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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 TIMOTHY MICHAEL RYAN,) Case No. 22-cv-00521 DMR
16)
17 Plaintiff,) **SECOND AMENDED COMPLAINT FOR**
18) **DAMAGES**
19 vs.)
20) **Jury Trial Demanded**
21 CITY OF OAKLAND, ROLAND HOLMGREN,)
22 and PATRICK GONZALES,)
23)
24 Defendants.)
25)

26 Plaintiff TIMOTHY MICHAEL RYAN complains against defendants CITY OF OAKLAND,
27 ROLAND HOLMGREN, and PATRICK GONZALES as follows:

28 **PRELIMINARY STATEMENT**

1. Following the murder of George Floyd on May 25, 2020, in Minneapolis,
Minnesota, demonstrations against police violence erupted across the country. Beginning on
May 29, 2020 and continuing for four nights, demonstrators gathered in the streets of Oakland
to protest police violence. On May 29, May 30, May 31, and June 1, Oakland Police Officers and
officers from Mutual Aid law enforcement agencies used excessive force including tear gas and
“flash bang” grenades to suppress the public demonstrations.

STATEMENT OF FACTS

1
2 9. Plaintiff RYAN attended the June 1, 2020, protest held in Oakland over the murder
3 of George Floyd. This night was the fourth consecutive night of demonstrations in Oakland
4 protesting police violence.

5 10. At all times relevant hereto, plaintiff RYAN was acting lawfully and peacefully in
6 the course and scope of his employment as a reporter for KCBS Radio. Plaintiff RYAN was clearly
7 identified as a working journalist, wearing a helmet with the word "PRESS" on it and his KCBS
8 press identification attached to his belt and carrying a digital recorder.

9 11. On June 1, 2020, defendant HOLMGREN was serving as the Oakland Police
10 Department's Incident Commander and had full authority over the tactics and weapons use of all
11 Oakland police officers and all officers sent to Oakland by its mutual aid partners to police the
12 protests occurring on that date.

13 12. The Incident Commander is an official of the Oakland Police Department who has
14 been assigned authority over the Department's operations for a given event. During the George
15 Floyd protests from May 29 - June 1, 2020, OPD assigned a high ranking official, either a chief or
16 police captain, as Incident Commander for each day of the protests. The Incident Commander
17 had ultimate authority for leading OPD's operations on that date, including the deployment of
18 OPD personnel and the personnel of mutual aid departments, determination of police tactics and
19 weapons, the instruction, briefing, and commands given to officers participating in the entire
20 operation on a given night, and the prevention of police actions that would violate the rights of
21 persons lawfully engaged in protest or those reporting on the protests. The Incident Commander
22 puts together an operations plan and briefs the officers or the supervisors of the officers who are
23 deployed on that date.

24 13. Defendant HOLMGREN was Incident Commander on May 29, 2020, May 31,
25 2020, and June 1, 2020, which made up three of the four nights of demonstrations against police
26 violence. As Incident Commander, he was responsible for examining the uses of force and their
27 justifications and writing an after action report for the Oakland Police Department chain of
28

1 command for each night. He witnessed or was briefed on the unlawful uses of force used to
2 suppress the demonstrations on at least two nights immediately preceding June 1, 2020.

3 14. Oakland's crowd control policy directs that "the discharge of a chemical agent shall
4 not be used in demonstrations or other crowd events without the approval of the Incident
5 Commander." It allows for an exception, under exigent circumstances, where "a supervisor or
6 commander [may] authorize the immediate use of chemical agents." On June 1, 2020, in
7 dereliction of his duty as Incident Commander, defendant HOLMGREN preauthorized sergeants
8 such as defendant GONZALES to direct the use of chemical agents, allowing them to do so even
9 in the absence of exigent circumstances. Defendant GONZALES, in turn and in violation of the
10 policy, preauthorized the officers that he was supervising to use chemical agents against
11 demonstrators.

12 15. On June 1, 2020, defendant GONZALES was serving as the supervisor of the
13 Oakland Police Department Tactical Operations ("Tango") Team that was authorized and
14 equipped to utilize tear gas and other less-lethal weapons in support of the Oakland Police
15 Department's crowd control activities on that date.

16 16. Defendant GONZALES is the Special Operations Tactical Sergeant and he
17 conducted a significant portion of the training given to the Oakland Police Department Tango
18 Team members present on June 1, 2020, and to all approximately 75 members of the Oakland
19 Police Department Tango Team. The training purportedly includes how to comply with Oakland
20 Police Department's crowd control policy—a policy that dictates when force may be used during
21 a demonstration and the manner in which it must be used—and how to use force lawfully under
22 those circumstances.

23 17. At approximately 7:40 p.m. on June 1, 2020, plaintiff RYAN was located at or near
24 the corner of Broadway Street and Ninth Street in Oakland. He was standing on a raised entry
25 way positioned above the crowd by approximately thirty-inches. Members of the Oakland Police
26 Department, including defendant GONZALES, were present in and behind an officer-formed
27 skirmish line across Broadway and knew that the crowd included people who were peacefully
28 protesting and journalists lawfully reporting on the protests and police responses to the protests.

1 18. At that time and location, without warning, and without reasonable or lawful cause
2 for doing so, officers employed by the Oakland Police Department and supervised by defendant
3 GONZALES began indiscriminately deploying tear gas and tear gas grenades towards peaceful
4 participants in the protests and journalists, including plaintiff RYAN.

5 19. Immediately prior to this deployment, defendant GONZALES reported into his
6 body worn camera that there were no children and senior citizens in the crowd. On information
7 and belief, his examination of the crowd revealed that plaintiff RYAN was perched above the
8 crowd with PRESS prominently displayed on his clothing and head gear and carrying a digital
9 recorder with a microphone bearing the KCBS all news radio logo.

10 20. The Oakland Police Department officers deploying tear gas and tear gas grenades
11 failed to distinguish between people who were peacefully and lawfully protesting and journalists
12 covering the protests, including plaintiff RYAN, and those allegedly engaged in violent and/or
13 unlawful activity. Their actions were motivated by the intent to suppress protected speech
14 and/or deliberate indifference to the police actions that interfered with protected speech,
15 including that of plaintiff RYAN.

16 21. The actions of the Oakland Police Department officers who deployed tear gas and
17 tear gas grenades were not justified by "exigent circumstances" and therefore were contrary to
18 Oakland Police Department policy.

19 22. At all times relevant hereto, defendants HOLMGREN and GONZALES were
20 engaged in the supervision of the Oakland Police Department employees engaged in the
21 deployment of tear gas and tear gas grenades against people who were lawfully and peacefully
22 exercising their First Amendment rights and against journalists who were duly engaged in their
23 employment, including plaintiff RYAN.

24 23. Defendant HOLMGREN failed to prevent the improper and unlawful use of tear
25 gas and tear gas grenades by subordinate police officers and failed to train and supervise said
26 officers in the proper and lawful deployment of tear gas and tear gas grenades.

27 24. Defendant GONZALES set in motion the improper and unlawful use of tear gas and
28 tear gas grenades by subordinate police officers by authorizing and encouraging that deployment

1 of tear gas and tear gas grenades, by failing to stop that deployment, and by failing to train and
2 supervise said officers in the proper and lawful deployment of tear gas and tear gas grenades.

3 25. The deployment of tear gas caused plaintiff RYAN to experience difficulty
4 breathing, a burning sensation in his eyes, nose, and throat, and feelings of panic.

5 26. The deployment of the tear gas forced plaintiff RYAN to leave the sidewalk where
6 he was standing and to attempt to flee the tear gas by running away from it. As he was running
7 away from the tear gas plaintiff RYAN tripped and fell and was injured, suffering a near full
8 thickness tear his right anterior talofibular ligament; a partial tear of his right calcaneofibular
9 ligament; and a non-displaced fracture of the fifth metatarsal bone of his right foot.

10 27. As a result of the injuries he suffered, plaintiff RYAN was required to have surgery
11 and suffered temporary and permanent disability.

12 **FIRST CLAIM FOR RELIEF**
13 **VIOLATION OF THE RIGHTS OF PERSONS ENGAGED IN PROTECTED ACTIVITY**
14 **IN VIOLATION OF THE FIRST AMENDMENT**
15 (By plaintiff RYAN against defendant GONZALES)
16 (42 U.S.C. § 1983)

17 28. Plaintiff incorporates by reference paragraphs 1 through 27 above as though fully
18 set forth herein.

19 29. By virtue of the foregoing, plaintiff RYAN was engaged in constitutionally protected
20 activity as a journalist when unknown police officers employed by defendant CITY OF
21 OAKLAND and directed by defendant GONZALES indiscriminately deployed tear gas in his
22 direction, causing his injuries as set forth above.

23 30. The tear gas attack by defendants on plaintiff RYAN was motivated by his status as
24 a working journalist and by the officers' desires to suppress speech including that of plaintiff
25 RYAN or was committed with reckless disregard of his status as a journalist and his peaceful and
26 lawful presence at the protest on June 1, 2020.

27 31. The actions of defendant GONZALES chilled and interfered with plaintiff RYAN's
28 constitutionally protected rights to report the news in violation of the First Amendment to the
Constitution of the United States.

1 persons, including plaintiff RYAN, exercising their constitutional rights and subjecting such
2 persons to excessive force.

3 40. By virtue of the foregoing, defendants CITY OF OAKLAND was deliberately
4 indifferent to the obvious consequences of its failure to train, supervise and discipline Oakland
5 police officers.

6 41. As a result of inadequate training policies, officers employed by the CITY OF
7 OAKLAND deprived plaintiff TIM RYAN of his rights, as set forth above.

8 **FIFTH CLAIM FOR RELIEF**
9 **SUPERVISORY LIABILITY**

10 (By plaintiff RYAN against defendants HOLMGREN and GONZALES)
11 (42 U.S.C. § 1983)

12 42. Plaintiff incorporates by reference paragraphs 1 through 41 above as though fully
13 set forth herein.

14 43. Defendants HOLMGREN and GONZALES personally participated in the series of
15 events that resulted in plaintiff RYAN's constitutional, physical, and emotional injuries and
16 failed in their obligation to adequately train and supervise Oakland police officers to refrain from
17 using tear gas and excessive force against persons, including plaintiff RYAN, exercising their
18 constitutional rights and subjecting such persons to excessive force.

19 44. By virtue of the foregoing, defendants HOLMGREN and GONZALES were
20 deliberately indifferent to the obvious consequences of their failure to train, supervise and
21 discipline Oakland police officers.

22 45. As a result of their actions and inactions plaintiff TIM RYAN was deprived of his
23 rights and injured, as set forth above.

24 **DAMAGES**

25 46. As a result of the actions of defendants, plaintiff RYAN has been injured and has
26 suffered damages as follows:

27 a. He has been physically, mentally, emotionally, and financially injured and
28 damaged as a proximate result of the wrongful actions of the public employees named above, and
others;

