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COOKE aka Virginia Cooke, SAMIR
SHRESTHA, KATHARINE
LONCKE, GOPAL DAYAYENI,
BROOKE ANDERSON, and
SHARON FENNEMA,

v.

CITY OF BERKELEY.

GOVERNMENT TORT CLAIM

(Govt. Code, § 910, et seq.)

CLAIMANTS' NAMES: LEWIS WILLIAMS, DYLAN COOKE aka Virginia Cooke, SAMIR SHRESTHA, KATHARINE LONCKE, GOPAL DAYAYENI, BROOKE ANDERSON, and SHARON FENNEMA,

CLAIMANTS' ADDRESS: c/o Rachel Lederman, Attorney at Law, 558 Capp Street, San Francisco, CA 94110.

CLAIMANTS' TELEPHONE NUMBER: c/o Rachel Lederman, Attorney at Law, 415-282-9300.

ADDRESS TO WHICH NOTICES ARE TO BE SENT: Rachel Lederman, Attorney at Law, 558 Capp Street, San Francisco, CA 94110.

DATE OF THE INCIDENT: June 20-21, 2017.

LOCATION OF INCIDENT: In and outside of Longfellow Middle School, 1500 Derby Street, Berkeley, CA.

BASIS OF CLAIM:

On June 20, 2017, the Berkeley City Council held a special meeting at Longfellow Middle School to consider whether or not to continue Berkeley's participation in Urban Shield, a SWAT team training and weapons expo, and other issues related to the law enforcement. Hundreds of people, including the Claimants, turned out and gave public comment urging the Council to pull out of Urban Shield. At about 12:30am, the council voted in favor of continuing to participate. As the council meeting was drawing to a close, several activists went up to the stage, and peacefully unfurled a banner reading, "Stop Urban Shield, End The Militarization Of Our Communities".

Claimant DYLAN COOKE was one of the people who got onto the stage. Immediately, without saying a word, Berkeley Police Department (BPD) SGT. SEAN ROSS, assisted by OFCS. SHULZ, SPEELMAN, and/or DOE unknown BPD officers, twisted Dylan's wrist and shoulder in an excruciating pain hold. Dylan did not resist in any way, but Sgt. Ross never gave them an order or chance to comply before gratuitously inflicting excruciating pain on them. Dylan told Sgt. Ross that he was hurting them and asked him to let go, but Sgt. Ross did not respond and continued to wrench Dylan's wrist and shoulder even more, for an extended period of time, injuring Dylan's wrist and shoulder. Eventually the BPD officers handcuffed Dylan. Even after

Dylan was handcuffed, and put up no resistance, Ofc. Speelman and/or a DOE unknown BPD officer wrenched their arm even harder before taking them out to a police car, causing further injury.

Claimant SAMIR SHRESTHA held one end of the banner at the front of the auditorium. Samir too was given no chance to leave and put up no resistance before BPD Sgt. Ross applied a similar pain hold on him. Samir told Sgt. Ross that he would cooperate and get off the stage, as the others were doing, but Ross said, "You are resisting" and continued to unnecessarily apply pain even after Samir was handcuffed. As Sgt. Ross, Ofc. Schulz and/or DOE unknown BPD officers took Samir down the stairs from the stage, they pushed him, causing Samir further injury. Samir's handcuffs were painfully tight and were left on for at least an hour.

Dylan and Samir knew that by going onto the stage, there was some risk that they would be arrested, but expected to be arrested nonviolently as they had no intention of resisting the police. They were shocked when the police inflicted excruciating pain on them for no reason at all, without giving them any opportunity to either leave the stage or cooperate in being arrested peacefully. The police took Dylan and Samir to the Berkeley Jail, where they were held until approximately 3:30am before being released. Dylan later received a Penal Code section 849(b) notice indicating that BPD had determined that there were insufficient grounds for making a criminal complaint against them. Samir did not receive an 849(b) notice, but was never charged with any crime.

The BPD officers' unprovoked, visible use of pain on Dylan and Samir, on the stage, caused others to gather around, pleading with the officers to stop hurting the activists. Despite the activists', and a Council member's attempts to deescalate the police officers' aggression, the BPD officers began forcefully pushing people out of the auditorium. Outside, when people expressed verbal opposition to the brutal and unnecessary arrests, BPD officers advanced on the crowd, using their batons with unnecessary and aggressive force.

Claimant BROOKE ANDERSON, who was wearing a visible press pass and taking photographs of the event, identified herself as press to the police, yet BPD OFCR. MATHIS and/or DOE unknown BPD officers used unnecessary force on her. Brooke was wearing a brace on one arm due to a pre-existing injury, and BPD officers hit her repeatedly with batons on the injured arm, and pushed her camera into her face with batons, causing pain and bruises.

OFC. MATHIS and/or DOE unknown BPD officers, hit Claimant DR. SHARON FENNEMA, a minister and professor, with a baton on the arms, hands and shoulder, causing pain and bruises.

Claimant KATHARINE LONCKE was very concerned for Samir and Dylan and stood near the police cars they had been put into. As she stood peacefully, DOE unknown BPD officers shoved her multiple times with so much force that she was lifted into the air and thrown backward. A DOE unknown BPD officer struck her in the face with a baton, causing her lip to swell and bleed.

Even though Claimant GOPAL DAYAYENI tried to reassure the officers that he and the other protesters were nonviolent and did not intend any harm, BPD SGT. ROSS and DOE unknown BPD officers hit Gopal multiple times with batons, leaving bruises all over his arms.

A DOE unknown BPD officer forcefully shoved Claimant LEWIS WILLIAMS, a 74 year old retired elementary school teacher, with a baton. Like others, Lew was trying to back up but was hemmed in by the crowd behind him. Lew was jostled by someone in the crowd and his glasses fell to the ground. Lew bent down to pick them up, but as he was straightening up, a DOE BPD officer hit him with great force on the top of his head, causing a laceration and a concussion. Despite the fact that blood was pouring from Lew's head, no BPD officer provided first aid or called for medical aid. Instead, demonstrators helped Lew to safety and tried to staunch the bleeding.

None of the Claimants presented a threat or engaged in any conduct justifying any use of force by the police at any time. In fact, Claimants and others tried to calm the officers and assure them that there was no need for force.

The police conduct was not only illegal, but violated Berkeley Police Department General Order C-64, which had just been revised in a City Council mandated collaborative process between the police and Police Review Commission, and in settlement of a federal lawsuit arising from similar excessive force toward demonstrators. General Order C-64 emphasizes de-escalation and peaceful conflict resolution rather than use of force. It prohibits officers from using batons to collectively push a crowd in a particular direction prior to dispersal orders being given, and states that officers should give verbal requests or commands before advancing on a crowd. No dispersal orders were given during this incident and commands to step back were simultaneous with hitting people, giving no time to comply.

The General Order also prohibits officers from striking people who cannot move back due to a crowd behind them. Similarly, officers are prohibited from using pain compliance techniques without giving protesters a chance to comply.

Claimants are informed and believe that BERKELEY POLICE CHIEF ANDREW GREENWOOD, Mayor Jesse Arreguin, and members of the Berkeley City Council, were present at the City Council meeting and observed some of the police misconduct complained of herein.

Claimants are informed and believe and thereon alleges that the CITY OF BERKELEY; POLICE CHIEF ANDREW GREENWOOD, SGT. ROSS, SGT. FOMBY, SGT. SABINS, OFC. MATHIS, OFC. SPEELMAN, and OFC. SCHULZ, individually and in their official capacities; and DOES 1-50, and/or each of them, individually and/or while acting in concert with one another, violated Claimants' constitutional rights. Said constitutional violations included, but were not limited to, the violation of Claimants' rights under the California and United States Constitutions to be free from the use of excessive and/or arbitrary force; to freedom of the press, freedom of speech and freedom of association; to be free from arbitrary, capricious or excessive governmental action; and the right to equal protection of the laws.

Claimants are further informed and believe and thereon allege that said constitutional violations were authorized, condoned, encouraged and/or ratified by the CITY OF BERKELEY including, but not limited to, POLICE CHIEF ANDREW GREENWOOD and other high ranking members, supervisors and/or command staff of the City of Berkeley and Berkeley Police Department.

Claimants are further informed and believe and thereon allege that the violations of Claimants' constitutional rights and damages as alleged herein were caused by customs, policies and/or practices of the City of Berkeley, including, but not limited to, POLICE CHIEF ANDREW GREENWOOD, and/or other high ranking policy makers, and/or each of them, which encouraged, authorized, condoned and/or ratified the violations and other misconduct as alleged herein.

Claimants are further informed and believes and thereon allege that the CITY OF BERKELEY, including, but not limited to, POLICE CHIEF ANDREW GREENWOOD, and/or other high ranking officials, policy makers, police department command staff and/or supervisors, were on actual notice at

the time of this incident that there was a custom, policy, pattern and/or practice of excessive force, inadequate supervision, training, control and/or discipline of members of the Berkeley Police, a Code of Silence within that agency, and/or other customs, policies and/or practices which the Berkeley Police, and/or its high ranking officials knew and/or reasonably should have known were likely to cause violations of the rights of, injury and/or damages to citizens having contact with members of those agencies, including, but not limited to, Claimants. Claimants are further informed and believes that CHIEF GREENWOOD, SGT. FOMBY, SGT. SABINS, and SGT. ROSS, were directly supervising the police actions complained of, and caused Claimants' injuries through their supervisory malfeasance.

Claimants are further informed and believe and thereon allege that the conduct of individual employees, agents and/or servants of the CITY OF BERKELEY, and/or each of them was intentional, malicious, oppressive and/or done with a conscious or reckless disregard for Claimants' rights, justifying the award of punitive damages.

Claimants are informed and believes and thereon allege that they have claims for damages arising from the acts and/or omissions of the employees, agents and/or servants of the CITY OF BERKELEY, and DOES 1-50, and each of them, individually and/or while acting in concert with one another, as alleged herein based on theories of liability which include, but may not be limited to, assault, battery, negligence, intentional infliction of emotional distress, negligence per se, violation of civil rights, including, but not limited to, violation of constitutional and/or statutory rights under California and Federal law, negligent hiring, supervision, control and/or discipline, respondeat superior liability of the CITY OF BERKELEY and/or omissions committed within the course of scope of employment by its employees and/or other agents, and/or other causes of action subject to continuing discovery.

Claimants have and may continue to have in the future, claims for general damages, including, but not limited to, claims for pain, suffering, humiliation and emotional distress in amounts to be determined according to proof.

Claimants have and may continue to have in the future, claims for special damages, including, but not limited to, claims for medical and related expenses, lost income, and/or other special damages in amounts to be determined according to proof.

In the event that any of the Claimants are the prevailing party in any litigation stemming from the incidents alleged herein, Claimants may be entitled to recover attorneys' fees and costs based on state and/or federal statutes.

Claimants are informed and believe and thereon allege that the acts and/or omissions of the CITY OF BERKELEY and/or its employees, agents and/or servants as described herein included, but were not limited to, interference by threats, intimidation or coercion with Claimant's exercise and enjoyment of the rights secured by the Constitution and laws of the United States and of California. Claimants are also informed and believe and thereon allege that the acts and/or omissions of the City of Berkeley and/or its employees, agents and/or servants as described herein included, but were not limited to, violence or intimidation by threats of violence on the basis of Claimants' perceived political affiliation, journalism, race, color, and/or ancestry. Claimants may also have claims for statutory damages in amounts to be determined according to proof under California law, including, but not limited to, claims for statutory damages and penalties under California Civil Code sections 51.7, 52 and 52.1.

INJURY OR DAMAGE: Claimants' injuries and damages include, or may include past, present and/or future damages for pain, suffering, disability, emotional distress, humiliation, violation of civil rights, medical special damages, lost wages and/or damage to career, property damage and property loss, statutory damages and/or other general and/or special damages in amounts to be determined according to proof. Claimants may also be entitled to recover their attorneys' fees and costs pursuant to statutes in the event that any of the Claimants are the prevailing party. Claimants may also be entitled to recover punitive damages against the individual CITY OF BERKELEY officers, employees, agents and/or servants and/or each of them who are liable for the injuries and/or damages alleged herein. Discovery is continuing and Claimants reserve the right to supplement and/or amend this claim.

PUBLIC EMPLOYEES ALLEGED TO HAVE CAUSED INJURY OR DAMAGE: BERKELEY POLICE CHIEF ANDREW GREENWOOD, SGT. ROSS, SGT. FOMBY, SGT. SABINS, OFC. MATHIS, OFC. SPEELMAN, and OFC. SCHULZ, individually and in their official capacities; and DOES 1-50 inclusive, and/or each of them. Discovery is continuing and Claimants reserve the right to supplement and/or amend this claim.

DEMAND FOR PRESERVATION OF EVIDENCE: Claimants hereby demand that the CITY OF BERKELEY, including but not limited to the Berkeley Police Department, Office of Emergency Services, Police Review Commission, City Council, and all other City departments, and their employees, agents, servants and/or attorneys, maintain and preserve all evidence, documents and tangible materials which relates in any manner whatsoever to the subject matter of this claim during the pendency of this matter, including until the completion of any and all civil and/or criminal litigation arising from the events which are the subject matter of this claim. This demand for preservation of evidence includes, but is not limited to, a demand that all communications tapes, logs, computer records, photographs, video, and/or other tangible materials of any kind be preserved until the completion of any and all civil and criminal litigation arising from the subject matter of the events which are the subject matter of this claim.

AMOUNT OF CLAIM: The claims are each in excess of \$10,000.00. Jurisdiction is designated as “unlimited” and jurisdiction would be in the Superior Court of the State of California for Alameda County, and/or the United States District Court for the Northern District of California.

DATED: December 14, 2017 Signed on behalf of Claimants:

By _____

RACHEL LEDERMAN, Attorney at Law