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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 RUSSELL BATES,

14 Plaintiff,

15 v.

16 CITY OF OAKLAND; CHIEF
17 HOWARD JORDAN, DEPUTY
18 CHIEF ANTHONY TORIBIO,
19 DEPUTY CHIEF ERIC
20 BRESHEARS, DEPUTY CHIEF
21 DARREN ALLISON, LT. SHARON
22 WILLIAMS, individually and in
23 their official capacities; DOES 1 –
24 50, inclusive,

Defendants.

CASE NO. 3:14-cv-1984 VC

**FIRST AMENDED
COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS AND
OTHER WRONGS**

42 U.S.C. § 1983

JURY TRIAL DEMANDED.

COMPLAINT

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I. INTRODUCTION

1. This is a civil rights complaint arising from Oakland Police officers' wrongful beating, arrest and imprisonment of Plaintiff Russell Bates. These wrongs occurred on May 1, 2012, during and after a political demonstration initiated by Occupy Oakland and other groups in commemoration of May Day, International Worker's Day.
2. Plaintiff, age 65, was peacefully videotaping Oakland Police Officers using excessive force on a demonstrator near the 15th and Broadway intersection in downtown Oakland, when Defendants DOES 1-5 clubbed him on the forehead, causing a serious concussion.
3. Defendants DOES 1-15 then arrested Plaintiff without probable cause, and illegally incarcerated him for approximately eight hours.
4. Defendants' actions deprived Plaintiff of his rights to freedom of speech, freedom of association, and freedom of the press; his right to be free from unreasonable searches and seizures; his right to equal protection of the laws and to due process of law; his right to be free from the use of excessive and/or arbitrary force; his right to be free from unreasonable, summary punishment; and his right to personal liberty and freedom of movement, all guaranteed by the United States Constitution.

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II. JURISDICTION AND VENUE

5. This action arises under Title 42 of the United States Code, §1983. This Court has jurisdiction over the action under 28 U.S.C. §§1331 and 1343.
6. Venue properly lies within this District under 28 U.S.C. § 1391(b). The named Defendants perform their official duties in this District, and the events and omissions giving rise to Plaintiff's claims occurred in this District.

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III. INTRADISTRICT ASSIGNMENT

7. Pursuant to Local Rule 3-2, this action may properly be assigned to the San Francisco or Oakland divisions of this Court.

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IV. THE PARTIES

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Plaintiff

8. Plaintiff RUSSELL BATES is an adult citizen of the United States and a resident of Oakland, California.

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Defendants

9. Defendant CITY OF OAKLAND is, and at all times herein mentioned was, a municipal corporation duly organized and existing under the laws of the State of California.
10. Defendant HOWARD JORDAN was the Chief of Police for the City of Oakland at the time of the subject incident. Plaintiff is informed and believes and thereon alleges that Defendant JORDAN was personally involved in the planning, execution, supervision and

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1 subsequent investigation(s) of the OPD's actions related to the May 1,
2 2012, demonstration. Defendant Jordan is being sued in his individual
3 and official capacities.

4 11. Defendant ANTHONY TORIBIO was a Deputy Chief of Police for
5 the City of Oakland at the time of the subject incident and was
6 assigned as the "Incident Commander" for the May 1, 2012,
7 demonstration. Plaintiff is informed and believes and thereon alleges
8 that Defendant TORIBIO was personally involved in the planning,
9 execution and supervision of the OPD's actions relating to the
10 demonstration and the events giving rise to the Plaintiff's claims.
11 Defendant Toribio is being sued in his individual and official capacities.

12 12. Defendant ERIC BRESHEARS was a Deputy Chief of Police for
13 the City of Oakland at the time of the subject incident and was
14 assigned as the "Deputy Incident Commander" for the May 1, 2012,
15 demonstration. Plaintiff is informed and believes and thereon alleges
16 that Defendant BRESHEARS was personally involved in the planning,
17 execution and supervision of OPD's actions relating to the
18 demonstration and the events giving rise to Plaintiff's claims.
19 Defendant Breshears is being sued in his individual and official
20 capacities.

21 13. Defendant DARREN ALLISON was a Deputy Chief of Police for
22 the City of Oakland at the time of the subject incident and was
23 assigned as the "Operations Commander" for the May 1, 2012,

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1 demonstration. Plaintiff is informed and believes and thereon alleges
2 that Defendant ALLISON was personally involved in the planning,
3 execution and supervision of OPD's actions relating to the
4 demonstration and the events giving rise to Plaintiff's claims.

5 Defendant Allison is being sued in his individual and official capacities.

6 14. Defendant SHARON WILLIAMS was a Lieutenant of Police for
7 the City of Oakland at the time of the subject incident and was
8 assigned as the "Operations Commander" for the May 1, 2012,
9 demonstration. Plaintiff is informed and believes and thereon alleges
10 that Defendant WILLIAMS was personally involved in the planning,
11 execution and supervision of OPD's actions relating to the
12 demonstration and the events giving rise to Plaintiff's claims.

13 Defendant Williams is being sued in her individual and official
14 capacities.

15 15. Plaintiffs are ignorant of the true names and/or capacities of
16 defendants sued herein as DOES 1 through 50, inclusive, and therefore
17 sue said defendants by such fictitious names. Plaintiffs will amend this
18 complaint to allege their true names and capacities when ascertained.
19 The Doe defendants include other individuals who participated in the
20 conduct complained of herein. Plaintiffs are informed and believe and
21 therefore allege that each of the Doe defendants is legally responsible
22 and liable for the incident, injuries and damages hereinafter set forth,
23 and that each of said defendants proximately caused said incidents,

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1 injuries and damages by reason of their negligence, breach of duty,
2 negligent supervision, management or control, violation of
3 constitutional and legal rights, or by reason of other personal, vicarious
4 or imputed negligence, fault, or breach of duty, whether severally or
5 jointly, or whether based upon agency, employment, or control or upon
6 any other act or omission. Plaintiffs will ask leave to amend this
7 complaint to insert further charging allegations when such facts are
8 ascertained.

9 16. In doing the acts alleged herein, defendants, and each of them,
10 acted within the course and scope of their employment.

11 17. In doing the acts and/or omissions alleged herein, Defendants,
12 and each of them, acted under color of authority and/or under color of
13 law.

14 18. In doing the acts and/or omissions alleged herein, Defendants,
15 and each of them, acted as the agent, servant, employee and/or in
16 concert with each of said other defendants.

17 **V. FACTUAL ALLEGATIONS**

18 19. Plaintiff Russell Bates was 65 years old and retired at the time of
19 this incident. A longtime political activist and member of Berkeley
20 Copwatch, Plaintiff routinely took video documenting police actions as
21 a means of upholding human rights and deterring police misconduct.

22 20. On May 1, 2012, Plaintiff attended the May Day demonstration
23 for the purpose of videotaping and observing the police actions, first

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1 arriving at approximately noon. While Plaintiff was engaged in this
2 activity, another videographer was shooting a documentary about
3 Plaintiff and Copwatch.

4 21. Around 8:30pm, Plaintiff was in a restaurant eating dinner when
5 he heard the sound of OPD CS Blast grenades exploding and decided to
6 return to 14th and Broadway to document what was happening, still
7 accompanied by the videographer who was making the documentary
8 about him.

9 22. Suddenly, a line of officers came northbound on Broadway.
10 Plaintiff tried to get out of the way, between the parked cars, but an
11 officer told him to “keep moving”.

12 23. Plaintiff moved north on Broadway in compliance with the
13 officers’ instructions, but his progress was impeded when officers ran
14 past him and knocked someone to the ground ahead of him, near the
15 intersection of 15th Street. Plaintiff, along with other journalists and
16 videographers, filmed this while still trying to continue north as
17 instructed, but without warning, an OPD officer or officers, DOES 1-5,
18 clubbed Plaintiff in the forehead and took him to the ground, hitting
19 him repeatedly and causing him to lose consciousness.

20 24. Plaintiff awoke on the ground. People in the crowd were calling,
21 “Stop hitting him!” OPD officers, DOES 1-15, handcuffed him painfully
22 tightly, yanked him to his feet, and placed him under arrest.

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1 25. Despite the severe force the police had used on him and his age,
2 no OPD officer provided Plaintiff with medical attention.

3 26. At no time did Plaintiff engage in any behavior justifying the use
4 of force on Plaintiff, or his arrest.

5 27. There was no probable cause for Plaintiff's arrest.

6 28. After arresting him, OPD officers, DOES 1-25 caused plaintiff to
7 be taken to the Alameda County Jail, in violation of their California
8 statutory obligation to cite and release a misdemeanor arrestee such as
9 Plaintiff and in retaliation for Plaintiff's exercise of his First
10 Amendment rights.

11 29. Plaintiff was incarcerated in a holding area at Glen Dyer Jail
12 under unreasonable, inhumane conditions for approximately eight
13 hours before being released with a citation for violation of Penal Code
14 section 409, a misdemeanor, failure to disperse.

15 30. Plaintiff was never charged with any crime in connection with
16 this incident.

17 31. As a result of Defendants' use of force and other misconduct,
18 Plaintiff suffered a concussion, post-concussion syndrome, and post
19 traumatic stress disorder. For months afterward, and continuing to this
20 day to a lesser extent, Plaintiff has suffered from severe headaches,
21 cognitive difficulties, dizziness, sleep disturbances, depression, fear and
22 paranoia.

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VI. REQUISITES FOR RELIEF

32. Plaintiff is informed and believe that the violations of the plaintiff's constitutional and lawful rights complained of herein were caused by customs, policies, directives, practices, acts and omissions of authorized policy makers of defendant CITY OF OAKLAND, including Chief Howard Jordan and other supervisory officials of the OPD and the City of Oakland, who encouraged, authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of herein. Said customs, policies and practices include, but are not limited to the use of excessive force and pre-charging imprisonment under inhumane conditions to disrupt and deter demonstrators and First Amendment protected activity; the failure to maintain adequate policies, and to adequately train, supervise and control OPD officers concerning the policing of demonstrations and other expressive activities with respect to crowd control, and with respect to the constitutional and statutory limitations on use of force, and with respect to the constitutional and statutory standards governing arrests, and the reasonable provision of medical attention to detainees who have been subjected to police force or otherwise injured, and the requirements for citation and release of misdemeanor arrestees; the repeated failure to fully implement and enforce crowd control policies, including, but not limited to the policy that was adopted as part of the settlements reached in *Coles / Local 10 v. City of Oakland*, C03-2961

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1 and C03-2962 TEH; the repeated failure to fully implement and enforce
2 the reforms mandated by the non-monetary settlement agreement in
3 *Delphine Allen v. City of Oakland, et al.*, Case No. C00-4599 TEH; the
4 failure to adopt and fully implement an appropriate early warning
5 system; policies, practices and customs which encouraged officers to
6 conceal their own misconduct and misconduct by their colleagues
7 and/or which encouraged them to collaborate on accounts of incidents
8 where the rights of citizens were violated; the repeated failure by City
9 of Oakland high ranking officials, police department managers and/or
10 supervisors to hold officers accountable for violating the rights of
11 citizens; and/or other customs, policies and/or practices subject to
12 continuing discovery.

13 33. Plaintiff is informed and believes that Defendants JORDAN,
14 TORIBIO, BRESHEARS, ALLISON, WILLIAMS, and DOES 26-50
15 and/or each of them, caused the violation of the Plaintiff's federal
16 constitutional rights as a result of their supervisory malfeasance and/or
17 deliberate indifference to the need for more or different training,
18 supervision and/or discipline of the City of Oakland Police personnel
19 assigned to the subject incident, including, but not limited to, DOES 1-
20 25, and/or each of them, to prevent the foreseeable violation of the
21 Plaintiff's federal constitutional rights.

22 34. As a direct and proximate result of the conduct of defendants
23 described herein, plaintiff has been denied his constitutional, statutory

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1 and legal rights as stated below, and has suffered general and special
2 damages, including but not limited to, physical injuries and bodily
3 harm, pain, fear, mental and emotional distress, humiliation,
4 embarrassment, discomfort, anxiety and other damages in an amount
5 according to proof.

6 35. The individual Defendants' acts were willful, wanton, malicious
7 and oppressive and done with conscious disregard and deliberate
8 indifference for plaintiff's rights.

9 36. Plaintiff has incurred, and will continue to incur, attorneys' fees
10 and costs in amounts to be determined according to proof.

11 **VII. CLAIMS FOR RELIEF**

12 **ONE - VIOLATION OF FOURTH AMENDMENT (42 U.S.C. § 1983)**

13 37. Plaintiff re-alleges and incorporates by reference the preceding
14 paragraphs of this Complaint.

15 38. Defendants' above-described conduct violated plaintiff's rights to
16 be free from unreasonable seizures and unnecessary, excessive and/or
17 arbitrary force, imprisonment without reasonable or probable cause,
18 unreasonable pre-charging punishment, and unreasonable failure to
19 provide medical care, under the Fourth Amendment to the United
20 States Constitution.

21 **TWO - VIOLATION OF FIRST AMENDMENT (42 U.S.C. § 1983)**

22 39. Plaintiff re-alleges and incorporates by reference the preceding
23 paragraphs of this Complaint.

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1 40. Defendants' above-described conduct violated plaintiff's rights to
2 freedom of speech, freedom of association, and freedom of the press,
3 under the First Amendment to the United States Constitution.

4 **THREE - VIOLATION OF FOURTEENTH AMENDMENT (42 U.S.C. §**
5 **1983)**

6 41. Plaintiff re-alleges and incorporates by reference the preceding
7 paragraphs of this Complaint.

8 42. Defendants' above-described conduct violated plaintiff's right to
9 not be deprived of liberty without due process of law, and to equal
10 protection of the laws, and to personal liberty and freedom of
11 movement, under the Fourteenth Amendment to the United States
12 Constitution.

13 **VIII. JURY TRIAL DEMAND**

14 Plaintiff hereby demands a jury trial.

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1 **IX. PRAYER**

2 WHEREFORE, Plaintiff prays for judgment against Defendants,
3 and each of them, as follows:

4 1. For general and special damages to be determined according
5 to proof;

6 2. For punitive damages against Defendant Does 1-50 and/or
7 each of them, in amounts to be determined according to proof;

8 3. For attorneys' fees pursuant to 42 U.S.C. § 1988 in amounts to
9 be determined according to proof;

10 5. For costs of suit;

11 6. For pre- and post-judgment interest as permitted by law;

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

14 **X. CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

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

17
18 Dated: May 2, 2014

_____/S/_____
RACHEL LEDERMAN
Attorney for Plaintiffs

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