgment. *See Rodriguez v. California Highway Patrol*,
89 F.Supp.2d 1131, 1142 (N.D. Cal. 2000) (plaintiffs alleged enough to overcome defendant's
motion to dismiss where they alleged a pattern and practice of illegal law enforcement activity;
noting that plaintiffs were entitled to proceed with discovery to attempt to establish an evidentiary
basis for their claims for injunctive relief, and that after discovery, defendants may attack plaintiffs')

1 defendants failed to secure a warrant and/or failed to provide advance notice,” as described in
2 Paragraph 3 of the Proposed Order (Dkt. No. 19) submitted by plaintiffs in support of the instant
3 application.
4

5 **CONCLUSION**

6 For the foregoing reasons, this Court should grant plaintiffs’ requested temporary restraining
7 order and request for a preliminary injunction.
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9 DATED: September 2, 2014

Respectfully submitted,

10
11 /s/ Joseph D. Elford
12 JOSEPH D. ELFORD
13 Attorney for Plaintiffs
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28 entitlement to injunctive relief by motion for summary judgment). Before the defendants have answered the complaint, it would be premature to rule out plaintiffs’ entitlement to an injunction.