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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 KIERRA BROWN and TOSHUA SEARS,
17 Individually and on behalf of a class of all
18 persons similarly situated,

19 v.

20 CITY OF OAKLAND, SUSAN
21 MANHEIMER, ~~LERONNE~~
22 ~~ARMSTRONG~~, ROLAND HOLMGREN,
23 RANDELL WINGATE, ALAMEDA
24 COUNTY, GREGORY J. AHERN,
25 RYAN E. SWETAVAGE, BRYAN K.
26 FRANCIS, MICHAEL D. DALISAY,
27 COLBY D. STAYSA, VICTOR M.
28 FOX, BRYAN CLIFFORD, A.
ALCANTAR, T. THURSTON, E,
PEREZ-ANGELES, K. ALBIONO, K.
AU, J. PALMER, A. BARRAGAN, R.
BROWN, C. CARDONA, J.
HUTCHINSON, D. JAGAR, J.

Case 3:21-cv-02881-RS

**THIRD AMENDED
CLASS ACTION COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF**

42 U.S.C. § 1983

JURY TRIAL DEMANDED

1 **SMOAK, S. TORBIDO, B. ALAURA,**
2 **A. ESPARZA, THOMAS BOYD,**
3 **COREY SHAUN, WILLIAM**
4 **DORSHKIND, RICHARD R.**
5 **FRANCO, JEFFERY HAZELITT,**
6 **KEITH LYDON, MIGUEL JUSTIN,**
DOES 30 -100.

7 **I. INTRODUCTION**

8 1. Police have been targeting, brutalizing, and killing Black people since the inception of
9 law enforcement in the United States, and Oakland’s police force has shown a demonstrable
10 history of violence against Black people and other people of color in Oakland. This action
11 arises out of protests across the nation in response to the May 25, 2020, murder of George
12 Floyd by Minneapolis Police Department officers. The events in Minneapolis, soon after the
13 deaths of Breonna Taylor and Ahmaud Arbery, brought out millions of people around the
14 country to condemn the deaths of Black and Brown people by law enforcement in one of the
15 largest social justice movements in the United States history.¹

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17
18 2. In Oakland, thousands took to the streets on a daily basis starting on May 29, 2020, to
19 make their viewpoint known that police brutality and institutionalized racism must end. The
20 Oakland Police Department (“OPD”), and its mutual aid partner Alameda County Sheriff
21 Office (“ACSO”), brutally repressed the Oakland demonstrators, targeting protestors with
22 highly dangerous impact munitions (also known as Specialty Impact Munitions “SIM”, Kinetic
23 Impact Projectiles “KIP”, or Projectile Impact Weapons “PIW”), explosive grenades and
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28 ¹ *Black Lives Matter May Be the Largest Movement in U.S. History*, NY Times, 3 Jul. 2020
<https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>, last
visited Feb. 2021.

1 chemical agents, and wrongful arrests.

2 3. This misconduct by OPD and ACSO violated the plaintiffs' constitutional rights, and
3 the CITY OF OAKLAND Police Department's own Crowd Control and Crowd Management
4 Policy. Said Policy was adopted by the CITY OF OAKLAND and OPD as part of the federal
5 court settlement orders in four prior federal lawsuits arising from mass injuries caused by
6 OPD's and assisting agencies' (including ACSO's) constitutional violations, including
7 misuse of these weapons and wrongful mass arrests at demonstrations: *Coles / Local 10, ILWU*
8 *v. City of Oakland*, Nos. C03-2961 TEH, C03-2962 TEH; *Spalding, et al. v. City of Oakland*,
9 C11-02867 TEH, and *Campbell, et al. v. City of Oakland*, C11-05498 JST. (See Exhibit A,
10 OPD Training Bulletin III-G, which is the Crowd Control and Crowd Management Policy as
11 promulgated to the police force.)
12

13
14 4. This is a civil rights action for damages, injunctive and declaratory relief arising from
15 the unconstitutional OPD and ACSO violence toward demonstrators on ~~May 29~~ and June 1,
16 2020.
17

18 **II. JURISDICTION AND VENUE**

19 5. This action seeks damages and injunctive relief under 42 U.S.C. § 1983. This Court has
20 jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343. It has supplemental jurisdiction
21 over the state law claims under 28 U.S.C. § 1367.
22

23 6. Venue properly lies within this District under 28 U.S.C. § 1391(b). The named
24 defendants perform their official duties in this District, and the events and omissions giving rise
25 to plaintiffs' claims occurred in this District.

26 7. Plaintiffs KIERRA BROWN and TOSHUA SEARS have filed administrative claims
27 with the City of Oakland and with Alameda County, in compliance with California Government
28

1 Code § 910 et seq. The City of Oakland denied plaintiffs’ claim on February 1, 2021. More than
2 45 days have elapsed since the claim against Alameda County was submitted on October 16,
3 2020; therefore that claim is deemed denied.
4

5 **III. INTRADISTRICT ASSIGNMENT**

6 8. Pursuant to Local Rule 3-2(e), this action is properly assigned to the Oakland or San
7 Francisco divisions of this Court.

8 **IV. PARTIES**

9 **A. PLAINTIFFS**

10 9. Plaintiff KIERRA BROWN is an adult resident of Contra Costa County, California.

11 10. Plaintiff TOSHUA SEARS is an adult resident of Alameda County, California.

12 **B. DEFENDANTS**

13 11. Defendant CITY OF OAKLAND is a municipal corporation, duly organized and
14 existing under the laws of the State of California.

15 12. Defendant SUSAN MANHEIMER was at all times relevant herein, employed by
16 defendant City of Oakland as the Interim Chief of Police, and was acting within the course and
17 scope of that employment at all such times. At all material times, defendant MANHEIMER was
18 the final policy making official for the Oakland Police Department (OPD), ultimately
19 responsible for all policies, procedures or omission of procedures, supervision, and training of
20 OPD employees and for supervision of assisting agencies brought in as mutual aid to OPD
21 during Oakland events.
22

23 ~~Defendant LERONNE ARMSTRONG is employed by defendant City of Oakland as its~~
24 ~~current Chief of Police, and was at all times relevant herein, its Deputy Chief of Police,~~
25 ~~and was acting within the course and scope of that employment at all such times. At all~~
26 ~~material times, defendant ARMSTRONG, as the Incident Commander, supervised the~~
27
28

1 ~~response to the June 1, 2020, demonstration by the CITY OF OAKLAND Police and the~~
2 ~~assisting agencies brought in as mutual aid to OPD.~~

3
4 13. Defendant **ROLAND HOLMGREN** is and was at all times relevant herein, employed by
5 defendant City of Oakland as its Deputy Chief of Police, and was acting within the course and
6 scope of that employment at all such times. At all material times, defendant HOLMGREN, as
7 the Incident Commander, supervised the response to the **June 1, 2020**, demonstration by the
8 CITY OF OAKLAND Police and the assisting agencies brought in as mutual aid to OPD.

9
10 14. Defendant **RANDELL WINGATE** is and was at all times relevant herein, employed by
11 defendant City of Oakland as its Captain of Police, and was acting within the course and scope
12 of that employment at all such times. At all material times, defendant WINGATE, as the
13 Operations Chief, supervised the response to the ~~May 29, and~~ June 1, 2020, demonstrations by
14 the CITY OF OAKLAND Police and the assisting agencies brought in as mutual aid to OPD.

15 15. Defendant **ALAMEDA COUNTY** is a political and administrative subdivision of the
16 State of California.

17
18 16. Defendant **GREGORY J. AHERN** is, and was at all times relevant herein, the elected
19 Sheriff and Coroner of Alameda County, and the regional commander of mutual aid. Defendant
20 AHERN supervises the Alameda County Sheriff's Office (ACSO) and all its personnel. At all
21 material times, defendant AHERN was the final policy making official for the ACSO,
22 ultimately responsible for all policies, procedures or omission of procedures, supervision, and
23 training of ACSO employees. AHERN is also, and was at all material times, the Law
24 Enforcement Mutual Aid Coordinator for Region II, which includes Oakland, directing the
25 response of all regional agencies to requests for mutual aid from the City of Oakland and its
26 Police Department.
27
28

1 17. Defendant RYAN E. SWETAVAGE is and was at all times relevant herein,
2 employed by defendant Alameda County as a Deputy Sheriff, and was acting within the
3 course and scope of that employment at all such times. SWETAVAGE, DALISAY and/or
4 a DOE Alameda County deputy shot plaintiff Toshua Sears with impact munitions, and
5 were integral participants in the virtually simultaneous indiscriminate mass shooting by
6 multiple officers; and observed and had the opportunity to intervene but failed to
7 intervene to stop use of excessive force against Plaintiff by fellow officers; any and all of
8 which subjected Plaintiff to deprivation of his First and Fourth Amendment rights.
9

10 18. Defendant MICHAEL D. DALISAY is and was at all times relevant herein,
11 employed by defendant Alameda County as a Deputy Sheriff, and was acting within the
12 course and scope of that employment at all such times. DALISAY, SWETAVAGE,
13 and/or a DOE ACSO deputy shot plaintiff Toshua Sears with impact munitions; and
14 were integral participants in the virtually simultaneous indiscriminate mass shooting by
15 multiple officers; and observed and had the opportunity to intervene but failed to
16 intervene to stop use of excessive force against Plaintiff by fellow officers; any and all of
17 which subjected Plaintiff to deprivation of his First and Fourth Amendment rights.
18

19 19. Defendant BRYAN K. FRANCIS is and was at all times relevant herein, employed
20 by defendant Alameda County as a Deputy Sheriff, and was acting within the course and
21 scope of that employment at all such times. FRANCIS and/or a DOE Alameda County
22 deputy shot plaintiff Kierra Brown with impact munitions; and observed and had the
23 opportunity to intervene but failed to intervene to stop use of excessive force against Ms.
24 Brown by fellow officers; any and all of which subjected Plaintiff to deprivation of her
25 First and Fourth Amendment rights.
26
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1 20. Defendant COLBY D. STAYSA is and was at all times relevant herein, employed
2 by defendant Alameda County as an ACSO Commander, and was acting within the
3 course and scope of that employment at all such times. At all material times, defendant
4 STAYSA, supervised the response to the June 1, 2020, demonstration by the ALAMEDA
5 COUNTY Sheriff's Office.
6

7 21. Defendant VICTOR M. FOX is and was at all times relevant herein, employed by
8 defendant Alameda County as an ACSO Captain, and was acting within the course and
9 scope of that employment at all such times. At all material times, defendant FOX
10 supervised the response to the June 1, 2020, demonstration by DALISAY,
11 SWETAVAGE, FRANCIS, and other ACSO deputies.
12

13 22. Defendant BRYAN CLIFFORD is and was at all times relevant herein, employed
14 by defendant CITY OF OAKLAND as an OPD Officer, and was acting within the course
15 and scope of that employment at all such times. CLIFFORD wrongfully arrested Plaintiff
16 Kierra Brown without probable cause.
17

18 23. Defendants A. ALCANTAR, T. THURSTON, E. PEREZ-ANGELES, K.
19 ALBIONO, K. AU, J. PALMER, A. BARRAGAN, R. BROWN, C. CARDONA, J.
20 HUTCHINSON, D. JAGAR, J. SMOAK, S. TORBIDO, B. ALAURA, A. ESPARZA were
21 at all times relevant herein, employed by defendant CITY OF OAKLAND as OPD
22 Officers and were acting within the course and scope of that employment at all such
23 times. These OPD officers were integral participants in the virtually simultaneous,
24 indiscriminate mass use of chemical weapons by multiple officers that injured Plaintiff
25 TOSHUA SEARS, and observed and had the opportunity to intervene but failed to
26 intervene to stop use of excessive force against Mr. SEARS by fellow law enforcement
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1 **officers; all of which subjected Mr. SEARS to deprivation of his First and Fourth**
2 **Amendment rights, as more fully described below.**

3 24. **Defendants THOMAS BOYD, COREY SHAUN, WILLIAM DORSHKIND,**
4 **RICHARD R. FRANCO, JEFFERY HAZELITT, KEITH LYDON, and MIGUEL**
5 **JUSTIN ESPARZA were at all times relevant herein, employed by defendant**
6 **ALAMEDA COUNTY as ACSO Deputies, and were acting within the course and scope**
7 **of that employment at all such times. These ACSO Deputies were integral participants in**
8 **the virtually simultaneous, indiscriminate mass use of chemical weapons by multiple**
9 **officers that injured Plaintiff TOSHUA SEARS, and observed and had the opportunity to**
10 **intervene but failed to intervene to stop use of excessive force against Mr. SEARS by**
11 **fellow law enforcement officers; all of which subjected Mr. SEARS to deprivation of his**
12 **First and Fourth Amendment rights, as more fully described below.**

13 25. The individual defendants are sued in their individual capacities.

14 26. The DOE defendants include other individuals who supervised and/or participated in
15 the conduct complained of herein. Plaintiffs are informed and believe and therefore allege that
16 each of the DOE defendants is legally responsible and liable for the incident, injuries and
17 damages hereinafter set forth, and that each of said defendants proximately caused said
18 incidents, injuries and damages by reason of their negligence, breach of duty, negligent
19 supervision, management or control, violation of constitutional and legal rights, or by reason of
20 other personal, vicarious or imputed negligence, fault, or breach of duty, whether severally or
21 jointly, or whether based upon agency, employment, or control or upon any other act or
22 omission. Plaintiffs will ask leave to amend this complaint to insert further charging allegations
23 when such facts are ascertained.
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1 27. In doing the acts alleged herein, defendants, and each of them, acted within the course
2 and scope of their employment.

3 28. In doing the acts and/or omissions alleged herein, defendants, and each of them, acted
4 under color of authority and/or under color of law.

5 29. In doing the acts and/or omissions alleged herein, defendants, and each of them, acted
6 as the agent, servant, employee and/or in concert with each of said other defendants.
7

8 **V. FACTS**

9 30. On May 25, 2020, Minneapolis police officers killed George Floyd, a 46-year-old
10 Black Minneapolis resident. A white police officer knelt on Mr. Floyd's neck for nearly nine
11 minutes while three other officers observed. Mr. Floyd died calling out for his mother and
12 begging for his life as his death was recorded by passersby. The recording was shared on
13 multiple media platforms for all the world to witness.
14

15 31. In the days and weeks following Mr. Floyd's death, people across the country flooded
16 into streets demanding an end to police brutality against Black people; protesting the deaths of
17 Mr. Floyd, Breonna Taylor, Ahmaud Arbery, and countless others at the hands of police,
18 through vigils, demonstrations, and public gatherings.
19

20 32. OPD Command Staff, including defendants MANHEIMER ~~ARMSTRONG~~, and
21 HOLMGREN, were aware of the potential for large demonstrations to occur in Oakland as the
22 weekend drew near, and eventually that a demonstration had been called for that Friday
23 evening, May 29. They planned for the May 29 demonstration, including by calling in mutual
24 aid through the Regional Mutual Aid Coordinator, defendant AHERN and ACSO.
25

26 33. Also in anticipation of the Oakland protest organized for the evening of May 29, 2020,
27 earlier that day, attorneys of record for plaintiffs in the prior crowd control settlements emailed
28

1 defendants MANHEIMER ARMSTRONG and HOLMGREN, along with Assistant Chief
2 Darren Allison, Mayor Libby Schaaf, and City Attorney Barbara Parker to remind them of the
3 City of Oakland’s and the OPD’s legal obligation to comply with the OPD Crowd
4 Management and Crowd Control Policy in policing anticipated demonstrations (Exhibit B,
5 May 29, 2020, Letter).

7 34. Specifically, the May 29, 2020 Letter reminded OPD and CITY OF OAKLAND
8 officials that the federal court settlement agreements and orders in *Spalding, et al. v. City of*
9 *Oakland*, C11-02867, and *Campbell, et al. v. City of Oakland*, C11-05498, mandate adherence
10 to the Crowd Control Policy, promulgated as OPD Training Bulletin III-G, in all crowd
11 situations, and require OPD and the City to meet and confer with plaintiffs’ counsel before
12 making any material change to TB III-G and associated training outlines. (Exhibits A and B.)

14 35. The May 29, 2020 Letter specifically mentioned that the Policy prohibits certain
15 weapons and types of force in the crowd context and restricts others. Chemical agents and hand
16 thrown pyrotechnic devices may not be used in crowd events without the approval of the
17 Incident Commander, absent exigent circumstances. (Exhibit A, ¶ V.H.4, p. 13, and Exhibit B.)
18 Hand thrown pyrotechnic devices such as CS Blast grenades may not be thrown directly into a
19 crowd. They must be deployed to explode at a safe distance from the crowd to minimize the
20 risk of serious injury. (Exhibit A, ¶ V.H.5, p. 14, and Exhibit B.) The May 29, 2020 Letter also
21 mentioned that these devices have caused serious burns and permanent hearing loss when used
22 in Oakland crowds. (Exhibit B.)

25 36. The May 29, 2020 Letter specified that, according to Oakland’s own policy, “Specialty
26 Impact Less-Lethal Munitions (SIM) such as so called “foam” or “sponge” rounds and bean
27 bags may *never* be used for crowd control or dispersal. In a crowd situation, the Policy requires
28

1 a different standard for SIM than on patrol. SIM may only be used against a specific individual
2 who is engaging in conduct that poses an *immediate threat of loss of life or serious bodily*
3 *injury* to him or herself, officers, or the general public or who is engaging in substantial
4 destruction of property which creates an *immediate risk to the lives or safety* of other persons.
5 In such instances, SIM shall be used *only* when other means of arrest are unsafe and when the
6 individual can be targeted without endangering other crowd members or bystanders, i.e., when
7 the officer has a clear shot – not in the midst of a crowd. (Exhibit A, ¶ VI.F.2, p. 15 and
8 Exhibit B.)
9

10
11 37. An OPD Chief’s Memorandum to all personnel further clarifies OPD’s policy regarding
12 use of SIM at crowd events, stating: “*The mere fact that an individual is picking up, about to*
13 *throw, or throwing a chemical agent canister previously deployed by OPD, or other object,*
14 *does not automatically constitute an immediate threat of loss of life or serious bodily injury.*
15 *Members must consider the size and composition of the object and the distance from which it is*
16 *being thrown.*” (Exhibit C, Chief’s Nov. 19, 2014 Memo.)
17

18 38. The Chief’s Memorandum goes on to clarify that “*Even when an individual’s conduct*
19 *does constitute an immediate threat of loss of life or serious bodily injury, Direct Fired SIM*
20 *shall be used only when other means of arrest are unsafe and when the individual can be*
21 *targeted without endangering other crowd members or bystanders. The member using SIM*
22 *must have a shot the member reasonably believes can be taken and will only impact the*
23 *intended target, given consideration of how close the individual is to others, whether crowd*
24 *members are moving, and factors that may affect visibility and the accuracy of shot placement,*
25 *such as chemical agent deployment.*” (Exhibit C.)
26
27
28

1 39. The Chief’s Memorandum also states that “*Medical attention shall be provided to any*
2 *individual struck by SIM. All officers at the scene are responsible for ensuring that medical*
3 *attention is available for injured persons and for people affected by*
4 *chemical agents.*” (Exhibit C.)

5
6 40. OPD and the City adopted these restrictions to prevent another tragedy like the
7 permanent brain damage sustained by Scott Olsen, a young veteran who was accidentally
8 struck in the head with a police “bean bag” while peacefully standing at a 2011 demonstration.
9 Mr. Olsen received a \$4.5 million settlement from the City, but will never regain full mental
10 function.”²

11
12 41. It is well recognized that impact munitions or SIM, also known as KIP or PIW, can
13 cause injuries ranging from localized contusions to severe organ damage and death. Data from
14 1,984 SIM injuries revealed that 3% died and 15.5% were permanently disabled as a result of
15 being shot with SIM.³

16
17 42. Indeed, close-range firing of SIM/ KIP results in injury patterns similar to those seen
18 with live ammunition, causing severe injuries and disabilities. It is important to note that while
19 factors such as a large surface area may reduce the risk of skin penetration, they increase the
20 inaccuracy of the weapon. SIMs/ KIPs, therefore, are not only likely to be lethal at close range,
21 but are likely to be inaccurate and indiscriminate at longer ranges, even those recommended by
22
23

24
25 ²*Olsen v. City of Oakland*, No. C12-6333 SI; [https://www.sfgate.com/crime/article/Occupy-
26 protester-wounded-by-Oakland-police-gets-5337743.php](https://www.sfgate.com/crime/article/Occupy-protester-wounded-by-Oakland-police-gets-5337743.php).

27 ³ Haar RJ, Iacopino V, Ranadive N, et al. *Death, injury and disability from kinetic impact*
28 *projectiles in crowd-control settings: a systematic review.* BMJ Open 2017;7:e018154.
doi:10.1136/bmjopen-2017-018154; <<https://bmjopen.bmj.com/content/7/12/e018154>>, accessed June 29, 2022, pp. 2-5.

1 manufacturers for safety.⁴ Following an extensive review of the medical literature, Physicians
 2 for Human Rights made findings consistent with OPD’s prohibition on using SIM for crowd
 3 control:

4
 5 The classification of KIPs as “less-lethal” contradicts extensive research illustrating
 6 that these weapons can cause serious injuries, permanent disabilities, and death. Severe
 7 injuries are more likely when KIPs are fired at close range, as some types of KIPs have
 8 the same ability to penetrate the skin as conventional live ammunition and can be just
 9 as lethal. When launched or fired from afar, these weapons are often inaccurate and can
 10 strike vulnerable body parts, causing unintended injuries to bystanders. Therefore, PHR
 11 considers that *KIPs are not an appropriate weapon for crowd management and*
 12 *specifically for dispersal purposes*. PHR thus recommends that localities move to ban
 their use altogether in crowd-control situations, due to the egregious and life-
 threatening injuries they can cause, particularly given their *inherently indiscriminate*
nature in crowd-control situations.⁵

13 43. Impact munitions caused at least 115 head injuries across the United States during the
 14 summer 2020 protests following the killing of George Floyd.⁶

15 44. In addition to the provisions mentioned in the May 29, 2020, letter, the Oakland Crowd
 16 Control Policy and OPD Training Bulletin III-G govern OPD’s use of mutual aid at a
 17 demonstration or crowd event. They provide, inter alia,

18
 19 ...[T]he [Incident Commander] shall be responsible for ensuring to the extent
 20 possible that mutual aid agencies:

21
 22
 23 ⁴ Physicians for Human Rights and INCLO *Lethal in Disguise: The Health Impacts of Crowd-*
 24 *Control Weapons* (2016) <https://www.inclo.net/issues/lethal-in-disguise/> accessed Oct. 17, 2021.

25 ⁵ Physicians for Human Rights, *Shot in the Head*, Sept. 14, 2020,
 26 <https://storymaps.arcgis.com/stories/29cbf2e87b914dbaabdec2f3d350839e> accessed Oct. 17,
 2021, emphasis added.

27 ⁶ Physicians for Human Rights, *Shot in the Head*, Sept. 14, 2020,
 28 <https://storymaps.arcgis.com/stories/29cbf2e87b914dbaabdec2f3d350839e> accessed Oct. 17,
 2021.

- 1 1. Are briefed and in agreement with OPD’s Unity of Command structure under
2 which only OPD Commanders may authorize the use of less lethal munitions
3 for crowd control and dispersal;
- 4 2. Are briefed on OPD’s policy on prohibited weapons and force;
- 5 3. Do not bring or use any weapons or force that is prohibited under OPD’s
6 policy;
- 7 4. Are provided a copy of OPD’s Crowd Control Policy and Use of Force
8 policies;
- 9 5. Are not assigned to front-line positions or used for crowd intervention, control
10 or dispersal unless there is a public safety emergency....

(Exhibit A, ¶ IX, pp. 20-21.)

11 45. The above provisions regarding mutual aid were added to the OPD Policy in 2013 as
12 part of the aforementioned *Spalding* and *Campbell* settlement agreements, after mutual aid
13 agencies such as ACSO caused many injuries through their use of SIM and hand-thrown
14 pyrotechnic grenades in a manner prohibited by Oakland’s Policy during the Occupy Oakland
15 demonstrations in 2011-2012. Following widescale public outcry over the law enforcement
16 excessive force at those demonstrations, OPD asked Sheriff AHERN and ACSO to seek
17 assistance for OPD from agencies with similar policies, but AHERN publicly stated that
18 departments called in to provide emergency assistance would follow their own use-of-force
19 policies and be armed with weapons prohibited by Oakland’s policy. In effect, Defendant
20 AHERN and ALAMEDA COUNTY were condoning the use of indiscriminate,
21 unconstitutionally excessive force on protesters, with the acquiescence of OPD and the CITY
22 OF OAKLAND.⁷

27
28 ⁷Shoshana Walter, NY Times, *In Oakland, Officials Say Police Used Illegal Tactics* (Apr. 28, 2012)
<https://www.nytimes.com/2012/04/29/us/oakland-police-say-theyve-altered-tactics-for-handling-protests-in-oakland-officials-say-police-used-illegal-tactics.html> Accessed **June 30, 2022**.

1 46. The City of Oakland had the Frazier Group conduct an independent investigation of the
2 police response to Occupy Oakland, and adopted its report, findings and recommendations.
3 These included, inter alia, that Mutual Aid officers should not be comingled with OPD officers
4 on the front lines, “even under extreme conditions”, but rather, assigned specific missions to be
5 carried out with department and unit integrity under the direction of OPD. ([Frazier Report](#),
6 June 14, 2012, p. 13.)
7

8 47. However, even after the provisions concerning mutual aid were added to the OPD
9 Crowd Control Policy by agreement and federal court order, ACSO continued to communicate
10 to Oakland Police Department command staff that ACSO would not comply with the OPD
11 Crowd Control Policy when providing mutual aid in Oakland. SHERIFF AHERN and/or his
12 agents communicated that ACSO personnel would not comply with the Policy’s restrictions on
13 use of chemical agents and less lethal munitions; would use chemical agents and less lethal
14 munitions without the authorization of OPD Commanders; and would bring and use weapons
15 and force that are prohibited under OPD’s policy while providing mutual aid in Oakland. The
16 OPD defendants tacitly or explicitly agreed, flouting the federal court settlement agreements
17 and orders in *Spalding* and *Campbell* by continuing to put ACSO and other mutual aid officers
18 on the front lines in contact with demonstrators and crowds, and allowing them to use
19 dangerous weapons and excessive force against crowds which included lawful demonstrators,
20 journalists, observers and bystanders, and thus violate individuals’ constitutional rights.
21
22
23

24 ***The June 1 Oakland Demonstration***

25 48. On June 1, 2020, young people including many Black and Brown high school students
26 and others held a march to protest racist police violence. The march started at Oakland Technical
27 High School, and was planned to end with speeches at the Oakland Police Administration
28

1 Building. At the onset, the organizers announced that the protest was peaceful and explicitly
2 called for “no destruction.”

3 49. Despite the fact that the march was peaceful, Alameda County declared an 8pm curfew.
4 Also, on June 1, 2020, the City of Oakland declared a local emergency and 8 p.m. to 5 a.m.
5 curfew.
6

7 50. Defendant **ROLAND HOLMGREN** was the Incident Commander, and Defendant
8 **RANDELL WINGATE** was the Operations Chief, who planned, commanded and supervised the
9 **OPD and mutual aid officers’ response to the June 1, 2020, demonstration. HOLMGREN and**
10 **WINGATE failed to have the ACSO and other mutual aid forces briefed on OPD’s crowd**
11 **control policy and restrictions on use of chemical agents and SIM; allowed ACSO to bring**
12 **and use weapons and force at the demonstration that were prohibited by OPD’s policy;**
13 **assigned ACSO to front line positions in which the ACSO personnel would be very likely to**
14 **use prohibited weapons in a prohibited, and unconstitutional manner; failed to clearly**
15 **assign an OPD pathfinder to ACSO and ensure that the pathfinder was equipped with a**
16 **body worn camera to monitor ACSO use of force; further interfered with the ACSO**
17 **pathfinder’s ability to monitor and control the ACSO personnel by calling her away from**
18 **the demonstration to meet with him; and otherwise failed to adequately exercise command**
19 **and control and supervision over the ACSO personnel so as to prevent foreseeable use of**
20 **excessive force on the plaintiffs. HOLMGREN, who was nearby closely monitoring the**
21 **event, had the opportunity but failed to intervene to stop the violations of Plaintiffs’ First**
22 **and Fourth Amendment rights.**

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26 51. Defendant **COLBY STAYSA** was the Commander who commanded and supervised
27 **the ALAMEDA COUNTY Sheriff’s Office personnel’s response to the June 1, 2020,**
28

1 **demonstration. STAYSA failed to adequately supervise and restrict the use of dangerous**
2 **chemical weapons and impact munitions by the deputies under his command, including but**
3 **not limited to DALISAY, SWETAVAGE, FRANCIS, BOYD, SHAUN, DORSHKIND,**
4 **FRANCO, HAZELITT, LYDON, and JUSTIN, and had the opportunity but failed to**
5 **intervene to stop the violations of Plaintiffs’ First and Fourth Amendment rights.**

7 52. **Defendant VICTOR FOX was the Captain who supervised SWETAVAGES’,**
8 **DALISAY’S, FRANCIS’ and other ACSO deputies’ response to the June 1, 2020,**
9 **demonstration. FOX failed to adequately supervise and restrict the use of dangerous**
10 **chemical weapons and impact munitions by the deputies under his command; and had the**
11 **opportunity but failed to intervene to stop the violations of Plaintiffs’ First and Fourth**
12 **Amendment rights.**

14 53. Well prior to the curfew hour, Oakland and Alameda County officers formed lines
15 blocking the demonstrators’ path, forcing many of them to stop at Oscar Grant / Frank Ogawa
16 Plaza rather than at the Police Administration Building.

18 54. At approximately 5 p.m., after the march had already started, the County of Alameda and
19 the City of Oakland began disseminating the message that a curfew would begin just three hours
20 later.

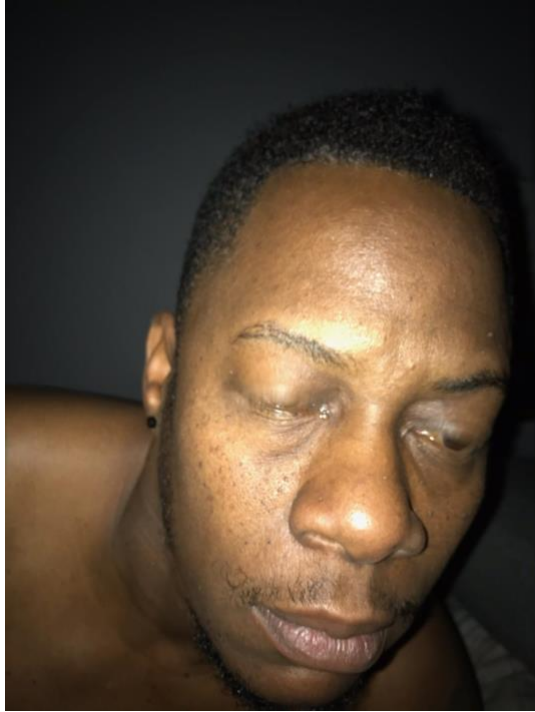
21 55. A smaller number of demonstrators continued from Oscar Grant Plaza towards the Police
22 Administration Building. At Washington Street and 8th Street, the demonstrators met a line of
23 police outfitted in full riot gear. The OPD **and ACSO** ‘kettled’ the group via line formations and
24 by way of their vehicles, blocking opportunities for egress.

26 56. Without warning and before the curfew hour, **OPD and ACSO officers including but**
27 **not limited to Defendants A. ALCANTAR, T. THURSTON, E. PEREZ-ANGELES, K.**
28

1 **ALBIONO, K. AU, J. PALMER, A. BARRAGAN, R. BROWN, C. CARDONA, J.**
2 **HUTCHINSON, D. JAGAR, J. SMOAK, S. TORBIDO, B. ALAURA, A. ESPARZA,**
3 **THOMAS BOYD, COREY SHAUN, WILLIAM DORSHKIND, RICHARD R. FRANCO,**
4 **JEFFERY HAZELITT, KEITH LYDON, MIGUEL JUSTIN, and DOE OPD and ACSO**
5 **officers,** used chemical weapons, threw explosive blast grenades and pyrotechnic devices, and
6 **ACSO deputies including but not limited to DALISAY, SWETAVAGE and DOES,** shot
7 impact munitions into the crowd of confined demonstrators, causing chaos **and injuries. No**
8 **dispersal announcement was made prior to the bombardment of chemical weapons, impact**
9 **munitions and blast grenades by the DOE OPD and ACSO officers. A dispersal**
10 **announcement that many or most of the crowd could not hear or decipher was made ten**
11 **minutes later, simultaneous with a second round of chemical weapons. The defendants filled**
12 the entire block between 8th and 9th St. with a virtual wall of CS gas and smoke that impeded,
13 rather than aided the demonstrators in dispersing as people had **great difficulty** seeing and
14 breathing, and impacted neighboring residents and business in this dense urban area of
15 downtown Oakland.

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19 57. Plaintiffs KIERRA BROWN and TOSHUA SEARS each attended the June 1, 2020,
20 march to protest racist police violence. Mr. Sears, who is Black, carried a sign, “All lives matter
21 even ours”.

22
23 58. TOSHUA SEARS was in the area of 8th and Broadway, when well before 8pm, DOE
24 OAKLAND Police and ALAMEDA COUNTY Sheriff officers blocked egress on three sides and
25 at about 7:40pm, without warning, **A. ALCANTAR, T. THURSTON, E. PEREZ-ANGELES,**
26 **K. ALBIONO, K. AU, J. PALMER, A. BARRAGAN, R. BROWN, C. CARDONA, J.**
27 **HUTCHINSON, D. JAGAR, J. SMOAK, S. TORBIDO, B. ALAURA, A. ESPARZA,**
28



THOMAS BOYD, COREY SHAUN, WILLIAM DORSHKIND, RICHARD R. FRANCO, JEFFERY HAZELITT, KEITH LYDON, MIGUEL JUSTIN, and DOE OPD and ACSO officers, threw and shot chemical weapons and explosive grenades into the crowd and ALAMEDA COUNTY deputies including DALISAY and SWETAVAGE shot dangerous impact munitions into the crowd. The crowd had been peaceful, and Mr. Sears did not hear the police

give any warnings, orders or announcements, nor did he see any crowd activity that would justify the sudden use of force. Mr. Sears began to leave, when suddenly, he felt an enormous impact as **a-Defendants SWETAVAGE, DALISAY and/or DOE ALAMEDA COUNTY Sheriff officers** shot him with an impact projectile in the right hip / buttock area.

59. At first, Mr. Sears did not know if he had been shot with a live bullet or a so-called less lethal impact munition. It was terrifying. Chemical agent burned Mr. Sears' eyes, mouth and nose. It was hard to see and breathe. He hobbled away as best he could and called his wife to pick him up.

60. At home, Mr. Sears washed his face and flushed his eyes out but his eyes swelled and remained swollen for days. His vision was affected as a result of chemical conjunctivitis caused by his exposure to the chemical agent. His hip remained extremely painful and developed a large, hard, swollen lump. It was hard to read or walk for some time. He could not sleep on his side. The lump and pain persisted for months.

1 61. Mr. Sears never presented any threat whatsoever to any of the **defendants** or to anyone
2 else. There was no justification for the defendants to use any force on him, and thus both the
3 shot and teargas were completely unnecessary and unlawful.

4 62. **DALISAY, SWETAVAGE and DOE ACSO deputies were shooting**
5 **indiscriminately, using weapons that release multiple projectiles at once and are thus**
6 **non-target specific, and shooting into a cloud of smoke and teargas that greatly reduced**
7 **or eliminated their ability to see where they were shooting these potentially lethal**
8 **munitions, and without any justification for this high level of force.**

9 63. **SWETAVAGE, DALISAY AND DOE ACSO deputies were integral participants**
10 **in the virtually simultaneous, indiscriminate mass use of impact munitions by multiple**
11 **officers without notice or opportunity to disperse, whose misconduct was a substantial**
12 **factor in causing Plaintiff's physical, mental and constitutional injuries. These defendants**
13 **also observed and had the opportunity to intervene but failed to intervene to stop use of**
14 **excessive force against Mr, Sears by fellow officers; all of which subjected Mr Sears to**
15 **injuries and deprivation of his First and Fourth Amendment rights.**

16 64. **Defendants A. ALCANTAR, T. THURSTON, E. PEREZ-ANGELES, K.**
17 **ALBIONO, K. AU, J. PALMER, A. BARRAGAN, R. BROWN, C. CARDONA, J.**
18 **HUTCHINSON, D. JAGAR, J. SMOAK, S. TORBIDO, B. ALAURA, A. ESPARZA,**
19 **THOMAS BOYD, COREY SHAUN, WILLIAM DORSHKIND, RICHARD R.**
20 **FRANCO, JEFFERY HAZELITT, KEITH LYDON, MIGUEL JUSTIN, and DOE OPD**
21 **and ACSO officers, were integral participants in the virtually simultaneous,**
22 **indiscriminate mass use of chemical weapons on Mr. Sears by multiple officers without**
23 **notice or opportunity to disperse, whose misconduct was a substantial factor in causing**
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1 **Plaintiff’s physical, mental and constitutional injuries. These defendants also observed**
2 **and had the opportunity to intervene but failed to intervene to stop use of excessive force**
3 **against Mr, Sears by fellow officers; all of which subjected Mr Sears to injuries and**
4 **deprivation of his First and Fourth Amendment rights.**

5
6 65. Many other demonstrators were shot in the back as they were fleeing the shooting,
7 explosive grenades and chemical weapons, only to be impeded by police lines kettling them
8 from all directions.

9
10 66. Public health and other medical experts have condemned the use of teargas and other
11 respiratory irritants on protesters as increasing the risk for COVID-19 by making the respiratory
12 tract more susceptible to infection, exacerbating existing inflammation, and inducing coughing,
13 as well as by forcing those exposed to remove masks that have been contaminated.

14 67. KIERRA BROWN was not at 8th and Broadway when the police used the chemical
15 weapons, but went to 14th and Broadway after the march to help wash people’s eyes who had
16 been affected by the chemical agent. While Ms. Brown was doing this, the police approached
17 and pushed the crowd further up Broadway. Ms. Brown was running toward 15th Street, which
18 was what it seemed the police wanted the crowd to do, when **Defendant FRANCIS and/or a**
19 **DOE ALAMEDA COUNTY** Sheriff officer shot her in the back of her right leg.

20
21 68. The OAKLAND and ALAMEDA COUNTY officers then trapped Ms. Brown and others
22 between their lines and detained them, zip tying Ms. Brown and the others’ hands. The kettling
23 occurred before 8pm.

24
25 69. **OPC Officer BRYAN CLIFFORD arrested Mr. Brown. OPD officers** took Ms.
26 Brown to a parking garage for processing before ultimately releasing her with a citation. She was
27 never charged with any crime.
28

1 70. Ms. Brown never presented any threat whatsoever to any of the OPD or ACSO officers
2 or to anyone else. There was no justification for the defendants to use any force on her, and
3 thus shooting her with highly dangerous SIM as she attempted to flee in response to the police
4 action was completely unnecessary and unlawful.

5
6 71. There was no probable cause to arrest Ms. Brown.

7 72. That night, Ms. Brown's leg swelled and became numb from hip to ankle. She
8 experienced uncomfortable tingling, and her leg developed a hard, swollen lump.

9 73. Ms. Brown has never regained full sensation in her right leg and is at risk of losing
10 mobility in her foot as a result of being shot by **BRYAN FRANCIS** and/or the DOE ACSO



19 officer.

20 74. ~~Ms. Gaffett~~, Ms. Brown and Mr. Sears wish to continue to express their views on police
21 brutality and institutionalized racism by participating in public protests on the streets of Oakland,
22 but are afraid that they will again be subjected to unlawful law enforcement violence and
23 wrongful arrests.

24
25 75. Defendants' actions on ~~May 29~~ and June 1 violated every provision of the CITY OF
26 OAKLAND's Crowd Management and Crowd Control Policy that the attorneys had warned
27 about in their May 29 letter, and more. Oakland's own policy and the law are clear that verbal
28 criticism or abuse of officers is not grounds for arrest or use of force. And while police may use

1 force to defend themselves against an individual, it is both illegal and a violation of **both**
2 Oakland's **and Alameda County's** policies to use impact munitions indiscriminately against a
3 crowd.

4
5 76. Defendants' actions on ~~May 29 and~~ June 1 violated the Policy's provisions which
6 prohibit impact munitions and explosive grenades from being fired into crowds, and allow
7 impact munitions to be used *only* against "a specific individual who is engaging in conduct that
8 poses an immediate threat of loss of life or serious bodily injury to him or herself, officers, or the
9 general public or who is engaging in substantial destruction of property which creates an
10 immediate risk to the lives or safety of other persons" (Ex. A, ¶ VI.F.2.a, p. 15); provisions
11 limiting the use of chemical weapons (Ex. A, ¶¶ V.H.4, V.H.5, pp. 13-14); and the requirement
12 that OPD ensure mutual aid agencies do not bring or use any weapons or force that is prohibited
13 under this policy, and not be assigned to front-line positions unless there is a public safety
14 emergency (Ex. A, ¶ IX, p. 20). ACSO brought and used prohibited weapons including Stinger
15 Grenades **and Sting Ball munitions** at the ~~May 29 and~~ June 1 events, violating Oakland's
16 Policy, ¶ IX.3, and ACSO officers, including the DOE ACSO defendants, were comingled with
17 OPD in front-line positions, violating ¶ IX.5 and the City of Oakland's Frazier Report findings.

18
19
20 77. On ~~May 29 and~~ June 1, defendants also violated the Crowd Control Policy provision
21 providing that "Any person struck by a round shall be transported to a hospital for observation
22 and any necessary treatment." (Exhibit A, ¶ VI.F.2.c, p. 15.) None of the plaintiffs were offered
23 medical aid by OPD or City of Oakland personnel (or by ACSO personnel).

24
25 78. Following the ~~May 29—~~ June 1 demonstrations, CITY OF OAKLAND officials made a
26 number of false and misleading statements to the public and media about the demonstrations and
27 the actions of OAKLAND police officers and mutual aid agencies, fabricating and/or
28

1 exaggerating reports of property destruction and supposed aggression by demonstrators while
2 minimizing the police violence and injuries caused by the police.

3 ~~a. As part of this cover up and failure to hold officers accountable for the excessive~~
4 ~~force, on being confronted with a photograph of Ms. Gaffett's injuries, which~~
5 ~~were inflicted by defendants on May 29, CITY OF OAKLAND officials stated~~
6 ~~falsely and publicly that the photograph was a hoax and depicted someone in~~
7 ~~Texas.~~

9
10 79. Defendants' acts were willful, wanton, malicious, and oppressive, and done with
11 conscious disregard and deliberate indifference for plaintiff's rights and safety, justifying an
12 award of punitive damages.

13 80. As a direct and proximate result of the conduct of defendants described herein, plaintiffs
14 have been denied their constitutional, statutory and legal rights as stated below, and have
15 suffered general and special damages, including but not limited to, pain, suffering, humiliation,
16 emotional distress, fear, anxiety, disabilities, medical and related expenses, and other damages in
17 amounts according to proof.

18
19 81. Plaintiffs have incurred, and will continue to incur, attorneys' fees and costs in amounts
20 to be determined according to proof.

21 **VII. MONELL AND SUPERVISORY LIABILITY ALLEGATIONS**

22
23 82. The constitutional violations alleged herein were the proximate result of decisions,
24 orders, acts and omissions of the CITY OF OAKLAND'S authorized policymakers including but
25 not limited to defendants MANHEIMER and **HOLMGREN**; and ALAMEDA COUNTY'S
26 policymakers including but not limited to defendant AHERN.

1 83. These decisions, orders, acts and omissions included the decisions by MANHEIMER,
2 **HOLMGREN**, AHERN, and DOE CITY OF OAKLAND and ALAMEDA COUNTY officials
3 to approve the use of impact munitions, explosive grenades and pyrotechnic devices, and
4 chemical weapons at the demonstrations, without sufficient justification, which resulted in such
5 weapons being used in an unconstitutional, indiscriminate, unnecessary, and excessive manner.
6

7 84. These decisions, orders, acts and omissions which caused the constitutional violations
8 also included a tacit or explicit agreement by MANHEIMER, **HOLMGREN**, AHERN, and
9 DOE CITY OF OAKLAND and ALAMEDA COUNTY officials to encourage or allow ACSO
10 personnel and other mutual aid personnel to take front line positions at the ~~May 29~~ and June 1,
11 2020, demonstrations and encourage ACSO (and other mutual aid agencies') **personnel**,
12 **including but not limited to DALISAY, SWETAVAGE, FRANCIS, BOYD, SHAUN,**
13 **DORSHKIND, FRANCO, HAZELITT, LYDON, and JUSTIN** to use dangerous force and
14 weapons on demonstrators that are constitutionally excessive, and prohibited under OPD's
15 Crowd Control Policy, and without command and control by OPD, which resulted in such
16 weapons being used in an unconstitutional, indiscriminate, unnecessary, and excessive manner.
17

18 85. These decisions, orders, acts and omissions which caused the constitutional violations
19 also included the decision for ALAMEDA COUNTY and the CITY OF OAKLAND to declare a
20 curfew on June 1, which was unconstitutional as further explained below, and used as a pretext
21 for wrongful arrests of Ms. BROWN and others.
22

23 86. In addition, MANHEIMER, **HOLMGREN**, AHERN, and DOE City officials and
24 County officials caused the CITY OF OAKLAND police officers' and ALAMEDA COUNTY
25 Sheriff's officers', **including but not limited to SWETAVAGE, DALISAY FRANCIS, A.**
26 **ALCANTAR, T. THURSTON, E, PEREZ-ANGELES, K. ALBIONO, K. AU, J. PALMER,**
27
28

1 **A. BARRAGAN, R. BROWN, C. CARDONA, J. HUTCHINSON, D. JAGAR, J. SMOAK,**
2 **S. TORBIDO, B. ALAURA, A. ESPARZA, BOYD, SHAUN, DORSHKIND, FRANCO,**
3 **HAZELITT, LYDON, and JUSTIN'S**, constitutional violations complained of herein by
4 failing to provide adequate policies, training, supervision, and command of their officers
5 assigned to the June 1, 2020, demonstrations to stop the officers from using excessive force,
6 making wrongful arrests, and depriving plaintiffs and class members of their First Amendment
7 rights. This failure to provide adequate policies, training, supervision, and command included,
8 *inter alia*:

- 9
10
11 • **MANHEIMER, HOLMGREN**, and other CITY OF OAKLAND officials failed to
12 provide OPD officers assigned to the 2020 demonstrations, **including but not limited**
13 **to WINGATE, A. ALCANTAR, T. THURSTON, E. PEREZ-ANGELES, K.**
14 **ALBIONO, K. AU, J. PALMER, A. BARRAGAN, R. BROWN, C. CARDONA,**
15 **J. HUTCHINSON, D. JAGAR, J. SMOAK, S. TORBIDO, B. ALAURA, A.**
16 **ESPARZA**, with sufficient, regular training on the OPD Crowd Control Policy,
17 constitutional restrictions on the use of force, particularly in the context of crowd
18 events and First Amendment events, and lawful crowd management and crowd
19 control tactics.
20
- 21 • **MANHEIMER, HOLMGREN** and other CITY OF OAKLAND officials chose not
22 to brief the ACSO and other mutual aid officers assigned to the 2020 demonstrations,
23 **including but not limited to SWETAVAGE, DALISAY, FRANCIS, BOYD,**
24 **SHAUN, DORSHKIND, FRANCO, HAZELITT, LYDON, and JUSTIN**, on the
25 Crowd Control Policy and on OPD's Unity of Command structure under which only
26 OPD Commanders may authorize the use of less lethal munitions for crowd control,
27
28

1 and allowed them to operate outside of OPD's command and control and without
2 restrictions.

- 3
- 4 • **MANHEIMER, HOLMGREN**, and other CITY OF OAKLAND officials, and
5 **AHERN** and other ALAMEDA COUNTY officials, allowed and encouraged
6 ALAMEDA COUNTY and other mutual aid officers assisting OAKLAND at the
7 subject demonstrations, including but not limited to **SWETAVAGE, DALISAY,**
8 **FRANCIS, BOYD, SHAUN, DORSHKIND, FRANCO, HAZELITT, LYDON,**
9 **and JUSTIN**, to bring and use munitions of a type and in an unconstitutionally
10 excessive manner which are specifically prohibited by OAKLAND's Crowd Control
11 Policy because they are highly dangerous, indiscriminate, and likely to cause
12 constitutional violations and other injuries, and they did cause constitutional
13 violations complained of herein, ~~to the extent plaintiffs were injured by ACSO or~~
14 ~~other mutual aid officers.~~

- 15
- 16 • **AHERN, STAYSA** and other ALAMEDA COUNTY officials failed to provide
17 ACSO and other mutual aid officers assigned to the 2020 demonstrations, **including**
18 **but not limited to SWETAVAGE, DALISAY, FRANCIS, BOYD, SHAUN,**
19 **DORSHKIND, FRANCO, HAZELITT, LYDON, and JUSTIN**, with adequate
20 policies, command and control, and training on constitutional restrictions on the use
21 of force, particularly in the context of crowd events and First Amendment events, and
22 lawful crowd management and crowd control tactics.

- 23
- 24 • **AHERN and STAYSA** (explicitly or tacitly) made known to ACSO officers,
25 **including but not limited to SWETAVAGE, DALISAY, FRANCIS, BOYD,**
26 **SHAUN, DORSHKIND, FRANCO, HAZELITT, LYDON, and JUSTIN**, that,
27
28

1 while providing mutual aid at the 2020 Floyd demonstrations, they need not adhere to
2 restrictions on the use of dangerous munitions and chemical weapons in crowds or
3 follow OPD's unity of command structure as to use of force, *which they knew would*
4 *likely result, and did result in such weapons being used in an unconstitutional,*
5 *indiscriminate, unnecessary, and excessive manner.*

- 7 • **STAYSA and FOX failed to provide adequate supervision of the officers**
8 **assigned to the June 1, 2020, demonstrations, including SWETAVAGE,**
9 **DALISAY, and FRANCIS, THOMAS BOYD, COREY SHAUN, WILLIAM**
10 **DORSHKIND, RICHARD R. FRANCO, JEFFERY HAZELITT, KEITH**
11 **LYDON, MIGUEL JUSTIN, to stop these officers from using excessive force,**
12 **making wrongful arrests, and depriving plaintiffs and class members of their**
13 **First Amendment rights.**

15 87. Plaintiffs further allege that the constitutional violations alleged herein were the
16 proximate result of a repeated course of conduct by members of the OPD and ACSO tantamount
17 to a custom, policy, pattern or repeated practice of condoning, ratifying and/or tacitly
18 encouraging the abuse of police authority, and disregard for the constitutional rights of citizens,
19 including the rights of the plaintiffs and class members.

21 88. Plaintiffs are further informed and believe and thereon allege that the constitutional
22 violations alleged herein were the proximate result of a custom, policy, pattern or practice of
23 deliberate indifference by defendants CITY OF OAKLAND and ALAMEDA COUNTY to the
24 repeated violations of the constitutional rights of citizens by defendants' law enforcement
25 officers, which have included, but are not limited to, the repeated use of excessive force, and the
26 repeated failure to properly and/or adequately train, supervise and/or discipline officers with
27
28

1 respect to the use of excessive force, constitutional limitations on the use of force; the repeated
2 failure by CITY OF OAKLAND and ALAMEDA COUNTY's high ranking officials, OPD and
3 ACSO managers and/or supervisors to hold officers accountable for violating the rights of
4 citizens; and/or other customs, policies and/or practices subject to continuing discovery.
5

6 89. The CITY OF OAKLAND's customs, policies, pattern and practice of condoning,
7 ratifying, tacitly encouraging, and deliberate indifference to officers' constitutional violations are
8 exemplified by the following facts: In 2003, the United States District Court approved a
9 negotiated settlement agreement (NSA) placing the Oakland Police Department under the
10 Court's supervision until such time as it had implemented a number of specified reforms to hold
11 OPD officers accountable for violating people's rights and to prevent excessive force and other
12 police misconduct. *Allen v. City of Oakland*, USDC ND Cal. No. 3:00-cv-04599. The NSA
13 reforms were initially planned to take place within five years. However, in more than eighteen
14 years now, the CITY OF OAKLAND and OPD has failed to fully implement the required
15 reforms. And in 2005, the CITY OF OAKLAND and OPD first agreed to follow, train on, and
16 implement the OPD Crowd Control Policy, as described in ¶ 3 above. Yet, for sixteen years now,
17 almost every time that there is an upsurge of demonstration activity in Oakland, such as
18 during the Justice for Oscar Grant movement, the Occupy Oakland movement, and the 2020
19 George Floyd demonstrations, OPD and mutual aid assisting OPD have violated OAKLAND's
20 own Policy, invariably causing the violation of demonstrators' constitutional rights.
21

22 90. ALAMEDA COUNTY's customs, policies, pattern and practice of condoning, ratifying,
23 tacitly encouraging, and deliberate indifference to officers' constitutional violations are
24 exemplified by the following facts. During the economic justice demonstrations associated with
25 the Occupy Oakland movement in 2011-2012, and subsequent demonstrations in which ACSO
26
27
28

1 provided mutual aid to the CITY OF OAKLAND, deputies repeatedly used excessive force
2 against unarmed and non-threatening demonstrators, causing serious injuries, but defendant
3 AHERN failed to hold deputies accountable and has made a number of public statements
4 condoning ACSO's use of weapons and force prohibited by the OPD Crowd Control Policy.
5 AHERN has also failed to hold his deputies accountable for repeated abuses in other law
6 enforcement contexts and in the ALAMEDA COUNTY Jail. As of 2020, the ACSO led the
7 region in wrongful deaths and excessive force payouts, with \$27.6 million over five years. It
8 ranked third when analyzed per officer.⁸ ALAMEDA COUNTY and AHERN have faced many
9 accusations of excessive force in the Alameda County Jail, and AHERN has made public
10 statements in support of deputies accused of excessive force. AHERN's actions in allowing
11 condoning, or encouraging deputies to use excessive force create an atmosphere where deputies
12 resort to unconstitutional excessive force because they are either encouraged to so, or at least
13 know they will not be punished.

16 91. Plaintiffs are informed and believe that defendants MANHEIMER, ~~ARMSTRONG~~,
17 HOLMGREN, WINGATE, AHERN, **STAYSA**, **FOX**, and DOE OPD and ACSO supervisors,
18 and/or each of them, caused the violation of the plaintiffs' constitutional rights as a result of their
19 supervisory malfeasance and/or deliberate indifference to the need for more or different training,
20 supervision and/or discipline of the CITY OF OAKLAND Police and ALAMEDA COUNTY
21 Sheriff's Office personnel assigned to the subject incident, to prevent the foreseeable violation of
22 plaintiffs' constitutional rights, as further discussed above.

25 VIII. CLASS ACTION ALLEGATIONS

28 ⁸ <https://oaklandside.org/2021/04/13/sheriff-candidates-alameda-county-sb271-gregory-ahern-law-enforcement-experience/>

1 92. Plaintiffs seek class certification pursuant to Fed.R.Civ.P. 23(a), and Fed.R.Civ.P.
2 23(b)(2), to pursue claims for injunctive and declaratory relief on behalf of themselves and all
3 persons similarly situated.

4 93. The class is defined as all persons who have in the past participated, presently are
5 participating, or may in the future participate in, or be present at, demonstrations and crowd
6 events within the City of Oakland in the lawful exercise of their rights of free speech, assembly,
7 association, petition, and of the press, who have suffered physical injury to their body, or chilling
8 of their speech, resulting from the conduct of defendants as described herein.

9 94. This case satisfies the prerequisites of a Rule 23 class action. The class is so numerous
10 that joinder of all members is impracticable. The class consists of hundreds or even thousands of
11 people.

12 95. There are questions of law and fact common to the class, in that the named plaintiffs
13 claim that defendants' unlawful use of force and threats of force at the demonstrations described
14 herein, were based on OPD and ACSO policies and orders that were unlawful and chilled their
15 First Amendment rights.

16 96. The questions of law and/or fact which predominate over any question affecting only
17 individual class members include whether defendants improperly declared an unlawful assembly
18 depriving peaceful participants of their First Amendment rights, whether defendants used
19 excessive force against peaceful participants, whether defendants' motivation was to deprive
20 participants of their First Amendment rights, and whether defendants engaged in racial, content
21 and viewpoint-discrimination.

22 97. By ordering and allowing officers to use unjustified force on the crowd at the
23 demonstrations, and failing to implement policies prohibiting such use of excessive force and
24

1 requiring OPD to brief mutual aid agencies on the Crowd Control and Crowd Management
2 Policy, ensure they do not bring or use any weapons or force that is prohibited under this policy,
3 and not assign mutual aid to front-line positions unless there is a public safety emergency,
4 defendants have acted on grounds generally applicable to the class, so that injunctive and
5 declaratory relief is appropriate respecting the class as a whole.
6

7 98. The questions of law and fact common to the classes, which are outlined above,
8 predominate over any questions affecting only individual members.

9 99. The claims of the named plaintiffs are typical of the claims of the class in that the named
10 plaintiffs and class members claim that their First Amendment rights have been chilled by the
11 same misconduct of defendants and seek protection to bar the repeat of those violations in the
12 future.
13

14 100. The class representatives will fairly and adequately protect the interests of the class
15 because they were subject to the unlawful law enforcement conduct complained of herein, and
16 have no interests antagonistic to the class.
17

18 101. The class representatives will fairly and adequately represent the common class interest.
19 The class representatives have a strong interest in achieving the relief requested in this
20 Complaint, they have no conflicts with members of the plaintiff class, and they will fairly and
21 adequately protect the interests of the class.
22

23 102. The class representatives are represented by counsel who are well-experienced in federal
24 civil rights class action litigation and are familiar with the issues in this case.

25 103. Counsel for the class representatives know of no conflicts among or between members of
26 the class, the named plaintiffs, or the attorneys in this action.
27
28

1 104. In accordance with FRCP Rule 23(b)(1)(A), the prosecution of separate actions by
2 individual members of the class would create a risk of inconsistent or incompatible standards of
3 conduct for the defendants, thereby making a class action the superior method of adjudicating the
4 controversy.
5

6 105. In accordance with FRCP Rule 23(b)(1)(B), prosecutions of separate actions by
7 individual members of the classes would create a risk of adjudications with respect to individual
8 members of the class which would, as a practical matter, substantially impair or impede the
9 interests of the other members of the class to protect their interests.
10

11 106. In accordance with FRCP Rule 23(b)(2), defendants have acted on grounds generally
12 applicable to the class, so that final injunctive relief or corresponding declaratory relief is
13 appropriate respecting the class as a whole.
14

15
16 **IX. CLAIMS FOR RELIEF**
17 **COUNT ONE – INJUNCTIVE RELIEF**
18 **(First, Fourth and Fourteenth Amendments, 42 U.S.C. § 1983; California Constitution**
19 **Article 1 §§ 2, 3, 7, 13; Cal. Penal Code § 835.5 ; Cal. Civil Code §§ 52.1, 815.6)**

20 All Plaintiffs Against All Defendants
21

22 107. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs of this
23 Complaint.
24

25 108. The Defendants engaged in repeated, widespread violations of law, as outlined above,
26 over the course of at least several nights, using excessive force against hundreds if not thousands
27 of protestors in retaliation for their protected First Amendment activity; imposing a curfew
28 without accommodating the right to peaceable assembly and protest; declaring unlawful
assemblies without adequate sound amplification and without providing adequate notice, means
and opportunity to disperse before taking aggressive police action including the use of highly

1 dangerous impact munitions / SIM, chemical weapons and explosive grenades; hitting large
2 numbers of protestors with impact munitions / SIM, grenades, and using chemical weapons on
3 them, all with unreasonable and excessive force; failing to provide medical aid or
4 decontamination to persons defendants shot and/or teargassed; and unlawfully arresting and
5 detaining dozens of people.
6

7 109. The CITY OF OAKLAND, through MANHEIMER, **HOLMGREN** and the OPD, and
8 ALAMEDA COUNTY, through AHERN and the ACSO, have failed to train their officers in the
9 constitutional responses to demonstrations as revealed by the above allegations.
10

11 110. Without intervention by this Court, the plaintiffs and class members, who have
12 participated, observed or documented protest activities and wish to do so in the future,
13 particularly related to police violence and racial justice, are at risk of having their rights violated
14 in the future due to the defendants' demonstrated pattern of constitutional violations. The
15 plaintiffs have no adequate remedy at law to protect the future lawful exercise of their
16 constitutional rights, and, without action by this court, will suffer irreparable injury, thereby
17 entitling them to injunctive and declaratory relief.
18

19 111. The Defendants have acted and refused to act on grounds generally applicable to the
20 putative class. Injunctive and declaratory relief for the class as a whole is appropriate.
21

22 112. Defendants' policies, practices, customs, conduct and acts alleged herein have resulted
23 and will continue to result in irreparable injury to the plaintiffs, including but not limited to
24 violations of their constitutional and statutory rights. Plaintiffs have no plain, adequate or
25 complete remedy at law to address the wrongs described herein. Plaintiffs intend in the future to
26 exercise their constitutional rights of freedom of speech and association by engaging in
27 demonstrations, observation and documentation of demonstrations and police actions, and other
28

1 expressive activities in the City of Oakland. Defendants' conduct described herein has created
2 fear, anxiety and uncertainty among plaintiffs with respect to their exercise now and in the future
3 of these constitutional rights.

4
5 113. Specifically, plaintiffs are concerned that if they participate in, observe or document
6 protest activities in the City of Oakland they will again be subjected to unreasonable and
7 excessive force by OPD and ACSO.

8 114. Plaintiffs are concerned that, when they are engaged in protest activities, Defendants will
9 impose curfews without accommodating or attempting to accommodate First Amendment rights;
10 will not provide adequate notice of such curfews or in the event unlawful assemblies are
11 declared; will not provide adequate means and opportunity to disperse; and will again employ
12 indiscriminate, racially discriminatory, unreasonable or excessive force, injuring and terrifying
13 protestors.

14
15 115. Plaintiffs are also concerned that that if they participate in, observe or document protest
16 activities in the City of Oakland they will be wrongfully detained and arrested by members of
17 OPD and/or ACSO.

18
19 116. Plaintiffs therefore seek injunctive relief from this court to ensure that plaintiffs and
20 persons similarly situated will not suffer violations of their rights from defendants' illegal and
21 unconstitutional policies, customs, and practices described herein.

22
23 117. Plaintiffs seek injunctive relief in the form of an order prohibiting OPD and ACSO from
24 using chemical weapons, explosive grenades, and impact munitions in crowds.

25 118. Plaintiffs also seek injunctive relief in the form of an order requiring that defendants seal
26 and destroy any records derived from the arrests for curfew violations, including but not limited
27 to KIERRA BROWN, including fingerprints, photographs, and other identification and
28

1 descriptive information, and all information, and biological samples and information obtained
2 from such biological samples collected from such arrestees, and identify all entities and agencies
3 to which such information has been disseminated; and that all such disseminated records be
4 collected and destroyed.
5

6 **COUNT TWO – DECLARATORY RELIEF**

7 All Plaintiffs Against All Defendants

8 119. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
9 Complaint.
10

11 120. An actual controversy exists between plaintiffs and defendants in that plaintiffs contend
12 that the policies, practices and conduct of defendants alleged herein are unlawful and
13 unconstitutional, whereas plaintiffs are informed and believe that defendants contend that said
14 policies, practices and conduct are lawful and constitutional. Plaintiffs therefore seek a
15 declaration of rights with respect to this controversy pursuant to 28 U.S.C. §§ 2201-2202.
16

17 **COUNT THREE – 42 U.S.C. § 1983**

18 **VIOLATION OF FIRST AMENDMENT RIGHTS**

19 All Plaintiffs Against All Defendants

20 121. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
21 Complaint.
22

23 122. Plaintiffs’ association with the anti-police violence/ racial justice demonstrations and
24 observation and/or documentation of the police response were substantial and motivating factors
25 for the defendants’ use of excessive force on all of the plaintiffs, and in the case of KIERRA
26 BROWN and class members, defendants’ arrest of them. The acts and/or omissions of the
27 defendants, and each of them, individually and/or while acting in concert with one another,
28

1 chilled the plaintiffs’ rights to freedom of speech, expression and association, under the First
2 Amendment to the United States Constitution.

3 123. The curfew order also violated and chilled the plaintiffs’ First Amendment rights.

4 124. As a result of Defendants’ wrongful conduct, the plaintiffs suffered damages as alleged
5 above.

6 125. As a result of Defendants’ wrongful conduct, and the potential that such conduct will
7 recur, the class is entitled to relief from the potential that such violations will recur.

8
9 The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count pursuant to
10 *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 82-90 above.

11 Defendants MANHEIMER, ARMSTRONG, HOLMGREN, and WINGATE, STAYSA, FOX,
12 and DOE OPD and ACSO supervisors are liable based on supervisory liability as detailed in ¶¶
13 82-91 above.

14
15 126. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

16
17 **COUNT FOUR – 42 U.S.C. § 1983**

18 **EXCESSIVE FORCE – U.S. Const., 4th and 14th Amds.**

19 **All Plaintiffs Against All Defendants except CLIFFORD**

20 127. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
21 Complaint.

22 128. The acts and/or omissions of the defendants, and each of them, individually and/or while
23 acting in concert with one another, violated plaintiffs’ rights to be free from excessive force,
24 under the Fourth and Fourteenth Amendments to the United States Constitution.

25 129. As a result of Defendants’ wrongful conduct, the named plaintiffs suffered damages as
26 alleged above.
27
28

1 130. As a result of Defendants’ wrongful conduct, and the potential that such conduct will
2 recur, the class is entitled to relief from the potential that such violations will recur.

3 The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count pursuant to
4 *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 82-90 above.
5 Defendants MANHEIMER, ARMSTRONG, HOLMGREN, and WINGATE, STAYSA, and
6 DOE OPD and ACSO supervisors are liable based on supervisory liability as detailed in ¶¶ 82-91
7 above.
8

9 131. Wherefore, the plaintiffs pray for relief as hereinafter set forth.
10

11 **COUNT FIVE – 42 U.S.C. § 1983**

12 **WRONGFUL ARREST – U.S. Const., 4th and 14th Amds.**

13 Plaintiff KIERRA BROWN and the CLASS Against Defendants CITY OF OAKLAND,

14 MANHEIMER, HOLMGREN, WINGATE and CLIFFORD.
15

16 132. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
17 Complaint.
18

19 133. There was no probable cause to support the arrests of KIERRA BROWN and the
20 CLASS. Therefore, the acts and/or omissions of the defendants, and each of them, individually
21 and/or while acting in concert with one another, violated plaintiffs’ rights to be free from
22 wrongful arrest, under the Fourth and Fourteenth Amendments to the United States Constitution.
23

24 134. Defendants’ above-described conduct violated BROWN and the class members’ rights to
25 be free from unreasonable seizures under the Fourth Amendment and under the Fourteenth
26 Amendment’s due process clause and the state constitutional analogues.
27

28 135. As a result of Defendants’ wrongful conduct, and the potential that such conduct will

1 recur, the Class is entitled to relief from the potential that such violations will recur.

2 136. The CITY OF OAKLAND is liable under this count pursuant to *Monell v. Department of*
3 *Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 82-90 above. Defendants MANHEIMER,
4 ~~ARMSTRONG~~, **HOLMGREN**, WINGATE and DOE OPD supervisors are liable based on
5 supervisory liability as detailed in ¶¶ 82-91 above.
6

7 137. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

8 **COUNT SIX – 42 U.S.C. § 1983**

9 **Conspiracy to Deprive Plaintiffs of Their Constitutional Rights**

10 All Plaintiffs Against All Defendants

11
12 138. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
13 Complaint.

14 139. Each of the named and unidentified DOE Defendant OPD and ACSO Officers along with
15 Defendants CITY OF OAKLAND, CHIEF MANHEIMER, ~~CHIEF ARMSTRONG~~, CHIEF
16 HOLMGREN, CAPTAIN WINGATE, ALAMEDA COUNTY, ~~and~~ SHERIFF AHERN,
17 **COMMANDER STAYSA, and CAPTAIN FOX**, acted in concert with each other and
18 conspired by concerted action to accomplish an unlawful purpose by unlawful means.
19

20 140. Each of the Defendants took concrete steps to enter into an agreement to unlawfully use
21 excessive force on Plaintiffs without cause, for the purpose of breaking up the demonstrations
22 and violating Plaintiffs' First and Fourth Amendment rights.
23

24 141. Specifically, the CITY OF OAKLAND adopted policies prohibiting the use of impact
25 munitions for crowd control because such weapons are inherently indiscriminate and dangerous
26 and thus violate demonstrators and bystanders' constitutional rights by causing serious injuries
27 without justification (see ¶¶ 40-43), but CITY OF OAKLAND officials, including but not
28

1 limited to CHIEF MANHEIMER ~~CHIEF ARMSTRONG~~ and CHIEF HOLMGREN, knowing
2 that SHERIFF AHERN condoned the excessive use of impact munitions on crowds and knowing
3 the risks thereof, deliberately placed ALAMEDA COUNTY personnel **including but not**
4 **limited to DALISAY, SWETAVAGE, FRANCIS, BOYD, SHAUN, DORSHKIND,**
5 **FRANCO, HAZELITT, LYDON, and JUSTIN** on the front lines at the demonstration and
6 encouraged or allowed them to use these highly dangerous weapons on Oakland demonstrators,
7 for the purpose of expediently breaking up the demonstrations with unconstitutional force and
8 violating the demonstrators and bystanders' First and Fourth Amendment rights. See ¶¶ 82-90.
9
10 142. Defendants CITY OF OAKLAND, CHIEF MANHEIMER, ~~CHIEF ARMSTRONG~~,
11 CHIEF HOLMGREN, ALAMEDA COUNTY, and SHERIFF AHERN, and **COMMANDER**
12 **STAYSA** took concrete steps to enter into an agreement with DOE Defendants to retroactively
13 justify and cover up Defendant Officers' unwarranted use of excessive force on all Plaintiffs for
14 the purpose of violating Plaintiffs' First and Fourth Amendment rights, as detailed in ¶ 78 and
15 below.
16

17
18 143. In furtherance of this conspiracy, each of the Defendant Officers committed specific
19 overt acts, misusing their police powers for the purpose of violating Plaintiff's rights. They
20 accomplished this goal by using unwarranted, excessive force on all Plaintiffs, including, but not
21 limited to, using CS Blast and Stinger grenades to break up lawful demonstrations, shooting
22 dangerous impact munitions at protestors without justification, and firing chemical weapons into
23 lawful crowds, as detailed in ¶¶ 48-70 and by **arresting plaintiff BROWN and class members**
24 **without probable cause as alleged in ¶¶ 68-69, 71.**
25

26 144. Defendants CITY OF OAKLAND, CHIEF MANHEIMER, ~~CHIEF ARMSTRONG~~,
27 CHIEF HOLMGREN, ALAMEDA COUNTY, and SHERIFF AHERN, and **COMMANDER**
28

1 **STAYSA** committed additional specific overt acts, misusing their powers as high-ranking
2 officials for the purpose of violating Plaintiff's rights. They accomplished this goal by using
3 ACSO officers brought in as mutual aid to suppress the Oakland demonstration with excessive
4 force, using unreasonably dangerous weapons in an indiscriminate manner that violated the
5 plaintiffs' constitutional rights; by issuing an unconstitutional curfew order without adequate
6 notice and directing Defendant Officers **including CLIFFORD** to enforce the order against
7 Plaintiffs. Further, they covered up Defendant Officers' violations of Plaintiffs' constitutional
8 rights by falsely claiming that the police were under attack by "violent disruptors" and
9 "professional agitators" who were "stacking up bottles" and "making Molotov cocktails" to
10 throw at the police prior to the police use of force; ~~and by falsely claiming that a photograph~~
11 ~~depicting plaintiff GAFFETT's injuries was a hoax and depicted someone in Texas.~~ AHERN and
12 ACSO furthered this cover-up by refusing to turn over ACSO's body camera videos and reports
13 to OPD Internal Affairs, such that OPD could avoid including ACSO's use of force in its
14 investigation of these incidents, despite OPD's accountability processes being under federal
15 court oversight.

16
17
18
19 145. Each individual named or unknown Defendant is therefore liable for the violation of
20 Plaintiffs' rights by any other individual Defendant.

21
22 146. As a direct and proximate result of the Defendants' conspiracy, Plaintiffs suffered
23 damages as alleged above.

24 147. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

25 **COUNT SEVEN – 42 U.S.C. § 1983**

26 **Failure to Intervene**

27 **All Plaintiffs Against All Defendants except CLIFFORD**

1 148. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
2 Complaint.

3 149. During the events described above, the defendants stood by without intervening to
4 prevent the violations of plaintiffs' constitutional rights heretofore alleged, even though the
5 violations occurred in plain view of numerous CITY OF OAKLAND Police Officers and
6 ALAMEDA COUNTY Sheriff Officers, **who had the duty and opportunity intervene, but**
7 **failed to do so, including but not limited to WINGATE, STAYSA, FOX, DALISAY,**
8 **SWETA VAGE, FRANCIS, A. ALCANTAR, T. THURSTON, E. PEREZ-ANGELES, K.**
9 **ALBIONO, K. AU, J. PALMER, A. BARRAGAN, R. BROWN, C. CARDONA, J.**
10 **HUTCHINSON, D. JAGAR, J. SMOAK, S. TORBIDO, B. ALAURA, A. ESPARZA,**
11 **BOYD, SHAUN, DORSHKIND, FRANCO, HAZELITT, LYDON, and JUSTIN.**

12 150. **MANHEIMER, HOLMGREN, and AHERN were monitoring the event, and** had the
13 opportunity and duty to **intervene, but failed to do so.**

14 151. The misconduct described in this Count was objectively unreasonable and was
15 undertaken intentionally, with malice and knowing disregard for plaintiffs' clearly established
16 constitutional rights.

17 152. As a result of defendants' wrongful conduct, all of the plaintiffs suffered damages as
18 alleged above.

19 153. As a result of defendants' wrongful conduct, and the potential that such conduct will
20 recur, plaintiffs and the class are entitled to relief from the potential that such violations will
21 recur.

22 154. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count
23 pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 82-
24 25 26 27 28

1 90 above. Defendants MANHEIMER, ~~ARMSTRONG~~, HOLMGREN, ~~and~~ WINGATE,
2 **STAYSA, FOX**, and DOE OPD and ACSO supervisors are liable based on supervisory liability
3 as detailed in ¶¶ 82-91 above.

4
5 155. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

6 **COUNT EIGHT – CALIFORNIA BANE ACT**

7 All Plaintiffs Against All Defendants

8 156. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
9 Complaint.

10
11 157. The acts and/or omissions of the defendants, and each of them, individually and/or while
12 acting in concert with one another, constituted interference, and attempted interference, by
13 threats, intimidation, and coercion, with plaintiffs’ peaceable exercise and enjoyment of rights
14 secured by the Constitution and laws of the United States and the State of California, in violation
15 of California Civil Code § 52.1.

16
17 158. As a result of defendants’ wrongful conduct, all of the plaintiffs and damages class
18 members suffered damages as alleged above.

19 159. As a result of defendants’ wrongful conduct, and the potential that such conduct will
20 recur, plaintiffs and the class are entitled to relief from the potential that such violations will
21 recur.

22
23 160. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count based
24 on respondeat superior.

25 161. The violations and harm described herein were proximately caused by defendants
26 MANHEIMER, ~~ARMSTRONG~~, HOLMGREN, WINGATE, AHERN, **STAYA, FOX, and**
27 DOE OPD and ACSO supervisors by showing supervisory indifference or tacit authorization of
28

1 subordinates’ misconduct and abuse of authority while on duty and exercising their authority as a
2 police officer, proximately causing the injuries described above. (*Weaver v. State of California*
3 (1998) 63 Cal.App.4th 188, 209.) Each defendant supervisor had actual or constructive
4 knowledge of defendants’ wrongful conduct; (2) the supervisor’s response was so inadequate as
5 to show ‘deliberate indifference to or tacit authorization of the alleged offensive practices; and
6 (3) the existence of an affirmative causal link has been established between the supervisor’s
7 inaction and plaintiff’s injuries. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1279–1280.)

9 162. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

11 **COUNT NINE – CALIFORNIA RALPH ACT**

12 All Plaintiffs Against All Defendants except CLIFFORD

13 163. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
14 Complaint.

15 164. Plaintiffs are informed and believe that bias against plaintiffs’ perceived political
16 affiliation with the protest against police violence and police racism, and bias against plaintiffs’
17 perceived race, were motivating reasons for the defendants’ above-described misconduct toward
18 them.

19 165. Defendants’ above-described conduct violated plaintiffs’ rights to be free from violence
20 and intimidation by threat of violence because of their actual or perceived political affiliation
21 and/or viewpoint, in violation of California Civil Code § 51.7.

22 166. As a result of defendants’ wrongful conduct, the plaintiffs suffered damages as alleged
23 above.

24 167. As a result of defendants’ wrongful conduct, and the potential that such conduct will
25 recur, the plaintiffs and class are entitled to relief from the potential that such violations will
26
27
28

1 recur.

2 168. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count based
3 on respondeat superior.

4
5 169. The violations and harm described herein were proximately caused by defendants
6 MANHEIMER, ~~ARMSTRONG~~, HOLMGREN, WINGATE, AHERN, STAYSA, FOX, and
7 DOE OPD and ACSO supervisors by showing supervisory indifference or tacit authorization of
8 subordinates' misconduct and abuse of authority while on duty and exercising their authority as a
9 police officer, proximately causing the injuries described above. (*Weaver v. State of California*
10 (1998) 63 Cal.App.4th 188, 209.) Each defendant supervisor had actual or constructive
11 knowledge of defendants' wrongful conduct; (2) the supervisor's response was so inadequate as
12 to show 'deliberate indifference to or tacit authorization of the alleged offensive practices; and
13 (3) the existence of an affirmative causal link has been established between the supervisor's
14 inaction and plaintiff's injuries. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1279–1280.)

15
16
17 170. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

18 **COUNT TEN – ASSAULT AND BATTERY**

19 **All Plaintiffs Against All Defendants except CLIFFORD**

20 171. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
21 Complaint.

22
23 172. Defendants committed assault and battery on each of the plaintiffs, by shooting impact
24 munitions at them and using chemical weapons and other force on them.

25 173. Said acts by defendants and/or each of them were unreasonable and excessive uses of
26 force.

27 174. Plaintiffs did not consent to the use of force against them and were injured thereby.
28

1 175. As a result of defendants’ wrongful conduct, the plaintiffs suffered damages as alleged
2 above.

3 176. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count based
4 on respondeat superior.
5

6 177. The violations and harm described herein were proximately caused by defendants
7 **MANHEIMER, ARMSTRONG, HOLMGREN, WINGATE, AHERN, STAYSA, FOX,**
8 and DOE OPD and ACSO supervisors by showing supervisory indifference or tacit authorization
9 of subordinates’ misconduct and abuse of authority while on duty and exercising their authority
10 as a police officer, proximately causing the injuries described above. (*Weaver v. State of*
11 *California* (1998) 63 Cal.App.4th 188, 209.) Each defendant supervisor had actual or
12 constructive knowledge of defendants’ wrongful conduct; (2) the supervisor’s response was so
13 inadequate as to show ‘deliberate indifference to or tacit authorization of the alleged offensive
14 practices; and (3) the existence of an affirmative causal link has been established between the
15 supervisor’s inaction and plaintiff’s injuries. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260,
16 1279–1280.)
17
18

19 178. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

20 **COUNT ELEVEN – FALSE ARREST AND FALSE IMPRISONMENT**

21 **PLAINTIFF KIERRA BROWN against CITY OF OAKLAND, MANHEIMER, HOLMGREN,**
22 **WINGATE, CLIFFORD and DOES.**
23

24 179. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
25 Complaint.

26 180. Plaintiff KIERRA BROWN and class members were arrested without reasonable
27 suspicion and without probable cause to believe that they had committed any crime.
28

1 181. As a result of defendants’ wrongful conduct, BROWN suffered damages as alleged
2 above.

3 182. As a result of defendants’ wrongful conduct, and the potential that such conduct will
4 recur, BROWN and the class are entitled to relief from the potential that such violations will
5 recur.
6

7 183. The CITY OF OAKLAND is liable under this count based on respondeat superior.

8 184. The violations and harm described herein were proximately caused by defendants
9 MANHEIMER, HOLMGREN, WINGATE, and DOE OPD supervisors by showing supervisory
10 indifference or tacit authorization of subordinates’ misconduct and abuse of authority while on
11 duty and exercising their authority as a police officer, proximately causing the injuries described
12 above. (*Weaver v. State of California* (1998) 63 Cal.App.4th 188, 209.) Each defendant
13 supervisor had actual or constructive knowledge of defendants’ wrongful conduct; (2) the
14 supervisor’s response was so inadequate as to show ‘deliberate indifference to or tacit
15 authorization of the alleged offensive practices; and (3) the existence of an affirmative causal
16 link has been established between the supervisor’s inaction and plaintiff’s injuries. (*Grassilli v.*
17 *Barr* (2006) 142 Cal.App.4th 1260, 1279–1280.)
18
19

20 185. Wherefore, the plaintiffs pray for relief as hereinafter set forth.
21

22 **COUNT TWELVE – NEGLIGENCE**

23 All Plaintiffs Against All Defendants

24 186. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
25 Complaint.

26 187. Defendants, and/or each of them, individually and/or while acting in concert with one
27 another, owed plaintiffs the duty to use reasonable care to avoid causing foreseeable injury and
28

1 damage to plaintiffs during the events described in this Complaint the above-described acts and
2 omissions of defendants breached the duty of care defendants owed to plaintiffs.

3 188. In doing the acts and/or omissions as alleged herein, Defendants and/or each of them,
4 breached said duty to use reasonable care and said breach of duty caused, and/or contributed to
5 the cause, of plaintiffs' injuries and damages as alleged in this Complaint.
6

7 189. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count based
8 on respondeat superior.

9 The violations and harm described herein were proximately caused by defendants
10 MANHEIMER, ~~ARMSTRONG~~, HOLMGREN, WINGATE, AHERN, STAYSA, FOX, and
11 DOE OPD and ACSO supervisors breaching their duties to supervise subordinates, which caused
12 the officers' misconduct and abuse of authority while on duty and exercising their authority as a
13 police officer, proximately causing the injuries described above. Each defendant supervisor had
14 actual or constructive knowledge of other defendants' wrongful conduct or risk thereof; the
15 supervisor's supervision was so inadequate as to show a breach of duty, causing plaintiffs' and
16 class members injuries.
17
18

19 190. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

20 **X. PRAYER FOR RELIEF**

21 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

- 22 1. For an order certifying the class pursuant to Federal Rules of
23 Civil Procedure 23(b)(2);
24
25 2. For preliminary and permanent injunctive relief restraining defendants from engaging in
26 the unlawful and unconstitutional actions complained of above;
27
28 3. For a declaratory judgment that defendants' conduct complained of herein violated

1 plaintiffs' rights under the Constitution and laws of the United States and California;

2 4. For past, present and future general damages for the named individual plaintiffs,
3 including but not limited to, pain, suffering, permanent disfigurement and/or emotional distress
4 to be determined according to proof;

5
6 5. For past, present and future special damages for the named individual plaintiffs,
7 including, but not limited to, medical expenses, lost wages, damage to career and/or other out of
8 pocket losses to be determined according to proof;

9
10 6. For punitive damages against the individual defendants and/or each of them, to be
11 determined according to proof;

12 7. For statutory damages and exemplary damages pursuant to Cal. Civil Code §§ 52 and
13 52.1, to be determined according to proof, and for a \$25,000 civil penalty per violation pursuant
14 to Cal. Civil Code § 52 for each plaintiff;

15 8. For pre- and post-judgment interest as permitted by law;

16
17 9. For attorneys' fees pursuant to 42 U.S.C. § 1988 and Cal. Civil Code §§ 52 and 52.1,
18 and/or other authorities, to be determined according to proof;

19 10. For costs of suit;

20 11. For such other and further relief as the Court may deem just and proper.

21 **XI. CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

22 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
23 named parties, there is no such interest to report.
24

25
26 **XII. JURY TRIAL DEMAND**

27 Plaintiffs demand a jury trial.
28

1 Dated: July 1, 2022

Respectfully submitted,

2

3

/S/ Rachel Lederman
Alexsis C. Beach & Rachel Lederman, Attorneys
Flynn Law Office
Attorneys for plaintiffs

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