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Attorneys for Claimant

CINDY PINCUS,  
Claimant,  
v.  
CITY OF BERKELEY.

**GOVERNMENT TORT CLAIM**  
(Govt. Code, § 910, et seq.)

**CLAIMANT’S NAME:** CINDY PINCUS

**CLAIMANT’S ADDRESS:** c/o Rachel Lederman, Attorney at Law, 558 Capp Street, San Francisco, CA 94110.

**CLAIMANT’S TELEPHONE NUMBER:** c/o Rachel Lederman, Attorney at Law, 415-282-9300.

**ADDRESS TO WHICH NOTICES ARE TO BE SENT:** Rachel Lederman, Attorney at Law, 558 Capp Street, San Francisco, CA 94110.

**DATE OF THE INCIDENT:** Dec. 6-7, 2014.

**LOCATION OF INCIDENT:** Berkeley, CA. Pincus Tort Claim

**BASIS OF CLAIM:**

On December 6, 2014, a March Against State Violence was held in Berkeley in response to the grand jury decisions not to indict the police officers who killed Michael Brown and Eric Garner and the issue of racist police violence and impunity. Demonstrators initially gathered at Telegraph and Bancroft at 5pm. A peaceful march ensued, and at approximately 6:10pm, demonstrators and journalists arrived in the vicinity of Berkeley Police headquarters at 2100 Martin Luther King, Jr. Way. There, the march was blocked by a line of police officers.

At about 6:30pm, the police opened the way for people to move north on Martin Luther King Jr. Way toward Addison St. At the same time, without warning, Berkeley Police Officers struck a number of people with clubs.

BPD also proceeded to deploy chemical agents, although they had up to that point given the crowd no orders, announcements or warnings. The police use of force pushed the crowd north to University Avenue, where police formations split the crowd, sending one portion toward San Pablo but blocking their way there so that demonstrators were forced to walk through residential areas, to the area of Berkeley Way and Acton Street.

As the demonstrators walked east on Berkeley Way at approximately 8pm, a line of officers blocked their path and other officers suddenly appeared behind them. The police gave no orders or announcements. The only way to disperse appeared to be through parking lots which led back to University Ave. from Berkeley Way.

The demonstrators were moving through these parking lot when unidentified Hayward officers, acting as mutual aid to BPD, opened fired into the crowd with “sponge rounds”, and “beanbag rounds”, dangerous so-called “less lethal” munitions.

As the evening progressed, people began to congregate in the area of Bancroft and Telegraph. Beginning about 9:40pm and continuing for the next few hours as additional persons gathered, the Berkeley Police, and other agencies acting as mutual aid under BPD’s direction, used chemical agents and batons to forcefully drive the peaceful demonstrators south on Telegraph to the Oakland border.

CINDY PINCUS, a minister, had been peacefully participating in the demonstration with friends and was carrying a sign that said, “Jesus Can’t Breathe”. After 10pm, although the demonstrators were peaceful, the Berkeley Police Officers, Hayward Police Officers, and other mutual aid officers began jabbing people with clubs, pushing them south on Telegraph Ave. toward Oakland. When she tried to assist a woman who had fallen to the ground, Claimant was was

hit in the back of the head by unknown Berkeley, Hayward, and/or other officers acting as mutual aid and under the direction of the Berkeley Police, DOES 1-50. Berkeley, Hayward and/or other officers acting as mutual aid and under the direction of the Berkeley Police then deployed chemical agents and dangerous “less lethal” munitions into the retreating crowd. Claimant fled through the tear gas, unable to see and bleeding from the head. Eventually she found two friends who assisted her getting to a local hospital, where a large gash on the back of her head was closed with three staples.

Claimant behaved lawfully and peacefully at all times and did nothing to justify the use of force. This use of force by Berkeley Police Officers and/or Hayward Police Officers and/or other officers acting as mutual aid and under the direction of the Berkeley Police, DOES 1-50, was unnecessary and excessive.

Claimant is informed and believes and thereon alleges that the CITY OF BERKELEY; BERKELEY CITY MANAGER CHRISTINE DANIEL, BERKELEY POLICE CHIEF MICHAEL MEEHAN, CAPTAIN ERIK UPSON, LIEUTENANT ANDREW RATEAVER, LIEUTENANT RICO ROLLERI, CITY OF HAYWARD, POLICE CHIEF DIANE URBAN, individually and in their official capacities; and DOES 1-50, and/or each of them, individually and/or while acting in concert with one another, violated Claimant’s constitutional rights. Said constitutional violations included, but were not limited to, the violation of Claimant’s rights under the California and United States Constitutions to be free from the use of excessive and/or arbitrary force; to freedom of the press, freedom of speech and freedom of association; to be free from arbitrary, capricious or excessive governmental action; and the right to equal protection of the laws.

Claimant is further informed and believes and thereon alleges that said constitutional violations were authorized, condoned, encouraged and/or ratified by the CITY OF BERKELEY including, but not limited to, CITY MANAGER CHRISTINE DANIEL, POLICE CHIEF MICHAEL MEEHAN and other high ranking members, supervisors and/or command staff of the Berkeley Police Department, CITY OF HAYWARD, including, but not limited to, HAYWARD POLICE CHIEF DIANE URBAN, and other high ranking members, supervisors and/or command staff of the Hayward Police Department

Claimant is further informed and believes and thereon alleges that the violations of Claimant’s constitutional rights and damages as alleged herein were caused by customs, policies and/or practices of the City of Berkeley, and or the City of Hayward, including, but not limited to, CITY MANAGER CHRISTINE DANIEL,

POLICE CHIEF MICHAEL MEEHAN, and/or HAYWARD POLICE CHIEF DIANE URBAN and/or other high ranking policy makers, and/or each of them, which encouraged, authorized, condoned and/or ratified the violations and other misconduct as alleged herein.

Claimant is further informed and believes and thereon alleges that the CITY OF BERKELEY, including, but not limited to, CITY MANAGER CHRISTINE DANIEL, POLICE CHIEF MICHAEL MEEHAN, CAPTAIN ERIK UPSON, LIEUTENANT ANDREW RATEAVER, LIEUTENANT RICO ROLLERI, and/or other high ranking officials, policy makers, police department command staff and/or supervisors, were on actual notice at the time of this incident that there was a custom, policy, pattern and/or practice of excessive force, inadequate supervision, training, control and/or discipline of members of the Berkeley Police, a Code of Silence within that agency, and/or other customs, policies and/or practices which the Berkeley Police, and/or its high ranking officials knew and/or reasonably should have known were likely to cause violations of the rights of, injury and/or damages to citizens having contact with members of those agencies, including, but not limited to, Claimant. Claimant is further informed and believes that CAPTAIN UPSON, LIEUTENANT RATEAVER and LIEUTENANT ROLLERI were directly supervising the police actions complained of, including the actions of officers of agencies providing mutual aid to BPD, and caused Claimant's injuries through their supervisory malfeasance.

Claimant is further informed and believes and thereon alleges that the conduct of individual employees, agents and/or servants of the CITY OF BERKELEY, and/or CITY OF HAYWARD and/or each of them was intentional, malicious, oppressive and/or done with a conscious or reckless disregard for Claimant's rights.

Claimant is informed and believes and thereon alleges that they have claims for damages arising from the acts and/or omissions of the employees, agents and/or servants of the CITY OF BERKELEY, and/or CITY OF HAYWARD, and DOES 1-50, and each of them, individually and/or while acting in concert with one another, as alleged herein based on theories of liability which include, but may not be limited to, assault, battery, false arrest, false imprisonment, negligence, intentional infliction of emotional distress, negligence per se, violation of civil rights, including, but not limited to, violation of constitutional and/or statutory rights under California and Federal law, negligent hiring, supervision, control and/or discipline, respondeat superior liability of the CITY OF BERKELEY, and/or CITY OF HAYWARD and/or omissions committed within the course of scope of employment by its employees and/or other agents, and/or other causes of action

subject to continuing discovery.

Claimant has and may continue to have in the future, claims for general damages, including, but not limited to, claims for pain, suffering, humiliation and emotional distress in amounts to be determined according to proof.

Claimant has and may continue to have in the future, claims for special damages, including, but not limited to, claims for medical and related expenses, lost income, and/or other special damages in amounts to be determined according to proof.

In the event that Claimant is the prevailing party in any litigation stemming from the incidents alleged herein, Claimant may be entitled to recover attorneys' fees and costs based on state and/or federal statutes.

Claimant is informed and believes and thereon alleges that the acts and/or omissions of the CITY OF BERKELEY, and/or CITY OF HAYWARD, and/or its employees, agents and/or servants as described herein included, but were not limited to, interference by threats, intimidation or coercion with Claimant's exercise and enjoyment of the rights secured by the Constitution and laws of the United States and of California. Claimant is also informed and believes and thereon alleges that the acts and/or omissions of the City of Berkeley, and/or City of Hayward and/or its employees, agents and/or servants as described herein included, but were not limited to, violence or intimidation by threats of violence on the basis of Claimant's perceived political affiliation. Claimant may also have claims for statutory damages in amounts to be determined according to proof under California law, including, but not limited to, claims for statutory damages and penalties under California Civil Code sections 51.7, 52 and 52.1.

**INJURY OR DAMAGE:** Claimant's injuries and damages include, or may include past, present and/or future damages for pain, suffering, disability, emotional distress, humiliation, violation of civil rights, medical special damages, lost wages and/or damage to career, property damage and property loss, statutory damages and/or other general and/or special damages in amounts to be determined according to proof. Claimant may also be entitled to recover their attorneys' fees and costs pursuant to statutes in the event that the Claimant is the prevailing party. Claimant may also be entitled to recover punitive damages against the individual CITY OF BERKELEY officers, CITY OF HAYWARD officers, employees, agents and/or servants and/or each of them who are liable for the injuries and/or damages alleged herein. Discovery is continuing and Claimant reserves the right to supplement and/or amend this claim.

**PUBLIC EMPLOYEES ALLEGED TO HAVE CAUSED INJURY OR DAMAGE:** BERKELEY CITY MANAGER CHRISTINE DANIEL, BERKELEY POLICE CHIEF MICHAEL MEEHAN, CAPTAIN ERIK UPSON, LIEUTENANT ANDREW RATEAVER, LIEUTENANT RICO ROLLERI, HAYWARD POLICE CHIEF, individually and in their official capacities; and DOES 1-50 inclusive, and/or each of them. Discovery is continuing and Claimant reserves the right to supplement and/or amend this claim.

**DEMAND FOR PRESERVATION OF EVIDENCE:**

Claimant hereby demands that the CITY OF BERKELEY, including but not limited to the Berkeley Police Department, Fire Department, Office of Emergency Services, Police Review Commission, Hayward Police Department, and all other City departments, and their employees, agents, servants and/or attorneys, maintain and preserve all evidence, documents and tangible materials which relates in any manner whatsoever to the subject matter of this claim during the pendency of this matter, including until the completion of any and all civil and/or criminal litigation arising from the events which are the subject matter of this claim. This demand for preservation of evidence includes, but is not limited to, a demand that all communications tapes, logs, computer records, photographs, video, and/or other tangible materials of any kind be preserved until the completion of any and all civil and criminal litigation arising from the subject matter of the events which are the subject matter of this claim.

**AMOUNT OF CLAIM:** The claims are each in excess of \$10,000.00. Jurisdiction is designated as “unlimited” and jurisdiction would be in the Superior Court of the State of California for Alameda County, and/or the United States District Court for the Northern District of California.

DATED: June 2, 2015

Signed on behalf of Claimant:

By \_\_\_\_\_  
RACHEL LEDERMAN, Attorney at Law