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

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

15 vs.

16 CITY OF OAKLAND, a municipal entity,  
POLICE CHIEF RICHARD WORD, DEPUTY  
17 CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT.  
E. POULSON, LT. HOWARD JORDAN,  
18 LT. DAVE KOZICKI, SGT. T. HOGENMILLER,  
19 SGT. E. TRACEY (8004), R. GUTIERREZ (8091),  
A. OERLEMANS (7632), R. HOLMGREN (8282), P.  
20 GONZALES (8151), S. KNIGHT (7776), E.  
ROMANS (8045), C. DELROSARIO (7668), SGT.  
21 GARY TOLLESON, SGT. D. CAMPBELL (7762), R.  
MOORE (8051), A. STEINBERGER (7818), F. UU  
22 (7472), B. WORDEN (8107), J. FUKUDA (7693), J.  
DOOLITTLE (8007), C. SAUNDERS (8254), M.  
23 NICHELINI (8035), OFFICER LOW (7732), J.  
FISHER (7498), SGT. W. WALLACE (7215), and  
24 DOES 1-100, in their individual and official  
capacities, Jointly and Severally,  
25 Defendants.

) No. C 03-2961 TEH (JL)  
) Hon. Thelton E. Henderson

) **THIRD AMENDED**  
) **COMPLAINT AND DEMAND**  
) **FOR JURY TRIAL**

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

3 **JURISDICTION**

4 1. This Third Amended Complaint is filed pursuant to the Stipulation and Order  
5 filed June 23, 2005. This is a civil rights action arising from Defendants' use of excessive  
6 force and unreasonable seizure of Plaintiffs, and violation of Plaintiffs' rights to freedom  
7 of speech, assembly, association, conscience, and press, at a peaceful demonstration at  
8 the Port of Oakland on April 7, 2003, in the City of Oakland, Alameda County, California.  
9 This action is brought pursuant to 42 USC §§ 1983 and 1988, and the First, Fourth, and  
10 Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon  
11 28 USC §§ 1331 and 1343(a)(3) and (4), and the aforementioned statutory and  
12 constitutional provisions. Plaintiffs further invoke the supplemental jurisdiction of this  
13 Court pursuant to 28 USC §1367 to hear and decide claims arising under state law.  
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16 **INTRADISTRICT ASSIGNMENT**

17 2. A substantial part of the events and/or omissions complained of herein  
18 occurred in Alameda County, California, and this action is properly assigned to either the  
19 Oakland or San Francisco Division of the United States District Court for the Northern  
20 District of California.  
21

22 **PARTIES AND PROCEDURE**

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

24 4. Defendant City of Oakland is a municipal corporation established by the  
25 laws and Constitution of the State of California, and owns, operates, manages, directs,  
26 and controls the Oakland Police Department which employs other defendants in this  
27 action.  
28

1           5.       Defendants POLICE CHIEF RICHARD WORD, DEPUTY CHIEF PATRICK  
2 HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD JORDAN,  
3 LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. E. TRACEY (8004), R. GUTIERREZ  
4 (8091), A. OERLEMANS (7632), R. HOLMGREN (8282), P. GONZALES (8151), S.  
5 KNIGHT (7776), E. ROMANS (8045), C. DELROSARIO (7668), SGT. GARY  
6 TOLLESON, SGT. D. CAMPBELL (7762), R. MOORE (8051), A. STEINBERGER (7818),  
7 F. UU (7472), B. WORDEN (8107), J. FUKUDA (7693), J. DOOLITTLE (8007), C.  
8 SAUNDERS (8254), M. NICHELINI (8035), OFFICER LOW (7732), J. FISHER (7498),  
9 and SGT. W. WALLACE (7215) were at all material times employed as law enforcement  
10 officers by Defendant City of Oakland, and were acting within the course and scope of  
11 their employment.  
12

13           6.       The true names and capacities of Defendants sued herein as Does 1-100  
14 (“Doe defendants”) are unknown to Plaintiffs, who therefore sue said Defendants by such  
15 fictitious names, and Plaintiffs will seek leave to amend this complaint to show their true  
16 names and capacities when the same are ascertained. At all material times, each Doe  
17 defendant was an employee/agent of Defendant City of Oakland acting within the course  
18 and scope of that relationship.  
19

20           7.       Plaintiffs are informed and believe and thereon allege that each of the  
21 Defendants sued herein was negligently, wrongfully, and otherwise responsible in some  
22 manner for the events and happenings as hereinafter described, and proximately caused  
23 injuries and damages to Plaintiffs. Further, one or more Doe defendants were at all  
24 material times responsible for the hiring, training, supervision, and discipline of other  
25 defendants, and/or directly responsible for violation of Plaintiffs’ rights.  
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1           8.       Each individual defendant (meaning non-municipal defendants) is sued in  
2 his/her individual and official capacities.

3           9.       Plaintiffs are informed and believe, and thereon allege, that each of the  
4 defendants was at all material times an agent, servant, employee, partner, joint venturer,  
5 co-conspirator, and/or alter ego of the remaining defendants, and in doing the things  
6 herein alleged, was acting within the course and scope of that relationship. Plaintiffs are  
7 further informed and believe, and thereon allege, that each of the defendants herein gave  
8 consent, aid, and assistance to each of the remaining defendants, and ratified and/or  
9 authorized the acts or omissions of each defendant as alleged herein, except as may be  
10 hereinafter otherwise specifically alleged.

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

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

15           12.      At all material times, POLICE CHIEF RICHARD WORD, DEPUTY CHIEF  
16 PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD JORDAN,  
17 LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. E. TRACEY (8004), R. GUTIERREZ  
18 (8091), A. OERLEMANS (7632), R. HOLMGREN (8282), P. GONZALES (8151), S.  
19 KNIGHT (7776), E. ROMANS (8045), C. DELROSARIO (7668), SGT. GARY  
20 TOLLESON, SGT. D. CAMPBELL (7762), R. MOORE (8051), A. STEINBERGER (7818),  
21 F. UU (7472), B. WORDEN (8107), J. FUKUDA (7693), J. DOOLITTLE (8007), C.  
22 SAUNDERS (8254), M. NICHELINI (8035), OFFICER LOW (7732), J. FISHER (7498),  
23 SGT. W. WALLACE (7215), and Does 1-100 acted pursuant to the actual customs,  
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1 policies, practices and procedures of the Oakland Police Department and Defendant City  
2 of Oakland.

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

4 **GENERAL ALLEGATIONS**

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

7 15. On the morning of April 7, 2003, each Plaintiff was at a political  
8 demonstration at the Port of Oakland. This demonstration was lawful, peaceful,  
9 Constitutionally protected, and consisted of approximately a few hundred people  
10 gathered to express their opposition to the U.S. war in Iraq and war profiteering by  
11 corporations doing business at the Port, among other matters of public concern.  
12

13 16. Plaintiffs Sri Louse Coles, Jennifer Hansen, Dave Telles, and Lindsay  
14 Parkinson were participating in the demonstration; Plaintiff Scott Bohning came to the  
15 demonstration intending to participate, but was prevented from ever doing so by  
16 Defendants' conduct as further described below; and Plaintiff Ron Smith was attending  
17 the demonstration as an independent photo-journalist, with press passes prominently  
18 displayed on his body. At all material times, each Plaintiff was engaged in constitutionally  
19 protected activity concerning matters of great public concern in a public forum, including  
20 exercise of their rights to freedom of speech, assembly, association, conscience, and  
21 press.  
22

23 17. At all material times, each Plaintiff herein acted peacefully and lawfully,  
24 never threatened any person, and never resisted any lawful order by any police officer.  
25

26 18. The Oakland Police used unnecessary and unreasonable force against  
27 Plaintiffs and other peaceful people at the Port, including but not limited to firing "less  
28

1 lethal” projectiles -- including concussion or “stinger” grenades, wooden dowels, and  
2 “flexible batons,” also known as “bean bags,” consisting of lead birdshot shot wrapped in  
3 a bag and fired from a 12 gauge shot gun -- into the crowd and at Plaintiffs and others;  
4 aggressively and forcefully driving motorcycles into some Plaintiffs and other people;  
5 striking one Plaintiff and other people with batons; and by other means. Defendants’  
6 conduct at the Port in the course of each use of force by Defendants against Plaintiffs  
7 caused a governmental termination of each Plaintiff’s freedom of movement through  
8 means intentionally applied.

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

- 12 a. An officer forcefully struck Plaintiff Sri Louis Coles in her midsection  
13 with a baton; An officer, believed to be Defendant M. Nichelini, struck  
14 Ms. Coles with a motorcycle; and an officer, believed to be  
15 Defendant DelRosario, shot a projectile at Ms. Coles striking her in  
16 her face and neck;
- 17 b. When Ms. Coles attempted to make a complaint of misconduct  
18 concerning this incident to an Oakland police officer who was  
19 interviewing her while she was receiving treatment for her injuries in  
20 the hospital, the officer told Ms. Coles that if she wanted to file a  
21 complaint, she would have to go to the Internal Affairs division of the  
22 Oakland Police Department;
- 23 c. An officer shot a projectile at Plaintiff Ron Smith, striking him in his  
24 left hand as he was using that hand to hold a camera to his face to  
25 film this demonstration and the Oakland police response to it;
- 26 d. An officer shot a projectile at Plaintiff Jennifer Hansen, striking her in  
27 the back of her right, upper arm;
- 28 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 Low pursuant  
to Defendants’ “BUMP” policy, and lifted from the ground by her ear  
by Defendants Low, Fisher, Wallace, and/or another officer;

- 1 h. Defendant Low's intentional motorcycle BUMP of Plaintiff Lindsay  
2 Parkinson was witnessed and ratified by Defendants Fisher and  
3 Wallace, who failed to intercede, protect Ms. Parkinson, or report this  
4 use of excessive force by Defendant Low.
- 5 i. Plaintiff Lindsay Parkinson was wrongfully arrested and incarcerated  
6 by Defendants Low, Fisher, Wallace, and/or other Oakland police  
7 officers, without probable cause or other legal right;
- 8 j. Plaintiff Lindsay Parkinson also was maliciously prosecuted with  
9 malice and without probable cause, and for the purpose of denying  
10 her equal protection of the law under the Fourteenth Amendment  
11 and other rights protected by the First Amendment; those charges  
12 were based on false information and conduct from Defendant Low  
13 Fisher, and Wallace who wrongfully caused those charges to be  
14 filed; those charges were ultimately resolved in Ms. Parkinson's favor  
15 when they were dismissed on the motion of the District Attorney.

16 20. Each and every use of force against Plaintiffs described herein was done in  
17 the course of a seizure of Plaintiffs, and was excessive and objectively unreasonable  
18 under the circumstances. Further, the "less lethal" shots fired to the faces of Plaintiffs Sri  
19 Louise Coles, Scott Bohning, and Ron Smith, constitute deadly force, and were fired  
20 without any cause to believe that those Plaintiffs posed a significant and immediate threat  
21 of death or serious physical injury to anyone.

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

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

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

30 24. Defendants' firing of "less lethal" projectiles at Plaintiffs and other people  
31 exercising their First Amendment rights at the Port was objectively unreasonable under

1 the circumstances, both in Defendants' decision to use such munitions and in the manner  
2 in which those munitions were used.

3 25. Officers at the demonstration had concealed their names, badge numbers,  
4 and/or identifying information.

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

10 27. Defendants DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E.  
11 POULSON, LT. HOWARD JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER,  
12 SGT. E. TRACEY (8004), R. GUTIERREZ (8091), A. OERLEMANS (7632), R.  
13 HOLMGREN (8282), P. GONZALES (8151), S. KNIGHT (7776), E. ROMANS (8045), C.  
14 DELROSARIO (7668), SGT. GARY TOLLESON, SGT. D. CAMPBELL (7762), R.  
15 MOORE (8051), A. STEINBERGER (7818), F. UU (7472), B. WORDEN (8107), J.  
16 FUKUDA (7693), J. DOOLITTLE (8007), and C. SAUNDERS (8254) each fired and/or  
17 caused to be fired "less lethal" projectiles at Plaintiffs and others in the manner described  
18 herein.

19 28. Defendants POLICE CHIEF RICHARD WORD, DEPUTY CHIEF PATRICK  
20 HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD JORDAN, LT. DAVE  
21 KOZICKI, SGT. T. HOGENMILLER, SGT. GARY TOLLESON, SGT. TRACEY, and DOE  
22 DEFENDANTS, planned, authorized, ordered, permitted, and ratified the Oakland Police  
23 Department's response to this entire demonstration, including but not limited to the  
24 following:  
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- 1 a. the use of "less lethal" munitions against individuals behaving  
2 lawfully;
- 3 b. the use of "less lethal" munitions against individuals behaving  
4 peacefully and who did not pose any threat to anyone;
- 5 c. the use of batons to strike individuals behaving peacefully and  
6 lawfully;
- 7 d. the use of Harley Davidson police motorcycles to strike or "BUMP"  
8 individuals behaving peacefully and lawfully, and against non-violent  
9 individuals for "crowd control;"
- 10 e. the arrest, incarceration, and recommendation/institution of charges  
11 for individuals without probable cause or legal right;
- 12 f. the concealment of officers' identities and/or identifying information;
- 13 g. the singling out of individuals at this particular demonstration for an  
14 unusually aggressive police response because of those individuals'  
15 viewpoints and the perceived content of their expression;
- 16 h. wrongfully causing baseless charges against Lindsay Parkinson to  
17 be filed.

18 29. Defendants' conduct described herein was intended, and was reasonably  
19 likely, to deter and/or chill Plaintiffs' exercise of Constitutionally protected rights, and/or  
20 was in retaliation for Plaintiffs' exercise of Constitutionally protected rights.

21 30. Plaintiffs' exercise of their First Amendment rights to freedom of speech,  
22 assembly, association, conscience, and press, and the content and/or viewpoint of  
23 Plaintiffs' protected expression, or perceived expression, was a substantial or motivating  
24 factor for Defendants' conduct described herein.

25 31. A number of Plaintiffs have refrained from going to other demonstrations or  
26 events to express their views, or have gone to other demonstrations and events with  
27 great apprehension and reserve, and have continued to have their rights to free speech  
28 and expression chilled as a result of Defendants' conduct culminating on April 7, 2003 as  
described herein.

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

5           33.    On information and belief, Defendants and other officers have given false  
6 statements, filed false police reports, copied sections of their reports verbatim from other  
7 officers' reports, improperly completed Use of Force reports, concealed material  
8 information, improperly investigated this matter, and have otherwise attempted to cover-  
9 up their and other officers' misconduct, violations of Constitutional rights, and other  
10 tortious and unlawful conduct.

11           34.    As a direct and proximate result of each Defendant's conduct as set forth  
12 above, each Plaintiff sustained the following physical injuries previously described with  
13 more precision in their depositions taken in this matter, among other injuries:  
14

- 15
- 16           a.    Sri Louise Coles: contusions, scrapes, and soft tissue damage  
17                about her body, including in the area of her face and neck;
  - 18           b.    Ron Smith: open fracture to the left distal second metacarpal (left  
19                hand), contusions, scrapes, and soft tissue damage;
  - 20           c.    Jennifer Hansen: contusions, scrapes, and soft tissue damage in the  
21                area of her right upper arm;
  - 22           d.    Dave Telles: contusions, scrapes, and soft tissue damage in the  
23                area of his left upper leg;
  - 24           e.    Scott Bohning: laceration to his nose, injury to his nose and sinus  
25                area, contusions, scrapes, and soft tissue damage to his nose, face,  
26                a finger of his right hand, back, and buttocks;
  - 27           f.    Lindsay Parkinson: contusions, scrapes, and soft tissue damage in  
28                the area of her left thigh, left forearm and wrist, right elbow, and back  
              of her left calf.

29           35.    As a direct and proximate result of each Defendant's conduct as set forth  
30 above, Plaintiff Lindsay Parkinson also sustained a wrongful arrest and incarceration,  
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1           39. By the actions and omissions described above, POLICE CHIEF RICHARD  
2 WORD, DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT.  
3 HOWARD JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. E. TRACEY  
4 (8004), R. GUTIERREZ (8091), A. OERLEMANS (7632), R. HOLMGREN (8282), P.  
5 GONZALES (8151), S. KNIGHT (7776), E. ROMANS (8045), C. DELROSARIO (7668),  
6 SGT. GARY TOLLESON, SGT. D. CAMPBELL (7762), R. MOORE (8051), A.  
7 STEINBERGER (7818), F. UU (7472), B. WORDEN (8107), J. FUKUDA (7693), J.  
8 DOOLITTLE (8007), C. SAUNDERS (8254), M. NICHELINI (8035), OFFICER LOW  
9 (7732), J. FISHER (7498), SGT. W. WALLACE (7215), and Does 1-100 violated 42 USC  
10 §1983, depriving Plaintiffs of the following clearly-established and well-settled  
11 constitutional rights protected by the First, Fourth, and Fourteenth Amendments to U.S.  
12

13 Constitution:

- 14
- 15           a. The right to be free from excessive or unreasonable force as secured by  
16 the Fourth Amendment;
  - 17           b. The right to be free from unreasonable searches and seizures as  
18 secured by the Fourth Amendment;
  - 19           c. The right to be free from wrongful arrest, detention, and imprisonment  
20 as secured by the Fourth Amendment;
  - 21           d. The right to be free from interference with, or retaliation for, their  
22 exercise of constitutionally protected rights, including but not limited to  
23 speech, assembly, association, conscience, and press, as secured by  
24 the First and Fourteenth Amendments;
  - 25           e. The right to be free from the deprivation of equal protection of the law as  
26 secured by the Fourteenth Amendment;
  - 27           f. The right to be free from the deprivation of liberty and from the use of  
28 unjustifiable force without due process of law as secured by the  
Fourteenth Amendment;
  - g. Plaintiff Lindsay Parkinson's right to be free from malicious prosecution  
as secured by the First, Fourth, and Fourteenth Amendments;
  - h. Plaintiff Lindsay Parkinson's right to be free from malicious prosecution  
for the purpose of depriving her of rights secured by the First, Fourth,  
and Fourteenth Amendments.

1  
2 40. Defendants subjected Plaintiffs to Defendants' wrongful conduct, depriving  
3 Plaintiffs of rights described herein, knowingly, maliciously, and with conscious and  
4 reckless disregard for whether the rights and safety of Plaintiffs and others would be  
5 violated by their acts and/or omissions.

6 41. As a direct and proximate result of Defendants' acts and/or omissions as  
7 set forth above, Plaintiffs sustained injuries and damages as set forth at paragraphs 34-  
8 36, above.

9 42. The conduct of Defendants POLICE CHIEF RICHARD WORD, DEPUTY  
10 CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD  
11 JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. E. TRACEY (8004), R.  
12 GUTIERREZ (8091), A. OERLEMANS (7632), R. HOLMGREN (8282), P. GONZALES  
13 (8151), S. KNIGHT (7776), E. ROMANS (8045), C. DELROSARIO (7668), SGT. GARY  
14 TOLLESON, SGT. D. CAMPBELL (7762), R. MOORE (8051), A. STEINBERGER (7818),  
15 F. UU (7472), B. WORDEN (8107), J. FUKUDA (7693), J. DOOLITTLE (8007), C.  
16 SAUNDERS (8254), M. NICHELINI (8035), OFFICER LOW (7732), J. FISHER (7498),  
17 SGT. W. WALLACE (7215), and Does 1-100 entitles Plaintiffs to punitive damages and  
18 penalties allowable under 42 USC §1983 and California law.  
19  
20

21 43. Plaintiffs also claim reasonable costs and attorneys' fees under 42 USC  
22 §1988 and as otherwise allowed by law.

23  
24 **COUNT TWO**  
25 **- 42 USC §1983 -**  
26 **DEFENDANTS CITY OF OAKLAND, POLICE CHIEF RICHARD WORD, DEPUTY**  
27 **CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD**  
28 **JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT GARY TOLLESON,**  
**SGT. TRACEY, AND DOES 1-100**

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

1           45.     The unconstitutional actions and/or omissions of POLICE CHIEF RICHARD  
2 WORD, DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT.  
3 HOWARD JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. TOLLESON,  
4 SGT. TRACEY, AND DOES 1-100, as well as other officers employed by or acting on  
5 behalf of Defendant City of Oakland were pursuant to the following customs, policies,  
6 practices, and/or procedures of DEFENDANT CITY OF OAKLAND, stated in the  
7 alternative, which were directed, encouraged, allowed, and/or ratified by policy making  
8 officers for the Oakland Police Department:  
9

- 10           a.     to cover-up police misconduct and violations of constitutional rights  
11                 by allowing, tolerating, and/or encouraging police officers to file false  
12                 police reports, copy other officers' police reports and submit them as  
13                 their own, make false statements, falsely charge individuals with  
14                 crimes or wrongs, obstruct and/or interfere with investigations of  
15                 unconstitutional, unlawful, or improper police conduct; by withholding  
16                 and/or concealing material information; and by ignoring and/or failing  
17                 to properly and adequately investigate and discipline  
18                 unconstitutional, unlawful, or wrongful police activity;
- 19           b.     to allow, tolerate, and/or encourage the "Code of Silence" protecting  
20                 police officers from responsibility for their misconduct, including the  
21                 suppression and/or fabrication of evidence and cover-up of police  
22                 misconduct;
- 23           c.     to interfere with, obstruct, and/or violate the rights of individuals in  
24                 their exercise of constitutionally protected rights, and to chill and/or  
25                 deter those individuals from exercising their rights, including but not  
26                 limited to their right to freedom of speech, assembly, association,  
27                 conscience, and press;
- 28           d.     to use "less lethal" munitions – including but not limited to  
                  concussion or "stinger" grenades, wooden dowels, "flexible batons,"  
                  and/or "bean bags" consisting of lead birdshot shot wrapped in a bag  
                  and fired from a 12 gauge shotgun – 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, wooden dowels, "flexible batons,"  
                  and/or "bean bags" consisting of lead birdshot shot wrapped in a bag  
                  and fired from a 12 gauge shotgun – 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

1 individuals because of their viewpoint and/or the perceived content of  
2 their expression;

3 f. to use police motorcycles to strike nonviolent individuals to seize  
4 them in a manner that is objectively unreasonable under the  
5 circumstances, pursuant to custom and a written "BUMP" ("Basic  
6 Use of Motorcycle Push") policy;

7 g. to detain, arrest, and/or incarcerate individuals who are peacefully  
8 and lawfully exercising their First Amendment rights, based on such  
9 individuals' viewpoint and/or the perceived content of their  
10 expression, and with the intent to chill or prevent their further  
11 exercise of First Amendment rights;

12 h. to select and/or allow Defendant DelRosario to participate in a  
13 "Tango Team" on April 7, 2003, where DelRosario could shoot  
14 demonstrators and others at the Port of Oakland with "bean bags"  
15 and/or other munitions, selecting his own targets, despite his known  
16 history in the department, including his evaluations and prior  
17 complaint and misconduct history, and without due concern for  
18 Defendant DelRosario's adherence to generally accepted law  
19 enforcement standards concerning bias, truthfulness, judgment, and  
20 use of force.

21 46. DEFENDANTS CITY OF OAKLAND POLICE CHIEF RICHARD WORD,  
22 DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD  
23 JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. TOLLESON, SGT.  
24 TRACEY, AND DOES 1-100 failed to properly train, instruct, monitor, supervise, and  
25 discipline Defendants and other Police Department personnel, with deliberate  
26 indifference to Plaintiffs' constitutional rights, which were thereby violated as described  
27 above.

28 47. The unconstitutional actions and/or omissions of Defendants and other  
Police Department personnel, as described above, were known, and 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,  
SGT. TOLLESON, SGT. TRACEY, AND DOES 1-100.







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- g. The right to be free from excessive and/or unreasonable force as secured by the California Constitution, Article 1, Section 13;
- h. The right to enjoy and defend life and liberty, acquire, possess and protect property, and pursue and obtain safety, happiness and privacy, as secured by the California Constitution, Article 1, Section 1;
- i. The right to freely speak and express their sentiments on all subjects, including but not limited to the freedom of conscience, beliefs, and associations, as secured by the California Constitution, Article 1, Section 2;
- j. The right to life, liberty and property and not to be deprived of those without due process of law as secured by the California Constitution, Article 1, Section 7;
- k. The right to equal protection of the laws as secured by California Constitution, Article 1, Section 7.

55. As a direct and proximate result of Defendants' violation of California Civil Code §52.1, Plaintiffs sustained injuries and damages as set forth in paragraphs 41 through 43, above. Further, Plaintiffs claim all damages allowed by law, including California Civil Code §§52 and 52.1, and including costs, attorneys fees, treble damages, and civil penalties.

**COUNT FIVE**  
**-- VIOLATION OF CALIFORNIA CIVIL CODE §51.7 --**  
**ALL DEFENDANTS**

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

57. By their actions, omissions, customs, and policies, as described above, each Defendant violated each Plaintiff's rights to be free from any violence, or intimidation by threat of violence, committed against his/her person because of his/her political affiliation, perceived political views, perceived speech and expression, and association with protestors at the Port of Oakland on April 7, 2003, as secured by California Civil Code §51.7.



1           64.    At all times, each Defendant owed Plaintiffs the duty to act with reasonable  
2 care, including in crowd control and conduct as described above.

3           65.    These general duties of reasonable care and due care owed to Plaintiffs by  
4 Defendants include but are not limited to the following specific obligations:

- 5                   a.    To refrain from using excessive or unreasonable force against  
6 Plaintiffs;
- 7                   b.    To refrain from wrongfully arresting and incarcerating protestors,  
8 including Plaintiff Lindsay Parkinson;
- 9                   c.    To refrain from giving false and/or misleading information about  
10 Plaintiffs to law enforcement authorities;
- 11                   d.    To refrain from subjecting Plaintiffs to force, arrest, incarceration, or  
12 limitation of their constitutional rights because of Plaintiffs' exercise,  
or perceived exercise, of rights to freedom of speech, conscience,  
assembly, association, and press, among other rights exercised or  
attempted to be exercised by Plaintiffs as described herein;
- 13                   e.    To refrain from abusing their rights and/or authority granted them by  
14 law;
- 15                   f.    To refrain from violating the rights of Plaintiffs guaranteed by the  
16 United States and California Constitutions and law, as more fully set  
forth herein;
- 17                   g.    To refrain from violating lawful policies and procedures of the  
18 Oakland Police Department;
- 19                   h.    To refrain from violating lawful training each Defendant has received  
in the course of his law enforcement career;

20           66.    Additionally, the general duties of reasonable care and due care owed to  
21 Plaintiffs by DEFENDANTS CITY OF OAKLAND, POLICE CHIEF RICHARD WORD,  
22 DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD  
23 JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. TOLLESON, SGT.  
24 TRACEY, AND DOES 1-100, include but are not limited to the following specific  
25 obligations:

- 26                   a.    to properly and adequately investigate, train, supervise, monitor and  
27 discipline police officers to ensure that officers act at all times in the  
28

1 public interest, with due regard for the rights and safety of others,  
2 and in conformance with law;

3 b. to make, enforce, and at all times act in conformance with policies  
4 and customs that are protective of individual rights and safety,  
including Plaintiffs'.

5 c. to refrain from making, enforcing, and/or tolerating the wrongful  
6 policies and customs set forth at paragraph 45, above.

7 67. Defendants, through their acts and omissions, and through their conduct  
8 described herein, breached each and every one of the aforementioned duties and  
9 obligations owed to Plaintiffs.

10 68. As a direct and proximate result of Defendants' negligence, Plaintiffs  
11 sustained injuries and damages as set forth above in paragraphs 41 through 43, and are  
12 further entitled to damages, penalties, and costs as otherwise allowed under California  
13 law.  
14

15 **COUNT EIGHT**  
16 **-- FALSE ARREST --**

17 **DEFENDANTS CITY OF OAKLAND, POLICE CHIEF RICHARD WORD, DEPUTY**  
18 **CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD**  
19 **JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT GARY TOLLESON,**  
20 **OFFICER L. LOW, AND DOES 1-100**

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

23 70. Defendants CITY OF OAKLAND, POLICE CHIEF RICHARD WORD,  
24 DEPUTY CHIEF PATRICK HAW, CAPTAIN ROD YEE, LT. E. POULSON, LT. HOWARD  
25 JORDAN, LT. DAVE KOZICKI, SGT. T. HOGENMILLER, SGT. TOLLESON, OFFICER  
26 LOW, OFFICER FISHER, SGT. WALLACE, AND DOES 1-100, arrested and/or caused  
27 to be arrested and/or authorized, ordered, tolerated, or ratified the arrest of Plaintiff  
28 Lindsay Parkinson without probable cause or other legal right, and had her incarcerated  
and charged in violation of law, including but not limited to Cal. Penal Code § 853.6.

1           71. As a direct and proximate result of Defendants' false arrest of Plaintiff  
2 Lindsay Parkinson, Plaintiff Lindsay Parkinson sustained injuries and damages as set  
3 forth above in paragraphs 41 through 43, and is further entitled to damages, penalties,  
4 and costs as otherwise allowed under California law.

5           WHEREFORE, Plaintiffs respectfully request the following relief against each and  
6 every Defendant herein, jointly and severally:  
7

- 8           a. compensatory and exemplary damages in an amount according to proof  
9 and which is fair, just and reasonable;
- 10           b. punitive damages under 42 USC §1983 in an amount according to proof  
11 and which is fair, just, and reasonable;
- 12           c. all other damages, penalties, costs, interest, and attorneys' fees as allowed  
13 by 42 USC §§ 1983, 1988, Cal. Civil Code §§ 52, 52.1, 51.7, Cal. Code of  
14 Civil Procedure § 1021.5, and as otherwise allowed by law;
- 15           d. injunctive relief, including but not limited to the following:
- 16           i. an order prohibiting Defendants and their police officers  
17 from unlawfully interfering with the rights of Plaintiffs and  
18 others in connection with public demonstrations, to  
19 freedom of speech, association, assembly, beliefs and  
20 conscience;
- 21           ii. an order prohibiting Defendants and their police officers  
22 from discriminating or retaliating against Plaintiffs or  
23 others in connection with public demonstrations based  
24 upon their assertion of rights protected by the First and  
25 Fourteenth Amendments to the U.S. Constitution, and/or  
26 based on their viewpoint or the perceived content of their  
27 expression;
- 28           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 without legal justification or against  
nonviolent crowds or demonstrators;

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- 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 a lawful 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: July 12, 2005 HADDAD & SHERWIN

\_\_\_\_\_  
MICHAEL J. HADDAD  
Attorneys for Plaintiff

1 **JURY DEMAND**

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3 Plaintiffs hereby request a trial by jury.

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6 DATED: July 12, 2005

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HADDAD & SHERWIN

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MICHAEL J. HADDAD  
Attorneys for Plaintiff

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***PROOF OF SERVICE***  
**(FRCivP 5 and 28 USC §1746)**

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2  
3 Re: Sri Louise Coles, et al. v. City of Oakland, et al., U.S.D.C. No. C 03-2961TEH

4 I declare that: I am employed in the County of Alameda, State of California. I am  
5 over the age of eighteen years and not a party to the within entitled cause; my business  
6 address is 505 Seventeenth Street, Oakland, California 94612.

7 On July 12, 2005, I served the attached THIRD AMENDED COMPLAINT, on the  
8 parties in said causes by E-FILING to all counsel of record, including:

9 Mr. James B. Chanin  
10 Ms. Julie M. Houk  
11 Law Offices of James B. Chanin  
12 3050 Shattuck Ave.  
13 Berkeley, CA 94705  
14 FAX: (510) 848-5819

15 Mr. John L. Burris  
16 Law Offices of John L. Burris  
17 7677 Oakport Street, Suite 1120  
18 Oakland, CA 94621  
19 FAX: (510) 839-3882

20 Mr. Gregory Fox  
21 Bertrand, Fox & Elliot  
22 2749 Hyde Street  
23 San Francisco, CA 94109

24 Mr. Randolph Warren Hall  
25 Office of the City Attorney  
26 1 Frank Ogawa Plaza  
27 Sixth Floor  
28 Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct and that on  
the date stated above, this declaration was executed at Oakland, California.

\_\_\_\_\_  
MICHAEL J. HADDAD