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Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 REGINALD OLIVER; JOSEPH BATIESTE, )  
JR.; ANTOINETTE MCCULLOUGH; )  
12 DELANDRO BROWN; DANNIE CARTER, )  
SR.; LAWRENCE GRAHAM; MESIAH )  
13 SHAW; NEDYA SHAW; GRACE )  
FOSTER; DANNIE CARTER, JR.; )  
14 NICOLE JACKSON, individually and as )  
guardian ad litem for N.O., a minor; )  
15 ANTHONY BIGGINS; RICKETA LYNN )  
MATTHEWS; CHERYL HOPKINS; )  
16 TRAVIS HOPKINS; DANIEL CASEY; )  
HUMBERTO TORRES; individually and on )  
17 behalf of those persons similarly situated, )

18 Plaintiffs, )

19 vs. )

20 CITY OF OAKLAND; KARLA RUSH OR )  
DOE 1, individually and in her capacity as a )  
21 police officer for the City of Oakland; DOES )

CASE NO: C08-04914 TEH

**SECOND AMENDED COMPLAINT FOR  
DAMAGES, DECLARATORY AND  
INJUNCTIVE RELIEF  
(Violation of Civil Rights,  
42 U.S.C. Section 1983)**

**CIVIL RIGHTS CLASS ACTION**

**JURY TRIAL DEMANDED**

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1 2-100, inclusive, )  
Defendants. )  
2 )  
3 )

**JURISDICTION**

4 1. This action arises under 42 U.S.C. Sections 1983. Jurisdiction is based on  
5 28 U.S.C. Sections 1331 and 1343.

**INTRADISTRICT ASSIGNMENT**

6  
7 2. The claims alleged herein arose in the City of Oakland, State of California.  
8 Therefore, venue and assignment lies in the United States District Court for the Northern District  
9 of California, San Francisco or Oakland Divisions. 28 U.S.C. Section 1391(b)(2).

**PARTIES**

- 10 3. Plaintiff, REGINALD OLIVER, is an African American male.
- 11 4. Plaintiff, JOSEPH BATIESTE, JR., is an African American male.
- 12 5. Plaintiff, ANTOINETTE MCCULLOUGH, is an African American  
13 female.
- 14 6. Plaintiff, DELANDRO BROWN, is an African American male.
- 15 7. Plaintiff, DANNIE CARTER, SR., is an African American male.
- 16 8. Plaintiff, LAWRENCE GRAHAM, is an African American male.
- 17 9. Plaintiff, MESIAH SHAW, is an African American male.
- 18 **10. Plaintiff, NEDYA SHAW, is an African American female.**
- 19 **11. Plaintiff, GRACE FOSTER, is an African American female.**
- 20 **12. Plaintiff, DANNIE CARTER, JR., is an African American male.**

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1 DELANDRO BROWN, DANNIE CARTER, SR., LAWRENCE GRAHAM, MESIAH SHAW,  
2 **NEDYA SHAW; GRACE FOSTER; DANNIE CARTER, JR.; NICOLE JACKSON,**  
3 **individually and as guardian ad litem for N.O., a minor; ANTHONY BIGGINS;**  
4 **RIKETA LYNN MATTHEWS; CHERYL HOPKINS; TRAVIS HOPKINS; DANIEL**  
5 **CASEY; HUMERTO TORRES** and the class members described in this Complaint, were  
6 subjected to the violation of their constitutional rights as alleged herein.

7 **PLAINTIFF REGINALD OLIVER**

8 32. Specifically with respect to plaintiff REGINALD OLIVER, plaintiff is  
9 informed and believes and thereon alleges that defendant KARLA RUSH or DOE 1 and/or  
10 DOES 2-50 and/or each of them, individually and/or while acting in concert with one another as  
11 members of the CITY OF OAKLAND Police Department, caused a warrant to be issued by the  
12 Alameda Superior Court without probable cause, based on intentionally false and/or misleading  
13 statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of  
14 them.

15 33. Thereafter, plaintiff OLIVER was subjected to an unreasonable search and  
16 seizure on or about March 8, 2008, when members of the CITY OF OAKLAND Police  
17 Department used said warrant to enter a residence located at or about 619 Douglas Avenue in  
18 Oakland, California, where the plaintiff was located.

19 34. As a result of said unreasonable search and seizure, the plaintiff was  
20 arrested without reasonable or probable cause. The plaintiff was thereafter imprisoned in jail  
21 without reasonable or probable cause until he was able to post bail. The plaintiff was thereafter

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1 maliciously prosecuted on criminal charges in Alameda Superior Court as a direct result of the  
2 illegally obtained warrant.

3 35. Eventually, on or about October 6, 2008, plaintiff is informed and believes  
4 and thereon alleges that the malicious charges were dismissed after the Alameda County District  
5 Attorney's Office discovered that the warrant was obtained illegally by defendant KARLA  
6 RUSH or DOE 1 and/or by DOES 2-50, individually and/or while acting in concert with one  
7 another.

8 36. As a result of the aforementioned unreasonable search and seizure,  
9 Plaintiff OLIVER was unable to work and lost income in amounts to be determined according to  
10 proof.

11 37. As a result of the aforementioned unreasonable search and seizure,  
12 Plaintiff OLIVER, suffered damages for pain, suffering and emotional distress in amounts to be  
13 determined according to proof.

14 **PLAINTIFFS JOSEPH BATIESTE, JR. AND ANTOINETTE MCCULLOUGH**

15 38. Plaintiffs JOSEPH BATIESTE, JR. and ANTOINETTE MCCULLOUGH  
16 are informed and believe and thereon allege that defendant KARLA RUSH or DOE 1 and/or  
17 DOES 2-50 and/or each of them, individually and/or while acting in concert with one another as  
18 members of the CITY OF OAKLAND Police Department, caused a warrant to be issued by the  
19 Alameda Superior Court without probable cause, based on intentionally false and/or misleading  
20 statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of  
21 them.

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1 subjected Plaintiff MCCULLOUGH to excessive force when he put his knee into the Plaintiff's  
2 back while she was on the floor. Plaintiff MCCULLOUGH suffered additional pain, suffering  
3 and emotional distress due to the fact that the handcuffs were too tight around her wrists and  
4 interfered with the circulation in her hands and wrists.

5 43. Due to his arrest and imprisonment without probable cause, Plaintiff  
6 BATIESTE was unable to work and lost income as a result thereof in amounts to be determined  
7 according to proof.

8 44. As a result of the unreasonable search and seizure at the home of Plaintiff  
9 MCCULLOUGH, personal property and/or monies belonging to the Plaintiffs was damaged,  
10 destroyed and/or was taken by members of the CITY OF OAKLAND Police Department  
11 involved in the search and seizure, including, but not limited to, Defendant KARLA RUSH or  
12 DOE 1, DOES 2-50 and/or each of them.

13 45. As a result of the unreasonable search and seizure stemming from the  
14 illegally obtained warrant, Plaintiff MCCULLOUGH's home was left in an unsecured state  
15 following her arrest and personal property belonging to the Plaintiff was stolen from her  
16 residence, including, but not limited to, irreplaceable photographs and mementos of Plaintiff  
17 MCCULLOUGH's deceased husband.

18 46. As a further result of the unreasonable search and seizure caused by the  
19 illegally obtained warrant, Plaintiff MCCULLOUGH was forced to move from her residence and  
20 incurred special damages as a result of having to move from her home.

21 47. Due to the fact that the police took \$217.00 from Plaintiff BATIESTE at  
22 the time of this arrest, he was unable to pay the rental charge on a storage unit where he

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1 maintained his tools and equipment for his employment and as a result, said tools were taken  
2 and/or disposed of by the storage company, resulting in damages to Plaintiff BATIESTE for the  
3 loss of the tools in an amount to be determined according to proof.

4 48. As a result of the aforementioned unreasonable search and seizure,  
5 Plaintiffs BATIESTE and/or MCCULLOUGH and/or each of them, suffered damages for pain,  
6 suffering and emotional distress in amounts to be determined according to proof.

7 **PLAINTIFF DELANDRO BROWN**

8 49. Plaintiff DELANDRO BROWN is informed and believes and thereon  
9 alleges that defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them,  
10 individually and/or while acting in concert with one another as members of the CITY OF  
11 OAKLAND Police Department, caused a warrant to be issued by the Alameda Superior Court  
12 without probable cause, based on intentionally false and/or misleading statements made in bad  
13 faith by defendant RUSH or DOE 1 and/or DOES 4-50 and/or each of them.

14 50. As a result of said illegal warrant, Plaintiff DELANDRO BROWN is  
15 informed and believes and thereon alleges that on or about July 10, 2008, he was arrested  
16 without reasonable or probable cause when a car in which he was a passenger was stopped by  
17 members of the CITY OF OAKLAND Police Department (Defendants DOES 4-50 and/or each  
18 of them).

19 51. Despite the fact that there was no reasonable or probable cause to arrest  
20 Plaintiff DELANDRO BROWN, Plaintiff was handcuffed and imprisoned in jail without  
21 reasonable or probable cause until he was able to post \$5,000.00 in bail.

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52. Thereafter, Plaintiff DELANDRO BROWN is informed and believes and thereon alleges that no criminal charges were filed against him as a result of this incident. As a result, on or about September 2, 2008, Plaintiff BROWN obtained an Order from the Alameda Superior Court sealing and destroying his record of arrest as a result of this incident.

53. As a result of the unreasonable search and seizure, Plaintiff DELANDRO BROWN incurred damages for pain, suffering and emotional distress in amounts to be determined according to proof.

54. Following this incident, Plaintiff DELANDRO BROWN filed an Internal Affairs Complaint with Defendant CITY OF OAKLAND Police Department. Plaintiff is informed and believes and thereon alleges that Defendant CITY OF OAKLAND has failed to take any or appropriate remedial action as a result of this incident and/or otherwise ratified, approved and/or encouraged the unreasonable searches and/or seizures by Defendants KARLA RUSH or DOE 1, DOES 4-50 and/or each of them.

**DANNIE CARTER, SR.; DANNIE CARTER, JR. and GRACE FOSTER**

55. Plaintiffs **DANNIE CARTER, SR., DANNIE CARTER, JR., and/or GRACE FOSTER, and/or each of them are** informed and believe and thereon allege that defendant KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them, individually and/or while acting in concert with one another as members of the CITY OF OAKLAND Police Department, caused a warrant to be issued by the Alameda Superior Court without probable cause, based on intentionally false and/or misleading statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of them.

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56. Plaintiffs DANNIE CARTER, SR., DANNIE CARTER, JR., **and/or GRACE FOSTER and/or each of them, are** informed and believe and thereon allege that said illegally obtained warrant was issued for Apartment 6 of 1055 72<sup>nd</sup> Avenue in Oakland, California **(the residence of Plaintiff GRACE FOSTER)** based on the sworn affidavit of Defendant KARLA RUSH or DOE 1 that contained intentionally false and/or misleading statements made in bad faith.

57. **Despite the fact that the warrant was issued specifically for Unit 6, of 1055 72<sup>nd</sup> Avenue,** Plaintiffs DANNIE CARTER, SR. **DANNIE CARTER, JR., and/or GRACE FOSTER and/or each of them, are** informed and believe and thereon allege that Defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, intentionally entered the homes of **both GRACE FOSTER (Unit 6 of 1055 72<sup>nd</sup> Avenue) and** Plaintiff CARTER, SR., which was located at *Apartment 8* of 1055 72<sup>nd</sup> Avenue in Oakland, California, on or about July 16, 2008 **based on the same warrant which Plaintiffs are informed and believe and thereon allege was based on intentionally false and/or misleading information submitted by Defendant RUSH to the Court.**

58. Plaintiffs are further informed and believe and thereon allege that **despite entering both Units 6 and 8 of 1055 72<sup>nd</sup> Avenue with the single warrant issued for Unit 6, Defendant RUSH falsely claimed that she “mistakenly” wrote the number “6” on her warrant affidavit instead of the number “8” and that she actually intended to obtain the warrant for Unit 8.**

59. As a result of the unreasonable search and seizure caused by Defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, Plaintiffs DANNIE

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1 CARTER, SR., **DANNIE CARTER, JR., and/or GRACE FOSTER and/or each of them,**  
2 **were detained and/or** arrested without reasonable or probable cause.

3 60. As a result of the unreasonable search and seizure caused by Defendant  
4 KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, personal property of the  
5 Plaintiffs **and/or each of them,** was damaged, destroyed and/or seized by KARLA RUSH or  
6 DOE 1 and/or DOES 2-50 and/or each of them, during the course of the search.

7 61. **During said incident, Plaintiff GRACE FOSTER further alleges that**  
8 **a male CITY OF OAKLAND POLICE OFFICER (DOES 2-50), kicked and stomped on**  
9 **her dog without any reasonable justification.**

10 62. **As a result of this incident, Plaintiff GRACE FOSTER was issued a**  
11 **citation which was not based on probable cause and was the product of the aforesaid illegal**  
12 **search and seizure. To date, Plaintiff FOSTER is informed and believes and thereon**  
13 **alleges that no charges have been filed against her as a result of this incident.**

14 63. **As a result of this incident,** Plaintiff DANNIE CARTER, SR. was  
15 imprisoned without reasonable or probable cause from approximately July 16, 2008, until  
16 approximately October 17, 2008. In addition, Plaintiff DANNIE CARTER, SR. is informed and  
17 believes and thereon alleges that he was maliciously prosecuted on charges stemming from the  
18 illegally obtained warrant.

19 64. Thereafter, Plaintiff DANNIE CARTER, SR. is informed and believes and  
20 thereon alleges that the criminal charges were eventually dismissed and he was not convicted of  
21 having committed any crime as a result of this incident.

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1 defendant KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them, individually and/or  
2 while acting in concert with one another as members of the CITY OF OAKLAND Police  
3 Department, caused a warrant to be issued by the Alameda Superior Court without probable  
4 cause, based on intentionally false and/or misleading statements made in bad faith by defendant  
5 RUSH or DOE 1 and/or DOES 4-50 and/or each of them.

6 69. Thereafter, Plaintiffs LAWRENCE GRAHAM and/or MESIAH SHAW  
7 **and/or NEDYA SHAW** and/or each of them was/were subjected to an unreasonable search and  
8 seizure on or about January 25, 2008, when members of the CITY OF OAKLAND Police  
9 Department used said warrant to enter a residence located at or about 1075 70<sup>th</sup> Avenue in  
10 Oakland, California, where the plaintiffs were located.

11 70. As a result of said unreasonable search and seizure, the plaintiffs were  
12 handcuffed and detained without reasonable or probable cause during the search of the premises.  
13 Thereafter, plaintiff MESIAH SHAW was arrested and imprisoned in jail as a result of the  
14 aforesaid illegal warrant. Eventually, Plaintiff MESIAH SHAW was released from jail and was  
15 never convicted of any criminal charges as result of this incident.

16 71. Subsequently, Plaintiffs are informed and believe and thereon allege that  
17 Defendant KARLA RUSH or DOE 1 and/or DOES 4-50 issued a letter to the owner of 1075 70<sup>th</sup>  
18 Avenue, Oakland, California, on or about April 15, 2008, threatening to impose fines and  
19 penalties against her by falsely alleging that the Plaintiffs and/or each of them, were using the  
20 premises for drug trafficking, even though no evidence of illegal drugs was found at the premises  
21 during the course of the January 25, 2008 unreasonable search and seizure. As a result thereof,

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1 Plaintiff LAWRENCE GRAHAM **and/or NEDYA SHAW** and/or each of them was forced to  
2 move out of the premises and suffered general and special damages as a result thereof.

3 72. As a result of the aforementioned unreasonable search and seizure,  
4 Plaintiffs and/or each of them, suffered damages for pain, suffering and emotional distress,  
5 **property damage, displacement from their home and/or other damages** in amounts to be  
6 determined according to proof.

7 **PLAINTIFFS NICOLE JACKSON, N.O., A MINOR, AND ANTHONY BIGGINS**  
8 **(Incident No. 1 occurring on or about January 25, 2008)**

9 73. Plaintiff NICOLE JACKSON is informed and believes and thereon  
10 **alleges that defendant KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them,**  
11 **individually and/or while acting in concert with one another as members of the CITY OF**  
12 **OAKLAND Police Department, caused a warrant to be issued by the Alameda Superior**  
13 **Court without probable cause, based on intentionally false and/or misleading statements**  
14 **made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of them.**

15 74. Thereafter, Plaintiff NICOLE JACKSON was subjected to an  
16 **unreasonable search and seizure on or about January 25, 2008, when members of the CITY**  
17 **OF OAKLAND Police Department used said warrant to enter her residence located at or**  
18 **about 7979 MacArthur Blvd, Apt. 5, in Oakland, California.**

19 75. As a result of said unreasonable search and seizure, Plaintiff NICOLE  
20 JACKSON was arrested without reasonable or probable cause. Plaintiff JACKSON was  
21 thereafter imprisoned in jail without reasonable or probable cause until she was able to  
22 **post bail.**

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1           **76. Plaintiff is informed and believes and thereon alleges that she was**  
2 **thereafter maliciously prosecuted on criminal charges in Alameda Superior Court as a**  
3 **direct result of the illegally obtained warrant.**

4           **77. Eventually, on or about December 23, 2008, plaintiff is informed and**  
5 **believes and thereon alleges that the malicious charges were dismissed after the Alameda**  
6 **County District Attorney’s Office discovered that the warrant was obtained illegally by**  
7 **defendant KARLA RUSH or DOE 1 and/or by DOES 2-50, individually and/or while**  
8 **acting in concert with one another. Plaintiff JACKSON was thereafter released from**  
9 **custody on or about December 24, 2008.**

10           **78. As a result of the aforementioned unreasonable search and seizure,**  
11 **Plaintiff NICOLE JACKSON incurred damages, including, but not limited to, bail**  
12 **expenses, pain, suffering and emotional distress in amounts to be determined according to**  
13 **proof.**

14                           **(Incident No. 2 occurring on or about May 8, 2008)**

15           **79. Plaintiffs NICOLE JACKSON, N.O., a Minor, ANTHONY BIGGINS**  
16 **and/or each of them, are informed and believe and thereon allege that defendant KARLA**  
17 **RUSH or DOE 1 and/or DOES 4-50 and/or each of them, individually and/or while acting**  
18 **in concert with one another as members of the CITY OF OAKLAND Police Department,**  
19 **caused warrants to be issued by the Alameda Superior Court without probable cause,**  
20 **based on intentionally false and/or misleading statements made in bad faith by defendant**  
21 **RUSH or DOE 1 and/or DOES 2-50 and/or each of them.**

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**80. Thereafter, Plaintiffs NICOLE JACKSON, N.O., a Minor, ANTHONY BIGGINS and/or each of them, were subjected to an unreasonable search and seizure on or about May 8, 2008, when members of the CITY OF OAKLAND Police Department used said warrants to enter Plaintiff JACKSON’S residence, located at or about 7979 MacArthur Blvd, Apt. 5, in Oakland, California, the residence where her minor daughter, Plaintiff, N.O., was located at or about 7975 MacArthur Blvd., Apt. 28, Oakland, California.**

**81. As a result of said unreasonable search and seizure, Plaintiffs NICOLE JACKSON and/or ANTHONY BIGGINS were subjected to an unreasonable search and seizure at 7979 MacArthur Blvd., Apt. 5, Oakland, California, without reasonable or probable cause. Plaintiff JACKSON’s minor daughter, N.O., who was located at 7975 MacArthur Blvd., Apt. 28 was also subjected to an unreasonable search and seizure. The minor was detained, but not arrested.**

**82. During said unreasonable search and seizure, Plaintiff ANTHONY BIGGINS was subjected to excessive force which included, but was not limited to, knocking him to the floor, having an officer jam a knee into his back and causing Plaintiff BIGGINS to have difficulty breathing.**

**83. Plaintiffs NICOLE JACKSON and/or ANTHONY BIGGINS were arrested as a result of the illegally obtained warrant.**

**84. As a result of her imprisonment on said false charges, Plaintiff NICOLE JACKSON was terminated from her job.**

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1 Plaintiff was at the premises at that time to deliver a Christmas gift to her boyfriend and  
2 did not reside at that premises.

3 89. Defendant KARLA RUSH and other members of the CITY OF  
4 OAKLAND Police Department, DOES 2-50 and/or each of them, entered the premises with  
5 their guns drawn. Defendant RUSH ordered other officers (DOES 2-50) to handcuff  
6 Plaintiff MATTHEWS.

7 90. Defendant RUSH demanded that Plaintiff MATTHEWS provide her  
8 with information concerning criminal activities. When Plaintiff MATTHEWS attempted  
9 to explain to Defendant RUSH that she did not have the information Defendant RUSH was  
10 seeking, Defendant RUSH called her “liar” and told her that she would be spending  
11 Christmas and New Year’s in jail.

12 91. After Plaintiff MATTHEWS was put into an Oakland Police car,  
13 Defendant RUSH told Plaintiff MATTHEWS that she had “one more chance” to tell her  
14 the truth. When Plaintiff MATTHEWS told Defendant RUSH she had no information to  
15 provide her, Defendant RUSH ordered that the Plaintiff be arrested and falsely charged  
16 with crimes, including, but not limited to, a false firearms charge.

17 92. Although Defendant RUSH was aware that Plaintiff had identification  
18 with her that indicated that she did not live at the address that was the subject of the search  
19 warrant, and was only visiting the premises as a guest, Defendant RUSH ordered another  
20 Oakland Police Officer (DOES 2-50) to write the location of the search as the Plaintiff’s  
21 address on the police report of the incident, rather than her correct residence address  
22 shown on her identification.

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**102. Plaintiffs are also informed and believe and thereon allege that Defendant RUSH and/or DOES 2-50 and/or each of them, obtained this warrant in retaliation for an earlier incident in which Plaintiff CHERYL HOPKINS, who had no criminal record, exercised her First Amendment right to freedom of speech when she criticized how Defendant RUSH handled a motor vehicle investigation involving Plaintiff TRAVIS HOPKINS.**

**103. During the course of the incident, Defendant RUSH and/or DOES 2-50 and/or each of them, entered the Plaintiffs’ residence in the early morning hours of June 20, 2008, with their guns drawn and pointed at Plaintiffs.**

**104. Plaintiff TRAVIS HOPKINS was subjected to excessive force by a CITY OF OAKLAND Police Officer (DOES 2-50) when he was struck in the face and knocked to the floor without justification.**

**105. Plaintiff DANIEL CASEY was awakened from his bed at gunpoint by officers, was thrown onto the floor and handcuffed by DOES 2-50 and/or each of them.**

**106. The Plaintiffs were handcuffed and detained initially in the living room of their home as the officers searched their home without reasonable or probable cause.**

**107. Plaintiff CHERYL HOPKINS was not allowed by the officers to use the restroom and, as a result, soiled herself and was humiliated.**

**108. During the course of the search, Plaintiffs’ personal property was damaged and/or destroyed unnecessarily by Defendants RUSH and/or DOES 2-50 and/or each of them.**

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1           **120. When the officers entered the Plaintiff’s home, they had their guns**  
2 **drawn and pointed at the Plaintiff. Plaintiff TORRES was ordered to lay on the floor and**  
3 **was handcuffed. Later, Plaintiff was taken outside of his home, wearing only boxer shorts,**  
4 **and put into an Oakland Police car.**

5           **121. Plaintiff TORRES was arrested without reasonable or probable cause**  
6 **as a result of the illegally obtained warrant and was taken to Santa Rita Jail.**

7           **122. As a result of this incident, Plaintiff’s probation was revoked and he**  
8 **was incarcerated for approximately 150 days on the probation violation. Eventually, the**  
9 **Plaintiff was released from custody and his probation was restored when the Alameda**  
10 **County District Attorney’s Office discovered Defendant RUSH’s misconduct and moved to**  
11 **dismiss the charges against the Plaintiff.**

12           **123. As a result of this incident, Defendant RUSH also attempted to have**  
13 **the Plaintiff’s home declared a nuisance by the CITY OF OAKLAND. This resulted in**  
14 **causing additional emotional distress to the Plaintiff.**

15           **124. As a result of the aforementioned unreasonable search and seizure,**  
16 **Plaintiff TORRES incurred damages, including, but not limited to, lost wages, pain,**  
17 **suffering and emotional distress in amounts to be determined according to proof.**

18           **AS TO ALL NAMED PLAINTIFFS AND THE CLASS**

19           **125. Plaintiffs are further informed and believe and thereon allege that**  
20 **Plaintiffs, and all persons similarly situated, suffered the violation of their constitutional rights as**  
21 **a result of customs, policies, patterns and/or practices of Defendant CITY OF OAKLAND,**

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1 DOES 51-100, and each of them, including, but not limited to, deliberate indifference in the  
2 hiring, supervision, training, and discipline of members of the Oakland Police Department,  
3 including, but not limited to, defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or  
4 each of them.

5 126. Plaintiffs are further informed and believe and thereon allege that they,  
6 and all persons similarly situated to them, suffered the violation of their constitutional rights as  
7 alleged herein as a result of customs, policies and/or practices of defendants CITY OF  
8 OAKLAND, DOES 51-100, and/or each of them, including customs, policies and/or practices of  
9 failing to fully and/or fairly investigate complaints of misconduct against its police officers; of  
10 failing to appropriately monitor or otherwise track complaints of misconduct against its police  
11 officers so that appropriate and timely disciplinary action and/or training could be taken when  
12 officer(s) were shown to have a history of complaints; and/or of failing to promptly remove or  
13 terminate officers who repeatedly violated the rights of citizens and/or engaged in the type of  
misconduct alleged herein.

14 127. Plaintiffs are informed and believe and thereon allege that the  
15 aforementioned incidents were caused by the deliberate indifference of the CITY OF  
16 OAKLAND, Defendants 51-100, and/or other high ranking Police Department officials and/or  
17 supervisors, with regard to the need for more or different training and/or supervision and/or  
18 discipline of its police officers, including, but not limited to, defendants KARLA RUSH or DOE  
19 1 and/or DOES 2-50 and/or each of them.

20 128. Plaintiffs are further informed and believe and thereon allege that they,  
21 and all persons similarly situated, suffered the violation of their constitutional rights as a result of

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1 customs, policies, or practices of defendants CITY OF OAKLAND, DOES 51-100, and/or each  
2 of them, individually and/or acting in concert with one another, including, but not limited to,  
3 customs, policies or practices which encouraged, authorized or condoned false arrests,  
4 fabrication of evidence, falsification of police reports, false and/or misleading warrant affidavits  
5 and/or other misconduct which foreseeably would result in the violation of the rights of citizens.

6 129. Plaintiffs are further informed and believe and thereon allege that they,  
7 and all persons similarly situated, suffered the violation of their constitutional rights as a result of  
8 customs, policies or practices of defendants CITY OF OAKLAND, DOES 51-100, individually  
9 and/or acting in concert with one another, including, but not limited to, a custom, policy or  
10 practice of failing to stop or prevent ongoing acts of misconduct by certain members of its police  
11 department, including, but not limited to, defendant KARLA RUSH or DOE 1, DOES 2-50  
12 and/or each of them.

13 130. Plaintiffs are further informed and believe and thereon allege that they,  
14 and all persons similarly situated, suffered the violation of their constitutional rights as a result of  
15 customs, policies or practices of defendants CITY OF OAKLAND, DOES 51-100, individually  
16 and/or acting in concert with one another, including, but not limited to, a custom, policy or  
17 practice of failing to uphold and enforce remedies that defendants already agreed to adopt to  
18 prevent such ongoing abuses by members of the CITY OF OAKLAND Police Department in the  
19 *Delphine Allen v. City of Oakland (The Riders) Litigation.*

20 131. Plaintiffs are further informed and believe and thereon allege that high  
21 ranking CITY OF OAKLAND officials, including, but not limited to defendants DOES 51-100,  
22 and/or other high ranking police department officials and/or supervisors, knew and/or reasonably

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1 should have known of the custom, policies, patterns and/or practices of misconduct by the  
2 individual police officer Defendants herein, KARLA RUSH or DOE 1 and/or DOES 2-100  
3 and/or by each of them, and failed to take any or appropriate remedial action prior to the subject  
4 incident.

5 132. Plaintiffs are further informed and believe and thereon allege that  
6 defendants DOES 51-100, and/or each of them, tacitly or directly ratified, approved, condoned  
7 and/or otherwise encouraged a pattern, practice, custom or policy of misconduct and/or civil  
8 rights violations by defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them.

9 **CLASS ACTION ALLEGATIONS**

10 133. Plaintiffs seek class certification pursuant to Fed.R.Civ.P. 23(a) and (b)(2)  
11 to allege claims for damages, injunctive and declaratory relief on behalf of himself and all  
12 persons similarly situated. The proposed class consists of all persons who were subjected to  
13 searches, seizures, arrests, imprisonments and/or malicious prosecutions based on false and/or  
14 misleading information contained in CITY OF OAKLAND police reports, warrant affidavits  
15 and/or other testimony and/or writings used to obtain search and/or arrest warrants from  
16 California Courts by members of the CITY OF OAKLAND Police Department since the  
17 adoption of the non-monetary settlement agreement in *Delphine Allen v. City of Oakland*.

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

19 135. The class is so numerous that joinder of all members is impracticable.  
20 Plaintiffs do not know the identities or exact number of all class members. Based on newspaper  
21 accounts, it appears that at least 11 members of the City of Oakland Police Department were  
22 pulled from street duty by the Oakland Police Department in connection with this latest scandal

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1 and the Alameda County District Attorney's Office has not yet determined the exact number of  
2 cases it intends to move to dismiss as a result of the false and/or misleading information given by  
3 Oakland Police Department officers to the Court in procuring warrants. Therefore, the size of  
4 the class is likely to be large given the number of officers involved.

5 136. There are questions of law and fact common to all members of the class,  
6 because all class members have been adversely affected by the challenged actions of the  
7 defendants. Common questions of law and fact include, but are not limited to: whether defendant  
8 KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them engaged in a custom, policy,  
9 pattern and/or practice of fabricating police reports, making false and/or misleading statements in  
10 procuring warrants from the Courts and/or otherwise causing the plaintiff and class members to  
11 be subjected to unreasonable searches and seizures, false arrests, false imprisonments and/or  
12 malicious prosecutions; whether the defendants' conduct was motivated by racial animus or bias,  
13 whether defendant CITY OF OAKLAND maintained customs, policies, patterns and practices  
14 which caused and/or contributed to the violation of the plaintiffs' rights; and whether the CITY  
15 OF OAKLAND, its police department and/or city officials and/or supervisors failed to properly  
16 train and supervise members of the CITY OF OAKLAND Police Department which caused  
17 and/or contributed to the violation of the plaintiffs' rights.

18 137. The claims of the named plaintiffs are typical of the claims of the class.  
19 The claims of the class members arise from the same type of conduct, customs, policies or  
20 practices that have resulted in damages to the class representatives and are based on the same  
21 legal theories.

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1           138. The representative plaintiffs will fairly and adequately protect the interests  
2 of the class because they are, and were, subject to the policies, customs, patterns and practices  
3 complained of herein, and have no interests antagonistic to other members of the class. In  
4 addition, plaintiffs’ counsel are experienced in litigating federal civil rights cases and class  
5 actions, including federal civil rights actions against the CITY OF OAKLAND and the CITY OF  
6 OAKLAND Police Department.

7           139. The defendants have acted and/or have failed to act on grounds generally  
8 applicable to the class, and an award of damages, injunctive and declaratory relief for the class as  
9 a whole is appropriate.

10           140. The prosecution of separate actions by individual members of the class  
11 would create a risk of inconsistent or incompatible standards of conduct for the defendants,  
12 thereby making a class action the superior method of adjudicating the controversy.

**STATEMENT OF DAMAGES AND RELIEF SOUGHT**

13           141. As a result of the acts and/or omissions of defendants as alleged in this  
14 Complaint, plaintiffs, and those persons similarly situated, and each of them, suffered damages  
15 and/or injuries, including, but not limited to, pain, suffering and emotional distress, in amounts to  
16 be determined according to proof.

17           142. As a result of the acts and/or omissions of defendants as alleged in this  
18 Complaint, plaintiffs, and those persons similarly situated, and each of them, suffered special  
19 damages or may suffer special damages in the future, including, but not limited to, lost wages,  
20 criminal defense attorneys’ fees and costs, bail bond expenses, loss of their home(s), relocation

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1 expenses, damage or loss of personal property and/or other out of pocket losses to be determined  
2 according to proof.

3 143. Plaintiffs and the class members will also be entitled to recover their  
4 reasonable attorneys' fees and costs in addition to their general and compensatory damages  
5 pursuant to statute.

6 144. The conduct of defendant KARLA RUSH or DOE 1 and/or DOES 2-100  
7 and/or each of them, was intentional, oppressive, malicious, fraudulent and/or done with a  
8 conscious and/or reckless disregard for the rights of the plaintiffs. Therefore, plaintiffs and the  
9 class members will be entitled to recover punitive damages in amounts to be determined  
10 according to proof.

11 145. Defendants' policies, practices, customs, conduct and acts alleged herein  
12 have resulted and will continue to result in irreparable injury to plaintiffs and the class members,  
13 including but not limited to violations of their constitutional and statutory rights. Plaintiffs and  
14 class members have no plain, adequate or complete remedy at law to address the wrongs  
15 described herein. The plaintiffs and class members intend in the future to exercise their  
16 constitutional rights in the vicinity of the City of Oakland and in other public places in the City  
17 of Oakland. Defendants' conduct described herein has created fear, anxiety and uncertainty  
18 among plaintiffs with respect to their ability to exercise their constitutional rights in the present  
19 and future, and with respect to their liberty, privacy, physical security and safety. Defendants'  
20 conduct described herein has also created fear, anxiety and uncertainty among plaintiffs and class  
21 members with respect to their exercise of their right to move freely about the public streets, in  
22 their own homes and/or in the homes of friends and/or relatives without being subjected to

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1 unreasonable searches and seizures and/or discriminatory and disparate treatment due to their  
2 ethnicity and/or race.

3 146. Plaintiffs and the class therefore seek injunctive relief from this court, to  
4 ensure that plaintiffs and persons similarly situated will not suffer violations of their rights from  
5 defendants' illegal and unconstitutional policies, customs and practices as described herein.

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

12 **CLAIMS FOR RELIEF**  
13 **FIRST CLAIM FOR RELIEF**  
14 **(42 U.S.C. SECTION 1983)**

15 **(AGAINST DEFENDANTS KARLA RUSH, DOES 1-50)**

16 148. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1  
17 through 147.

18 149. In doing the acts complained of herein, defendants KARLA RUSH or  
19 DOE 1 and/or DOES 2-50 and/or each of them, did act under color of state law to deprive  
20 plaintiffs, the class members and/or each of them as alleged heretofore of certain constitutionally  
21 protected rights, including, but not limited to:

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

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

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

3 150. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
4 Amendments to the United States Constitution.

5 151. As a result of the violation of their constitutional rights by defendants  
6 KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, plaintiffs, the class members  
7 and/or each of them sustained the injuries and/or damages as alleged heretofore in this  
8 Complaint.

9 WHEREFORE, Plaintiffs and the class members pray for relief as hereinafter set forth.

10 **SECOND CLAIM FOR RELIEF**

11 **(42 U.S.C. SECTION 1983)**

12 **(AGAINST DEFENDANTS CITY OF OAKLAND, DOES 51-100)**

13 152. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1  
14 through **150**.

15 153. As against Defendants CITY OF OAKLAND and/or DOES 51-100 and/or  
16 each of them, individually and/or in their capacities as official policy-maker(s) for the CITY OF  
17 OAKLAND, the plaintiffs and class members further allege that the acts and/or omissions  
18 alleged in the Complaint herein are indicative and representative of a repeated course of conduct  
19 by members of defendant CITY OF OAKLAND Police Department tantamount to a custom,  
20 policy or repeated practice of condoning and tacitly encouraging the abuse of police authority,  
21 and disregard for the constitutional rights of citizens, such as plaintiffs.

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154. Plaintiffs and class members are further informed and believe and thereon allege that the acts and/or omissions alleged herein are the proximate result of a custom, policy, pattern or practice of deliberate indifference by defendant CITY OF OAKLAND, DOES 51-100 and/or each of them, to the repeated violations of the constitutional rights of citizens by CITY OF OAKLAND police officers, which have included, but are not limited to, repeated acts of making false reports, providing false and/or misleading information in the procurement of warrants, causing arrests, imprisonments and/or malicious prosecutions based on fabricated and/or misleading statements and/or engaging in similar acts of misconduct on a repeated basis.

155. Plaintiffs and class members are further informed and believe and thereon allege that the damages sustained as alleged herein were the proximate result customs, policies and/or practices which included, but were not limited to, the failure to adequately or appropriately hold officers accountable for their misconduct, the failure to properly and fairly investigate complaints about officers’ misconduct, the failure to enact or adopt policies to ensure adequate and/or appropriate oversight of officers to prevent continuing violations of the rights of citizens, the failure to fully implement and enforce the non-monetary settlement agreement in the *Delphine Allen v. City of Oakland (the Riders) Litigation* which was intended to redress the same or similar unconstitutional conduct that occurred in the instant case, the failure to properly train and/or discipline officers, the failure to adequately or properly supervise officers, the failure to adopt and fully implement an appropriate early warning system, policies and customs which encouraged officers to target certain groups of citizens for unreasonable search and seizure and/or other customs, and/or policies which caused and/or contributed to, the violation of the rights of citizens by members of the CITY OF OAKLAND Police Department.

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1           156. The aforementioned deliberate indifference, customs, policies or practices  
2 of defendants CITY OF OAKLAND, DOES 51-100, and/or each of them, resulted in the  
3 deprivation of the constitutional rights of the plaintiffs and class members, including, but not  
4 limited to, the following:

- 5           (a) the right not to be deprived of liberty or property without Due Process of Law;
- 6           (b) the right to be free from unreasonable searches and/or seizures; and/or,
- 7           (c) the right to equal protection of the law.

8           157. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
9 Amendments to the United States Constitution.

10           158. As a result of the violation of their constitutional rights by defendants  
11 CITY OF OAKLAND and/or DOES 51-100 and/or each of them, plaintiffs and the class  
12 members and/or each of them, sustained the injuries and/or damages as alleged heretofore in this  
13 Complaint.

14           WHEREFORE, plaintiffs and class members pray for relief as hereinafter set  
15 forth.

**JURY TRIAL DEMAND**

16           159. Plaintiffs and class members hereby demand a jury trial.

**PRAYER**

17           WHEREFORE, Plaintiffs and class members pray for judgment against defendants, and  
18 each of them, as follows:  
19

- 20           1. For an order certifying the class defined herein pursuant to Fed.R.Civ.P. 23(a) and  
21 (b)(2);

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

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

5 4. For the individual named plaintiffs, general, special and compensatory damages to be  
6 determined according to proof;

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

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

11 7. For costs of suit;

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

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

14 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

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

17 Dated: February 6, 2009

18 JOHN  
At

\_\_\_\_\_/S/\_\_\_\_\_  
L. BURRIS  
torney for Plaintiffs

19 Dated: February 6, 2009

20 At

\_\_\_\_\_/S/\_\_\_\_\_  
JAMES B. CHANIN  
torney for Plaintiffs

21  
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