

If you were exposed to gas or other chemical agents at the Trump Protest outside the Phoenix Convention Center on August 22, 2017, your rights may be affected and you may be entitled to receive money from a federal class action lawsuit.

A federal court approved this notice. This notice has been published to tell you about your rights. This is not an advertisement from a lawyer.

- There is a federal civil rights lawsuit in the District Court of Arizona against the City of Phoenix, the Phoenix Police Chief, and other members of the Phoenix Police Department (“the Defendants”).
- The Court has decided that this case can proceed as a class action. A class action is a lawsuit in which one or more people sue for themselves and for others who have similar claims.
- You are a part of this class action if you:
 1. Were in the Trump Protest area north of the Phoenix Convention Center which was designated as the “free-speech zone” (the area for anti-Trump protestors bounded to the south by Monroe Street, 2nd Street to the west, and 3rd Street to the east) on August 22, 2017; AND
 2. Did not throw objects or attempt to breach the “free-speech zone” barrier along Monroe Street; AND
 3. Were forced out of the “free-speech zone” onto adjacent streets between 8:25 pm and 10:00 pm by the Phoenix Police Department’s use of force or other unlawful police activity; AND
 4. Were exposed to gas, pepper spray, pepper bullets, or other chemical agents (as opposed to projectiles).
- The Court has not decided whether the Defendants did anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	Stay in this lawsuit. Wait for the outcome. Give up certain rights. By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or settlement. But, you give up any rights to sue the Defendants separately about the same legal claims in this case.
ASK TO BE EXCLUDED	Get out of this lawsuit. Get no benefits from it. Keep rights. If you ask to be excluded from this case, you won’t share in any money or benefits that may be awarded later. But, you keep any rights to sue the Defendants separately about the same legal claims in this case.

- Your options are explained in this notice. To ask to be excluded, you must act before **July 12, 2020**.
- The people who have brought this lawsuit must prove the claims in a trial. If any money is obtained from Defendants, you will be told how to ask for your share. If there is a proposed settlement, you will

UNITED STATES DISTRICT COURT: DISTRICT OF ARIZONA

receive separate notice. You will then have the opportunity to exclude yourself from the settlement, or be told how to participate in the settlement.

- **Questions? Read on. For more information about this case, go to bit.ly/puentenotice.**

PARA UNA NOTIFICACIÓN EN ESPAÑOL, VISITE bit.ly/puentenotice.

BASIC INFORMATION

1. Why did I get this notice?

You may have been exposed to gas or other chemical agents at the Trump Protest outside the Phoenix Convention Center on August 22, 2017 (“Trump Protest”) between 8:25 p.m. and 10:00 p.m. This notice explains that the Court has allowed or “certified” a class action lawsuit that may affect you. This notice explains your legal rights and options.

2. What is this lawsuit about?

The lawsuit alleges that the City of Phoenix, the Phoenix Police Chief, and other members of the Phoenix Police Department (“the Defendants”) violated the United States Constitution by shutting down the Trump Protest without warning, by using unlawful force, such as tear gas, pepper spray, pepper bullets, or other chemical agents against protestors.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” sue for themselves and for people who have similar claims. The people together are a “Class” or “Class Members.” The people who brought the case, and all the class members, are called “Plaintiffs.” The people or entities who have been sued are called “Defendants.”

This is a federal case. The case name is *Puente v. City of Phoenix*, Case Number 2:18-CV-02778. The Class Representatives in this case are three people named Janet Travis, Cynthia Guillen, Jacinta Gonzalez Goodman, and two organizations named Puente Arizona and Poder in Action. The court in charge of this case is the United States District Court for the District of Arizona. This Court will decide issues for everyone in the Class, except for those people who exclude themselves from the Class. The judge in charge of this case is the Honorable John J. Tuchi.

4. What are the claims in this lawsuit?

This case claims that the Defendants violated Plaintiffs’ constitutional rights to free speech and association, due process, equal protection, and freedom from excessive force by shutting down the Trump protest and using unlawful force against protestors.

5. How do the Defendants respond to those claims?

The Defendants deny that they violated the Constitution. They say the way they acted was legal because they were reasonably responding to criminal activity by certain protestors, including protestors who were attempting to breach a police barricade and were throwing gas canisters and other objects at officers.

6. Has the Court decided who is right?

No. The Court has not decided who is right. By establishing the Class and issuing this notice, the Court is not suggesting that the Plaintiffs will win or lose this case.

7. What are Plaintiffs asking for?

Plaintiffs are asking that money be paid to each Class Member to compensate them for damages they have because of the City of Phoenix's conduct. In addition, Plaintiffs ask the Court to order Defendants to (1) stop the constitutional violations alleged in the lawsuit and (2) put in place protections to make sure that these alleged constitutional violations do not happen again. Finally, Plaintiffs ask for attorneys' fees and the costs of bringing the case.

8. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether the Defendants did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will be obtained. If they are, you will be told how to ask for your share of the money or benefits.

WHO IS IN THE CLASS

You need to decide whether you are affected by this lawsuit.

9. Am I a part of the Class?

The Court has decided that you are a Class Member if you:

- Were at the Trump Protest on August 22, 2017 outside the Phoenix Convention Center in the "free-speech zone" (the area for Trump protestors bordered to the south by Monroe Street, 2nd Street to the west, and 3rd street to the east);
- Did not throw objects or try to cross the "free-speech zone" barrier along Monroe Street; AND
- Were forced out of the "free-speech zone" between 8:25 p.m. and 10:00 p.m. by the Phoenix Police Department's use of force or other unlawful police activity in response to the protestors; AND
- Were exposed to gas, pepper spray, pepper bullets, or other chemical agents (as opposed to projectiles).

10. I'm still not sure whether I am included.

If you are still not sure whether you are included, you can get free help by calling or writing to the lawyers in this case at (602) 773-6009 or ACLU Foundation of Arizona, 3707 North 7th Street, Suite 235, Phoenix, AZ 85014.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded before the trial, and you have to decide this now.

11. What happens if I do nothing at all?

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this

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lawsuit. By doing nothing, you are staying in the Class. If you stay in the Class and the Plaintiffs get money, through either trial or settlement, you will be told how to apply for your share of the money.

Keep in mind that, if you do nothing now, whether the Plaintiffs win or lose the trial, you will not be able to sue, or continue to sue, the Defendants separately about the issues described above. This means that, if you do nothing, you will be legally bound – win or lose – by all the final decisions in the case.

12. Why would I ask to be excluded from the lawsuit?

If you already have your own lawsuit against any of the Defendants alleging a violation of your rights based on the police's conduct at the Trump Protest, and you want to continue with it, you need to ask to be excluded from the Class. If you want to file your own lawsuit based on this conduct, you need to ask to be excluded from the Class. If you exclude yourself from the class (also known as "opting out" of the Class), you will not get any money or other benefits from this lawsuit. If you exclude yourself, you will not be legally bound by the Court's judgments in this case.

If you start your own lawsuit against any of the Defendants after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against any of the Defendants for claims based on the Trump Protest, you should talk to your own lawyer soon because your claims may be subject to a statute of limitations.

13. How do I ask the Court to exclude me from the lawsuit?

To ask to be excluded, you must send in an Exclusion Request. The Exclusion Request is a letter that says that you want to be excluded from *Puente v. City of Phoenix*. Be sure to include your name and address, and sign the letter. (If you previously used a different name, include any names you have used.) The Court will exclude from the class any Class Member who requests exclusion. You must mail your Exclusion Request postmarked by **July 12, 2020** to:

ACLU Foundation of Arizona
3707 North 7th Street, Suite 235
Phoenix, AZ 85014

United States District Court District of Arizona - Phoenix Division
Sandra Day O'Connor U.S. Courthouse, Suite 130
401 West Washington Street, SPC 1
Phoenix, AZ 85003-2118

Osborn Maledon, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793

Manning & Kass
Ellrod, Ramirez, Trester, LLP
3636 North Central Avenue, 11th Floor
Phoenix, Arizona 85012

UNITED STATES DISTRICT COURT: DISTRICT OF ARIZONA

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The Court has decided that the law firms ACLU Foundation of Arizona, Goodwin Procter, Hadsell Stormer Renick & Dai, Kaye McLane Bednarski & Litt, Mitchell Stein Carey Chapman, and Public Counsel are qualified to represent you and all Class Members in this case. These lawyers are called “Class Counsel.” They are experienced in handling similar cases. If you have questions about this case, you may call (602) 773-6009 to speak to one of the lawyers handling the case. More information about the lawyers’ experience is available at <https://www.acluaz.org/>, <https://www.goodwinlaw.com/>, <https://www.hadsellstormer.com/>, <https://www.kmblaw.com/>, <https://mscclaw.com/>, and <http://www.publiccounsel.org/>.

15. Should I get my own lawyer?

You do not need to hire your own lawyer because the lawyers representing the Class are working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer.

16. How will the lawyers be paid?

You will not have to pay any fees or expenses to the lawyers representing the Class. If the lawyers obtain money or benefits for the Class, they will ask the Court for fees and expenses. If the Court grants the lawyers’ request, or if the matter is settled, the fees and expenses will be paid by the Defendants, or out of a settlement fund approved by the Court.

THE TRIAL

17. How and when will the Court decide who is right in the case and whether money should be awarded?

If this case is not resolved by a settlement or otherwise, the lawyers representing the Class will have to prove the claims at trial. The trial has not yet been scheduled. You do not necessarily need to attend the trial; however, you or your own lawyer are welcome to come to the trial at your own expense.

GETTING MORE INFORMATION

18. How can I get more information?

To get more information, you may call or write to the lawyers representing the Class at (602) 773-6009 or ACLU Foundation of Arizona, 3707 North 7th Street, Suite 235, Phoenix, AZ 85014. You may also visit bit.ly/puentenotice. On the website you will find the Court’s Order certifying the Class, the Complaint that the Plaintiffs submitted, and the Answer that the Defendants submitted.

Si usted tuvo contacto con el gas o otras químicas que uso la policía en la protesta de Trump fuera del Centro de Convenciones de Phoenix el 22 de agosto del 2017, sus derechos pueden haber sido afectados y podría tener derecho a recibir dinero de una demanda colectiva federal.

Una Corte federal aprobó este aviso. Este aviso ha sido publicado para informarle sobre sus derechos. Este no es un anuncio de un abogado.

- Existe una demanda federal de derechos civiles en la Corte del Distrito de Arizona contra la Ciudad de Phoenix, el jefe de Policía de la ciudad de Phoenix y otros miembros del Departamento de Policía de Phoenix ("los Demandados").
- La Corte ha decidido que este caso puede proceder como una demanda colectiva. Una demanda colectiva es un caso en el que una o más personas demandan por sí mismas y por otras personas que tienen reclamos similares.
- Usted es parte de esta demanda colectiva si usted:
 1. Estaba en el área de la protesta de Trump al norte del Centro de Convenciones de Phoenix que fue designada como la "zona de libertad de expresión" (el área para los manifestantes anti-Trump designada al sur por Monroe Street, 2nd Street al oeste, y 3rd Street al este) el 22 de agosto, 2017; Y si
 2. No tiro objetos en intentó romper la barrera de la "zona de libertad" a lo largo de la calle Monroe; Y si
 3. Fue presionado a salir de la "zona de libertad de expresión," y forzado a las calles adyacentes entre las 8:25 pm y las 10:00 pm por el uso de la fuerza u otras acciones policiacas ilegal por parte del Departamento de Policía de Phoenix. Y
 4. Fue expuesto a gas, gas pimienta, balas de pimienta o otros productos químicos (además de estos proyectiles)
- La Corte no ha decidido si los Demandados hicieron algo mal. No hay dinero disponible en este momento, y no hay garantía de que habrá dinero en el futuro. Sin embargo, sus derechos legales están afectados, usted tiene la opción de hacer algo ahora:

SUS DERECHOS LEGALES Y OPCIONES EN ESTA DEMANDA	
NO TOME ACCION	Manténgase en esta demanda. Espere el resultado. Renuncie ciertos derechos. Al no hacer nada, mantiene la posibilidad de obtener dinero o beneficios que pueden provenir de un juicio o un acuerdo. Pero, renunciara a cualquier derecho a demandar los Demandados por su propia parte por el mismo reclamo en este caso.
PIDA SER EXCLUIDO	Salga de esta demanda. No obtenga beneficios de la demanda. Mantenga sus derechos. Si solicita ser excluido de este caso, no compartirá ningún dinero o beneficio que pueda ser ganado en el futuro. Sin embargo, usted tiene el derecho de demandar a los Demandados en su propia demanda por los mismos reclamos legales en este caso.

- Se le explican sus opciones en este aviso. Para solicitar ser excluido, debe actuar antes del **12 de julio de 2020**.
- Las personas que han presentado esta demanda deben comprobar los reclamos en un juicio. Si se obtiene dinero de los Demandados, se le dirá cómo solicitar su parte. Si hay posibilidad de resolver el caso llegando a un acuerdo con los Demandados, se le mandará una notificación nueva sobre el posible acuerdo. Usted tendrá la oportunidad de excluirse del acuerdo o se le indicará cómo podrá participar en el acuerdo.
- **¿Preguntas? Siga leyendo. Para obtener más información sobre este caso, visite el sitio de web: bit.ly/puentenotice.**

PARA UNA NOTIFICACIÓN EN ESPAÑOL, VISITE bit.ly/puentenotice.

INFORMACIÓN BÁSICA

1. ¿Por qué recibí este aviso?

Es posible que tuvo contacto con gas u otras químicas que uso la policía en la protesta de Trump fuera del Centro de Convenciones de Phoenix el 22 de agosto de 2017 ("Trump Protest") entre las 8:25 p.m. y las 10:00 p.m. Este aviso explica que la Corte ha permitido o "certificado" que este caso puede proceder como una demanda colectiva, y le notifica que puede verse afectado. Este aviso explica sus derechos y opciones legales.

2. ¿De qué se trata esta demanda?

La demanda alega que la ciudad de Phoenix, el jefe de policía de Phoenix y otros miembros del Departamento de Policía de Phoenix ("los demandados") violaron la Constitución de los Estados Unidos al usar fuerza ilegal para concluir la protesta de Trump sin algún aviso, usando gas lacrimógeno, gas pimienta, balas de pimienta u otros productos químicos contra los manifestantes.

3. ¿Qué es una demanda colectiva y a quién involucra?

En una demanda colectiva, una o más personas, a las cuales se denominan "Representantes de Clase" entablan una demanda en nombre propio y en nombre de personas que tienen reclamos semejantes. Las personas que juntas meten la demanda colectiva son una "Clase" o "Miembros de la Clase". Las personas que entablaron el caso, y todos los miembros de la clase, se denominan "Demandantes". Las personas o entidades que han sido demandadas se denominan "Demandados".

Este es un caso federal. El caso se conoce como *Puente v. City of Phoenix*, Case No. 2:18-CV-02778. Los Representantes de la Clase en este caso son tres personas llamadas Janet Travis, Cynthia Guillen, Jacinta González Goodman, y dos organizaciones llamadas Puente Arizona y Poder in Action. La Corte encargada de este caso es el Tribunal de Distrito de los Estados Unidos, Distrito de Arizona. Esta Corte emitirá un fallo que será obligatorio para todos los Miembros de la Clase, excepto para aquellas personas que pidan ser excluidos de la Clase. El juez encargado de este caso es el Honorable John J. Tuchi.

4. ¿Cuáles son las reclamaciones en esta demanda?

Este caso alega que los Demandados violaron los derechos constitucionales de los Demandantes a la libertad de expresión y asociación, al debido proceso, a la protección contra la discriminación, y el derecho contra el abuso policiaco, cuando usaron violencia contra los manifestantes para concluir la protesta de Trump.

5. ¿Cómo responden los Demandados a esas reclamaciones?

Los Demandados niegan que violaron la Constitución. Dicen que la forma en que actuaron era legal porque estaban respondiendo razonablemente a la actividad criminal de ciertos manifestantes, y manifestantes que intentaban violar una barricada policial y lanzaban botes de gas y otros objetos a los oficiales.

6. ¿Ha decidido la Corte quién tiene razón?

No. La Corte no ha decidido quién tiene razón. Al establecer que este caso procederá como acción colectiva con miembros de la Clase, y emitir esta notificación, la Corte no está sugiriendo que los Demandantes ganarán o perderán este caso.

7. ¿Qué piden los Demandantes?

Los Demandantes piden que se pague dinero a cada Miembro de la Clase para compensarlos por los daños y perjuicios sufridos debido a la conducta de la Ciudad de Phoenix. Además, los Demandantes piden a la Corte que ordene que los Demandados (1) dejen de cometer las violaciones constitucionales alegadas en la demanda y (2) pongan en función protecciones para asegurarse de que estas presuntas violaciones constitucionales no vuelvan a ocurrir. Por último, los Demandantes piden honorarios de abogados y los costos de presentar el caso.

8. ¿Hay dinero disponible ahora?

No hay dinero ni beneficios disponibles ahora porque la Corte aún no ha decidido si los Demandados hicieron algo mal, y los dos lados no han resuelto el caso. No hay garantía de que se obtenga dinero o beneficios. Y si hay, se le notificará cómo solicitar su parte del dinero o beneficios.

¿QUIÉN ESTÁ EN LA CLASE?

Usted debe decidir si usted está afectado por esta demanda.

9. ¿Soy parte de la Clase?

La Corte ha decidido que usted es un Miembro de la Clase si:

- Asistió a la protesta de Trump el 22 de agosto de 2017 fuera del Centro de Convenciones de Phoenix en la "zona de libertad de expresión" (el área para los manifestantes contra Trump bordeada al sur por Monroe Street, 2nd Street al oeste y 3a calle al este); Y
- No tiro objetos ni trató de cruzar la barrera de la "zona de libertad" y al lado de Monroe Street; Y

- Fueron forzados a salir la "zona de libertad de expresión" entre las 8:25 p.m. y las 10:00 p.m. por el uso de la fuerza por parte del Departamento de Policía de Phoenix u otra actividad policial ilegal en respuesta a los manifestantes; Y
- Tuvo contacto con el gas, gas pimienta, balas de pimienta u otros productos químicos (además de los proyectiles).

10. Todavía no estoy seguro si soy Miembro de la Clase.

Si todavía no está seguro si es Miembro de la Clase, puede obtener ayuda gratuita llamando o escribiendo a los abogados en este caso al (602) 773-6009 o ACLU Foundation of Arizona, 3707 North 7th Street, Suite 235, Phoenix, AZ 85014.

SUS DERECHOS Y OPCIONES

Usted tiene que decidir si permanecerá en la clase o pedirá ser excluido antes del juicio. Usted tiene que decidir esto ahora.

11. ¿Qué pasa si no hago nada?

Usted no tiene que hacer nada ahora si desea mantener la posibilidad de obtener dinero o beneficios de esta demanda. Al no hacer nada, se queda en la clase. Si usted permanece en la Clase y los Demandantes reciben dinero, ya sea a través de un juicio o acuerdo, se le avisará cómo solicitar su parte del dinero.

Tenga en cuenta que, si no hace nada ahora, es posible que los Demandantes ganen o pierdan el juicio, y usted no podrá demandar o continuar demandando a los Demandados en su propia demanda sobre los reclamos involucrados en este caso. Esto significa que, si no hace nada, estará legalmente obligado – si se gana o pierde el caso - por todas las decisiones finales del caso.

12. ¿Por qué pediría que me excluyan de la demanda?

Si ya tiene su propia demanda contra cualquiera de los Demandados alegando una violación de sus derechos debido en la conducta de la policía en la Protesta de Trump, y desea continuar con ella, debe pedir ser excluido de la Clase. Si desea presentar su propia demanda debido a esta conducta, debe solicitar ser excluido de la Clase. Si usted se excluye de la clase (también conocido como "opting out" de la Clase), no obtendrá ningún dinero u otros beneficios de esta demanda. Si se excluye, no estará legalmente obligado por los juicios de esta Corte en este caso.

Si inicia su propia demanda contra cualquiera de los Demandados después de excluirse, tendrá que contratar y pagar a su propio abogado para esa demanda, y tendrá que comprobar sus reclamos. Si usted se excluye para comenzar o continuar su propia demanda contra cualquiera de los Demandados por reclamos debido en la Protesta de Trump, usted debe hablar con su propio abogado lo más pronto posible porque sus reclamos pueden estar sujetos a una estatua de limitaciones.

13. ¿Cómo pido a la Corte que me excluya de la demanda?

Para solicitar ser excluido, debe enviar una Solicitud de Exclusión. La Solicitud de Exclusión es una carta que dice que desea ser excluido de *Puente v. City de Phoenix*. Asegúrese de incluir su nombre y dirección, y firme la carta. (Si anteriormente usó un nombre diferente, incluya todos los nombres que haya utilizado.) La Corte excluirá de la clase a cualquier Miembro del Grupo que solicite la exclusión. Debe enviar su solicitud de exclusión que incluye una estampilla con la fecha antes del **12 de julio de 2020** a:

ACLU Foundation of Arizona
3707 North 7th Street, Suite 235
Phoenix, AZ 85014

United States District Court District of Arizona - Phoenix Division
Sandra Day O'Connor U.S. Courthouse, Suite 130
401 West Washington Street, SPC 1
Phoenix, AZ 85003-2118

Osborn Maledon, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793

Manning & Kass
Ellrod, Ramirez, Trester, LLP
3636 North Central Avenue, 11th Floor
Phoenix, Arizona 85012

LOS ABOGADOS QUE TE REPRESENTAN

14. ¿Tengo un abogado en este caso?

La Corte ha decidido que los bufetes de abogados ACLU Foundation of Arizona, Goodwin Procter, Hadsell Stormer Renick & Dai, Kaye McLane Bednarski & Litt, Mitchell Stein Carey Chapman y Public Counsel están calificados para representarlo a usted y a todos los miembros de la clase en este caso. Estos abogados se llaman "Abogados de Clase". Tienen experiencia en el manejo de casos similares. Si tiene preguntas sobre este caso, puede llamar al (602) 773-6009 para hablar con uno de los abogados que manejan el caso. Más información sobre la experiencia de los abogados está disponible en <https://www.acluaz.org/>, <https://www.goodwinlaw.com/>, <https://www.hadsellstormer.com/>, <https://www.kmblaw.com/>, <https://mscclaw.com/>, y <http://www.publiccounsel.org/>.

15. ¿Debo conseguir mi propio abogado?

No es necesario conseguir su propio abogado porque los abogados que representan a la Clase están trabajando en su nombre. Pero, si quiere su propio abogado, tendrá que pagar ese abogado.

16. ¿Cómo se pagará a los abogados?

Usted no tendrá que pagar ningún cargo o gasto a los abogados que representan a la Clase. Si los abogados obtienen dinero o beneficios para la Clase, los abogados pedirán a la Corte que les pague los honorarios y gastos. Si la Corte concede la solicitud de los abogados, o si el asunto se resuelve con un acuerdo, los honorarios y gastos serán pagados por los Demandados, o de un fondo de liquidación aprobado por la Corte.

EL JUICIO

17. ¿Cómo y cuándo decidirá la Corte quién tiene razón en el caso y si se debe conceder dinero?

Si este caso no se resuelve mediante un acuerdo o de otra manera, los abogados que representan a la Clase tendrán que someter pruebas de las alegaciones en un juicio. El juicio aún no ha sido programado. No es necesario que asista al juicio; sin embargo, usted o su propio abogado son bienvenidos a venir al juicio a su propio costo.

OBTENER MAS INFORMACION

18. ¿Cómo puedo obtener más información?

Para obtener más información, puede llamar o escribir a los abogados que representan a la Clase al (602) 773-6009 o ACLU Foundation of Arizona, 3707 North 7th Street, Suite 235, Phoenix, AZ 85014. También puede visitar bit.ly/puentenotice. En el sitio web encontrará la Orden de la Corte que certifica la Clase, la Queja que los Demandantes presentaron y la Respuesta que los Demandados presentaron.

COMPLAINT

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10 Attorneys for Plaintiffs

11 [Additional counsel cont. on next page]

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Puente, an Arizona nonprofit corporation;
15 Poder in Action, an Arizona nonprofit
corporation; Ira Yedlin; Janet Travis;
16 Cynthia Guillen; Jacinta Gonzalez
Goodman, individually and as class
17 representatives,

18 Plaintiffs,

19 v.

20 City of Phoenix, a municipal corporation;
Jeri L. Williams; Benjamin Moore; Douglas
21 McBride; Robert Scott; Christopher
Turiano; Glenn Neville; John Sticca; Lane
22 White; Jeffrey Howell; George Herr,
23 individually and in their official capacities;
and Does 1-20.

24 Defendants.

Case No.:

**CLASS ACTION FOR DAMAGES,
INJUNCTIVE AND DECLARATORY
RELIEF; DEMAND FOR JURY**

1. **EXCESSIVE FORCE (42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENTS)**
2. **FREEDOM OF SPEECH AND ASSOCIATION (42 U.S.C. § 1983 FIRST AND FOURTEENTH AMEDMENTS)**
3. **DUE PROCESS (42 U.S.C. § 1983 FOURTEENTH AMENDMENT)**
4. **EQUAL PROTECTION (42 U.S.C. § 1983 FIRST AND FOURTEENTH AMENDMENTS)**

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1 [Additional counsel cont. from first page]

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16 * *Pro hac vice* application pending

17 Attorneys for Plaintiffs
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19
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21
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INTRODUCTION

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2 1. This is a class action to enforce Plaintiffs’ fundamental constitutional
3 rights of speech and association, and to be free from excessive police force and from
4 discrimination and harm by law enforcement based on the content of their speech. On
5 the night of August 22, 2017, a force of close to 900 officers of the Phoenix Police
6 Department (“PPD”) conducted an unannounced attack on Plaintiffs and hundreds of
7 others who had gathered outside the Phoenix Convention Center to protest in
8 connection with a speech by President Trump; the goal of this assembly was to
9 demonstrate strong disagreement with President Trump’s and his supporters’ racist
10 and anti-immigrant policies and views. Defendants knew that most, if not all, of those
11 the police attacked were acting in a peaceable manner, but disregarded the well-being
12 of these anti-Trump protestors as well as well-established constitutional mandates and
13 police policies. PPD personnel indiscriminately fired harmful pepper spray, gas,
14 pepper bullets, and flash-bang cannisters into the assembled crowd, which included
15 children, elderly people, disabled people, and pregnant women. The failure of the
16 Phoenix Police to warn the peaceably assembled crowd of the coming attack, as is
17 required by the Constitution, and to provide for a safe dispersal route for the protesters
18 to avoid the police onslaught, guaranteed the ensuing widespread panic and fear
19 amongst those assembled and resulted in physical and emotional injuries, as well as
20 constitutional violations.

21 2. Defendant Chief of Phoenix Police Jeri L. Williams predictably had
22 fulsome praise for the Phoenix Police personnel at the scene of the attack on the
23 assembled crowd; as then-Mayor Greg Stanton stood by, she wholeheartedly endorsed
24 and ratified the actions taken by Phoenix Police officers. City Manager Ed Zuercher
25 also praised the police for their conduct at the gathering. Despite a significant increase
26 in the Phoenix Police Department’s use-of-force incidents against civilians, including
27 the events of August 22, 2017, and many other police-on-civilian shootings, City
28 officials, including the Police Chief, the Mayor, the City Manager, and the City

1 Council members have failed to condemn this police violence and to take any
2 meaningful steps to stop it, reduce it, or address the trauma that police violence causes
3 to individuals, families, and communities in the City of Phoenix. To date in 2018, there
4 have been thirty-seven officer-involved shootings by the Phoenix Police resulting in
5 eighteen deaths (plus another death by taser), more than during the entire year of 2017.

6 3. This action seeks injunctive relief to restrain the Phoenix Police
7 Department's use of excessive force against civilians and to prohibit future disruptions
8 of the peaceable exercise of First Amendment rights. Absent the Court's intervention,
9 those who wish to gather and speak will continue to experience understandable fear of
10 police retaliation when participating in protests, demonstrations, and marches,
11 particularly when expressing anti-Trump views. This action also seeks damages to
12 compensate Plaintiffs and the class they represent for the denial of their First
13 Amendment rights on August 22, 2017, and for the physical injuries and emotional
14 harms resulting from the Phoenix Police Department's excessive use of force.

15 **JURISDICTION AND VENUE**

16 4. This action arises under 42 U.S.C. § 1983 and the laws and
17 Constitution of the United States. Jurisdiction lies under 28 U.S.C. §§ 1331, 1343, and
18 1367. The Court has jurisdiction to issue declaratory and/or injunctive relief pursuant
19 to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57. The Court has
20 authority to award attorneys' fees under 42 U.S.C. § 1988(b).

21 5. Venue properly lies within this District under 28 U.S.C. § 1391(b). The
22 Defendants are all public officials or other employees or agents of the City of Phoenix,
23 as well as the City itself. Each of the Defendants resides within this District and/or
24 performs official duties within the State of Arizona. This Court, accordingly, has
25 personal jurisdiction over each of the Defendants.

26 6. The named Defendants perform their official duties in this District, and
27 a substantial part of the events or omissions giving rise to Plaintiffs' claims have
28 occurred or will occur in this District.

PARTIES

Organizational Plaintiffs: Injunctive Class Representatives and Damages Plaintiffs

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3 7. Plaintiff Puente is a grassroots nonprofit membership organization
4 based in Phoenix, Arizona. Puente’s mission is to develop, educate, and empower
5 migrant communities through lobbying, advocacy, and activism. Puente provides free
6 English classes, media trainings, know-your-rights workshops, health and wellness
7 trainings, educational programs for children, and other services. As part of their efforts
8 to support migrant communities, Puente members frequently organize and participate
9 in community events and demonstrations in Phoenix. Puente members believe that the
10 Phoenix Police Department’s continued unlawful use of force against organizers and
11 protesters will deter and dissuade members and the public from participating in Puente
12 and community organized Phoenix demonstrations in the future. Members and
13 supporters of Puente have been chilled from participating in political expressive
14 activities by the PPD’s improper, excessive, and unconstitutional uses of force. Puente
15 expended significant time and resources to organize and participate in the protest on
16 August 22, 2017, to convey the message that the racist and anti-immigrant policies of
17 the Trump administration must end; Defendants’ actions stopped this message from
18 reaching its intended audience. Puente members and supporters believe that they will
19 be targeted for violent PPD retaliation if they attend future demonstrations, especially
20 when espousing anti-Trump messages. Puente also suffered out-of-pocket damages as
21 a result of the PPD’s unlawful actions on August 22, 2017, including for lost equipment
22 employed at demonstrations and other events. Members were violently denied their
23 rights to speech and association.

24 8. Plaintiff Poder in Action (“Poder”) (formerly the Center for
25 Neighborhood Leadership) is a grassroots nonprofit organization based in Phoenix,
26 Arizona. Poder’s mission is to build power with people impacted by injustice through
27 leadership development, civic engagement, and policy advocacy. Poder’s work
28 includes advocacy on immigration, education, and police brutality. Poder regularly

1 organizes and participates in protests and political expressive activities in Phoenix to
2 raise awareness on issues impacting black, brown, and migrant communities, including
3 police violence. Poder representatives believe that the PPD's continued unlawful use of
4 force against organizers and protesters will deter and dissuade their supporters and the
5 public from participating in such Phoenix protests in the future. Members and
6 supporters of Poder are chilled from participating in political expressive activities by
7 the PPD's demonstrated improper, excessive, and unconstitutional uses of force against
8 protesters. Poder expended significant time and resources to organize and participate in
9 the protest on August 22, 2017, to convey the message that the racist and anti-immigrant
10 policies of the Trump administration must end. Defendants' actions stopped this
11 message from reaching its intended audience, which included President Trump and his
12 supporters.

13 ***Injunctive and Damages Class Representatives***

14 9. Plaintiff Janet Travis is, and was at all relevant times, a resident of
15 downtown Phoenix. Ms. Travis attended the protest to witness first-hand and join the
16 opposition to Trump, to document the protest, and to express her own views critical of
17 Trump's policies to Trump supporters. PPD gassed Ms. Travis causing her to inhale
18 pepper spray, and brutally shot her multiple times with unidentified projectiles in the
19 upper back, lower back and buttocks, causing her injuries and emotional trauma so
20 severe she could not continue her expressive activities and had to seek medical
21 attention. Ms. Travis wants to continue to be active in political rallies and protests in
22 her community, but is concerned that the PPD will continue to target peaceful
23 protesters. Ms. Travis is chilled from participating in future protests and politically
24 expressive activities in Phoenix without significant reform to the Phoenix Police
25 Department's policies, practices ,and procedures concerning the use of force against
26 peaceful protesters and protecting speech and associational rights.

27 10. Plaintiff Ira Yedlin is a resident of Bisbee, Arizona, and a strong critic
28 of President Trump's politics, policies, and leadership. Mr. Yedlin has attended

1 numerous protests since the Vietnam War and considers it his civic duty to participate
2 in protests when he disagrees with government action. Mr. Yedlin and his wife attended
3 the August 22, 2017 protest in Phoenix to express to Trump and his supporters their
4 dissatisfaction with how President Trump governs the country. PPD gassed Mr. Yedlin
5 causing him to inhale pepper spray, and violently shot him multiple times with
6 unidentified projectiles in the face, upper torso, and leg area. PPD injured Mr. Yedlin's
7 face so severely that he could not continue to protest and had to seek treatment for his
8 injuries in a hospital emergency room. Mr. Yedlin desires to continue to be active in
9 political rallies and protests in Phoenix, but believes that the PPD will continue to target
10 peaceful protesters. Mr. Yedlin is chilled from participating in future protests and
11 politically expressive activities in Phoenix without significant reform to the Phoenix
12 Police Department's policies, practices, and procedures concerning the use of force
13 against peaceful protesters and protecting speech and associational rights.

14 11. Plaintiff Cynthia Guillen is a resident of Mesa, Arizona, and an active
15 participant in demonstrations in the Phoenix metropolitan area. Ms. Guillen participated
16 in the demonstration against President Trump on August 22, 2017, to make her
17 objections to this policies to his supporters. PPD gassed Ms. Guillen causing her to
18 inhale pepper spray, and senselessly shot her in the lower stomach and hip with
19 unidentified projectiles. The impact of PPD's projectiles caused Ms. Guillen external
20 and internal injuries that required her to leave the protest and seek medical attention;
21 she has had ongoing medical treatment. Ms. Guillen is chilled from participating in
22 future protests and politically expressive activities in Phoenix without significant
23 reform to the Phoenix Police Department's policies, practices, and procedures
24 concerning the use of force against peaceful protesters and protecting speech and
25 associational rights.

26 12. Plaintiff Jacinta Gonzalez Goodman is a resident of Phoenix, Arizona,
27 and a long-time activist and organizer. Ms. Gonzalez Goodman volunteers with Puente
28 and works with Mijente, a national civil rights organization focused on building

1 leadership and social change in the Latinx community. Ms. Gonzalez Goodman
2 participated in the demonstration against President Trump on August 22, 2017, to
3 express her disagreement with the President and his supporters' vision for the country,
4 to peacefully show solidarity with her community, and to demonstrate to Trump and
5 his supporters the intense public opposition to the President's policies and goals. Ms.
6 Gonzalez Goodman participated in the planning of the protest, and during the protest
7 served as a liaison between the protesters and PPD. PPD gassed Ms. Gonzalez
8 Goodman, causing her to inhale pepper spray, which caused injuries to her lungs and
9 eyes that lingered for a day, and forced Ms. Gonzalez Goodman to leave the protest
10 before she could deliver her message to her intended audience. Ms. Gonzalez Goodman
11 is chilled from participating in future protests and politically expressive activities in
12 Phoenix without significant reform to the Phoenix Police Department's policies,
13 practices, and procedures concerning the use of force against peaceful protesters and
14 protecting speech and associational rights.

15 *Defendants*

16 13. Defendant City of Phoenix is a municipal corporation, organized and
17 existing under the laws of the State of Arizona. The Phoenix Police Department is an
18 agency of the City of Phoenix, and all actions of the PPD are the legal responsibility of
19 the City.

20 14. Defendant Jeri L. Williams is, and was at all relevant times, the Chief
21 of Police for the City of Phoenix. As such, Chief Williams is the final policy maker for
22 the City of Phoenix in the area of law enforcement and in setting and implementing the
23 policies and practices of the PPD including but not limited to the development,
24 implementation, and the training of PPD personnel in these and all PPD areas, including
25 the procedures, policies, regulations, and practices related to the proper use of force and
26 the need for prior warnings, in response to political protests, and public demonstrations,
27 and marches. At all relevant times, Chief Williams was responsible for the development
28 of policies concerning protests and the protection of participants' basic rights of speech

1 and association, for making these policies known to all PPD personnel, and for ensuring
2 that all members of the PPD were adequately and consistently trained in their meaning
3 and implementation, as well as in all relevant constitutional requirements and police
4 best practices. Chief Williams was responsible for the training and preparation of PPD
5 personnel with respect to the events of August 22, 2017, and she approved and/or
6 ratified the PPD's plans for that event including the unconstitutional acts complained
7 of herein. As set out below, Chief Williams failed to establish sufficient guidelines and
8 regulations governing the PPD in the situation presented on August 22, 2017, and did
9 not ensure adequate training before the event, or properly supervise and monitor the
10 actions of PPD personnel during the protest. As set out below, after becoming aware of
11 the events and the actions of PPD on the scene, Chief Williams praised the members of
12 the PPD with then-Mayor Stanton by her side, and fully ratified the actions of PPD
13 personnel. City Manager Ed Zuercher also praised and ratified the PPD's decisions and
14 actions complained of herein. Chief Williams is sued in her official and individual
15 capacity.

16 15. Defendant Benjamin Moore is a Lieutenant with the PPD. On August
17 22, 2017, he was designated as the "Alpha Leader" and "Field Force Commander" in
18 charge of all PPD units working the night of the Trump rally and protest. Lt. Moore
19 gave the initial improper orders for PPD officers to use force against anti-Trump
20 protestors that resulted in indiscriminate attacks against hundreds of peaceable
21 protestors without warnings and before any unlawful assembly had been declared.
22 Plaintiffs sue Lt. Moore in his official and individual capacity.

23 16. Defendant Douglas McBride is a Sergeant with the PPD. On August
24 22, 2017, he was assigned as the "Grenadier Team Leader" for the Trump rally and
25 protest. According to PPD, grenadiers are "specialty trained officers on deployment of
26 chemical munitions." Plaintiffs sue Sgt. McBride in his official and individual capacity.

27 17. Defendant Robert Scott is an officer with the PPD who was assigned
28 to the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth herein,

1 Officer Scott indiscriminately fired on and injured Plaintiffs without warning. Plaintiffs
2 sue Officer Scott in his official and individual capacity.

3 18. Defendant Christopher Turiano is an officer with the PPD who was
4 assigned to the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth
5 herein, Officer Turiano indiscriminately shot and injured Plaintiffs without warning.
6 Plaintiffs sue Officer Turiano in his official and individual capacity.

7 19. Defendant Glenn Neville is an officer with the PPD who was assigned
8 to the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth herein,
9 Officer Neville indiscriminately shot and injured Plaintiffs without warning. Plaintiffs
10 sue Officer Glenn in his official and individual capacity.

11 20. Defendant John Sticca is an officer with the PPD who was assigned to
12 the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth herein,
13 Officer Sticca indiscriminately shot and injured Plaintiffs without warning. Plaintiffs
14 sue Officer Sticca in his official and individual capacity.

15 21. Defendant Lane White is an officer with the PPD who was assigned to
16 the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth herein,
17 Officer White indiscriminately shot and injured Plaintiffs without warning. Plaintiffs
18 sue Officer White in his official and individual capacity.

19 22. Defendant Jeffrey Howell is an officer with the PPD who was assigned
20 to the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth herein,
21 Officer Howell indiscriminately shot and injured Plaintiffs without warning. Plaintiffs
22 sue Officer Howell in his official and individual capacity.

23 23. Defendant George Herr is an officer with the PPD who was assigned
24 to the PPD's Tactical Response Unit as one of the "Grenadiers." As set forth herein,
25 Officer Herr indiscriminately shot and injured Plaintiffs without warning. Plaintiffs sue
26 Officer Herr in his official and individual capacity.

27 24. Plaintiffs are ignorant of the true names and/or capacities of
28 Defendants sued herein as Does 1 through 20, inclusive, and therefore sue said

1 Defendants by such fictitious names. Plaintiffs will amend this complaint to allege their
2 true names and capacities when ascertained. Plaintiffs are informed and believe, and
3 upon such information and belief allege, that each of the Doe Defendants is legally
4 responsible and liable for the incident, injuries, and damages hereinafter set forth, and
5 that each of said Defendants proximately caused said incidents, injuries, and damages
6 by reason of their failure to supervise, train, manage, or control staff, violation of
7 constitutional rights, violation of public policy, or based on agency, employment,
8 ownership, entrustment, custody, care, or control, or upon any other act or omission.
9 Plaintiffs will seek leave to amend this complaint to insert further charging allegations
10 when such facts are ascertained.

11 25. Each of the above individual Defendants participated in and has
12 responsibility for the unlawful conduct and resulting injuries to Plaintiffs and putative
13 damages class members described herein, by, among other things, personally
14 participating in the unlawful conduct, or acting jointly or conspiring with others who
15 did so; authorizing, acquiescing in, or setting in motion policies, plans, or actions that
16 led to the unlawful conduct; failing to take action to prevent the unlawful conduct;
17 failing and refusing, with deliberate indifference to Plaintiffs' rights, to initiate and
18 maintain adequate training and supervision; and ratifying the unlawful conduct that
19 occurred by agents and officers under their direction and control, including failing to
20 take remedial or disciplinary action.

21 26. In doing the acts alleged herein, Defendants, and each of them, acted
22 within the course and scope of their employment for the City of Phoenix.

23 27. In doing the acts and/or omissions alleged herein, Defendants, and
24 each of them, acted under color of authority and/or under color of law. In doing the acts
25 and/or omissions alleged herein, Defendants, and each of them, acted as the agent,
26 servant, employee, and/or in concert with each of said other Defendants herein.

1 PPD liaisons communicated with organizers about the details of the planned
2 demonstrations. Puente and Poder also met, and otherwise communicated with PPD
3 liaisons to discuss logistics for the demonstration to ensure that all who gathered would
4 be able to safely exercise their free-speech and assembly rights, and make their
5 opposition to Trump's actions known to his supporters. Puente, Poder, and other
6 organizations exchanged phone calls, emails, and text messages with the PPD and other
7 City representatives leading up to the demonstration. The ACLU of Arizona also
8 reached out to representatives of the City of Phoenix and PPD to request that the City
9 and the PPD put in place measures to prevent the devastation that befell protestors in
10 Charlottesville and ensure that all could exercise their speech rights safely. City and
11 PPD representatives assured the ACLU of Arizona that the PPD was prepared and was
12 much more experienced in managing crowds and large demonstrations than the police
13 in Charlottesville.

14 31. During the planning communications, PPD made it clear to Puente,
15 Poder, and other organizers that anti-Trump protesters would be relegated to
16 assembling in an outdoor but confined space in the downtown area which it
17 euphemistically called the "free-speech zone." PPD defined this area as follows: its
18 southern boundary was Monroe Street, between Second and Third Streets, in front of
19 the Herberger Theater, directly north of the Convention Center's northern entrance. The
20 northern boundary of the "free-speech zone" was marked by a barrier which stretched,
21 in part, across Third Street between Monroe and Van Buren Streets. PPD restricted anti-
22 Trump protesters to assembling, chanting, and holding signs in this zone, north of
23 Monroe Street and south of the barrier. The streets and sidewalks of downtown Phoenix
24 slated for use by anti-Trump protesters were traditional public fora regularly used by
25 demonstrators for expressive events and activities.

26 32. Puente and Poder shared with PPD that, based just on responses on
27 social media, their groups alone expected upwards of 500 protestors including children
28 and persons with disabilities, and that total attendance would far exceed that. Puente

1 and Poder organized a staging and fallback area for demonstrators at the Civic Space
2 Park, two blocks north and three blocks west of the main protest area. They
3 communicated to PPD that volunteers would begin gathering at the Civic Space Park
4 by 1 P.M. or earlier and that demonstrators would arrive at the Civic Space Park by 3
5 P.M. or earlier. Puente and Poder expected that the demonstration would continue
6 through the time that Trump's rally ended and he and his supporters exited the
7 Convention Center, so that protesters could reach the intended audience and express
8 their views to Trump and his supporters. PPD was aware of proposed protest plans.

9
10 ***PPD Used Excessive Force to Unlawfully Disperse Anti-Trump Protestors in
Violation of the Fourth Amendment***

11 33. PPD officers were present from the beginning of the demonstration.
12 As early as 2:30 P.M., despite the absence of any indication of violence, PPD officers
13 obscured their identities by face shields and vests and other equipment covering their
14 badges. Many officers had weapons drawn despite the peaceful and lawful assembly as
15 anti-Trump protesters convened throughout the afternoon, and later waited for the
16 speech to end and the many Trump supporters to leave the Convention Center and travel
17 close enough to hear the protesters' chants and see their many anti-Trump signs.

18 34. PPD officers, including "grenadiers," were equipped with several
19 types of chemical and projectile weapons including:

20 a. Pepper bullets;

21 b. 40 mm foam impact rounds, which travel at speeds of 89 miles per
22 hour and contained "CS" (irritant) powder and cayenne pepper to deliver both
23 blunt trauma and the effects of an irritant powder;

24 c. Flash-bang grenades, which are devices that produce loud explosive
25 noises and bright flashes of light;

26 d. Smoke grenades, which are explosive devices that release smoke;

27 e. "Stingers," which are explosive devices that release smoke, rubber,
28 pellets, and a chemical irritant within a radius of approximately 50 feet; and

1 f. Canisters containing “CS,” or tear gas.

2 The manufacturers’ specifications describe these munitions as designed to incapacitate
3 subjects, and to inflict pain to compel compliance. Despite PPD’s presence, including
4 many officers in riot gear with weapons powerful enough to incapacitate and cause
5 serious and lethal injuries, anti-Trump protestors remained peaceful throughout the day.

6 35. On information and belief, Trump’s presence meant that PPD
7 coordinated regarding plans for crowd control with officers from the Secret Service and
8 other federal agencies.

9 36. Officers from many other law enforcement agencies in Arizona were
10 also present to provide support and assistance during the demonstrations. Among those
11 forces present were representatives of federal agencies and mounted police from the
12 Tempe and Scottsdale police departments, with experience and expertise in dispersing
13 large crowds. The PPD had the primary crowd-control role throughout the
14 demonstration, and made the decision to use the incapacitating weaponry
15 indiscriminately against hundreds of peaceably assembled anti-Trump protestors
16 without warning.

17 37. President Trump arrived at the Convention Center at approximately
18 6:32 P.M.

19 38. Without provocation, at approximately 7:00 P.M., PPD officers in riot
20 gear formed a line (“Police Line”) on Monroe Street in the “safety zone” in front of
21 anti-Trump protestors who assembled during the afternoon directly across from the
22 north entrance of the Convention Center. Anti-Trump protestors were awaiting the end
23 of Trump’s rally inside the Convention Center, and his and his supporters’ exit from
24 the building.

25 39. Despite there being no provocation or dangerous acts by anti-Trump
26 protestors, at approximately 7:03 P.M. and 7:13 P.M., the PPD increased its already
27
28

1 forceful presence in that area as several additional police units arrived to join the
 2 growing Police Line on Monroe Street.



14 40. Without any precipitating conduct by the anti-Trump protestors, at
 15 7:19 P.M., the Police Line of officers (all wearing helmets and masks obscuring their
 16 faces and badges), took several steps forward in a northern direction, in unison, towards
 17 the anti-Trump protestors. Ex. 1.

18 41. On information and belief, PPD removed its officers stationed in the
 19 designated “free-speech zone” nearby the anti-Trump protestors at approximately 8:20
 20 P.M., without explanation or notice to protest organizers, including the Puente and
 21 Poder contacts who had previously been in communication with some of those officers.

22 42. As the Trump rally inside the Convention Center was ending, several
 23 dozens of officers filed out of the Convention Center in riot gear heading west towards
 24 Second Street to join the Police Line. By 8:29 P.M., the number of PPD officers in the
 25 Police Line forcefully confronting anti-Trump protestors had grown significantly. The
 26 only attempted excuse for this increased show of force was that a few individuals had
 27 thrown plastic water bottles; none of the officers were injured.
 28

1 43. PPD did not attempt to identify or separate from the gatherings of anti-
2 Trump protesters any individuals they considered to be problematic or possibly engaged
3 in improper conduct. As later events revealed, PPD instead opted for a “let’s fire on all”
4 tactic that endangered the rights and well-being of hundreds of peaceable persons,
5 including children and the elderly; PPD personnel were apparently trained in the tactic
6 of firing on all in a crowd as the best method for shaking out one or two persons of
7 concern, if even present at all.

8 44. At approximately 8:30 P.M., Trump and other federal officials began
9 exiting the Convention Center. After hours of assembling and gathering in Phoenix’s
10 sweltering heat all day, anti-Trump protesters were about to have their opportunity to
11 chant and display their signs to express their views to Trump and his supporters as they
12 exited the Convention Center.

13 45. At 8:32 P.M. hundreds of anti-Trump protesters were assembled
14 behind the pedestrian fencing along Monroe Street. As a result, a twenty-foot portion
15 of the fence was shaken. PPD gave no warnings that either force would be used, or that
16 the crowd would be dispersed if the fence continued to shake. Without first ordering
17 officers to warn protestors about touching the fence, and with no warning or clear
18 instruction about how to avoid the attack and where to disperse, Defendant Lieutenant
19 Benjamin Moore and Defendant Sergeant Douglas McBride ordered officers to fire
20 pepper balls.

21 46. At no time between 2:00 P.M. to 8:32 P.M. did PPD announce to the
22 assembled protesters that any force would be used against them or that an attack by
23 PPD personnel was imminent. Nonetheless, Lt. Moore ordered officers to shoot gas,
24 projectiles, and munitions, but never ordered them to warn protestors prior to opening
25 fire. As later acknowledged, PPD had insufficient megaphones, sound magnifying
26 devices, or plans to effectively communicate to a large crowd. No declaration of an
27 unlawful assembly or order to disperse was made between 2:00 P.M. and 8:32 P.M.
28 when Defendants Lt. Moore and Sgt. McBride gave the order to use force.

1 47. Defendant Officer Robert Scott was the first to deploy pepper bullets.
2 Scott shot the first pepper bullets, impacting the ground in front of the anti-Trump
3 protesters closest to the fence. Other PPD officers immediately joined him, and together
4 officers shot at least another ten pepper bullets in rapid succession towards anti-Trump
5 protesters in the same general area. Ex. 2 (screen shot of first pepper bullet rounds).
6 The crowd in the immediate vicinity dispersed. Ex. 3 (screen shot of “free-speech zone”
7 nearly clear of anti-Trump protestors). Despite this, Officer Scott continued to fire
8 pepper bullets at protestors who were dispersing. Scott was apparently trained that he
9 could ignore the PPD policy prohibiting firing pepper bullets above a person’s waist
10 when he reported that he “deployed multiple rounds of pepper ball,” while “aiming at
11 the torso of the subject.”

12 48. At 8:33 P.M., one minute after officers fired the initial rounds of
13 pepper bullets at protestors, two plastic water bottles were thrown from the crowd. One
14 landed several feet in front of the Police Line, and another landed over their heads. No
15 PPD officers were injured by the plastic bottles. No protestor was engaged in any
16 violent or threatening conduct. At this time, anti-Trump protesters were chanting,
17 “Hands up! Don’t shoot!” and other anti-Trump and social justice messages.

18 49. At 8:35 P.M., without any provocation, warning, or declaration of an
19 unlawful assembly, an officer along Monroe Street threw the first visible tear gas
20 canister towards the anti-Trump protesters standing along the pedestrian fencing. Ex.
21 4. That canister erupted in yellow smoke, harming protesters who had been peacefully
22 assembled. Again without warning, a second officer threw another gas canister toward
23 protestors. Ex. 4. Utter chaos ensued. Protestors, including children and elderly people,
24 ran from the gas, screaming, coughing, and crying. The gas and fumes were unexpected
25 and persons with mobility issues required assistance to retreat and get to safety. Anti-
26 Trump protesters who remained in the area acted to kick and clear the gas canisters
27 away from the protestors to protect them from the chemicals. PPD fired three more gas
28 canisters, two of which were kicked or thrown in directions away from the anti-Trump

1 protesters. None of the gas canisters thrown or kicked away by the anti-Trump
2 protesters originated from Plaintiffs.

3 50. PPD officers launched three more gas canisters toward the anti-Trump
4 protesters and violently attacked them with other chemical weapons and projectiles.
5 Protesters continued running away, screaming, confused, terrified, dodging rubber
6 bullets, gas canisters, and unidentifiable projectiles launched at their torsos and heads
7 in violation of PPD policy. Anti-Trump protesters fled while holding their shirts or
8 cloths over their noses and mouths to block the gas and pepper spray that burned their
9 eyes, throats, and lungs. Still at this point in time, the PPD had not declared an unlawful
10 assembly and had given no dispersal order.

11 51. PPD then escalated its use of force on protesters by deploying flash-
12 bang grenades on the ground and in the air, which emitted loud booms and clouds of
13 green and grey gas. PPD had not yet declared an unlawful assembly, given any dispersal
14 instructions to protesters, or directed protesters to an area where they could continue
15 their peaceful assembly. At no point before 8:32 P.M., when force was first used, did
16 any person from PPD give Puente, Poder, or any anti-Trump protesters warning that
17 force would be used, or information about where to go for safety or to continue their
18 assembly.

19 52. Anti-Trump protesters reacted to the indiscriminate police violence
20 and resulting physical injuries and great fear by clearing the area as of 8:42 P.M.
21 Nonetheless, PPD officers continued shooting pepper bullets at close range toward one
22 remaining anti-Trump protester, who posed no threat and was filming the police
23 response, hitting his upper torso in violation of department policy. Exs. 5, 6 (screen shot
24 of anti-Trump protester being shot while recording officers).

25 53. At 8:44 P.M., PPD still had not declared an unlawful assembly, or
26 issued an order to disperse or warnings that officers would continue to use violent force.
27 Yet, Lt. Moore next ordered PPD officers to use force against anti-Trump protesters by
28 “mov[ing] into the crowd and clear[ing] the area all the way to Van Buren,” without

1 warning or direction to anti-Trump protesters that the area should be cleared before
2 force was used. As ordered, PPD officers with riot helmets on, shields drawn, and rifles
3 aimed to shoot chemical munitions and projectiles advanced on the anti-Trump
4 protesters and breached the pedestrian gate on Monroe Street, at the location where
5 Puente and Poder had positioned much of the water for protesters at PPD's direction.
6 Officers in the Police Line continued to fire tear gas and pepper balls into the crowd as
7 they marched in unison towards Plaintiffs, effectively corralling them away from the
8 designated demonstration area and water station.

9 54. The riot-gear-clad officers moved into the areas of assembly
10 designated for anti-Trump protesters while firing projectiles indiscriminately and
11 without prior, or even simultaneous, warnings. Anti-Trump protesters had no
12 opportunity to collect their personal property and signs containing their political
13 messages. Puente was forced to leave behind equipment it uses for demonstrations and
14 other events, including a large inflatable screen and amplifiers. PPD also shoved the
15 anti-Trump protesters with their shields even as the protesters were moving out of the
16 area. As PPD advanced north, PPD trapped Plaintiffs within the barricades of the zone,
17 forcing them to climb, jump, or otherwise find a way over the barricades to escape
18 PPD's attack. PPD's actions took no considerations for the elderly or persons with
19 limited mobility, some of whom were in wheelchairs and had to unexpectedly, and
20 without warnings, flee PPD's advancing violence.

21 55. Through all of this, PPD gave no instructions to protestors about where
22 to disperse. All day, organizers of the demonstration had cooperated with PPD to ensure
23 that the peaceful and lawful assembly would continue. Indeed, at the request of PPD,
24 earlier that day, organizers were asked to move collections of water bottles to a different
25 area, and organizers complied.

26 56. PPD gave no instructions to disperse in the minutes before the first
27 projectiles were shot by police at 8:32 P.M., through the next 30 minutes. As of 9:00
28 P.M., no unlawful assembly had been declared and no dispersal orders had been given

1 despite the violent actions of PPD officers using their weapons to disperse the anti-
2 Trump protesters.

3 57. Between 8:32 and 9:00 P.M., the Police Line continued to move north
4 on both Second and Third Streets, forcefully driving anti-Trump protesters out from the
5 area by indiscriminately shooting them with gas canisters and pepper bullets at close
6 range in the head, face, upper back, stomach, and groin areas. PPD officers shot anti-
7 Trump protesters who were taking photos or video. Ignoring department policy, as they
8 advanced, PPD sprayed Plaintiffs in the face with pepper spray from just inches away
9 even as they were following orders and retreating. Exs. 7, 8, 9. PPD never warned these
10 protestors that force would be used based on any conduct they were engaging in. PPD
11 sprayed at least one member of the media who was documenting her retreat from the
12 violence on video, in the face and camera lens – even as she was moving away from
13 the Police Line. Exs. 10, 11. PPD never warned her that an officer would directly spray
14 her face if she kept recording.

15 58. The first instructions to disperse were finally heard from a helicopter
16 at approximately 9:00 P.M. PPD’s own “After-Action Report” confirms that it was not
17 until around 9:00 P.M. that an air unit was used “to make announcement to disperse.”
18 The dispersal orders from the helicopter were in English only, ignoring that some of the
19 participants may not have understood English. For nearly 30 minutes prior, PPD had
20 rained pepper bullets, gas canisters, and pepper spray without warnings on anti-Trump
21 protesters. These after-the-fact helicopter announcements never warned anti-Trump
22 protesters that they would be shot with projectiles, gas, or other munitions.

23 59. After the dispersal order was given from the helicopter, PPD continued
24 indiscriminately using chemical and impact munitions, pepper spray, and their shields
25 as weapons against anti-Trump protesters in the assembly, including children, persons
26 with disabilities and mobility issues, and the media. Dozens of individuals were shot at
27 close range as officers unloaded their weapons at anti-Trump protesters. Fleeing
28 protesters were trapped with PPD advancing violently from the south and barricades

1 erected by PPD blocking their escape to the north. Individuals were forced to climb or
2 jump over the barricades, with some people falling over them in flight and some with
3 mobility issues requiring assistance from others to breach the barricades. While
4 breaking up the lawful demonstration, PPD officers shouted obscenities at the peaceful
5 protesters. Contemporaneous with firing chemical and impact munitions at anti-Trump
6 protesters, PPD officers yelled: “stun bag that guy, oh yeah, yep that’ll teach him,” and
7 “that’s right motherfuckers, you just smoked yourself, dumbasses.”

8 60. At 9:14 P.M., several “grenadiers” continued to “target anyone who
9 aggressively approaches the police line with pepper balls.” As the officers moved north,
10 they targeted anti-Trump protesters in their path with projectiles and other force as the
11 officers continued to fire chemical and impact munitions, gas, and pepper spray at
12 persons with no evidence that any of the persons who were shot had engaged in any
13 improper conduct.

14 61. Defendant officers were aware that they were targeting protestors
15 despite their peaceful status. PPD acknowledged in an after-action report dated August
16 28, 2017, “*It is important to note that the vast majority of participants on August 22*
17 *in both the campaign rally and the protests outside were peaceful, prepared and civil.*”
18 (Emphasis added.)

19 62. Despite knowing that anti-Trump protesters were “peaceful, prepared
20 and civil,” PPD officers indiscriminately used unlawful and excessive force as follows:

21 a. ***Defendant Officer Scott*** was a grenadier and the first to fire chemical
22 weapons at the anti-Trump protesters. According to Scott, he shot at anti-Trump
23 protesters to “make the immediate area unpleasant to be in because of irritant in the
24 pepper balls.” Without warning, Scott “began attempting to directly impact[] the legs
25 of the subjects that remained” in the area. Still giving no warning, Scott also shot the
26 torso of an “older male” who was touching the pedestrian fence with “direct impact”
27 weapons. With no unlawful assembly declared, Scott “deploy[ed] pepper ball to clear
28 out the remaining people at the pedestrian fence.” On orders from Moore and without

1 any warnings, Scott erratically fired “multiple rounds of pepper ball using the area
2 saturation method.” Officer Scott continued to fire projectiles and chemical weapons
3 indiscriminately at anti-Trump protesters without warning throughout the night.

4 b. ***Defendant Officer Turiano*** was among the grenadiers working at the
5 Trump rally and protest. He saw a man in blue shorts running toward the Police Line,
6 and despite his knowledge that an OC canister (pepper spray) reaches temperatures of
7 800 degrees Fahrenheit, Turiano nonetheless fired an “OC impact round at the male’s
8 lower torso” hitting his groin from about 20 yards away. This protestor collapsed and
9 was dragged off for medical assistance. Officer Turiano alone fired at least 40 rounds
10 of impact weapons, tear gas, and smoke bombs.

11 c. ***Defendant Officer Neville*** was a grenadier on detail to the Trump rally
12 and protest. He fired chemical munitions and weapons at the anti-Trump protesters
13 without warning. On information and belief, Officer Neville continued to fire
14 projectiles and chemical weapons indiscriminately at anti-Trump protesters without
15 warning throughout the night.

16 d. ***Defendant Officer Sticca*** was also assigned as one of the “grenadiers.”
17 Officer Sticca heard protesters chanting “Hands up! Don’t Shoot!” and other anti-
18 Arpaio, and law enforcement related messages just before he was ordered to and did
19 deploy “smoke canisters,” “CS Canisters,” pepper bullets, and projectiles toward the
20 crowd without first warning them. Officer Sticca continued to fire projectiles and
21 chemical weapons indiscriminately at anti-Trump protesters without warning
22 throughout the night.

23 e. ***Defendant Officer White*** was another one of PPD’s “grenadiers” who
24 arbitrarily used excessive force against anti-Trump protesters. After Lt. Moore gave the
25 order to “smoke,” Lane began throwing smoke munitions in the direction of peaceful
26 participants along the north curb of Monroe Street without warning. Additionally, when
27 Lt. Moore ordered officers to deploy CS gas, he deployed CS grenades and CS
28 munitions, also without warnings.

1 f. **Defendant Officer Howell**, another “grenadier,” began to deploy
2 pepper balls to the ground directly in front of protestors who had been touching the
3 pedestrian gate along Monroe Street after Lt. Moore gave the order. Additionally,
4 against policy, and without warnings, Officer Howell deployed multiple pepper balls
5 “at the torso areas of the [protestors’] bodies,” and carried out “mid-torso direct
6 impacts.” Officer Howell continued to fire projectiles and chemical weapons
7 indiscriminately at anti-Trump protesters without warning throughout the night.

8 g. **Defendant Officer Herr** is a “grenadier” who was teamed with
9 Defendant Sgt. McBride at the time officers were ordered to begin using force on anti-
10 Trump protesters. Without warning or declaration of an unlawful assembly, Herr and
11 Sgt. McBride fired pepper ball munitions at the ground to disperse anti-Trump
12 protesters near the area where a pedestrian fence was shaking. Officer Herr next shot
13 2-3 pepper ball munitions without any warnings at an individual protester who “was
14 directly impacted by the pepper ball munitions and ran towards the back of the crowd.”
15 Officer Herr also indiscriminately shot pepper balls into the crowd, “target[ing]
16 individuals who were physically grabbing the fencing” for “direct impact of the pepper
17 ball.” Herr also loaded a single round of the “super sock” munition, or a bean bag round,
18 into his shotgun and against policy he shot a “light skinned male, with no shirt” in the
19 “upper torso area causing him to fall to the ground.”

20 h. **Defendant Sgt. McBride** was in charge of the actions of all of these
21 officers. Sergeant Mc Bride was on Monroe Street with his team of grenadiers when Lt.
22 Moore ordered PPD officers to use “smoke and gas grenades” on anti-Trump protesters
23 without warning, and took no action to stop this conduct. After Lt. Moore improperly
24 ordered the lawful assembly to be cleared, Sgt. McBride ordered the team of grenadiers
25 to “support the skirmish line,” move into the crowd, and on his orders grenadiers fired
26 chemical and other projectiles indiscriminately without warning to “clear[] the area all
27 the way to Van Buren.” Sgt. McBride did nothing to intervene in the use of excessive
28 force and violations of PPD policy.

1 63. The Phoenix Police Department had approximately 882 police officers
2 on hand at the Trump rally and protest, yet made no attempt to isolate any individuals
3 or groups that may have been engaging in improper or unlawful conduct. Instead, PPD
4 used unwarranted and unlawful indiscriminate force against all anti-Trump protesters.

5 64. PPD officers advanced towards hundreds of anti-Trump protesters
6 assembled north of the Convention Center, regardless of whether they had engaged in
7 any unlawful activity – shooting them with so-called “less lethal” munitions designed
8 to incapacitate, and which did knock Plaintiffs to the ground. PPD officers did not use
9 such force to effectuate arrest, overcome resistance to arrest, or in self-defense. The
10 anti-Trump protesters did not resist arrest, attempt to escape arrest, use force upon any
11 person, or threaten to use force upon any person. Yet, without regard to whether anti-
12 Trump protesters were engaged in unlawful activity, PPD officers fired their dangerous
13 weapons indiscriminately, aiming at and striking the upper torsos and heads of
14 Plaintiffs—in violation of manufacturer’s warnings and PPD policy.

15 65. As a result, Plaintiffs and putative members of the injunctive class are
16 understandably hesitant to engage in further speech, assembly, demonstrations, and
17 gatherings in Phoenix, particularly when expressing criticism of Trump and his
18 supporters. As it was on August 22, 2017, the PPD will be the primary law enforcement
19 agency at future demonstrations in Phoenix.

20 66. PPD injured Plaintiffs by this violence as follows:

21 a. *Plaintiff Puente* planned, organized, and participated in the August 22,
22 2017 Phoenix Trump protest to express its and its members’ and supporters’ opposition
23 to President Trump’s treatment of migrants, his immigration policies, and his
24 anticipated pardoning of former Maricopa County Sheriff Joe Arpaio. In planning the
25 protest, Puente had communicated with the PPD to ensure the safety of its members,
26 other protesters, and the community. Despite Puente’s efforts, after Trump’s rally
27 ended, PPD did not communicate with Puente that it intended to end the Trump Protest
28 or that force would be used against the anti-Trump protesters. PPD deprived Puente

1 members of their First Amendment rights to criticize Trump by violently attacking
2 them. PPD has previously used excessive force during First Amendment protected
3 activities planned and organized by Puente, against Puente members and supporters.

4 b. *Plaintiff Poder* also assisted, organized, planned, and participated in
5 the August 22, 2017 Trump Protest to express its opposition to President Trump's
6 treatment of migrants and his immigration policies. During the protest, Poder
7 representatives and supporters were peaceful. Likewise, after Trump's rally ended, PPD
8 did not communicate to Poder that it was dispersing the assembly. Despite having
9 Poder's contact information, PPD did not warn Poder that its members and supporters
10 would be subjected to the indiscriminate use of force by PPD officers. PPD viciously
11 attacked Poder members just as they intended to express their anti-Trump views to
12 Trump and his supporters. PPD has previously used excessive force during First
13 Amendment protected activities planned and organized by Poder, against its supporters.

14 c. *Plaintiff Janet Travis* was walking home, observing, and
15 photographing the protest and police response, when PPD gassed her, caused her to
16 inhale pepper spray, and shot her in the upper part of her back just inches from her head,
17 with unidentified projectiles at close range. Ms. Travis had no warning she would be
18 gassed or shot and was not engaged in any conduct to justify the use of force against
19 her. A PPD projectile struck Ms. Travis's back with such force that it knocked her to
20 the ground. Exs. 12-13. As concerned protesters aided Ms. Travis and attempted to help
21 her to her feet, PPD struck her again with another unidentified projectile shot from close
22 range. The second projectile struck her upper torso in the lower part of her back, and
23 upper glute. Exs. 12-13. Ms. Travis suffered difficulties breathing, and such significant
24 trauma and bruising along her back, buttocks, and leg that she was forced to seek
25 medical attention for her injuries. Before opening fire on Ms. Travis and other anti-
26 Trump protesters, PPD gave no warnings that officers were planning to use force. Since
27 being shot, Ms. Travis is fearful and distrusting of the PPD. For Ms. Travis, it has been
28 a source of angst to see on the internet, in newspapers, and on television reports across

1 the world photos and videos of her being shot because it feels like an extreme invasion
2 of privacy.

3 d. ***Plaintiff Ira Yedlin*** was peacefully protesting outside the Phoenix
4 Convention Center when PPD officers gassed him, caused him to inhale pepper spray,
5 and shot him with unidentified projectiles five times in the legs, once in the back, and
6 once in the face. Before opening fire on Mr. Yedlin and other anti-Trump protesters,
7 PPD gave no dispersal instructions or warnings that officers were planning to use force.
8 Mr. Yedlin was not engaged in any conduct that justified the use of force against him.
9 After being shot, Mr. Yedlin quickly ran from the protest area. As Mr. Yedlin and his
10 wife drove home, they became so overcome with the fumes from the chemical agents
11 that remained on his clothes that they had to hang his clothes out of the window of their
12 car as they drove away. Mr. Yedlin was forced to go to an emergency room for
13 treatment of the injuries caused by the PPD's indiscriminate use of force. Mr. Yedlin
14 remains distrustful that the PPD will violently react in future protests.

15 e. ***Plaintiff Cynthia Guillen*** was peacefully chanting and filming the
16 protest and police response, when PPD gassed her, and shot her in the upper torso on
17 her breast and near her stomach and hip, with an unidentified projectile. Ms. Guillen
18 had no warning that she would be gassed or shot, and was not engaged in any conduct
19 justifying the use of force. PPD's projectile struck with such force it knocked the wind
20 out of Ms. Guillen, requiring other anti-Trump protesters to help her limp away from
21 the assembly area in severe pain as she inhaled gas and coughed. PPD's use of force
22 caused Ms. Guillen substantial injuries, including pancreatitis triggered by the high-
23 impact force with which PPD hit her. Since the August 22, 2017 protest, Ms. Guillen
24 has experienced continuing medical problems, problems working, trouble sleeping, and
25 anxiety.

26 f. ***Plaintiff Jacinta Gonzalez Goodman*** was peacefully protesting and
27 coordinating public safety for anti-Trump protesters when PPD gassed her and other
28 protesters, prematurely ending the planned event. Despite working as a liaison between

1 PPD and protest organizers, and being in direct contact with PPD Officer Brockman in
2 person and by text message just before the attack, Ms. Gonzalez Goodman received no
3 dispersal instructions or warnings that officers were planning to use force. Ms.
4 Gonzalez Goodman was not engaged in any conduct that justified the use of force
5 against her. PPD's use of force caused Ms. Gonzalez Goodman to lose the opportunity
6 to exercise her First Amendment rights as she planned. Despite participating in dozens
7 of protests, Ms. Gonzalez Goodman had never seen officers act so aggressively towards
8 peaceful protesters without cause or warning. Ms. Gonzalez Goodman remains
9 concerned and fearful that the PPD will react violently in response to future protests.

10 67. PPD officers deliberately fired at these Plaintiffs and at the upper
11 torsos of anti-Trump protesters, based on their training and with the approval of PPD
12 command staff. But even if the officers had done nothing more than shoot
13 indiscriminately at the lower torso area of the adults, that put them in direct range of
14 the upper torsos and heads of children and persons in wheelchairs who were
15 participating. It was sheer luck that (to Plaintiffs' knowledge) no child was struck in the
16 head with a projectile given the indiscriminate deployment of over 590 munitions at the
17 peaceful, fleeing assembly, especially with the use of weapons intended to incapacitate
18 and having the potential to cause death or great bodily injury when used as the PPD did
19 on this occasion—at close range and to the upper torso, head, and face areas of
20 protestors.

21 68. There was no probable cause or reasonable suspicion to believe that
22 anti-Trump protesters posed an immediate or credible threat of injury to police or any
23 other person.

24 69. The PPD never attempted to disperse the demonstrators with less
25 violent measures, including making announcements directing the crowd to disperse, or
26 calling in the mounted police forces from the Tempe and Scottsdale police departments
27 who were trained in crowd control measures and deployed to the demonstration for the
28 purpose of assisting the PPD in this very task. Nor did PPD attempt to insulate the

1 overwhelming majority of the protestors, who they knew had been peaceable
2 throughout the demonstration, from unnecessary attack, injuries, and loss of basic
3 rights, by separating from the crowd the handful of persons PPD claims had acted
4 wrongly.

5 70. Many hundreds (and perhaps thousands) of peaceful protestors
6 including men, women, and children who had been engaged in no criminal activity—
7 and who were attempting to disperse after PPD’s attack began—were physically injured
8 as they were shot with munitions, gas, pepper spray, and/or assaulted by the advancing
9 Police Line.

10 ***Using Violence, PPD Violated the First Amendment Rights of Anti-Trump***
11 ***Protesters to Assemble and Speak Their Views Critical of Trump***

12 71. Plaintiffs reallege and incorporate by reference as if fully set forth
13 herein the allegations set forth previously and subsequently in this complaint.

14 72. Trump’s visit received significant publicity because he had announced
15 that he would deliver remarks that might include the pardon of former Sheriff Arpaio.
16 On August 22, 2017, when temperatures hit 108 degrees, record numbers of anti-Trump
17 protesters began arriving in downtown Phoenix. Some gathered downtown, while
18 others participated in marches and demonstrations nearby in advance of the main
19 demonstration near the Convention Center set to begin around 4 P.M.

20 73. The PPD segregated those gathering in downtown into two groups:
21 those who were there to support Trump and anti-Trump protesters. PPD ordered anti-
22 Trump protesters to limit their activities to the assigned “free speech zone.”

23 74. Near the only area PPD made available for the anti-Trump protesters
24 to assemble, the so-called “free-speech zone,” PPD set up fence barricades lining the
25 north and south sides of Monroe Street between 2nd and 3rd Streets for the purpose of
26 keeping Trump supporters and anti-Trump protesters separated. The street between the
27 two groups created a “safe zone” for PPD in between the two factions. There was no
28 barricade, however, on the south side of Monroe Street, crossing 2nd Street. PPD’s

1 leaving this gap in the barricades left the Trump supporters who were exiting the Trump
2 rally around 8:30 P.M. free to harass anti-Trump protesters.

3 75. Trump supporters attending Trump's rally entered the Convention
4 Center through the south entrance. About 15,000 Trump supporters ended up inside the
5 Convention Center for the Trump rally, while another 4,000 to 5,000 gathered at the
6 south end of the Convention Center.

7 76. Over 6,000 peaceful anti-Trump protesters assembled in the
8 designated area north of the Convention Center, along the northern sidewalks of
9 Monroe Street, and along Second and Third Streets.

10 77. Given Trump's policies and his anticipated pardon of Arpaio, anti-
11 Trump protesters had a strong First Amendment interest in having their messages heard
12 by Trump supporters. Protestors included young children, students, elderly people,
13 people with disabilities, and people of various races, ethnicities, and socio-economic
14 backgrounds. Spurred by a desire for civic engagement after Trump's election, many
15 anti-Trump protesters were exercising their First Amendment speech and assembly
16 rights for the first time. These protestors marched, calmly gathered, displayed signs, set
17 up water stations, and peacefully chanted as early as 1:00 P.M. Throughout the day
18 anti-Trump protesters chanted the following messages: "Don't Pardon!"; "No Trump
19 no KKK, no fascist USA!"; and "This is what democracy looks like!" Trump Protestors
20 also held posters with similar political messages. *See* Ex. 1.

21 78. As a result of PPD's unjustified and violent termination of the Trump
22 Protest, PPD silenced anti-Trump protesters at the precise moment that they sought to
23 have their opinions heard by the intended audience—President Trump and his
24 supporters as they left the Convention Center.

25 ***Defendants' Violence Was Directed at Anti-Trump Protestors;***
26 ***the Trump Supporters Were Spared***

27 79. Plaintiffs reallege and incorporate by reference as if fully set forth
28 herein the allegations set forth previously and subsequently in this complaint.

1 80. Despite the overwhelmingly “peaceful, prepared, and civil” nature of
2 the group assembled and the discussions before with organizers, the police came
3 dressed in full riot gear and armed with weaponry to confront anti-Trump protesters.
4 Before the Trump Protest, PPD officials had “coordinated multiple group meetings”
5 with Secret Service staff. Indeed, the PPD’s “Dignitary Protection Branch of
6 Operations” orchestrated the movements of all of the high-level officials participating
7 in the rally inside the Convention Center: the President, Vice President, President’s
8 Chief of Staff, and the Secretary of Housing and Urban Development. PPD managed
9 their movements “in partnership with federal . . . law enforcement agencies.”

10 79. PPD limited the area where anti-Trump protesters could assemble to
11 engage in their First Amendment activities to a small area north of the Convention
12 Center.

13 80. Throughout the day, PPD showed clear antagonism to the First
14 Amendment rights of the anti-Trump protesters in this area, and preference for Trump
15 supporters. For instance, one PPD officer advised other officers to “stay on this side.
16 They’re more pro-police on this side than that side,” encouraging police to stay away
17 from anti-Trump protesters and near Trump supporters. Later, another PPD officer
18 describing Trump supporters said, “There’s just a different look about [the Trump
19 supporters]. They’re so calm on this side,” and said without basis that the anti-Trump
20 protesters who oppose Trump’s politics were paid to be there.

21 81. On information and belief, PPD officers who dispersed the anti-Trump
22 protesters are members of the Phoenix Law Enforcement Association (“PLEA”). PLEA
23 is an organization whose president has accused organizations like Plaintiffs Puente and
24 Poder of being “radical community groups” “whose disrespect for law enforcement is
25 total.” A PLEA publication expressed that its law enforcement members view Puente
26 and Poder as “aggressive radical groups [that] make noise in the interest of hurting the
27 men and women who serve daily on the frontlines of Phoenix public safety.”
28

1 82. PPD's violent dispersal of anti-Trump protesters was at the exact time
2 that Trump and his supporters would be exiting the Trump rally inside of the
3 Convention Center. PPD command staff told its officers that it would end the Trump
4 Protest by 9:00 P.M. One PPD officer told another, "Boss said we'll be out of here by
5 nine." To ensure officers were "out of [t]here by nine," without justification, PPD
6 violently dispersed anti-Trump protesters around 8:30 P.M.

7 83. Prior to the launch of the first pepper bullet and tear gas canisters by
8 PPD, the Trump Protest was carried out by the thousands assembled in a lawful manner.
9 Assuming some isolated incidents of throwing plastic water bottles by a few, these did
10 not justify firing and harming the many. No Trump protester threw any dangerous
11 objects, nor initiated use of the weapons used by the PPD; they did kick the gas canisters
12 thrown by police away from anti-Trump protesters, or were near the shaking fence.
13 Rather than isolating and dealing with the small number of people whose conduct it
14 viewed as improper, PPD resorted to violence against all. There was no lawful
15 justification for this police action as the few persons who had been near the shaking the
16 fence and threw plastic water bottles and kicked gas away from the protestors at around
17 8:32 P.M. had immediately dispersed. Exs. 3-6. There was no need for the PPD to
18 continue to escalate their demonstration of force by moving the Police Line through
19 downtown, assaulting everyone in their path.

20 84. As they swept through downtown, removing everyone in sight, PPD
21 officers deliberately targeted anti-Trump protesters and persons who were chanting and
22 holding anti-Trump posters expressing their views critical of Trump.

23 85. The conduct complained of herein was undertaken pursuant to
24 policies, practices, and customs of the PPD, an agency of the City of Phoenix, and the
25 City of Phoenix. At all relevant times, Defendants City of Phoenix and Chief Jeri L.
26 Williams ratified the unlawful conduct of PPD officers and command staff.

27
28

MUNICIPAL LIABILITY

Defendant City of Phoenix Is Responsible for the Illegal Policies, Procedures, and Practices Utilized by the PPD at the Trump Protest.

86. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations set forth previously and subsequently in this complaint.

87. The City of Phoenix has vested final decision making authority in its police chief, Defendant Williams, in the area of law enforcement and setting and implementing the policies and practices of the PPD including but not limited to the development, implementation and/or ratification of the PPD’s procedures, policies, regulations, practices, and/or customs related to its use of force in response to political protests, the proper handling of large political protests, demonstrations, and marches, and the use of weapons against civilians including gas and projectiles.

88. On August 22, 2017, PPD officers engaged in an inordinate use of force, unnecessarily injuring thousands of people at the precise moment they intended to express their views critical of Trump, without warnings. Immediately following this violent display of force, and despite acknowledging that anti-Trump protesters were “peaceful, prepared, and civil,” the procedures and violence used by PPD were ratified and found well within accepted City practices by the key policy makers for the City of Phoenix in these areas—Chief Williams and City Manager Zuercher.

89. In a press conference the same night (following the PPD assault of hundreds and possibly thousands of anti-Trump protesters without legal justification, with officers shouting obscenities at the protesters and indiscriminately using dangerous weapons to disperse without warning, in violation of the constitutional protections of speech and to be free from excessive force and PPD policy), Defendant Williams stated that she was “just so proud to be the police chief of men and women who literally showed that professionalism—under contentious scenarios and situations—they demonstrated it flawlessly.” Chief Williams also repeatedly stated that on August 22, 2017, the night of Trump’s rally, she “believe[s] the actions of our

1 officers reflected the direction I gave them,” and that “our community members went
2 home safely.”

3 90. Then-Mayor Stanton stood by Chief Williams in this press conference
4 as she praised the PPD officers for displaying “professionalism” as they violently
5 silenced the views of anti-Trump protesters viewed as “radical” and harmful to law
6 enforcement by PPD officers.

7 91. City Manager Ed Zuercher issued a memorandum on August 28,
8 2017, to Chief Williams stating,

9 What all members of the Phoenix Police Department
10 accomplished on August 22 was notable. In an emotional
11 atmosphere, our police officers showed professionalism in
12 ensuring the safety and First Amendment rights of the community.
13 There were no serious injuries or property damage and only four
14 related arrests. . . .

15 92. The City of Phoenix has a “strong” City Manager form of government,
16 with a “weak” Mayoral role; Zuercher has the authority to hire and fire the Chief of
17 Police. Zuercher’s praise of Chief Williams, and the PPD’s assaults on anti-Trump
18 protesters under her leadership as “notable and “professional” further demonstrate
19 after-the-fact ratification by the relevant Phoenix officials of the above-described PPD
20 unconstitutional violent and indiscriminate acts on August 22, 2017.

21 ***As a Matter of Policy and Practice Defendant Williams Allowed Defendant City of***
22 ***Phoenix to Maintain Inadequate Equipment to Peacefully and Lawfully Control***
23 ***Protests and Demonstrations.***

24 93. Plaintiffs reallege and incorporate by reference as if fully set forth
25 herein the allegations set forth previously and subsequently in this complaint.

26 94. Defendant Williams and her delegated command staff were aware
27 prior to August 22, 2017, that the City did not possess the proper equipment, and in
28

1 sufficient amount, to adequately deliver warnings and dispersal messages to protestors
2 prior to and after commencing of the use of force.

3 95. The only verbal dispersal order that was given on August 22, 2017,
4 was made about 9:00 P.M. in English only, despite PPD's knowledge that a significant
5 number of the protestors were Spanish speakers. In a report after the protest, City
6 Manager Ed Zuercher, and Defendant Williams admitted that in the future the City
7 needed to "increase the number and use" of bullhorns and megaphones, and other
8 means for crowd communication and direction.

9 96. Moreover, after the events of August 22, 2017, Defendant Williams
10 and Defendant City of Phoenix conceded that:

11 Several large protests and demonstrations have confirmed the need to
12 upgrade the Police Department's communication capabilities for safety
13 and legal requirements. The current communication equipment, LRAD-
14 100X, is a backpack system that was purchased in 2010.

15 Ex. 14 at 18.

16 97. It was not until June 13, 2018, that Defendant Williams submitted a
17 procurement request to the Phoenix City Council for a new long range acoustic device
18 "specifically designed to address large crowds."

19 98. Given the demonstrated lawless actions by the PPD under the direction
20 of Defendant Williams, use of the particular LRAD device Williams has requested must
21 be subjected to great scrutiny. It has been found in other jurisdictions that, when used
22 at the volume levels intended by PPD, the LRAD itself becomes a weapon of excessive
23 force and great harms, including irreversible damage to the hearing of protestors.

24 ***As a Matter of Policy, Practice, and Custom, Defendant City Through Defendant***
25 ***Williams Failed to Adequately Train PPD Officers in Lawful Crowd Control***
26 ***Techniques.***

27 99. Plaintiffs reallege and incorporate by reference as if fully set forth
28 herein the allegations set forth previously and subsequently in this complaint.

1 100. Defendant Williams and her delegated command staff were aware that
2 the unlawful use of dangerous weapons in violent and unlawful ways to break up
3 peaceful associations and speech is a regular practice of PPD personnel, and a custom
4 ingrained in the marrow of the PPD. It was therefore critical to take all steps necessary
5 to ensure that official policy was changed and officers were trained in a manner
6 sufficient to address the practice and custom to violate First and Fourth Amendment
7 rights.

8 101. PPD policy directs that bean bags should not be fired at closer than
9 five feet and that the lower torso, legs, and buttocks should be the primary targets. The
10 PPD policy on bean bags prohibits hitting the head, neck, and spine and warns that
11 “shots to non-target areas” (head, neck, spine, thorax, and spine) “can result in fatal or
12 serious injury.”

13 102. As for the use of pepper spray, PPD policy specifically orders, “**Do**
14 **not** use within three (3) feet of a subject as soft tissue damage could occur.” (Emphasis
15 in policy.)

16 103. PPD policy is silent on what officers and command staff must do to
17 ensure that police warnings prior to dispersal are given and heard. Despite the legal
18 necessity of prior warnings, the policy provides no guidance on what warnings or
19 dispersal instructions must be given to protestors exercising their First Amendment
20 rights.

21 104. Additionally, PPD policy does not restrict the use of less-lethal
22 munitions on already dispersing crowds or individuals, and crowds that are retreating,
23 nor on persons who are using recording devices to lawfully document public police
24 actions.

25 105. The failure to maintain adequate policies, and to regularly train PPD
26 personnel on these and proper crowd control, led to the injuries suffered by Plaintiffs.
27 The need for training in this instance was obvious.
28

1 106. Defendant Williams and Defendant City have known of the
2 deficiencies in PPD policies and training since at least 2010 when its officers violently
3 shot pepper spray at protesters marching for immigration reform from Falcon Park to
4 Tent City.

5 107. In October 2014, at demonstration in downtown Phoenix to protest
6 police brutality, PPD officers indiscriminately and without warning fired pepper bullets
7 at protestors.

8 108. Similarly, at a rally at Phoenix City Hall in response to the fatal
9 shooting of Alton Sterling in July 2016, PPD repeatedly pepper sprayed protestors
10 without warning as a “crowd-control measure.”

11 109. In all of the above actions, the City has acted with deliberate
12 indifference to the rights of the public to engage in lawful expressive activity in
13 traditional public fora within the City, and to be free from excessive force.

14 110. Despite the long history of unlawful PPD conduct at demonstrations,
15 and the longstanding deficiencies in the training of PPD line and command staff on
16 proper law enforcement conduct at demonstrations and regarding the use of force at
17 peaceful demonstrations, the City failed to adequately train its officers and command
18 staff prior to August 22, 2017, in the rights of demonstrators, lawful crowd control,
19 dispersal orders, separating those engaged in unlawful conduct from those engaged in
20 lawful conduct, the permissible use of “less-than-lethal” weapons in crowd
21 control/demonstration situations, and the permissible use of force and circumstances
22 justifying it in such situations. This failure amounted to deliberate indifference to the
23 rights of persons with whom the police come into contact.

24 111. Defendant Williams had and delegated final responsibility and
25 authority to persons within her command staff to act as the final policy maker at the
26 Trump Protest to decide whether to declare the assembly unlawful, whether to give
27 warnings or instructions to disperse, and whether to use force. Defendant Williams has
28 stated that at all times during this protest the PPD officers and command staff on the

1 scene were acting at her direction. The persons who made these decisions acted as the
2 delegated policy maker for the City of Phoenix on these issues. There was no time,
3 opportunity, or procedure for anyone to review or revise the decisions made by these
4 delegated policy makers prior to their final implementation.

5 **CLASS ALLEGATIONS**

6 112. The proposed damages class is defined as those persons who were
7 present on August 22, 2017, at the Trump Protest area north of the Convention Center
8 which was designated as the “free-speech zone” (the area for anti-Trump protestors
9 bounded to the south by Monroe Street, 2nd Street to the west, and 3rd street to the east)
10 and forced by PPD onto adjacent streets at any point between 8:25 and 10:00 P.M., who
11 did not engage in any conduct justifying the Defendants’ use of force against them, and
12 who were subjected to the PPD’s dispersal by the use of force, or other unlawful police
13 activity arising from the police response to anti-Trump protestors. The proposed
14 damages subclasses are defined as:

- 15 a. All persons who were unlawfully dispersed by the use of gas, pepper
16 spray, pepper bullets, or other chemical agents;
17 b. All persons who were unlawfully dispersed by PPD by being struck with
18 projectiles of any type.

19 113. The proposed injunctive relief class is defined as all persons who have
20 in the past, including those present at the anti-Trump protest on August 22, 2017,
21 between 8:25 and 10:00 P.M., or may in the future, participate in, or be present at,
22 demonstrations within the City of Phoenix in the exercise of their rights of free speech
23 and assembly without engaging in any conduct justifying the use of force.

24 114. In accordance with Federal Rule of Civil Procedure 23(a), the class
25 and subclasses are so numerous that joinder of all members is impracticable. Plaintiffs
26 do not know the exact number of class members. Defendants’ After-Action Report
27 documents that more than 500 projectiles of some type were deployed, and this figure
28 does not include pepper spray or tear gas deployed by PPD officers. Further, PPD

1 counted over 6,000 anti-Trump protesters assembled outside of the Convention Center.
2 Thus, Plaintiffs are informed and believe and thereon allege that there are in excess of
3 500 members of the class.

4 115. In accordance with Federal Rule of Civil Procedure 23(a), the claims
5 that the class members' Fourth, First, and Fourteenth Amendment rights were violated
6 raise common questions of law and fact.

7 116. In accordance with Federal Rule of Civil Procedure 23(a), the claims
8 of the representative Plaintiffs are typical of the class they represent. Each
9 representative Plaintiff was present in or about the area north of the Convention Center
10 designated for assembly by anti-Trump protesters on August 22, 2017, between the
11 hours of 8:25 P.M. and 10:00 P.M. Each representative Plaintiff was subjected to force
12 in the streets north of the Convention Center or as he or she attempted to disperse from
13 the assembly area, or as she or he attempted to disperse along Second, Third, Fourth,
14 or Fifth Streets, or in the vicinity of those streets. No representative Plaintiff did
15 anything to attack or threaten to attack any person, or interfere with any lawful action
16 of anyone, or resist arrest, or escape. Except for their presence in the assembly area
17 north of the Convention Center, and peaceful, verbal, non-violent protests, and
18 observing Defendants, Plaintiffs did nothing to justify dispersal by the use of violent
19 force. Defendants had no legal justification for ordering any representative Plaintiff to
20 disperse and no legal justification for using force against any representative Plaintiff.

21 117. Each representative Plaintiff has the same interests and suffered the
22 same type of injuries as the class members. The claims of each representative Plaintiff
23 arose because of PPD's unlawful dispersal orders and use of force against the anti-
24 Trump protesters. The claims of the representative Plaintiffs are based upon the same
25 legal theories as the claims of the class members. Each representative class member
26 suffered actual physical injuries as a result of Defendants' unlawful dispersal and use
27 of force.
28

1 118. In accordance with Federal Rule of Civil Procedure 23(a), the
2 representative Plaintiffs will fairly and adequately protect the interests of the class. The
3 interests of the representative Plaintiffs are consistent with and not antagonistic to the
4 interests of the class.

5 119. In accordance with Federal Rule of Civil Procedure 23(b)(1)(A),
6 prosecutions of separate actions by individual members of the class would create a risk
7 that inconsistent or varying adjudications with respect to individual members of the
8 class would establish incompatible standards of conduct for the parties opposing the
9 class.

10 120. In accordance with Federal Rule of Civil Procedure 23(b)(1)(B),
11 prosecutions of separate actions by individual members of the class would create a risk
12 of adjudications with respect to individual members of the class which would, as a
13 practical matter, substantially impair or impede the interests of the other members of
14 the class to protect their interests.

15 121. In accordance with Federal Rule of Civil Procedure 23(b)(2), the
16 Defendants have acted, threatened to act, and will continue to act on grounds generally
17 applicable to the class, thereby making appropriate final injunctive relief or declaratory
18 relief with respect to the class as a whole.

19 122. In accordance with Federal Rule of Civil Procedure 23(b)(3), the
20 questions of law or fact common to the members of the class predominate over any
21 questions affecting only individual members.

22 123. In accordance with Federal Rule of Civil Procedure 23(b)(3), this class
23 action is superior to other available methods for the fair and efficient adjudication of
24 the controversy between the parties. The interest of members of the class in individually
25 controlling the prosecution of a separate action is low, in that most class members
26 would be unable to individually prosecute any action at all. Plaintiffs are informed and
27 believe and thereon allege that the amounts at stake for individuals are so small that
28 separate suits would be impossible or impracticable. Plaintiffs are informed and believe

1 and thereon allege that most members of the class will not be able to find counsel to
2 represent them. Plaintiffs are informed and believe that Defendants have no records, or
3 virtually no records or evidence of any kind, justifying any use of force against
4 individual anti-Trump protesters, and that Defendants' only justifications for any use
5 of force against anti-Trump protesters is based on facts which apply to all anti-Trump
6 protesters equally.

7 124. Plaintiffs are informed and believe that it is desirable to concentrate all
8 litigation in one forum because all of the claims arise in the same location, date, and
9 time, *i.e.*, in the vicinity of the streets and areas north of the Convention Center on
10 August 22, 2017, between 8:25 P.M. and 10:00 P.M., and it will promote judicial
11 efficiency to resolve the common questions of law and fact in one forum, rather than in
12 multiple courts.

13 125. Plaintiffs do not know the identities of all of the class members.
14 Plaintiffs are aware of the identities of approximately 200 class members. Plaintiffs are
15 informed and believe and thereon allege that the identities of most class members may
16 be obtained from organizations which sponsored, organized, and participated in the
17 anti-Trump protesters including Puente, Poder, and other organizations. Plaintiffs are
18 informed and believe and thereon allege that the identities of class members may be
19 obtained from calls for assistance made to Puente, Poder, and other organizers.

20 126. In accordance with Federal Rule of Civil Procedure 23(b)(3), class
21 members must be furnished with the best notice practicable under the circumstances,
22 including individual notice to all members who can be identified through reasonable
23 effort. Plaintiffs contemplate notice through organizational "hotlines" devoted to the
24 events of August 22, 2017, distribution of leaflets in the downtown Phoenix area, social
25 media, and at gatherings of the groups which organized the anti-Trump protesters, as
26 well as calls to Plaintiffs' counsel's office in Arizona. Plaintiffs contemplate that the
27 class notice will inform class members of the following:

- 28 a. The pendency of the class action, and the issues common to the class;

1 Plaintiffs' exercise of their rights to speech and association by the unnecessary and
2 violent acts described above. Further, Defendants discriminated against protestors
3 based on their viewpoint only ending the ability of those who had an anti-Trump
4 message to speak, and provided no alternative means for continuing speech and
5 assembly.

6 136. As a proximate result of the wrongful, malicious, and violent acts of
7 Defendants, Plaintiffs and each of them, suffered compensable and irreparable injuries
8 including having their rights to engage in the constitutionally protected activities of
9 political speech and assembly truncated, extinguished and/or deprived them.

10 137. In doing the foregoing wrongful acts, the individual Defendants, and
11 each of them, acted in intentional, reckless, and/or callous disregard for the
12 constitutional rights of Plaintiffs. The wrongful acts, and each of them, were willful,
13 oppressive, fraudulent and malicious.

14 **THIRD CLAIM FOR RELIEF**
15 **DUE PROCESS**

16 **(Fourteenth Amendment, 42 U.S.C. § 1983)**
17 **(All the class representatives, individually and on behalf of the class they seek to**
18 **represent, against all Defendants)**

19 138. Plaintiffs reallege and incorporate by reference as if fully set forth
20 herein the allegations set forth previously and subsequently in this complaint.

21 139. The actions of the Defendants including but not limited to targeting
22 anti-Trump protesters and using excessive force without warning or declaring an
23 unlawful assembly without regard to legitimate law enforcement objectives, were
24 deliberately indifferent to the rights and well being of anti-Trump protesters as set forth
25 above. The level of force and violence employed by Defendants shocks the conscience
26 and violates Plaintiffs' right to due process of law guaranteed by the Fourteenth
27 Amendment of the United States Constitution.

28 140. As a proximate result of the wrongful, malicious, and violent acts of
Defendants, and the fright caused Plaintiffs, Plaintiffs and each of them, suffered

1 physical injuries including being hit by projectiles and inhaling gas and pepper spray,
2 experienced shock and injury to the nervous system, and were injured in their health,
3 strength, and activity, suffering extreme and severe mental anguish and physical pain,
4 anxiety, humiliation, and emotional distress.

5 141. By reason of the aforementioned acts and omissions of Defendants,
6 Plaintiffs, and each of them, have incurred and will incur in the future, medical and
7 related expenses, past and future lost earnings, loss of property, and/or other special
8 and general damages, in an amount according to proof, but in excess of the jurisdictional
9 limits of this Court.

10 142. In doing the foregoing wrongful acts, the individual Defendants, and
11 each of them, acted in intentional, reckless, and/or callous disregard for the
12 constitutional rights of Plaintiffs. The wrongful acts, and each of them, were willful,
13 oppressive, fraudulent and malicious.

14 **FOURTH CLAIM FOR RELIEF**
15 **EQUAL PROTECTION**
16 **(First and Fourteenth Amendments, 42 U.S.C. § 1983)**
17 **(All the class representatives, individually, and on behalf of the class they seek to**
18 **represent, against all Defendants)**

19 143. Plaintiffs reallege and incorporate by reference as if fully set forth
20 herein the allegations set forth previously and subsequently in this complaint.

21 144. The actions of the Defendants, as set forth above, violated Plaintiffs'
22 Fourteenth Amendment rights to equal protection of the laws of the United States. The
23 PPD discriminated against protestors based on their viewpoint, made no lawful
24 declaration of unlawful assembly, dispersed protestors without warning or justification,
25 and provided no alternative means for continuing speech and assembly.

26 145. The actions of Defendants impermissibly treated the Trump supporters
27 better than other persons assembled for the Trump Protest in violation of both the First
28 Amendment and the Equal Protection Clause of the Fourteenth Amendment by granting
the Trump supporters, whose views it found acceptable, the use of a public forum, while

1 denying the same public forum to those wishing to express views less favored by
2 Defendants.

3 146. As a proximate result of the wrongful, malicious, and violent acts of
4 Defendants, and the fright caused Plaintiffs, Plaintiffs and each of them, suffered
5 physical injuries including being hit by projectiles and inhaling gas and pepper spray,
6 experienced shock and injury to the nervous system, and were injured in their health,
7 strength and activity, suffering extreme and severe mental anguish and physical pain,
8 anxiety, humiliation, and emotional distress.

9 147. By reason of the aforementioned acts and omissions of Defendants,
10 Plaintiffs, and each of them, have incurred and will incur in the future, medical and
11 related expenses, past and future lost earnings, loss of property, and other special and
12 general damages, in an amount according to proof, but in excess of the jurisdictional
13 limits of this Court.

14 148. In doing the foregoing wrongful acts, the individual Defendants, and
15 each of them, acted in intentional, reckless, and/or callous disregard for the
16 constitutional rights of Plaintiffs. The wrongful acts, and each of them, were willful,
17 oppressive, fraudulent and malicious.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs seek the following relief:

- 20 A. Declaratory relief concerning the unconstitutionality of Defendants' actions
21 as described herein;
- 22 B. A preliminary and permanent injunction prohibiting Defendants from
23 engaging in any of the unconstitutional behaviors as described herein and to
24 put into place safeguards sufficient to ensure that they do not continue in the
25 future;
- 26 C. Compensatory, general, statutory, and special damages for themselves and the
27 class they represent in an amount according to proof;
- 28

- 1 D. Exemplary damages against each of the individual Defendants in an amount
2 sufficient to deter and make an example of those Defendants;
3 E. Attorneys' fees and costs, and costs of suit, as provided by 42 U.S.C. 1988
4 and any other applicable authority; and
5 F. Such other and further relief as this Court deems just and proper.

6 DATED this 4th day of September, 2018.

7
8 ACLU FOUNDATION OF ARIZONA

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Kathleen E. Brody
Darrell L. Hill

10
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14 *Attorneys for Defendants*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 Puente, an Arizona nonprofit corporation;
18 Poder in Action, an Arizona nonprofit
corporation; Ira Yedlin; Janet Travis;
19 Cynthia Guillen; Jacinta Gonzalez
Goodman, individually and as class
20 representatives,

21 Plaintiffs,

22 v.

23 City of Phoenix, a municipal corporation;
24 Jeri L. Williams; Benjamin Moore;
Douglas McBride; Robert Scott;
25 Christopher Turiano; Glenn Neville; John
Sticca; Lane White; Jeffrey Howell;
26 George Herr, individually and in their
official capacities; and Does 1-20,
27

28 Defendants.

Case No. 2:18-cv-02778-JJT

**DEFENDANTS’ ANSWER TO
PLAINTIFFS’ COMPLAINT
AND DEMAND FOR JURY TRIAL**

1 Defendants City of Phoenix, Chief Jeri L. Williams, Lt. Benjamin Moore, Sgt.
2 Douglas McBride, Officer Robert Scott, Officer Christopher Turiano, Officer Glenn
3 Neville, Officer John Sticca, Officer Lane White, Officer Jeffrey Howell, and Officer
4 George Herr (individually and in their official capacities) (collectively referred to as
5 "Defendants"), by and through undersigned counsel, hereby submit their Answer in
6 response to Plaintiffs' Complaint filed on or about September 4, 2018 [Doc. 1], and admit,
7 deny, and allege, as follows:

8 **INTRODUCTION**

- 9 1. Answering paragraph 1, Defendants deny the allegations set forth therein.
10 2. Answering paragraph 2, Defendants deny the allegations set forth therein.
11 3. Answering paragraph 3, admit that Plaintiffs purport to seek injunctive relief
12 and damages but deny that they are entitled to either and deny the remaining allegations of
13 paragraph 3.

14 **JURISDICTION AND VENUE**

- 15 4. Answering paragraph 4, Defendants admit that this Court has jurisdiction as
16 to some of the claims asserted. Defendants deny that Plaintiffs have standing for
17 declaratory and injunctive relief and deny that Plaintiffs are entitled to the relief they seek.
18 5. Answering paragraph 5, Defendants admit that this Court has personal
19 jurisdiction over the Defendants and that venue is proper.
20 6. Answering paragraph 6, Defendants admit that this Court has jurisdiction
21 and that venue is proper. Defendants deny any acts or omissions violative of Plaintiffs'
22 constitutional rights or federal law.

23 **PARTIES**

- 24 7. Answering paragraph 7, Defendants deny the following allegations: that
25 members and supporters of Puente have been chilled from participating in political
26 expressive activities by the Phoenix Police Department's ["PPD"] improper, excessive, and
27 unconstitutional uses of force, that Defendants' actions stopped Puente's message from
28 reaching its intended audience, that PPD's actions on August 22, 2017, were unlawful, and

1 that Puente's members were violently denied their right to speech and association by the
2 PPD. As to the remaining allegations set forth in paragraph 7, Defendants lack knowledge
3 or information sufficient to form a belief as to those allegations and, therefore, deny same.

4 8. Answering paragraph 8, Defendants deny the following allegations: that the
5 PPD's use of force was unlawful, improper, excessive, and unconstitutional, and that
6 Defendants' actions stopped Poder's message from reaching its intended audience. As to
7 the remaining allegations set forth in paragraph 8, Defendants lack knowledge or
8 information sufficient to form a belief as to those allegations and, therefore, deny same.

9 9. Answering paragraph 9, Defendants lack knowledge or information
10 sufficient to form a belief as to those allegations and, therefore, deny same.

11 10. Answering paragraph 10, Defendants lack knowledge or information
12 sufficient to form a belief as to those allegations and, therefore, deny same.

13 11. Answering paragraph 11, Defendants lack knowledge or information
14 sufficient to form a belief as to those allegations and, therefore, deny same.

15 12. Answering paragraph 12, Defendants lack knowledge or information
16 sufficient to form a belief as to those allegations and, therefore, deny same.

17 13. Answering paragraph 13, Defendants admit only that the City of Phoenix is a
18 municipal corporation, organized and existing under the laws of the State of Arizona, and
19 that the PPD is an agency of the City of Phoenix. Defendants deny the remaining
20 allegations set forth therein.

21 14. Answering paragraph 14, Defendants admit only that Defendant Jeri L.
22 Williams is the Chief of Police ("Chief Williams") for the City of Phoenix. Defendants
23 deny that Chief Williams failed to establish sufficient guidelines and regulations governing
24 the PPD in the situation presented on August 22, 2017, did not ensure adequate training
25 before the event, did not properly supervise and monitor the actions of PPD personnel
26 during the protest, and ratified the actions of PPD. Chief Williams specifically denies that
27 she violated any of Plaintiffs' constitutional rights or rights existing under federal law. As
28 to the remaining allegations set forth in paragraph 14, Defendants lack knowledge or

1 information sufficient to form a belief as to those allegations and, therefore, deny same.

2 15. Answering paragraph 15, Defendants admit that Defendant Benjamin Moore
3 is a Lieutenant with the PPD ("Lt. Moore") and, on August 22, 2017, was the Field Force
4 Commander. Defendants deny that the orders Lt. Moore gave for PPD officers to use
5 force were improper, resulted in indiscriminate attacks against hundreds of peaceable
6 protestors, and were without warnings and before any unlawful assembly had been
7 declared. Defendant Lt. Moore specifically denies that he violated any of Plaintiffs'
8 constitutional rights or rights existing under federal law. As to the remaining allegations
9 set forth in paragraph 15, Defendants lack knowledge or information sufficient to form a
10 belief as to those allegations and, therefore, deny same.

11 16. Answering paragraph 16, Defendants admit that Defendant Douglas
12 McBride is a Sergeant with the PPD ("Sgt. McBride") and, on August 22, 2017, Sgt.
13 McBride was assigned as the Grenadier Team Leader. Further, Defendants admit that
14 according to PPD, grenadiers are "specially trained officers on deployment of chemical
15 munitions." Defendant Sgt. McBride specifically denies that he violated any of Plaintiffs'
16 constitutional rights or rights existing under federal law. As to the remaining allegations
17 set forth in paragraph 16, Defendants lack knowledge or information sufficient to form a
18 belief as to those allegations and, therefore, deny same.

19 17. Answering paragraph 17, Defendants admit that Defendant Robert Scott is
20 an officer with the PPD ("Officer Scott") and was assigned to the PPD's Tactical Response
21 Unit as one of the Grenadiers; and deny that Officer Scott indiscriminately fired on and
22 injured Plaintiffs without warning. Defendant Officer Scott specifically denies that he
23 violated any of Plaintiffs' constitutional rights or rights existing under federal law.

24 18. Answering paragraph 18, Defendants admit that Defendant Christopher
25 Turiano is an officer with the PPD ("Officer Turiano") and, on August 22, 2017, Officer
26 Turiano was assigned to the PPD's Tactical Response Unit as one of the Grenadiers.
27 Defendants deny that Officer Turiano indiscriminately shot and injured Plaintiffs without
28 warning. Defendant Officer Turiano specifically denies that he violated any of Plaintiffs'

1 constitutional rights or rights existing under federal law.

2 19. Answering paragraph 19, Defendants admit that Defendant Glenn Neville is
3 an officer with the PPD ("Officer Neville") and, on August 22, 2017, Officer Neville was
4 assigned to the PPD's Tactical Response Unit as one of the Grenadiers. Defendants deny
5 that Officer Neville indiscriminately shot and injured Plaintiffs without warning.
6 Defendant Glenn Neville specifically denies that he violated any of Plaintiffs'
7 constitutional rights or rights existing under federal law.

8 20. Answering paragraph 20, Defendants admit that Defendant John Sticca is an
9 officer with the PPD ("Officer Sticca") and, on August 22, 2017, Officer Sticca was
10 assigned to the PPD's Tactical Response Unit as one of the Grenadiers. Defendants deny
11 that Officer Sticca indiscriminately shot and injured Plaintiffs without warning. Defendant
12 Officer Sticca specifically denies that he violated any of Plaintiffs' constitutional rights or
13 rights existing under federal law.

14 21. Answering paragraph 21, Defendants admit that Defendant Lane White is an
15 officer with the PPD ("Officer White") and, on August 22, 2017, Officer White was
16 assigned to the PPD's Tactical Response Unit as one of the Grenadiers. Defendants deny
17 that Officer White indiscriminately shot and injured Plaintiffs without warning. Defendant
18 Officer White specifically denies that he violated any of Plaintiffs' constitutional rights or
19 rights existing under federal law.

20 22. Answering paragraph 22, Defendants admit that Defendant Jeffrey Howell is
21 an officer with the PPD ("Officer Howell") and, on August 22, 2017, Officer Howell was
22 assigned to the PPD's Tactical Response Unit as one of the Grenadiers. Defendants deny
23 that Officer Howell indiscriminately shot and injured Plaintiffs without warning.
24 Defendant Officer Howell specifically denies that he violated any of Plaintiffs'
25 constitutional rights or rights existing under federal law.

26 23. Answering paragraph 23, Defendants admit that Defendant George Herr is
27 an officer with the PPD ("Officer Herr") and, on August 22, 2017, Officer Herr was
28 assigned to the PPD's Tactical Response Unit as one of the Grenadiers. Defendants deny

1 that Officer Herr indiscriminately shot and injured Plaintiffs without warning. Defendant
2 Officer Herr specifically denies that he violated any of Plaintiffs' constitutional rights or
3 rights existing under federal law.

4 24. To the extent that the allegations set forth in paragraph 24 are directed at
5 defendants other than these Answering Defendants, no answer is required and none is
6 given. To the extent that the allegations are directed to these Answering Defendants, the
7 allegations are denied.¹

8 25. Answering paragraph 25, Defendants deny the allegations set forth therein.

9 26. Answering paragraph 26, Defendants admit only that at the time of the
10 events alleged in Plaintiffs' Complaint, Defendants acted within the course and scope of
11 their employment with the City of Phoenix. Defendants deny that they, any of them, acted
12 in a manner that was unconstitutional, unlawful, improper or unreasonable.

13 27. Answering paragraph 27, Defendants lack knowledge or information
14 sufficient to form a belief as to those allegations and, therefore, deny same.

15
16
17 **STATEMENT OF FACTS**

18 28. Answering paragraph 28, Defendants lack knowledge or information
19 sufficient to form a belief as to those allegations and, therefore, deny same.

20 29. Answering paragraph 29, Defendants admit that, on August 16, 2017,
21 President Trump's campaign announced that the President would visit Phoenix on August
22 22, 2017. As to the remaining allegations set forth in paragraph 29, Defendants lack
23 knowledge or information sufficient to form a belief as to those allegations and, therefore,
24 deny same.

25 30. Answering paragraph 30, Defendants admit that plaintiff Puentes was in
26

27 ¹ Plaintiffs have listed "Doe" Defendants. The naming of fictitious defendants in a
28 Complaint is improper; the Federal Rules of Civil Procedure do not provide for fictitious
defendants. The "Doe" Defendants should be dismissed.

1 communication with PPD liaisons in the week prior to and up to the event on August 22,
2 2017. As to the remaining allegations set forth in paragraph 30, Defendants lack
3 knowledge or information sufficient to form a belief as to those allegations and, therefore,
4 deny same.

5 31. Answering paragraph 31, Defendants admit that plaintiff Puentes was in
6 communication with PPD liaisons in the week prior to and up to the event on August 22,
7 2017. As to the remaining allegations set forth in paragraph 31, Defendants lack
8 knowledge or information sufficient to form a belief as to those allegations and, therefore,
9 deny same.

10 32. Answering paragraph 32, Defendants lack knowledge or information
11 sufficient to form a belief as to those allegations and, therefore, deny same.

12 33. Answering paragraph 33, Defendants lack knowledge or information
13 sufficient to form a belief as to those allegations and, therefore, deny same.

14 34. Answering paragraph 34, Defendants admit only that PPD officers, including
15 grenadiers, were equipped with pepper balls, smoke canisters, CS canisters, and stun bag
16 shotguns. Defendants deny that all protesters remained peaceful throughout the day. As to
17 the remaining allegations set forth in paragraph 34, Defendants lack knowledge or
18 information sufficient to form a belief as to those allegations and, therefore, deny same.

19 35. Answering paragraph 35, Defendants admit only that PPD along with several
20 other federal, state, county, and local law enforcement agencies coordinated all safety
21 activities associated with the August 22, 2017 event. As to the remaining allegations set
22 forth in paragraph 35, Defendants lack knowledge or information sufficient to form a
23 belief as to those allegations and, therefore, deny same.

24 36. Answering paragraph 36, Defendants admit only that PPD along with several
25 other federal, state, county, and local law enforcement agencies coordinated all safety
26 activities associated with the August 22, 2017 event. Defendants deny that PPD made the
27 decision to use the incapacitating weaponry indiscriminately against hundreds of peaceably
28 assembled “protestors without warning”. As to the remaining allegations set forth in

1 paragraph 36, Defendants lack knowledge or information sufficient to form a belief as to
2 those allegations and, therefore, deny same.

3 37. Answering paragraph 37, Defendants admit that President Trump arrived at
4 the Convention Center on August 22, 2017 at approximately 6:32 p.m.

5 38. Answering paragraph 38, Defendants deny the allegations set forth therein.
6 Defendants affirmatively assert that, at approximately 7:00 p.m., PPD officers observed
7 water bottles being thrown at event attendees from the overflow area southbound across
8 Monroe Street and that, at approximately 7:03 p.m., water bottles were being thrown at
9 PPD officers from the crowd at 2nd Street and Monroe Street. Defendants further assert
10 that PPD officers were deployed along the south side of Monroe Street along the exit route
11 to position themselves between the two opposing groups. As to the remaining allegations
12 set forth in paragraph 38, Defendants lack knowledge or information sufficient to form a
13 belief as to those allegations and, therefore, deny same.

14 39. Answering paragraph 39, Defendants deny that there was no provocation or
15 dangerous acts by “protesters warranting an increased police presence”. Defendants
16 affirmatively allege that between approximately 7:00 p.m. and 7:03 p.m. PPD officers
17 observed water bottles and other items being thrown from the crowd toward event
18 attendees and at police officers. Defendants further assert that additional PPD units arrived
19 in response to reports of items being thrown toward event attendees and PPD officers. As
20 to the remaining allegations set forth in paragraph 39, Defendants lack knowledge or
21 information sufficient to form a belief as to those allegations and, therefore, deny same.

22 40. Answering paragraph 40, Defendants deny that there was no precipitating
23 conduct by protesters that preceded officers’ movements in unison in a northern direction.
24 Defendants affirmatively allege that between approximately 7:00 p.m. and 7:03 p.m. PPD
25 officers observed water bottles and other items being thrown from the crowd toward event
26 attendees and at police officers. Defendants further assert that additional PPD units arrived
27 in response to reports of items being thrown toward event attendees and PPD officers. At
28 approximately 7:15 p.m., PPD officers made announcements to the crowd on Monroe

1 Street between 2nd Street and 3rd Street not to throw objects. At approximately 7:20 p.m.,
2 the PPD utilized its Long Range Acoustic Device or LRAD (a high-volume
3 communication system designed to give clear instructions to large crowds in amplified
4 noise conditions), instructing community members and groups to demonstrate peacefully,
5 not to cross the fence and police lines, and not to throw objects. Two PPD officers issued
6 these warnings on Monroe Street between 1st Street and 5th Street. As to the remaining
7 allegations set forth in paragraph 40, Defendants lack knowledge or information sufficient
8 to form a belief as to those allegations and, therefore, deny same.

9 41. Answering paragraph 41, Defendants lack knowledge or information
10 sufficient to form a belief as to those allegations and, therefore, deny same. Defendants
11 affirmatively assert that at approximately 8:15 p.m., water bottles were being thrown down
12 from the parking garage located at 2nd Street and Monroe Street, toward officers, that
13 additional PPD officers were dispatched to the garage, and the garage was secured to
14 prevent any further incidents.

15 42. Answering paragraph 42, Defendants deny the allegations set forth therein.

16 43. Answering paragraph 43, Defendants deny the allegations set forth therein.

17 44. Answering paragraph 44, Defendants admit only that, at approximately 8:30
18 p.m., President Trump and other federal officials began exiting the Convention Center. As
19 to the remaining allegation set forth in paragraph 44, Defendants lack knowledge or
20 information sufficient to form a belief as to those allegations and, therefore, deny same.

21 45. Answering paragraph 45, Defendants admit only that, at approximately 8:32
22 p.m., pepper balls were deployed by PPD officers, as there was an attempt by individuals
23 to use the wood support of signs to topple a section of the pedestrian fence. Defendants
24 deny the remaining allegations set forth in paragraph 45.

25 46. Answering paragraph 46, Defendants lack knowledge or information
26 sufficient to form a belief as to those allegations and, therefore, deny same.

27 47. Answering paragraph 47, Defendants admit only that at approximately 8:33
28 p.m., PPD officers deployed pepper balls toward the ground near the pedestrian fence in an

1 effort to prevent a barrier breach and to maintain public safety. Further Defendants assert
2 that, at approximately 8:34 p.m., Lt. Moore gave an order to stop the deployment of pepper
3 balls as the crowd behind the pedestrian fence had moved approximately 15 to 20 feet
4 away from the fence. Defendants deny the remaining allegations set forth in paragraph 47.

5 48. Answering paragraph 48, Defendants deny the allegations set forth therein.
6 Defendants affirmatively assert that, at approximately 8:34 p.m., a small gas grenade was
7 thrown at PPD officers from the crowd and an unknown gas, later identified as tear gas,
8 began exhausting from the grenade. Defendants affirmatively allege that several PPD
9 officers were affected by the gas and were treated through an on-site decontamination
10 process.

11 49. Answering paragraph 49, Defendants deny the allegations set forth therein.
12 Defendants allege that, at approximately 8:34 p.m., PPD officers donned gas masks and
13 that, at approximately 8:35 p.m., PPD officers deployed smoke grenades to the area along
14 Monroe Street where individuals were attempting to breach the pedestrian fence.
15 Defendants affirmatively allege that these individuals reached over and through the
16 pedestrian fence, and began kicking and throwing police deployed smoke munitions from
17 Monroe Street back at PPD officers. Defendants allege that from approximately 8:34 p.m.
18 through 9:31 p.m., the crowd continued to throw and/or kick items at PPD officers,
19 including munitions deployed by the PPD.

20 50. Answering paragraph 50, Defendants deny the allegations set forth therein.
21 Defendants allege that at approximately 8:36 p.m., another type of pyrotechnical munition
22 was thrown at PPD officers from the crowd and, in response, PPD officers were ordered to
23 deploy CS canisters in the same location and use pepper balls to drive back aggressive
24 protesters.

25 51. Answering paragraph 51, Defendants deny the allegations set forth therein.

26 52. Answering paragraph 52, Defendants deny the allegations set forth therein.

27 53. Answering paragraph 53, Defendants deny the allegation set forth therein.

28 54. Answering paragraph 54, Defendants deny the allegations set forth therein.

1 55. Answering paragraph 55, Defendants lack knowledge or information
2 sufficient to form a belief as to those allegations and, therefore, deny same.

3 56. Answering paragraph 56, Defendants deny the allegations set forth therein.
4 Defendants allege that, at approximately 8:34 p.m., an Air Unit was requested to illuminate
5 the area and make announcements; that, at approximately 8:40 p.m., an Air Unit arrived in
6 the downtown area; that, at approximately 8:47 p.m., the Air Unit was requested to make
7 announcements; and that, from approximately 8:52 p.m. through 9:10 p.m., the Air Unit
8 was used to make repeated announcements to disperse and to leave the area. Defendants
9 further allege that, at approximately 8:52 p.m. the crowd was determined to be unlawfully
10 assembled, and the official unlawful assembly announcement was broadcasted via a police
11 public address system from a marked Patrol Chevrolet Tahoe.

12 57. Answering paragraph 57, Defendants deny the allegations set forth therein.
13 Defendants allege that, at approximately 8:52 p.m., two police lines were formed, one
14 facing east and one facing west, and extended from 2nd Street to just north of Monroe
15 Street. Defendants further allege that, at approximately 8:56 p.m., the police line began
16 marching slowly northward toward Van Buren Street to confront remaining aggressive
17 protesters, and PPD officers deployed OC, pepper balls and tactics to disperse the crowd.

18 58. Answering paragraph 58, Defendants deny the allegations set forth therein.

19 59. Answering paragraph 59, Defendants deny the allegations set forth therein.

20 60. Answering paragraph 60, Defendants admit that pepper balls were deployed
21 by PPD officer grenadiers toward “anyone who aggressively approach[e]d the police
22 line....” As for the remaining allegations set forth in paragraph 60, Defendants lack
23 knowledge or information sufficient to form a belief as to those allegations and, therefore,
24 deny same.

25 61. Answering paragraph 61, Defendants admit only that in a letter to Chief
26 Williams dated August 28, 2017, the City Manager acknowledged that the vast majority of
27 participants on August 22 in both the campaign rally and the protests outside “were
28 peaceful, prepared and civil.” Defendants deny the remaining allegations set forth therein.

1 62. Answering paragraph 62, Defendants admit only as follows: (a) Officer Scott
2 was a PPD grenadier, (b) Officer Turiano was among the PPD grenadiers working at the
3 rally and protest, (c) Officer Neville was a PPD grenadier on detail to the rally and protest,
4 (d) Officer Sticca was assigned as one of the PPD grenadiers, (e) Officer White was
5 another one of the PPD grenadiers, (f) Officer Howell was a PPD grenadier, and (g)
6 Officer Herr is a PPD grenadier. Defendants deny the remaining allegations set forth in
7 paragraph 62.

8 63. Answering paragraph 63, Defendants admit that there were approximately
9 882 police officers utilized during the August 22, 2017 event. Defendants deny the
10 remaining allegations set forth therein.

11 64. Answering paragraph 64, Defendants deny the allegations set forth therein.

12 65. Answering paragraph 65, Defendants deny the allegations set forth therein.

13 66. Answering paragraph 66, Defendants admit one or more representatives of
14 Puente had communicated with the PPD prior to the August 22, 2017 event. As for the
15 remaining allegations set forth in paragraph 66, Defendants lack knowledge or information
16 sufficient to form a belief as to those allegations and, therefore, deny same.

17 67. Answering paragraph 67, Defendants deny the allegations set forth therein.

18 68. Answering paragraph 68, Defendants deny the allegations set forth therein.

19 69. Answering paragraph 69, Defendants deny the allegations set forth therein.

20 70. Answering paragraph 70, Defendants deny the allegations set forth therein.

21 71. Answering paragraph 71, Defendants incorporate herein and reassert all prior
22 admissions, denials and factual assertions set forth herein.

23 72. Answering paragraph 72, Defendants lack knowledge or information
24 sufficient to form a belief as to those allegations and, therefore, deny same.

25 73. Answering paragraph 73, Defendants admit that individuals assembled at the
26 August 22, 2017 event with other individuals but were kept separate from others in order
27 to prevent violence while allowing for the opportunity to exercise free movement and the
28 right to free speech. Defendants lack knowledge or information sufficient to form a belief

1 as to the remaining allegations set forth therein and, therefore, deny same.

2 74. Answering paragraph 74, Defendants lack knowledge or information
3 sufficient to form a belief as to those allegations and, therefore, deny same.

4 75. Answering paragraph 75, Defendants admit that, at approximately 5:30 p.m.,
5 the doors to the Convention Center were closed due to the facility having reached capacity
6 and due to safety concerns; at that time, about 11,000 individuals ended up inside the
7 Convention Center while another approximate 4,500 individuals in line to enter the
8 Convention Center were required to remain outside. As for the remaining allegations set
9 forth in paragraph 75, Defendants lack knowledge or information sufficient to form a
10 belief as to those allegations and, therefore, deny same.

11 76. Answering paragraph 76, Defendants admit only that there were
12 approximately 6,000 individuals gathered outside the Convention Center. Defendants lack
13 knowledge or information sufficient to form a belief as to the remaining allegations set
14 forth therein and, therefore, deny same.

15 77. Answering paragraph 77, Defendants lack knowledge or information
16 sufficient to form a belief as to those allegations and, therefore, deny same.

17 78. Answering paragraph 78, Defendants deny the allegations set forth therein.

18 79. Answering paragraph 79 (as it first appears in Plaintiffs' Complaint),
19 Defendants incorporate herein and reassert all prior admissions, denials and factual
20 assertions set forth herein.

21 80. Answering paragraph 80 (as it first appears in Plaintiffs' Complaint),
22 Defendants admit only that PPD's "Dignitary Protection Branch of Operations" in
23 cooperation with "federal...law enforcement agencies" planned for and orchestrated the
24 movements of the high-level officials participating in the event inside of the Convention
25 Center and that some PPD officers came to the event in full riot gear armed with
26 reasonable, non-deadly weaponry. The remaining allegations are denied.

27 81. Answering paragraph numbered 79 (as it appears for the second time in
28 Plaintiffs' Complaint), Defendants lack knowledge or information sufficient to form a

1 belief as to those allegations and, therefore, deny same.

2 82. Answering paragraph numbered 80 (as it appears for the second time in
3 Plaintiffs' Complaint), Defendants deny the allegations set forth therein.

4 83. Answering paragraph 81, Defendants deny the allegations set forth therein.

5 84. Answering paragraph 82, Defendants deny the allegations set forth therein.

6 85. Answering paragraph 83, Defendants deny the allegations set forth therein.

7 86. Answering paragraph 84, Defendants deny the allegations set forth therein.

8 87. Answering paragraph 85, Defendants deny the allegations set forth therein.

9 **MUNICIPAL LIABILITY**

10 88. Answering paragraph 86, Defendants incorporate herein and reassert all prior
11 admissions, denials and factual assertions set forth herein.

12 89. Answering paragraph 87, Defendants deny the allegations set forth therein.

13 90. Answering paragraph 88, Defendants deny the allegations set forth therein.

14 91. Answering paragraph 89, Defendants admit only that Defendant Chief
15 Williams made the statements attributed to her in a press conference on August 22, 2017.
16 The remaining allegations are denied.

17 92. Answering paragraph 90, Defendants admit only that then-Mayor Stanton
18 stood by Chief Williams at the August 22, 2017 press conference. The remaining
19 allegations are denied.

20 93. Answering paragraph 91, Defendants admit the allegations set forth therein.

21 94. Answering paragraph 92, Defendants deny the allegations set forth therein.

22 95. Answering paragraph 93, Defendants incorporate herein and reassert all prior
23 admissions, denials and factual assertions set forth herein.

24 96. Answering paragraph 94, Defendants deny the allegations set forth therein.

25 97. Answering paragraph 95, Defendants admit that the statements attributed to
26 Defendant Chief Williams and referred to therein were contained in a report that followed
27 the August 22, 2017 event. The remaining allegations are denied.

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1 98. Answering paragraph 96, Defendants admit that the statements attributed to
2 Defendant Chief Williams and the City of Phoenix were stated following the August 22,
3 2017 incident.

4 99. Answering paragraph 97, Defendants admit the allegations set forth therein.

5 100. Answering paragraph 98, Defendants deny the allegations set forth therein.

6 101. Answering paragraph 99, Defendants incorporate herein and reassert all prior
7 admissions, denials and factual assertions set forth herein.

8 102. Answering paragraph 100, Defendants deny the allegations set forth therein.

9 103. Answering paragraph 101, Defendants admit that the PPD's policy regarding
10 the use of bean bag munition contains statements as alleged therein.

11 104. Answering paragraph 102, Defendants admit the PPD policy on using pepper
12 spray contains statements as alleged therein.

13 105. Answering paragraph 103, Defendants deny the allegations set forth therein.

14 106. Answering paragraph 104, Defendants deny the allegations set forth therein.

15 107. Answering paragraph 105, Defendants deny the allegations set forth therein.

16 108. Answering paragraph 106, Defendants deny the allegations set forth therein.

17 109. Answering paragraph 107, Defendants deny the allegations set forth therein.

18 110. Answering paragraph 108, Defendants deny the allegations set forth therein.

19 111. Answering paragraph 109, Defendants deny the allegations set forth therein.

20 112. Answering paragraph 110, Defendants deny that the proposed class and
21 subclass definitions are appropriate and that any class should be certified.

22 113. Answering paragraph 111, Defendants deny that the proposed class and
23 subclass definitions are appropriate and that any class should be certified.

24 **CLASS ALLEGATIONS**

25 114. Answering paragraph 112, Defendants lack knowledge or information
26 sufficient to form a belief as to those allegations and, therefore, deny same.

27 115. Answering paragraph 113, Defendants deny the allegations deny the
28 allegations set forth therein.

- 1 116. Answering paragraph 114, Defendants deny the allegations set forth therein.
2 117. Answering paragraph 115, Defendants deny the allegations set forth therein.
3 118. Answering paragraph 116, Defendants deny the allegations set forth therein.
4 119. Answering paragraph 117, Defendants deny the allegations set forth therein.
5 120. Answering paragraph 118, Defendants deny the allegations set forth therein.
6 121. Answering paragraph 119, Defendants deny the allegations set forth therein.
7 122. Answering paragraph 120, Defendants deny the allegations set forth therein.
8 123. Answering paragraph 121, Defendants deny the allegations set forth therein.
9 124. Answering paragraph 122, Defendants deny the allegations set forth therein.
10 125. Answering paragraph 123, Defendants deny the allegations set forth therein.
11 126. Answering paragraph 124, Defendants deny the allegations set forth therein.
12 127. Answering paragraph 125, Defendants lack knowledge or information
13 sufficient to form a belief as to those allegations and, therefore, deny same.
14 128. Answering paragraph 126, deny that class certification is appropriate and
15 that the proposed methods for notice described are appropriate
16 129. Answering paragraph 127, Defendants lack knowledge or information
17 sufficient to form a belief as to those allegations and, therefore, deny same.
18 130. Answering paragraph 128, Defendants deny the allegations set forth therein.

19 **FIRST CLAIM FOR RELIEF**

20 **EXCESSIVE FORCE**

21 **(Fourth and Fourteenth Amendments, 42 U.S.C. § 1983)**

- 22 131. Answering paragraph 129, Defendants incorporate herein and reassert all
23 prior admissions, denials and factual assertions set forth herein.
24 132. Answering paragraph 130, Defendants deny the allegations set forth therein.
25 133. Answering paragraph 131, Defendants deny the allegations set forth therein.
26 134. Answering paragraph 132, Defendants deny the allegations set forth therein.
27 135. Answering paragraph 133, Defendants deny the allegations set forth therein.
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SECOND CLAIM FOR RELIEF
FREEDOM OF SPEECH AND ASSOCIATION
(First and Fourteenth Amendments, 42 U.S.C. § 1983)

136. Answering paragraph 134, Defendants incorporate herein and reassert all prior admissions, denials and factual assertions set forth herein.

137. Answering paragraph 135, Defendants deny the allegations set forth therein.

138. Answering paragraph 136, Defendants deny the allegations set forth therein.

139. Answering paragraph 137, Defendants deny the allegations set forth therein.

THIRD CLAIM FOR RELIEF
DUE PROCESS
(Fourteenth Amendments, 42 U.S.C. § 1983)

140. Answering paragraph 138, Defendants incorporate herein and reassert all prior admissions, denials and factual assertions set forth herein.

141. Answering paragraph 139, Defendants deny the allegations set forth therein.

142. Answering paragraph 140, Defendants deny the allegations set forth therein.

143. Answering paragraph 141, Defendants deny the allegations set forth therein.

144. Answering paragraph 142, Defendants deny the allegations set forth therein.

FOURTH CLAIM FOR RELIEF
EQUAL PROTECTION
(First and Fourteenth Amendments, 42 U.S.C. § 1983)

145. Answering paragraph 143, Defendants incorporate herein and reassert all prior admissions, denials and factual assertions set forth herein.

146. Answering paragraph 144, Defendants deny the allegations set forth therein.

147. Answering paragraph 145, Defendants deny the allegations set forth therein.

148. Answering paragraph 146, Defendants deny the allegations set forth therein.

149. Answering paragraph 147, Defendants deny the allegations set forth therein.

150. Answering paragraph 148, Defendants deny the allegations set forth therein.

AFFIRMATIVE DEFENSES

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1. Plaintiffs' Complaint fails to state a claim against Defendants.

2. Neither Defendants' actions nor inactions violated Plaintiffs' constitutional rights or rights existing under federal law.

3. Plaintiffs lack standing to seek injunctive and declaratory relief.

4. The Defendants are entitled to qualified immunity.

5. There can be no vicarious liability on the part of the City of Phoenix.

6. Defendants are not liable pursuant to the doctrine of assumption of the risk, in that at all times mentioned in the complaint, Plaintiffs knew the risks involved in placing themselves in the position which they then assumed, and voluntarily assumed such risk, including, but not limited to, the risk of personal injury.

7. Each Plaintiff's alleged injury, if any, and claimed damages were caused, either in whole or in part, by the acts or omissions of other(s) who is/are not party to this action and, as such, fault should be allocated to each such non-party, reducing *pro rata* any recovery to Plaintiffs.

8. Plaintiffs' claims under the Federal Civil Rights Act are barred because plaintiffs suffered no actual damages and there is no right to recover damages based on the abstract value of constitutional rights.

9. Plaintiffs' claims under the Federal Civil Rights Act against each individual Defendant are barred because each individual Defendant acted in good faith with an honest and reasonable belief that the actions taken were necessary, reasonable and appropriate. All force used by any individual Defendant was objectively reasonable under the totality of the circumstances.

10. Plaintiffs' claims under the Federal Civil Rights Act against each individual Defendant are barred because a reasonable police officer could have believed that the acts and conduct were reasonable, justified and appropriate.

11. Plaintiffs' claims under the Federal Civil Rights Act against each individual Defendant are barred because the conduct did not violate clearly established rights.

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ATTORNEYS AT LAW

1 12. Plaintiffs cannot recover punitive damages against a defendant that is a
2 public entity as a matter of law under the Federal Civil Rights Act.

3 13. Plaintiffs' claims under the Federal Civil Rights Act against the public entity
4 Defendant, and against the individual Defendants in their official capacities, are barred
5 because the alleged violation of civil rights did not occur pursuant to a government policy,
6 practice or custom.

7 14. Plaintiffs' claims under the Federal Civil Rights Act against each individual
8 Defendant are barred because the alleged deprivation of civil rights was not without due
9 process of law.

10 15. Plaintiffs' recovery against each individual Defendant is barred, in whole or
11 in part, because any injury or damage suffered by Plaintiffs was caused solely by the
12 wrongful acts and willful resistance to a peace officer in the discharge of his or her duties
13 by Plaintiffs.

14 16. Plaintiffs' claims under the Federal Civil Rights Act are barred insofar as the
15 individual Defendants are supervisors who can only be liable for their own misconduct and
16 not for that of their subordinates.

17 17. The negligence and/or intentional conduct of a third person or persons was a
18 superseding, intervening cause of Plaintiffs' injuries.

19 18. Plaintiffs have failed to mitigate their damages, and said failure to mitigate
20 bars Plaintiffs from recovery in this action.

21 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants request
22 that this matter be dismissed; that Defendants be awarded their costs, including attorneys'
23 fees, incurred herein, and such other relief that this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Defendants hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: October 8, 2018

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: */s/ Gary L. Popham, Jr.*

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CERTIFICATE OF SERVICE

I hereby certify that on October 08, 2018, I electronically transmitted the foregoing document to the Clerk of the U.S. District Court's CM/ECF system for filing and transmittal of a Notice of Electronic filing to the following CM/ECF registrants and copies emailed/mailed to:

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**COURT'S CLASS
CERTIFICATION ORDER**

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Puente, *et al.*,
10 Plaintiffs,
11 v.
12 City of Phoenix, *et al.*,
13 Defendants.

No. CV-18-02778-PHX-JJT

ORDER

14 At issue is Plaintiffs' Amended Motion for Class Certification (Doc. 101, Mot.), to
15 which Defendants filed a Response (Doc. 113, Resp.) and Plaintiffs filed a Reply
16 (Doc. 127, Reply). The Court heard oral argument on the Motion on June 12, 2019.
17 (Docs. 160, 165.) In this Order, the Court will also resolve Defendants' Motion for Leave
18 to Supplement the Class Certification Record (Doc. 138), Motion to File Exhibit under Seal
19 (Doc. 141), and Motion for Leave to File a Sur-Reply (Doc. 144), as well as Plaintiffs'
20 Motion to Strike Portions of Defendants' Supplements or Alternatively for Leave to
21 Respond to Defendants' Filings (Doc. 146).

22 **I. BACKGROUND**

23 On August 22, 2017, President Donald Trump held a rally at the Phoenix
24 Convention Center, and approximately 6,000 demonstrators—both pro-Trump and anti-
25 Trump—gathered outside the Convention Center.¹ The Phoenix Police Department
26

27 ¹ The background facts summarized here are a synthesis of the parties' proffered video
28 evidence (Doc. 90 Exs. 29–39; Resp. Exs. 42–64), testimony, and reports. Certain
discrepancies exist within this evidence, but the Court is satisfied that its synthesis is
sufficiently accurate for the purpose of resolving Plaintiffs' Amended Motion for Class
Certification.

1 (“PPD”) had about a week’s advance notice of the rally, during which it made preparations
2 to try to ensure the safety of the downtown area during the expected demonstrations. The
3 preparations included setting up a “free speech zone” designated for anti-Trump
4 demonstrators on the north side of the Convention Center, across Monroe Street. The free
5 speech zone was bordered by 2nd Street to the west, 3rd Street to the east, and Monroe
6 Street to the south, and demarcated by a three-foot high pedestrian fence. PPD anticipated
7 that certain groups of demonstrators would be present, including Antifa—a national,
8 militant political protest movement opposing fascism and right-wing ideology whose
9 groups had disrupted several other demonstrations in the weeks preceding President
10 Trump’s Phoenix visit—as well as Plaintiff Puente—a Phoenix grassroots organization
11 representing migrant communities through lobbying, advocacy, and activism—and
12 Plaintiff Poder in Action (“Poder”)—a Phoenix grassroots organization with a mission of
13 empowering victims of injustice through leadership development, civic engagement, and
14 policy advocacy.

15 In a Presidential Visit After-Action Report (Doc. 101-3 at 2–35, Bates Nos.
16 COP014832–014865, “PPD Report”), Defendant PPD Chief Jeri Williams stated that, on
17 the day of the rally, PPD deployed approximately 985 officers around the Convention
18 Center. According to the report, large crowds of demonstrators began arriving by 11:00 a.m.
19 and, although PPD officers observed minor altercations and a few water bottles being
20 thrown at rally attendees lining up to enter the Convention Center, the demonstrations
21 proceeded generally without incident during the day.

22 The rally inside the Convention Center began at 6:30 p.m. At approximately 8:15
23 p.m., after PPD officers around 2nd Street and Monroe reported that water bottles were
24 being thrown at them, PPD used a Long Range Acoustic Device (“LRAD”) to make
25 announcements instructing individuals to stop throwing objects. At 8:23 p.m., 15 to 20
26 individuals PPD had identified as Antifa put up large banners near the fence along Monroe,
27 which concealed their activities from PPD officers. PPD deployed Tactical Response Unit
28 (“TRU”) personnel, including grenadiers trained in the deployment of chemical munitions,

1 in the area where Antifa had gathered. Just after 8:32 p.m., President Trump began to leave
2 the rally, and PPD officers observed Antifa pushing or shaking the fence.

3 PPD deployed its first munition in front of Antifa just before 8:33 p.m. in the form
4 of pepper balls on the ground, which cleared most individuals from the immediate vicinity.
5 Thereafter, PPD officers reported that rocks and bottles were being thrown and, at 8:34,
6 officers reported that canisters of some kind of tear gas were thrown at them. At that point,
7 PPD officers donned gas masks and, at 8:35, the grenadiers deployed inert smoke bombs.
8 Large numbers of demonstrators began to clear the area.

9 After officers noted that some smoke canisters were being kicked back and a spear-
10 like object and an incendiary device were thrown at them, the grenadiers deployed CS
11 gas—a type of tear gas—in what they perceived to be a focused location to target specific
12 individuals. Plaintiff Gonzalez Goodman alleges she inhaled gas. The grenadiers also
13 deployed aerial flash bangs intended to act as auditory warnings. Demonstrators began to
14 run away and, by 8:39, the area where individuals had been throwing projectiles was mostly
15 empty, although demonstrators remained to the east and west of the area.

16 From 8:36 to 8:45, PPD used additional smoke cannisters and pepper balls to clear
17 an area so that officers could form lines to begin dispersing the crowd. Helicopters from
18 the PPD Air Unit began arriving at 8:40, and they started making announcements directing
19 the crowd to disperse at 8:52. In this time period, the grenadiers deployed smoke canisters,
20 pepper balls, and OC bullets—bullets filled with pepper spray—one of which hit Plaintiff
21 Guillen. Lines of PPD officers with riot shields began marching to move the crowd at 8:56.
22 At some point between 8:42 and 8:47, PPD made the determination that the crowd was
23 unlawfully assembled, and at 9:02, an official unlawful assembly announcement was made
24 via a public address system from a marked police vehicle on the ground.

25 Thereafter, the grenadiers deployed munitions in the form of pepper balls, OC
26 bullets, and CS gas canisters at anyone who approached a police officer, and Plaintiff
27 Travis was hit several times. PPD officers told the press to leave the area at 9:20 p.m. The
28 crowd was dispersed and gone from the free speech area by 9:56 p.m.

1 Over the course of the evening, PPD documented eight Incident Reports—for
2 criminal damage, disorderly conduct, aggravated assault on Police, and unlawful
3 assembly—and made five individual arrests. After the rally, Chief Williams publicly
4 acknowledged that she directed PPD’s actions against the protestors and that the actions
5 were appropriate.

6 On September 4, 2018, Plaintiffs filed suit against PPD and certain PPD members—
7 including Chief Williams, Field Force Commander Moore, Grenadier Team Leader
8 McBride, and Grenadiers Scott, Turiano, Neville, Sticca, White, Howell, and Herr—
9 raising four claims: (1) a claim under 42 U.S.C. § 1983 for excessive use of force during a
10 search or seizure under the Fourth and Fourteenth Amendments; (2) a § 1983 claim for
11 infringement of Plaintiffs’ freedom of speech and association rights under the First and
12 Fourteenth Amendments; (3) a § 1983 claim for due process violations under the
13 Fourteenth Amendment; and (4) a § 1983 claim for equal protection violations under the
14 First and Fourteenth Amendments. (Doc. 1, Compl.) Plaintiffs now move to certify this
15 suit as a class action.

16 **II. LEGAL STANDARD**

17 Federal Rule of Civil Procedure 23(a) provides that a class action—that is, an action
18 in which one or more members of a class sue on behalf of all members of the class—may
19 proceed only if four prerequisites are met:

- 20 (1) Numerosity: “the class is so numerous that joinder of all members is
21 impracticable;”
- 22 (2) Commonality: “there are questions of law or fact common to the class;”
- 23 (3) Typicality: “the claims or defenses of the representative parties are typical of
24 the claims or defenses of the class;” and
- 25 (4) Adequacy of Representation: “the representative parties will fairly and
26 adequately protect the interests of the class.”

27 Fed. R. Civ. P. 23(a).

28

1 In addition, under Rule 23(b), a court may only certify a class action if there is at
2 least one of the following:

- 3 (1) Risk of Inconsistency: the prosecution of separate actions by individual class
4 members would create a risk of inconsistent adjudications or adjudications
5 that would be dispositive of non-party class member interests; or
6 (2) Appropriate Class-Wide Injunctive Relief: injunctive or declaratory relief is
7 appropriate respecting the class as a whole because the conduct of the
8 opposing party applies generally to the class; or
9 (3) Predominance and Superiority: “the court finds that the questions of law or
10 fact common to class members predominate over any questions affecting
11 only individual members, and that a class action is superior to other available
12 methods for fairly and efficiently adjudicating the controversy.”

13 Fed. R. Civ. P. 23(b).

14 “Rule 23 does not set forth a mere pleading standard. A party seeking class
15 certification must affirmatively demonstrate his compliance with the Rule—that is, he must
16 be prepared to prove that there are *in fact* sufficiently numerous parties, common questions
17 of law or fact, etc.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Thus,
18 “sometimes it may be necessary for the court to probe behind the pleadings before coming
19 to rest on the certification question.” *Id.* (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457
20 U.S. 147, 160 (1982)). Class certification “is proper only if ‘the trial court is satisfied, after
21 a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied,’” which will
22 frequently “entail some overlap with the merits of the plaintiff’s underlying claim.” *Id.* at
23 350–51 (quoting *Falcon*, 457 U.S. at 161).

24 **III. ANALYSIS**

25 In the Complaint, Plaintiffs propose a “damages class” consisting of

26
27 those persons who were present on August 22, 2017, at the Trump Protest
28 area north of the Convention Center which was designated as the “free-
speech zone” (the area for anti-Trump protestors bounded to the south by

1 Monroe Street, 2nd Street to the west, and 3rd street to the east) and forced
 2 by PPD onto adjacent streets at any point between 8:25 and 10:00 P.M., who
 3 did not engage in any conduct justifying the Defendants’ use of force against
 4 them, and who were subjected to the PPD’s dispersal by the use of force, or
 5 other unlawful police activity arising from the police response to anti-Trump
 6 protestors.

7 (Compl. ¶ 112.) Plaintiffs propose two damages subclasses: (a) “All persons who were
 8 unlawfully dispersed by the use of gas, pepper spray, pepper bullets, or other chemical
 9 agents;” and (b) “All persons who were unlawfully dispersed by PPD by being struck with
 10 projectiles of any type.” (Compl. ¶ 112.) Plaintiffs Janet Travis and Cynthia Guillen are
 11 proposed class representatives for damages subclasses (a) and (b), and Plaintiff Jacinta
 12 Gonzalez Goodman is a proposed class representative for only subclass (a).²

13 Plaintiffs propose an “injunctive relief class” consisting of

14 all persons who have in the past, including those present at the anti-Trump
 15 protest on August 22, 2017, between 8:25 and 10:00 P.M., or may in the
 16 future, participate in, or be present at, demonstrations within the City of
 17 Phoenix in the exercise of their rights of free speech and assembly without
 18 engaging in any conduct justifying the use of force.

19 (Compl. ¶ 113.) Plaintiffs’ proposed injunctive relief class representatives are Travis,
 20 Guillen, and Gonzalez Goodman as well as the two Plaintiff organizations, Puente and
 21 Poder.

22 **A. Proposed Damages Class**

23 **1. Failsafe Class Definition**

24 Defendants argue that Plaintiffs’ proposed damages class definition fails, somewhat
 25 ironically, because it is “failsafe”—that is, it limits “membership to plaintiffs described by
 26 their theory of liability in the class definition such that the definition presupposes success
 27 on the merits.” *Melgar v. CSK Auto, Inc.*, 681 F. App’x 605, 607 (9th Cir. 2017). Put
 28 another way, Defendants argue that, by limiting class membership to those “who did not
 engage in any conduct justifying the Defendants’ use of force against them,” the class

² The Complaint also named Plaintiff Ira Yedlin as a class representative, but Plaintiffs withdrew him as a class representative in their Reply. (Reply at 12.)

1 definition requires that the Court examine the merits of each individual’s claim before it
2 can determine whether the individual is a member of the class, which Defendants contend
3 is unacceptable. (Resp. at 12–15.)

4 As Defendants point out, “‘Defining the class is of critical importance because it
5 identifies the persons (1) entitled to relief, (2) bound by a final judgment, and (3) entitled
6 under Rule 23(c)(2) to the best notice practicable in a Rule 23(b)(3) action.’ Thus, a class
7 definition ‘must be precise, objective, and presently ascertainable’ before a class action can
8 proceed.” (Resp. at 12 (quoting *Daniel F. v. Blue Shield of Cal.*, 305 F.R.D. 115, 121 (N.D.
9 Cal. 2014) (internal quotations omitted)).) In *Lyll v. City of Los Angeles*, another District
10 Judge declined to certify a class defined as individuals “who did not engage in any conduct
11 justifying their detention by [Los Angeles Police Department] officers or the officers’
12 forced entry over objection to the artists’ space” because the class was not presently
13 ascertainable and therefore “unmanageable virtually by definition.” 2010 WL 11549565,
14 at *2–3 (C.D. Cal. May 18, 2010) (internal quotations omitted).

15 Plaintiffs and Defendants interpret the proposed damages class definition
16 differently. Plaintiffs represent that they intended to define a class not by presupposing that
17 they win the legal question at issue, but rather by limiting the class to individuals who did
18 not engage in certain conduct. (Reply at 5–6; Doc. 165, June 12, 2019, Hearing Transcript
19 (“Hr’g Tr.”) at 13.) Defendants focus not on the conduct of the class members, but rather
20 the conclusion that must be drawn from that conduct—that it did not justify Defendants’
21 use of force against them. (Resp. at 13.)

22 The Court is not entirely convinced that a failsafe class definition must fail in every
23 instance. But Plaintiffs’ proposed damages class definition can be read to require that a
24 legal conclusion be reached as to whether individuals’ conduct justified the force used
25 against them before determining if they are members of the class, which the Court agrees
26 is inconsistent with the goals of precision, objectivity, and present ascertainability in class
27 definition. *See Hagen v. City of Winnemucca*, 108 F.R.D. 61, 63–64 (D. Nev. 1985).

28

1 A court “may construct a definition of the class or may modify a proposed definition
2 where the original is inadequate.” *Id.* at 64 (internal quotations and citations omitted). Here,
3 the Court finds the defect in Plaintiffs’ proposed damages class definition to be somewhat
4 akin to a defective complaint in which a claim relies on allegations couched as legal
5 conclusions instead of non-conclusory allegations of fact. If the class definition were to
6 focus on the individuals’ conduct, as Plaintiffs intended, concerns about having to reach
7 the merits of Plaintiffs’ claims in identifying class members would no longer be present.
8 Moreover, the conduct Defendants have identified as justifying their use of force was only
9 two-fold: individuals attempting to breach the free speech zone barrier and individuals
10 throwing objects (including CS gas cannisters) at PPD officers. Thus, a more precise,
11 presently ascertainable, non-conclusory class definition that is consistent with the class
12 definition Plaintiffs have chosen would be as follows:

13
14 those persons who were present on August 22, 2017, at the Trump Protest
15 area north of the Convention Center which was designated as the “free-
16 speech zone” (the area for anti-Trump protestors bounded to the south by
17 Monroe Street, 2nd Street to the west, and 3rd street to the east) and forced
18 by PPD onto adjacent streets at any point between 8:25 and 10:00 P.M., who
19 neither threw objects nor attempted to breach the “free speech zone” barrier
along Monroe Street, and who were subjected to the PPD’s dispersal by the
use of force, or other unlawful police activity arising from the police response
to anti-Trump protestors.

20 (Compl. ¶ 112 (altered provision emphasized).) Indeed, Plaintiffs propose alternative
21 language along these very lines in their Reply. (Reply at 8.) The Court finds this language
22 would alleviate concerns about conducting merits inquiries in forming the class.

23 **2. Numerosity, Commonality, Predominance, and Damages**

24 Plaintiffs generally describe their theory of liability as follows: “PPD used
25 indiscriminate force against the whole protest (as opposed to individual protestors against
26 whom such force was justified) and declared an unlawful assembly based on the conduct
27 of a few individuals who could and should have been isolated. This undifferentiated use of
28 force and wholesale crowd dispersal violated the protestors’ rights.” (Reply at 5–6.)

1 Plaintiffs allege that large numbers of individuals were subject to PPD’s use of force, that
2 common issues of law and fact apply to those individuals’ claims, and that the common
3 issues predominate over individual issues, thus satisfying the requirements of Rules
4 23(a)(1), (2), and 23(b)(3).

5 In contrast, Defendants contend that the evidence shows that Plaintiffs’ claims “are
6 riddled with individualized inquiries that cannot be answered on a classwide basis.” (Resp.
7 at 14.) Defendants point in particular to evidence that the PPD deployments of munitions,
8 whether in the form of gas and chemical agents (Plaintiffs’ proposed damages subclass (a))
9 or bullets and projectiles (Plaintiffs’ proposed damages subclass (b)), were targeted at
10 certain individuals and spread out over time and space. The Court now examines whether
11 Plaintiffs have sufficiently demonstrated numerosity, commonality, and predominance
12 with respect to each proposed damages subclass.

13 **a. Proposed Damages Subclass (a) – Gas/Chemical Agents**

14 Plaintiffs contend the evidence shows that the individuals exposed to gas or
15 chemical agents “number at least in the hundreds” out of the estimated 6,000 protestors.
16 (Mot. at 25.) They further argue that these individuals’ claims for relief require resolving
17 central, common questions as to Defendants’ liability and that these common questions
18 predominate over individual issues, satisfying Rules 23(a)(2) and 23(b)(3). (Mot. at 27–
19 30.) Plaintiffs also argue that the individuals’ damages for deprivation of their First and
20 Fourth Amendment rights, which resulted from centralized command decisions, are
21 sufficiently common, and even if they are not, individualized damages should not defeat
22 class certification. (Mot. at 30–31.)

23 A review of the video and other evidence reveals that a large number of
24 individuals—more than 40—appear to have been exposed to gas or chemical agents, even
25 if in some instances it was inert smoke, and Plaintiffs therefore satisfy the numerosity
26 requirement.

27 As for commonality, the Court need not find that all questions of fact and law be
28 common to the individual class members; “[t]he existence of shared legal issues with

1 divergent factual predicates is sufficient, as is a common core of salient facts coupled with
2 disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
3 (9th Cir. 1998), *overruled on other grounds by Dukes*, 564 U.S. at 338. Plaintiffs’ First
4 Amendment claim requires they demonstrate that Defendants’ actions deterred or chilled
5 their political speech and that such deterrence or chilling was a “substantial or motivating
6 factor” in Defendants’ conduct.³ *Mendocino Env’tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283,
7 1300 (9th Cir. 1999) (internal quotations omitted). Such intent can be demonstrated by
8 showing that Defendants’ acts “would chill or silence a person of ordinary firmness from
9 future First Amendment activities.” *Id.* (internal quotations omitted). Plaintiffs’ Fourth
10 Amendment claim requires they show that Defendants’ use of force was not “reasonable”
11 under the “facts and circumstances” of the case.⁴ *Graham v. Connor*, 490 U.S. 386, 396
12 (1989).

13 Defendants argue that their use of gas and chemical agents was by different
14 grenadiers exercising individual judgment in response to certain actions by protestors, and
15 each use was targeted at certain groups of individuals. As a result, Defendants contend, the
16 factual questions arising from their use of force are too individualized for class
17 certification. In support, they rely on cases in which courts denied class certification such
18 as *Moss v. United States Secret Service*, 2015 WL 5705126, at *1–2 (D. Or. Sep. 28, 2015),
19 in which officers struck certain individuals or hit them with pepper spray bullets in
20 attempting to move them from their location; *Lyall*, 2010 WL 11549565, at *2–3, in which
21 officers subjected certain individuals at a musical and cultural event to searches; and
22 *Universal Calvary Church v. City of New York*, 177 F.R.D. 181, 182 (S.D.N.Y. 1998), in
23 which officers used mace on certain individuals to prevent them from leaving a church over
24 a period of more than twelve hours.

25 _____
26 ³ Plaintiffs’ Equal Protection claim will “rise and fall with the First Amendment claim.”
OSU Student Alliance v. Ray, 699 F.3d 1053, 1067 (9th Cir. 2012).

27 ⁴ In contrast, Plaintiffs’ Fourteenth Amendment claim—the excessive use of force claim
28 where there was no “seizure”—requires they show the officers’ conduct “shock[s] the
conscience.” *See Darrah v. City of Oak Park*, 255 F.3d 301, 305–06 (6th Cir. 2001)
(comparing Fourth and Fourteenth Amendment excessive use of force claims).

1 The Court disagrees with Defendants that this case is similar to those and that the
2 factual and legal questions as to PPD’s use of gas/chemical agents are too individualized
3 for class certification here. While the grenadiers report that they intended to target certain
4 groups of individuals with their use of force, the very nature of the use of gas is that it is
5 not contained to a certain individual or a small area. The video evidence shows that PPD’s
6 use of pepper balls, tear gas, and inert smoke caused large numbers of protestors to
7 disperse. The Court also disagrees with Defendants’ argument that even if inert smoke
8 appears to have had an impact on the larger number of people, it was “just inert smoke”
9 and likely caused at most minimal injury. A jury could find the smoke had the effect PPD
10 intended—dispersal of the crowd—and that is squarely at issue in Plaintiffs’ claims.

11 The Court also finds that Plaintiffs have satisfactorily demonstrated for the purposes
12 of their Motion that Defendants’ actions were likely command decisions, from the initial
13 authorization to use gas and chemical agents, to the unlawful assembly and dispersal
14 announcements, to the later ratification of PPD’s actions by its Chief.⁵ Plaintiffs thus have
15 shown that both factual and legal questions as to the propriety of Defendants’ use of gas
16 and chemical agents are common among the proposed class members and predominate
17 over any individual questions. *See Multi-Ethnic Immigrant Workers Organizing Network*
18 *v. City of Los Angeles*, 246 F.R.D. 621, 634–35 (C.D. Cal. 2007) (“MIWON”).

19 Finally, Defendants contend that determining the amount of damages each class
20 member is entitled to demands individual inquiries, which weighs against class
21 certification. (Resp. at 17 n.11.) However, as Plaintiffs point out, if they can “show that
22 their damages stemmed from the defendant’s actions that created their legal liability,” the
23 “presence of individualized damages cannot, by itself, defeat class certification under Rule
24 23(b)(3).” (Mot. at 31 (quoting *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513–14 (9th
25 Cir. 2013))); *see also Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975) (“The amount

26 ⁵ To the extent Defendants contend that common issues do not extend to each grenadier
27 and his individual use of gas and chemical agents, Plaintiffs rely on the principle of
28 “integral participation,” which “does not require that each officer’s actions themselves rise
to the level of a constitutional violation” if the officer was aware of the decisions to use
force and a participant in the concerted action to use it. *Boyd v. Benton Cty.*, 374 F.3d 773,
780 (9th Cir. 2004).

1 of damages is invariably an individual question and does not defeat class action
2 treatment.”) Plaintiffs have satisfactorily shown that any class-wide damages will arise
3 from common proof regarding Defendants’ liability to satisfy the requirements at the class
4 certification stage. *See Chua v. City of Los Angeles*, 2017 WL 10776036, at *11 (C.D. Cal.
5 May 25, 2017).

6 **b. Proposed Damages Subclass (b) – Projectiles**

7 As for protestors hit with projectiles, Plaintiffs state they have uncovered 20 such
8 individuals and point out that PPD has stated it fired 590 projectiles over the course of the
9 evening. (Mot. at 25.) Thus, Plaintiffs argue they are likely to form a class of more than 40
10 individuals and, in any event, the Court should certify the subclass even if it is comprised
11 of fewer than 40 individuals under *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319
12 & n.10 (9th Cir. 1992) (identifying 8 cases certifying classes with fewer than 40 members).
13 (Mot. at 25.) As with Defendants’ use of gas and chemical agents, Plaintiffs argue that the
14 individuals’ claims for relief require resolving central, common questions as to
15 Defendants’ liability and that these common questions predominate over individual issues,
16 satisfying Rules 23(a)(2) and 23(b)(3). (Mot. at 27–30.)

17 Here, the Court disagrees with Plaintiffs that the issues are sufficiently common.
18 The video and other evidence shows that Defendants used bullets and other projectiles
19 against individual protestors under varying circumstances in different locations and at
20 different times. Thus, both the factual questions and the legal ones—such as whether each
21 deployment of bullets was reasonable under the circumstances at the time—will differ for
22 each individual. *See Moss*, 2015 WL 5705126, at *1–2; *Lyall*, 2010 WL 11549565, at *2–
23 3. Because Plaintiffs have not demonstrated commonality and predominance under Rules
24 23(a)(2) and 23(b)(3), the Court will decline to certify proposed damages subclass (b).

25 **3. Typicality and Adequacy of Representation**

26 Returning to the remaining damages class—proposed damages subclass (a)—
27 Plaintiffs have satisfactorily demonstrated typicality and adequacy of representation with
28 respect to the named Plaintiffs. Gonzalez Goodman, Guillen, and Travis all claim they were

1 exposed to Defendants’ gas/chemical agents and subject to Defendants’ dispersal order.
2 Moreover, there is no argument before the Court that the named Plaintiffs have a conflict
3 of interest or that counsel for Plaintiffs are not competent to represent the class. Plaintiffs
4 have therefore shown typicality and adequacy of representation under Rules 23(a)(3) and
5 (4). Because Plaintiffs have met the requirements of Rules 23(a) and 23(b)(3), the Court
6 will certify Plaintiffs’ proposed subclass (a) of the damages class for a class action.

7 **B. Proposed Injunctive Relief Class**

8 **1. Standing**

9 With regard to Plaintiffs’ proposed injunctive relief class, Defendants argue that
10 Plaintiffs do not have standing to seek injunctive relief because they have not demonstrated
11 an actual and imminent repetition of Defendants’ alleged violations. (Resp. at 24–27.) A
12 plaintiff cannot properly represent a class if the plaintiff lacks individual standing. *Hawkins*
13 *v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9th Cir. 2001). Moreover, a plaintiff “must
14 demonstrate standing separately for each form of relief sought.” *DaimlerChrysler Corp. v.*
15 *Cuno*, 547 U.S. 332, 352 (2006). Article III standing has three elements. *Lujan v. Defenders*
16 *of Wildlife*, 504 U.S. 555, 560 (1992). First, a plaintiff must have suffered an “injury in
17 fact—an invasion of a legally protected interest which is (a) concrete and particularized . . .
18 and (b) actual or imminent, not conjectural or hypothetical.” *Id.* (internal citations and
19 quotations omitted). Second, there must be a causal connection between the injury and the
20 alleged violation. *Id.* at 560. Third, it must be likely that the injury will be redressed by a
21 favorable decision. *Id.* A plaintiff must allege sufficient, specific facts in the complaint to
22 establish standing. *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279 F.3d 817, 821
23 (9th Cir. 2002).

24 An organization has standing “to seek judicial relief from injury to itself and to
25 vindicate whatever rights and immunities the association itself may enjoy.” *Warth v.*
26 *Seldin*, 422 U.S. 490, 511 (1975). An organization also has “associational standing” to
27 bring suit on behalf of its members “when its members would otherwise have standing to
28 sue in their own right, the interests at stake are germane to the organization’s purpose, and

1 neither the claim asserted nor the relief requested requires the participation of individual
2 members in the lawsuit.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*,
3 528 U.S. 167, 181 (2000) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333,
4 343 (1977)).

5 To be a class representative seeking injunctive relief, a plaintiff “must demonstrate
6 ‘that he is realistically threatened by a repetition of [the violation].’” *Armstrong v. Davis*,
7 275 F.3d 849, 860–61 (9th Cir. 2001) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95,
8 109 (1983)), *overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005). A
9 plaintiff “need not establish that future harm is certain, or even probable” but “must
10 establish that recurrence is not ‘conjectural’ or ‘hypothetical.’” *MIWON*, 246 F.R.D. at 628
11 (citing *Lyons*, 461 U.S. at 105–08).

12 Here, Plaintiffs contend that they suffered actual injuries as a result of deficient PPD
13 policies and that Defendants’ conduct at the protest was officially sanctioned behavior
14 violative of Plaintiffs’ federal rights. (Reply at 15–16.) Defendants frame their conduct at
15 the protest by stating, “officers used types of force they rarely use, in response to sudden
16 and specific threats, in an unusually tense high-security atmosphere,” such that Plaintiffs
17 are not realistically threatened by a repetition of the violations they allege occurred in
18 response to the protest. (Resp. at 28.)

19 The Court notes that although the named Plaintiffs allege their First Amendment
20 rights have been chilled by Defendants’ conduct, the evidence shows they have attended
21 demonstrations in Phoenix since PPD’s use of force at issue in this lawsuit. The Court will
22 accept Plaintiffs’ position that “chilling” free speech rights is not equivalent to preventing
23 Plaintiffs from protesting, but rather has made them more reluctant or fearful to do so—a
24 proposition Defendants do not appear to challenge. (Hr’g Tr. at 29–31.)

25 With regard to whether Plaintiffs are realistically threatened by a repetition of
26 Defendants’ alleged violations, in *Armstrong*, the Ninth Circuit stated there are at least two
27 ways to demonstrate that an injury is likely to recur for the purposes of standing to seek
28 injunctive relief. 275 F.3d at 861.

1
2 First, a plaintiff may show that the defendant had, at the time of the injury, a
3 written policy, and that the injury stems from that policy. In other words,
4 where the harm alleged is directly traceable to a written policy, there is an
5 implicit likelihood of its repetition in the immediate future. Second, the
6 plaintiff may demonstrate that the harm is part of a pattern of officially
7 sanctioned . . . behavior, violative of the plaintiffs' [federal] rights. Thus,
8 where the defendants have repeatedly engaged in the injurious acts in the
9 past, there is a sufficient possibility that they will engage in them in the near
10 future to satisfy the realistic repetition requirement.

11 *Id.* at 861 (internal quotations and citations omitted).

12 As for the second of these ways of demonstrating a realistic likelihood of recurrence,
13 the parties dispute whether PPD's past conduct is sufficient to indicate that PPD will
14 engage in a use of force in the future similar to that alleged by Plaintiffs in this case. But
15 the Court finds that Plaintiffs have provided enough policy evidence to meet the first of the
16 two tests set forth in *Armstrong*. Specifically, Plaintiffs point to evidence that PPD had no
17 policy in place at the time of the protest regarding the use of tear gas/chemical agents,
18 which is directly related to Plaintiffs' alleged injuries. (Reply at 15.) Moreover, Plaintiffs
19 provide evidence that PPD did not change its procedures or implement corrective actions
20 after the protest, and indeed its Chief ratified PPD's conduct after the event. (Reply at 15–
21 16.) Because the harm Plaintiffs allege is traceable to PPD's policies, or lack thereof, the
22 Court can infer a realistic repetition of PPD's course of action sufficient for standing
23 purposes.

24 **2. Rule 23(a) Elements**

25 The parties do not raise new arguments regarding whether Plaintiffs' proposed
26 injunctive relief class meets the Rule 23(a) requirements of numerosity, commonality,
27 typicality, and adequacy of representation, as applied to the individual Plaintiffs and the
28 organizational Plaintiffs in vindicating their own interests and those of their members.
Instead, Defendants point out that a class action is not necessary to obtain injunctive relief
when an individual plaintiff can obtain the same relief (Resp. at 27)—a proposition with
which, as a practical matter, the Court agrees. However, because Plaintiffs' damages class

1 will be certified and the issues involved in seeking damages and injunctive relief largely
2 intersect, allowing the injunctive relief class to proceed will not result in substantial
3 unfairness or inefficiency. The Court will thus certify Plaintiffs' proposed injunctive class.

4 **C. Other Motions**

5 Defendants filed a Motion for Leave to Supplement the Class Certification Record
6 (Doc. 138), which Plaintiffs opposed with a Motion to Strike (Doc. 146). The Court
7 reviewed the deposition transcripts provided by Defendants (Docs. 139, 140) together with
8 their Motion and did not find Defendants' summaries to be akin to additional briefing. The
9 Court will therefore grant Defendants' Motion for Leave to Supplement (Doc. 138), grant
10 Defendants' associated Motion to Seal (Doc. 141), and deny Plaintiffs' Motion to Strike
11 (Doc. 146).

12 Defendants also filed a Motion for Leave to File a Sur-Reply (Doc. 144), which
13 Plaintiffs opposed (Doc. 148). Because the Court did not rely on Defendants' proposed
14 Sur-Reply in resolving Plaintiffs' Amended Motion for Class Certification (Doc. 101), the
15 Court will deny Defendants' Motion for Leave to File a Sur-Reply (Doc. 144) as moot.

16 **IT IS THEREFORE ORDERED** granting in part and denying in part Plaintiffs'
17 Amended Motion for Class Certification (Doc. 101). The Court certifies Plaintiffs'
18 proposed subclass (a) of the damages class with the modification to the class definition
19 described in this Order, as well as Plaintiffs' proposed injunctive relief class. The Court
20 denies certification of Plaintiffs' proposed damages subclass (b).

21 **IT IS FURTHER ORDERED** granting Defendants' Motion for Leave to
22 Supplement the Class Certification Record (Doc. 138) and directing the Clerk of Court to
23 file on the docket the documents currently lodged at Docs. 139 and 140.

24 **IT IS FURTHER ORDERED** granting the Motion to File Exhibit under Seal
25 (Doc. 141) and directing the Clerk of Court to file under seal the document currently lodged
26 under seal at Doc. 142.

27 **IT IS FURTHER ORDERED** denying as moot Defendants' Motion for Leave to
28 File a Sur-Reply (Doc. 144).

