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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

<p>JOSEPH MALOTT Plaintiff,</p> <p>v.</p> <p>CITY OF WALNUT CREEK, CITY OF PITTSBURG, CITY OF SAN RAMON, CITY OF MARTINEZ, CONTRA COSTA COUNTY, CITY OF PLEASANT HILL, WILL APPEL, RANDY VILLA, MICHAEL LINCOLN, JONATHAN ELMORE, ANDREW GARTNER, PATRICK ESPIRITU, JOHN CATTOLICO, ALEX SODERBERG, GUY EZARD, ROBERT ROSAS, CURTIS BORMAN, WILL MARRE, JARRED PEREIRA, JAY HILL, THOMAS CHAPLIN, TOM BREINIG, MANJIT SAPPAL, BRYAN HILL, CRAIG STEVENS, KEITH TESTERMAN, BRIAN ADDINGTON, SEATON FAJEAU</p> <p>And Does 1 through 20 inclusive;</p> <p>Defendants.</p>	<p>Case No. 3:21 CV 01674 SK (PB)</p> <p>FIRST AMENDED COMPLAINT COMPLAINT FOR DAMAGES</p> <p>FEDERAL CIVIL RIGHTS VIOLATIONS, 42 USC 1983, 1985(3); VIOLATION OF FIRST, FOURTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND STATE LAW CLAIMS</p> <p>DEMAND FOR JURY TRIAL</p>
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2 **I. JURISDICTION and VENUE (Intra-district Assignment)**

- 3 1. This is an action for monetary damages brought pursuant to Title 42 U.S.C. section 1981,
4 1983, and 1988, and the First, Fourth and Fourteenth Amendments to the United States
5 Constitution and under the common law of the State of California, and the California State
6 Constitution Article 1 Section 28, against the City of Walnut Creek, County of Contra
7 Costa, City of Pleasant Hill, City of San Ramon, City of Pittsburg, City of Martinez and
8 police officers and officials employed by and acting on behalf of said cities and county.
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10 2. Jurisdiction is based on the fact that this case involves a federal question regarding
11 violation of civil rights under federal law under at least the 1st, 4th and 14th amendments to
12 the US Constitution, 42 U.S.C. section 1981, 1983, 1988 and under 28 U.S.C. section 1331
13 and 1343; The court has supplemental jurisdiction under 28 USC section 1367(a).

14 **II. SUMMARY OF ACTION**

- 15 3. This action arises out of conduct occurring on or about June 1, 2020 when plaintiff, a
16 young black male, was exercising his first amendment rights to free speech and peaceful
17 assembly as part of a Black Lives Matter Protest in the City of Walnut Creek, California.
18 Plaintiff was one of a few young black males among hundreds of participants in the protest.
19 Walnut Creek is a predominantly non-black populated city. The City of Walnut Creek
20 enlisted the MAMFF, Central County Swat Team and other neighboring police agencies in
21 a military-like operation against civilians peacefully exercising their constitutional rights.
22 The officers were unnecessarily over-equipped with significant and dangerous armament
23 and being so equipped, felt compelled to use the armament, including snipers, batons,
24 chemical agents, flash bombs, armored assault vehicles, riot gear, less lethal projectiles, gas
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1 masks, shields and multiple K9; despite no need or justification for deploying or using such
2 weaponry. The City of Walnut Creek confused matters by arbitrarily, covertly and most
3 likely illegally moved a curfew time up by two hours after the protest had already begun
4 and unbeknownst to the protestors, this act in combination with the militaristic operation
5 and use of dangerous armament by the police created a situation of utter chaos, including
6 violence by police against peaceful citizens simply exercising their constitutional rights.
7 The police then ultimately singled out Plaintiff, one of the few young black male
8 participants and targeted him for police violence. Plaintiff was unjustifiably and violently
9 attacked by multiple police officers and at least one police K9. Plaintiff was also struck by
10 multiple projectiles, gassed and ultimately, unlawfully arrested and subjected to excessive
11 force by several officers during the course of arrest, including the police purposely
12 engaging the police K9 in a manner directed at inflicting significant injury to him. Plaintiff
13 was taken to the Contra Costa County Jail and required to post bond. No criminal charges
14 were ever pursued against plaintiff.
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- 16 4. At all times relevant, each of the individuals named as defendants herein were State Actors.
17
18 5. Plaintiff has received partial information from the various police agencies involved as part
19 of a *redacted* report by the Walnut Creek Police Department. The police agencies have
20 *withheld* body cam footage and other recordings related to the event and redacted names of
21 potential witnesses and potential parties. Plaintiff has submitted a public records requests
22 from the agencies and information has been withheld despite that request. As such, known
23 persons listed as direct participants who violated plaintiff's rights are set forth in the
24 paragraphs below. However, there were many other officers whose identities are currently
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1 unknown, and who were involved by playing some role in the harm caused to plaintiff, as
2 such plaintiff would anticipate listing further parties as they become known to him.

3 **III. PARTIES**

4 6. Plaintiff, Joseph Mallot is a young black male adult residing in Walnut Creek, CA, Contra
5 Costa County.

6 7. Defendant, City of Walnut Creek is a public entity and employs individuals within the
7 Walnut Creek Police Department who are responsible for various acts and conduct alleged
8 herein. Such individuals, listed below, were at all times acting in their individual capacity
9 and on behalf of the City of Walnut Creek within the scope of their duties and their
10 capacity as an employee, representative or agent of the City.

11 8. Defendant Will Appel, at all times relevant herein, was an officer for the City of Walnut
12 Creek Police Department. He is sued in his individual and official capacity. Appel's
13 conduct as alleged in this complaint occurred during performance of his duties for the City
14 of Walnut Creek Police Department. Appel acted on behalf of the City of Walnut Creek,
15 individually and in concert with other defendants named and unnamed herein; and under
16 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
17 State of California, Contra Costa County and the City of Walnut Creek.

18 9. Defendant Guy Ezard, at all times relevant herein, was an officer for the City of Walnut
19 Creek Police Department. He is sued in his individual and official capacity. Ezard's
20 conduct as alleged in this complaint occurred during performance of his duties for the City
21 of Walnut Creek Police Department. Ezard acted on behalf of the City of Walnut Creek,
22 individually and in concert with other defendants named and unnamed herein; and under
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1 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
2 State of California, Contra Costa County and the City of Walnut Creek.

3 10. Defendant, Curtis Borman at all times relevant herein, was an officer for the City of Walnut
4 Creek Police Department. He is sued in his individual and official capacity. Borman's
5 conduct as alleged in this complaint occurred during performance of his duties for the City
6 of Walnut Creek Police Department. Borman acted on behalf of the City of Walnut Creek,
7 individually and in concert with other defendants named and unnamed herein; and under
8 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
9 State of California, Contra Costa County and the City of Walnut Creek.
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11 11. Defendant, Will Marre at all times relevant herein, was an officer for the City of Walnut
12 Creek Police Department. He is sued in his individual and official capacity. Marre's
13 conduct as alleged in this complaint occurred during performance of his duties for the City
14 of Walnut Creek Police Department. Marre acted on behalf of the City of Walnut Creek,
15 individually and in concert with other defendants named and unnamed herein; and under
16 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
17 State of California, Contra Costa County and the City of Walnut Creek.
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19 12. Defendant, Robert Rosas at all times relevant herein, was an officer for the City of Walnut
20 Creek Police Department. He is sued in his individual and official capacity. Rosas' conduct
21 as alleged in this complaint occurred during performance of his duties for the City of
22 Walnut Creek Police Department. Rosas acted on behalf of the City of Walnut Creek,
23 individually and in concert with other defendants named and unnamed herein; and under
24 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
25 State of California, Contra Costa County and the City of Walnut Creek.

1 13. Defendant, Randy Villa at all times relevant herein, was an officer for the City of Walnut
2 Creek Police Department. He is sued in his individual and official capacity. Rosas' conduct
3 as alleged in this complaint occurred during performance of his duties for the City of
4 Walnut Creek Police Department. Rosas acted on behalf of the City of Walnut Creek,
5 individually and in concert with other defendants named and unnamed herein; and under
6 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
7 State of California, Contra Costa County and the City of Walnut Creek.
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9 14. Defendant Jay Hill, currently acting Chief of Police, formerly Police Captain at all times
10 relevant herein, was an officer for the City of Walnut Creek Police Department. He is sued
11 in his individual and official capacity. Hill's conduct as alleged in this complaint occurred
12 during performance of his duties for the City of Walnut Creek Police Department. Hill
13 acted on behalf of the City of Walnut Creek, individually and in concert with other
14 defendants named and unnamed herein; and under color of law, to wit the statutes,
15 ordinances, regulations, policies, customs and usages of the State of California, Contra
16 Costa County and the City of Walnut Creek.
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18 15. Defendant Thomas Chaplin, Chief of Police for City of Walnut Creek Police Department at
19 all times relevant herein is sued in his individual and official capacity. Chaplin's conduct as
20 alleged in this complaint occurred during performance of his duties for the City of Walnut
21 Creek Police Department. Chaplin acted on behalf of the City of Walnut Creek,
22 individually and in concert with other defendants named and unnamed herein; and under
23 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
24 State of California, Contra Costa County and the City of Walnut Creek.
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1 16. Defendant, City of Martinez is a public entity and employs individuals within the Martinez
2 Police Department who are responsible for various acts and conduct alleged herein. Such
3 individuals, listed below, were at all times acting in their individual capacity and on behalf
4 of the City of Martinez within the scope of their duties and their capacity as an employee,
5 representative or agent of the City.

6 17. Defendant, Michael Lincoln at all times relevant herein, was a police officer and K9 officer
7 for the City of Martinez Police Department. He is sued in his individual and official
8 capacity. Lincoln's conduct as alleged in this complaint occurred during performance of his
9 duties for the City of Martinez Police Department. Lincoln acted on behalf of the City of
10 Martinez, individually and in concert with other defendants named and unnamed herein;
11 and under color of law, to wit the statutes, ordinances, regulations, policies, customs and
12 usages of the State of California, Contra Costa County and the City of Martinez. Lincoln is
13 the K9 officer responsible for handling police K9 "Jago" a K9 "officer" for the City of
14 Martinez.

15 18. Defendant, Tom Breinig at all times relevant herein, was a police officer for the City of
16 Martinez Police Department. He is sued in his individual and official capacity. Breinig's
17 conduct as alleged in this complaint occurred during performance of his duties for the City
18 of Martinez Police Department. Breinig acted on behalf of the City of Martinez,
19 individually and in concert with other defendants named and unnamed herein;
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21 19. Defendant, Manjit Sappal Chief of Police for City of Martinez Police Department at all
22 times relevant herein is sued in his individual and official capacity. Sappal's conduct as
23 alleged in this complaint occurred during performance of his duties for the City of Martinez
24 Police Department. Sappal acted on behalf of the City of Martinez, individually and in
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1 concert with other defendants named and unnamed herein; and under color of law, to wit
2 the statutes, ordinances, regulations, policies, customs and usages of the State of California,
3 Contra Costa County and the City of Martinez.

4 20. Defendant, City of Pleasant Hill is a public entity and employs individuals within the
5 Pleasant Hill Police Department who are responsible for various acts and conduct alleged
6 herein. Such individuals, listed below, were at all times acting in their individual capacity
7 and on behalf of the City of Pleasant Hill within the scope of their duties and their capacity
8 as an employee, representative or agent of the City.
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10 21. Defendant Bryan Hill, Chief of Police for City of Pleasant Hill Police Department at all
11 times relevant herein is sued in his individual and official capacity. Hill's conduct as
12 alleged in this complaint occurred during performance of his duties for the City of Pleasant
13 Hill Police Department. Hill acted on behalf of the City of Pleasant Hill, individually and in
14 concert with other defendants named and unnamed herein; and under color of law, to wit
15 the statutes, ordinances, regulations, policies, customs and usages of the State of California,
16 Contra Costa County and the City of Pleasant Hill.

17 22. Defendant, Andrew Gartner, at all times relevant herein, was an officer for the City of
18 Pleasant Hill Police Department. He is sued in his individual and official capacity.
19 Gartner's conduct as alleged in this complaint occurred during performance of his duties
20 for the City of Pleasant Hill Police Department. Gartner acted on behalf of the City of
21 Pleasant Hill, individually and in concert with other defendants named and unnamed
22 herein; and under color of law, to wit the statutes, ordinances, regulations, policies,
23 customs and usages of the State of California, Contra Costa County and the City of
24 Pleasant Hill.
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1 23. Defendant, City of San Ramon is a public entity and employs individuals within the San
2 Ramon Police Department who are responsible for various acts and conduct alleged herein.
3 Such individuals, listed below, were at all times acting in their individual capacity and on
4 behalf of the City of San Ramon within the scope of their duties and their capacity as an
5 employee, representative or agent of the City.

6 24. Defendant, Craig Stevens, Chief of Police for City of San Ramon Police Department at all
7 times relevant herein is sued in his individual and official capacity. Stevens' conduct as
8 alleged in this complaint occurred during performance of his duties for the City of San
9 Ramon Police Department. Stevens acted on behalf of the City of San Ramon, individually
10 and in concert with other defendants named and unnamed herein; and under color of law, to
11 wit the statutes, ordinances, regulations, policies, customs and usages of the State of
12 California, Contra Costa County and the City of San Ramon.

13 25. Defendant, Patrick Espiritu at all times relevant herein, was an officer for the City of San
14 Ramon Police Department. He is sued in his individual and official capacity. Espiritu's
15 conduct as alleged in this complaint occurred during performance of his duties for the City
16 of San Ramon Police Department. Espiritu acted on behalf of the City of San Ramon,
17 individually and in concert with other defendants named and unnamed herein; and under
18 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
19 State of California, Contra Costa County and the City of San Ramon.

20 26. Defendant, Seaton Fajeau at all times relevant herein, was an officer for the City of San
21 Ramon Police Department. He is sued in his individual and official capacity. Fajeau's
22 conduct as alleged in this complaint occurred during performance of his duties for the City
23 of San Ramon Police Department. Fajeau acted on behalf of the City of San Ramon,
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1 individually and in concert with other defendants named and unnamed herein; and under
2 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
3 State of California, Contra Costa County and the City of San Ramon.

4 27. Defendant, Keith Testerman at all times relevant herein, was an officer for the City of San
5 Ramon Police Department. He is sued in his individual and official capacity. Testerman's
6 conduct as alleged in this complaint occurred during performance of his duties for the City
7 of San Ramon Police Department. Testerman acted on behalf of the City of San Ramon,
8 individually and in concert with other defendants named and unnamed herein; and under
9 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
10 State of California, Contra Costa County and the City of San Ramon.
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12 28. Defendant John Cattolico, at all times relevant herein, was an officer for the City of San
13 Ramon Police Department. He is sued in his individual and official capacity. Cattolico's
14 conduct as alleged in this complaint occurred during performance of his duties for the City
15 of San Ramon Police Department. Cattolico acted on behalf of the City of San Ramon,
16 individually and in concert with other defendants named and unnamed herein; and under
17 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
18 State of California, Contra Costa County and the City of San Ramon.
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20 29. Defendant Jarred Pereira, at all times relevant herein, was an officer for the City of San
21 Ramon Police Department. He is sued in his individual and official capacity. Pereira's
22 conduct as alleged in this complaint occurred during performance of his duties for the City
23 of San Ramon Police Department. Perieira acted on behalf of the City of San Ramon,
24 individually and in concert with other defendants named and unnamed herein; and under
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1 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
2 State of California, Contra Costa County and the City of San Ramon.

3 30. Defendant, City of Pittsburg is a public entity and employs individuals within the Pittsburg
4 Police Department who are responsible for various acts and conduct alleged herein. Such
5 individuals, listed below, were at all times acting in their individual capacity and on behalf
6 of the City of Pittsburg within the scope of their duties and their capacity as an employee,
7 representative or agent of the City.
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9 31. Defendant, Brian Addington, Chief of Police for City of Pittsburg Police Department at all
10 times relevant herein is sued in his individual and official capacity. Addington's conduct as
11 alleged in this complaint occurred during performance of his duties for the City of Pittsburg
12 Police Department. Addington acted on behalf of the City of Pittsburg, individually and in
13 concert with other defendants named and unnamed herein; and under color of law, to wit
14 the statutes, ordinances, regulations, policies, customs and usages of the State of California,
15 Contra Costa County and the City of Pittsburg.

16 32. Defendant, Jonathan Elmore at all times relevant herein, was an officer for the City of
17 Pittsburg Police Department. He is sued in his individual and official capacity. Elmore's
18 conduct as alleged in this complaint occurred during performance of his duties for the City
19 of Pittsburg Police Department. Elmore acted on behalf of the City of Pittsburg,
20 individually and in concert with other defendants named and unnamed herein; and under
21 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
22 State of California, Contra Costa County and the City of Pittsburg.
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24 33. Contra Costa County is a public entity and employs individuals within the County of
25 Contra Costa who are responsible for various acts and conduct alleged herein. Such

1 individuals, were at all times acting in their individual capacity and on behalf of the County
2 of Contra Costa within the scope of their duties and their capacity as an employee,
3 representative or agent of the County.

4 34. The County of Contra Costa maintains a mutual force of officers known as MAMFF.

5 Lieutenant Joshua Patzer of the Contra Costa County Sheriff was the Commanding Officer
6 of the MAMFF at all times herein relevant.

7 35. Lieutenant Scott Wooden of the Contra Costa County Sheriff was the Assistant
8 Commanding Officer of the MAMFF at all times herein relevant.

9 36. The MAMFF was primarily comprised of deputies from the Contra Costa County Sheriff's
10 Department. Of 104 officers that comprised the MAMFF at the time of the incident
11 described herein, 47 were members of the Contra Costa County Sheriff's Department
12 including Deputy Alex Soderberg who personally inflicted unnecessary, unlawful and
13 excessive closed fists blows to the body of the plaintiff.

14 37. Contra Costa County Sheriff Deputies, Lieutenant Patzer and Lieutenant Wooten were in
15 command of the officers and the operation that led to plaintiff's injuries herein.

16 38. The Central County S.W.A.T. team is overseen by the Sheriff of Contra Costa County and
17 is made up of officers from various agencies within the Central County geographical area.
18 Walnut Creek, Pleasant Hill, San Ramon, Martinez are all contributors to the Central
19 County SWAT team.

20 39. At all times relevant herein, defendants Appel, Guy, Gartner, Cattolico, Espiritu, Lincoln,
21 Testerman, Borman, Marre, Soderberg were acting in a dual capacity for the city police
22 department where they are employed as police officers and Deputy Sheriff for cities in the
23 County of Contra Costa as part of either the MAMFF or Central County SWAT team.
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1 40. At all times relevant each of the defendants listed herein acted individually and in concert
2 with other defendants named and unnamed herein; and under color of law, to wit the
3 statutes, ordinances, regulations, policies, customs and usages of the State of California,
4 Contra Costa County.

5 41. SWAT Team leaders consisted of at least Guy, Pereira, Ezard, the commanding SWAT
6 officer is uncertain at this time.

7
8 42. Defendant, Alex Soderberg at all times relevant herein, was a Deputy with the Contra
9 Costa County Sheriff's Department. He is sued in his individual and official capacity.
10 Soderberg's conduct as alleged in this complaint occurred during performance of his duties
11 for the County of Contra Costa. Soderberg acted on behalf of the Contra Costa County,
12 individually and in concert with other defendants named and unnamed herein; and under
13 color of law, to wit the statutes, ordinances, regulations, policies, customs and usages of the
14 State of California, Contra Costa County.

15 43. DOES 1-20, Deputies and Police Officers in Contra Costa County - geographic law
16 enforcement agencies, were at all times relevant to this Complaint duly appointed and
17 acting officers for the city and county they represent. Each of the officers were involved in
18 at least some aspect of the circumstances leading to the excessive force, violation of civil
19 rights, false arrest and the other constitutional violations alleged herein. Their names are
20 unknown at this time. Plaintiffs will seek leave to amend when their names become known.
21 They are sued in their individual and official capacities. Each of them was acting under
22 color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs
23 and usages of the State of California and/or Contra Costa County and/or city within the
24 county.
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1 44. Attached hereto and incorporated by reference are photographs of known and unknown
2 officers responsible for the harm caused either individually or in concert inflicting harm to
3 plaintiff. Unknown officers are listed as Doe Defendants herein.

4 45. At all times relevant herein, all defendants were acting in concert and conspired with one
5 another and were jointly and severally liable for the injuries to plaintiff herein.

6 46. At all times relevant herein, all defendants were acting as agents of the other defendants,
7 authorized to act thereby and were acting within the course and scope of said agency.
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9 **IV. GENERAL ALLEGATIONS**

10 47. On June 1, 2020 Joseph Mallot a young black man, who had grown up in the foster care
11 system and was ultimately adopted into an affluent and disparately white community, was
12 experiencing an exhilarating sense of belonging and understanding of who he is, by
13 identifying with the Black Lives Matter awakening that spread throughout the country
14 following the police killing of George Floyd and the protests that followed. This was an
15 incredible moment for him as an individual, who had been treated differently and
16 disparately his entire life. This great moment was turned into an utter nightmare by overly
17 armored and grossly armed, gung-ho, police and sheriff's deputies bent on utilizing their
18 armament against non-threatening American Citizens seeking to simply exercise their
19 constitutional rights to assemble and protest. In particular, given the opportunity, these
20 government empowered agents were bent on retaliating against young black males for
21 daring to protest against police militaristic armament and tactics. In fact, the refrain of the
22 protestors included repeating "defund the police" and was taken as a personal affront by
23 these heavily armored MAMFF and SWAT officers.
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1 48. A peaceful protest was scheduled by the Black Lives Matter organizers in Walnut Creek on
2 June 1, 2020. Despite the fact the percentage of population for African Americans in
3 Walnut Creek was less than 2%, Walnut Creek had become a central location for protests
4 in light of the Walnut Creek Police unjustified shooting and killing of a mentally ill young
5 black male, Miles Hall. The response of the City and the Police in Walnut Creek to the
6 shooting of Miles Hall has been a trigger for protests in Walnut Creek.

7
8 49. On June 1, 2020 the protest was organized, the participants respectful and appropriately
9 peaceful.

10 50. On the date of the protest, June 1, 2020 Walnut Creek had a published curfew of 8:00 pm.
11 At some point in time, after the protests had been going on for hours, Walnut Creek may
12 have arbitrarily and without legal authorization decided to change the curfew to 6:00 pm.
13 For the sole purpose of quelling the freedom of citizen's rights to assemble and free speech.
14 This action by the City of Walnut Creek was done in a manner not reasonably calculated to
15 be communicated to protestors, but rather to serve the purpose of spurring law enforcement
16 officers to deploy their military operation against the uninformed citizens.

17 51. The police for their part initially stood by with snipers on building tops, urban assault
18 tactical tanks, gas masks, riot gear, police K9; Batons, "less lethal" gas devices; Tri-
19 Chamber CS Gas Grenades; diversionary devices, Flash Bang devices, tear gas, 40
20 millimeter less lethal projectiles guns; CS Riot Smoke. The tactic of the police was to
21 demonstrate a show of force and then to engage in heavy-handed militaristic tactics to gain
22 immediate and unnecessary compliance with whatever their arbitrary demands were for
23 behavioral control. The police engaged in these tactics despite the fact that studies for years
24 have demonstrated that these tactics only lead to escalation of violence and in this case,
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1 heavily armed police vs. ordinary citizens. The police in this case created a chaotic
2 circumstance and then used violence to control the very situation they created.

3 52. The police involved in this case were local Walnut Creek Police Officers acting in concert
4 with Officers from several jurisdictions; MAMFF officers and SWAT officers,
5 predisposed, trained and equipped to engage in violent police response. At least San
6 Ramon, Martinez, Hercules, Pittsburg, Pleasant Hill, Concord, BART and Contra Costa
7 County Sheriffs were represented as part of the military operation.
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9 53. The peaceful organized protest began in Civic Park in Downtown Walnut Creek. After
10 several hours of speeches, peaceful calls to action and solidarity by the participants the core
11 demonstration waned and protestors began to walk through the city streets carrying on their
12 peaceful protest. A large facet of the group of protestors headed towards I680 and did
13 peacefully and several safely entered the freeway after traffic was stopped. The motorists
14 in the area joining in solidarity. Many officers taken aback by the stoppage of traffic on the
15 freeway gathered and created a wall or so-called "skirmish line" to press back the
16 protestors. In order to facilitate the push back the officers deployed gas, flash bang
17 devices, armored vehicles, and rubber bullet guns were used against the protestors. These
18 armament deployments occurred despite the cooperation of the protestors in yielding to the
19 commands of the officers and exiting the freeway, and freeway area.
20

21 54. Either Officer Pereria or Wickman, both of whom are believed to have been operating
22 armored assault vehicles, threatened to run over a protestor who did not move immediately
23 out of the way. The Walnut Creek police in response to allegations that the armored assault
24 vehicle was being used to threaten protestors posted misleading footage on the news. The
25 officer clearly stated "move or you will be dead" but footage played on the news stated

1 “move or you will be gassed”. This was just one of many fabrications that have been
2 brought forward by law enforcement and the multiple jurisdictions in their representations
3 in the media and in their reports of this incident.

4 55. The officers started deploying gas, flash bang devices and rubber bullets even after
5 protestors were clearly yielding to their requests; and well before the newly “invoked” 6:00
6 curfew; and even after the citizen protestors, including plaintiff were trying to leave the
7 scene in peace. The officers simply would not let them leave the scene in peace; The
8 officers continued to use their gas, threats, flash bang and rubber bullets as a demonstration
9 of force in retaliation for the defund the police protest movement.

10 56. The officers shot out the window of a vehicle with a rubber bullet and tried to blame the
11 citizen protestors.

12 57. Police also shot a young woman in the face with a rubber bullet causing serious injuries.
13 Plaintiff tried to assist the young woman delaying his retreat and causing police to utilize
14 more force against him and other individuals.

15 58. A young Caucasian woman sensing the danger to plaintiff, a young black male, spread her
16 arms out and acted as a human shield between the police and plaintiff.

17 59. This young lady herself was subjected to excessive force and false arrest for her part in
18 trying to protect plaintiff from the police attack.

19 60. Plaintiff along with the other protestors were subjected to an onslaught of gas, flash bang,
20 rubber bullets and other devices misused and abused in a manner of inflicting violence
21 upon the ordinary citizen protestors.
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- 1 61. The protestors consisted of young teens, older women and older men, young adults, male
2 and female and largely non-black citizens. Because of the demographics of the protestors,
3 Plaintiff clearly stuck out to the police as one of the few young black males in the group.
- 4 62. The protestors were cooperating with police. The protestors were yielding to the commands
5 of the police. Despite this clear cooperation by the protestors, the police being predisposed
6 to use their weapons in a violent manner pressed forward with gas, flash bang and rubber
7 bullets in an effort to punish the protestors for what the officers perceived as a defiant act
8 of a personal nature against themselves as police.
- 9 63. The protestors did not threaten nor harm anyone; Yet were threated and harmed by the
10 police. Several protestors were arrested however none were subjected to the purposeful
11 level of violence directed at the one black person arrested, Plaintiff.
- 12 64. Like other protestors, the plaintiff while retreating was subjected to unwarranted gassing,
13 flash bang exposure, and being struck by multiple rubber bullets.
- 14 65. Like other protestors, the plaintiff while retreating had a gas canister “grenade” thrown at
15 him and others with him. Like other protestors plaintiff’s eyes were burning and throat
16 burning from the exposure; Like other protestors plaintiff threw back a canister to get it
17 away from his fellow protestors. Unlike other protestors plaintiff was a black male. Unlike
18 other protestors plaintiff was literally attacked by several officers and a police K9 despite
19 simply walking away from the scene just like the other protestors.
- 20 66. Only one protestor that day was attacked by the police in such a violent manner, struck
21 multiple times with rubber bullets, struck with a police baton, taken down by at least 3
22 officers and had his flesh torn from biting and scratching by the police K9.
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1 67. Plaintiff did nothing to justify the attack by the police or the level of violence to which he
2 was subjected.

3 68. Following the attack plaintiff was arrested and taken to jail despite his injuries and the fact
4 that the arrest was baseless. Plaintiff had to post significant bail and charges were not
5 prosecuted however he was incarcerated wrongfully for several days and because bail was
6 set so high, he had to use the assistance of a bondsmen and forfeited the bail fee.

7 69. Plaintiff filed tort claims with various jurisdictions however has not received a response
8 and statutory time for responding has expired.
9

10 **V. DAMAGES**

11 70. Plaintiff has incurred and will continue to incur substantial attorney's fees and costs
12 associated with prosecuting these lawful claims pursuant to state and federal law including
13 42 USC 1983, 1985 and 1988.

14 71. As a result of Defendants' violation of Plaintiff's' federal civil rights under 42 USC 1983,
15 the 4th amendment and the Fourteenth Amendment to the U.S. Constitution; 42 USC
16 1985(3), Plaintiff has experienced permanent scars both physically and mentally.

17 72. Plaintiff is entitled to recover damages for scarring, pain, mental suffering, humiliation,
18 duress, out of pocket loss and other compensatory damages economic and non-economic
19 damages according to proof;
20

21 73. At all times herein referenced the defendants acted in reckless disregard of plaintiff's
22 constitutional rights. Plaintiff is entitled to punitive and exemplary damages according to
23 proof.
24
25

1 **VI. FIRST CAUSE OF ACTION**
2 **42 U.S.C. 1983 – 4TH AMENDMENT**
3 **EXCESSIVE FORCE – RETALIATION EXERCISE FIRST AMENDMENT**
4 **AS TO DEFENDANTS APPEL, SODERBERG AND ELMORE and Does 1-20**

5 74. Paragraphs 1 through 69 are incorporated by reference as though fully set forth herein.

6 75. Defendant’s Appel, Soderberg and Elmore each of them physically attacked Mr. Malott in
7 order to effectuate an unlawful arrest against him; and to inflict pain to him in retaliation
8 for the exercise of his constitutional rights.

9 76. Mr. Malott was compliant and notwithstanding that compliance was physically attacked by
10 these officers acting in concert with one another.

11 77. No amount of force was necessary in order to place Mr. Malott into custody.

12 Notwithstanding the illegality of the arrest, Mr. Malott did not resist or flee or otherwise
13 create a risk to the officers or any other person.

14 78. Mr. Malott was simply engaging in an exercise of his first amendment rights and did
15 nothing to justify the illegal violent retaliatory response by the police.

16 79. Defendants Elmore, Appel and Soderberg engaged in excessive force in their attack and
17 arrest of plaintiff.

18 80. After Plaintiff had been taken to the asphalt and was entirely restrained by at least
19 Defendant Soderberg, Appel, and Defendant Lincoln and K9 Jago; Defendant Elmore
20 struck Mr. Malott with a baton in the back multiple times, for the sole purpose of inflicting
21 pain on him as he was already in the custody of Appel, Soderberg, Lincoln and K9 Jago

22 81. Defendant Soderberg and Appel physically struck Mr. Malott and took him to the ground
23 smashing him into the concrete and holding him there to facilitate a police K9 Jago biting,
24 clawing and digging into his skin. Appel continued to engage in application of excessive
25

1 force and Soderberg took gratuitous shots at plaintiff with his closed fist for the sole
2 purpose of inflicting pain on plaintiff.

3 82. Plaintiff re-alleges the damages claims set forth in paragraphs 70-73 above. Plaintiff
4 further alleges the conduct of the named defendants was malicious, oppressive, and
5 undertaken with reckless disregard for the rights and safety of plaintiff entitling plaintiff to
6 an award of punitive damages.

7
8 83. Wherefore plaintiffs pray as hereinafter specified.

9 **VII. SECOND CAUSE OF ACTION**
10 **42 U.S.C. 1983 – FOURTH AMENDMENT – EXCESSIVE FORCE**
DEFENDANT LINCOLN – RETALIATION EXERCISE 1ST AMENDMENT

11 84. Paragraphs 1 through 83 are incorporated by reference as though fully set forth herein;

12 85. Defendant Lincoln is the K9 handler for Jago, a police K9 at the Martinez Police
13 Department.

14 86. Defendant Lincoln and K9 Jago attacked plaintiff despite the fact at least three other
15 officers were already physically attacking plaintiff in order to subdue him into custody.

16 87. There was no justification for the deployment by Lincoln of K9 Jago against Mr. Malott.

17 88. The reason Lincoln ordered K9 Jago to attack plaintiff was to retaliate for the exercise of
18 his first amendment rights; and to purposely inflict injury and pain upon him.

19 89. Lincoln intentionally utilized K9 Jago in a manner that was directed at intentionally
20 inflicting harm to plaintiff as opposed to any level of justifiable conduct in lawful response
21 to plaintiff's actions.

22 90. Plaintiff did not resist, flee or otherwise do anything to justify the use of force against him
23 and particularly not in the excessive manner in which it occurred. Plaintiff was bitten
24
25

1 multiple times and suffered deep clawing and scratching on his back, leaving permanent
2 scars on his leg and back.

3 91. Plaintiff re-alleges the damages claims set forth in paragraphs 70-73 above. Plaintiff
4 further alleges the conduct of the named defendant was malicious, oppressive, and
5 undertaken with reckless disregard for the rights and safety of plaintiff entitling plaintiff to
6 an award of punitive damages.

7
8 92. Wherefore plaintiffs pray as hereinafter specified.

9 **VIII. THIRD CAUSE OF ACTION**
10 **42 USC 1983 – EXCESSIVE FORCE – RETALIATION EXERCISE 1ST AMENDMENT**
11 **DEPLOYMENT OF CHEMICAL AGENTS,**
12 **FLASH BANG AND LESS LETHAL WEAPONS**
13 **DEFENDANTS APPEL, ROSAS, GARTNER, CATTOLICO, ESPIRITU, FAJEAU**

14 93. Plaintiffs hereby incorporates all allegations set for in paragraphs 1-92 above as if fully set
15 forth herein.

16 94. The defendants listed hereunder each deployed chemical agents, gas grenades, flash bangs
17 and/or less lethal rounds. The deployment of this armament and weaponry was entirely
18 unnecessary and unjustified. The defendants were predisposed to deploy these weapons in a
19 violent manner against citizens exercising their first amendment rights to challenge the
20 policies and actions of the government, and in this case specifically protesting against
21 police violence as part of the “defund the police” movement stemming from the death of
22 George Floyd; and located in Walnut Creek due to protest against prior misconduct against
23 a young black male. Their predisposition stemmed from retaliation against the concerted
24 movement initiated by Black Lives Matter criticizing police for the very heavy-handed
25 tactics the police used in this instance; and persistent protest against the non-action in the
matter of Miles Hall.

1 95. Each of the named defendants herein deployed, chemical agents, flash bang and/or less
2 lethal rounds directly effecting or striking plaintiff.

3 96. Defendant Gartner deployed numerous Less Lethal 40 mm rounds; Chemical Agents; CS
4 Grenades; and CS Gas to which Plaintiff was exposed and/or contacted;

5 97. Defendant Appel deployed Less Lethal 40 mm rounds, directly striking plaintiff;

6 98. Defendant Cattolico deployed an incredible amount of Chemical Agent Tri-Chamber
7 Flameless Grenades; Flash Bang; Less Lethal eXact Impact 40 mm rubber bullets; and
8 physically struck a protestor with the butt of his less lethal rifle, exposing and affecting
9 plaintiff;

10 99. Defendant Espiritu deployed chemical agents and eXact Impact 40mm less lethal bullet
11 directly affecting plaintiff;

12 100. Defendant Fajeau deployed chemical agents and eXact Impact 40 mm less lethal bullet
13 directly affecting plaintiff;

14 101. Plaintiff did nothing to justify the deployment of less lethal rounds, chemical agents and
15 flash bang devices. The use of the less lethal rounds, chemical agents and flash bang
16 devices was not directed at addressing any threat or illegal act justifying such use, but
17 rather used in retaliation for protesting police violence.
18

19 102. Plaintiff re-alleges the damages claims set forth in paragraphs 70-73 above. Plaintiffs
20 further allege the conduct of the named defendants was malicious, oppressive, and
21 undertaken with reckless disregard for the rights and safety of plaintiffs entitling plaintiffs
22 to an award of punitive damages.
23

24 103. Wherefore plaintiffs pray as hereinafter specified.
25

1 **IX. FOURTH CAUSE OF ACTION**
2 **CONSPIRACY TO VIOLATE CIVIL RIGHTS**
3 **DEFENDANTS SODERBERG, APPEL, LINCOLN, ELMORE**
4 **42 USC SECTION 1983**

5 104. Plaintiff hereby incorporate the allegations set forth in paragraphs 1- 103 above as if set
6 forth fully herein.

7 105. Defendants conspired to violate Plaintiff's civil rights.

8 106. The roles of the various defendants was mostly dependent upon their position, however
9 all contributed in some significant manner to the violations complained of herein.

10 107. Well over 100 officers met before the protest and set up their militaristic operation.

11 Present were at least Walnut Creek Police Officers, multi-jurisdictional Central County
12 SWAT officers and multi-jurisdictional MAMFF officers; Contra Costa County J-Team;
13 Pittsburg SWAT and District Attorney Investigators.

14 108. The officers deployed in several locations, including downtown and then later as many of
15 the protestors marched toward the freeway many of the officers deployed to that location.
16 The officers at both locations used their armament to exact a forceful and violent response
17 on protestors. Over 20 officers or more set up a so called "skirmish" line near the freeway
18 and pushed back the protestors using gas, flash bang devices and rubber bullets, armored
19 vehicles were used as well as K-9 in a concerted effort to stamp down the legitimate protest
20 to which plaintiff was a part. The officers instigated and effectuated violence upon the
21 protestors, including plaintiff and did so in a concerted effort.

22 109. Acting in furtherance of the general violence inflicted upon the protestors; Defendants, at
23 least, Appel, Soderberg, Lincoln, Elmore directed their infliction of violence specifically
24 targeting plaintiff.
25

1 110. Officers Appel, Soderberg, Lincoln and Elmore first specifically targeted plaintiff, then to
2 concrete steps to enter into an agreement to unlawfully use excessive force on plaintiff.

3 111. Prior to attacking plaintiff, the officers communicated their intent to go after him and
4 then worked together to carry out the attack.

5 112. The officers ultimately singled out plaintiff and decided together to attack him both
6 personally and with the assistance of police K9 Jago.

7 113. The four primary officers (Appel, Elmore, Soderberg, Lincoln) knew they would be
8 assisted by the other officers present by shielding the four primary officers while they
9 attacked plaintiff and physically prevented other citizens from coming to plaintiff's aid,
10 surrounded plaintiff so the officers physically attacking him could do so without witnesses
11 including physically restraining persons and turning them away so as not to see the
12 violence being acted upon plaintiff.
13

14 114. During the course of their own physical attack of plaintiff, the four primary officers
15 agreed to hold plaintiff down while police K9 Jago was gnawing, biting and scratching
16 plaintiff. The sole purpose of this act was furtherance of their scheme to inflict illegal,
17 excessive and unnecessary pain on plaintiff in retaliation for his exercise of his
18 constitutional rights.
19

20 115. The officers knew there was no justification for their excessive conduct and committed
21 specific overt acts, including agreeing to, and actually breaking ranks with the other
22 officers in their "skirmish line" in order to effectuate their joint purpose to inflict pain on
23 plaintiff and violating his constitutional rights.

24 116. Defendants achieved their goal by breaking ranks, rushing towards and tackling plaintiff
25 against the metal fence, attacking him with the K9 Jago, punching him and then throwing

1 him to the asphalt face down, punching him and striking him with a baton (while
2 restrained), then restraining him further to allow Lincoln to continue to use K9 Jago to
3 gnaw, scratch, bite and claw plaintiff's body.

4 117. The abuse of police powers was a concerted effort and an overt act in furtherance of the
5 conspiracy. The conduct continued after plaintiff was taken into custody.

6 118. The officers in a concerted effort to justify and cover up their conduct disrupted audio
7 and video recordings, manipulated footage and communicated with one another to fabricate
8 the police reports (consisting of at least the following agencies' reports – Walnut Creek,
9 San Ramon, Pleasant Hill, Martinez, Pittsburg, and Contra Costa County); with said reports
10 depicting a picture of a defiant, resisting and combative person (plaintiff) being subjected
11 to justifiable force. The reports also include fabrication to paint a false picture of the
12 protestors threatening or attacking the officers, which reports are clearly false. The reports
13 have been fabricated and have been done so through a concerted effort of cooperation
14 between the various agencies in order to protect one another for their part in the violation
15 of constitutional rights of plaintiff as articulated herein; and for the benefit of the primary
16 defendant officers who physically attacked plaintiff.

17 119. Lieutenant Patzer fabricated the information in the After Action Report required by
18 MAMFF protocol describing proper officer conduct throughout the operation and failed to
19 disclose the excessive force engaged in by many officers, including the four primary
20 officers against plaintiff.
21

22 120. Plaintiff re-alleges the damages claims set forth in paragraphs 70-73, above. Plaintiffs
23 further allege the conduct of the named defendants was malicious, oppressive, and
24
25

1 undertaken with reckless disregard for the rights and safety of plaintiffs entitling plaintiffs
2 to an award of punitive damages.

3 121. Wherefore plaintiffs pray as hereinafter specified.

4 **X. FIFTH CAUSE OF ACTION**
5 **CONSPIRACY TO VIOLATE CONSTITUTIONAL RIGHTS**
6 **BASED ON RACE – 42 USC SECTION 1983; 1985(3)**
7 **DEFENDANTS ELMORE APPEL SODERSTROM LINCOLN**

8 122. Plaintiff hereby incorporate the allegations set forth in paragraphs 1-121 above as if set
9 forth fully herein.

10 123. Despite the fact the City of Walnut Creek has a population of less than 2% black it has
11 been a center for protests stemming initially from the police killing of a young black man
12 suffering from mental illness, Miles Hall. By and large the demographic of the protestors
13 tend to be 20 something white males and white females, but also include several minority
14 classes with differing numerical representation of low numbers. Included in the larger,
15 Black Lives Matter protest that occurred on June 1, 2020 were a much greater
16 representation than normal persons identifiable as of black race. The very anticipation of
17 this fact led the City of Walnut Creek to enlist SWAT and MAMFF officers from
18 throughout the County as part of a militaristic operation bent on exercising great and
19 violent force upon protestors.

20 124. The protest itself was clearly focused on the manner in which police throughout the
21 country and more specifically in Walnut Creek disparately treat young people of color, and
22 more specifically those identified of the black race, generally young black men in an
23 unjustifiably violent manner.
24
25

1 125. The police response to the planning of the protest was to show up in full SWAT gear,
2 with Armored Vehicles, helicopters and drones, Snipers, K9, gas masks, full riot armament
3 and deploy them against citizens.

4 126. Rather than irony, it was inevitable that at a “defund the police” rally, stemming from
5 police violence against black men, in a military type operation with full display of
6 expensive and unnecessary military type equipment; that a young black man would be
7 attacked by police officers and a police K9.
8

9 127. While many of the protestors were the target of the heavy-handed tactics of the military
10 operation, it was a young black male, plaintiff that was the intentional target of the
11 infliction of significant injury and harm in retaliation for being a young black man
12 protesting against police violence.

13 128. The attack on plaintiff and unquestionably the level of violence to which he was
14 subjected was based on his race.

15 129. Defendants Appel, Soderberg, Elmore and Lincoln, were all aware plaintiff was a young
16 black male. These defendants were not only aware plaintiff was a young black male in
17 advance, but targeted violence upon him for that reason.

18 130. Officers Appel, Soderberg, Lincoln and Elmore first specifically targeted plaintiff, then
19 took concrete steps to enter into an agreement to unlawfully use excessive force on
20 plaintiff.
21

22 131. Prior to attacking plaintiff, the officers communicated their intent to go after him and
23 then worked together to carry out the attack.

24 132. The officers ultimately singled out plaintiff and decided together to attack him both
25 personally and with the assistance of police K9 Jago.

1 133. The four primary officers (Appel, Elmore, Soderberg, Lincoln) knew they would be
2 assisted by the other officers present by shielding the four primary officers while they
3 attacked plaintiff and physically prevented other citizens from coming to plaintiff's aid,
4 surrounded plaintiff so the officers physically attacking him could do so without witnesses
5 including physically restraining persons and turning them away so as not to see the
6 violence being acted upon plaintiff.

7
8 134. During the course of their own physical attack of plaintiff, the four primary officers
9 agreed to hold plaintiff down while police K9 Jago was gnawing, biting and scratching
10 plaintiff. The sole purpose of this act was furtherance of their scheme to inflict illegal,
11 excessive and unnecessary pain on plaintiff in retaliation for his exercise of his
12 constitutional rights.

13 135. The officers knew there was no justification for their excessive conduct and committed
14 specific overt acts, including agreeing to, and actually breaking ranks with the other
15 officers in their "skirmish line" in order to effectuate their joint purpose to inflict pain on
16 plaintiff and violating his constitutional rights.

17 136. Defendants achieved their goal by breaking ranks, rushing towards and tackling plaintiff
18 against the metal fence, attacking him with the K9 Jago, punching him and then throwing
19 him to the asphalt face down, punching him and striking him with a baton (while
20 restrained), then restraining him further to allow Lincoln to continue to use K9 Jago to
21 gnaw, scratch, bite and claw plaintiff's body.

22
23 137. The abuse of police powers was a concerted effort and an overt act in furtherance of the
24 conspiracy. The conduct continued after plaintiff was taken into custody.
25

1 138. Plaintiff re-alleges the damages claims set forth in paragraphs 70-73 above. Plaintiffs
2 further allege the conduct of the named defendants was malicious, oppressive, and
3 undertaken with reckless disregard for the rights and safety of plaintiffs entitling plaintiffs
4 to an award of punitive damages.

5
6 **XI. SIXTH CAUSE OF ACTION**
7 **MONELL CLAIM AS TO CITY OF WALNUT CREEK**
8 **42 USC SECTION 1983**

9 139. Plaintiffs hereby incorporate all allegations set forth in paragraphs 1-138 above as if set
10 forth fully herein.

11 140. The violations of plaintiff's constitutional rights as alleged herein under the First and
12 Fourth amendment to the US Constitution, plaintiff's damages, and the conduct of the
13 individual defendant employees, representatives and agents of the City of Walnut Creek
14 were directly and proximately caused by the actions and/or inaction of defendant City of
15 Walnut Creek, which has encouraged tolerated, ratified and has been deliberately
16 indifferent to the following policies, patterns, practices, and customs, and to the need for
17 more or different training, supervision, investigation or discipline in the areas of:

- 18 a. Use of force against persons exercising their first amendment rights;
19 b. Use of K9 in the context of public rallies and protest;
20 c. Use of gas, flash bang, gas grenades, less lethal projectiles, snipers, armored vehicles
21 and other armament;
22 d. Illegal seizure;
23 e. Use of force in engaging in arrest;
24 f. Peaceful crowd control;
25 g. Fabrication of police reports;

- 1 h. Proper use of Body Worn Cameras or other recordings devices;
- 2 i. Fabrication of evidence by manipulation of recording devices;
- 3 j. Racial discrimination in police contact with citizens;

4 141. The City of Walnut Creek, through the chief of police, high ranking police supervisory
5 personnel and the city council brought in over 100 SWAT and MAMFF officers, highly
6 equipped and predisposed to violence for the sole purpose of “controlling” citizens
7 engaging in peaceful protests within the City of Walnut Creek; The City of Walnut Creek
8 did so out of fear; a fear that irrationally stemmed from the fact that the city is
9 predominately white and affluent and the rally at issue was in protest of the manner in
10 which law enforcement violently mistreats black males; The City of Walnut Creek would
11 be filled with people of color and people of all races protesting against the treatment by the
12 City’s police force against black men. The representatives in the City, including the Chief
13 of Police, acting Chief of Police and the City Council were all aware that protestors would
14 challenge the authority of the police through this protest and based on their irrational fear
15 and unwarranted perception that the otherwise peaceful protestors would rely on violence
16 to carry out this message brought in an army battalion of SWAT officers predisposed to
17 violence and fully equipped to carry it out against ordinary citizens.

18
19 142. The City and law enforcement officials were aware that the concerted effort of the law
20 enforcement presence would result in violence against citizens but chose to go forth in this
21 manner as opposed less intrusive means of protecting citizens constitutional rights; and
22 avoiding unnecessary injury to citizens.
23
24
25

1 143. The heavy-handed tactics were not only sought out by the representatives of the City of
2 Walnut Creek and Walnut Creek law enforcement officials, but moreover were facilitated
3 by the City's resources and policies.

4 144. In addition to the heavy-handed tactics the City of Walnut Creek instituted a last minute
5 arbitrary, unwarranted and mis-executed curfew for the purpose of creating an opportunity
6 for the military operation to kick into full motion while there were many "undesirables"
7 still within the city limits.

8 145. The persons responsible for the City's actions and policies were policy makers and high
9 ranking supervisory personnel of law enforcement and within the City administration.

10 146. As a result of the City of Walnut Creek's failures in these areas the plaintiff has suffered
11 severe and substantial emotional distress damages, compensatory damages and other
12 damages according to proof at time of trial.

13
14 **XII. SEVENTH CAUSE OF ACTION**
15 **MONELL CLAIM AS TO CITIES OF**
16 **PLEASANT HILL, SAN RAMON, PITTSBURG**
17 **42 USC SECTION 1983**

18 147. Plaintiff hereby incorporates all allegations set forth in paragraphs 1-146 above.

19 148. The violations of plaintiff's constitutional rights as alleged herein under the First and
20 Fourth amendment to the US Constitution, plaintiff's damages, and the conduct of the
21 individual defendant employees, representatives and agents of the Cities listed herein were
22 directly and proximately caused by the actions and/or inaction of defendant Cities, which
23 have encouraged, tolerated, ratified and have been deliberately indifferent to the following
24 policies, patterns, practices, and customs, and to the need for more or different training,
25 supervision, investigation or discipline in the areas of:

- a. Use of force against persons exercising their first amendment rights;

- 1 b. Use of K9 in the context of public rallies and protest;
- 2 c. Use of gas, flash bang, gas grenades, less lethal projectiles, snipers, armored vehicles
- 3 and other armament;
- 4 d. Illegal seizure;
- 5 e. Use of force in engaging in arrest;
- 6 f. Peaceful crowd control;
- 7 g. Fabrication of police reports;
- 8 h. Proper use of Body Worn Cameras or other recordings devices;
- 9 i. Fabrication of evidence by manipulation of recording devices;
- 10 j. Racial discrimination in police contact with citizens;
- 11

12 149. The Cities listed herein were aware of the tactics and acted in accord and deference to the
13 City of Walnut Creek, through its chief of police and the city council to bring in over 100
14 SWAT and MAMFF officers, including officers from the cities listed herein, highly
15 equipped and predisposed to violence for the sole purpose of “controlling” citizens
16 engaging in peaceful protests within the City of Walnut Creek; The cities listed herein
17 facilitated his operation despite knowledge City of Walnut Creek was motivated by fear; a
18 fear that irrationally stemmed from the fact that the city is predominately white and affluent
19 and the rally at issue was in protest of the manner in which law enforcement violently
20 mistreats black males; These listed cities knew the City of Walnut Creek would be filled
21 with people of color and people of all races protesting against the treatment by all the
22 Cities’ police forces against black men. The representatives in Walnut Creek, including the
23 Chief of Police, acting Chief of Police and the City Council were all aware that protestors
24 would challenge the authority of the police through this protest and based on their irrational
25

1 fear and unwarranted perception that the otherwise peaceful protestors would rely on
2 violence to carry out this message brought in an army battalion of SWAT officers
3 predisposed to violence and fully equipped to carry it out against ordinary citizens. These
4 cities shared that understanding and yet facilitated the operation.

5 150. The Cities and their law enforcement officials were aware that the concerted effort of the
6 law enforcement presence would result in violence against citizens but chose to facilitate
7 the City of Walnut Creek in going forth in this manner as opposed to employing less
8 intrusive means of protecting citizens constitutional rights; and avoiding unnecessary injury
9 to citizens.

10 151. The heavy-handed tactics were not only sought out by the representatives of the City of
11 Walnut Creek and Walnut Creek law enforcement officials, but moreover were facilitated
12 by the City's resources and policies. The cities listed herein were aware of this and
13 facilitated this policy and action by providing their own resources to assist Walnut Creek in
14 meeting its demand of the moment.

15 152. The persons responsible for the Cities' actions and policies were policy makers and high
16 ranking supervisory personnel of law enforcement and within the City administration.

17 153. The cities not only facilitated the military like operation but also ratified the conduct after
18 they learned what had occurred.

19 20 21 22 23 24 25
154. As a result of these cities' failures in these areas the plaintiff has suffered severe and
substantial emotional distress damages, compensatory damages and other damages
according to proof at time of trial.

**XIII. EIGHTH CAUSE OF ACTION
MONELL CLAIM AS TO CITY OF MARTINEZ
42 USC SECTION 1983**

155. Plaintiff hereby incorporates all the allegations set forth in paragraphs 1-154 set forth above as if fully set forth herein.

156. The violations of plaintiff's constitutional rights as alleged herein under the First and Fourth amendment to the US Constitution, plaintiff's damages, and the conduct of the individual defendant employees, representatives and agents of the Cities listed herein were directly and proximately caused by the actions and/or inaction of defendant Cities, which have encouraged, tolerated, ratified and have been deliberately indifferent to the following policies, patterns, practices, and customs, and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. Use of force against persons exercising their first amendment rights;
- b. Use of K9 in the context of public rallies and protest;
- c. Use of gas, flash bang, gas grenades, less lethal projectiles, snipers, armored vehicles and other armament;
- d. Illegal seizure;
- e. Use of force in engaging in arrest;
- f. Peaceful crowd control;
- g. Fabrication of police reports;
- h. Proper use of Body Worn Cameras or other recordings devices;
- i. Fabrication of evidence by manipulation of recording devices;
- j. Racial discrimination in police contact with citizens;

1 157. The City of Martinez in particular was aware of the violent tenancies of K9 Jago under
2 the supervision of Lincoln and that despite being aware of the violent and unlawful
3 tenancies continued to deploy Lincoln and K9 Jago, including the deployment on this
4 occasion described herein.

5 158. The City of Martinez failed to adequately supervise Lincoln and K9 Jago and once
6 learned of his conduct in this case ratified said conduct.

7 159. The ratification of the unlawful conduct of Lincoln and his deployment of Jago in this
8 case was done both by policy making persons in the police department including the police
9 chief, but also policy making officials in the City of Martinez. Such ratification and
10 tolerance of the misconduct occurred despite the fact the City was aware that Lincoln
11 violated the City of Martinez Police K9 policy.

12 160. The City of Martinez was aware of and acted in accord and deference to the City of
13 Walnut Creek, through its chief of police and the city council to bring in over 100 SWAT
14 and MAMFF officers, including officers from the City of Martinez, highly equipped and
15 predisposed to violence for the sole purpose of “controlling” citizens engaging in peaceful
16 protests within the City of Walnut Creek; The City of Walnut Creek did so out of fear; a
17 fear that irrationally stemmed from the fact that the city is predominately white and affluent
18 and the rally at issue was in protest of the manner in which law enforcement violently
19 mistreats black males; The City of Walnut Creek would be filled with people of color and
20 people of all races protesting against the treatment by the City’s police force against black
21 men. The representatives in the City, including the Chief of Police, acting Chief of Police
22 and the City Council were all aware that protestors would challenge the authority of the
23 police through this protest and based on their irrational fear and unwarranted perception
24
25

1 that the otherwise peaceful protestors would rely on violence to carry out this message
2 brought in an army battalion of SWAT officers predisposed to violence and fully equipped
3 to carry it out against ordinary citizens.

4 161. The City of Martinez and their law enforcement officials were aware that the concerted
5 effort of the law enforcement presence would result in violence against citizens but chose
6 to facilitate the City of Walnut Creek in going forth in this manner as opposed less
7 intrusive means of protecting citizens constitutional rights; and avoiding unnecessary injury
8 to citizens.

9
10 162. The heavy-handed tactics were not only sought out by the representatives of the City of
11 Walnut Creek and Walnut Creek law enforcement officials, but moreover were facilitated
12 by the City's resources and policies. The City of Martinez was aware of this and facilitated
13 this policy and action by providing their own resources to assist Walnut Creek in meeting
14 its demand of the moment.

15 163. The persons responsible for the City of Martinez' actions and policies were policy
16 makers and high-ranking supervisory personnel of law enforcement and within the City
17 administration.

18 164. The City of Martinez not only facilitated the military like operation but also ratified the
19 conduct after they learned what had occurred.

20
21 165. As a result of these City of Martinez' failures in these areas the plaintiff has suffered
22 severe and substantial emotional distress damages, compensatory damages and other
23 damages according to proof at time of trial.
24
25

1 **XIV. NINTH CAUSE OF ACTION**
2 **INTERFERENCE WITH CIVIL RIGHTS**
3 **CALIFORINA CIVIL CODE SECTION 52.1 “THE BANE ACT”**
4 **ALL DEFENDANTS**

5 166. Plaintiff hereby incorporates all allegations set forth in paragraphs 1-165 above as if fully
6 set forth herein.

7 167. Defendants’ above-described conduct constituted interference, and attempted
8 interference, by threats, intimidation, coercion and force with the Plaintiff’s peaceable
9 exercise and enjoyment of rights to due process, equal protection of the laws, to be free
10 from state action that shocks the conscience and to life, liberty and property secured by the
11 Constitution and laws of the State of California and the United States, all in violation of
12 California Civil Code section 52.1.

13 168. Plaintiff re-alleges the damages claims set forth in paragraphs 70-73 above. Plaintiff
14 further alleges the conduct of the named defendant was malicious, oppressive, and
15 undertaken with reckless disregard for the rights and safety of plaintiff entitling plaintiff to
16 an award of punitive damages.

17 169. Wherefore plaintiffs pray as hereinafter specified.

18 **XIV. TENTH CAUSE OF ACTION**
19 **INTENTIONAL INFLICTION EMOTIONAL DISTRESS**
20 **DEFENDANTS CATTOLICO, ESPIRITU, GARTNER, APPEL, LINCOLN, FAJEAU**
21 **SODERBERG, BREINIG, EZARD, ELMORE, VILLA, ROSAS, MARRE, BOREMAN**

22 170. The plaintiff hereby incorporates all allegations set forth in paragraphs 1-169 above as if
23 set forth fully herein.

24 171. The conduct of defendants as described above was intentional conduct. The defendants
25 were aware they had a duty towards plaintiff and intentionally violated that duty.

172. The conduct was extreme and outrageous behavior all beyond all common decency.

1 173. The conduct resulted in extreme and substantial emotional distress to plaintiff.

2 174. Plaintiff has suffered substantial mental suffering and humiliation. Plaintiff's damages
3 include economic and non-economic damages. The conduct of defendant was intentional,
4 reckless, malicious and deliberate and justifies an award of punitive and exemplary
5 damages.

6
7 **XV. ELEVENTH CAUSE OF ACTION**
8 **MONNELL CLAIM AS TO THE COUNTY OF CONTRA COSTA**
9 **42 USC SECTION 1983**

10 175. Plaintiff hereby incorporates all allegations set forth in paragraphs 1-174 above as if set
11 forth fully herein.

12 176. The violations of plaintiff's constitutional rights as alleged herein under the First and
13 Fourth amendment to the US Constitution, plaintiff's damages, and the conduct of the
14 individual defendant employees, representatives and agents of Contra Costa County were
15 directly and proximately caused by the actions and/or inaction of defendant Contra Costa
16 County, which have encouraged, tolerated, ratified and have been deliberately indifferent to
17 the following policies, patterns, practices, and customs, and to the need for more or
18 different training, supervision, investigation or discipline in the areas of:

- 19 a. Use of force against persons exercising their first amendment rights;
20 b. Use of K9 in the context of public rallies and protest;
21 c. Use of gas, flash bang, gas grenades, less lethal projectiles, snipers, armored vehicles
22 and other armament;
23 d. Illegal seizure;
24 e. Use of force in engaging in arrest;
25 f. Peaceful crowd control;

- 1 g. Fabrication of police reports;
- 2 h. Proper use of Body Worn Cameras or other recordings devices;
- 3 i. Fabrication of evidence by manipulation of recording devices;
- 4 j. Racial discrimination in police contact with citizens;
- 5 k. Multit-jurisdictional police force operations;

6 177. The County of Contra Costa maintains a multi-jurisdictional law enforcement organization
7 known as MAMFF. The MAMFF maintains aggressive militaristic and archaic operational
8 policies and procedures depending largely on showing and using excessive levels of force
9 against citizens in the name of order. The MAMFF operational policies and procedures
10 continue to be utilized by Contra Costa County despite many modern scientific and law
11 enforcement resources, studies and treatises clearly identifying the fact that these tactics
12 lead to more violence. Such is the case here where the tactics carried out instigated the
13 violence against protestors including plaintiff herein. Contra Costa County law
14 enforcement continues to utilize the antiquated and harmful policies and procedures out of
15 a preference to engage in violent tactics as opposed to achieving peaceful operational
16 results.
17

18 178. The policies include intentionally inflicting violence through so called less lethal
19 weapons accompanied with distraction devices such as flash bang and deployment of
20 harmful gas along with demonstration and maneuvers intended to provoke psychological
21 responses; including use of menacing K9 and simultaneous chanting.
22

23 179. The Sheriff of Contra Costa County is one of the highest-ranking government law
24 enforcement officials and a policy maker within the County.
25

1 180. In Contra Costa County the Sheriff put two individuals in a position of leadership of the
2 MAMFF operations, the Officer in Command for this operation. The Commander was
3 Lieutenant Joshua Patzer and the Assistant Commander was lieutenant Scott Wooten.
4 Wooten in fact was the initial point of contact for the City of Walnut Creek.

5 181. The sheriff appointed these two individuals despite knowledge the two officers each had
6 previously demonstrated propensity towards infliction and tolerance of excessive force as
7 they were both previously named in different civil rights lawsuits involving excessive
8 force.
9

10 182. In addition to these two individuals own propensity to engage in excessive force the
11 Contra Costa County Sheriff's department itself has been under great scrutiny for the
12 manner in which the organization mistreats incarcerated individuals and the manner in
13 which the organization mistreats immigration detainees (people of color); including the
14 Racial Justice Task Force calling for an independent monitoring body and grievance
15 process related to disparate treatment based on race in the county jails.

16 183. The Sheriff has also failed to follow the law enacted by AB 1421 requiring the Sheriff to
17 disclose acts of misconduct, including excessive force by officers under his command. His
18 failure to follow the law led to a lawsuit wherein it was determined that in fact he was not
19 following the law and his continued reluctance to be transparent in compliance with the law
20 demonstrates deference and tolerance to misconduct by his officers, including use of
21 excessive force.
22

23 184. Upon information and belief neither Deputy Soderberg nor any other individual working
24 under the Sheriff was subject to investigation or discipline for conduct related to the
25 mistreatment of protestors, and specifically plaintiff in this case. This is true despite video

1 evidence that clearly demonstrates inappropriate operations and tactics, and specifically
2 Deputy Soderberg both fabricated and omitted material information in his report related to
3 the attack on plaintiff.

4 185. Additionally, the policy, custom and practice is such that the After Action report authored
5 by Joshua Patzer fails to remotely describe the events leading up to the arrest of plaintiff;
6 the chaos and misuse of weapons and abuse of police power during the operation; which
7 are captured in part on video, much of which remains withheld by the defendants in this
8 case despite legal requirements to produce said video. The After Action report is
9 necessarily to be reviewed by the Sheriff and ultimately the operation detailed to the board
10 of supervisors for the County.
11

12 186. The omissions in the After Action report and the lack of production of video depicting
13 the events and failure to take any disciplinary action are all actions further demonstrating a
14 culture of tolerance in the Contra Costa County Sheriff's Department for police abuse of
15 power and mistreatment of citizens in defiance of their constitutional rights.

16 187. The lack of transparency, failure to conduct internal investigations, failure to scrutinize
17 reports including the After Action report herein and failure to discipline have resulted in
18 use of force without impunity, manifested by the acts in this case.

19 188. The misinformation provided by law enforcement both before the operation and post
20 operation was intended to justify use of excessive force and then to diminish the significant
21 adverse impact the operation had on the constitutional rights of citizens including plaintiff.
22 The misinformation is part of the custom and practice of Contra Costa County law
23 enforcement and tolerated by the Sheriff and condoned by the Board of Supervisors.
24
25

1 189. The County of Contra Costa was aware of and acted in accord and deference to the City
2 of Walnut Creek, through its chief of police and the city council to bring in over 100's of
3 MAMFF and SWAT officers, including officers from the Contra Costa County Sheriff
4 Department (47 of 104 MAMFF officers were sheriff deputies, sergeants and lieutenants; in
5 addition to the 104 MAMFF officers; SWAT; J-Team and District Attorney Investigators
6 were involved in the operations) and multiple police agencies throughout the county, highly
7 equipped and predisposed to violence for the sole purpose of "controlling" citizens
8 engaging in peaceful protests within the City of Walnut Creek; The City of Walnut Creek
9 did so out of fear; a fear that irrationally stemmed from the fact that the city is
10 predominately white and affluent and the rally at issue was in protest of the manner in
11 which law enforcement violently mistreats black males; The City of Walnut Creek would
12 be filled with people of color and people of all races protesting against the treatment by the
13 City's police force against black men. The representatives in the City, including the Chief
14 of Police, acting Chief of Police and the City Council were all aware that protestors would
15 challenge the authority of the police through this protest and based on their irrational fear
16 and unwarranted perception that the otherwise peaceful protestors would rely on violence
17 to carry out this message brought in an army battalion of MAMFF and SWAT officers
18 predisposed to violence and fully equipped to carry it out against ordinary citizens.
19

20
21 190. The County of Contra Costa and their law enforcement officials were aware that the
22 concerted effort of the law enforcement presence would result in violence against citizens
23 but chose to facilitate the City of Walnut Creek in going forth in this manner as opposed
24 less intrusive means of protecting citizens constitutional rights; and avoiding unnecessary
25 injury to citizens.

1 191. The heavy-handed tactics were not only sought out by the representatives of the City of
2 Walnut Creek and Walnut Creek law enforcement officials, but moreover were facilitated
3 by the City's resources and policies. The County of Contra Costa was aware of this and
4 facilitated this policy and action by providing their own resources to assist Walnut Creek in
5 meeting its demand of the moment.

6 192. While the MAMFF according to their policies and procedures is trained in crowd control
7 tactics and operations, albeit antiquated and unnecessarily violence provoking, the SWAT
8 personnel are not trained to control crowds of citizen protestors but rather to engage in high
9 level police violence.

10 193. Central County SWAT is another organization maintained by the County involving joint
11 operations by multiple police agencies, and like MAMFF is the ultimate responsibility of
12 the Sheriff in Contra Costa County.

13 194. The operation in this case was carried out in a splintered fashion, whereas the MAMFF
14 command deferred to the Central County SWAT and Pittsburg Police SWAT and the
15 counties J-Team – a street level covert operations special patrol team (entirely unrelated to
16 crowd control) to conduct operations at the subject location where the incident involving
17 plaintiff occurred. The SWAT and J-Team officers necessarily reverted to their violent and
18 aggressive police tactics which ultimately led to plaintiff's injuries in this case.

19 20 21 22 23 24 25
195. The custom and practice of employing non-MAMFF officers to assist in MAMFF type
operations led to or exacerbated the antagonistic and violence provoking tactics occurring
in this case and the ultimate breaking of ranks by the officers directly responsible for the
hands on violence to plaintiff.

1 196. The persons responsible for the Contra Costa County's actions and policies were high
2 level supervisory and policy makers at the level of law enforcement and within the County
3 administration.

4 197. The County of Contra Costa not only facilitated the military like operation but also
5 ratified the conduct after they learned what had occurred.

6 198. As a result of these County of Contra Costa's failures in these areas the plaintiff has
7 suffered severe and substantial emotional distress damages, compensatory damages and
8 other damages according to proof at time of trial.
9

10 **XVI. TWELTH CAUSE OF ACTION**
11 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
12 **DEFENDANTS CATTOLICO, ESPIRITU, GARTNER, APPEL, LINCOLN, FAJEU,**
13 **SODERBERG, BREINIG, EZARD, ELMORE, VILLA, ROSAS, MARRE, BORMAN**

14 199. Plaintiffs hereby incorporate all allegations set forth in paragraph 1-196 above as if fully
15 set forth herein.

16 200. The defendants had a duty of reasonable care towards plaintiff.

17 201. The defendants failed to exercise reasonable care as set forth above.

18 202. As a result of defendants' conduct, plaintiff has suffered substantial emotional distress
19 and mental suffering.

20 203. Plaintiff has suffered mental distress and humiliation and his damages include both
21 economic and non-economic harm.

22 **XVII. THIRTEENTH CAUSE OF ACTION**
23 **ASSAULT AND BATTERY**
24 **DEFENDANTS ELMORE, LINCOLN, ESPIRITU**
25 **GARTNER, APPEL, CATTOLICO, SODERGERG**

204. Plaintiff hereby incorporates all allegations set forth in paragraphs 1-202 above as if set
forth fully herein.

1 205. The defendants intentionally engaged in conduct towards plaintiff that put him in
2 apprehension of harm and that physically touch him in an offensive and harmful manner;

3 206. The apprehension and touching was non-consensual;

4 207. The apprehension and touching resulted in substantial physical and emotional injuries;

5 208. Plaintiff has suffered substantial mental distress and humiliation and physical scarring
6 and other physical injuries.

7 209. Plaintiff's damages include economic and non-economic damages.

8 210. The conduct of defendants was intentional, reckless, malicious and deliberate and
9 justifies an award of punitive and exemplary damages.
10

11 **WHEREFORE, the Plaintiff requests he be awarded damages as follows:**

12 1. Plaintiff seeks compensatory damages for economic and non-economic harm to plaintiff
13 against the Individual Defendants and the public entities jointly and severally according
14 to proof;

15 2. Punitive and exemplary damages against individual defendants according to proof on the
16 following claims: Causes of Action One through Five, Nine, Ten and Thirteen and as
17 otherwise ordered by the Court;

18 3. Costs incurred in the prosecution of this complaint;

19 4. Reasonable attorney's fees on all relevant causes of action per 42 USC 1988; and any
20 other appropriate statute;

21 5. Reasonable attorney's fees pursuant to Civil Code section 52.1 et. seq.

22 6. Such other and further relief as this Court may deem appropriate.
23

24 Dated: November 29, 2021

25 /S/ Peter Johnson
Peter Johnson
Attorney for Plaintiff

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PLAINTIFF HEREBY DEMANDS A JURY TRIAL

Dated: November 29, 2021

/s/ Peter Johnson
Peter Johnson
Attorney for Plaintiff