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LOS ANGELES COUNTY SUPERIOR COURT

GREG AKILI, BLACK LIVES
MATTER LOS ANGELES,
SHANNON THOMAS, and EMILY
ALLERS, individually, and as
taxpayers, on behalf of a class of
similarly situated persons,

PLAINTIFFS,

v.

CITY OF LOS ANGELES, a
municipal entity, LIUETENANT
CARLOS FIGUEROA (No. 35260),
CAPTAIN WARNER CASTILLO
(No. 31715), OFFICER DANIEL
ORLIK (No. 43917), OFFICER
BRITTANY PRIMO (No. 40695), and
DOES 1-10,

DEFENDANTS.

Case No.: **22STCV00934**

CIVIL RIGHTS COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

1 1. On December 6, 2020, six minutes before declaring an unlawful
2 assembly, riot-clad Los Angeles Police Department (“LAPD”) officers attacked a
3 crowd of peaceful protesters assembled on a Sunday morning near Los Angeles
4 Mayor Eric Garcetti’s mansion. For several weeks, Black Lives Matter Los Angeles
5 had been holding a daily peaceful morning protest in front of the Mayor’s mansion.
6 Its members and supporters were calling on then president-elect Joe Biden not to
7 appoint Mayor Garcetti to his cabinet, in light of the Mayor’s policies on
8 homelessness and transportation, as well as his support of the LAPD’s
9 discriminatory policing practices against communities of color and those protesting
10 the LAPD’s tactics. LAPD personnel were present at all the daily protests but took
11 no action against any protester until December 6th.
12

13 2. December 6th’s demonstration started at about 9:15 a.m. as a peaceful
14 morning protest, like the daily protests before it, and was attended by many of the
15 same individuals who had protested over the course of many days at the same
16 location. But then, at about 9:43 a.m., the LAPD, premised on an alleged violation
17 of a municipal noise ordinance, deployed lines of riot officers against the protesters.
18 Shoving and swinging batons, LAPD officers rushed at and knocked down peaceful
19 protesters assembled in front of the Mayor’s mansion and then brutally beat them
20 with batons, including head strikes, causing serious injuries. LAPD only arrested
21 one protester – not the person who allegedly violated the noise ordinance – and the
22 City Attorney’s office declined to file charges.
23

24 3. The peaceful protesters posed no threat to the officers that could
25 possibly have justified the use of force. Plaintiffs seek monetary damages on behalf
26 of themselves and a proposed class to redress violations of their rights, and
27 declaratory and injunctive relief to protect the public from Defendants’ unlawful
28 policies and practices.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the Plaintiffs' claims pursuant to Code of Civil Procedure sections 187, 526(a), 1060, and 1085.

5. Venue is proper in this Court because the causes of action arose in the County and the City of Los Angeles is located in the County.

PARTIES

A. Plaintiffs

6. Organizational Plaintiff **BLACK LIVES MATTER LOS ANGELES ("BLMLA")** is part of a nationwide organization with chapters in many major cities, including Los Angeles. The organization originated in Los Angeles with demonstrations on July 13, 2013, the date George Zimmerman was acquitted of killing teenager Trayvon Martin in Florida. **BLMLA** is one of the largest and most active chapters of the organization, with nearly 500 active members and organized ally groups, including White People for Black Lives. On average, **BLMLA** sponsors four actions a week.

7. During the course of the December 6, 2020, protest and others over the preceding months, while **BLMLA** and its members were engaged in lawful, protected expressive activity, the LAPD used unjustified and excessive force to terminate the protests, including the indiscriminate use of so-called "less lethal" weapons that caused injury to its members and instilled fear in them that, if they chose to assemble in public spaces to express their opinions, they would be the subject of such violence and arrest.

8. Defendants' actions interfered with **BLMLA's** right to assembly and speech. **BLMLA** plans to assist, plan, participate in, hold similar events in the future, on its own or in conjunction with others, and is fearful that the same unlawful police actions in response to this and similar protests will be repeated due to

1 LAPD's continuation of the practices, policies, and customs that caused the City's
2 unlawful action in response to this protest.

3 9. Plaintiff **GREG AKILI**, a seventy-two-year-old individual, is and was
4 at all times relevant hereto, a resident of the County of Los Angeles, City of Los
5 Angeles. He is an organizer with **BLMLA**. **AKILI** was subjected to unlawful force,
6 as described below, with such intensity that he was knocked out of his shoes as he
7 fell to the ground.

8 10. Plaintiff **SHANNON THOMAS**, an individual, is and was at all times
9 relevant hereto, a resident of the County of Los Angeles, City of Los Angeles.
10 **THOMAS** was subjected to unlawful force, as described below, with such intensity
11 that her teeth were loosened when she was struck in the face with the full force of a
12 baton strike. Subsequently, and only months after **THOMAS** filed a supplemental
13 government claim in this matter, naming the individual defendant who struck her in
14 the face with a baton, did the officer seek to have **THOMAS** criminally prosecuted,
15 subjecting Plaintiff **THOMAS** to a City Attorney hearing on the false allegations
16 that she engaged in criminal conduct.
17

18 11. Plaintiff **EMILY ALLERS**, an individual, is and was at all times
19 relevant hereto, a resident of the County of Los Angeles, City of Los Angeles.

20 12. All Plaintiffs pay taxes to the City and County of Los Angeles.

21 **B. Defendants**

22 13. Defendant **CITY OF LOS ANGELES** is a municipal corporation
23 duly organized and existing under the Constitution and laws of the State of
24 California. The Los Angeles Police Department ("LAPD") is a local government
25 entity and an agency of Defendant City of Los Angeles, and all actions of the LAPD
26 are the legal responsibility of the City of Los Angeles. The City of Los Angeles
27 employs the individually named defendants and is liable for their tortious and
28 unconstitutional conduct under the doctrine of respondeat superior.

1 14. Defendant **LIEUTENANT CARLOS FIGUEROA** is employed by
2 the LAPD.

3 15. Defendant **LIEUTENANT WARNER CASTILLO** is employed by
4 the LAPD.

5 16. Defendant **OFFICER BRITTANY PRIMO** is employed by the
6 LAPD.

7 17. Defendant **OFFICER DANIEL ORLICK** is employed by the LAPD.

8 18. Plaintiffs are informed, believe, and thereupon allege that Does 1
9 through 10 were the agents, servants, and employees of Defendants City of Los
10 Angeles and/or the LAPD. Plaintiffs are ignorant of the true names and capacities
11 of Defendants sued herein as Does 1 through 10, inclusive, and therefore sue these
12 Defendant by such fictitious names. Plaintiffs will amend this Complaint to allege
13 their true names and capacities when ascertained. The individual Doe Defendants
14 are sued in both their individual and official capacities.

15 19. Plaintiffs are informed, believe, and thereupon allege that at all times
16 relevant hereto Does 1 through 10, in addition to the named Defendants, are
17 responsible in some manner for the damages and injuries alleged herein.

18 20. Plaintiffs are informed, believe, and thereupon allege that at all times
19 relevant hereto Defendants, and each of them, were the agents, servants and
20 employees of the other Defendants and were acting at all times within the scope of
21 their agency and employment and with the knowledge and consent of their principal
22 and employer. At all times Defendants were acting under color of state law.

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 21. Plaintiffs exhausted their administrative remedies by timely filing a
25 governmental tort claim with the City pursuant to California Government Code
26 section 910 *et seq.* and a supplemental claim, identifying the officer who engaged
27
28

1 in excessive force against Plaintiff **THOMAS**. This action was timely filed after
2 the City rejected Plaintiffs' tort claims.

3 **FACTS COMMON TO ALL CLAIMS**

4 22. **BLMLA** members and supporters, as well as observers, arrived at the
5 Mayor's mansion at about 9:15 a.m. on Sunday, December 6, 2020, for a Sunday
6 "brunch" protest. Families with children were in attendance. When they arrived, a
7 line of LAPD officers was already on the sidewalk in front of the Mayor's mansion,
8 on the West side of Irving Boulevard, near 6th Street.

9 23. The protesters gathered peacefully on the sidewalk and grass parkway
10 across from the Mayor's mansion on the East side of Irving, just South of 6th Street.
11 A few minutes after the protesters arrived, Defendant **FIGUEROA**, who was
12 present almost daily since the protests began, came forward with a bullhorn and
13 warned those assembled to stay out of the street. The announcement was largely
14 inaudible. Defendant **FIGUEROA** provided no additional announcements or
15 directives to those assembled. On information and belief, December 6, 2020, was
16 the first day on which Defendant **FIGUEROA** was in charge of the police response.
17

18 24. At about 9:22 a.m., an additional line of LAPD arrived, wearing riot
19 gear. The officers lined up near the northeast corner of Irving and 6th, facing South
20 towards the protesters gathered on the other side of 6th Street. Defendant
21 **FIGUEROA** was observed giving orders to these officers.

22 25. At about 9:41 a.m., the officers blocked off 6th Street and advanced
23 towards the protesters, forming a line from the Southwest to the Southeast corner
24 of Irving and 6th Streets.

25 26. At about 9:43 a.m., Defendant **FIGUEROA** directed the officers in
26 front of the Mayor's mansion to get into a 6x2 formation, with riot helmets and
27 batons drawn. Defendants **FIGUEROA** and **CASTILLO** were in front talking to
28 the officers. They were then observed loudly directing the officers to get the

1 protester wearing blue for his use of a bullhorn, thereby directing the assault. The
2 officers crossed the street to the East side of Irving where the protesters were
3 assembled, including the protester in blue. No LAPD officer had provided any
4 warning about the use of bullhorns. The protester identified by Defendant
5 **FIGUEROA** had a bullhorn in his hand but was not using it.

6 27. Defendant **FIGUEROA** called for the entire line of officers, about
7 fourteen in total, to attack the peaceful protesters. In clear violation of constitutional
8 and statutory law, no declaration of an unlawful assembly and order to disperse was
9 issued prior to the police assault. The violent attack by the officers caused the
10 protesters to fall down and topple over each other. Seventy-two-year-old Plaintiff
11 **AKILI** was one of the first people shoved to the ground by the officers. He was
12 pushed from behind, landing on his hands, causing an injury to his right hand which
13 took months to completely heal.

14 28. After charging at and pushing protesters, officers began wildly and
15 forcefully swinging their batons at protesters, some of whom had fallen to the
16 ground.

17 29. Defendant **PRIMO**, was swinging her baton wildly, lunging at people.
18 As Plaintiff **ALLERS** attempted to get up after being pushed to the ground,
19 Defendant **PRIMO** struck **ALLERS** in the back of her head near her ear with a
20 baton, knocking her unconscious. Defendant **PRIMO** also struck Diana Barbadillo
21 several times, including across her buttocks.

22 30. Defendant **ORLICK** struck Plaintiff **THOMAS** in the head with his
23 baton as she tried to help another protester that had been knocked to the ground.
24 The baton strikes by Defendant **ORLICK** were made with such force to
25 **THOMAS'** face that several of her teeth were loosened by the impact. He also
26 grabbed her arm while he struck her several more times on her back and left knee.
27 Besides knocking her teeth loose, the blows left painful bruising on **THOMAS'** left
28

1 hip and left leg. **THOMAS** and **ALLERS** were both treated at Cedar Sinai Medical
2 Center a few hours later and **ALLERS** is still receiving ongoing medical treatment
3 for her injuries.

4 31. When Defendants **FIGUEROA** and **CASTILLO** observed LAPD
5 officers' unlawful and potentially lethal use of batons to strike peaceful protesters
6 in the head, they failed to intervene. At about 9:49 a.m., only after brutally attacking
7 the peaceful crowd, Defendant **CASTILLO** for the first time declared an unlawful
8 assembly and issued a dispersal order. The officers still had their riot gear on and
9 their batons out. All remaining protesters left. California Penal Code § 409, which
10 defines an unlawful assembly, has repeatedly been construed to require a showing
11 of imminent violence that so permeates a lawful expressive activity that law
12 enforcement may curtail the rights of all demonstrators. Facts justifying the
13 declaration of an unlawful assembly did not exist here. Chief of Police Michael
14 Moore and other LAPD Command Staff were involved with the ongoing protest
15 that led up to this event.
16

17 **CLASS ACTION ALLEGATIONS**

18 32. The claims set forth in this action are brought by the class
19 representatives on their own behalf and on behalf of all of those similarly situated
20 pursuant to Code of Civil Procedure § 382 for declaratory and injunctive relief and
21 damages. All class members were struck with batons and/or knocked down by the
22 actions of LAPD officers.

23 33. The class consists of about 50 individuals who were present on
24 December 6, 2020, near the Mayor's mansion on Irving Street near 6th Street, who
25 were participating in or observing a public **BLM-LA** organized demonstration and
26 who were struck by batons or knocked down by LAPD officers, and who were
27 neither violently resisting nor posing an immediate threat of violence or physical
28 harm.

1 34. Class members who were struck with batons and/or knocked down
2 were injured in a manner that evinced that Defendants applied force unlawfully.
3 Class members were struck in the face, head, shoulder, buttocks, and breast areas.
4 LAPD personnel struck them with batons to injure and punish them on site.

5 35. Defendants used unreasonable and excessive force indiscriminately,
6 engaging in baton strikes and knocking down protesters, not based on an
7 individualized assessment of conduct justifying such force – more specifically
8 where the person attacked by police was not violently resisting arrest and did not
9 present an immediate threat of violence or physical harm – in violation of the Fourth
10 Amendment and its state law analogues. Further, this conduct was deliberately
11 indifferent to the damages class members rights, shocks the conscience, and violates
12 the decencies of civilized conduct, under the Fourteenth Amendment and its state
13 law analogues.

14 36. As a result of Defendants’ wrongful conduct, the damages class
15 members suffered damages as alleged above.

16 37. **Numerosity:** The putative class consists of approximately 50
17 individuals. The members of the class are so numerous that it is impracticable to
18 bring them all before this Court.

19 38. **Ascertainability:** The class is defined in terms of the objective
20 characteristics of a date, time, and location, which makes the ultimate identification
21 of members possible when that identification becomes necessary.

22 39. **Community of Interest in the Questions of Law or Fact:** Questions
23 of law or fact common to putative class members predominate over any questions
24 affecting only individual members. The violations of class members’ rights arise
25 from a common set of facts, to wit: Defendants, acting in accordance with orders
26 given by supervisors from the highest command positions hit class members with
27 baton and/or knocked them down during the protest without cause or justification.

28 40. Common questions of law and fact include but are not limited to:

- 1 a. Did Defendants break up the protest through the use of force
2 although the individuals against whom such force was used were
3 not engaged in conduct justifying such force?
4 b. Did Defendants have a lawful basis to declare an unlawful
5 assembly?
6 c. Was any protest participant or observer engaged in conduct
7 justifying arrest?
8 d. Did Defendants evaluate the feasibility of isolating and arresting
9 anyone responsible for any unlawful conduct, and, if feasible, take
10 action only against the individual/s?
11 e. Was any protest participant or observer engaged in conduct
12 justifying the use of force?
13 f. Whether Defendants breaking up the protest through the use of
14 force when those present were not engaging in conduct justifying
15 such force violates their constitutional rights?
16 g. Must Defendants, when declaring unlawful assemblies, provide
17 adequate sound amplification and provide both directions, means,
18 and opportunity to disperse before taking aggressive and injurious
19 – and potentially deadly – police action?
20 h. Must Defendants evaluate the feasibility of isolating and arresting
21 anyone responsible for any unlawful conduct, and if feasible, take
22 action only against those individuals?
23 i. Did any of the conduct alleged herein violate Cal. Civil Code § 52.1
24 (the Bane Act)?
25 j. Are general class-wide damages available?
26 k. Are statutory damages under § 52.1 available to the damages class?
27
28

1 1. Did any of the conduct alleged herein violate Cal. Civil Code § 51.7
2 (the Ralph Act)?

3 41. The questions of law and fact common to the classes, as outlined
4 above, predominate over any questions affecting only individual members.

5 **FIRST CAUSE OF ACTION**

6 Violation of the Bane Act (Cal. Civil Code § 52.1);
7 Cal. Constitution, Article 1, §§ 2 (Freedom of Speech), 3 (Right of Petition and
8 Assembly), 7 (Due Process), 13 (Search and Seizure),
9 19 Cruel and Unusual Punishment)
10 (All Plaintiffs Against All Defendants)

11 42. Plaintiffs re-allege and incorporate by reference the preceding and
12 subsequent paragraphs as though fully set forth herein.

13 43. The federal and state constitutions guarantee the right to assembly and
14 to petition the government for a redress of grievances, the right to be free from
15 unnecessary and excessive force by law enforcement officers, as well as the rights
16 to due process and to be free from cruel and unusual punishment. Defendants, by
17 engaging in the wrongful acts and failures to act alleged above, denied these rights
18 to Plaintiffs by threats, intimidation, or coercion, to deter, prevent and in retaliation
19 for the exercise of Plaintiffs' constitutional rights, in violation of Cal. Civ. Code §
20 52.1.

21 44. The use of unreasonable force by Defendants was a substantial factor
22 in causing the violation of rights and attendant harm by Plaintiffs.

23 45. Defendant **CITY** of Los Angeles is liable for the wrongful conduct of
24 its employees through the doctrine of respondeat superior.

25 46. Defendants' actions as set out above and further on in this complaint
26 constituted interference by threat, intimidation, or coercion, with the exercise or
27 enjoyment by any individual or individuals of rights secured by the Constitution or
28 laws of the United States, or of the rights secured by the Constitution or laws of

1 California in violation of Cal. Civil Code §52.1. The violation of § 52.1 includes
2 violations of the rights of class members as outlined throughout this Complaint.

3 47. As a direct and proximate result of the aforementioned acts or
4 omissions of Defendants, Plaintiffs sustained damages, including but not limited to
5 general damages, statutory damages and treble statutory damages under Cal. Civ.
6 Code § 52, but no less than \$4,000 for each incident, and pain and suffering.

7 **SECOND CAUSE OF ACTION**

8 Assault

9 California Civil Code § 43

10 (By Plaintiffs Akili, Allers, and Thomas Against All Defendants)

11 48. Plaintiffs re-allege and incorporate by reference the preceding and
12 subsequent paragraphs as though fully set forth herein.

13 49. Defendants approached Plaintiffs **AKILI, ALLERS, and THOMAS**
14 dressed in riot gear and wielding batons. Aforementioned Plaintiffs, all peaceful
15 protesters, reasonably believed the officers would use such force against them.

16 50. As a direct and proximate result of the aforementioned acts or
17 omissions, Plaintiffs **AKILI, ALLERS, and THOMAS** sustained and incurred
18 damages including pain, suffering, and emotional injury.

19 51. The **CITY** is liable through respondeat superior.

21 **THIRD CAUSE OF ACTION**

22 Battery by a Police Officer

23 (By Plaintiffs Akili, Allers, and Thomas Against All Defendants)

24 52. Plaintiffs re-allege and incorporate by reference the preceding and
25 subsequent paragraphs as though fully set forth herein.

26 53. Defendants, by the actions of the officers of the Los Angeles Police
27 Department, intentionally touched Plaintiffs **AKILI, ALLERS, and THOMAS**

1 without their consent and without lawful justification by shoving them and beating
2 them with batons, resulting in bodily injury to their person.

3 54. As a direct and proximate result of the aforementioned acts or
4 omissions, Plaintiffs **AKILI, ALLERS, and THOMAS** sustained and incurred
5 damages including physical injuries and pain and suffering.

6 55. The use of unreasonable force by the LAPD officers was a substantial
7 factor in causing harm to Plaintiffs.

8 56. The **CITY** is liable through respondeat superior.

9 **FOURTH CAUSE OF ACTION**

10 Taxpayer Suit; Declaratory and Injunctive Relief
11 (Code of Civil Procedure § 526a)
12 (All Plaintiffs against All Defendants)

13 57. Plaintiffs re-allege and incorporate by reference the preceding and
14 subsequent paragraphs as though fully set forth herein.

15 58. The City of Los Angeles assesses a sales tax that is added to the basic
16 state sales tax, in addition to other taxes. Plaintiffs have been assessed and are liable
17 to pay taxes in and to the City of Los Angeles. Plaintiffs have suffered, and unless
18 the Court restrains Defendants, will continue to suffer irreparable harm.

19 59. Plaintiffs are informed and believe, and on that basis allege, that the
20 conduct of Defendants, their employees, agents, and contractors, has been and,
21 unless restrained, will continue to be deleterious to the constitutional and statutory
22 rights of Plaintiffs and the general public. Plaintiffs thereby seek to enforce
23 important rights affecting the public interest within the meaning of California Code
24 of Civil Procedure § 1021.5.

25 60. Plaintiffs have no adequate remedy at law.
26
27
28

61. Defendants have expended public monies and threaten and will continue to spend such monies to implement and engage in the illegal conduct described herein.

62. Pursuant to California Code of Civil Procedure §§ 526 and 526a, and the constitutional and statutory provisions set forth above, the Plaintiffs, as taxpayers and as injured parties entitled to relief, seek declaratory and injunctive relief and an accounting to prevent continued harm and to protect themselves and the public from the Defendants' unlawful policies and practices.

63. Unless the Defendants are enjoined from continuing their unlawful course of conduct, Plaintiffs will suffer ongoing and irreparable injury to their rights. Plaintiffs seek injunctive relief pursuant to California Code of Civil Procedure § 526a and the substantive standards reflected in the claims stated above, for which injunctive and declaratory relief are appropriate remedies.

64. It is necessary and appropriate for the Court to render a declaratory judgment that sets forth the parties' legal rights and obligations with respect to constitutionally protected assemblies and demonstrations.

REQUEST FOR RELIEF

Wherefore, Plaintiffs seek judgment as follows:

1. An order certifying the class as defined herein pursuant to Code of Civil Procedure § 382;

2. An order enjoining and restraining Defendants from unlawfully and unconstitutionally policing protected expressive activity, assemblies and demonstrations:

3. A declaratory judgment that Defendants' conduct detailed herein violated Plaintiffs' rights under the state Constitution and laws;

4. General and compensatory damages for Plaintiffs and the class they represent for the violations of their constitutional and statutory rights, pain and suffering, all to be determined according to proof;

5. An award of attorneys' fees pursuant to Cal. Civil Code §§ 52(b) & 52.1(h) and Cal. Code of Civ. Proc. § 1021.5;

6. Costs of suit;

7. Pre- and post-judgment interest as permitted by law;

8. Such other and further relief as the Court may deem just and proper.

Dated: January 6, 2022

Respectfully submitted,

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/s/ Colleen Flynn

By: COLLEEN FLYNN

Attorneys for Plaintiffs

REQUEST FOR JURY DEMAND

Plaintiffs hereby request a jury trial in this action.

Dated: January 6, 2022

Respectfully submitted,

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