

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. XXXX**

**BRAXTON DAVID WINSTON, II, DANIELLE
ADELE HILTON LOMBARD, JAMIE
MARSICANO, DHRUV PATHAK,
SAMANTHA POLER, MARY FRANCES
“SCOUT” ROSEN, and ASHLEY S.
WILLIAMS,**

Plaintiffs,

v.

**CITY OF CHARLOTTE and CHIEF KERR
PUTNEY, in his Official Capacity as Chief of the
Charlotte-Mecklenburg Police Department,**

Defendants.

**COMPLAINT FOR INJUNCTIVE
RELIEF**

I. PRELIMINARY STATEMENT

1. Our Nation is built on a foundation of free speech, dissent, and protest; since our very founding, the American people have taken to the streets and sidewalks to make their voices heard on matters of public concern.

2. Further, the right to be free from unreasonable seizure by the government is fundamental to the proper functioning of our criminal justice system, and reflects our country’s deep concern for personal security and their recognition of the potential for law enforcement excesses.

3. Defendant Charlotte-Mecklenburg Police Department (CMPD) has repeatedly and persistently violated the constitutional rights of the named plaintiffs, and other nonviolent protesters similarly situated, in response to Plaintiffs’ exercise of their constitutional rights to

assemble and protest—to make their voices heard. Plaintiffs seek injunctive relief to enforce their constitutionally protected rights under the First Amendment, Fourth Amendment, and Fourteenth Amendments to the United States Constitution, and Article I §§ 12, 14, 19, and 20 of the North Carolina Constitution.

4. The constitutional rights of Plaintiffs and those similarly situated will again be violated, and irreparable harm will result, if the Court does not provide immediate relief in the form of granting a Temporary Restraining Order, Preliminary Injunctive Relief, and Permanent Injunctive Relief, and enjoin Defendants from preventing or impeding their constitutional rights to free speech and assembly.

5. Plaintiffs have engaged in protected constitutional activity in the wake of the fatal shooting of Keith Lamont Scott by CMPD on September 20, 2016. Plaintiffs have engaged in speech, association, and protest on the streets, sidewalks, and medians of Charlotte—traditional public fora where individuals’ First Amendment rights are at their zenith. Unfortunately, this exercise of constitutional rights has been met with a military-grade assault on protesters’ bodies and rights.

6. Plaintiffs are residents of the City of Charlotte and have engaged in constitutionally protected activities to raise awareness of and speak out against racially discriminatory practices by law enforcement in multiple jurisdictions, including by CMPD.

7. Plaintiffs, in the course of exercising their constitutional rights to assemble and protest, have been subjected to unlawful physical contact and/or restraint by CMPD, as well as actions by CMPD designed to frighten and intimidate them, and to deter their continued exercise of their constitutional rights.

8. CMPD, acting under color of law, has intimidated demonstrators, impeded their entry or exit from demonstrations, assaulted them with chemical agents (including tear gas and pepper spray), shot them with so-called “less than lethal” projectiles, rounded them up in mass arrests, engaged in physical and verbal abuse, failed to visibly identify themselves, and categorically labeled all demonstrations as unlawful assemblies.

9. Tear gas is a chemical agent, precluded from use in warfare. Tear gas most frequently causes intense burning sensations, skin irritation, chest pain, and difficulty in breathing. These effects can be magnified for vulnerable persons, such as children and those with asthma or other respiratory impairments. Research indicates that tear gas can cause miscarriages and stillbirths, damage to major organs, or even death, due to the chemical or physical impact of the canister. The effects of being gassed may also cause psychological harm such as flashbacks or hyper vigilance, both symptoms of trauma.

10. Specifically, as alleged herein, CMPD knowingly used tear gas and other chemical agents against demonstrators, including Plaintiffs, in a manner designed to inflict pain and anguish rather than to accomplish any legitimate law enforcement objective. Children and elderly people were in the crowd when the police launched tear gas upon them without warning and often with no clear means of egress. CMPD’s use of tear gas and other chemical agents constitutes excessive force, in violation of the Fourth Amendment.

11. Further, as alleged herein, police categorically labeled gatherings as unlawful assemblies, boxed in demonstrators without ample means of exit, failed to wear visible identification, and failed to provide ample notice or opportunity to exit before administering chemical agents upon crowds of peaceful demonstrators, including Plaintiffs. Rather, CMPD

administered chemical agents in an effort to target and punish Plaintiffs and other similarly-situated demonstrators for exercising their constitutional rights to assemble and protest.

12. Each and every paragraph in this Complaint shall be fully incorporated and re-alleged as if fully set forth herein.

II. JURISDICTION AND VENUE

13. Plaintiffs bring this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 2201, and 2202, 42 U.S.C. § 1983, and the First, Fourth, and Fourteenth Amendments to the United States Constitution. This Court may issue a temporary restraining order and preliminary injunction pursuant to Fed. R. Civ. 65(b).

14. This Court has supplemental jurisdiction over Plaintiffs' claims under the North Carolina Constitution pursuant to 28 U.S.C. § 1367(a).

15. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the matter arises within the Western District of North Carolina.

III. PARTIES

16. Plaintiff Braxton David Winston, II, is a 33-year-old resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Winston has participated in demonstrations to raise awareness of racial disparities in the criminal justice system and to call attention to incidents of police misconduct within Charlotte and across the country.

17. Plaintiff Danielle Adele Hilton Lombard, is a 41-year-old resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Hilton has participated in demonstrations to raise awareness of racial disparities in the criminal justice

system and to call attention to incidents of police misconduct within Charlotte and across the country.

18. Plaintiff Jamie Marsicano, is a 23-year-old resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Marsicano has participated in demonstrations to raise awareness of racial disparities in the criminal justice system and to call attention to incidents of police misconduct within Charlotte and across the country.

19. Plaintiff Dhruv Pathak is a 22-year-old resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Pathak has participated in demonstrations to raise awareness of racial disparities in the criminal justice system and to call attention to incidents of police misconduct within Charlotte and across the country.

20. Plaintiff Samantha Poler is a resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Poler has participated in multiple demonstrations to raise awareness of racial disparities in the criminal justice system and to call attention to incidents of police misconduct within Charlotte and across the country.

21. Plaintiff Mary Frances “Scout” Rosen is a 21-year-old resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Rosen has participated in demonstrations to raise awareness of racial disparities in the criminal justice system and to call attention to incidents of police misconduct within Charlotte and across the country.

22. Plaintiff Ashley S. Williams is a 24-year-old resident of Charlotte, North Carolina. Since the fatal shooting of Keith Lamont Scott by CMPD, Plaintiff Williams has participated in several demonstrations to raise awareness of racial disparities in the criminal

justice system and to call attention to incidents of police misconduct within Charlotte and across the country.

23. Defendant Kerr Putney is the Chief of Police for the Charlotte-Mecklenburg Police Department (CMPD). In that capacity, Defendant Putney oversees the law enforcement operations in the City of Charlotte, including oversight and control of law enforcement's response to the demonstrations following the fatal shooting of Keith Lamont Scott. Defendant Putney is sued in his individual and official capacities for acts taken under color of law within the scope of his employment. Because the actions of Defendant Putney as described herein were intentional, willful, wanton, and outside his lawful authority, he is not entitled to any public officer or governmental immunity that might otherwise shield him from liability under the claims alleged herein.

24. Defendant City of Charlotte is a municipal corporation organized under the laws of the State of North Carolina, and capable under state statute of bringing and defending lawsuits, including claims involving its police department. The City is responsible for governing and overseeing the policies and actions of CMPD. It is vicariously liable for the wrongful acts of Defendant Putney under North Carolina law, as he was acting as an agent of the City of Charlotte within the scope of his employment at all times relevant to this action. On information and belief, the City of Charlotte has purchased insurance, either by contract with an insurance company or by participation in an insurance risk pool, that covers the claims raised in this action and has thereby waived any defense of sovereign or governmental immunity.

IV. FACTUAL ALLEGATIONS

25. The allegations contained in previous paragraphs of this Complaint shall be fully incorporated and re-alleged as if fully set forth herein.

26. On September 20, 2016, Keith Lamont Scott, an African-American man who was sitting in his car, waiting to pick up his son from the school bus, was shot and killed by CMPD. Mr. Scott was the sixth person to be fatally shot by CMPD since September 2015. The others were a Latino man, an Asian man, and three African-American men.

27. Although law enforcement agencies do not universally report such information, reports show that law enforcement across the country killed at least 234 African-American people in 2016. Law enforcement killed 346 African-American people in 2015.

28. On September 14, 2013, Jonathan Ferrell was shot ten times by Charlotte-Mecklenburg Police Officer Randall “Wes” Kerrick, who was criminally charged but not convicted. The City of Charlotte ultimately settled a lawsuit with the family of Mr. Ferrell for \$2.25 million.

29. Other people of color shot and killed by CMPD over the past 20 years include, but are not limited to: James Willie Cooper (November 19, 1996); Carolyn Sue Boetticher (April 9, 1997); Charles Irwin Potts (September 4, 1998); Douglas Arthur Hutchinson (September 21, 1998); Ronald Francis Pool (November 2, 1998); Jaquaz Walker (June 19, 2013); Devaron Ricardo Wilburn (June 18, 2014); Janisha Fonville (February 19, 2015); Daquan Antonio Westbrook (December 24, 2015); Carlton Anthony Murphy (January 5, 2016); Germonta Wallace (January 3, 2016); Sylasone Ackhavong (April 19, 2016); and Rodney Smith (June 2, 2016).

30. There is much evidence of over-policing and misuse of police power. For example, analysis of over 18 million traffic stops statewide from 2002-2013 shows dramatic disparities in the rates at which black drivers, particularly young males, are searched and arrested as compared to similarly situated white drivers. Out of more than 1.3 million traffic stops in

Charlotte between 2002 and 2013, data show that the search rate for blacks is double that of whites, with black males at 136 percent more than white males, and black females at 13 percent more than their white counterparts. Further, the degree of racial disparity in searches incident to a traffic stop has been growing over time. Finally, the rate at which searches lead to the discovery of contraband is consistently lower for blacks than for whites, providing strong evidence that the empirical disparities are evidence of racial bias.

31. Unsurprisingly, Charlotte has long ranked among the lowest in the nation on interracial trust.

32. The shooting of Mr. Scott and the City's response highlighted and reinforced this history of racial discrimination in Charlotte and North Carolina, as well as the longstanding mistreatment of African-American residents by law enforcement.

33. In the aftermath of Mr. Scott's killing, citizens outraged by the conduct of police and other government agencies took to public streets and sidewalks in Charlotte, North Carolina, as well as other parts of Mecklenburg County, in a variety of spontaneous and planned peaceful demonstrations to express their concerns about police actions, including the use of excessive force in African-American communities.

34. Those engaging in these nonviolent demonstrations have done so as part of a political protest, pursuant to their protected rights under the state and federal constitutions.

35. Nonviolent protesters have sought, and continue to seek, justice for the deaths and abuse of young black men, women, and children at the hands of police, to bring attention to issues of police violence and racist policing in communities of color, and to advocate for policing reforms.

36. Early demonstrations in the wake of Mr. Scott's killing were met with a militarized response by CMPD. This response included, but was not limited to: dressing out in riot gear; shooting demonstrators with tear gas, pepper spray, and rubber bullets; rounding protesters up in mass arrests; impeding entry or exit from demonstrations; engaging in physical and verbal abuse; and categorically labeling demonstrations as unlawful assemblies.

37. Community members and leaders have raised concerns about these behaviors and have advocated for different Rules of Engagement for lawful and peaceful demonstrations.

38. At these demonstrations, individuals have been voicing, and intend to continue to voice, their opinions and concerns about the fatal shooting of Keith Lamont Scott by CMPD; broader issues of public concern such as the strained relationship between police and the community; the frequency with which police officers shoot unarmed black men, women, and children; the militarization of local police forces; and police accountability.

39. All of the Plaintiffs have participated in or been present at demonstrations and intend to continue to do so.

40. During the course of these demonstrations, Plaintiffs and others have witnessed and experienced numerous incidents in which CMPD and its officers undertook actions which were purposefully designed to frighten and punish demonstrators by inflicting harm, in an effort to deter them from continuing demonstrative activities. Numerous examples of police abuse at demonstrations during the week following the killing of Keith Lamont Scott cause Plaintiffs to believe that unless Defendants are enjoined, their constitutional rights will continue to be violated in the future.

Plaintiff Winston

41. Plaintiff Braxton David Winston, II, was present on September 20, 2016 when he observed CMPD officers dressed in riot gear respond to nonviolent protesters near the site of Keith Lamont Scott's shooting.

42. Plaintiff Winston witnessed CMPD officers throw tear gas canisters into the crowd. Plaintiff Winston was subjected to the tear gas burning his skin, making it difficult for him to breathe and causing him to vomit.

43. Plaintiff Winston also witnessed CMPD officers continue to use tear gas, flash bangs, and concussion grenades into the crowd without warning or issuing any order to disperse.

44. Plaintiff Winston was standing near the frontline of CMPD officers and was repeatedly struck by the tear gas canisters that these officers threw, which caused bruising and burning of his skin.

45. Plaintiff Winston was hit with more tear gas canisters, and threatened with the use of pepper spray, while kneeling and praying alongside other protesters near the frontline of CMPD officers.

46. After leaving the protest on September 20, Plaintiff Winston experienced peeling skin, as well as a burning sensation on his skin and in his lungs. These conditions lasted for several days, leaving Plaintiff Winston in great discomfort and unable to even hold his children.

47. Plaintiff Winston's Affidavit is attached and incorporated by reference hereto as **Exhibit A.**

Plaintiff Marsicano

48. Plaintiff Jamie Marsicano was present on September 21, 2016 and September 22, 2016 when they observed police show up in riot gear to a nonviolent group of citizens gathered to protest.

49. On September 21, near the site of Keith Lamont Scott's fatal shooting, Plaintiff Marsicano witnessed CMPD officers block paths of exit for protesters.

50. Plaintiff Marsicano witnessed the police beat his friends with their batons and throw tear gas into the crowd. Plaintiff Marsicano was subjected to the tear gas stinging his eyes and causing him to cough constantly.

51. Plaintiff Marsicano heard the police threaten the peaceful protesters that if they did not move they would be arrested. Plaintiff Marsicano also witnessed the police arresting protesters and forcing other protesters into the street.

52. Plaintiff Marsicano's Affidavit is attached and incorporated by reference hereto as **Exhibit B.**

Plaintiff Pathak

53. Plaintiff Dhruv Pathak was present the first two weeks of protests, beginning on September 20, 2016. Plaintiff Pathak witnessed CMPD officers run towards the crowd of protesters, pushing them with their shields and pepper spraying them without giving any warnings of the release of tear gas or pepper spray.

54. Plaintiff Pathak witnessed the police throw the tear gas into the crowd about thirty (30) to forty (40) times. On the third night of protests, Plaintiff Pathak witnessed CMPD officers use a weapon that carried the tear gas farther, making it impossible for anyone to get away from the gas. Demonstrators who were blocks away could feel the effects of the gas.

55. Plaintiff Pathak also witnessed police shooting rubber bullets at the crowd and throwing objects resembling fireworks into the air. Plaintiff Pathak observed demonstrators who could not stand as a result of being pepper sprayed.

56. When Plaintiff Pathak was subjected to the tear gas he was unable to breathe, his eyes burned, and his body tingled, causing him to vomit.

57. Plaintiff Pathak's Affidavit is attached and incorporated by reference hereto as **Exhibit C.**

Plaintiff Lombard

58. Plaintiff Danielle Adele Hilton Lombard protested on September 20, 2016. Plaintiff Lombard witnessed CMPD officers in riot gear respond to peaceful protesters near the site of Keith Lamont Scott's shooting.

59. Plaintiff Lombard also witnessed CMPD officers throw tear gas and other smoke bombs into the nonviolent crowd without warning.

60. Plaintiff Lombard asked police to give warning before firing tear gas. Then, without warning, Plaintiff was hit with tear gas. Plaintiff Lombard could not breathe or see clearly.

61. Plaintiff Lombard's Affidavit is attached and incorporated by reference hereto as **Exhibit D.**

Plaintiff Poler

62. Plaintiff Samantha Poler protested on September 20, 2016, and September 22, 2016. Plaintiff witnessed the police officers surrounding the demonstrators, blocking paths of exit, and escalating the situation with riot gear.

63. Plaintiff Poler also witnessed the police push demonstrators to the ground and walk over them. She also watched the police throw tear gas and other smoke bombs into the nonviolent crowd without warning or any order to disperse.

64. Plaintiff Poler was hit with tear gas and hit in the ribs by a police baton. Plaintiff Poler was unable to breathe or see, and felt the burning of her skin as a result of the tear gas. She observed protesters beaten and bleeding.

65. On September 22, 2016, Plaintiff Poler observed CMPD officers use force against non-violent protesters without giving warning or order to disperse. Plaintiff Poler has experienced difficulty breathing since being tear gassed and inhaling pepper spray on September 20 and September 22.

66. Plaintiff Poler's Affidavit is attached and incorporated by reference hereto as **Exhibit E**.

Plaintiff Williams

67. Between September 21 and October 4, 2016, Plaintiff Williams witnesses CMPD use excessive force against nonviolent peaceful protesters in Charlotte.

68. Plaintiff Williams experienced burning as a result of CMPD's use of tear gas.

69. Plaintiff Williams witnessed the police push demonstrators to the ground and walk over them. They also watched the police throw tear gas and other smoke bombs into the nonviolent crowd without warning or any order to disperse.

70. Plaintiff Williams' Affidavit is attached and incorporated by reference hereto as **Exhibit F**.

Plaintiff Rosen

71. On September 20, 2016, Plaintiff Rosen witnessed CMPD, wearing riot gear and brandishing batons, hit protesters with tear gas canisters.

72. Plaintiff Rosen witnessed the police aggressively employ tear gas and rubber bullets against nonviolent protesters.

73. Plaintiff Rosen witnessed a number of CMPD officers who were using force against nonviolent protesters and yet were not wearing identification on their uniforms and/or refusing to identify themselves.

74. Plaintiff Rosen's Affidavit is attached and incorporated by reference hereto as **Exhibit G**.

Future Protests

75. Plaintiffs and others similarly situated demonstrators plan to organize gatherings in the future and continue the protests.

76. Accordingly, Plaintiffs have reason to believe and are fearful that they will be further harmed by the behavior of CMPD and its officers. They wish to continue to exercise their constitutional rights and are fearful that they will be forced to either forego exercising those rights or be threatened with future mental and emotional distress, physical injuries, bodily harm, pain, fear, humiliation, embarrassment, discomfort, and anxiety.

77. Plaintiffs are informed and believe that the violations of their constitutional rights complained of herein were caused by customs, policies, directives, practices, acts and omissions of the Defendants.

78. Defendant Chief Putney encouraged, authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of herein.

79. These customs, policies, and practices of the City of Charlotte include, but are not limited to, the use of excessive and/or arbitrary force to disperse and control crowds and others involved in expressive activities; the failure to maintain adequate policies; and the failure to adequately train, supervise, and control CMPD officers during situations related to policing of demonstrations and/or celebratory activities with respect to crowd control, crowd dispersal, the

constitutional limitations on the use of force, and/or to adopt other remedial measures and policies to insure that such violations of legal rights would not recur.

80. As a direct and proximate result of the conduct of Defendants described herein, Plaintiffs have been denied their constitutional, statutory, and legal rights as described herein. Because Plaintiffs intend to continue to exercise their constitutional rights to assemble and protest, they are fearful that they will be forced to either forego exercising those rights or be threatened with future mental and emotional distress, physical injuries and bodily harm, pain, fear, humiliation, embarrassment, discomfort, and anxiety, medical and related expenses, and lost earnings in an amount according to proof.

81. Unless Defendants and their agents are enjoined, Plaintiffs, other similarly-situated protesters, and other members of the public will be irreparably harmed, as they will be prevented from peacefully gathering in public spaces to express their views on pressing issues of public concern—activity protected by United States Constitution and North Carolina Constitution.

82. Absent an Order from this Court, Plaintiffs will suffer irreparable injury.

V. CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION
First Amendment
(Freedom of Speech, Freedom of Assembly)
42 U.S.C. § 1983

83. The allegations contained in the previous paragraphs of this Complaint shall be fully incorporated and re-alleged as if fully set forth herein.

84. Defendants, acting under color of law, have violated, and unless enjoined by this Court, will continue to violate Plaintiffs' rights to speech and assembly as guaranteed by the First

Amendment to the United States Constitution, which applies to the State of North Carolina under the Fourteenth Amendment.

85. The actions complained of were pursuant to customs, policies, directives, practices, acts, and omissions of Defendants who encouraged, authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of herein.

86. Plaintiffs have suffered irreparable harm by Defendants' infringement of their federal and state constitutional rights, and will continue to suffer irreparable harm unless relief is granted.

87. Plaintiffs have no adequate remedy at law.

SECOND CAUSE OF ACTION
Fourth Amendment
(Unreasonable Seizure, Excessive Force)
42 U.S.C. § 1983

88. The allegations contained in the previous paragraphs of this Complaint shall be fully incorporated and re-alleged as if fully set forth herein.

89. As a result of the particular use of force by Defendants, Plaintiffs and other similarly-situated demonstrators were consistently trapped either in enclosed locations or in public by the use of chemical agents to block egress. Plaintiffs and other similarly-situated demonstrators were then subjected to severe physical and emotional pain as a result of being exposed to the chemical agents with no possibility of egress.

90. Defendants, acting under color of law, have violated, and unless enjoined by this Court, will continue to violate Plaintiffs' right to be free from unreasonable and unnecessary seizure and excessive force in the course of a detention as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitutions

91. The actions complained of were pursuant to by customs, policies, directives, practices, acts, and omissions of Defendants, who encouraged, authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of herein.

92. Plaintiffs have suffered irreparable harm by Defendants' infringement of their federal and state constitutional rights, particularly while exercising their First and Fourteenth Amendment rights, and will continue to suffer irreparable harm unless relief is granted.

93. Plaintiffs have no adequate remedy at law.

THIRD CAUSE OF ACTION
N.C. Const. Art. I, § 12, 14
(Freedom of Speech, Right of Assembly)

94. The allegations contained in the previous paragraphs of this Complaint shall be fully incorporated and re-alleged as if fully set forth herein.

95. Defendants, acting under color of law, have violated, and unless enjoined by this Court, will continue to violate Plaintiffs' free speech and assemble rights as guaranteed by the North Carolina Constitution under Article I, Sections 12 and 14.

96. The actions complained of were pursuant to customs, policies, directives, practices, acts, and omissions of Defendants who encouraged, authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of herein.

97. Plaintiffs have suffered irreparable harm by Defendants' infringement of their federal and state constitutional rights, and will continue to suffer irreparable harm unless relief is granted.

98. Plaintiffs have no adequate remedy at law.

FOURTH CAUSE OF ACTION
N.C. Const., Art. I, §§ 19, 20
(Unreasonable Seizure, Excessive Force)

99. The allegations contained in the previous paragraphs of this Complaint shall be fully incorporated and re-alleged as if fully set forth herein.

100. As a result of the particular use of force by Defendants, Plaintiffs and other similarly-situated demonstrators were consistently trapped either in enclosed locations or in public by the use of chemical agents to block egress. Plaintiffs and other similarly-situated demonstrators were then subjected to severe physical and emotional pain as a result of being exposed to the chemical agents with no possibility of egress. Certain plaintiffs and other similarly-situated were also treated differently by Defendants based on their race.

101. Defendants, acting under color of law, have violated, and unless enjoined by this Court, will continue to violate Plaintiffs' rights to be free from unreasonable and unnecessary seizure and excessive force in the course of a detention, as guaranteed by Art. I, §§ 19 and 20 of the North Carolina Constitution.

102. The actions complained of were pursuant to by customs, policies, directives, practices, acts, and omissions of Defendants, who encouraged, authorized, directed, condoned, and ratified the unconstitutional and unlawful conduct complained of herein.

103. Plaintiffs have suffered irreparable harm by Defendants' infringement of their federal and state constitutional rights, particularly while exercising their First and Fourteenth Amendment rights, and will continue to suffer irreparable harm unless relief is granted.

104. Plaintiffs have no adequate remedy at law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:

1. That this Court schedule an emergency hearing and issue a Temporary Restraining Order, followed by Preliminary and Permanent Injunctive Relief, ordering that Defendants:

(a) Cannot deploy law enforcement officers to gatherings, organized protests, or to individuals engaged in constitutionally-protected activities unless each officer carries on their person clearly visible personal identification, including accurate name, law enforcement agency, and if applicable, badge number;

(b) Cannot utilize tear gas, inert smoke, pepper gas, other chemical agents, or flash bombs on individuals engaged in peaceful, non-criminal activity in the City of Charlotte for the purpose of frightening them or punishing them for exercising their constitutional rights;

(c) Cannot utilize tear gas, inert smoke, pepper gas, other chemical agents, or flash bombs on gatherings unless:

(i) They are preceded by clear and unambiguous warning and an opportunity for sufficient time to pass for members of the gathering to heed the warning and exit the area;

(ii) They are deployed in such a manner as to minimize impacts on the members of the gathering who are complying with lawful law enforcement commands; and

(iii) They are deployed in such a manner as to always allow for a continuing means of safe egress from an area.

(d) Cannot utilize tear gas, inert smoke, pepper gas, other chemical agents, or flash bombs on individuals or gatherings in a closed environment;

(f) Cannot utilize tear gas, inert smoke, pepper gas, other chemical agents, or flash bombs on individuals being arrested when the individuals are not physically resisting arrest;

(g) Cannot unjustly track and target community members on social media based on their exercise of protected speech and involvement in protest activity to intimidate and harass protesters;

(h) Cannot utilize force as a means of controlling non-violent protesters, including, but not limited to, by using bicycles, batons, shields, and other implements or devices against individuals.

2. That this Court award Plaintiffs' costs and attorneys' fees, pursuant to 42 U.S.C. § 1988, and such other relief as this Court deems just and proper.

Dated: October 21, 2016

Respectfully submitted,

/s/ Jacob H. Sussman

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