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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 JANE SMITH NO. 1;) CASE NO.
15 JANE SMITH NO. 2;)
16 JANE SMITH NO. 3;)
17 JANE SMITH NO. 4; and)
18 JANE SMITH NO. 5, individually and) **COMPLAINT FOR DAMAGES,**
on behalf of persons similarly) **DECLARATORY AND INJUNCTIVE**
19 situated,) **RELIEF**
) (42 U.S.C. Section 1983)
)
20 Plaintiffs,) **CIVIL RIGHTS CLASS ACTION**
) **JURY TRIAL DEMANDED**
21 vs.)
)
22 CITY OF OAKLAND;)
RICHARD VALERGA, DOES 1-100,)
inclusive,)
)
23 Defendants.)
)

24 JURISDICTION

25 1. This action arises under 42 U.S.C. Section 1983.
26 Jurisdiction is based on 28 U.S.C. Sections 1331 and 1343.
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INTRADISTRICT ASSIGNMENT

2. The claims alleged herein arose in the City of Oakland, State of California. Therefore, venue and assignment lies in the United States District Court for the Northern District of California, San Francisco or Oakland Divisions. 28 U.S.C. Section 1391(b) (2).

PARTIES

- 3. Plaintiff, JANE SMITH NO. 1, is an Asian female.
- 4. Plaintiff, JANE SMITH NO. 2, is an Asian female.
- 5. Plaintiff, JANE SMITH NO. 3, is an Asian female.
- 6. Plaintiff, JANE SMITH NO. 4, is an Asian female.
- 7. Plaintiff, JANE SMITH NO. 5, is an Asian female.
- 8. Defendant CITY OF OAKLAND is, and at all times herein mentioned was, a municipal corporation duly organized and existing under the laws of the State of California.
- 9. Defendant RICHARD VALERGA (hereinafter Defendant VALERGA) was at all times herein mentioned, a Police Officer for Defendant CITY OF OAKLAND and is sued herein in his individual and official capacities.

10. Plaintiffs are ignorant of the true names and/or capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and upon such information and belief allege that each of the Doe defendants is legally responsible and liable for

1 the incident, injuries and damages hereinafter set forth, and
2 that each of said defendants proximately caused said incidents,
3 injuries and damages by reason of their negligence, breach of
4 duty, negligent supervision, management or control, battery,
5 violation of constitutional rights, violation of public policy,
6 false arrests, or by reason of other personal, vicarious or
7 imputed negligence, fault, or breach of duty, whether severally
8 or jointly, or whether based upon agency, employment, ownership,
9 entrustment, custody, care or control or upon any other act or
10 omission. Plaintiffs will ask leave to amend this complaint to
11 insert further charging allegations when such facts are
12 ascertained.

13 11. In doing the acts alleged herein, Defendants, and
14 each of them, acted within the course and scope of their
15 employment for the CITY OF OAKLAND.

16 12. In doing the acts and/or omissions alleged herein,
17 Defendants, and each of them, acted under color of authority
18 and/or under color of law.

19 13. In doing the acts and/or omissions alleged herein,
20 Defendants, and each of them, acted as the agent, servant,
21 employee and/or in concert with each of said other Defendants
22 herein.

23 **STATEMENT OF FACTS**

24 14. Plaintiffs are informed and believe and thereon
25 allege that defendants VALERGA and/or DOE 1-50, while acting in
26 his capacity as an on duty, sworn member of the CITY OF OAKLAND
27 Police Department, engaged in a repeated custom, policy, pattern

1 or practice of singling out women of Asian descent for traffic
2 stops and subjecting them to sexual harassment and/or other
3 disparate and discriminatory treatment based on their gender,
4 race and/or ethnicity, including, but not limited to,
5 inappropriate and unwanted physical contact.

6 15. The plaintiffs and class members are women of
7 Asian descent that were subjected to the violation of their civil
8 rights by defendants VALERGA, the CITY OF OAKLAND and/or DOES 1-
9 100 and/or each of them.

10 **PLAINTIFF JANE SMITH NO. 1**

11 16. In or about late January or early February 2005,
12 plaintiff, JANE SMITH NO. 1, was driving in the vicinity of East
13 14th Street in Oakland, California, when she was pulled over and
14 directed to stop her vehicle by defendant VALERGA or DOE 1
15 without reasonable or probable cause to believe that the
16 plaintiff had committed any traffic violation or crime.

17 17. When the plaintiff asked defendant VALERGA or DOE
18 1 why he had stopped her, defendant VALERGA or DOE 1 told the
19 plaintiff he wanted to speak with her.

20 18. Defendant VALERGA or DOE 1 then ordered plaintiff
21 JANE SMITH NO. 1 to get out of her car and accompany him to his
22 police vehicle. Defendant VALERGA or DOE 1 directed the
23 plaintiff to sit in the front seat of his car.

24 19. Reasonably believing that she was not free to
25 leave and was required to follow defendant VALERGA's or DOE 1's
26 orders, plaintiff sat in the front seat of the police vehicle.

27 20. Once plaintiff was seated in the patrol vehicle,

1 defendant VALERGA or DOE 1 asked the plaintiff for her telephone
2 number and ordered the plaintiff to call his cell phone number
3 from her phone so that he could save her telephone number to his
4 cell phone.

5 21. Defendant VALERGA or DOE 1 told the plaintiff that
6 he wanted to take her picture and told her words to the effect
7 that she was pretty. Defendant VALERGA or DOE 1 then proceeded
8 to take the plaintiff's photograph with his cell phone.

9 22. Defendant VALERGA or DOE 1 told the plaintiff that
10 she needed to smile and took more photographs of the plaintiff.
11 Defendant VALERGA or DOE 1 also attempted to touch the plaintiff,
12 but she pulled away from him and told him not to touch her.

13 23. The plaintiff repeatedly asked defendant VALERGA
14 or DOE 1 if she could go and he told the plaintiff that she could
15 not.

16 24. Defendant VALERGA or DOE 1 told the plaintiff that
17 he wanted to take a photograph of the plaintiff with her sweater
18 opened. Reasonably believing that she could not refuse and that
19 defendant VALERGA or DOE 1 would not allow her to leave the car,
20 plaintiff opened the front of her sweater and defendant VALERGA
21 or DOE 1 took another photograph.

22 25. The plaintiff continued to ask defendant VALERGA
23 or DOE if she could go and defendant VALERGA or DOE 1 refused to
24 allow the plaintiff to leave his vehicle.

25 26. Instead, defendant VALERGA or DOE 1 asked the
26 plaintiff a series of personal questions having nothing to do
27 with any legitimate law enforcement purpose. This included

1 asking the plaintiff where she worked and telling her that he
2 wanted to visit her at work.

3 27. During this entire time, the plaintiff reasonably
4 believed that she was not free to leave and was extremely
5 frightened and upset about defendant VALERGA's or DOE 1's
6 conduct.

7 28. While the plaintiff was sitting on the front seat
8 of defendant VALERGA's or DOE 1's police vehicle, another City of
9 Oakland Police Officer (DOES 2-50 and/or each of them) pulled up
10 and observed the plaintiff in the car. Thereafter, defendant
11 VALERGA or DOE 1 allowed the plaintiff to leave the vehicle and
12 did not issue any citation to the plaintiff for any alleged
13 traffic violation or crime.

14 29. Plaintiff is informed and believes and thereon
15 alleges that defendants DOES 2-50 and/or each of them, although
16 aware that defendant VALERGA or DOE 1 had civilians sitting in
17 the front seat of his vehicle and/or had other knowledge of
18 defendant VALERGA or DOE's misconduct, failed to document, report
19 or otherwise take any or appropriate action to ensure that
20 defendant VALERGA and/or DOES 1-50 did not violate the rights of
21 citizens, such as the plaintiffs.

22 30. Plaintiff JANE SMITH NO. 1 is informed and
23 believes and thereon alleges that after she related what occurred
24 to her sister, plaintiff's sister reported the incident to
25 defendant CITY OF OAKLAND's Police Department shortly thereafter.

26 31. Nevertheless, plaintiff is informed and believes
27 and thereon alleges that defendant CITY OF OAKLAND and/or DOES

1 51-100 and/or each of them, failed to take appropriate remedial
2 action and, as a result thereof, defendant VALERGA or DOE 1 was
3 allowed to continue to engage in his pattern and practice of
4 violating the rights of Asian females while he was working as a
5 police officer for the CITY OF OAKLAND.

6 **PLAINTIFF JANE SMITH NO. 2**

7 32. Plaintiff, JANE SMITH NO. 2, was also subjected to
8 a traffic stop by defendant VALERGA or DOE 1 on or about February
9 5, 2005 while defendant VALERGA or DOE 1 was acting in his
10 capacity as a member of the CITY OF OAKLAND Police Department.

11 33. At that time, plaintiff JANE SMITH NO. 2 was
12 driving her automobile in the vicinity of 23rd Avenue and 15th
13 Street in Oakland, California. Plaintiff JANE SMITH NO. 2 had
14 her two minor children sitting in the back seat of her vehicle.

15 34. After making a turn onto 15th Street, defendant
16 VALERGA or DOE 1 pulled up behind her, put on his siren and
17 directed plaintiff to pull her car over without reasonable or
18 probable cause to believe that the plaintiff committed any
19 traffic violation or crime.

20 35. The plaintiff pulled her vehicle over and stopped.
21 Defendant VALERGA or DOE 1 asked the plaintiff for her driver's
22 license and ordered her to accompany him to his police vehicle,
23 leaving the plaintiff's two minor children alone in the
24 plaintiff's car.

25 36. Defendant VALERGA or DOE 1 asked the plaintiff a
26 series of questions unrelated to any legitimate law enforcement
27 purposes, including whether she was married and where she worked.

1 37. Defendant VALERGA or DOE 1 touched the plaintiff's
2 hands, commented that her hands were soft and asked plaintiff for
3 her phone number.

4 38. During this entire time, plaintiff was frightened
5 and reasonably believed that she could not leave the police
6 vehicle.

7 39. Eventually, defendant VALERGA or DOE 1 returned
8 the plaintiff's driver's license to her, allowed her to leave the
9 car and did not issue any citation to the plaintiff for any
10 alleged traffic violation or other crime.

11 **PLAINTIFF JANE SMITH NO. 3**

12 40. In or about approximately late February 2005,
13 plaintiff JANE SMITH NO. 3 was driving her vehicle on 14th
14 Avenue in Oakland California near Highland Hospital when she
15 was directed by defendant VALERGA or DOE 1 to pull over.

16 41. After directing the plaintiff to give him her
17 driver's license, defendant VALERGA or DOE 1 ordered the
18 plaintiff to sit on the front seat of his CITY OF OAKLAND
19 Police Vehicle. Once in the police car, Defendant VALERGA or
20 DOE 1 asked the plaintiff for her home telephone and cell phone
21 number.

22 42. While seated in the police vehicle, defendant
23 VALERGA or DOE 1 grabbed the plaintiff's hand and told her that
24 her hands were soft. Plaintiff told defendant VALERGA or DOE 1
25 that she did not want him to touch her, but he persisted.

26 43. Defendant VALERGA or DOE 1 also asked plaintiff
27 a series of personal questions unrelated to any legitimate law

1 enforcement purpose. This included asking where she worked and
2 telling the plaintiff that he wanted to visit her at work.

3 44. Defendant VALERGA or DOE 1 told the plaintiff to
4 kiss him. When she did not, he kissed the plaintiff on her
5 lips. Shocked, the plaintiff told defendant VALERGA or DOE 1
6 not to kiss her. Defendant VALERGA or DOE 1 asked the
7 plaintiff whether she liked being kissed by him and she told
8 him no.

9 45. Despite being told by plaintiff that she did not
10 want him to kiss her, defendant VALERGA or DOE 1 kissed the
11 plaintiff again on the lips.

12 46. During this entire time, the plaintiff was
13 frightened and reasonably believed that she could not leave the
14 police vehicle.

15 47. Eventually, defendant VALERGA or DOE 1 allowed
16 the plaintiff to leave the car and did not issue the plaintiff
17 a citation for any traffic violation or other crime.

18 48. The following day, defendant VALERGA or DOE 1
19 called the plaintiff on the telephone and said that he wanted
20 to take her out for lunch. The plaintiff declined.

21 **PLAINTIFF JANE SMITH NO. 4**

22 49. In or about late 2004 or the first half of 2005,
23 plaintiff JANE SMITH NO. 4 was driving her car westbound on
24 McArthur Boulevard in the vicinity of 38th Avenue in Oakland,
25 California. The plaintiff had her two minor children in the
26 vehicle with her.

27 50. At approximately 35th Avenue, the plaintiff

1 noticed that there was a CITY OF OAKLAND Police car following
2 her vehicle.

3 51. After the plaintiff turned onto 35th Avenue, she
4 continued to Kansas Street, where she made another turn onto
5 Kansas Street. The plaintiff noticed that the police vehicle
6 was continuing to follow her.

7 52. Eventually, the plaintiff parked her car across
8 the street from her home on Kansas Street. Defendant VALERGA
9 or DOE 1, who had been driving the CITY OF OAKLAND Police car
10 which had been following her, parked the police vehicle on
11 Kansas Street.

12 53. Defendant VALERGA or DOE 1 ordered the plaintiff
13 to get out of her car and to go to his police vehicle without
14 any reasonable or probable cause to believe that the plaintiff
15 had committed any vehicle code violation or other crime.

16 54. The plaintiff told her children to get out of
17 the car and go to their home.

18 55. Reasonably believing she was not free to leave,
19 the plaintiff went to defendant VALERA'S or DOE 1'S police
20 vehicle where he directed her to sit on the front passenger
21 seat.

22 56. Defendant VALERGA or DOE 1 directed the
23 plaintiff to produce her driver's license and asked for her
24 telephone number. Defendant VALERGA or DOE 1 repeatedly
25 attempted to touch the plaintiff's hand, but she pulled away
26 from him and told him not to touch her.

27 57. Defendant VALERGA or DOE 1 persisted in his

1 attempts to touch the plaintiff's hands and remarked to the
2 plaintiff that her hands were cold. Defendant VALERGA or DOE 1
3 asked the plaintiff if he could call her for a date and she
4 told him no.

5 58. During this entire time, the plaintiff was
6 frightened and reasonably believed that she was not allowed to
7 leave the police car.

8 59. Eventually, defendant VALERGA or DOE 1 allowed
9 the plaintiff to leave his police vehicle and did not issue the
10 plaintiff a citation for any alleged traffic violation or other
11 crime.

12 **PLAINTIFF JANE SMITH NO. 5**

13 60. In or about approximately 2004 or 2005,
14 plaintiff JANE SMITH NO. 5 was driving in the vicinity of
15 Fruitvale and International Boulevard in Oakland, California,
16 when she was directed to pull her vehicle over by defendant
17 VALERGA or DOE 1.

18 61. After taking the plaintiff's driver's license,
19 defendant VALERGA or DOE 1 ordered the plaintiff to sit in the
20 front seat of his police vehicle.

21 62. Defendant VALERGA or DOE 1 asked the plaintiff a
22 series of personal questions unrelated to any legitimate law
23 enforcement purpose, including where she went to school and
24 whether she had a boyfriend.

25 63. Defendant VALERGA or DOE 1 took the plaintiff's
26 hand and held it for a long time and asked her for her cell
27 phone number. Defendant VALERGA or DOE 1 entered the

1 plaintiff's cell phone number into his cell phone.

2 64. During this entire time, the plaintiff was
3 frightened and reasonably believed that she was not allowed to
4 leave defendant VALERGA's or DOE 1's vehicle.

5 65. Eventually, defendant VALERGA or DOE 1 told the
6 plaintiff that she could leave, but retained her driver's
7 license, telling the plaintiff words to the effect that he
8 wished to keep it for the memories. Defendant VALERGA or DOE 1
9 did not issue the plaintiff a citation for any alleged traffic
10 violation or other crime.

11 66. Subsequently, plaintiffs are informed and
12 believe and thereon allege that defendant VALERGA or DOE 1 was
13 charged by the Alameda County District Attorney's Office with
14 violations of the California Penal Code in connection with his
15 traffic stops of Asian females. Plaintiffs are informed and
16 believe and thereon allege that defendant VALERGA or DOE 1
17 pleaded no contest to some of those charges.

18 67. Plaintiffs are informed and believe and thereon
19 allege that defendant VALERGA or DOE 1 was able to engage in a
20 custom, policy, pattern and/or practice of inappropriate
21 conduct and civil rights violations against Asian female
22 motorists as a result of longstanding customs, policies and/or
23 practices of the CITY OF OAKLAND which encouraged, authorized,
24 condoned and/or acquiesced in sexual harassment and other
25 unlawful conduct by members of the CITY OF OAKLAND Police
26 Department.

27 68. Plaintiffs are informed and believe and thereon

1 allege that said abuses of power by CITY OF OAKLAND Police
2 Officers in past years have included, but are not limited to:

3 a. Rape, sexual harassment (Officer Bernard Riley);
4 b. Visiting a brothel while on duty (Officers Eric
5 Riccholt and Mark Neely, Jr.);

6 c. Stalking, sexual harassment and retaliation
7 against a subordinate (Lt. Antonio Romero);

8 d. Quid pro quo sexual harassment (Officer Kent
9 McNabb);

10 e. Sexual harassment (Officer John Mendez);

11 f. Kidnapping, assault and battery, drug planting,
12 fabricating evidence and reports, false arrests and false
13 imprisonment, conspiracy (See, e.g., *Delphine Allen v. City of*
14 *Oakland, et al.*, Master File No. C00-4599 TEH);

15 g. Violation of civil rights resulting in a jury
16 award totaling more than \$2 million dollars in damages to
17 plaintiffs against OPD officers Clyde Sims, Robert Chenault,
18 Michael Sitterud (*Bari/Cherny v. FBI, et al.*);

19 h. *Stewart v. City of Oakland, et al.* (Sexual
20 harassment and sexual assault of a civilian by Oakland Police
21 officer);

22 i. *Keller-Dean v. City of Oakland, Gary Romero, et*
23 *al.*, USDC Case No. C00-01930 MHP (sexual assault/sexual
24 harassment of a civilian by an Oakland Police Officer).

25 69. Plaintiff is further informed and believes and
26 thereon alleges that the repeated abuse of authority by CITY OF
27 OAKLAND Police Officers is the product of a culture of

1 tolerance within the CITY OF OAKLAND Police Department. This
2 culture is rooted in the deliberate indifference of high
3 ranking Defendant CITY OF OAKLAND officials, including, but not
4 limited to Defendants DOES 51-100, and/or other high ranking
5 officials and/or supervisors, and each of them, individually
6 and/or acting in concert with one another, who have routinely
7 acquiesced in misconduct of members of the CITY OF OAKLAND
8 Police Department, ratified such misconduct and/or who have
9 otherwise failed to take the measures necessary to prevent and
10 curtail such misconduct.

11 70. Plaintiffs are further informed and believe and
12 thereon allege that they suffered the violation of their
13 constitutional rights and otherwise incurred damages as alleged
14 herein as a result of customs, policies, patterns and/or
15 practices of Defendants CITY OF OAKLAND and DOES 51-100, and
16 each of them, which have encouraged, authorized, condoned,
17 ratified and otherwise permitted such misconduct to continue
18 and flourish within the CITY OF OAKLAND Police Department.

19 71. Plaintiffs are further informed and believe and
20 thereon allege that said customs, policies, patterns and
21 practices have included the repeated failure by Defendant CITY
22 OF OAKLAND and its high ranking officials to fully implement
23 remedial action intended to prevent such misconduct from
24 continuing to occur within the CITY OF OAKLAND Police
25 Department.

26 72. Plaintiffs are informed and believe and thereon
27 allege that they suffered the violation of their constitutional

1 rights as a result of deliberate indifference of Defendants
2 CITY OF OAKLAND, DOES 51-100, and/or other high ranking Police
3 Department officials and/or supervisors, with regard to the
4 need for more or different policies, training, supervision
5 and/or discipline of its police officers, including, but not
6 limited to, Defendant VALERGA and/or DOES 1-50, and/or each of
7 them.

8 73. Plaintiffs are informed and believe and thereon
9 allege that the subject incidents were caused as a result of
10 the aforesaid customs, policies, patterns, practices and/or
11 deliberate indifference by Defendants CITY OF OAKLAND, DOES 20-
12 10 and/or each of them.

13 **CLASS ACTION ALLEGATIONS**

14 74. Plaintiffs seek class certification pursuant to
15 Fed.R.Civ.P. 23(a) and (b)(2) to allege claims for damages,
16 injunctive and declaratory relief on behalf of themselves and
17 all persons similarly situated. The proposed class consists of
18 all females of Asian descent who were subjected to traffic
19 stops by defendants Richard Valerga and/or DOES 1-50 while they
20 were working as members of the CITY OF OAKLAND Police
21 Department that were not supported by probable cause; all
22 females of Asian descent who were subjected to discriminatory
23 or disparate treatment during traffic stops by defendants
24 Valerga and/or DOES 1-50 while they were working as members of
25 the CITY OF OAKLAND Police Department because of their
26 ethnicity, race and/or gender; and all females of Asian descent
27 who were subjected to sexual harassment by defendants Richard

1 Valerga and/or DOES 1-50 while they were working as members of
2 the CITY OF OAKLAND Police Department.

3 75. This case satisfies the prerequisites of a Rule
4 23(b)(2) class action.

5 76. The class is so numerous that joinder of all
6 members is impracticable. Plaintiffs do not know the identities
7 or exact number of all class members. Based on newspaper
8 accounts, it appears that defendant Valerga began his employment
9 with the City of Oakland Police Department in approximately 1999
10 and, based on his tenure with the Oakland Police Department and
11 defendant Valerga's repeated pattern and practice of misconduct,
12 the membership of the class is likely to be numerous.

13 77. There are questions of law and fact common to all
14 members of the class, because all class members have been
15 adversely affected by the challenged actions of the defendants.
16 Common questions of law and fact include, but are not limited to:
17 whether defendant Richard Valerga and/or DOES 1-50 and/or each of
18 them engaged in a practice of making traffic stops of Asian
19 females without probable cause; whether defendants Richard
20 Valerga and/or Does 1-50 and/or each of them engaged in a
21 practice of using traffic stops as a pretext to sexually harass
22 Asian females; whether defendants Richard Valerga and/or Does 1-
23 50 and/or each of them engaged in a practice of singling out
24 Asian females for discriminatory and disparate treatment because
25 of their race, ethnicity and/or gender while they were working as
26 members of the CITY OF OAKLAND Police Department; whether the
27 CITY OF OAKLAND maintained customs, policies, patterns and

1 practices which caused and/or contributed to the violation of the
2 plaintiffs' rights; and whether the CITY OF OAKLAND, its police
3 department and/or city officials and/or supervisors failed to
4 properly train and supervise members of the CITY OF OAKLAND
5 Police Department which caused and/or contributed to the
6 violation of the plaintiffs' rights.

7 78. The claims of the named plaintiffs are typical of
8 the claims of the class. The claims of the class members arise
9 from the same type of conduct, customs, policies or practices
10 that have resulted in damages to the class representatives and
11 are based on the same legal theories.

12 79. The representative plaintiffs will fairly and
13 adequately protect the interests of the class because they are,
14 and were, subject to the policies, customs, patterns and
15 practices complained of herein, and have no interests
16 antagonistic to other members of the class. In addition,
17 plaintiffs' counsel are experienced in litigating federal civil
18 rights cases and class actions, including federal civil rights
19 actions against the CITY OF OAKLAND and the CITY OF OAKLAND
20 Police Department.

21 80. The defendants have acted and/or have failed to
22 act on grounds generally applicable to the class, and an award of
23 damages, injunctive and declaratory relief for the class as a
24 whole is appropriate.

25 81. The prosecution of separate actions by individual
26 members of the class would create a risk of inconsistent or
27 incompatible standards of conduct for the defendants, thereby

1 making a class action the superior method of adjudicating the
2 controversy.

3 **STATEMENT OF DAMAGES AND RELIEF SOUGHT**

4 82. As a result of the acts and/or omissions of
5 defendants as alleged in this Complaint, plaintiffs, and each
6 of them, suffered damages and/or injuries, including, but not
7 limited to, pain, suffering and emotional distress.

8 83. Plaintiffs will also be entitled to recover
9 their reasonable attorneys' fees and costs in addition to their
10 general and compensatory damages pursuant to statute.

11 84. The conduct of defendant VALERGA and/or DOES 1-
12 100 and/or each of them, was intentional, oppressive,
13 malicious, fraudulent and/or done with a conscious and/or
14 reckless disregard for the rights of the plaintiffs.
15 Therefore, plaintiffs will be entitled to recover punitive
16 damages in amounts to be determined according to proof.

17 85. Defendants' policies, practices, customs, conduct
18 and acts alleged herein have resulted and will continue to result
19 in irreparable injury to plaintiffs, including but not limited to
20 violations of their constitutional and statutory rights.
21 Plaintiffs have no plain, adequate or complete remedy at law to
22 address the wrongs described herein. The plaintiffs and class
23 members intend in the future to exercise their constitutional
24 rights in the vicinity of the City of Oakland and in other public
25 places in the City of Oakland. Defendants' conduct described
26 herein has created fear, anxiety and uncertainty among plaintiffs
27 with respect to their ability to exercise their constitutional

1 rights in the present and future, and with respect to their
2 physical security and safety. Defendants' conduct described
3 herein has also created fear, anxiety and uncertainty among
4 plaintiffs and class members with respect to their exercise of
5 their right to move freely about the public streets, without
6 being subjected to unreasonable searches and seizures and/or
7 discriminatory and disparate treatment due to their ethnicity,
8 race and/or gender.

9 86. Plaintiffs therefore seek injunctive relief from
10 this court, to ensure that plaintiffs and persons similarly
11 situated will not suffer violations of their rights from
12 defendants' illegal and unconstitutional policies, customs and
13 practices as described herein.

14 87. An actual controversy exists between plaintiffs
15 and defendants in that plaintiffs contend that the policies,
16 practices and conduct of defendants alleged herein are unlawful
17 and unconstitutional, whereas plaintiffs are informed and believe
18 that defendants contend that said policies, practices and conduct
19 are lawful and constitutional. Plaintiffs seek a declaration of
20 rights with respect to this controversy.

21 **CLAIMS FOR RELIEF**

22 FIRST CLAIM FOR RELIEF

23 (42 U.S.C. SECTION 1983)
(AGAINST DEFENDANTS RICHARD VALERGA, DOES 1-50)

24 88. Plaintiffs incorporate by reference and re-
25 alleges herein Paragraphs 1 through 87.

26 89. In doing the acts complained of herein,
27 defendants VALERGA and/or DOES 1-19 and/or each of them, did

1 act under color of state law to deprive plaintiffs, the class
2 members and/or each of them as alleged heretofore of certain
3 constitutionally protected rights, including, but not limited
4 to:

5 (a) the right to be free from unreasonable searches or
6 seizures;

7 (b) the right to equal protection of the law; and/or

8 (c) the right not to be deprived of liberty without due
9 process of law.

10 90. Said rights are substantive guarantees under
11 the Fourth and/or Fourteenth Amendments to the United States
12 Constitution.

13 91. As a result of the violation of their
14 constitutional rights by defendants VALERGA and/or DOES 1-50
15 and/or each of them, plaintiffs, the class members and/or each
16 of them sustained the injuries and/or damages as alleged
17 heretofore in this Complaint.

18 WHEREFORE, Plaintiffs pray for relief as hereinafter set
19 forth.

20 SECOND CLAIM FOR RELIEF
(42 U.S.C. SECTION 1983)
21 (AGAINST DEFENDANTS CITY OF OAKLAND, DOES 51-100)

22 92. Plaintiffs incorporate by reference and re-
23 allege herein Paragraphs 1 through 91.

24 93. As against Defendants CITY OF OAKLAND and/or
25 DOES 51-100 and/or each of them, individually and/or in their
26 capacities as official policy-maker(s) for the CITY OF
27 OAKLAND, the plaintiffs further allege that the acts and/or

1 omissions alleged in the Complaint herein are indicative and
2 representative of a repeated course of conduct by members of
3 the CITY OF OAKLAND Police Department tantamount to a custom,
4 policy or repeated practice of condoning and tacitly
5 encouraging the abuse of police authority, and disregard for
6 the constitutional rights of citizens, such as plaintiffs.

7 94. Plaintiffs are further informed and believe and
8 thereon allege that the acts and/or omissions alleged herein
9 are the proximate result of a custom, policy, pattern or
10 practice of deliberate indifference by Defendants CITY OF
11 OAKLAND, DOES 51-100 and/or each of them, to the repeated
12 violations of the constitutional rights of citizens by CITY OF
13 OAKLAND police officers, which have included, but are not
14 limited to, repeated acts of sexual misconduct while on duty,
15 unreasonable searches and seizures, false arrests, false
16 imprisonments, the repeated denial of equal protection of the
17 law based on race and/or gender and other repeated violations
18 of the constitutional rights of citizens in Oakland.

19 95. Plaintiffs are further informed and believe and
20 thereon allege that the damages sustained as alleged herein
21 were the proximate result customs, policies and/or practices
22 which included, but were not limited to, the failure to
23 adequately or appropriately hold officers accountable for
24 their misconduct, the failure to properly and fairly
25 investigate complaints about officers' misconduct, the failure
26 to enact or adopt policies to ensure adequate and/or
27 appropriate oversight of officers to prevent continuing

1 violations of the rights of citizens, the failure to properly
2 train and/or discipline officers, the failure to adequately or
3 properly supervise officers, the failure to adopt and fully
4 implement an appropriate early warning system, policies and
5 customs which encouraged officers to target certain groups of
6 citizens for unreasonable search and seizure and/or other
7 customs, and/or policies which caused and/or contributed to,
8 the violation of the rights of citizens by members of the CITY
9 OF OAKLAND Police Department.

10 96. The aforementioned deliberate indifference,
11 customs, policies or practices of Defendants CITY OF OAKLAND,
12 DOES 51-100, and/or each of them, resulted in the deprivation
13 of the constitutional rights of the plaintiffs and class
14 members, including, but not limited to, the following:

15 (a) the right not to be deprived of liberty or property
16 without Due Process of Law;

17 (b) the right to be free from unreasonable searches
18 and/or seizures; and/or,

19 (c) the right to equal protection of the law.

20 97. Said rights are substantive guarantees under
21 the Fourth and/or Fourteenth Amendments to the United States
22 Constitution.

23 98. As a result of the violation of their
24 constitutional rights by defendants CITY OF OAKLAND and/or
25 DOES 51-100 and/or each of them, plaintiffs and the class
26 members and/or each of them, sustained the injuries and/or
27 damages as alleged heretofore in this Complaint.

1 WHEREFORE, plaintiffs pray for relief as hereinafter set
2 forth.

3 JURY TRIAL DEMAND

4 99. Plaintiffs hereby demand a jury trial.

5 PRAYER

6 WHEREFORE, Plaintiffs pray for judgment against
7 defendants, and each of them, as follows:

8 1. For an order certifying the class defined herein
9 pursuant to Federal Rules of Civil Procedure Rule 23(b)(2);

10 2. For preliminary and permanent injunctive relief
11 restraining defendants from engaging in the unlawful and
12 unconstitutional actions complained of above;

13 3. For a declaratory judgment that defendants' conduct
14 complained of herein was a violation of plaintiffs' rights under
15 the Constitution and laws of the United States and California;

16 4. For the individual named plaintiffs, general and
17 compensatory damages to be determined according to proof;

18 5. For punitive and exemplary damages in amounts to be
19 determined according to proof as to the individual defendants;

20 6. For attorneys' fees pursuant to 42 U.S.C. § 1988
21 and/or other authorities in amounts to be determined according to
22 proof;

23 7. For costs of suit;

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

26 9. For such other and further relief as the Court may
27 deem just and proper.

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

1 Pursuant to Civil L.R. 3-16, the undersigned certifies
2 that as of this date, other than the named parties, there is
3 no such interest to report.
4

5 Dated: November 20, 2006

_____/s/_____
JOHN L. BURRIS
Attorney for Plaintiffs

7
8 DATED: November 20, 2006

_____/s/_____
JAMES B. CHANIN
Attorney for Plaintiffs

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