

Honorable Marsha Pechman

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiffs,

v.

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

Defendants.

No. C00-1672 P

SECOND AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS

I. NATURE OF THE CASE

1. Plaintiffs and the class they seek to represent assembled in downtown Seattle to exercise their democratic rights during the 1999 World Trade Organization Ministerial. They included people from a wide variety of well-known and non-violent movements and concerns, including consumer groups, environmentalists, labor unions, human rights groups, small farmers, and many other organizations aligned with a particular social issue or those who simply wished to observe this exchange of ideas in a public forum. Plaintiffs and the class sought to exercise their rights of assembly and free speech in a variety of fashions: peaceful protest, the exchange of ideas,

SECOND AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS

- 1 -



HAGENS BERMAN
SOBOL SHAPIRO LLP
1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 silent observation. These rights are the bedrock upon which this country was founded and are
2 among the most precious in our society.

3 2. The World Trade Organization (“WTO”) had come to Seattle with the express
4 approval and encouragement of the City, and in particular its Mayor, Paul Schell. Mayor Schell was
5 determined to showcase Seattle to the watching world.

6 3. After witnessing one day of widespread and active, but largely peaceful protest
7 against the WTO, Mayor Schell and his Chief of Police, Norman Stamper, decided that the City’s
8 image was being jeopardized, as was the vision they had for how the WTO conference should
9 proceed. Mayor Schell and Police Chief Stamper thus conceived and implemented a course of
10 police action that was designed to suppress and stifle any further protest which might hint of
11 unruliness, or reflect badly on the image of Seattle authorities wanted the world to see.

12 4. Thus, Mayor Schell, with the input and assistance of Police Chief Stamper, issued
13 orders and directives aimed at eliminating all demonstrations or “protests” from major portions of
14 downtown Seattle. The policies of Mayor Schell, Police Chief Stamper and the City were intended
15 to create insulated zones inside which no form of unwanted ideological expression would be
16 allowed. These unwanted forms of expression were labeled “protests” and as such were deemed
17 undesirable. Therefore, inside these zones, even the simplest of expressive acts – talking, gathering,
18 and walking – were entirely prohibited by City authorities if exercised by individuals the City
19 deemed undesirable. Reminiscent of what one might expect in repressive societies, all attempts at
20 such activities in these zones, and as it later developed outside those zones as well, were subject to
21 aggressive police harassment and arrest.

22 5. The suppressive “no protest” policies of Mayor Schell, Police Chief Stamper and the
23 City ostensibly empowered their police agents to conduct massive and instantaneous arrests of all
24 individuals who attempted to demonstrate inside, or even physically enter any zone of the City in
25 which such activities were not desired by municipal authorities. These policies eventually became
26



embodied in Local Proclamation of Civil Emergency Order Number 3 (and subsequent revisions) ("Order Number 3").

6. Pursuant to these policies, the defendants engaged in a concerted and illegal effort to stifle free speech and assembly, prohibiting the activities of both ideological protestors and citizens who were just using the streets in the course of their daily lives.

7. This policy of repression included forcible and sometimes violent denials of the rights to assemble, to express ideas, and to petition the government for redress of grievances. It encompassed unreasonable and wrongful seizures of persons and incarceration under inhumane conditions. This course of conduct was summarized in the Seattle City Council's WTO Accountability Review Committee Final Report ("Accountability Report"):

Members of the public, including demonstrators, were victims of ill-conceived and sometimes pointless policy actions to "clear the streets." Police response, particularly on Capitol Hill, was sometimes out of proportion to the threats faced. Our inquiry found troubling examples of seemingly gratuitous assaults on citizens, including use of less-lethal weapons like tear gas, pepper gas, rubber bullets, and "beanbag guns," by officers who seemed motivated more by anger or fear than professional law enforcement.

8. In carrying out its oppressive policy, the City of Seattle hunted, accosted and incarcerated hundreds of individuals who had gathered to speak their minds in a public forum. The City's police agents shot unarmed civilians with rubber pellets. They sprayed peaceful civilians with nerve agents such as tear gas and pepper, forcibly handcuffed them, and in some cases violently beat them with clubs. After summarily arresting as many people as they could, the City's police herded them into cramped jail facilities where they were held for as many as 72 hours – often without adequate food, water or space to lie down. In numerous cases, access to legal counsel was denied to those incarcerated. All of these illegal actions were taken pursuant to the dictates and authority of the City itself, its mayor and its Chief of Police.

9. This suit is brought as a class action on behalf of all the individuals wrongfully arrested pursuant to the City's extensive "no protest" policies – policies which were ultimately



embodied in Order Number 3. It seeks to recover damages for those who, pursuant to City directives, were improperly arrested while inside the City's designated "no protest" zones and who were thus forcibly deprived of their right to free speech and assembly under the First Amendment to the United States Constitution, of their right to speak freely under Article 1, Section 5 of the Washington State Constitution, and of their right to freedom from unreasonable search and seizure under the Fourth Amendment to the United States Constitution. The improper arrests of these individuals violated 42 U.S.C. § 1983 (the Civil Rights Act of 1871).

10. This suit also seeks damages for those individuals who were wrongfully arrested pursuant to the City's "no protest" policies while outside any of the City's actual designated "no protest" zones. These individuals were forcibly deprived of their First Amendment rights to free speech and assembly, and their Article 1, Section 5 right to speak freely. Additionally, these individuals were forcibly deprived of their federal Fourth Amendment right to freedom from unreasonable search and seizure. The improper arrests of these individuals violated 42 U.S.C. § 1983 (the Civil Rights Act of 1871).

II. THE PARTIES

11. Former Plaintiff Robert Hickey is a citizen of the United States and a resident of New York State. He was arrested by police agents of the City of Seattle on December 1, 1999. Mr. Hickey is a member of the Teamsters Union and is currently working on a Ph.D at Cornell University in Labor Relations. He came to Seattle to express his solidarity with the Steelworkers who were engaged in peaceful demonstrations during the WTO. Mr. Hickey's claims have been resolved via settlement, along with the claims of the class he represented.

12. Kenneth Hankin is a citizen of the United States, and a resident of Washington State. He was arrested by police agents of the City of Seattle on December 1, 1999. Mr. Hankin is an advocate of animal rights and environmental concerns. He came to the WTO to exercise his free speech and assembly rights on these and other issues.



1 13. Jennifer Hudziec is a citizen of the United States and a resident of New Hampshire.
2 She was arrested by police agents of the City of Seattle on December 1, 1999. Ms. Hudziec was at
3 the WTO to observe and join in peaceful assembly and speech.

4 14. Stephanie Lane is a citizen of the United States and a resident of New York state.
5 She was arrested by police agents of the City of Seattle on December 1, 1999 and was illegally
6 incarcerated for four days. Ms. Lane is a resident of Illinois and came to Seattle to observe the WTO
7 demonstrations.

8 15. Former Plaintiff Carroll Jackson is a citizen of the United States and a resident of
9 Washington State. She was arrested by police agents of the City of Seattle on December 1, 1999 and
10 was illegally incarcerated for four days. Ms. Jackson is a 64 year old retired school teacher. She
11 was at the WTO to observe and take photographs of the demonstrations. Ms. Jackson's claims have
12 been resolved via settlement, along with the claims of the class she represented.

13 16. Denise Cooper is a citizen of the United States and a resident of Washington State.
14 She was arrested by police agents of the City of Seattle on December 1, 1999 and was illegally
15 incarcerated for four days. Ms. Cooper is a student at the University of Washington. She was at the
16 WTO to voice the concerns of African-Americans and other people of color who are affected by the
17 policies of the WTO.

18 17. Nicole Pearson is a citizen of the United States. She was arrested by police agents of
19 the City of Seattle on December 1, 1999 and was illegally incarcerated for four days. She was at the
20 WTO to voice the concerns of African-Americans and other people of color who are affected by the
21 policies of the WTO.

22 18. Former Plaintiff Emily Maloney is a citizen of the United States and a resident of the
23 State of California. She was arrested by police agents of the City of Seattle on December 1, 1999
24 and was illegally incarcerated for over 40 hours. Ms. Maloney is a 68 year old lawyer and was in
25 Seattle December 1, 1999 to exercise her First Amendment right to protest the policies of the WTO.
26 Her claims were resolved via settlement.

1 19. The City of Seattle is a municipal corporation organized under the laws of the State of
2 Washington. The defendant City includes, as one of its agencies, the Seattle Police Department.

3 20. Paul Schell is, and was at all times pertinent to this suit, the Mayor of the City of
4 Seattle, with overall executive and supervisory responsibility for the acts of defendants described
5 herein. At all times material to this complaint, defendant Schell was an agent and employee of the
6 City of Seattle, and was acting within the scope of his employment and under color of the laws of the
7 State of Washington. The claims against Mr. Schell have been dismissed.

8 21. Norman Stamper was, at all times pertinent to this suit, the Chief of Police of the City
9 of Seattle, with executive and supervisory responsibility for the acts of Seattle police officers during
10 all acts of the defendants described herein. He was responsible for the policies, practices and
11 customs of the Seattle Police Department. He possessed final policy-making and decisional
12 authority regarding issues of law enforcement, discipline and training within the Police Department.
13 At all times material to this complaint, defendant Stamper was an agent and employee of the City of
14 Seattle, and was acting within the scope of his employment and under color of the laws of the State
15 of Washington. The claims against Mr. Stamper have been dismissed.

16 **III. JURISDICTION AND VENUE**

17 22. This Court has jurisdiction over the plaintiffs because they are either residents of the
18 State of Washington or submit to jurisdiction in this forum. The Court has jurisdiction over the
19 defendants because they are residents of the State of Washington. This Court has jurisdiction over
20 the subject matter of the suit pursuant to 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983. The Court has
21 jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1337.

22 23. Venue is proper in the Western District of Washington at Seattle pursuant to 28
23 U.S.C. § 1391(b).

IV. FACTUAL ALLEGATIONS

A. The WTO Comes to Seattle

24. Between November 30, 1999, and December 3, 1999, a ministerial conference of the WTO was held in Seattle, Washington. The WTO is an international policy body that according to its charter promotes global trade. The WTO claims authority to impose economic sanctions upon member nations that are at odds with this objective.

25. The City of Seattle had actively sought to host the WTO's 1999 winter ministerial conference. Mayor Schell considered landing the WTO to be a prize for the city and believed it would add to the city's prestige, as well as his own.

26. On January 25, 1999, after months of behind the scenes solicitation, Mayor Paul Schell announced that the White House had chosen Seattle to be the site of the 1999 WTO Ministerial Conference. Holding the conference in Seattle was portrayed as a coup that would bring millions of dollars in revenues to local business owners. More importantly, hosting the WTO Ministerial Conference would solidify Seattle's reputation as a "world class" city and place us at the hub of international trade. As Mayor Schell noted in an interview with the SEATTLE POST-INTELLIGENCER reported on January 26, 1999, "[W]e'll get advertising through the news media that we couldn't afford to buy." Other leaders called the conference a "phenomenal opportunity to showcase Washington State." Senator Murray observed that the WTO's coming to Seattle was like "winning the jackpot." Mayor Schell shared their sentiments.

27. Mayor Schell was so anxious to host the WTO that he was willing to have the City incur millions in WTO-related expenses because "in terms of furthering the city's role ... this is a huge plus." He was also willing to override downtown merchants' concerns, in the process noting that, "This event is a momentous exciting affair for Seattle" and "speaks to the growing stature of Seattle's place on the world stage."

28. On October 12, 1999, Seattle City Councilwoman Tina Podlowski observed about Schell, "[T]his is all about the Mayor's desire to put on the best possible face for the WTO. All he



1 cares about is the outside show and he doesn't give a damn about people in the neighborhoods." As
2 events would have it, she turned out to be correct.

3 **B. Legitimate, Well-Recognized Groups Express Their Intent to Exercise Rights of Free**
4 **Speech and Assembly in Protest of the WTO**

5 29. Unfortunately for Mayor Schell's Norman Rockwell-like plans, dark clouds (from his
6 perspective) began to form shortly after Seattle was selected as the site of the WTO conference.

7 30. The convening of this conference had, for months, drawn the attention of thousands
8 of citizens and organizations who disagreed with WTO policies, including the Direct Action
9 Network, Public Citizen, the AFL-CIO and its affiliated unions, the Earth Justice Legal Defense
10 Fund, Sierra Club, the International Forum on Globalization, and many other well-known and
11 respected organizations. The opposition to the ministerial conference also included many diverse
12 organizations within the environmental, consumer rights, labor, pro-democracy, and other
13 movements, both in the United States and worldwide. Interested parties even included presidential
14 candidate Ralph Nader.

15 31. This opposition created an organized free speech presence in Seattle from the summer
16 of 1999 through December of that year. Opposition groups sponsored numerous educational
17 conferences and seminars concerning the WTO, many of which resulted in publications of books and
18 journals detailing their view that the WTO's policies and practices were anti-consumer, anti-
19 environmental, and anti-union. There were widely attended and publicized events dealing with the
20 elements and logistics of protest, including a training session on civil disobedience and nonviolent
21 actions conducted by the Direct Action Network. These expressions of public protest and
22 preparations for non-violent demonstrations were well known to City officials and to the Seattle
23 Police Department.

24 32. Through a series of public declarations and press conferences, the opposition to the
25 WTO made clear that its intention was to hold large demonstrations and rallies in downtown Seattle.
26 Some protestors expressed the desire to block delegates' entrance to the WTO conference being held



1 at the Washington Trade Center. The sites where the demonstrators would convene were widely
 2 publicized. In addition, a large labor march was granted a City permit to march from Memorial
 3 Stadium to the Trade Center site, starting at noon on November 30, 1999.

4 **C. Defendants Were on Notice That the Constitution Does Not Permit the Banning of**
 5 **Legitimate Free Speech and Assembly**

6 33. The City, Mayor Schell and Police Chief Stamper knew that WTO demonstrators had
 7 the constitutionally protected right to conduct their planned assemblies, and to voice their opinions
 8 in Seattle's public places. The controversial, passionate, even contentious nature of the WTO did
 9 not afford the City any excuse to limit such activities. Clearly established law regarding public
 10 demonstrations – such as the case of *Collins v. Jordan*, 110 F.3d 1363 (9th Cir. 1996) – mandated
 11 that the City could not act to abbreviate or violate the public's federal First Amendment right of
 12 expression because of a prospective fear regarding potentially unruly activity. Long standing
 13 precedent, *e.g. Bering v. Share*, 106 Wash.2d 212, 721 P.2d 918 (1986), dictated that the public's
 14 right to speak freely under Article 1, Section 5 of the Washington Constitution was even more
 15 expansive than their federal rights to freedom of expression.

16 34. Clearly established law also informed the City that it could not place any general or
 17 blanket limitations on the public's right to lawful protest even if some instances of illegal or
 18 destructive conduct did occur during the anticipated demonstrations. Authority such as *Collins* and
 19 *Bering* clearly determined that such general restrictions would be fatally overbroad, unconstitutional
 20 and unreasonable.

21 35. Further, decades of well established constitutional law prohibits the City from picking
 22 and choosing, based on the content or form of speech or assembly, which citizens may exercise their
 23 constitutional rights of speech and assembly.

24 36. Based on well known legal precepts, the City, Mayor Schell and Police Chief
 25 Stamper well knew that the only limitations they could properly impose on demonstrators were those
 26

1 which were carefully tailored to prevent illegal behavior while simultaneously allowing the
2 continued expression of lawful speech.

3 **D. Lawful and Peaceful Assembly and Protest Take Place on November 30, 1999**

4 37. By 7:00 a.m. on November 30, 1999, the first day of the WTO ministerial, groups of
5 political protesters had gathered and organized themselves outside the hotels where out-of-town
6 delegates were staying. Other demonstrators filled the streets around these hotels and around the
7 Trade Center, carrying signs, chanting slogans, and passing out leaflets.

8 38. The Seattle Police Department commissioned numerous Metro buses that were used
9 to encircle the Trade Center and establish a perimeter beyond which protestors could not advance.
10 This tactic was successful in keeping the public away from the WTO's meeting place, however it
11 apparently did not result in enough perceived crowd control to satisfy City authorities. Then, early
12 in the day on November 30, 1999, City police agents began liberally employing pepper spray, tear
13 gas and rubber pellets against demonstrators in an attempt to remove them entirely from the streets
14 of downtown Seattle.

15 39. For understandable reasons, Mayor Schell and the City refrained from imposing any
16 state of emergency or "no protest" zones on the afternoon of November 30. They knew that the
17 officially scheduled and sanctioned labor march was unavoidably bringing numerous families –
18 including young children – and recognizable citizens into the downtown area. Indeed, Seattle's
19 Deputy Mayor Tom Byers was part of that march. Consequently, the City limited its crowd control
20 efforts to piecemeal and often uncoordinated use of pepper spray, tear gas, and other weapons-
21 oriented methods on first day of the WTO conference. In spite of these pain-inflicting activities,
22 numerous protests and political demonstrations took place in the heart of the City streets. Although
23 not treated as such, these lawful forms of expression were almost entirely peaceable and restricted to
24 passive civil disobedience. Several isolated instances of destructive behavior did occur on the
25 fringes of larger ideological gatherings. Yet although the few perpetrators of such detrimental
26



1 behavior were often known to, and even witnessed by, the City and its police agents, no action was
2 taken by any City authority to impede or contain them.

3 **E. Institution of Curfew Zones and a No Protest Policy**

4 40. By the evening of November 30, 1999, Mayor Schell and the City had decided that
5 their attempts to stunt the protests were not achieving their desired effects. If anything, the number
6 of people who planned to speak and assemble appeared to be growing. With a growing appreciation
7 of their inadequate preparations for the WTO events, the City, Mayor Schell and Police Chief
8 Stamper declared a State of Civil Emergency in the evening of November 30, 1999. First, a general
9 nightlong curfew was imposed on the downtown area. Then, in an ever-escalating series of
10 restrictions, the City, Mayor Schell and Police Chief Stamper began to dictate various policies and
11 orders that would authorize the mass arrests of anyone perceived to be protesting – peacefully or
12 otherwise – in the downtown area after the lifting of the general curfew. In fact, these directives and
13 orders mandated the arrest of anyone who, without proper credentials, even ventured into the
14 downtown core.

15 41. Thus, for the first time in the city's history, peaceful protestors or citizens wishing to
16 use the streets, were subject to arrest merely for being present in a public place. A radio exchange
17 showed that even some members of the Seattle police department were often surprised by the import
18 of the City's policies and orders:

19 Let me get this straight [officer on the radio] we're just supposed to
20 arrest all protestors?

21 That's affirmative.

22 42. The defendants' directives and orders creating these "no protest" and/or curfew zones
23 were unconstitutional on their face. They were designed to deprive the plaintiffs, Class members
24 and public at large of their federal First Amendment right to free speech and assembly, as well as
25 their Washington State Constitutional right to speak freely. They were, in effect, content-based and
26 discriminatory restrictions aimed at denying specific individuals their lawfully guaranteed freedoms



1 of expression. They were also unconstitutional as applied. As applied, they were directed at
 2 individuals who were lawfully gathered to exercise protected freedoms.

3 43. The City, Mayor Schell, and Police Chief Stamper elected to enforce their restrictions
 4 on free speech and assembly by using disruptive and painful "crowd control" measures such as
 5 rubber pellets, pellet grenades, tear gas and pepper spray.¹ These measures were employed by the
 6 City in a manner which unfairly punished peaceful demonstration, failed to curtail destructive
 7 behavior, and did not foster general conditions of public safety in the downtown Seattle area.

8 44. On December 1, 1999, Mayor Schell's and the City's "no protest" policies and
 9 directives culminated in the issuance of Local Proclamation of Civil Emergency Order Number 3
 10 (and subsequent revisions) ("Order Number 3"). The provisions of Order Number 3 embodied the
 11 City's official policy of banning the general public from gathering in, or even from entering, an area
 12 of approximately 24 city blocks in downtown Seattle described as: "Starting on the corner of 4th
 13 Avenue and Lenora Street, then proceeding south on 4th Avenue to Seneca Street, then east on
 14 Seneca Street to the I-5 freeway, then north along the I-5 freeway to Boren Avenue, then north on
 15 Boren Avenue to Pine Street, then west on Pine Street to 6th Avenue, then north on 6th Avenue to
 16 Lenora Street, then west on Lenora Street to, and concluding at [sic] 4th Avenue and Lenora."

17 45. This restricted area, which came to be the best known of the City's "no protest"
 18 zones, included the Washington State Convention Center, which was the hub of all WTO activity in
 19 Seattle. The area also incorporated Westlake Plaza, numerous hotels, much of the retail-shopping
 20 core of the city, and many other public areas in which peaceful political demonstrations had been
 21 held prior to the issuance of Order Number 3. The blanket speech, assembly and physical presence
 22 restrictions imposed by Order Number 3 were declared to be effective until 12:00 a.m. on
 23

24 ¹ Pepper spray – also called "OC," in reference to its active ingredient: oleoresin capsicum – is a projectile
 25 substance derived from cayenne peppers. The chemical agents in oleoresin capsicum produce sensations of heat and
 26 burning on human nerve-endings, in particular those located in the eyes, nose and mouth. The intensity of this burning is
 measured along a scale known as the Scoville heat unit rating. One to three Scoville units are detectable by the tongue as
 a level of heat. The pepper spray used by police in Seattle – the strongest and purest available – contained 10 – 15%
 oleoresin capsicum extract, with a Scoville rating of 1.5 to 2 million units. *Hawken, Paul, "On the Streets of Seattle,"*
The Amicus Journal, Spring 2000, p.29, 2000.



1 December 2, 1999. Following this expiration date and time, Order Number 3 was revised and
 2 extended to 12:00 a.m. on December 3, 1999.

3 46. Like the City's other "no protest" directives which had preceded it, Order Number 3
 4 authorized law enforcement agents to arrest and summarily incarcerate any member of the general
 5 public who entered specified areas of downtown for any reason – including the expression of
 6 political ideas or the exchange of constitutionally protected speech. The only individuals exempted
 7 from this order were credentialed WTO personnel, law enforcement officials, members of the press,
 8 and residents (both commercial and domestic) of the restricted downtown area. The "credential"
 9 exception to Order Number 3 provided:

10 No person shall entered or remain in a public place as defined in SMC
 11 15.02.046C within the above described limited curfew area except the
 12 following: Delegates and personnel authorized by the WTO to
 13 participate in official WTO functions; Employees and owners of
 14 businesses within the limited curfew area and other personnel
 necessary to the operation of those businesses; Persons who reside
 within the limited curfew area; Representatives of the press with
 proper credentials; City officials with valid identification, and;
 Emergency and public safety personnel.

15 47. Thus, Order No. 3 made it legal for one group of people to exercise their rights of
 16 expression, but not others. WTO delegates were free to move about in the "no protest" zone, as
 17 were credentialed press, while peaceful law abiding citizens, whether protesting or not, were
 18 prohibited from assembly or speech.

19 48. On December 1 and 2, 1999, in accordance with the City's "no protest" policies and
 20 even before the effective commencement of Order Number 3, numerous groups of peaceful
 21 individuals were accosted and arrested by City police agents merely for attempting to express their
 22 opinions of the WTO, or by offering silent support to those who were expressing their opinion.
 23 Many more people were waylaid and arrested by police for nothing more than being physically
 24 present in the City's targeted sections of the downtown area. All of these individuals were
 25 confronted by armed City police agents who forcibly detained them, stifled their efforts of
 26 expression, subdued them with painful crowd control weapons, searched their persons and



1 belongings, and transported them to incarceration facilities for long periods of holding. In almost no
 2 case did the individuals detained in this manner offer any resistance to the City's police agents. At
 3 Second Avenue and Pine Street marchers were chanting "peaceful protest" when police attacked
 4 them with rounds of tear gas, rubber pellets and concussion bombs. Many officers, against Seattle
 5 Police Department policy, actually masked their identification so they could attack protestors with
 6 anonymity.



16 Riot police spray peaceful protestors with pepper spray.

17 49. Although the City's Order Number 3 ostensibly designated very specific zones as
 18 being subject to speech restrictions, the City often chose to stifle all expression and demonstration in
 19 a much more expansive area. With the consent of the Mayor and Chief of Police, citizens and
 20 visitors were consequently arrested pursuant to City "no protest" policies and directives even though
 21 they were actually outside any designated "no protest" zone. In all cases, these people were
 22 subjected to the liberal use of crowd control weaponry, searches and seizures of their person, and
 23 lengthy incarceration. Such weaponry included tear gas, rubber pellets and pepper spray.

24 50. For example, on the morning and afternoon of December 1, 1999, pursuant to a
 25 permit issued by the City of Seattle itself, members and supporters of a steelworkers union were
 26 allowed to participate in a political march which occurred well outside the designated no protest

1 zone. After the march terminated near the Seattle waterfront, many of the participants began making
 2 their way back toward the demonstration's starting point by angling east, in the general direction of
 3 the downtown core. As one large group neared the location of 1st Avenue and Pike Street, the City
 4 of Seattle's police agents confronted it and used painful crowd control weapons such as pepper spray
 5 and rubber pellets to stop its progress. Importantly, at all times that such force was used, the group
 6 of protesters was well outside the no protest zone of Order Number 3.

7 51. After stopping the protestors, the City's police agents employed more crowd control
 8 weapons to herd them northward along 1st Avenue for approximately one mile, in a direction that
 9 took them even further away from the no protest zone. The demonstrators were ultimately forced
 10 into a second group of City police agents, who had been pre-positioned to block their path. Finding
 11 their progress impeded in all directions, the protestors could do nothing but remain frozen in an area
 12 around the intersection of 1st Avenue and Clay Street. Yet once they had ceased moving, the City's
 13 police agents moved in and forcibly arrested the protestors for ostensibly failing to "clear" the street
 14 "in accordance with Mayor [sic] order." The area of all these protestors' arrest was well outside any
 15 of the City's "no protest" zones. Numerous other individuals were also arrested at locations outside
 16 of any declared "no protest" zone. The police dragnet was so broad that even WTO delegates were
 17 captured. As reported in the Seattle P.I. on December 2, 1999, the City's police agents dragged
 18 away Mr. Victor Menotti, a delegate from San Francisco who was peacefully discussing
 19 environmental issues with a group of protestors. Observers reported that he was "arrested in mid-
 20 sentence."

21 52. On other occasions, the police force, using tear gas, rubber pellets, spray and crowd-
 22 control methods, drove protestors out of downtown Seattle and arrested others, even though they
 23 were outside the curfew area established by Order 3.

24 **F. Allegations Specific to Former Plaintiff Hickey**

25 53. Former Plaintiff Robert Hickey took part in a peaceful, municipally licensed, police-
 26 sanctioned demonstration organized by the Teamsters and Steelworkers unions on December 1,



1 1999. As part of this demonstration, thousands of people marched down to a rally on the Seattle
 2 waterfront, where a series of speeches about WTO policies were delivered. After this march and
 3 rally had concluded, many of the participants began making their way toward the downtown area of
 4 the City. Former Plaintiff Hickey was among these individuals, all of whom were peaceful and well-
 5 behaved.

6 54. Near the intersection of First Avenue and Broad Street, Hickey left the group of rally
 7 participants and entered the Labor Temple at that location. Hickey used a telephone inside the Labor
 8 Temple to make several personal calls, then returned to the streets. Outside, Hickey met an
 9 acquaintance who informed him that many of the participants from the labor rally were currently
 10 being accosted and detained by police forces near the intersection of First Avenue and Clay Street.
 11 Out of solidarity, Hickey hurried to this location, where he observed a cordon of riot police forces in
 12 the process of surrounding a large group of peaceful individuals.



23 Riot police use tear gas to disperse crowd.

24 55. Hickey attempted to cross the police lines in order to join the besieged demonstrators.
 25 The police allowed him to do so. From several members of the crowd, Hickey learned that as the
 26 rally participants had moved east, away from the waterfront, armored City police agents had

1 suddenly assembled to block their way. Without issuing any instructions or communications to the
 2 demonstrators, these agents had then begun to discharge projectile weapons and tear gas at them.
 3 The demonstrators had retreated from the police, using both chants and gestures to indicate their
 4 peaceful intentions. Police agents had pursued the demonstrators, herding them away from
 5 downtown. Other police agents had blocked side streets so as to insure that the demonstrators could
 6 proceed in only one direction.

7 56. While Hickey spoke with other rally participants, police agents gave the crowd a
 8 vague order to "disperse." However, both during and after the delivery of this dispersal order, police
 9 kept the demonstrators encircled and did not provide them with any means of leaving the area.
 10 Some individuals who actually tried to depart, including Hickey, were actively prevented from doing
 11 so. Many of these people were even targeted with tear gas and concussion devices to prevent any
 12 movement.

13 57. Police then arrested all of the surrounded demonstrators, including Hickey. Hickey
 14 was handcuffed and loaded onto a transport that took him to Sandpoint Naval Station for processing.
 15 At no point did Hickey offer any resistance to these police actions. He was never read his rights by
 16 any police agent, or informed of the charges on which his arrest was predicated.

17 58. After being arrested, Hickey was held in custody by the Seattle Police and its agents
 18 for approximately 72 hours before being released. At no time during his custodial incarceration was
 19 Hickey ever informed of the charges brought against him.

20 59. All charges against Hickey were later withdrawn by the City of Seattle without a trial
 21 on the merits.

22 **G. Allegations Specific to Plaintiff Hankin and Which Are Common to Members of the**
 23 **Class**

24 60. Plaintiff Kenneth Hankin took part in a peaceful demonstration that began in Denny
 25 Park on the morning of December 1, 1999. Hankin and other non-violent protestors marched toward
 26 downtown Seattle, singing songs, playing music and chanting ideological slogans concerning the



1 WTO. Many in the crowd with him repeated the words “peaceful protest” as they advanced. No
2 acts of violence could be observed in the area.

3 61. At some time near 9:00 a.m., the demonstration involving Hankin was stopped by
4 City police forces at the public square near Westlake Center, in the City’s commercial district.
5 Police agents wearing riot armor and others mounted on horses surrounded the demonstrators and
6 prevented their further progress in any direction. At this point, many of the demonstrators sat on the
7 ground to communicate their non-violent intentions.

8 62. The City’s police agents then informed the demonstrators that any individuals sitting
9 down would be summarily arrested. The Police stated that those persons who did not wish to be
10 arrested should remove themselves to a building front on one side of the public square. Not wanting
11 to be arrested, plaintiff Hankin walked over to stand in the indicated area.

12 63. Police agents proceeded to arrest all of the non-violent protestors who remained
13 seated in the public square, often using pain and “compliance” holds on individuals who offered
14 them no resistance. After placing all of these demonstrators on buses for transport to incarceration
15 facilities, police agents then arrested all of the individuals who had placed themselves in the “non-
16 arrest” area pursuant to prior police instructions.



Protestors being arrested at Westlake Center.

64. Plaintiff Hankin was arrested by Seattle Police agents at this time, handcuffed and placed on a bus for transport to an incarceration and processing facility at the Sandpoint Naval Station. Plaintiff Hankin offered no resistance to any police action. He was never read his rights by any police agent, or informed of the charges on which his arrest was predicated.

65. After being arrested, plaintiff Hankin was held in custody by the Seattle Police and its agents for approximately 60 hours before being released. At no time during his custodial incarceration was plaintiff Hankin ever informed of the charges brought against him.

66. All charges against plaintiff Hankin were later dismissed by the City of Seattle without a hearing.

H. Allegations Specific to Plaintiff Hudziec and Which Are Common To Members of the Class

67. Plaintiff Jennifer Hudziec took part in the peaceful demonstration that began in Denny Park on the morning of December 1, 1999. Hudziec marched with those who sang and chanted their ideas concerning the WTO. One of the demonstrators played accompanying music on a flute, others including Ms. Hudziec were singing the national anthem.

68. At some time around 9:00 a.m., the demonstration involving Hudziec was stopped by Seattle Police forces at the public square near Westlake Center. Seattle Police agents then informed the demonstrators that any individuals who did not remove themselves to one side of the square would be summarily arrested. The Police stated that those persons who did not wish to be arrested should proceed to a designated building front. Making what she considered to be one of the most difficult decisions of her life, but not wanting to be arrested, plaintiff Hudziec followed the police's directives and walked over to stand in the indicated area. She believed that by doing so she would not be arrested.

69. Police agents arrested all of the non-violent protestors who remained in the middle of the public square. The Police then began arresting all of the individuals who had purposely placed themselves in the "non-arrest" area, pursuant to prior police instructions. Plaintiff Hudziec was thus arrested by Seattle Police agents at this time, handcuffed and placed on a bus for transport to an incarceration and processing facility at the Sandpoint Naval Station. Plaintiff Hudziec offered no resistance to any police action. She was never read her rights by any police agent, or informed of the charges on which her arrest was predicated and was denied for hours the right to speak to a lawyer in private. After the media left the area, the bus she was on was taken behind the Naval Station whereupon Seattle Police began pepper spraying people on the bus and forcibly removed others. All of this was purposely done outside the presence of the media.

70. After being taken off the bus, she was shackled by handcuffs and a waist cuff, and transported to King County Jail. She was arrested on a Wednesday night and was not informed of the charges against her until before her arraignment on Friday.

71. All charges against plaintiff Hudziec were later dismissed by the City of Seattle without a hearing.

I. Allegations Specific to Plaintiff Lane and Which Are Common to Members of the Class

72. Plaintiff Stephanie Lane, like plaintiffs Hankin and Hudziec, took part in the peaceful demonstration that began in Denny Park on the morning of December 1, 1999.



1 73. Plaintiff Lane was with this demonstration when it was stopped by Seattle Police
2 forces at the public square near Westlake Center, in the City's commercial district. At the time it
3 was stopped, there were no acts of violence associated with this march.

4 74. Plaintiff Lane was among those individuals who did not want to be arrested.

5 75. However, plaintiff Lane was nonetheless arrested by Seattle Police agents, who
6 handcuffed her and placed her on a bus for transport to an incarceration and processing facility. At
7 no time did plaintiff Lane offer any resistance to police action. She was never read her rights by any
8 police agent.

9 76. After being arrested, plaintiff Lane was held in custody by the Seattle Police and its
10 agents for over 48 hours before being released.

11 77. All charges against plaintiff Lane were later dismissed by the City of Seattle without
12 a hearing.

13 **J. Allegations Specific to Former Plaintiff Jackson**

14 78. Former Plaintiff Carroll Jackson was observing the march in which Robert Hickey
15 participated, described above. Jackson had participated in marches earlier in the week, and she had
16 taken her camera downtown on December 1, 1999 to take photographs of the demonstrations. She
17 observed the City's police agents drive the demonstration of which Hickey was a part. After the
18 police agents had driven those demonstrators far north of the "no protest zone", Jackson was taking
19 photographs of the demonstrators. At that point, she was ordered to move across the street, and she
20 was then ordered to sit down with a group of demonstrators.

21 79. The police then ordered Jackson's group of demonstrators to join a larger group of
22 demonstrators. Police then arrested all of the surrounded demonstrators, including Jackson. Jackson
23 was handcuffed and loaded onto a transport that took her to Sandpoint Naval Station for processing.
24 At no point did Jackson offer any resistance to these police actions.

1 80. After being arrested, Jackson was held in custody by the Seattle Police and its agents
2 for more than four full days before being released. She was incarcerated for more than 72 hours
3 before she was arraigned. She was never read her rights.

4 81. All charges against Jackson were later withdrawn by the City of Seattle without a trial
5 on the merits.

6 **K. Allegations Specific to Plaintiff Cooper and Which are Common to Members of the**
7 **Class**

8 82. Plaintiff Cooper joined the march that had begun in Denny Park on the morning of
9 December 1, 1999. This was the same march in which plaintiffs Hankin, Hudziec and Lane, took
10 part.

11 83. Plaintiff Cooper was with this demonstration when it was stopped by Seattle Police
12 forces at the public square near Westlake Center, in the City's commercial district. At the time it
13 was stopped, there were no acts of violence associated with this march.

14 84. Plaintiff Cooper was among those individuals who did not want to be arrested. She
15 thus followed the police's directives to stand in an indicated "non-arrest" area and await further
16 instructions.

17 85. However, plaintiff Cooper was nonetheless arrested by Seattle Police agents, who
18 handcuffed her and placed her on a bus for transport to an incarceration and processing facility. At
19 no time did plaintiff Cooper offer any resistance to police action. After being arrested, plaintiff
20 Cooper was held in custody by the Seattle Police and its agents for more than four days before being
21 released.

22 86. All charges against plaintiff Cooper were later dismissed by the City of Seattle
23 without a hearing.

L. Allegations of Plaintiff Pearson Which are Common to the Members of the Class.

87. Plaintiff Pearson joined the march that had begun in Denny Park on the morning of December 1, 1999. This was the same march in which plaintiffs Hankin, Hudziec, Lane and Cooper, took part.

88. Plaintiff Pearson was with this demonstration when it was stopped by Seattle Police forces at the public square near Westlake Center, in the City's commercial district. At the time it was stopped, there were no acts of violence associated with this march.

89. Plaintiff Pearson was among those individuals who did not want to be arrested. She thus followed the police's directives to stand in an indicated "non-arrest" area and await further instructions.

90. However, plaintiff Pearson was nonetheless arrested by Seattle Police agents, who handcuffed her and placed her on a bus for transport to an incarceration and processing facility. At no time did plaintiff Pearson offer any resistance to police action. After being arrested, plaintiff Pearson was held in custody by the Seattle Police and its agents for more than four days before being released.

91. All charges against plaintiff Pearson were later dismissed by the City of Seattle without a hearing.

M. Allegations of Former Plaintiff Maloney

92. Former Plaintiff Emily Maloney took part in a peaceful demonstration that began in Denny Park on the morning of December 1, 1999. Maloney and other non-violent protestors marched toward downtown Seattle, singing songs, playing music and chanting ideological slogans concerning the WTO. Many in the crowd with her repeated the words "peaceful protest" as they advanced. No acts of violence could be observed in the area.

93. Maloney continued marching toward downtown Seattle with this group, and turned onto 8th Avenue. When the group approached the vicinity of 8th Avenue and Blanchard Street, a police line formed to block their path. The crowd remained peaceful. No acts of violence could be



1 observed. Then, without warning, the police began arresting the group. Maloney was among those
2 arrested.

3 94. The Seattle Police agents handcuffed Maloney and placed her on a bus for transport
4 to an incarceration and processing facility. At no time did Maloney offer any resistance to police
5 action. Nevertheless, the police placed the handcuffs so tight on her wrists that they started to bleed.
6 Despite the fact that Maloney is a sixty-eight year old woman, despite the fact that the police had
7 inflicted this pain upon her, and despite the cries for help by her and others, the police made no
8 attempt to loosen her handcuffs for several hours. Worse, she was illegally incarcerated for 36 hours
9 before she was given anything to eat.

10 95. Maloney was held in custody by the Seattle Police and its agents for over 40 hours
11 before being released.

12 96. All charges against Maloney were later dismissed by the City of Seattle without a
13 hearing.

14 **N. The Impact of the Defendants' Policies**

15 97. The impact of defendants' policy and orders as created and then implemented was
16 far-reaching and included, but was not limited to:

17 (a) Plaintiff and members of the class were prohibited from peaceful free speech
18 and assembly;

19 (b) Free speech and assembly was chilled, not just for plaintiffs and members of
20 the class, but for thousands of others who were considering lawful free speech and assembly,
21 but who were dissuaded from doing so by defendants' policies;

22 (c) Plaintiffs and members of the class experienced well-founded fear and anxiety
23 as their free speech rights were quashed by an aggressive, armed police force;

24 (d) Plaintiffs and members of the class had to endure arrest, including being
25 handcuffed and forced onto buses and jails against their will;
26



(e) Plaintiffs and members of the class had to suffer the indignity and burden of being jailed for exercising their constitutional rights; and

(f) Plaintiffs and members of the class each experienced distress and physical discomfort both from the deprivation of their civil rights and their physical treatment.

98. The foregoing impacts are common to plaintiffs and members of the class.

V. CLASS ACTION ALLEGATIONS

99. Plaintiffs originally brought this action individually and as a class action on behalf of the Class defined as follows ("the Original Class"):

All persons who were arrested by the City of Seattle and its police agents or its affiliated police agents on December 1 and 2, 1999, pursuant to the defendants' "no protest" policies and directives which were eventually embodied by the City of Seattle's Local Proclamation of Civil Emergency Order Number 3 (and subsequent revisions) and who were subsequently not convicted of any crime. Included in this class are all persons arrested pursuant to such policies both inside and outside the zone established by Order Number 3.

On January 25, 2002, the Court denied certification of this Class. On November 5, 2002, the Court certified the following Class:

All individuals arrested on December 1, 1999, at or near the intersections of First Avenue and Broad Street or First Avenue and Clay Street in Seattle, Washington, whose arrest records indicate that a reason for arrest was a violation of Seattle Municipal Code § 12A.26.040.

The claims of this Class (the "First and Broad Class") were settled and dismissed in 2004 following notice to the First and Broad Class and final approval of the Court. Following a reversal of the January 25, 2002, denial of class certification by the Ninth Circuit Court of Appeals, Plaintiffs now seek certification of the following Class (referred to herein as "the Class"):

All individuals arrested on the morning of December 1, 1999, in Seattle, Washington, in Westlake Park or the streets or sidewalks immediately adjacent to Westlake Park.

1 100. This action is brought and may properly be maintained as a class action pursuant to
2 Federal Rule of Civil Procedure 23(b)(1) and (b)(3). The action satisfies the numerosity, typicality,
3 adequacy, commonality, predominance and superiority requirements of those provisions.

4 101. The Class is so numerous that the individual joinder of all of its members is
5 impracticable. While the exact number of Class members is unknown to plaintiffs at this time and
6 can only be ascertained through appropriate discovery, plaintiffs are informed and believe that the
7 Class includes approximately two hundred members whose identities can be easily ascertained from
8 City records.

9 102. Common questions of fact and law exist as to all members of the Class which
10 predominate over any questions affecting individual members of the Class. These common legal
11 and factual questions, which do not vary from Class member to Class member, and which may be
12 determined without reference to the individual circumstances of any Class member, include but are
13 not limited to the following:

14 (a) whether the defendants' policies and directives which were ultimately
15 embodied by Local Proclamation of Civil Emergency Order Number 3 (and subsequent revisions) of
16 the City of Seattle, and which attempted to create extensive curfew zones, or "no protest" zones,
17 throughout the City's downtown area, violated the First Amendment of the United States
18 Constitution, and Article 1, Section 5 of the Washington State Constitution;

19 (b) whether the arrests of plaintiffs and the Class while physically within one of
20 the City's declared curfew zones or "no protest" zones violated the federal First and Fourth
21 Amendment rights of plaintiffs and the Class;

22 (c) whether the arrests of plaintiffs and the Class while physically within one of
23 the City's declared curfew zones or "no protest" zones violated the rights of plaintiffs and the Class
24 guaranteed under Article 1, Section 5 of the Washington State Constitution;



1 (d) whether, pursuant to 42 U.S.C. § 1983, plaintiffs and the Class are entitled to
 2 an award of compensatory damages resulting from the violation of their federal First Amendment
 3 rights by the City of Seattle;

4 (e) whether, pursuant to 42 U.S.C. § 1983, plaintiffs and the Class are entitled to
 5 an award of punitive damages resulting from the violation of their federal First Amendment rights;

6 (f) whether, pursuant to 42 U.S.C. § 1983, plaintiffs and the Class are entitled to
 7 an award of compensatory damages from the City resulting from the violation of their federal Fourth
 8 Amendment rights by the City of Seattle;

9 (g) whether pursuant to Article 1, Section 5 of the Washington State Constitution
 10 plaintiffs and the Class are entitled to an award of compensatory damages from the City for the
 11 violation of their guaranteed rights to speak freely.

12 103. Plaintiffs' claims are typical of the claims of the members of the Class, and the
 13 representative plaintiffs interests are coincident with and not antagonistic to those of the other Class
 14 members they seek to represent. Plaintiffs and all members of the Class have sustained damages
 15 from defendants' common course of conduct as complained of herein. The damages of each
 16 member of the Class were caused directly by defendants' wrongful conduct.

17 104. Plaintiffs will fairly and adequately protect the interests of the members of the Class.
 18 Plaintiffs have retained attorneys experienced in the prosecution of class actions, and plaintiffs
 19 intend to prosecute this action vigorously.

20 105. A class action is superior to other available methods for the fair and efficient
 21 adjudication of this controversy. Individual Class members do not have a cognizable interest in
 22 individually controlling the prosecution of separate actions. Given the relatively small amount of
 23 any potential damage awards attributable to each Class member, it would be impractical for them to
 24 pursue separate suits. Such suits would also be unduly burdensome to the courts in which they
 25 would proceed. Moreover, individualized litigation would present the potential for varying,
 26

1 inconsistent, or contradictory judgments and would magnify the delay and expenses to all parties and
2 to the court system resulting from multiple trials of the same factual and legal issues.

3 106. Owing to the predominance of common issues among Class members, as well as the
4 availability of adequate records regarding Class membership, the conduct of this litigation as a class
5 action will encounter no significant manageability obstacles.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Federal Civil Rights – Declaration of Unconstitutionality)**

8 107. Plaintiffs, individually and on behalf of the Class, incorporate the preceding
9 paragraphs as though fully set forth herein.

10 108. The actions of the City of Seattle in formulating, issuing and causing to be effectuated
11 the curfew and “no protest” policies and directives, which were ultimately embodied by Order
12 Number 3, were taken under color of state law. These policies, directives and Order Number 3
13 represented the official policy of the City of Seattle and were implemented by the City’s police
14 force.

15 109. These policies and Order Number 3 were unconstitutional as enacted, and as applied,
16 in that they restricted peaceful free speech and assembly based on its content, protecting certain
17 forms of speech and assembly (for example, that of WTO delegates) while prohibiting the free
18 speech of others who were engaging in “unwanted” forms of speech or expression. These policies
19 and orders were also unconstitutional as applied in that they restricted lawful, peaceful free speech
20 and assembly based on its content. The policies therefore violated plaintiffs’ and the Class’s federal
21 constitutional rights under the First Amendment.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of Washington State Civil Rights – Declaration of Unconstitutionality)**

24 110. Plaintiffs, individually and on behalf of the Class, incorporate the preceding
25 paragraphs as though fully set forth herein.
26



111. The actions of the City of Seattle in formulating, issuing and causing to be effectuated the curfew and “no protest” policies and directives which were ultimately embodied by Local Proclamation of Civil Emergency Order Number 3 were taken under color of state law. These policies and Order Number 3 represented the official policy of the City of Seattle and were implemented by the City’s police force.

112. The restrictions on physical presence, assembly and expression incorporated in defendants’ curfew and “no protest” policies and directives – which included Order Number 3 – violated plaintiffs’ and the Class’s rights under Article 1, Section 5 of the Washington State Constitution.

THIRD CAUSE OF ACTION

(Violation of Federal Civil Rights – Damages)

113. Plaintiffs, individually and on behalf the Class, incorporate the preceding paragraphs as though fully set forth herein.

114. The actions of the City of Seattle in formulating, issuing and causing to be effectuated the curfew and “no protest” policies and directives which were ultimately embodied by Order Number 3 were taken under color of state law. These policies, directives and Order Number 3 represented the official policy of the City of Seattle and were implemented by the City’s police force.

115. The mass arrests of plaintiffs and Class members while physically inside one of the defendants’ designated curfew or “no protest” zones violated their rights under the First and Fourth Amendments to the United States Constitution. Pursuant to 42 U.S.C. § 1983, the defendants are therefore liable for all of plaintiffs’ and Class members’ damages which proximately resulted therefrom. 115. The mass arrests of plaintiffs and Class members while physically outside one of the defendants’ designated curfew or “no protest” zones violated their federal constitutional rights under the First and Fourth Amendments to the United States Constitution. Pursuant to 42 U.S.C. §



1 1983, the defendants are therefore liable for all of plaintiffs' and Class members' damages which
 2 proximately resulted therefrom.

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of State Civil Rights – Damages)**

5 116. Plaintiffs, individually and on behalf the Class, incorporate the preceding paragraphs
 6 as though fully set forth herein.

7 117. The actions of defendants the City of Seattle in formulating, issuing and causing to be
 8 effectuated the curfew and “no protest” policies and directives which were ultimately embodied by
 9 Order Number 3 were taken under color of state law. These policies, directives and Order Number 3
 10 represented the official policy of the City of Seattle and were implemented by the City’s police
 11 force.

12 118. The mass arrests of plaintiffs and Class members pursuant to the defendants’ curfew
 13 and “no protest” policies, directives and Order Number 3 violated their rights to speak freely
 14 guaranteed by Article 1, Section 5 of the Washington State Constitution. Pursuant to this article and
 15 section of the constitution, the defendants are therefore liable for all of plaintiffs’ and Class
 16 members’ damages which proximately resulted therefrom, including the denial of the right to speak
 17 freely and the arrests and incarcerations associated with such denial.

18 **VI. JURY DEMAND**

19 119. Pursuant to Federal Rule of Civil Procedure 38, a jury trial is demanded on all causes
 20 of action alleged in the Complaint.

21 **VII. PRAYER FOR RELIEF**

22 120. Plaintiffs, on behalf of themselves and the Class, pray for the following relief:

23 A. Declaratory relief specifying that the defendants’ policies and directives
 24 which were intended to establish extensive curfew or “no protest” zones – and which included Local
 25 Proclamation of Civil Emergency Order Number 3 (and subsequent revisions) – violated the First
 26

1 Amendment of the United States Constitution, as well as Article 1, Section 5 of the Washington
2 State Constitution;

3 B. Declaratory Relief specifying that the defendants' arrest of individuals, both
4 inside and outside the "no protest" zones, violated plaintiffs' and class members' rights under the
5 Fourth Amendment to the United States Constitution.

6 C. A uniform award of compensatory damages against all defendants for plaintiff
7 and each member of the Class in an amount to be proven at trial;

8 D. An award of reasonable attorney's fees and costs pursuant to 42 U.S.C.
9 § 1988; and

10 E. For such other additional relief as the Court may deem just and proper.

11
12 DATED: May __, 2006.

13 HAGENS BERMAN SOBOL SHAPIRO LLP

14
15 By _____
16 Steve W. Berman, WSBA No. 12536
17 Tyler S. Weaver, WSBA No. 29413
18 1301 Fifth Avenue, Suite 2900
19 Seattle, WA 98101
20 (206) 623-7292

21 Lead Counsel for Plaintiffs

22 Arthur Bryant
23 Victoria Ni
24 TRIAL LAWYERS FOR PUBLIC JUSTICE
25 Trial Lawyers for Public Justice
26 555 12th Street, Suite 1620
Oakland, CA 94607

Michael E. Withey
STRITMATTER KESSLER WHELAN WITHEY
COLUCCIO
200 Second Avenue West
Seattle, WA 98119-4204
(206) 448-1777

SECOND AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS

- 31 -

1 FRED DIAMONDSTONE
2 Attorney at Law
3 700 Dexter Horton Bldg
4 710 Second Ave
5 Seattle, WA 98104
6 (206) 568-0082

7 YVONNE KINOSHITA WARD
8 128 14th St SE
9 Auburn, WA 98002

10 John Muenster
11 MUENSTER & KOENIG
12 Wells Fargo Center
13 999 Third Ave., Suite 4100
14 Seattle, WA 98104

15 Benjamin A. Schwartzman
16 LOVELL MITCHELL & BARTH
17 11542 N.E. 21st St, Suite A
18 Bellevue, WA 98004

19 ERWIN CHERMERISNKY
20 Professor of Law
21 Duke University Law School
22 Science Drive and Towerview Road
23 Durham, NC 27708
24 Counsel for Plaintiffs

25
26
SECOND AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS

- 32 -



HAGENS BERMAN
SOBOL SHAPIRO LLP
1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594