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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA**

STEVEN MENGEL, individually and on)
behalf of Class of Persons similarly) NO:
situated, and MICHAEL WOODY,)
individually,)
) **CLASS ACTION COMPLAINT**
Plaintiffs,) **FOR VIOLATION OF CIVIL**
) **RIGHTS**
vs.) **(42 U.S.C. 1981)**
)
CITY OF SAN LEANDRO, SAN LEANDRO POLICE,)
CHIEF SANDRA R. SPAGNOLI, OFFICER)
MATTHEW BARAJAS, DETECTIVE MORGAN, SGT.)
ANTHONY, DETECTIVE CLIFFORD, and DOES I)
through X, inclusive,)
) **JURY TRIAL DEMANDED**
)
Defendants.)

INTRODUCTION

This is a civil rights action for declaratory and injunctive relief and damages brought pursuant to 42 U.S.C. Sections 1983, 1985 and 1988, 42 U.S.C. 1981 et seq., the First, Fourth, and Fourteenth Amendments to the United States constitution, and the Commerce Clause. The Complaint seeks redress from one or more of the Defendants due to their: (i) arbitrary and unlawful discrimination on the basis of perceived sexual orientation; (ii) arbitrary and unlawful discrimination on the basis of gender; (iii) practice of arbitrarily, unlawfully and maliciously enforcing the law in a discriminatory manner against

1 targeting for arrest and/or arresting the named Plaintiff and
2 other similarly situated individuals without probable cause; (v)
3 practice of arbitrarily, unlawfully and maliciously violating the
4 named Plaintiff and other similarly situated individuals' right to
5 freedom of speech, expression, association, and (vi) practice of
6 arbitrarily, unlawfully and maliciously violating the named
7 plaintiff's and other similarly situated individuals' right to
8 equal protection under the law.

8 **JURISDICTION AND VENUE**

9 This Court has jurisdiction of this action under 28
10 U.S.C. § 1331 and 1343. Pursuant to 28 U.S.C. § 1391, venue is
11 proper in this Court because the acts and/or omissions complained
12 of occurred in the Northern District of California and the acts
13 described took place within the Northern District of California.

14 The amount in controversy herein, excluding interest and
15 costs, exceeds the minimum jurisdictional limit of this Court.

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19 **PARTIES**

20 Named Plaintiff STEVEN MENGEL was at all relevant times
21 a resident of the County of Alameda state of California.

22 The above named plaintiff seeks to represent a class of
individuals (hereinafter, the "Plaintiff Class"), which is defined
and described in further detail at paragraph 16 below.

6 Plaintiff MICHAEL WOODY was at all relevant times a
resident of the County of Alameda, state of California and is a
member of the Plaintiff Class.

1 Defendant CITY OF SAN LEANDRO is a government entity
2 located in the County of Alameda and is established by the laws
3 and constitution of the State of California, and owns, operates,
4 manages, directs, and controls the SAN LEANDRO POLICE DEPARTMENT
5 (hereinafter "SLPD") which employs other Defendants in this
6 action.

7 Defendant SANDRA R. SPAGNOLI is Chief of the SLPD and is
8 sued in her individual and official capacity.

9 Chief SPAGNOLI is responsible for establishing,
10 ratifying and enforcing the policies, practices and customs of the
11 SLPD and providing training, supervision, instruction, oversight,
12 and discipline concerning the policies, practices, customs, and
13 activities of the entire SLPD. Defendant SPAGNOLI acted at all
14 relevant times within the course and scope of her employment as
15 Police Chief.

16 10. Defendant SLPD Officers MATTHEW BARAJAS, DETECTIVE
17 MORGAN, SGT. ANTHONY, and DETECTIVE CLIFFORD, are all members of
18 the SLPD, all of whom are sued in both their individual capacities
19 and in their official capacities if they had any policy making
20 duties, functions, or responsibilities with respect to the matters
21 alleged herein.

22 11. Plaintiffs and the plaintiff class are unaware of the
true names and capacities of the defendants sued herein as DOES I
through DOE X and therefore sues such defendants by fictitious
names. Plaintiffs will seek leave of court to amend this
complaint when their true names are ascertained. Plaintiffs are
further informed and believe and thereupon allege that DOES I
through DOE X, and each of them, is in some manner liable to

1 12. Plaintiffs are informed and believe and thereon allege
2 that each of the Defendants sued herein was negligently,
3 wrongfully or otherwise responsible in some manner for the events
4 and happenings as hereinafter described, and proximately caused
5 injuries and damages to Plaintiffs and members of the Plaintiff
6 Class.

7 13. Plaintiffs are informed and believe and thereon allege
8 that each of the Defendants was at all relevant times an agent,
9 servant, employee, partner, joint venturer, co-conspirator, and/or
10 alter ego of the remaining Defendants, and in doing the things
11 herein alleged, was acting within the course and scope of that
12 relationship. Plaintiffs are further informed and believe and
13 thereon allege that each of the Defendants herein gave consent,
14 aid, and assistance to each of the remaining Defendants, and
15 ratified and/or authorized the acts or omissions of each Defendant
16 as alleged herein, except as may be hereinafter otherwise
17 specifically alleged.

18 14. At all relevant times, each Defendant was jointly engaged
19 in tortious activity, resulting in the deprivation of Plaintiffs'
20 and members of the Plaintiff Class' constitutional rights and
21 other harm. At all relevant times, each Defendant acted under
22 color of the laws, statutes, ordinances, policies, practices,
customs, and usages of the State of California, the CITY OF SAN
LEANDRO, and the SLPD.

PLAINTIFF CLASS ALLEGATIONS

15. The named Plaintiff brings this class action for declaratory and injunctive relief and damages on his own behalf and on behalf of all others similarly situated, pursuant to Rule

1 of the class of persons whose members have been harmed by the
2 specific allegations which are set forth infra in paragraph 15.

3 16. The Plaintiff Class consists of all men who have been
4 falsely arrested for soliciting or engaging in lewd conduct by SAN
5 LEANDRO POLICE acting as decoys, because they are perceived to be
6 interested in meeting in public, men interested in non-monetary
7 intimate association with other men.

8 A. The membership of the defined class is so numerous
9 that joinder of all members is impractical. On information and
10 belief, there are hundreds of men who have been illegally arrested
11 for violations of California law by the SLPD because they were
12 perceived to be interested in meeting in public, men interested in
13 non-monetary intimate association with other men.

14 B. There are questions of law and fact common to the
15 class, and those questions predominate over questions affecting
16 individual class members. Those common questions include: whether
17 one or more of the Defendants have violated the United States
18 Constitution, the California Constitution and California Statutory
19 law by: (i) targeting areas believed to be frequented by men, who
20 are perceived to be interested in meeting, in public, men
21 interested in intimate association with other men, for the purpose
22 of discouraging these men from these areas and/or arresting them;
(ii) effecting false arrests of men, including men who did not
violate any law but who are perceived to be interested in meeting,
in public, men interested in non-monetary intimate association
with other men; (iii) publicizing the targeting and arrests of men
who are perceived to be interested in meeting, in public, men
interested in non-monetary intimate association with other men;

1 officers and sending them into areas known or assumed to be
2 frequented by men who are perceived to be interested in meeting,
3 in public, men interested in non-monetary intimate association
4 with other men, with the unlawful objective of violating their
5 rights pursuant to California law as well as their
6 constitutionally protected rights to freedom of speech,
7 expression, and association, to be free from unlawful search and
8 seizure, to privacy and to equal protection.

9 C. The claims of the named Plaintiff is typical of the
10 claims of the Plaintiff Class, since the named Plaintiff: (i) was
11 perceived by one or more SAN LEANDRO police officers to be
12 interested in meeting, in public, men interested in non-monetary
13 intimate association with other men; (ii) were in or near a
14 location targeted by SAN LEANDRO police officers because it is
15 believed to be an area frequented by men interested in meeting, in
16 public, men interested in non-monetary intimate association with
17 other men; (iii) did not engage in any unlawful act in violation
18 of federal, state, or municipal law; and (iv) was arrested without
19 a warrant and without probable cause even though he had committed
20 no criminal act.

21 D. The named plaintiff will fairly represent and
22 adequately protect the interests of the Plaintiff Class, and will
do so vigorously and zealously. The named Plaintiff has no
interests antagonistic to the Plaintiff Class; he seeks relief
which will benefit all members of the Plaintiff Class, and he is
represented by counsel who is competent and experienced in civil
rights litigation.

E. The Defendants, by establishing, maintaining,

1 this complaint, have acted on grounds generally applicable to the
2 Plaintiff Class and, as a result, declaratory and injunctive
3 relief with respect to the Plaintiff Class is appropriate.

4 F. Prosecution of separate actions by individual class
5 members would create a risk of inconsistent or varying
6 adjudications with respect to class members which would establish
7 incompatible standards for parties opposing the class, and
8 Defendants have acted or refused to act on grounds generally
9 applicable to the class and its members, and class questions
10 predominate with respect to the class.

11 G. Therefore these actions are maintainable under F.R.
12 Civ. P. Rule 23(a), (b)(1)(A), (B)(1), (2), and (3).

13 I. The nature of the notice to be provided to class
14 members would be determined by the court.

15 **FACTUAL ALLEGATIONS**

16 17. The SAN LEANDRO, Chief SANDRA R. SPAGNOLI have
17 established, maintained, encouraged, allowed and/or ratified a
18 custom, practice or policy of: (i) targeting areas in the restroom
19 believed to be frequented by men who are perceived to be
20 interested in meeting, in public, men interested in non-monetary
21 intimate association with other men, for the purpose of harassing
22 these men and interfering with their rights of speech, privacy,
expression, association and equal protection; (ii) having police
officers approach men, undercover, who are perceived to be
interested in meeting, in public, men interested in non-monetary
intimate association with other men, for the purpose of
discussing, suggesting, or implying a willingness to engage in
sexual or other intimate activity; (iii) falsely arresting men who

1 interested in non-monetary intimate association with other men,
2 without warrants and with probable cause and accusing them of
3 engaging in criminal activity even though no criminal activity was
4 engaged in; (iv) treating individuals differently based on their
5 gender and/or perceived sexual orientation; (v) publicizing these
6 arrests in violation of these individuals' rights to privacy in an
7 attempt to deny them and other men their constitutionally
8 protected rights of freedom of speech, expression, association and
9 privacy; and (iv) failing to adequately train, supervise,
10 instruct, monitor, and discipline SAN LEANDRO Police Officers.

11 18. These defendants have established, maintained,
12 encouraged, allowed, and/or ratified the above custom, practice or
13 policy with the tacit understanding that it would promote the
14 unconstitutional and illegal goal of reducing the number of men
15 who are interested in meeting, in public, men interested in non-
16 monetary intimate association with other men from meeting one
17 another in public places at the SAN LEANDRO.

18 **Allegations Pertaining to Plaintiff STEVEN MENGEL**

19 19. Pursuant to the custom, practice or policy set forth
20 above, Plaintiff JOHN DOE was subjected to a course of conduct as
21 described below.

22 20. On June 12, 2012, Plaintiff MENGEL, in his sixties with
white hair, was parked on the street near Pescador Point, just
west of Monarch Bay Drive, near a restroom with a reputation as
being a place where men meet other men for intimate sexual
conduct.

21. He was approached by Defendant MATTHEW BARAJAS, in his

1 vehicle, acting as a decoy, pretending to be a person interested
2 in intimate sexual conduct.

3 22. He asked Defendant MENGEL if MENGEL was "Looking for
4 anything." This is a code expression to indicate an interest in
5 intimate conduct.

6 23. MENGEL replied, "Not right now."

7 24. BARAJAS then said he was new at this and asked if MENGEL
8 was "looking for anything later" to which MENGEL replied:
9 "Possibly."

10 25. BARAJAS then suggested noon of the following day to which
11 MENGEL said: That's fine."

12 26. The next day around noon, BARAJAS accompanied by
13 DEFENDANT DETECTIVE MORGAN met MENGEL at the same place as the
14 previous day. MENGEL was reading.

15 27. After a brief conversation, MENGEL agreed to give
16 BARAJAS and MORGAN a "Hand Job" which is a code word for manually
17 stimulating BARAJAS' penis.

18 28. The three entered the restroom with MORGAN acting as a
19 "lookout" to prevent others from entering the restroom, possibly
20 observing the conduct, and thereby being offended. At all times
21 MENGEL reasonably believed that his conduct would not offend
22 anyone present.

23 29. MENGEL and BARAJAS entered a toilet stall which did not
24 contain a door. MENGEL then reached for BARAJAS zipper but BARAJAS
25 pushed his hand away.

26 30. BARAJAS then said; You're sure you don't want any money
27 for this?"

28 31. At this point DEFENDANT MORGAN accompanied by SGT.

1 ANTHONY, and DETECTIVE CLIFFORD entered the restroom and arrested
2 MENGEL charging him with a violation of Penal Code section 647(d)
3 loitering around a toilet.

4 32. The arrest was false. At no time did Plaintiff loiter
5 with the specific intent to engage in any sort of lewd conduct,
6 nor did he solicit any act intending to perform it in a public
7 place where he knew or should have known that there were persons
8 present who were likely to be offended.

9 33. Plaintiff believes, and on the basis of that belief
10 alleges, that he was arrested because defendant Officer BARAJAS
11 and the others perceived him to be a man interested in meeting, in
12 public, other men interested in non-monetary intimate association
13 with other men.

14 33. Plaintiff further alleges that the SLPD never arrest men
15 by women decoy officers for non-monetary sexual conduct nor do
16 they arrest women by male decoy officers for non-monetary sexual
17 conduct.

18 34. As such, Plaintiff alleges that Defendants violated the
19 Equal Protection Clause of the 14th Amendment in that they
20 arrested him discriminatorily.

21 35. Defendant CHIEF SANDRA R. SPAGNOLI issued a press release
22 stating that he had been arrested for "loitering with intent" thus
publicizing Defendant's false arrest for the entire world to see.

36. On November 2, 2012 the Superior Court per the Hon. Kevin
Murphy dismissed all criminal charges against plaintiff pursuant
to a demurrer.

37. As a direct, proximate result of Plaintiff's false
arrest as alleged above, Plaintiff MENGEL has become mentally

1 embarrassment, and mental anguish. Plaintiff claims general
2 damages for such mental distress and aggravation in an amount to
3 be proved at trial.

4 38. Plaintiff now brings the instant complaint and demands a
5 jury trial.

6 **Allegations Pertaining to PLAINTIFF MICHAEL WOODY**

7 39. On June 12, 2012, Plaintiff MICHAEL WOODY drove to the
8 Marina Area of San Leandro and stopped to use a public restroom.

9 40. As he pulled into the parking area, a young man, Doe I,
10 made eye-to-eye contact with him. Plaintiff did not respond.

11 41. As Plaintiff WOODY approached the restroom, he observed
12 that Doe I was now standing at the entrance to the restroom.

13 42. Thinking that DOE I was waiting to use the bathroom,
14 Plaintiff MENGEL peered inside and observed the stall occupied by
15 two persons. One appeared to be helping the other who appeared to
16 be possibly handicapped.

17 43. Plaintiff decided to wait until the bathroom became clear
18 and so waited near the entrance near Doe I.

19 44. Doe I was very friendly asking Plaintiff MENGEL if he had
20 ever visited the restroom before. Plaintiff said, "Yes."

21 45. A few minutes later, the occupants of the restroom left.
22 Plaintiff then entered intending to use a stall for elimination.
However, when he observed that Doe I had followed him into the
bathroom, Plaintiff changed his mind and left.

46. Doe I followed him aggressively urging him to stay.
Plaintiff said he might return later. Doe I said he only had 20
minutes.

1 47. Plaintiff started his car as if to drive off. At this
2 point Doe I showed Plaintiff a police badge and stated he was under
3 arrest for a violation of Penal Code section 647(a), lewd conduct.

4 48. Plaintiff was issued a citation #SL622877 which ordered
5 him to appear in Superior Court on August 12, 2012.

6 49. Plaintiff retained counsel who appeared on that date. No
7 charges had been filed. The attorney made three more visits over
8 the next six months to check if charges would be filed. None were
9 filed.

10 50. Plaintiff believes that the District Attorney upon
11 reviewing the case decided that the arrest was false and refused to
12 file a complaint.

13 51. Nevertheless Defendant CHIEF SANDRA R. SPAGNOLI issued a
14 press release stating that Defendant WOODY had been arrested for
15 "loitering with intent," thus publicizing Defendant's false arrest
16 for the entire world to see.

17 52. The arrest was false. At no time did Plaintiff loiter
18 with the specific intent to engage in any sort of lewd conduct,
19 nor did he solicit any act intending to perform it in a public
20 place where he knew or should have known that there were persons
21 present who were likely to be offended.

22 53. Plaintiff believes, and on the basis of that belief
alleges, that he was arrested because defendant Officer BARAJAS
and the others perceived him to be a man interested in meeting, in
public, other men interested in non-monetary intimate association
with other men.

54. Plaintiff further alleges that the SLPD never arrest men
by women decoy officers for non-monetary sexual conduct nor do

1 they arrest women by male decoy officers for non-monetary sexual
2 conduct.

3 55. As such, Plaintiff alleges that Defendants violated the
4 Equal Protection Clause of the 14th Amendment in that they
5 arrested him discriminatorily.

6 56. As a direct, proximate result of Plaintiff's false
7 arrest as alleged above, Plaintiff WOODY has become mentally upset,
8 distressed and aggravated and suffered great humiliation,
9 embarrassment, and mental anguish. Plaintiff claims general
10 damages for such mental distress and aggravation in an amount to
11 be proved at trial.

12 57. Plaintiff now brings the instant complaint and demands a
13 jury trial.

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16 **CLAIMS FOR RELIEF**

17 **FIRST CAUSE OF ACTION**

18 42.U.S.C.1983

19 14th Amendment

20 58. One or more of the Defendants have violated Plaintiff's
21 right to equal protection of the laws under the Fourteenth
22 Amendment to the United States Constitution in that Defendants,
and each of them, only targeted men who were perceived to be
interested in meeting, in public, men who are interested in non-
monetary, intimate association with other men and ignored men who
are interested in meeting, in public, women who are interested in
non-monetary intimate association as held in *Baluyut V. Superior
Court*, (1996) 12 Cal. 4th 826.

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SECOND CAUSE OF ACTION

42.U.S.C.1983

1st Amendment

59. One or more of the Defendants have violated Plaintiff's right to freedom of speech, expression and association under the First Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

42.U.S.C.1983

4th, 14th Amendment

60. One or more of the Defendants have violated Plaintiff's right to be free of unreasonable search and seizure under the Fourth and Fourteenth Amendments to the United States Constitution.

61. One or more of the Defendants have unjustifiably deprived Plaintiff's of his liberty by unlawfully and maliciously arresting them without probable cause in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

FOURTH CAUSE OF ACTION, MONELL CLAIM

42.U.S.C.1983

Policy and Custom

62. The SAN LEANDRO POLICE and Chief SANDRA R. SPAGNOLI have, under color of law, violated Plaintiffs' rights, privileges and immunities secured by the United States Constitution in violation of Section 1983 of Title 42 of the United States Code.

63. The above described customs, practices and policies demonstrate a deliberate indifference on the part of the Defendants, and each of them, to the constitutional rights of persons within the City of SAN LEANDRO, and were the cause of the

1 64. During all relevant times, one or more of the Defendants,
2 and particularly Defendant Chief SPAGNOLI established, maintained,
3 encouraged, allowed and/or ratified a custom, practice or policy
4 of providing inadequate training, supervision, instruction,
5 oversight, and discipline to SAN LEANDRO police officers,
6 including those mentioned above, thereby failing to adequately
7 discourage constitutional violations and tacitly agreeing to
8 violate Plaintiffs' constitutional rights.

9 65. The above described customs, practices and policies
10 demonstrate a deliberate indifference on the part of Defendants,
11 and each of them, and particularly Defendant Chief SPAGNOLI, to
12 the constitutional rights of persons within the City of SAN
13 LEANDRO, and were the cause of the violations of Plaintiffs'
14 rights alleged herein.

15 66. Plaintiffs were unlawfully seized, arrested/detained by
16 Defendants without warrant or order or commitment or any other
17 legal authority of any kind as Plaintiff had not committed any
18 crime or public offence.

19 67. The conduct as alleged above is ongoing, creating the
20 likelihood of future injuries to Plaintiffs, and the Plaintiff
21 class.

22 68. Since Plaintiffs and the Plaintiff Class legally are
entitled to visit public areas where Defendant decoy officers
engage in the activities described above, they face imminent
danger of further arrest and harassment as alleged above.

 69. As a proximate result of the acts of Defendants, and each
of them, as herein alleged, Plaintiffs and members of the
plaintiff class was compelled to expend money all to their damage

1 the First, Fourth, and Fourteenth Amendments to the United States
2 Constitution.

3 B. Grant permanent injunctive relief enjoining Defendants
4 from targeting, harassing, and/or arresting men who are perceived
5 to be interested in meeting, in public, men interested in non-
6 monetary intimate association with other men;

7 C. Grant permanent injunctive relief enjoining Defendants
8 from enforcing laws in a discriminatory manner by targeting,
9 harassing, and/or arresting men because they are perceived to
10 desire, seek, and/or engage in non-monetary intimate association
11 with members of the same sex;

12 D. Award Plaintiffs and the Plaintiff Class reasonable
13 compensatory damages against Defendants, jointly and severally,
14 for violations of Federal Law as set forth above;

15 E. Award Plaintiffs their costs, expenses, and reasonable
16 attorney's fees pursuant to 42 U.S.C. § 1988;

17 F. And award such further relief as the court may deem just
18 and proper.

19 Dated: June 5, 2013

20 Bruce W. Nickerson
21 Attorney for the Plaintiff Class
22