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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JASMINE GAFFETT, KIERRA BROWN,
and TOSHUA SEARS,
Individually and on behalf of a class of all
persons similarly situated,

v.

CITY OF OAKLAND, SUSAN
MANHEIMER, LERONNE
ARMSTRONG, RONALD HOLMGREN,
RANDELL WINGATE, ALAMEDA
COUNTY, GREGORY J. AHERN, DOES
3-100.

Case 3:21-cv-02881-RS

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

42 U.S.C. § 1983

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Police have been targeting, brutalizing, and killing Black people since the inception of law enforcement in the United States, and Oakland's police force has shown a demonstrable

1 history of violence against Black people and other people of color in Oakland. This action
2 arises out of protests across the nation in response to the May 25, 2020, murder of George
3 Floyd by Minneapolis Police Department officers. The events in Minneapolis, soon after the
4 deaths of Breonna Taylor and Ahmaud Arbery, brought out millions of people around the
5 country to condemn the deaths of Black and Brown people by law enforcement in one of the
6 largest social justice movements in the United States history.¹

8 2. In Oakland, thousands took to the streets on a daily basis starting on May 29, 2020, to
9 make their viewpoint known that police brutality and institutionalized racism must end. The
10 Oakland Police Department (“OPD”), and its mutual aid partner Alameda County Sheriff
11 Office (“ACSO”), brutally repressed the Oakland demonstrators, targeting protestors with
12 highly dangerous impact munitions (also known as Specialty Impact Munitions “SIM”, Kinetic
13 Impact Projectiles “KIP”, or Projectile Impact Weapons “PIW”), explosive grenades and
14 chemical agents, and wrongful arrests.

16 3. This misconduct by OPD and ACSO violated the plaintiffs’ constitutional rights, and
17 the CITY OF OAKLAND Police Department’s own Crowd Control and Crowd Management
18 Policy. Said Policy was adopted by the CITY OF OAKLAND and OPD as part of the federal
19 court settlement orders in four prior federal lawsuits arising from mass injuries caused by
20 OPD’s and assisting agencies’ (including ACSO’s) constitutional violations, including
21 misuse of these weapons and wrongful mass arrests at demonstrations: *Coles / Local 10, ILWU*
22 *v. City of Oakland*, Nos. C03-2961 TEH, C03-2962 TEH; *Spalding, et al. v. City of Oakland*,

27 ¹ *Black Lives Matter May Be the Largest Movement in U.S. History*, NY Times, 3 Jul. 2020
28 <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>, last
visited Feb. 2021.

1 C11-02867 TEH, and *Campbell, et al. v. City of Oakland*, C11-05498 JST. (See Exhibit A,
2 OPD Training Bulletin III-G, which is the Crowd Control and Crowd Management Policy as
3 promulgated to the police force.)

4
5 4. This is a civil rights action for damages, injunctive and declaratory relief arising from
6 the unconstitutional OPD and ACSO violence toward demonstrators on May 29 and June 1,
7 2020.

8 **II. JURISDICTION AND VENUE**

9
10 5. This action seeks damages and injunctive relief under 42 U.S.C. § 1983. This Court has
11 jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343. It has supplemental jurisdiction
12 over the state law claims under 28 U.S.C. § 1367.

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

16
17 7. Plaintiffs JASMINE GAFFETT, KIERRA BROWN and TOSHUA SEARS have filed
18 administrative claims with the City of Oakland and with Alameda County, in compliance with
19 California Government Code § 910 et seq. The City of Oakland denied plaintiffs' claim on
20 February 1, 2021. More than 45 days have elapsed since the claim against Alameda County was
21 submitted on October 16, 2020; therefore that claim is deemed denied.

22 **III. INTRADISTRICT ASSIGNMENT**

23
24 8. Pursuant to Local Rule 3-2(e), this action is properly assigned to the Oakland or San
25 Francisco divisions of this Court.

26 **IV. PARTIES**

27 **A. PLAINTIFFS**

9. Plaintiff JASMINE GAFFETT is an adult resident of Alameda County, California.

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

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

B. DEFENDANTS

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

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

14. Defendant LERONNE ARMSTRONG is employed by defendant City of Oakland as its current Chief of Police, and was at all times relevant herein, its Deputy Chief of Police, and was acting within the course and scope of that employment at all such times. At all material times, defendant ARMSTRONG, as the Incident Commander, supervised the response to the June 1, 2020, demonstration by the CITY OF OAKLAND Police and the assisting agencies brought in as mutual aid to OPD.

15. Defendant RONALD HOLMGREN is and was at all times relevant herein, employed by defendant City of Oakland as its Deputy Chief of Police, and was acting within the course and scope of that employment at all such times. At all material times, defendant HOLMGREN, as

1 the Incident Commander, supervised the response to the May 29, 2020, demonstration by the
2 CITY OF OAKLAND Police and the assisting agencies brought in as mutual aid to OPD.

3 16. Defendant RANDELL WINGATE is and was at all times relevant herein, employed by
4 defendant City of Oakland as its Captain of Police, and was acting within the course and scope
5 of that employment at all such times. At all material times, defendant WINGATE, as the
6 Operations Chief, supervised the response to the May 29, and June 1, 2020, demonstrations by
7 the CITY OF OAKLAND Police and the assisting agencies brought in as mutual aid to OPD.
8

9 17. Defendant ALAMEDA COUNTY is a political and administrative subdivision of the
10 State of California.
11

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

22 19. The individual defendants are sued in their individual capacities.
23

24 20. The DOE defendants include other individuals who supervised and/or participated in
25 the conduct complained of herein. Plaintiffs are informed and believe and therefore allege that
26 each of the DOE defendants is legally responsible and liable for the incident, injuries and
27 damages hereinafter set forth, and that each of said defendants proximately caused said
28

1 incidents, injuries and damages by reason of their negligence, breach of duty, negligent
2 supervision, management or control, violation of constitutional and legal rights, or by reason of
3 other personal, vicarious or imputed negligence, fault, or breach of duty, whether severally or
4 jointly, or whether based upon agency, employment, or control or upon any other act or
5 omission. Plaintiffs will ask leave to amend this complaint to insert further charging allegations
6 when such facts are ascertained.
7

8 21. In doing the acts alleged herein, defendants, and each of them, acted within the course
9 and scope of their employment.
10

11 22. In doing the acts and/or omissions alleged herein, defendants, and each of them, acted
12 under color of authority and/or under color of law.

13 23. In doing the acts and/or omissions alleged herein, defendants, and each of them, acted
14 as the agent, servant, employee and/or in concert with each of said other defendants.
15

16 **V. FACTS**

17 24. On May 25, 2020, Minneapolis police officers killed George Floyd, a 46-year-old
18 Black Minneapolis resident. A white police officer knelt on Mr. Floyd's neck for nearly nine
19 minutes while three other officers observed. Mr. Floyd died calling out for his mother and
20 begging for his life as his death was recorded by passersby. The recording was shared on
21 multiple media platforms for all the world to witness.
22

23 25. In the days and weeks following Mr. Floyd's death, people across the country flooded
24 into streets demanding an end to police brutality against Black people; protesting the deaths of
25 Mr. Floyd, Breonna Taylor, Ahmaud Arbery, and countless others at the hands of police,
26 through vigils, demonstrations, and public gatherings.
27
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1 26. OPD Command Staff, including defendants MANHEIMER, ARMSTRONG, and
2 HOLMGREN, were aware of the potential for large demonstrations to occur in Oakland as the
3 weekend drew near, and eventually that a demonstration had been called for that Friday
4 evening, May 29. They planned for the May 29 demonstration, including by calling in mutual
5 aid through the Regional Mutual Aid Coordinator, defendant AHERN and ACSO.
6

7 27. Also in anticipation of the Oakland protest organized for the evening of May 29, 2020,
8 earlier that day, attorneys of record for plaintiffs in the prior crowd control settlements emailed
9 defendants MANHEIMER, ARMSTRONG and HOLMGREN, along with Assistant Chief
10 Darren Allison, Mayor Libby Schaaf, and City Attorney Barbara Parker to remind them of the
11 City of Oakland's and the OPD's legal obligation to comply with the OPD Crowd
12 Management and Crowd Control Policy in policing anticipated demonstrations (Exhibit B,
13 May 29, 2020, Letter).
14

15 28. Specifically, the May 29, 2020 Letter reminded OPD and CITY OF OAKLAND
16 officials that the federal court settlement agreements and orders in *Spalding, et al. v. City of*
17 *Oakland*, C11-02867, and *Campbell, et al. v. City of Oakland*, C11-05498, mandate adherence
18 to the Crowd Control Policy, promulgated as OPD Training Bulletin III-G, in all crowd
19 situations, and require OPD and the City to meet and confer with plaintiffs' counsel before
20 making any material change to TB III-G and associated training outlines. (Exhibits A and B.)
21

22 29. The May 29, 2020 Letter specifically mentioned that the Policy prohibits certain
23 weapons and types of force in the crowd context and restricts others. Chemical agents and hand
24 thrown pyrotechnic devices may not be used in crowd events without the approval of the
25 Incident Commander, absent exigent circumstances. (Exhibit A, ¶ V.H.4, p. 13, and Exhibit B.)
26 Hand thrown pyrotechnic devices such as CS Blast grenades may not be thrown directly into a
27
28

1 crowd. They must be deployed to explode at a safe distance from the crowd to minimize the
2 risk of serious injury. (Exhibit A, ¶ V.H.5, p. 14, and Exhibit B.) The May 29, 2020 Letter also
3 mentioned that these devices have caused serious burns and permanent hearing loss when used
4 in Oakland crowds. (Exhibit B.)

5
6 30. The May 29, 2020 Letter specified that, according to Oakland’s own policy, “Specialty
7 Impact Less-Lethal Munitions (SIM) such as so called “foam” or “sponge” rounds and bean
8 bags may *never* be used for crowd control or dispersal. In a crowd situation, the Policy requires
9 a different standard for SIM than on patrol. SIM may only be used against a specific individual
10 who is engaging in conduct that poses an *immediate threat of loss of life or serious bodily*
11 *injury* to him or herself, officers, or the general public or who is engaging in substantial
12 destruction of property which creates an *immediate risk to the lives or safety* of other persons.
13 In such instances, SIM shall be used *only* when other means of arrest are unsafe and when the
14 individual can be targeted without endangering other crowd members or bystanders, i.e., when
15 the officer has a clear shot – not in the midst of a crowd. (Exhibit A, ¶ VI.F.2, p. 15 and
16 Exhibit B.)

17
18
19 31. An OPD Chief’s Memorandum to all personnel further clarifies OPD’s policy regarding
20 use of SIM at crowd events, stating: “*The mere fact that an individual is picking up, about to*
21 *throw, or throwing a chemical agent canister previously deployed by OPD, or other object,*
22 *does not automatically constitute an immediate threat of loss of life or serious bodily injury.*
23 *Members must consider the size and composition of the object and the distance from which it is*
24 *being thrown.*” (Exhibit C, Chief’s Nov. 19, 2014 Memo.)

25
26 32. The Chief’s Memorandum goes on to clarify that “*Even when an individual’s conduct*
27 *does constitute an immediate threat of loss of life or serious bodily injury, Direct Fired SIM*
28

1 *shall be used only when other means of arrest are unsafe and when the individual can be*
2 *targeted without endangering other crowd members or bystanders. The member using SIM*
3 *must have a shot the member reasonably believes can be taken and will only impact the*
4 *intended target, given consideration of how close the individual is to others, whether crowd*
5 *members are moving, and factors that may affect visibility and the accuracy of shot placement,*
6 *such as chemical agent deployment.” (Exhibit C.)*

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

13 34. OPD and the City adopted these restrictions to prevent another tragedy like the
14 permanent brain damage sustained by Scott Olsen, a young veteran who was accidentally
15 struck in the head with a police "bean bag" while peacefully standing at a 2011 demonstration.
16 Mr. Olsen received a \$4.5 million settlement from the City, but will never regain full mental
17 function.”²

19 35. It is well recognized that impact munitions or SIM, also known as KIP or PIW, can
20 cause injuries ranging from localized contusions to severe organ damage and death. Data from
21 1,984 SIM injuries revealed that 3% died and 15.5% were permanently disabled as a result of
22 being shot with SIM.³

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

28 ³ Haar RJ, Iacopino V, Ranadive N, et al. *Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review*. BMJ Open 2017;7:e018154.

36. Indeed, close-range firing of SIM/ KIP results in injury patterns similar to those seen with live ammunition, causing severe injuries and disabilities. It is important to note that while factors such as a large surface area may reduce the risk of skin penetration, they increase the inaccuracy of the weapon. SIMs/ KIPs, therefore, are not only likely to be lethal at close range, but are likely to be inaccurate and indiscriminate at longer ranges, even those recommended by manufacturers for safety.⁴ Following an extensive review of the medical literature, Physicians for Human Rights made findings consistent with OPD's prohibition on using SIM for crowd control:

The classification of KIPs as "less-lethal" contradicts extensive research illustrating that these weapons can cause serious injuries, permanent disabilities, and death. Severe injuries are more likely when KIPs are fired at close range, as some types of KIPs have the same ability to penetrate the skin as conventional live ammunition and can be just as lethal. When launched or fired from afar, these weapons are often inaccurate and can strike vulnerable body parts, causing unintended injuries to bystanders. Therefore, PHR considers that *KIPs are not an appropriate weapon for crowd management and 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

doi:10.1136/bmjopen-2017-018154; <<https://bmjopen.bmj.com/7/e018154.full.pdf>>, accessed Oct. 17, 2021, pp. 2-5.

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

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

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

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

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

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

(Exhibit A, ¶ IX, pp. 20-21.)

39. The above provisions regarding mutual aid were added to the OPD Policy in 2013 as part of the aforementioned *Spalding* and *Campbell* settlement agreements, after mutual aid agencies such as ACSO caused many injuries through their use of SIM and hand-thrown pyrotechnic grenades in a manner prohibited by Oakland's Policy during the Occupy Oakland demonstrations in 2011-2012. Following widescale public outcry over the law enforcement excessive force at those demonstrations, OPD asked Sheriff AHERN and ACSO to seek

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

1 assistance for OPD from agencies with similar policies, but AHERN publicly stated that
2 departments called in to provide emergency assistance would follow their own use-of-force
3 policies and be armed with weapons prohibited by Oakland's policy. In effect, Defendant
4 AHERN and ALAMEDA COUNTY were condoning the use of indiscriminate,
5 unconstitutionally excessive force on protesters, with the acquiescence of OPD and the CITY
6 OF OAKLAND.⁷

8 40. The City of Oakland had the Frazier Group conduct an independent investigation of the
9 police response to Occupy Oakland, and adopted its report, findings and recommendations.
10 These included, inter alia, that Mutual Aid officers should not be comingled with OPD officers
11 on the front lines, "even under extreme conditions", but rather, assigned specific missions to be
12 carried out with department and unit integrity under the direction of OPD. ([Frazier Report](#),
13 June 14, 2012, p. 13.)

14 41. However, even after the provisions concerning mutual aid were added to the OPD
15 Crowd Control Policy by agreement and federal court order, ACSO continued to communicate
16 to Oakland Police Department command staff that ACSO would not comply with the OPD
17 Crowd Control Policy when providing mutual aid in Oakland. SHERIFF AHERN and/or his
18 agents communicated that ACSO personnel would not comply with the Policy's restrictions on
19 use of chemical agents and less lethal munitions; would use chemical agents and less lethal
20 munitions without the authorization of OPD Commanders; and would bring and use weapons
21 and force that are prohibited under OPD's policy while providing mutual aid in Oakland. The
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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 Oct. 19, 2021.

1 OPD defendants tacitly or explicitly agreed, flouting the federal court settlement agreements
2 and orders in *Spalding* and *Campbell* by continuing to put ACSO and other mutual aid officers
3 on the front lines in contact with demonstrators and crowds, and allowing them to use
4 dangerous weapons and excessive force against crowds which included lawful demonstrators,
5 journalists, observers and bystanders, and thus violate individuals' constitutional rights.
6

7 ***The May 29 Oakland Demonstration: Jasmine Gaffett***

8 42. At about 8 p.m. on May 29, 2020, demonstrators assembled at Broadway and 14th
9 Street in Oakland to express their views regarding the policing system that has systematically
10 killed Black people and other people of color. Other participants came with medical supplies,
11 water, and other aid for the demonstrators. And others, including journalists, legal observers,
12 and passersby, simply observed the demonstration. Most of the demonstrators and observers
13 wore masks and observed social distancing.
14

15 43. The defendants would ultimately inflict the same sort of ruthless violence on the
16 demonstrators that the demonstrators were protesting, and that is prohibited by the OPD Crowd
17 Control and Crowd Management Policy: indiscriminately dispersing teargas and shooting
18 impact munitions into the crowd, and detonating explosive grenades to cause panic and
19 disorientation. (See Exhibit A.)
20

21 44. Defendant RONALD HOLMGREN was the Incident Commander, and Defendant
22 RANDELL WINGATE was the Operations Chief, who planned, commanded and supervised the
23 OPD and mutual aid officers' response to the May 29, 2020, demonstration.
24

25 45. On May 29, 2020, plaintiff Jasmine Gaffett attended the demonstration in downtown
26 Oakland to express her opposition to racist police violence and support for the Black Lives
27 Matter movement.
28

1 46. Some time after 9pm, OPD and ACSO officers, formed a line across Broadway near 7th
2 Street in which officers from both departments were comingled on the front line -- exactly as
3 the City of Oakland's own Frazier Report had found should not be done.

4 47. Despite the fact that the crowd was largely peaceful, OPD declared the demonstration
5 an unlawful assembly, without lawful basis. At the *same time*, the OPD and ACSO officers
6 began using CS Blast grenades and Stinger Grenades, and teargas, such that the crowd did not
7 have a chance to disperse in compliance with the order before being subjected to the chemical
8 agents and volley of small explosives -- which is explicitly prohibited by the OPD Policy.
9 (Exhibit A, ¶ V.H.4.e, V.H.5.c, p. 14.) They also began shooting impact munitions into the
10 crowd -- which is also explicitly prohibited by the OPD Policy. (Exhibit A, ¶ VI.F.2, p. 15:
11 "*Direct Fired SIM may never be used indiscriminately against a crowd or group of persons*
12 *even if some members of the crowd or group are violent or disruptive.*")

13 48. Plaintiff Gaffett stood near the front of the crowd, closest to the police line, wearing a
14 red bandanna. She chanted and expressed views critical of the police and their response to the
15 demonstration. Ms. Gaffett and the rest of the crowd retreated when the police began
16 teargassing and shooting, but when the chemical agent cleared, they came back to continue
17 demonstrating against police violence.

18 49. Ms. Gaffett, and others near her, were yelling at the police and telling them that what
19 they were doing was wrong, but neither Ms. Gaffett, nor anyone near her, were throwing
20 anything, physically or verbally threatening the police, or trying to breach the police line.

21 50. Then, without warning, DOE OPD and/or ACSO officers shot Ms. Gaffett twice in the
22 leg, in quick succession, with impact munitions. Ms. Gaffett turned around and tried to run
23 away from the police, but the DOE officers aimed at her and deliberately shot her again and
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again, while she fled. DOE OPD and/or ACSO defendants shot Ms. Gaffett a total of at least twenty times, all over her body. After the first two shots, the DOE defendants kept shooting Ms. Gaffett from behind as she ran from them.

51. Ms. Gaffett never presented any threat whatsoever to any of the OPD or ACSO officers or to anyone else. There was no justification for the defendants to use any force on her, and thus the twenty-plus shots with highly dangerous impact munitions were completely unnecessary and unlawful.

52. Ms. Gaffett finally escaped further fire by lying on the ground behind a utility box. No OPD or ACSO officer offered her any first aid or summoned medical aid for her despite the fact that the shooting occurred in full view of the entire line of OPD and ACSO officers. This, too, violated the OPD Policy. (Exhibit A, ¶ VI.F.2.c, p. 15: “*Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.*”)

53. A nurse who was acting as a medic for injured demonstrators gave Ms. Gaffett aid, and she was eventually able to get home.

1 54. Ms. Gaffett was covered with large welts. Among other places, she was hit close to her
2 spleen, kidneys, spine, and groin, and in her right ring finger.

3 55. The OPD Crowd Control Policy prohibits officers from discharging SIM at a person's left
4 armpit, spine, kidneys, or groin unless deadly force would be justified. (Exhibit A, ¶ VI.F.2.h, p.
5 16.)
6

7 56. In severe pain, Ms. Gaffett could barely move for two days, requiring assistance for the
8 most basic functions. She remained laid up at home, in pain, for two weeks, but because she had
9 been laid off due to the pandemic and had no health insurance, she did not immediately seek
10 healthcare.
11

12 57. When Ms. Gaffett was seen at a clinic two weeks after being shot she still had visible
13 ecchymosis with hard, swollen lumps, and her right ring finger was found to be fractured.

14 ***The June 1 Oakland Demonstration: Toshua Sears and Kierra Brown***

15 58. On June 1, 2020, young people including many Black and Brown high school students
16 and others held a march to protest racist police violence. The march started at Oakland Technical
17 High School, and was planned to end with speeches at the Oakland Police Administration
18 Building. At the onset, the organizers announced that the protest was peaceful and explicitly
19 called for “no destruction.”
20

21 59. Despite the fact that the march was peaceful, Alameda County declared an 8pm curfew.
22 Also, on June 1, 2020, the City of Oakland declared a local emergency and 8 p.m. to 5 a.m.
23 curfew.
24

25 60. Defendant LERONNE ARMSTRONG was the Incident Commander, and Defendant
26 RANDELL WINGATE was the Operations Chief, who planned, commanded and supervised the
27 OPD and mutual aid officers’ response to the June 1, 2020, demonstration.
28

1 61. Well prior to the curfew hour, Oakland and Alameda County officers formed lines
2 blocking the demonstrators' path, forcing many of them to stop at Oscar Grant / Frank Ogawa
3 Plaza rather than at the Police Administration Building.

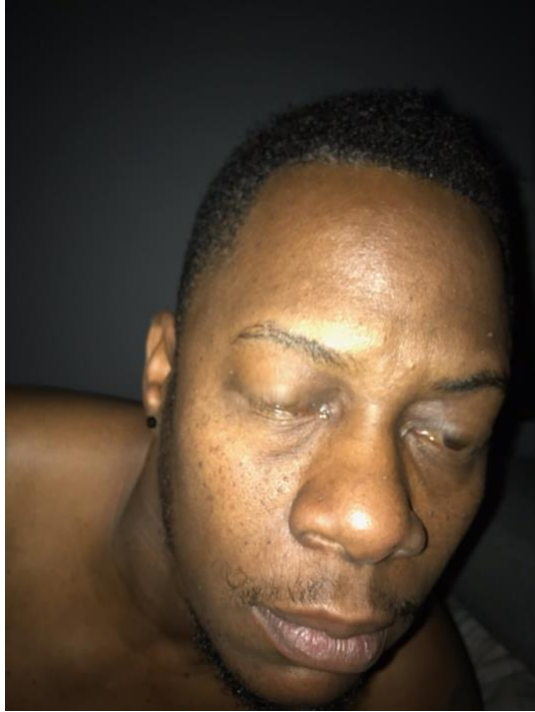
4
5 62. At approximately 5 p.m., after the march had already started, the County of Alameda and
6 the City of Oakland began disseminating the message that a curfew would begin just three hours
7 later.

8 63. A smaller number of demonstrators continued from Oscar Grant Plaza towards the Police
9 Administration Building. At Washington Street and 8th Street, the demonstrators met a line of
10 police outfitted in full riot gear. The OPD 'kettled' the group via line formations and by way of
11 their vehicles, blocking opportunities for egress.
12

13 64. Without warning and before the curfew hour, the OPD and ACSO used chemical
14 weapons, threw explosive blast grenades and pyrotechnic devices, and shot impact munitions
15 into the crowd of confined demonstrators, causing chaos. A dispersal announcement that many
16 or most of the crowd could not hear or decipher was made a couple of seconds prior to the
17 bombardment of chemical weapons, impact munitions and blast grenades. The police filled the
18 entire block between 8th and 9th St. with a virtual wall of CS gas and smoke that impeded, rather
19 than aided the demonstrators in dispersing as people had difficult seeing and breathing, and
20 impacted neighboring residents and business in this dense urban area of downtown Oakland.
21

22 65. Plaintiffs KIERRA BROWN and TOSHUA SEARS each attended the June 1, 2020,
23 march to protest racist police violence. Mr. Sears, who is Black, carried a sign, "All lives matter
24 even ours".
25

26 66. TOSHUA SEARS was in the area of 8th and Broadway, when well before 8pm, DOE
27 OAKLAND Police and ALAMEDA COUNTY Sheriff officers blocked egress on three sides and
28



at about 7:40pm, without warning, DOE OAKLAND and ALAMEDA COUNTY officers threw and shot chemical weapons, explosive grenades and SIM 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 DOE OAKLAND Police or ALAMEDA COUNTY Sheriff officer shot him with

an impact projectile in the right hip / buttock area.

67. 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.

68. 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.

69. Mr. Sears never presented any threat whatsoever to any of the OPD or ACSO officers or to anyone else. There was no justification for the defendants to use any force on him, and thus both the shot and teargas were completely unnecessary and unlawful.

1 70. Many other demonstrators were shot in the back as they were fleeing the shooting,
2 explosive grenades and chemical weapons, only to be impeded by police lines kettling them
3 from all directions.

4 71. Public health and other medical experts have condemned the use of teargas and other
5 respiratory irritants on protesters as increasing the risk for COVID-19 by making the respiratory
6 tract more susceptible to infection, exacerbating existing inflammation, and inducing coughing,
7 as well as by forcing those exposed to remove masks that have been contaminated.
8

9 72. KIERRA BROWN was not at 8th and Broadway when the police used the chemical
10 weapons, but went to 14th and Broadway after the march to help wash people's eyes who had
11 been affected by the chemical agent. While Ms. Brown was doing this, the police approached
12 and pushed the crowd further up Broadway. Ms. Brown was running toward 15th Street, which
13 was what it seemed the police wanted the crowd to do, when a DOE OAKLAND or ALAMEDA
14 COUNTY Sheriff officer shot her in the back of her right leg.
15

16 73. The OAKLAND and ALAMEDA COUNTY officers then trapped Ms. Brown and others
17 between their lines and detained them, zip tying Ms. Brown and the others' hands. The kettling
18 occurred before 8pm.
19

20 74. DOE OAKLAND Police officers took Ms. Brown to a parking garage for processing
21 before ultimately releasing her with a citation. She was never charged with any crime.
22

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

27 76. There was no probable cause to arrest Ms. Brown.
28

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

3 78. Ms. Brown has never regained full sensation in her right leg and is at risk of losing
4 mobility in her foot as a result of being shot by the DOE OPD or ACSO officer.
5



14
15 79. Ms. Gaffett, Ms. Brown and Mr. Sears wish to continue to express their views on police
16 brutality and institutionalized racism by participating in public protests on the streets of Oakland,
17 but are afraid that they will again be subjected to unlawful law enforcement violence and
18 wrongful arrests.
19

20 80. Defendants' actions on May 29 and June 1 violated every provision of the CITY OF
21 OAKLAND's Crowd Management and Crowd Control Policy that the attorneys had warned
22 about in their May 29 letter, and more. Oakland's own policy and the law are clear that verbal
23 criticism or abuse of officers is not grounds for arrest or use of force. And while police may use
24 force to defend themselves against an individual, it is both illegal and a violation of Oakland's
25 policy to use impact munitions indiscriminately against a crowd.
26

27 81. Defendants' actions on May 29 and June 1 violated the Policy's provisions which
28 prohibit impact munitions and explosive grenades from being fired into crowds, and allow

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

13
14 82. On May 29 and June 1, defendants also violated the Crowd Control Policy provision
15 providing that “Any person struck by a round shall be transported to a hospital for observation
16 and any necessary treatment.” (Exhibit A, ¶ VI.F.2.c, p. 15.) None of the plaintiffs were offered
17 medical aid by OPD or City of Oakland personnel (or by ACSO personnel).
18

19 83. Following the May 29 – June 1 demonstrations, CITY OF OAKLAND officials made a
20 number of false and misleading statements to the public and media about the demonstrations and
21 the actions of OAKLAND police officers and mutual aid agencies, fabricating and/or
22 exaggerating reports of property destruction and supposed aggression by demonstrators while
23 minimizing the police violence and injuries caused by the police.
24

25 84. As part of this cover-up and failure to hold officers accountable for the excessive force,
26 on being confronted with a photograph of Ms. Gaffett’s injuries, which were inflicted by
27 defendants on May 29, CITY OF OAKLAND officials stated falsely and publicly that the
28

1 photograph was a hoax and depicted someone in Texas.

2 85. Defendants' acts were willful, wanton, malicious, and oppressive, and done with
3 conscious disregard and deliberate indifference for plaintiff's rights and safety, justifying an
4 award of punitive damages.
5

6 86. As a direct and proximate result of the conduct of defendants described herein, plaintiffs
7 have been denied their constitutional, statutory and legal rights as stated below, and have
8 suffered general and special damages, including but not limited to, pain, suffering, humiliation,
9 emotional distress, fear, anxiety, disabilities, medical and related expenses, and other damages in
10 amounts according to proof.
11

12 87. Plaintiffs have incurred, and will continue to incur, attorneys' fees and costs in amounts
13 to be determined according to proof.

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

15 88. The constitutional violations alleged herein were the proximate result of decisions,
16 orders, acts and omissions of the CITY OF OAKLAND'S authorized policymakers including but
17 not limited to defendants MANHEIMER and ARMSTRONG; and ALAMEDA COUNTY's
18 policymakers including but not limited to defendant AHERN.
19

20 89. These decisions, orders, acts and omissions included the decisions by MANHEIMER,
21 ARMSTRONG, AHERN, and DOE CITY OF OAKLAND and ALAMEDA COUNTY officials
22 to approve the use of impact munitions, explosive grenades and pyrotechnic devices, and
23 chemical weapons at the demonstrations, without sufficient justification, which resulted in such
24 weapons being used in an unconstitutional, indiscriminate, unnecessary, and excessive manner.
25

26 90. These decisions, orders, acts and omissions which caused the constitutional violations
27 also included a tacit or explicit agreement by MANHEIMER, ARMSTRONG, AHERN, and
28

DOE CITY OF OAKLAND and ALAMEDA COUNTY officials to encourage or allow ACSO personnel and other mutual aid personnel to take front line positions at the May 29 and June 1, 2020, demonstrations and encourage ACSO (and other mutual aid agencies) to use dangerous force and weapons on demonstrators that are constitutionally excessive, and prohibited under OPD's Crowd Control Policy, and without command and control by OPD, which resulted in such weapons being used in an unconstitutional, indiscriminate, unnecessary, and excessive manner.

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

92. In addition, MANHEIMER, ARMSTRONG, AHERN, and DOE City officials and County officials caused the CITY OF OAKLAND police officers' and ALAMEDA COUNTY Sheriff's officers' constitutional violations complained of herein by failing to provide adequate policies, training, supervision, and command of their officers assigned to the May 29- June 1, 2020, demonstrations to stop the officers from using excessive force, making wrongful arrests, and depriving plaintiffs and class members of their First Amendment rights. This failure to provide adequate policies, training, supervision, and command included, *inter alia*:

- MANHEIMER, ARMSTRONG, and other CITY OF OAKLAND officials failed to provide OPD officers assigned to the 2020 demonstrations with sufficient, regular training on the OPD Crowd Control Policy, constitutional restrictions on the use of force, particularly in the context of crowd events and First Amendment events, and lawful crowd management and crowd control tactics.

- 1 • MANHEIMER, ARMSTRONG and other CITY OF OAKLAND officials chose not
2 to brief the ACSO and other mutual aid officers assigned to the 2020 demonstrations
3 on the Crowd Control Policy and on OPD's Unity of Command structure under which
4 only OPD Commanders may authorize the use of less lethal munitions for crowd
5 control, and allowed them to operate outside of OPD's command and control and
6 without restrictions.
- 7 • MANHEIMER, ARMSTRONG, and other CITY OF OAKLAND officials, and
8 AHERN and other ALAMEDA COUNTY officials, allowed and encouraged
9 ALAMEDA COUNTY and other mutual aid officers assisting OAKLAND at the
10 subject demonstrations to bring and use munitions of a type and in an
11 unconstitutionally excessive manner which are specifically prohibited by
12 OAKLAND's Crowd Control Policy because they are highly dangerous,
13 indiscriminate, and likely to cause constitutional violations and other injuries, and
14 they did cause constitutional violations complained of herein, to the extent plaintiffs
15 were injured by ACSO or other mutual aid officers.
- 16 • AHERN and other ALAMEDA COUNTY officials failed to provide ACSO and other
17 mutual aid officers assigned to the 2020 demonstrations with adequate policies,
18 command and control, and training on constitutional restrictions on the use of force,
19 particularly in the context of crowd events and First Amendment events, and lawful
20 crowd management and crowd control tactics.
- 21 • AHERN (explicitly or tacitly) made known to ACSO officers that, while providing
22 mutual aid at the 2020 Floyd demonstrations, they need not adhere to restrictions on
23 the use of dangerous munitions and chemical weapons in crowds or follow OPD's
24

1 unity of command structure as to use of force, *which he knew would likely result,*
2 *and did result in such weapons being used in an unconstitutional, indiscriminate,*
3 *unnecessary, and excessive manner.*

4
5 93. Plaintiffs further allege that the constitutional violations alleged herein were the
6 proximate result of a repeated course of conduct by members of the OPD and ACSO tantamount
7 to a custom, policy, pattern or repeated practice of condoning, ratifying and/or tacitly
8 encouraging the abuse of police authority, and disregard for the constitutional rights of citizens,
9 including the rights of the plaintiffs and class members.

10
11 94. Plaintiffs are further informed and believe and thereon allege that the constitutional
12 violations alleged herein were the proximate result of a custom, policy, pattern or practice of
13 deliberate indifference by defendants CITY OF OAKLAND and ALAMEDA COUNTY to the
14 repeated violations of the constitutional rights of citizens by defendants' law enforcement
15 officers, which have included, but are not limited to, the repeated use of excessive force, and the
16 repeated failure to properly and/or adequately train, supervise and/or discipline officers with
17 respect to the use of excessive force, constitutional limitations on the use of force; the repeated
18 failure by CITY OF OAKLAND and ALAMEDA COUNTY's high ranking officials, OPD and
19 ACSO managers and/or supervisors to hold officers accountable for violating the rights of
20 citizens; and/or other customs, policies and/or practices subject to continuing discovery.

21
22 95. The CITY OF OAKLAND's customs, policies, pattern and practice of condoning,
23 ratifying, tacitly encouraging, and deliberate indifference to officers' constitutional violations are
24 exemplified by the following facts: In 2003, the United States District Court approved a
25 negotiated settlement agreement (NSA) placing the Oakland Police Department under the
26 Court's supervision until such time as it had implemented a number of specified reforms to hold
27
28

1 OPD officers accountable for violating people's rights and to prevent excessive force and other
2 police misconduct. *Allen v. City of Oakland*, USDC ND Cal. No. 3:00-cv-04599. The NSA
3 reforms were initially planned to take place within five years. However, in more than eighteen
4 years now, the CITY OF OAKLAND and OPD has failed to fully implement the required
5 reforms. And in 2005, the CITY OF OAKLAND and OPD first agreed to follow, train on, and
6 implement the OPD Crowd Control Policy, as described in ¶ 3 above. Yet, for sixteen years now,
7 almost every time that there is an upsurge of demonstration activity in Oakland, such as
8 during the Justice for Oscar Grant movement, the Occupy Oakland movement, and the 2020
9 George Floyd demonstrations, OPD and mutual aid assisting OPD have violated OAKLAND's
10 own Policy, invariably causing the violation of demonstrators' constitutional rights.

13 96. ALAMEDA COUNTY's customs, policies, pattern and practice of condoning, ratifying,
14 tacitly encouraging, and deliberate indifference to officers' constitutional violations are
15 exemplified by the following facts. During the economic justice demonstrations associated with
16 the Occupy Oakland movement in 2011-2012, and subsequent demonstrations in which ACSO
17 provided mutual aid to the CITY OF OAKLAND, deputies repeatedly used excessive force
18 against unarmed and non-threatening demonstrators, causing serious injuries, but defendant
19 AHERN failed to hold deputies accountable and has made a number of public statements
20 condoning ACSO's use of weapons and force prohibited by the OPD Crowd Control Policy.
21 AHERN has also failed to hold his deputies accountable for repeated abuses in other law
22 enforcement contexts and in the ALAMEDA COUNTY Jail. As of 2020, the ACSO led the
23 region in wrongful deaths and excessive force payouts, with \$27.6 million over five years. It
24
25
26
27
28

1 ranked third when analyzed per officer.⁸ ALAMEDA COUNTY and AHERN have faced many
2 accusations of excessive force in the Alameda County Jail, and AHERN has made public
3 statements in support of deputies accused of excessive force. AHERN's actions in allowing
4 condoning, or encouraging deputies to use excessive force create an atmosphere where deputies
5 resort to unconstitutional excessive force because they are either encouraged to so, or at least
6 know they will not be punished.

8 97. Plaintiffs are informed and believe that defendants MANHEIMER, ARMSTRONG,
9 HOLMGREN, WINGATE, AHERN, and DOE OPD and ACSO supervisors, and/or each of
10 them, caused the violation of the plaintiffs' constitutional rights as a result of their supervisory
11 malfeasance and/or deliberate indifference to the need for more or different training, supervision
12 and/or discipline of the CITY OF OAKLAND Police and ALAMEDA COUNTY Sheriff's
13 Office personnel assigned to the subject incident, to prevent the foreseeable violation of
14 plaintiffs' constitutional rights, as further discussed above.

16 **VIII. CLASS ACTION ALLEGATIONS**

17 98. Plaintiffs seek class certification pursuant to Fed.R.Civ.P. 23(a), and Fed.R.Civ.P.
18 23(b)(2), to pursue claims for injunctive and declaratory relief on behalf of themselves and all
19 persons similarly situated.

21 99. The class is defined as all persons who have in the past participated, presently are
22 participating, or may in the future participate in, or be present at, demonstrations and crowd
23 events within the City of Oakland in the lawful exercise of their rights of free speech, assembly,
24

25
26
27
28 ⁸ <https://oaklandside.org/2021/04/13/sheriff-candidates-alameda-county-sb271-gregory-ahern-law-enforcement-experience/>

1 association, petition, and of the press, who have suffered physical injury to their body, or chilling
2 of their speech, resulting from the conduct of defendants as described herein.

3 100. This case satisfies the prerequisites of a Rule 23 class action. The class is so numerous
4 that joinder of all members is impracticable. The class consists of hundreds or even thousands of
5 people.
6

7 101. There are questions of law and fact common to the class, in that the named plaintiffs
8 claim that defendants' unlawful use of force and threats of force at the demonstrations described
9 herein, were based on OPD and ACSO policies and orders that were unlawful and chilled their
10 First Amendment rights.
11

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

19 103. By ordering and allowing officers to use unjustified force on the crowd at the
20 demonstrations, and failing to implement policies prohibiting such use of excessive force and
21 requiring OPD to brief mutual aid agencies on the Crowd Control and Crowd Management
22 Policy, ensure they do not bring or use any weapons or force that is prohibited under this policy,
23 and not assign mutual aid to front-line positions unless there is a public safety emergency,
24 defendants have acted on grounds generally applicable to the class, so that injunctive and
25 declaratory relief is appropriate respecting the class as a whole.
26
27
28

1 104. The questions of law and fact common to the classes, which are outlined above,
2 predominate over any questions affecting only individual members.

3 105. The claims of the named plaintiffs are typical of the claims of the class in that the named
4 plaintiffs and class members claim that their First Amendment rights have been chilled by the
5 same misconduct of defendants and seek protection to bar the repeat of those violations in the
6 future.

7 106. The class representatives will fairly and adequately protect the interests of the class
8 because they were subject to the unlawful law enforcement conduct complained of herein, and
9 have no interests antagonistic to the class.

10 107. The class representatives will fairly and adequately represent the common class interest.
11 The class representatives have a strong interest in achieving the relief requested in this
12 Complaint, they have no conflicts with members of the plaintiff class, and they will fairly and
13 adequately protect the interests of the class.

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

16 109. Counsel for the class representatives know of no conflicts among or between members of
17 the class, the named plaintiffs, or the attorneys in this action.

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

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

3 112. In accordance with FRCP Rule 23(b)(2), defendants have acted on grounds generally
 4 applicable to the class, so that final injunctive relief or corresponding declaratory relief is
 5 appropriate respecting the class as a whole.
 6

7 8 **IX. CLAIMS FOR RELIEF**

9 **COUNT ONE – INJUNCTIVE RELIEF**

10 **(First, Fourth and Fourteenth Amendments, 42 U.S.C. § 1983; California Constitution**

11 **Article 1 §§ 2, 3, 7, 13; Cal. Penal Code § 835.5; Cal. Civil Code §§ 52.1, 815.6)**

12 All Plaintiffs Against All Defendants

13
 14 113. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs of this
 15 Complaint.
 16

17 114. The Defendants engaged in repeated, widespread violations of law, as outlined above,
 18 over the course of at least several nights, using excessive force against hundreds if not thousands
 19 of protestors in retaliation for their protected First Amendment activity; imposing a curfew
 20 without accommodating the right to peaceable assembly and protest; declaring unlawful
 21 assemblies without adequate sound amplification and without providing adequate notice, means
 22 and opportunity to disperse before taking aggressive police action including the use of highly
 23 dangerous impact munitions / SIM, chemical weapons and explosive grenades; hitting large
 24 numbers of protestors with impact munitions / SIM, grenades, and using chemical weapons on
 25 them, all with unreasonable and excessive force; failing to provide medical aid or
 26 decontamination to persons defendants shot and/or teargassed; and unlawfully arresting and
 27
 28

1 detaining dozens of people.

2 115. The CITY OF OAKLAND, through MANHEIMER, ARMSTRONG and the OPD, and
3 ALAMEDA COUNTY, through AHERN and the ACSO, have failed to train their officers in the
4 constitutional responses to demonstrations as revealed by the above allegations.
5

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

14 117. The Defendants have acted and refused to act on grounds generally applicable to the
15 putative class. Injunctive and declaratory relief for the class as a whole is appropriate.
16

17 118. Defendants' policies, practices, customs, conduct and acts alleged herein have resulted
18 and will continue to result in irreparable injury to the plaintiffs, including but not limited to
19 violations of their constitutional and statutory rights. Plaintiffs have no plain, adequate or
20 complete remedy at law to address the wrongs described herein. Plaintiffs intend in the future to
21 exercise their constitutional rights of freedom of speech and association by engaging in
22 demonstrations, observation and documentation of demonstrations and police actions, and other
23 expressive activities in the City of Oakland. Defendants' conduct described herein has created
24 fear, anxiety and uncertainty among plaintiffs with respect to their exercise now and in the future
25 of these constitutional rights.
26

27 119. Specifically, plaintiffs are concerned that if they participate in, observe or document
28

1 protest activities in the City of Oakland they will again be subjected to unreasonable and
2 excessive force by OPD and ACSO.

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

10 121. Plaintiffs are also concerned that that if they participate in, observe or document protest
11 activities in the City of Oakland they will be wrongfully detained and arrested by members of
12 OPD and/or ACSO.
13

14 122. Plaintiffs therefore seek injunctive relief from this court to ensure that plaintiffs and
15 persons similarly situated will not suffer violations of their rights from defendants' illegal and
16 unconstitutional policies, customs, and practices described herein.
17

18 123. Plaintiffs seek injunctive relief in the form of an order prohibiting OPD and ACSO from
19 using chemical weapons, explosive grenades, and impact munitions in crowds.

20 124. Plaintiffs also seek injunctive relief in the form of an order requiring that defendants seal
21 and destroy any records derived from the arrests for curfew violations, including but not limited
22 to KIERRA BROWN, including fingerprints, photographs, and other identification and
23 descriptive information, and all information, and biological samples and information obtained
24 from such biological samples collected from such arrestees, and identify all entities and agencies
25 to which such information has been disseminated; and that all such disseminated records be
26 collected and destroyed.
27
28

COUNT TWO – DECLARATORY RELIEF

All Plaintiffs Against All Defendants

125. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint.

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

COUNT THREE – 42 U.S.C. § 1983

VIOLATION OF FIRST AMENDMENT RIGHTS

All Plaintiffs Against All Defendants

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

128. Plaintiffs’ association with the anti-police violence/ racial justice demonstrations and observation and/or documentation of the police response were substantial and motivating factors for the defendants’ use of excessive force on all of the plaintiffs, and in the case of KIERRA BROWN and class members, defendants’ arrest of them. The acts and/or omissions of the defendants, and each of them, individually and/or while acting in concert with one another, chilled the plaintiffs’ rights to freedom of speech, expression and association, under the First Amendment to the United States Constitution.

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

130. As a result of Defendants’ wrongful conduct, the plaintiffs suffered damages as alleged

1 above.

2 131. As a result of Defendants' wrongful conduct, and the potential that such conduct will
3 recur, the class is entitled to relief from the potential that such violations will recur.
4

5 132. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count
6 pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 88-
7 96 above. Defendants MANHEIMER, ARMSTRONG, HOLMGREN, and WINGATE, and
8 DOE OPD and ACSO supervisors are liable based on supervisory liability as detailed in ¶¶ 88-97
9 above.
10

11 133. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

12 **COUNT FOUR - 42 U.S.C. § 1983**

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

14 All Plaintiffs Against All Defendants

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

18 135. The acts and/or omissions of the defendants, and each of them, individually and/or while
19 acting in concert with one another, violated plaintiffs' rights to be free from excessive force,
20 under the Fourth and Fourteenth Amendments to the United States Constitution.
21

22 136. As a result of Defendants' wrongful conduct, the named plaintiffs suffered damages as
23 alleged above.

24 137. As a result of Defendants' wrongful conduct, and the potential that such conduct will
25 recur, the class is entitled to relief from the potential that such violations will recur.

26 138. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count
27 pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 88-
28

96 above. Defendants MANHEIMER, ARMSTRONG, HOLMGREN, and WINGATE, and DOE OPD and ACSO supervisors are liable based on supervisory liability as detailed in ¶¶ 88-97 above.

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

COUNT FIVE – 42 U.S.C. § 1983

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

Plaintiff KIERRA BROWN and the CLASS Against Defendants CITY OF OAKLAND, MANHEIMER, ARMSTRONG and WINGATE.

140. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint.

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

142. Defendants' above-described conduct violated BROWN and the class members' rights to be free from unreasonable seizures under the Fourth Amendment and under the Fourteenth Amendment's due process clause and the state constitutional analogues.

143. As a result of Defendants' wrongful conduct, and the potential that such conduct will recur, the Class is entitled to relief from the potential that such violations will recur.

144. The CITY OF OAKLAND is liable under this count pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 88-96 above. Defendants MANHEIMER, ARMSTRONG, and WINGATE, and DOE OPD supervisors are liable based on supervisory liability as detailed in ¶¶ 88-97 above.

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

COUNT SIX – 42 U.S.C. § 1983

Conspiracy to Deprive Plaintiffs of Their Constitutional Rights

All Plaintiffs Against All Defendants

146. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint.

147. Each of the named and unidentified DOE Defendant Officers along with Defendants CITY OF OAKLAND, CHIEF MANHEIMER, CHIEF ARMSTRONG, CHIEF HOLMGREN, CAPTAIN WINGATE, ALAMEDA COUNTY, and SHERIFF AHERN, acted in concert with each other and conspired by concerted action to accomplish an unlawful purpose by unlawful means.

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

149. Specifically, the CITY OF OAKLAND adopted policies prohibiting the use of impact munitions for crowd control because such weapons are inherently indiscriminate and dangerous and thus violate demonstrators and bystanders' constitutional rights by causing serious injuries without justification (see ¶¶ 34-37), but CITY OF OAKLAND officials, including but not limited to CHIEF MANHEIMER, CHIEF ARMSTRONG and CHIEF HOLMGREN, knowing that SHERIFF AHERN condoned the excessive use of impact munitions on crowds and knowing the risks thereof, deliberately placed ALAMEDA COUNTY personnel on the front lines at the demonstrations and encouraged or allowed them to use these highly dangerous weapons on Oakland demonstrators, for the purpose of expediently breaking up the demonstrations with unconstitutional force and violating the demonstrators and bystanders' First and Fourth

1 Amendment rights. See ¶¶ 39, 41, and 89-96.

2 150. Defendants CITY OF OAKLAND, CHIEF MANHEIMER, CHIEF ARMSTRONG,
3 CHIEF HOLMGREN, ALAMEDA COUNTY, and SHERIFF AHERN, took concrete steps to
4 enter into an agreement with DOE Defendants to retroactively justify and cover up Defendant
5 Officers' unwarranted use of excessive force on all Plaintiffs for the purpose of violating
6 Plaintiffs' First and Fourth Amendment rights, as detailed in ¶¶ 83-84 and below.

7
8 151. In furtherance of this conspiracy, each of the Defendant Officers committed specific
9 overt acts, misusing their police powers for the purpose of violating Plaintiff's rights. They
10 accomplished this goal by using unwarranted, excessive force on all Plaintiffs, including, but not
11 limited to, using CS Blast and Stinger grenades to break up lawful demonstrations, shooting
12 dangerous impact munitions at protestors without justification, and firing chemical weapons into
13 lawful crowds, as detailed in ¶¶ 42-76.

14
15 152. Defendants CITY OF OAKLAND, CHIEF MANHEIMER, CHIEF ARMSTRONG,
16 CHIEF HOLMGREN, ALAMEDA COUNTY, and SHERIFF AHERN, committed additional
17 specific overt acts, misusing their powers as high-ranking officials for the purpose of violating
18 Plaintiff's rights. They accomplished this goal by using ACSO officers brought in as mutual aid
19 to suppress the Oakland demonstration with excessive force, using unreasonably dangerous
20 weapons in an indiscriminate manner that violated the plaintiffs' constitutional rights; by issuing
21 an unconstitutional curfew order without adequate notice and directing Defendant Officers to
22 enforce the order against Plaintiffs. Further, they covered up Defendant Officers' violations of
23 Plaintiffs' constitutional rights by falsely claiming that the police were under attack by "violent
24 disruptors" and "professional agitators" who were "stacking up bottles" and "making Molotov
25 cocktails" to throw at the police prior to the police use of force; and by falsely claiming that a
26
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1 photograph depicting plaintiff GAFFETT's injuries was a hoax and depicted someone in Texas.
2 AHERN and ACSO furthered this cover-up by refusing to turn over ACSO's body camera
3 videos and reports to OPD Internal Affairs, such that OPD could avoid including ACSO's use of
4 force in its investigation of these incidents, despite OPD's accountability processes being under
5 federal court oversight.
6

7 153. Each individual named or unknown Defendant is therefore liable for the violation of
8 Plaintiffs' rights by any other individual Defendant.

9 154. As a direct and proximate result of the Defendants' conspiracy, Plaintiffs suffered
10 damages as alleged above.
11

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

13 **COUNT SEVEN – 42 U.S.C. § 1983**

14 **Failure to Intervene**

15 All Plaintiffs Against All Defendants

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

19 157. During the events described above, the defendants stood by without intervening to
20 prevent the violations of plaintiffs' constitutional rights heretofore alleged, even though the
21 violations occurred in plain view of numerous CITY OF OAKLAND Police Officers and
22 ALAMEDA COUNTY Sheriff Officers and the defendants had the opportunity and duty to do
23 so.
24

25 158. The misconduct described in this Count was objectively unreasonable and was
26 undertaken intentionally, with malice and knowing disregard for plaintiffs' clearly established
27 constitutional rights.
28

1 159. As a result of defendants' wrongful conduct, all of the plaintiffs suffered damages as
2 alleged above.

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

7 161. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count
8 pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as detailed in ¶¶ 88-
9 96 above. Defendants MANHEIMER, ARMSTRONG, HOLMGREN, and WINGATE, and
10 DOE OPD and ACSO supervisors are liable based on supervisory liability as detailed in ¶¶ 88-97
11 above.
12

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

14 **COUNT EIGHT – CALIFORNIA BANE ACT**

15 All Plaintiffs Against All Defendants

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

19 164. The acts and/or omissions of the defendants, and each of them, individually and/or while
20 acting in concert with one another, constituted interference, and attempted interference, by
21 threats, intimidation and coercion, with plaintiffs' peaceable exercise and enjoyment of rights
22 secured by the Constitution and laws of the United States and the State of California, in violation
23 of California Civil Code § 52.1.
24

25 165. As a result of defendants' wrongful conduct, all of the plaintiffs and damages class
26 members suffered damages as alleged above.

27 166. As a result of defendants' wrongful conduct, and the potential that such conduct will
28

1 recur, plaintiffs and the class are entitled to relief from the potential that such violations will
2 recur.

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

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

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

18
19 **COUNT NINE – CALIFORNIA RALPH ACT**

20 All Plaintiffs Against All Defendants

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

23
24 171. Plaintiffs are informed and believe that bias against plaintiffs' perceived political
25 affiliation with the protest against police violence and police racism, and bias against plaintiffs'
26 perceived race, were motivating reasons for the defendants' above-described misconduct toward
27 them.
28

1 172. Defendants' above-described conduct violated plaintiffs' rights to be free from violence
2 and intimidation by threat of violence because of their actual or perceived political affiliation
3 and/or viewpoint, in violation of California Civil Code § 51.7.

4
5 173. As a result of defendants' wrongful conduct, the plaintiffs suffered damages as alleged
6 above.

7 174. As a result of defendants' wrongful conduct, and the potential that such conduct will
8 recur, the plaintiffs and class are entitled to relief from the potential that such violations will
9 recur.

10
11 175. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count based
12 on respondeat superior.

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

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25 177. Wherefore, the plaintiffs pray for relief as hereinafter set forth.

26 **COUNT TEN - ASSAULT AND BATTERY**

27 All Plaintiffs Against All Defendants
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1 178. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this
2 Complaint.

3 179. Defendants committed assault and battery on each of the plaintiffs, by shooting impact
4 munitions at them and using chemical weapons and other force on them.

5 180. Said acts by defendants and/or each of them were unreasonable and excessive uses of
6 force.

7 181. Plaintiffs did not consent to the use of force against them and were injured thereby.

8 182. As a result of defendants' wrongful conduct, the plaintiffs suffered damages as alleged
9 above.

10 183. The CITY OF OAKLAND and ALAMEDA COUNTY are liable under this count based
11 on respondeat superior.

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

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

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COUNT ELEVEN – FALSE ARREST AND FALSE IMPRISONMENT

PLAINTIFF KIERRA BROWN against CITY OF OAKLAND, MANHEIMER,
ARMSTRONG, WINGATE, and DOES.

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

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

188. As a result of defendants' wrongful conduct, BROWN suffered damages as alleged above.

189. As a result of defendants' wrongful conduct, and the potential that such conduct will recur, BROWN and the class are entitled to relief from the potential that such violations will recur.

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

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

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

COUNT TWELVE – NEGLIGENCE

All Plaintiffs Against All Defendants

193. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint.

194. Defendants, and/or each of them, individually and/or while acting in concert with one another, owed plaintiffs the duty to use reasonable care to avoid causing foreseeable injury and damage to plaintiffs during the events described in this Complaint the above-described acts and omissions of defendants breached the duty of care defendants owed to plaintiffs.

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

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

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

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

X. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

1. For an order certifying the class pursuant to Federal Rules of Civil Procedure 23(b)(2);
2. For preliminary and permanent injunctive relief restraining defendants from engaging in the unlawful and unconstitutional actions complained of above;
3. For a declaratory judgment that defendants' conduct complained of herein violated plaintiffs' rights under the Constitution and laws of the United States and California;
4. For past, present and future general damages for the named individual plaintiffs, including but not limited to, pain, suffering, permanent disfigurement and/or emotional distress to be determined according to proof;
5. For past, present and future special damages for the named individual plaintiffs, including, but not limited to, medical expenses, lost wages, damage to career and/or other out of pocket losses to be determined according to proof;
6. For punitive damages against the individual defendants and/or each of them, to be determined according to proof;
7. For statutory damages and exemplary damages pursuant to Cal. Civil Code §§ 52 and 52.1, to be determined according to proof, and for a \$25,000 civil penalty per violation pursuant to Cal. Civil Code § 52 for each plaintiff;
8. For pre- and post-judgment interest as permitted by law;
9. For attorneys' fees pursuant to 42 U.S.C. § 1988 and Cal. Civil Code §§ 52 and 52.1, and/or other authorities, to be determined according to proof;
10. For costs of suit;
11. For such other and further relief as the Court may deem just and proper.

XI. CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

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

3 **XII. JURY TRIAL DEMAND**

4 Plaintiffs demand a jury trial.

5
6 Dated: October 21, 2021 Respectfully submitted,

7 */S/ Rachel Lederman*

8 Alexis C. Beach & Rachel Lederman, Attorneys

9 Flynn Law Office

10 Attorneys for plaintiffs
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