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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LOCAL 10, INTERNATIONAL LONGSHORE  
AND WAREHOUSE UNION; BILLY KEPOO;  
ALLEN CHAPMAN; CHRISTOPHER CLAY;  
SILAS DUNN; WILLIE HAMLIN; ERNEST  
EVANS; DAVID LOVILLE; LAWRENCE  
MASSEY; BYRON MOORE, SR.; JOHN  
NISHINAGA; WILLOW ROSENTHAL;  
JESSICA LAWRENCE; SCOTT FLEMING;  
JENNIFER SCHOCKEMOEHL; LAWRENCE  
MENARD; JEFFREY CROW BOLT;  
MATTHEW DODT; REBECCA SONCHEK;  
TERRENCE ENRIGHT; ARTHUR  
MARTINEZ; HENRY NORR; STEVEN  
SAKALA; SUSAN QUINLAN; TIM RIDOLFI;  
ALICIA GROGAN-BROWN; KENNETH  
HAYES; DEAN ROYER; BERNADINE  
MELLIS; THOMAS BECKER; PATRICIA  
"MAX" RORTY; JESSE CHRISTENSEN;  
DIANA BOHN; MILES MONTABANO;  
NICHOLAS FRABASILIO; CYPRUS  
GONZALEZ; KRISTIN MEEKER; ERIC  
SHAW; VIOLETA FOREGGER; CHELSEA  
SMITH; and AIDAN KOTLER, individually and  
on behalf of all others similarly situated,

Plaintiffs,

No.

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE AND  
DECLARATORY RELIEF**

**CIVIL RIGHTS CLASS ACTION**

**DEMAND FOR JURY TRIAL.**

1 vs.

2 CITY OF OAKLAND; RICHARD WORD;  
3 PATRICK HAW; ROD YEE; E. POULSON;  
4 HOWARD A. JORDAN; DAVE KOZICKI; T.  
5 HOGENMILLER; E. TRACEY; R. GUTIEREZ;  
6 A. OERLEAMNS; R. HOLMGREN; P.  
7 GONZALES; S. KNIGHT; M. RANDALL,  
8 individually and in their official capacities, and  
9 DOES 1-100, inclusive,  
10 Defendants.

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## I. INTRODUCTION

1. This is a civil rights class action arising from unconstitutional and unlawful actions taken by the Oakland Police Department (“OPD”) in response to a peaceful nonviolent antiwar demonstration at the Port of Oakland on April 7, 2003. The named individual plaintiffs are demonstrators, legal observers, videographers, journalists, and dockworkers who were in the vicinity of the April 7th demonstration when defendants did unlawfully disperse and interfere with the demonstration by, among other things, firing guns which shot wooden dowels and bean bags, throwing “stingball” grenades filled with rubber pellets and tear gas, and striking demonstrators with their motorcycles and clubs. Defendants’ actions were the result of unlawful and unconstitutional policies and practices of the City of Oakland and the OPD. The named individual plaintiffs seek damages from defendants for the injuries they suffered as a result of the unlawful police conduct at the April 7th demonstration. In addition, the plaintiffs, on their own behalf and on behalf of a class of persons similarly situated, seek declaratory and injunctive relief to restrain defendants from using excessive, indiscriminate and/or arbitrary force and other unlawful actions to interfere with, disperse and deter future demonstrations, rallies and protest activities in the City of Oakland.

2. Plaintiffs claim that defendants’ actions deprived them of their right to freedom of speech and association, their right to be free from unreasonable seizures and excessive force, and their right to due process and equal protection of the laws, all guaranteed by the United States and California Constitutions, as well as additional state law claims relating to the police actions complained of herein.

## II. JURISDICTION

3. This action arises under 42 U.S.C. §1983. Jurisdiction is based on 28 U.S.C. §1331 and §1343. The court has supplemental jurisdiction over state law claims under 28 U.S.C. §1367. Plaintiffs have filed administrative claims with the City of Oakland in compliance with California Government Code sections 910 et seq., and the City has not acted upon those claims.

## III. INTRADISTRICT ASSIGNMENT

4. 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 Division or the Oakland Division.

1 **IV. THE PARTIES**

2 **A. Plaintiffs**

3 5. Plaintiff LOCAL 10, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION  
4 (“LOCAL 10”) or (“ILWU”) is an unincorporated association and labor union whose members perform  
5 longshore work in the Ports of Oakland, San Francisco and Richmond under a collective bargaining  
6 agreement known as the Pacific Coast Longshore and Clerks Agreement (“PCL&CA”). Plaintiff  
7 LOCAL 10 has, along with individual LOCAL 10 members, economic and legal interests concerning the  
8 exercise of police powers and the use of force by defendants in the Port and City of Oakland. Plaintiff  
9 LOCAL 10 sues on its own behalf and in its representative capacity on behalf of its officers and  
10 members, including but not limited to, those who reside and/or work in the Port of Oakland and City of  
11 Oakland.

12 6. The elected officers of Local 10 perform various duties on behalf of the Local 10 membership,  
13 including, among other things, assisting and representing Local 10 members with respect to matters of  
14 employment at work sites including the container terminal facility operated by Stevedoring Services of  
15 America, and the marine container facility operated by American President Lines, Inc. and its wholly  
16 owned subsidiary Eagle Marine Services, Inc., both located in the Port of Oakland. In particular, Local  
17 10 officers show up when picketing or demonstrations occur at a work site, and represent Local 10 and  
18 its members in arbitration proceedings that are held under the PCL&CA to determine whether Local 10  
19 members should enter and/or work at a facility subject to such picketing or demonstrating.

20 7. Plaintiffs BILLY KEPOO, ALLEN CHAPMAN, CHRISTOPHER CLAY, SILAS DUNN,  
21 WILLIE HAMLIN, ERNEST EVANS, DAVID LOVILLE, LAWRENCE MASSEY, and BYRON  
22 MOORE, SR. are, and at all times mentioned herein were, dockworkers and members of Local 10 who  
23 were in the vicinity of the demonstration on April 7, 2003 and were subjected to the unlawful police  
24 conduct complained of herein.

25 8. Plaintiffs JOHN NISHINAGA, WILLOW ROSENTHAL, JESSICA LAWRENCE, SCOTT  
26 FLEMING, JENNIFER SHOCKEMOEHL, LAWRENCE MENARD, JEFFERY CROW BOLT,  
27 MATTHEW DODT, REBECCA SONCHEK, TERRENCE ENRIGHT, ARTHUR MARTINEZ,  
28 HENRY NORR, STEVEN SAKALA, SUSAN QUINLAN, TIM RIDOLFI, ALICIA GROGAN-

1 BROWN, KENNETH HAYES, DEAN ROYER, BERNADINE MELLIS, THOMAS BECKER,  
2 PATRICIA "MAX" RORTY, JESSE CHRISTENSEN, DIANA BOHN, MILES MONTABANO,  
3 NICHOLAS FRABASILIO, CYPRUS GONZALEZ, KRISTIN MEEKER, ERIC SHAW, VIOLETA  
4 FOREGGER, CHELSEA SMITH, and AIDAN KOTLER (hereafter referred to as “demonstrator  
5 plaintiffs”), are individuals who were exercising their rights to freedom of speech and association in the  
6 vicinity of the April 7, 2003, demonstration and were subjected to the unlawful police conduct  
7 complained of herein.

8 **B. Defendants**

9 9. Defendant CITY OF OAKLAND is, and at all times herein mentioned was, a municipal  
10 corporation duly organized and existing under the laws of the State of California.

11 10. Defendant RICHARD WORD is, and at all times herein mentioned was, the Chief of Police for  
12 the CITY OF OAKLAND. Defendant WORD was the policy-maker for Defendant CITY OF  
13 OAKLAND on the matters alleged herein related to the customs, policies, practices, of the OPD,  
14 including, but not limited to, customs, policies and practices related to policing of First Amendment  
15 activities; the training, supervision, hiring, discipline, assignment and control of police officers; and the  
16 management and supervision of OPD.

17 11. Defendant PATRICK HAW is, and at all times herein mentioned was, the Deputy Chief in  
18 charge of the OPD Patrol Division. Defendant HAW participated in the planning, supervision and  
19 execution of the police conduct complained of herein.

20 12. Defendants Captain ROD YEE, Lt. E. POULSON, Lt. HOWARD A. JORDAN, Lt. DAVID  
21 KOZICKI, Sgt. T. HOGENMILLER, and Sgt. E. TRACEY are, and at all times mentioned were,  
22 command and/or supervisory employees of OPD who participated in the planning, supervision and  
23 execution of the police conduct complained of herein.

24 13. Defendants Officers R. GUTIEREZ, A. OERLEAMNS, R. HOLMGREN, P. GONZALES, S.  
25 KNIGHT, and M. RANDALL, are, and at all times mentioned were, officers of OPD who participated  
26 in the execution of the police conduct complained of herein.

27 14. All of the above individual defendants are sued in their individual and official capacities.  
28



1 HENRY NORR, STEVEN SAKALA, SUSAN QUINLAN, TIM RIDOLFI, ALICIA GROGAN-  
2 BROWN, KENNETH HAYES, DEAN ROYER, BERNADINE MELLIS, THOMAS BECKER,  
3 PATRICIA "MAX" RORTY, JESSE CHRISTENSEN, DIANA BOHN, MILES MONTABANO,  
4 NICHOLAS FRABASILIO, CYPRUS GONZALEZ, KRISTIN MEEKER, ERIC SHAW, VIOLETA  
5 FOREGGER, CHELSEA SMITH, and AIDAN KOTLER, the demonstrator plaintiffs, seek class  
6 certification pursuant to Fed.R.Civ.P. 23(a) and (b)(2) to pursue injunctive and declaratory relief on  
7 behalf of themselves and all persons similarly situated. The proposed class consists of all persons who  
8 attended the April 7th demonstration, and/or who may attend in the future demonstrations, rallies and  
9 protests in the City of Oakland, and, as a result, have been, and/or hereafter may be, subjected to  
10 defendants' policy and practice of using excessive, indiscriminate and/or arbitrary force to disperse or  
11 control persons attending demonstrations, rallies or protests as complained of herein.

12 21. This case satisfies the prerequisites of a Rule 23(b)(2) class action.

13 22. The class is so numerous that joinder of all members is impracticable. Plaintiffs do not know  
14 the identities or exact number of all class members. Plaintiffs are informed and believe and thereon  
15 allege that in excess of 500 persons were present at, or in the vicinity of, said demonstration and were  
16 subjected to and/or threatened by the unlawful and unconstitutional actions of the OPD.

17 23. There are questions of law and fact common to all members of the class, because all class  
18 members have been, or may be in the future, adversely affected by the challenged actions of the  
19 defendants. Common questions of law and fact include, but are not limited to: whether OPD officers  
20 were justified in using force on April 7, 2003, and if so, what degree of force was constitutionally  
21 reasonable; whether the OPD and its officers have a policy or practice of using excessive force to  
22 interfere with nonviolent expressive activities; and whether the City, the OPD and its supervisors fail to  
23 properly train and supervise officers in the use of force during demonstrations and rallies.

24 24. The claims of the named demonstrator plaintiffs are typical of the claims of the class. The  
25 claims of the class members arise from the same customs, policies or practices that have resulted in  
26 damages to the class representatives and are based on the same legal theories.

27 25. The representative plaintiffs will fairly and adequately protect the interests of the class because  
28 they are, and were, subject to the policies, customs and practices complained of herein, and have no

1 interests antagonistic to other members of the class. In addition, plaintiffs' counsel are experienced in  
2 litigating federal civil rights cases and class actions, including federal civil rights actions against the City  
3 of Oakland and the OPD.

4 26. The defendants have acted and refused to act on grounds generally applicable to the class, and  
5 injunctive and declaratory relief for the class as a whole is appropriate.

6 27. The prosecution of separate actions by individual members of the class would create a risk of  
7 inconsistent or incompatible standards of conduct for the defendants, thereby making a class action the  
8 superior method of adjudicating the controversy.

## 9 VI. STATEMENT OF FACTS

10 28. In late March, 2003, the United States government invaded Iraq. Thousands of people  
11 participated in demonstrations and rallies in the San Francisco Bay Area to voice opposition to this war.

12 29. An antiwar demonstration was planned for April 7, 2003, at the Port of Oakland. The  
13 demonstration was intended to focus on American President Lines (“APL”), which was under contract  
14 with the United States military to ship weapons, and Stevedore Services of America (“SSA”), to which  
15 the U.S. government had just granted the contract to operate Iraq’s main port of Umm Qasr. Some  
16 participants planned to peacefully and nonviolently encourage workers and trucks to not enter the  
17 marine container facilities by setting up picket lines at the entrances to the facilities and talking to truck  
18 drivers, while others planned to peacefully and lawfully express their viewpoint against the war in the  
19 vicinity with signs, banners and verbal opposition. Still others intended to observe and/or document the  
20 demonstration and police response, including a number of legal observers, journalists, and independent  
21 videographers and photographers.

22 30. On information and belief, prior to this demonstration, defendants gathered, maintained and  
23 disseminated documents, information and intelligence concerning the demonstration, including, but not  
24 limited to, information about the constitutionally protected speech and associational activities of  
25 individuals and organizations involved in antiwar activities, including LOCAL 10 and its officers and  
26 members, and the demonstrators. Such documents and information gathered and maintained by the  
27 OPD included an anti-war internal newsletter of LOCAL 10, and email messages to an ILWU group  
28 listserv concerning union support for anti-war protest activities among other union business matters.

1 Defendants' actions in gathering, maintaining and disseminating documents, information and  
2 intelligence concerning the constitutionally protected speech and associational activities of plaintiffs was  
3 overbroad, unnecessary and unjustified by any legitimate law enforcement purpose.

4 31. On information and belief, on or before April 7, 2003, defendants WORD, HAW, YEE, and/or  
5 other commanders and supervisory officials of OPD and the CITY OF OAKLAND planned that the  
6 police would bring an arsenal of weapons, including projectile and chemical weapons, which the OPD  
7 and its officers knew would likely cause serious bodily injury to demonstrators. The OPD and its  
8 officers nevertheless planned to quickly deploy these weapons to clear demonstrators from the vicinity  
9 of the marine container facilities.

10 32. At various times on and before April 7, 2003, representatives of the OPD and CITY OF  
11 OAKLAND held meetings and discussions with non-ILWU employees and representatives of APL,  
12 SSA, and the Pacific Maritime Association ("PMA"), regarding the police response to the anticipated  
13 anti-war demonstration.

14 33. On April 7, 2003, several hundred demonstrators gathered at the Port in the early morning  
15 hours. Most arrived on BART or parked their vehicles near the West Oakland BART station, and  
16 walked or were shuttled to the Port. Some set up picket lines at the gate entrances of the APL and SSA  
17 Terminals, walking in circles carrying signs. Many others, including demonstrators, legal observers,  
18 videographers, journalists and others, stood to the side of the road, on the shoulder or along the railroad  
19 tracks.

20 34. At or around 6:00 a.m. on Monday, April 7, 2003, in excess of 20 LOCAL 10 members arrived  
21 to report to work at the gate entrances of the APL Terminal in the Port of Oakland. Pursuant to  
22 established contract procedures under the PCL&CA, the LOCAL 10 members, accompanied by several  
23 LOCAL 10 officers, "stood by" outside the gate entrances of the SSA Terminal and the APL Terminal  
24 to await the holding of a labor arbitration regarding whether LOCAL 10 members should or should not  
25 enter the SSA Terminal or the APL Terminal in the face of the public anti-war demonstration as well as  
26 the mass police presence. Most, if not all, of the LOCAL 10 members and officers at the scene  
27 congregated as a group, physically separate from the demonstrators and the police at the gate entrances  
28

1 of the SSA Terminal and the APL Terminal. At all material times, the LOCAL 10 officers and members  
2 acted peacefully and lawfully.

3 35. Plaintiffs are informed and believe that at approximately 7:15 a.m., the police purported to give  
4 a dispersal order to the demonstrators at one of the APL gates, but this order was inaudible to most and  
5 unclear in informing the demonstrators what the police wanted them to do. The demonstrators  
6 attempted to comply with the order and/or with police movements by clearing away from the gates, and  
7 traffic proceeded through. The police formed skirmish lines which blocked the demonstrators and  
8 observers from the direct route back to the West Oakland BART station and parking lot and refused to  
9 let them through.

10 36. After the demonstrators had cleared away from the gate, at approximately 7:30 a.m., without  
11 provocation or warning, OPD police officers, including defendants E. TRACEY, R. GUTIEREZ, A.  
12 OERLEAMNS, R. HOLMGREN, P. GONZALES, and S. KNIGHT, began throwing “sting ball”  
13 grenades filled with rubber pellets and tear gas, and firing guns which shot multiple wooden dowels and  
14 “flexible baton rounds” (bean bags), at the peaceful demonstrators and observers. Also, OPD officers  
15 ran motorcycles into the peaceful, fleeing demonstrators and observers, and hit them with clubs. OPD  
16 officers continued chasing and shooting at the retreating crowd north on Middle Harbor Road toward the  
17 SSA facilities for some minutes.

18 37. The police also purported to give an order to disperse to the peaceful picketers at the SSA gate  
19 entrances. Again, this order was inaudible to many and unclear as to what the demonstrators and  
20 observers were supposed to do. OPD officers, including defendants E. TRACEY, R. GUTIEREZ, A.  
21 OERLEAMNS, R. HOLMGREN, P. GONZALES, and S. KNIGHT, opened fire at the peaceful  
22 demonstrators and observers, and at the LOCAL 10 members and officers, shooting and striking them  
23 with projectiles. The demonstrators and others attempted to leave the area by walking up Maritime  
24 Road, the only avenue not blocked off by the police. Defendants pursued them, charging with  
25 motorcycles, throwing grenades and shooting wooden dowels directly at the backs and heads of fleeing  
26 demonstrators and others.

27 38. A number of people gathered at the intersection of Maritime and 7th Streets. Some were  
28 peacefully picketing, some merely observing, while others attended to wounds or tried to determine how

1 to get home. At approximately 9:00 a.m., OPD officers, including defendants E. TRACEY, R.  
2 GUTIEREZ, A. OERLEAMNS, R. HOLMGREN, P. GONZALES, and S. KNIGHT, approached,  
3 purported to give a dispersal order, again inaudible to many, and proceeded to open fire directly at the  
4 picketers and others in the vicinity. This was approximately one and a half hours and more than a mile  
5 in distance from when and where the projectiles were first fired.

6 39. OPD officers continued to herd the terrified demonstrators and observers down 7th Street  
7 toward the BART station with their motorcycles.

8 40. Throughout the period from approximately 7:30 a.m. to approximately 9:00 a.m., additional  
9 persons arrived in the vicinity to participate in or observe the antiwar demonstration. OPD officers,  
10 including defendants E. TRACEY, R. GUTIEREZ, A. OERLEAMNS, R. HOLMGREN, P.  
11 GONZALES, and S. KNIGHT, shot and threw projectiles at, and ran motorcycles into, these persons as  
12 well, without provocation or warning, and regardless of whether these persons had been in the area when  
13 any dispersal orders were given.

14 41. In protest of defendants' use of excessive force at the Port demonstration and the Iraq war,  
15 some of the demonstrators walked as a group from the BART area to the Oakland Federal Building.  
16 OPD officers continued to pursue them in an intimidating fashion, periodically hitting demonstrators  
17 with motorcycles and injuring them.

18 42. OPD officers, including defendants E. TRACEY, R. GUTIEREZ, A. OERLEAMNS, R.  
19 HOLMGREN, P. GONZALES, and S. KNIGHT, aimed and fired projectiles such as wooden dowels,  
20 "flexible batons" (bean bags), and sting ball grenades filled with rubber pellets and tear gas, directly at  
21 plaintiffs' heads, torsos, hands, arms and legs, in some cases from close range, despite their knowledge  
22 that such use of the projectile weapons constituted potentially deadly force, and contrary to the  
23 manufacturers' warnings and instructions, including, but not limited to, the warning prominently printed  
24 on each Federal Laboratories "Multiple Wood Baton Shell" used by defendants on April 7, 2003: "**Do**  
25 **not fire directly at persons as serious injury or death may result. Ricochet baton shell approximately**  
26 **3 meters in front of persons.**"

27 43. At no point did defendants give plaintiffs a clear order directing what they should do or where  
28 they should go to avoid being shot or otherwise subjected to force.

1           44. There was no probable cause or reasonable suspicion that the plaintiffs or any of the  
2 demonstrators, observers or dockworkers, posed an immediate or credible threat of injury to the police  
3 or any other person, and there were no facts that justified the force that the OPD and its officers directed  
4 against the plaintiffs.

5           45. Plaintiffs are informed and believe that defendants directed force against the demonstrators for  
6 the purpose of interfering with their First Amendment rights, and that defendants' use of force was  
7 motivated by the political content, message and viewpoint of the demonstrators, or by defendants'  
8 perceptions of such.

9           46. Plaintiffs are informed and believe that defendants deliberately singled out and aimed their  
10 weapons and otherwise directed force at legal observers; perceived demonstration leaders such as  
11 persons who carried bullhorns; videographers and journalists who were holding camera equipment.  
12 Plaintiffs are informed and believe that defendants' use of force against these plaintiffs was motivated  
13 and influenced by the political content and viewpoint of their message, and/or their acts of documenting  
14 the police conduct and/or criticism of the police, and/or defendants' perceptions of one or more of these  
15 characteristics.

16           47. Plaintiffs are informed and believe that defendants deliberately singled out and aimed their  
17 weapons and otherwise directed force at and engaged in the other conduct described herein against  
18 plaintiff LOCAL 10 and its officers and members because of hostility, animus and discrimination  
19 against the ILWU as an organization and against members and officers affiliated with the ILWU.

20           48. Plaintiffs are informed and believe that a total of at least 50 people were physically injured by  
21 the police actions complained of herein.

## 22 23                           **VIII. ALLEGATIONS CONCERNING INDIVIDUAL PLAINTIFFS**

24           49. On April 7, 2003, plaintiff BILLY KEPOO was a member of Local 10 of the ILWU and was  
25 "standing by" with other union members to await an arbitrator's decision as to whether they could cross  
26 the demonstrators' picket line and/or to be escorted into work by the police. The defendants, without  
27 legal justification or reasonable cause, caused him to be shot in the hand with a projectile, fracturing his  
28 thumb.

1           50. On April 7, 2003, while plaintiff ALLEN CHAPMAN, a member of Local 10 of the ILWU,  
2 was “standing by” with other union members, the defendants, without legal justification or reasonable  
3 cause, caused him to be shot with projectiles in the lower left back, inner left thigh, and on the left side.

4           51. On April 7, 2003, while plaintiff CHRISTOPHER CLAY, a member of Local 10 of the ILWU,  
5 was “standing by” with other union members, the defendants, without legal justification or reasonable  
6 cause, caused him to be shot with projectiles on the right hamstring and on his back near the right  
7 shoulder.

8           52. On April 7, 2003, while plaintiff SILAS DUNN, a member of Local 10 of the ILWU, was  
9 “standing by” with other union members, the defendants, without legal justification or reasonable cause,  
10 caused him to be shot with projectiles, including in the right lower abdomen, left side abdomen, in the  
11 arm and in the back of the leg.

12           53. On April 7, 2003, while plaintiff WILLIE HAMLIN, a member of Local 10 of the ILWU, was  
13 “standing by” with other union members, the defendants, without legal justification or reasonable cause,  
14 caused him to be shot with a projectile on the back of his right hamstring area.

15           54. On April 7, 2003, while plaintiff ERNEST EVANS, a member of Local 10 of the ILWU, was  
16 “standing by” with other union members, the defendants, without legal justification or reasonable cause,  
17 caused him to be shot with a projectile in the back.

18           55. On April 7, 2003, while plaintiff DAVID LOVILLE, a member of Local 10 of the ILWU, was  
19 “standing by” with other union members, the defendants, without legal justification or reasonable cause,  
20 caused him to be shot with a projectile in the right buttock and damaged his automobile with a  
21 concussion grenade.

22           56. On April 7, 2003, while plaintiff LAWRENCE MASSEY, a member of Local 10 of the ILWU,  
23 was “standing by” with other union members, the defendants, without legal justification or reasonable  
24 cause, caused him to be shot with projectiles in the back and buttocks.

25           57. On April 7, 2003, plaintiff BYRON MOORE, SR., a member of Local 10 of the ILWU, was  
26 “standing by” with other union members. When plaintiff MOORE realized the police were shooting in  
27 the vicinity, he attempted to go to his car with the intention of immediately leaving the area. As plaintiff  
28 MOORE was attempting to go to his car, the defendants, without legal justification or reasonable cause,

1 caused him to be shot with a projectile in the back near his right shoulder and damaged his vehicle with  
2 a projectile.

3 58. On April 7, 2003, plaintiff JOHN NISHINAGA was attending the April 7th demonstration  
4 when defendants, without legal justification or reasonable cause, caused him to be struck by a  
5 motorcycle and subsequently shot him with a projectile fired directly at him, fracturing his hand.

6 59. On April 7, 2003, plaintiff WILLOW ROSENTHAL was attending the demonstration when  
7 defendants, without legal justification or reasonable cause, caused her to be shot in the leg as she fled,  
8 resulting in an injury which has necessitated surgery and will likely leave permanent scarring and  
9 disfigurement.

10 60. On April 7, 2003, plaintiff JESSICA LAWRENCE was attending and videotaping the  
11 demonstration when defendants, without legal justification or reasonable cause, caused her to be shot in  
12 the thigh with a wooden dowel.

13 61. On April 7, 2003, plaintiff SCOTT P. FLEMING was attending the demonstration when  
14 defendants, without legal justification or reasonable cause, caused him to be shot five times in the back,  
15 shoulder, and under his arm with wooden dowels fired directly at him as he fled.

16 62. On April 7, 2003, plaintiff JENNIFER SCHOCKEMOEHL was attending the demonstration  
17 when defendants, without legal justification or reasonable cause, caused her to be shot in the back with a  
18 projectile.

19 63. On April 7, 2003, plaintiff JEFFERY CROW BOLT was attending the demonstration when  
20 defendants, without legal justification or reasonable cause, caused him to be repeatedly struck and run  
21 over by motorcycles and to be repeatedly shot with projectiles, which hit him in numerous places  
22 including the arm, buttocks and upper body.

23 64. On April 7, 2003, plaintiff MATTHEW DODT was attending the demonstration when  
24 defendants, without legal justification or reasonable cause, caused him to be repeatedly struck by a  
25 motorcycle, and, as he was attempting to leave the area, caused him to be shot with projectiles which  
26 struck him in the torso and hand.

27 65. On April 7, 2003, plaintiff REBECCA SONCHEK was attending the demonstration and  
28 walking with other demonstrators on the sidewalk toward the Oakland Federal Building, when

1 defendants, without legal justification or reasonable cause, caused her to be struck twice with a police  
2 club.

3 66. On April 7, 2003, plaintiff TERRENCE ENRIGHT was attending and videotaping the  
4 demonstration when defendants, without legal justification or reasonable cause, caused him to be struck  
5 with a police club and shot in the chest and leg with projectiles.

6 67. On April 7, 2003, plaintiff ARTHUR MARTINEZ was attending the demonstration when  
7 defendants, without legal justification or reasonable cause, caused him to be shot in the leg with a  
8 projectile.

9 68. On April 7, 2003, plaintiff LAWRENCE MENARD was attending the demonstration when  
10 defendants, without legal justification or reasonable cause, caused a “sting ball” grenade or similar  
11 object to explode with deafening noise and released tear gas and/or other chemical agents in close  
12 proximity to his head.

13 69. On April 7, 2003, plaintiff HENRY NORR was attending the demonstration when defendants,  
14 without legal justification or reasonable cause, caused him to be shot with a projectile in the leg.

15 70. On April 7, 2003, plaintiff STEVEN SAKALA was attending the demonstration when  
16 defendants, without legal justification or reasonable cause, caused him to be choked, shot with  
17 projectiles in the back, and exposed to tear gas and/or another chemical agents.

18 71. On April 7, 2003, plaintiff SUSAN QUINLAN was attending the demonstration when  
19 defendants, without legal justification or reasonable cause, caused her to be shot with projectiles in the  
20 arm and leg, and exposed to tear gas or other chemical agent.

21 72. On April 7, 2003, Plaintiff TIM RIDOLFI was attending and acting as a clearly identified legal  
22 observer at the demonstration, when defendants, without legal justification or reasonable cause, caused  
23 him to be shot with a projectile which struck him in the head.

24 73. On April 7, 2003, plaintiff ALICIA GROGAN-BROWN was attending the demonstration  
25 when defendants, without legal justification or reasonable cause, caused her to be shot in the arm with a  
26 projectile.  
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1           74. On April 7, 2003, plaintiff KENNETH HAYES was attending the demonstration when, as he  
2 was attempting to leave the area, defendants, without legal justification or reasonable cause, caused him  
3 to be shot in the foot with a projectile.

4           75. On April 7, 2003, plaintiff DEAN ROYER was attending and acting as a clearly identified  
5 legal observer at the demonstration, when, as he was attempting to leave the area, defendants, without  
6 legal justification or reasonable cause, caused him to be shot in the leg with a projectile.

7           76. On April 7, 2003, plaintiff BERNADINE MELLIS was attending the demonstration when, as  
8 she was attempting to leave the area, defendants, without legal justification or reasonable cause, caused  
9 her to be struck in the back of her shoulder by a projectile.

10           77. On April 7, 2003, plaintiff THOMAS BECKER was attending the demonstration when, as  
11 plaintiff BECKER was attempting to flee, defendants, without legal justification or reasonable cause,  
12 caused him to be shot in the leg with a projectile.

13           78. On April 7, 2003, plaintiff PATRICIA "MAX" RORTY was attending and acting as a clearly  
14 identified legal observer at the demonstration, when, as she was walking on the side of the road,  
15 defendants, including defendant M. RANDALL, without legal justification or reasonable cause, caused  
16 her to be struck with a motorcycle, running over her foot.

17           79. On April 7, 2003, plaintiff JESSE CHRISTENSEN was attending the demonstration when  
18 defendants, without legal justification or reasonable cause, caused him to be struck repeatedly in the  
19 chest and other parts of his body with projectiles.

20           80. On April 7, 2003, plaintiff DIANA BOHN was attending the demonstration when, as she was  
21 attempting to leave the area, defendants, without legal justification or reasonable cause, caused her to be  
22 struck in the back with a projectile.

23           81. On April 7, 2003, plaintiff MILES MONTABANO was attending and acting as a videographer  
24 in the vicinity of the demonstration when, as he was videotaping a woman being shot, defendants,  
25 including the officer who had just shot the woman he was videotaping, without legal justification or  
26 reasonable cause, caused plaintiff MONTABANO to be shot with a projectile, which struck him in the  
27 arm he was using to hold the video camera.



1 HAW and other supervisory officials of the OPD and the City of Oakland, which encouraged,  
2 authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of  
3 herein. Said customs, policies and practices include, but are not limited to the use of excessive and/or  
4 arbitrary force to disperse and control demonstrators and others involved in expressive activities; the  
5 failure to maintain adequate policies, and to adequately train, supervise and control OPD officers,  
6 concerning the policing of demonstrations and other expressive activities with respect to crowd control,  
7 crowd dispersal and the constitutional limitations on the use of force; and the failure to investigate and  
8 impose discipline on OPD officers involved in the unconstitutional and unlawful actions complained of  
9 herein, and/or to adopt other remedial measures and policies to insure that such violations of legal rights  
10 would not recur.

11 90. As a direct and proximate result of the conduct of defendants described herein, the named  
12 individual plaintiffs have been denied their constitutional, statutory and legal rights as stated below, and  
13 have suffered, continue to suffer and will in the future suffer general and special damages, including but  
14 not limited to, mental and emotional distress, physical injuries and bodily harm, pain, fear, humiliation,  
15 embarrassment, discomfort, and anxiety, medical and related expenses, and lost earnings in an amount  
16 according to proof.

17 91. Defendants' acts were willful, wanton, malicious and oppressive and done with conscious  
18 disregard and deliberate indifference for plaintiffs' rights.

19 92. Defendants' policies, practices, customs, conduct and acts alleged herein have resulted and will  
20 continue to result in irreparable injury to plaintiffs, including but not limited to violations of their  
21 constitutional and statutory rights. Plaintiffs have no plain, adequate or complete remedy at law to  
22 address the wrongs described herein. The demonstrator plaintiffs and class members intend in the future  
23 to exercise their constitutional rights of freedom of speech and association by engaging in  
24 demonstrations and expressive activities in the vicinity of the Port of Oakland and in other public places  
25 in the City of Oakland. Defendants' conduct described herein has created fear, anxiety and uncertainty  
26 among plaintiffs with respect to their exercise now and in the future of these constitutional rights, and  
27 with respect to their physical security and safety. Defendants' conduct described herein has also created  
28 fear, anxiety and uncertainty among members and officers of LOCAL 10 with respect to their exercise

1 of their associational and organizational activities and with the right to work and move freely about the  
2 public streets, without being subject to excessive force by the OPD, and with their physical security and  
3 safety. Plaintiffs therefore seek injunctive relief from this court, to ensure that plaintiffs and persons  
4 similarly situated will not suffer violations of their rights from defendants' illegal and unconstitutional  
5 policies, customs and practices as described herein.

6 93. An actual controversy exists between plaintiffs and defendants in that plaintiffs contend that  
7 the policies, practices and conduct of defendants alleged herein are unlawful and unconstitutional,  
8 whereas plaintiffs are informed and believe that defendants contend that said policies, practices and  
9 conduct are lawful and constitutional. Plaintiffs seek a declaration of rights with respect to this  
10 controversy.

11 **X. CLAIMS FOR RELIEF**  
12 **FIRST CLAIM FOR RELIEF**

13 **Violation Of First And Fourteenth Amendments To The United States Constitution**  
14 **(42 U.S.C. § 1983)**

15 94. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

16 95. Defendants' above-described conduct violated plaintiffs' rights to freedom of speech and  
17 association under the First and Fourteenth Amendments to the United States Constitution.

18 **SECOND CLAIM FOR RELIEF**

19 **Violation Of Fourth And Fourteenth Amendments To United States Constitution**  
20 **(42 U.S.C. § 1983)**

21 96. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

22 97. Defendants' above-described conduct violated plaintiffs' rights to be free from unreasonable  
23 seizures and excessive and/or arbitrary force under the Fourth and Fourteenth Amendments to the  
24 United States Constitution.  
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**THIRD CLAIM FOR RELIEF**

**Violation Of Fourteenth Amendment To United States Constitution**

**(42 U.S.C. § 1983)**

98. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

99. Defendants' above-described conduct violated plaintiffs' right to not be deprived of liberty without due process of law under the Fourteenth Amendment to the United States Constitution.

**FOURTH CLAIM FOR RELIEF**

**Violation Of Fourteenth Amendment To United States Constitution**

**(42 U.S.C. § 1983)**

100. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

101. Defendants' above-described conduct violated plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

**FIFTH CLAIM FOR RELIEF**

**Violation of California Constitution, Article I, §§ 2 and 3**

102. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

103. Defendants' above-described conduct violated plaintiffs' rights to freedom of speech and association, and to petition the government for redress of grievances, under article I, sections 2 and 3 of the California Constitution.

**SIXTH CLAIM FOR RELIEF**

**Violation of California Constitution, Article I, § 13**

104. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

105. Defendants' above-described conduct violated plaintiffs' right to be free from unreasonable seizures and excessive and/or arbitrary force under article I, section 13 of the California Constitution.

**SEVENTH CLAIM FOR RELIEF**

**Violation of California Constitution, Article 1, § 7(A)**

106. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

1 107. Defendants' above-described conduct violated plaintiffs' right not to be deprived of liberty  
2 without due process of law under article 1, section 7(a) of the California Constitution.

3 **EIGHTH CLAIM FOR RELIEF**

4 **Violation of California Constitution, Article 1, § 7(A)**

5 108. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

6 109. Defendants' above-described conduct violated plaintiffs' right to equal protection of the laws  
7 under article 1, section 7(a) of the California Constitution.

8 **NINTH CLAIM FOR RELIEF**

9 **Violation of California Constitution, Article 1, § 1**

10 110. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

11 111. Defendants' above-described conduct violated plaintiffs' right to informational privacy under  
12 article I, section 1 of the California Constitution.

13 **TENTH CLAIM FOR RELIEF**

14 **Violation of California Civil Code § 51.7**

15 112. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

16 113. Defendants' above-described conduct violated plaintiffs' right to be free from violence and  
17 intimidation by threat of violence because of their actual or perceived political affiliation and/or  
18 viewpoint and/or position in a labor dispute, in violation of California Civil Code section 51.7.

19 **ELEVENTH CLAIM FOR RELIEF**

20 **Violation of California Civil Code § 52.1**

21 114. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

22 115. Defendants' above-described conduct constituted interference, and attempted interference, by  
23 threats, intimidation and coercion, with plaintiffs' peaceable exercise and enjoyment of rights secured by  
24 the Constitution and laws of the United States and the State of California, in violation of California Civil  
25 Code section 52.1.  
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1 **TWELFTH CLAIM FOR RELIEF**

2 **Assault And Battery**

3 116. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

4 117. Defendants' above-described conduct constituted assault and battery on the named individual  
5 plaintiffs.

6 **THIRTEENTH CLAIM FOR RELIEF**

7 **Intentional Infliction Of Emotional Distress**

8 118. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

9 119. Defendants' above-described conduct was extreme, unreasonable and outrageous.

10 120. In engaging in the above-described conduct, defendants intentionally ignored or recklessly  
11 disregarded the foreseeable risk that the named individual plaintiffs would suffer extreme emotional  
12 distress as a result of defendants' conduct.

13 **FOURTEENTH CLAIM FOR RELIEF**

14 **Negligence**

15 121. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 93 of this complaint.

16 122. Defendants have a duty of care to plaintiffs to ensure that defendants did not cause  
17 unnecessary or unjustified harm to the named individual plaintiffs and a duty of care to hire, train,  
18 supervise and discipline OPD officers so as to not cause harm to plaintiffs and to prevent violations of  
19 plaintiffs' constitutional, statutory and common law rights.

20 123. The above-described acts and omissions of defendants breached the duty of care defendants  
21 owed to the named individual plaintiffs.

22 **XI. PRAYER**

23 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as follows:

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

26 2. For preliminary and permanent injunctive relief restraining defendants from engaging in the  
27 unlawful and unconstitutional actions complained of above;  
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By \_\_\_\_\_  
Alan L. Schlosser  
Attorneys for Plaintiffs

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