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

SRI LOUISE COLES, RON SMITH, JENNIFER )  
HANSEN, DAVE TELLES, SCOTT BOHNING, )  
and LINDSAY PARKINSON, individually, )  
 )  
Plaintiffs, )

No.  
Hon.

vs. )

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

CITY OF OAKLAND, a municipal entity, )  
POLICE CHIEF RICHARD WORD, DEPUTY )  
CHIEF PATRICK HAW, CAPTAIN ROD YEE, )  
LT. E. POULSON, LT. HOWARD JORDAN, )  
LT. DAVE KOZICKI, SGT. T. HOGENMILLER, )  
POLICE OFFICER J. LOW, in their individual )  
and official capacities, and DOES 1-100, Jointly )  
and Severally, )  
 )  
Defendants. )

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Plaintiffs, by and through their attorneys, HADDAD & SHERWIN, for their Complaint against Defendants, state as follows:

**JURISDICTION**

1. This is a civil rights action arising from Defendants' use of excessive force and unreasonable seizure of Plaintiffs, and violation of Plaintiffs' rights to freedom of speech, assembly, association, conscience, and press, at a peaceful demonstration at the Port of Oakland on April 7, 2003, in the City of Oakland, Alameda County, California. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the First, Fourth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 USC §§ 1331 and 1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions. The amount in controversy herein, excluding interest and costs, exceeds the minimum jurisdictional limit of this Court.

**INTRADISTRICT ASSIGNMENT**

2. A substantial part of the events and/or omissions complained of herein occurred in Alameda County, California, and this action is properly assigned to either the Oakland or San Francisco Division of the United States District Court for the Northern District of California.

**PARTIES AND PROCEDURE**

3. Each Plaintiff herein is a resident of the State of California.

4. Defendant City of Oakland is a municipal corporation established by the laws and Constitution of the State of California, and owns, operates, manages, directs, and controls the Oakland Police Department which employs other defendants in this action.

5. Defendants Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Police Officer J. Low were at all material times employed as law enforcement officers by Defendant City of Oakland, and were acting within the course and scope of their employment.

6. The true names and capacities of Defendants sued herein as Does 1-100 (“Doe defendants”) are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names, and Plaintiffs will seek leave to amend this complaint to show their true names and capacities when the same are ascertained. At all material times, each Doe defendant was an employee/agent of Defendant City of Oakland acting within the course and scope of that relationship.

7. Plaintiffs are informed and believe and thereon allege that each of the Defendants sued herein was negligently, wrongfully, and otherwise responsible in some manner for the events and happenings as hereinafter described, and proximately caused injuries and damages to Plaintiffs. Further, one or more Doe defendants were at all material times responsible for the hiring, training, supervision, and discipline of other defendants, and/or directly responsible for violation of Plaintiffs’ rights.

8. Each individual defendant (meaning non-municipal defendants) is sued in his/her individual and official capacities.

9. Plaintiffs are informed and believe, and thereon allege, that each of the defendants was at all material times an agent, servant, employee, partner, joint venturer, co-conspirator, and/or alter ego of the remaining defendants, and in doing the things herein alleged, was acting within the course and scope of that relationship.

Plaintiffs are further informed and believe, and thereon allege, that each of the defendants herein gave consent, aid, and assistance to each of the remaining defendants, and ratified and/or authorized the acts or omissions of each defendant as alleged herein, except as may be hereinafter otherwise specifically alleged.

10. At all material times, each defendant was jointly engaged in tortious activity, resulting in the deprivation of Plaintiffs' Constitutional rights and other harm.

11. At all material times, each defendant acted under color of the laws, statutes, ordinances, and regulations of the State of California.

12. At all material times, Defendants Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Police Officer J. Low, and Does 1-100 acted pursuant to the actual customs, policies, practices and procedures of the Oakland Police Department and Defendant City of Oakland.

13. This complaint may be pled in the alternative pursuant to FRCivP 8(e)(2).

#### **GENERAL ALLEGATIONS**

14. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

15. On the morning of April 7, 2003, each Plaintiff was at a political demonstration at the Port of Oakland. This demonstration was lawful, peaceful, Constitutionally protected, and consisted of approximately a few hundred people gathered to express their opposition to the U.S. war in Iraq and war profiteering by corporations doing business at the Port, among other matters of public concern.

16. Plaintiffs Sri Louse Coles, Jennifer Hansen, Dave Telles, and Lindsay Parkinson were participating in the demonstration; Plaintiff Scott Bohning came to the demonstration intending to participate, but was prevented from ever doing so by Defendants' conduct as further described below; and Plaintiff Ron Smith was attending the demonstration as an independent photo-journalist, with press passes prominently displayed on his body. At all material times, each Plaintiff was engaged in constitutionally protected activity concerning matters of great public concern in a public forum, including exercise of their rights to freedom of speech, assembly, association, conscience, and press.

17. At all material times, each Plaintiff herein acted peacefully and lawfully, never threatened any person, and never resisted any lawful order by any police officer.

18. The Oakland Police used unnecessary and unreasonable force against Plaintiffs and other peaceful people at the Port, including but not limited to firing "less lethal" projectiles -- including concussion or "stinger" grenades, rubber bullets, wooden dowels, "flexible batons," and/or "bean bags" consisting of shot wrapped in a bag -- into the crowd and at Plaintiffs and others; aggressively and forcefully driving motorcycles into some Plaintiffs and other people; striking one Plaintiff and other people with batons; and by other means.

19. All Defendants herein planned, authorized, directed, ratified, and/or personally participated in the following conduct:

- a. An officer forcefully struck Plaintiff Sri Louis Coles in her midsection with a baton; An officer struck Ms. Coles with a motorcycle; and an officer shot a projectile at Ms. Coles striking her in her face and neck;

- b. When Ms. Coles attempted to make a complaint of misconduct concerning this incident to an Oakland police officer who was interviewing her while she was receiving treatment for her injuries in the hospital, the officer told Ms. Coles that if she wanted to file a complaint, she would have to go to the Internal Affairs division of the Oakland Police Department;
- c. An officer shot a projectile at Plaintiff Ron Smith, striking him in his left hand as he was using that hand to hold a camera to his face to film this demonstration and the Oakland police response to it;
- d. An officer shot a projectile at Plaintiff Jennifer Hansen, striking her in the back of her right, upper arm;
- e. An officer shot a projectile at Plaintiff Dave Telles, striking him in the back of his left leg;
- f. Plaintiff Scott Bohning was struck multiple times by projectiles fired by the police, including on his nose, hand, and three times on his back;
- g. Plaintiff Lindsay Parkinson was intentionally struck and knocked to the ground by a police motorcycle driven by Defendant J. Low, pursuant to Defendants' "BUMP" policy, and lifted from the ground by her ear;
- h. Plaintiff Lindsay Parkinson also was wrongfully arrested and incarcerated by Defendant J. Low and other Oakland police officers, without probable cause or other legal right.

20. Each and every use of force described herein was without warning to Plaintiffs, and was objectively unreasonable under the circumstances.

21. Defendants fired all projectiles at each Plaintiff herein without warning, even though warnings would have been practicable and appropriate.

22. Defendants fired, and/or authorized, ordered, permitted, and ratified the firing of projectiles at the backs, heads and vital organs of Plaintiffs and other people exercising their First Amendment rights at the Port.

23. Defendants fired, and/or authorized, ordered, permitted, and ratified the firing of projectiles in an unreasonably and dangerously close range to Plaintiffs and other people exercising their First Amendment rights at the Port.

24. Defendants' firing of "less lethal" projectiles at Plaintiffs and other people exercising their First Amendment rights at the Port was objectively unreasonable under the circumstances, both in Defendants' decision to use such munitions and in the manner in which those munitions were used.

25. Many officers at the demonstration had concealed their names, badge numbers, and/or identifying information.

26. Each Plaintiff also witnessed police using unreasonable force and violating the rights of many other people behaving peacefully and lawfully, including police striking people, shooting unarmed, non-threatening people with projectiles, driving motorcycles at and striking people with motorcycles, and jabbing people with batons, among other violations of rights.

27. Defendants Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Doe Defendants, planned, authorized, ordered, permitted, and ratified the Oakland Police Department's response to this entire demonstration, including but not limited to the following:

- a. the use of "less lethal" munitions for crowd control and against individuals behaving peacefully and lawfully;
- b. the use of batons to strike individuals behaving peacefully and lawfully;
- c. the use of police motorcycles, including Harley Davidson motorcycles weighing over 1,000 pounds, to strike, or "BUMP"

individuals behaving peacefully and lawfully, and against non-violent individuals for “crowd control;”

- d. the arrest and incarceration of individuals without probable cause or legal right;
- e. the concealment of officers’ identities and/or identifying information;
- f. the singling out of individuals at this particular demonstration for an unusually aggressive police response because of those individuals’ viewpoints and the perceived content of their expression.

28. Defendants’ conduct described herein was intended, and was reasonably likely, to deter and/or chill Plaintiffs’ exercise of Constitutionally protected rights, and/or was in retaliation for Plaintiffs’ exercise of Constitutionally protected rights.

29. Plaintiffs’ exercise of their First Amendment rights to freedom of speech, assembly, association, conscience, and press, and the content and/or viewpoint of Plaintiffs’ protected expression, or perceived expression, was a motivating factor for Defendants’ conduct described herein.

30. At all material times, and alternatively, the actions and omissions of each Defendant were intentional, wanton and/or willful, conscience shocking, reckless, malicious, deliberately indifferent to each Plaintiff’s rights, done with actual malice, grossly negligent, negligent, and objectively unreasonable.

31. On information and belief, Defendants and other officers have given false statements, filed false police reports, improperly completed Use of Force reports, concealed material information, improperly investigated this matter, and have otherwise attempted to cover-up their and other officers’ misconduct, violations of Constitutional rights, and other tortious and unlawful conduct.



32. As a direct and proximate result of each Defendant's conduct as set forth above, each Plaintiff sustained the following physical injuries, among others:

- a. Sri Louise Coles: contusions, scrapes, and soft tissue damage in the area of her face and neck;
- b. Ron Smith: open fracture to the left distal second metacarpal (left hand), contusions, scrapes, and soft tissue damage;
- c. Jennifer Hansen: contusions, scrapes, and soft tissue damage in the area of her right upper arm;
- d. Dave Telles: contusions, scrapes, and soft tissue damage in the area of his left upper leg;
- e. Scott Bohning: laceration to his nose, injury to his nose and sinus area, contusions, scrapes, and soft tissue damage to his nose, face, a finger of his right hand, back, and buttocks;
- f. Lindsay Parkinson: contusions, scrapes, and soft tissue damage in the area of her right thigh, right forearm and wrist, left elbow, and back of her left calf.

33. As a direct and proximate result of each Defendant's conduct as set forth above, each Plaintiff sustained the following further injuries and damages, past and future, among others:

- a. mental suffering and emotional distress;
- b. physical pain and suffering;
- c. economic losses, including lost wages and medical expenses;
- d. interference with and violation of constitutional rights;
- e. all damages and penalties recoverable under 42 USC § 1983 and federal civil rights law.

**COUNT ONE**

**-- 42 USC §1983 --**

**DEFENDANTS POLICE CHIEF RICHARD WORD, DEPUTY CHIEF PATRICK HAW,  
CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD JORDAN, LT. DAVE KOZICKI,  
SGT. T. HOGENMILLER, POLICE OFFICER J. LOW,  
AND DOES 1-100**

34. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

35. By the actions and omissions described above, Defendants Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Police Officer J. Low, and Does 1-100 violated 42 USC §1983, depriving Plaintiffs of the following clearly-established and well-settled constitutional rights protected by the First, Fourth, and Fourteenth Amendments to U.S. Constitution:

- a. The right to be free from excessive or unreasonable force as secured by the Fourth Amendment;
- b. The right to be free from unreasonable searches and seizures as secured by the Fourth Amendment;
- c. The right to be free from wrongful arrest, detention, and imprisonment as secured by the Fourth Amendment;
- d. The right to be free from interference with, or retaliation for, their exercise of constitutionally protected rights, including but not limited to speech, assembly, association, conscience, and press, as secured by the First Amendment;
- e. The right to be free from the deprivation of liberty and from the use of unjustifiable force as secured by the Fourteenth Amendment.

36. Defendants subjected Plaintiffs to Defendants' wrongful conduct, depriving Plaintiffs of rights described herein, knowingly, maliciously, and with conscious and

reckless disregard for whether the rights and safety of Plaintiffs and others would be violated by their acts and/or omissions.

37. As a direct and proximate result of Defendants' acts and/or omissions as set forth above, Plaintiffs sustained injuries and damages as set forth at paragraphs 32-33, above.

38. The conduct of Defendants Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Police Officer J. Low, and Does 1-100 entitles Plaintiffs to punitive damages and penalties allowable under 42 USC §1983.

39. Plaintiffs also claim reasonable costs and attorneys' fees under 42 USC §1988 and as allowed by law.

**COUNT TWO**  
**- 42 USC §1983 -**  
**DEFENDANTS CITY OF OAKLAND, POLICE CHIEF RICHARD WORD, DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER AND DOES 1-100**

40. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

41. The unconstitutional actions and/or omissions of Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, Police Officer J. Low, and Does 1-100, as well as other officers employed by or acting on behalf of Defendant City of Oakland were pursuant to the following customs, policies, practices, and/or procedures of Defendant City of Oakland, stated in the alternative, which were directed, encouraged, allowed, and/or ratified by policy making officers for the Oakland Police Department:

- a. to cover-up police misconduct and violations of constitutional rights by allowing, tolerating, and/or encouraging police officers to file false police reports, make false statements, falsely charge individuals with crimes or wrongs, obstruct and/or interfere with investigations of unconstitutional, unlawful, or improper police conduct; by withholding and/or concealing material information; and by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional, unlawful, or wrongful police activity;
- b. to allow, tolerate, and/or encourage the “Code of Silence” protecting police officers from responsibility for their misconduct, including the suppression and/or fabrication of evidence and cover-up of police misconduct;
- c. to interfere with, obstruct, and/or violate the rights of individuals in their exercise of constitutionally protected rights, and to chill and/or deter those individuals from exercising their rights, including but not limited to their right to freedom of speech, assembly, association, conscience, and press;
- d. to use “less lethal” munitions – including but not limited to concussion or “stinger” grenades, rubber bullets, wooden dowels, “flexible batons,” and/or “bean bags” consisting of shot wrapped in a bag – as well as solid batons and other uses of force, for crowd control in a manner, and under circumstances, where such use of force would be objectively unreasonable;
- e. to use “less lethal” munitions – including but not limited to concussion or “stinger” grenades, rubber bullets, wooden dowels, “flexible batons,” and/or “bean bags” consisting of shot wrapped in a bag – as well as solid batons and other uses of force, against individuals who are peacefully and lawfully exercising their First Amendment rights, and against such individuals because of their viewpoint and/or the perceived content of their expression;
- f. to use police motorcycles to strike nonviolent individuals to seize them in a manner that is objectively unreasonable under the circumstances, pursuant to a written “BUMP” (“Basic Use of Motorcycle Push”) policy;
- g. to detain, arrest, and/or incarcerate individuals who are peacefully and lawfully exercising their First Amendment rights, based on such individuals’ viewpoint and/or the perceived content of their expression, and with the intent to chill or prevent their further exercise of First Amendment rights;

42. Defendants City of Oakland Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Does 1-100 failed to properly train, instruct, monitor, supervise, and discipline Defendants and other Police Department personnel, with deliberate indifference to Plaintiffs' constitutional rights, which were thereby violated as described above.

43. The unconstitutional actions and/or omissions of Defendants and other Police Department personnel, as described above, were ordered, approved, tolerated and/or ratified by policy making officers for the Oakland Police Department and the City of Oakland, including but not limited to Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Does 1-100.

44. The aforementioned customs, policies, practices, and procedures, as well as the failures to properly and adequately train, instruct, monitor, supervise and discipline of Defendants City of Oakland, Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Does 1-100 were a moving force and/or a proximate cause of the deprivations of Plaintiffs' clearly-established and well-settled constitutional rights in violation of 42 USC §1983, as more fully set forth in Paragraph 35, above.

45. As a direct and proximate result of the unconstitutional actions, omissions, customs, policies, practices and procedures of Defendants City of Oakland, Police Chief Richard Word, Deputy Chief Patrick Haw, Captain Rod Yee, Lt. E. Poulson, Lt. Howard Jordan, Lt. Dave Kozicki, Sgt. T. Hogenmiller, and Does 1-100, as described above,

Plaintiffs sustained serious and permanent injuries and are entitled to damages, penalties, costs and attorneys' fees as set forth in paragraphs 37 through 39, above.

WHEREFORE, Plaintiffs respectfully request the following relief against each and every Defendant herein, jointly and severally:

- a. compensatory and exemplary damages in an amount according to proof and which is fair, just and reasonable;
- b. punitive damages under 42 USC §1983 in an amount according to proof and which is fair, just, and reasonable;
- c. all other damages, penalties, costs, interest, and attorneys' fees as allowed by 42 USC §§ 1983 and as otherwise allowed by law;
- d. injunctive relief, including but not limited to the following:
  - i. an order prohibiting Defendants and their police officers from unlawfully interfering with the rights of Plaintiffs and others in connection with public demonstrations, to freedom of speech, association, assembly, beliefs and conscience;
  - ii. an order prohibiting Defendants and their police officers from discriminating or retaliating against Plaintiffs or others in connection with public demonstrations based upon their assertion of rights protected by the First and Fourteenth Amendments to the U.S. Constitution, and/or based on their viewpoint or the perceived content of their expression;
  - iii. an order requiring Defendants to rescind their "BUMP – Basic Use of Motorcycle Push" Technique policy, and all of their policies, practices, procedures, and/or customs allowing police officers to strike or bump any individual with their motorcycles, and further prohibiting Defendants from permitting their police officers to intentionally "bump" individuals with motorcycles;
  - iv. an order requiring Defendants to rescind all of their policies, practices, procedures, and/or customs allowing police officers to employ so-called "less lethal" weapons as crowd control mechanisms, and further prohibiting

Defendants from permitting their police officers to deploy such weapons against nonviolent crowds or demonstrators;

- v. an order requiring that in the event Defendants and their police officers employ so-called less lethal force, such force only be used in an objectively reasonable manner;
  - vi. an order prohibiting Defendants and their police officers from concealing their identity in the course and scope of their duties;
  - vii. an order prohibiting Defendants and their police officers from engaging in the “code of silence” as described herein;
  - viii. an order requiring Defendants to train all Oakland Police Officers concerning the law and this Court’s orders concerning the issues raised in injunctive relief requests i-vii, above;
  - ix. an order requiring Defendants to fully comply with the settlement agreement and Consent Decree in Delphine Allen, et al. v. City of Oakland, et al., (Master Case No. C-00-4599 TEH (JL)).
- e. such other and further relief, including injunctive relief, as this Court may deem appropriate.

DATED: June 26, 2003

HADDAD & SHERWIN

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MICHAEL J. HADDAD

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JULIA SHERWIN

Attorneys for Plaintiff

**JURY DEMAND**

Plaintiffs hereby request a trial by jury.

DATED: June 26, 2003

HADDAD & SHERWIN

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MICHAEL J. HADDAD

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JULIA SHERWIN

Attorneys for Plaintiff