

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20-CVS-8563

NATIONAL ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED PEOPLE )  
CHARLOTTE-MECKLENBURG )  
BRANCH NO. 5376, )  
JUSTIN LAFRANCOIS, AMERICAN )  
CIVIL LIBERTIES UNION OF NORTH )  
CAROLINA, WILLIAM G. ADAMS, )  
TEAM TRUBLUE, JAMIE MARSICANO, )  
SOUTHEAST ASIAN COALITION )  
VILLAGE, LINDSAY CURLEE )

Plaintiffs, )

v. )

CITY OF CHARLOTTE. )  
KERR PUTNEY, in his official capacity as )  
Chief of Charlotte-Mecklenburg Police )  
Department; and )  
JOHNNY JENNINGS, in his official )  
capacity as Chief of Charlotte-Mecklenburg )  
Police Department. )

Defendants. )

FIRST AMENDED COMPLAINT AND  
MOTIONS FOR TEMPORARY,  
PRELIMINARY, AND  
PERMANENT INJUNCTIVE RELIEF

FILED  
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Plaintiffs file this action seeking an order restraining the City of Charlotte and its Charlotte Mecklenburg Police Department from violating protesters' constitutionally protected rights to assemble, to speech, and to due process of law under the North Carolina State Constitution.

Plaintiffs all have an interest in the issues presented in recent protests following George Floyd's death and in their rights to participate, now and in the future, in such public demonstrations and protests. These rights enshrined in the laws and traditions of this state and nation, including the right to assemble with others, the right to freedom of speech, and the right to be free from unlawful seizures and use of excessive force without due process. These rights were trampled by Defendants in late May 2020 and early June 2020, and Plaintiffs risk their rights being trampled again at future demonstrations in Charlotte absent intervention by this Court.

Plaintiffs have been and remain committed to the protest movement to protect Black lives. They should be free to exercise their constitutional right to protest and participate in peaceful demonstrations against police brutality in Charlotte without becoming victims to police brutality themselves. Plaintiffs' right to protest includes not being boxed in by lines of police, i.e., "kettled," and freedom from crowd-control weapons such as tear gas, flash bang grenades and rubber bullets when they are peacefully expressing their views. Plaintiffs bring this action to restrain the City of Charlotte from continuing to respond to peaceful protests with unconstitutional force.

Plaintiffs, seeking preliminary and permanent injunctive relief pursuant to Rule 65 of the Rules of Civil Procedure and G.S. § 1-485 and a declaratory judgment pursuant to G.S. § 1-253, *et seq.*, allege the following against Defendants:

### **PARTIES**

1. Plaintiff National Association for the Advancement of Colored People Charlotte-Mecklenburg Branch #5376 ("NAACP") is the local affiliate of the North Carolina State Conference of the NAACP, part of the nation's oldest civil rights organization, and dedicated to seeking justice for all persons and the elimination of race discrimination. NAACP organized and its members participated in the June 2, 2020 protest and the Juneteenth 2020 demonstration in Charlotte. NAACP members regularly participate in protests and other public assemblies in Charlotte and throughout the state. NAACP will continue to organize protests and other public assemblies in Charlotte in the coming days, weeks, and months which many of its members will attend.

2. Plaintiff Justin LaFrancois is a resident of Mecklenburg County and a journalist. He participated in, reported on, and live streamed the recent protests in Charlotte following the death of George Floyd. He was subject to and live streamed the premeditated, violent, and dangerous attack on protesters on June 2, 2020 that is a subject of this action. Plaintiff LaFrancois attended the Juneteenth demonstration and will attend future protests and public assemblies in Charlotte in the coming days, weeks, and months.

3. Plaintiff American Civil Liberties Union of North Carolina ("ACLU-NC"), an affiliate of the national American Civil Liberties Union, is a private, non-profit membership organization with its principal office in Raleigh, North Carolina. It has approximately 23,000 members and supporters across North Carolina. ACLU-NC members and employees regularly attend protests, and ACLU-NC employees have participated in recent protests against police brutality in Mecklenburg County, including the protest on June 2, 2020. The mission of ACLU-NC is to protect and advance civil rights and civil liberties for all North Carolinians, including the rights safeguarded under the U.S. and North Carolina Constitutions to protest and assemble and be free from unlawful seizures and excessive use of force. The ACLU-NC brings this action on behalf of itself and its members, including members who have attended recent protests and experienced violations of their constitutional rights to assemble and protest and to be free from unlawful punishment without due process. Plaintiff ACLU-NC members and employees also attended the Juneteenth 2020 demonstration, and plan to attend future protests and public assemblies in Charlotte in the coming days, weeks, and months.

4. Plaintiff William G. Adams is a resident of Mecklenburg County and a founding member of Team Tru Blue, who participated in the recent protests in Charlotte following the death of George Floyd, and was subject to the premeditated, violent, and dangerous attack on protesters on June 2, 2020 that is a subject of this action. Plaintiff Adams plans to attend future protests and public assemblies in Charlotte in the coming days, weeks, and months.

5. Plaintiff Team TruBlue is a non-profit organization, duly organized and existing pursuant to the laws of North Carolina with its principal office in Charlotte, North Carolina. Team TruBlue's mission is to empower families and children through community programs. Team TruBlue is dedicated to respecting others and their human rights by promoting teamwork and supporting a diverse community to reach a common goal. Team TruBlue brings this action on behalf of itself and its members, including members who participated in recent protests on June 2, 2020 and experienced violations of their constitutional rights to assemble and protest and to be free from unlawful seizures and use of excessive force without due process. Plaintiff TruBlue members plan to attend future protests and public assemblies in Charlotte in the coming days, weeks, and months.

6. Plaintiff Jamie Marsicano is a resident of Mecklenburg County, a member of Charlotte Uprising, and participated in recent protests and experienced violations of her constitutional rights to assemble and protest and to be free from unlawful seizures and excessive use of force without due process. Plaintiff Marsicano plans to attend future protests and public assemblies in Charlotte in the coming days, weeks, and months.

7. Plaintiff Southeast Asian Coalition Village ("SEAC") is a non-profit organization, duly organized and existing pursuant to the laws of North Carolina with its principal office in Charlotte, North Carolina. SEAC's mission is to serve high-need communities in North Carolina according to social justice principles. Plaintiff SEAC brings this action on behalf of itself and its members, including members who participated in recent protests on June 2, 2020 and experienced violations of their constitutional rights to assemble and protest and to be free from unlawful seizures and use of excessive force without due process. Plaintiff SEAC's members attended the Juneteenth demonstration, and plan to attend future protests and public assemblies in Charlotte in the coming days, weeks, and months.

8. Plaintiff Lindsay Curlee is a resident of Montgomery County who participated in the multiple nights of protests and demonstrations in late May and early June 2020 following the death of George Floyd, including on June 2, 2020 and experienced violations of her constitutional rights to assemble and protest and to be free from unlawful seizures and excessive use of force without due process. Plaintiff Curlee plans to participate in protests and other public assemblies in Charlotte in the coming days, weeks, and months.

9. All Plaintiff organizations have a direct and immediate interest in the issues presented in recent protests and the rights of their members to participate, now and in the future, in such public demonstrations and protests against police violence, a right enshrined in the laws and traditions of this state and nation, including the right to assemble with others, the right to freedom of speech, and the right to be free from unlawful seizures and use of excessive force without due process. Those rights were trampled by Defendants on and around June 2, 2020 and risk being trampled again at future demonstrations in Charlotte absent immediate intervention by this Court.

10. In response to Defendants' actions, each of the Plaintiff organizations have been forced to do some or all of the following:

- divert staff and resources to assess and plan for potential violence by police, including increased needs for medical support and supplies to counteract the effects of chemical agents;
- enhance efforts to educate members and supporters regarding the potential dangers of police violence, how to protect themselves, and what to do if there is another assault like the one on June 2 that is the subject of this action;
- engage in a communications campaign about the events up to and including June 2 to try to reduce the chilling effects of Defendants' actions on the constitutional rights and participation of their members or supporters;
- arrange for transportation from the demonstration for persons injured by Defendants' conduct; and
- facilitate medical care for persons injured by Defendants' actions.

11. The time and effort each one of the Plaintiff organizations has expended due to Defendants' conduct have reduced their capacity to plan events and programming consistent with their organizational missions. Defendants' actions are directly frustrating each Plaintiff organization's capacity to fulfill its mission.

12. Defendant City of Charlotte is a municipal corporation organized by charter under Chapter 160A of the North Carolina General Statutes. It maintains and operates pursuant to its charter a unified city-county police force called the Charlotte-Mecklenburg Police Department ("CMPD"). At all times relevant to this action, the City of Charlotte acted through its managers and policy makers, including the Chief of Police and other employees of the CMPD; and the acts, edicts and practices of said persons represent the official policies and practices of the Defendant City. The City of Charlotte bears legal responsibility under state law for acts and omissions of CMPD police officers in the course of their employment. It is sued for injunctive relief from the unconstitutional and dangerous policies and practices of its police department and other emergency officials that occurred on and around June 2, 2020 and which will recur unless enjoined by the Court.

13. Defendant Kerr Putney ("Chief Putney") is an adult citizen and resident of Mecklenburg County and served as Chief of the CMPD during times relevant to the this Complaint. He is sued in his official capacity for the planned, unconstitutional use of force against peaceful demonstrators on and around June 2, 2020.

14. Defendant Johnny Jennings ("Chief Jennings") is an adult citizen and resident of Mecklenburg County who was named Chief of the CMPD effective July 1, 2020. He is sued in his official capacity to obtain injunctive relief from future unconstitutional use of force against peaceful demonstrators.

## JURISDICTION & VENUE

15. Superior Court has jurisdiction over this matter under Chapter 7A of the General Statutes, N.C.G.S. §1-253 and Art. IV § 9 of the North Carolina Constitution. Plaintiffs seek injunctive and declaratory relief under the laws and Constitution of North Carolina. The Superior Court of Mecklenburg County is the proper venue for this matter pursuant to N.C. Gen. Stat. §§ 1-77(2) and 1-82.

## FACTS

16. Just after 8:00 pm on May 25, 2020, George Floyd, a forty-six-year-old father, son, brother, and Black man was accused of a non-violent offense and arrested by the Minneapolis police. In the process of his arrest, Mr. Floyd was handcuffed and fell to the pavement. Less than ten minutes after the police arrived, a police officer who participated in Mr. Floyd's arrest placed his knee and the weight of his body on Mr. Floyd's neck as Mr. Floyd lay on the ground. For eight minutes and forty-six seconds, the officer held his knee on Mr. Floyd's neck as Mr. Floyd pleaded for relief. Other officers held his legs or stood by and watched while he died.

17. Among Mr. Floyd's final words were "please, please, please, I can't breathe." These words were reminiscent of the words spoken by Eric Garner before he was killed by a New York City police officer in 2014, which have since become a tragic rallying cry for people seeking to address racial inequities and reform the American criminal justice system.

18. Mr. Floyd's horrific death was captured on video by bystanders who pleaded with police to get off his neck. The video was broadcast globally, and sparked protests in at least 93 cities around the country and around the world against the gross, systemic injustices perpetrated by law enforcement against Black people in the United States, exemplified by the recent brutal murders of Mr. Floyd and Breonna Taylor, a Black woman who was killed in March 2020 by three Louisville police officers who entered her home in the middle of the night without knocking and shot her eight times.

19. Individual Plaintiffs and members of Plaintiff organizations have joined in a series of ongoing protests against police brutality taking place on the streets of Charlotte that began in late May following Mr. Floyd's death.

20. Such protests are not new to Charlotte. Following the killing of another Black man, Keith Lamont Scott, by CMPD officers in 2016, residents participated in widespread protests spanning many days and in response, CMPD used unreasonable force, including unlawful dispersal orders, "kettling" and chemical agents-- as they did again at the protests at the end of May and first days of June, 2020.

21. Following Mr. Keith Lamont Scott's death, there was a public outcry over the unlawful use of tear gas and explosive devices (flash bang grenades) by CMPD against peaceful protesters.

22. Several Charlotte residents were elected to the City Council after running on platforms to address policing issues in the community, including CMPD's unlawful use of force

during protests.

23. The City and CMPD hired an outside consulting group to assess the use of chemicals and force on peaceful protesters and issued recommendations to prevent their misuse in the future.

24. On May 29, 2020, CMPD officers used rubber bullets, tear gas, pepper spray, and flashbang grenades to force the dispersal of largely peaceful protesters, often without giving clear dispersal orders or reasonable opportunities for protesters to disperse.

25. On May 31, 2020, CMPD and CMPD Crowd Enforcement Unit (“CEU”) officers fired pepper balls at peaceful protesters, including the media.

26. On June 2, 2020, Plaintiff NAACP organized a protest that convened outside the Charlotte-Mecklenburg Government Center at approximately 5:00 p.m.

27. On information and belief, CMPD planned to respond to the June 2, 2020 protests in conjunction with Charlotte-Mecklenburg Emergency Management, which is housed in the same building as the City’s fire department.

28. It is estimated that about 6,000 to 8,000 people attended the NAACP protest on June 2, 2020. The protest began at the Government Center without incident. After speeches ended, the crowd began to march peacefully through uptown Charlotte.

29. Several protesters, including Plaintiff LaFrancois and ACLU staff member Ms. Kristie Puckett-Williams, live streamed the event on social media.

30. Officers in uniforms, equipped with Body Worn Cameras, were present at this time, and CMPD Sergeant Brad Koch walked at the front of the march to facilitate traffic control.

31. At approximately 6:00 p.m., the marchers stopped at the CMPD Headquarters. For about 20 minutes, speakers addressed the crowd and people had an opportunity to be heard.

32. At approximately 6:20 p.m. the march continued for over an hour, stopping again in Romare Bearden Park for about 10 minutes of speeches around approximately 8:00 p.m. By then, the crowd numbered about 800 people.

33. At approximately 8:10 p.m., a group of approximately 300 to 400 protesters left Romare Bearden Park and marched through the city. Near 9:00 p.m., the marchers arrived at 5th Street and McDowell Street, where a group of some 40-50 police officers in riot gear were waiting on the far side of North McDowell Street to block the entrance ramp to Independence Boulevard.

34. Other officers were blocking both sides of McDowell Street, preventing the protesters from turning in either direction. As a result, the march came to a stop.

35. Rev. Justin Martin, at the head of the marchers and dressed in ministerial cloth, asked the officers in what direction they wanted the marchers to move. In response, a CMPD

officer sprayed him with pepper spray, causing him to fall to the ground, unable to see. Several in the bunched-up crowd moved to assist him.

36. CMPD officers then threw a Triple Chaser CS Canister (“tear gas”) and flashbang grenade into the crowd, upsetting the marchers who then began to argue with the police.

37. After the tear gas canister was thrown, the marchers scattered temporarily and then regrouped and began to march back up 5th Street toward uptown, many with their hands up, chanting “hands up, don’t shoot.”

38. As the march moved uptown, police officers on bicycles began to block off available cross streets, forcing the marchers to 4th Street.

39. At approximately 9:28 p.m., the protesters marched up 4th Street and arrived at College Street.

40. As the protesters approached the intersection, two large lines of CMPD officers—one on bikes and the other standing by in riot gear—blocked access to College Street on both sides of 4<sup>th</sup> Street, forcing the protesters to continue marching up 4th Street towards Tryon Street.

41. CMPD officers also stood guard at the entrances to parking garages along 4th Street and blocked the alley by an ATM machine.

42. Protesters can be seen on video filing peacefully past the officers on College Street, chanting and holding their hands up.

43. As protesters approached Tryon Street, a contingent of the CMPD officers rushed across 4th Street and blocked Tryon to keep the protesters from advancing.

44. Immediately one of the CMPD/CMEMO officers blocking Tryon Street threw a tear gas canister at the front of the march and another threw a flash bang grenade.

45. The tear gas and grenade caused panic among protesters at the front of the march who immediately turned and started to flee down 4th Street to get away from the tear gas and explosions.

46. But riot-dressed officers at 4th Street and College Street stepped in behind the protesters and threw three tear gas canisters across the street, blocking means of exit — one to the right side of 4th Street, a second to the left side, and a third down the middle of the street and right at the panicked crowd of protesters.

47. This is a military-based tactic known as kettling, in which lines of police officers trap a group of protesters, blocking any possible exit.

48. Trapped by tear gas and officers and the buildings lining the sides of the street, the protesters began to scream and gasp for air in panic.

49. Many protesters removed their COVID-protective face masks and/or fell to their knees and huddled together for protection from the rubber bullets, flashbang grenades, and tear gas canisters that were being hurtled at them from all sides.

50. Amid this chaos and panic, other CMPD and/or CMEMO officers stationed on the second floor of a parking deck that lined 4th Street began to shoot at the protesters with pepper balls and rubber bullets, hitting some of the protesters, including directly in the face.

51. Some protesters in the group were able to pull up a locked gate of a parking deck for marchers to crawl under and escape. Video shows protesters squirming on their bellies underneath the gate, clawing their way into the parking garage.

52. The audio of that video shows the police at Tryon Street tossed five more flashbang grenades at the crowd.

53. Some of the protesters—coughing, wheezing and crying—ran down 4th Street through the tear gas cloud to escape.

54. Police moved away from blocking the alley by the ATM machine, and some protesters escaped through the alley.

55. Others were so overwhelmed by the burning to their eyes, nose and mouth that they fell to the ground, some vomiting, and others had to help them up as the gas began to dissipate.

56. One protester was shot in the back of the head with a projectile as she escaped down 4th Street, causing her to fall to her knees. Video showed another protester shot in the face by a pepper ball or rubber bullet.

57. Without warning, hundreds of peaceful protesters speaking out against police brutality were attacked violently by the police without provocation or legal cause.

58. The next night, June 3, CMPD used flash bangs again.

59. The June 2 kettling event was widely covered by the media and sparked outrage about CMPD's actions, including among City council members and government officials.

60. On June 3, Charlotte Mayor Vi Lyles stated: "Most of you are aware there was a video of the protest action that took place last night. And on that video, it appeared to be a situation that there are probably not the words to describe the way that it appeared and how it acted and turned out ... Last night was one of those times that none of us can be proud of—that none of us would want to see happen in our city. But it did. And I hope everyone is aware that that's not the kind of department we want to have for policing. It's not the kind of reputation that we want to



have nationally or locally.”<sup>1</sup>

61. At the Charlotte City Council meeting the following Monday, the city’s annual budget was on the agenda for approval. Council member Braxton, who had challenged the use of tear gas in 2016, and who had been arrested during the current protests against police brutality, filed a motion to block any funds being used to acquire or maintain CMPD’s tear gas supplies.

62. The City Council voted 9-2 to cease funding *future* purchases of tear gas in the next fiscal year. CMPD opposed this vote.

63. In response, Defendant CMPD Chief Putney publicly refused to discontinue the use of tear gas on demonstrators, instead saying that without chemical munitions, police reaction to protests will resemble civil rights demonstrations in the 1960s, and that Charlotte will look like “Birmingham, Alabama...All day Long,” and that CMPD officers would resort to “brute physical force, with shields and batons.”<sup>2</sup>

64. At the hearing on Plaintiffs’ motion for a temporary restraining order (TRO) on June 19, 2020, CMPD defiantly claimed that its actions were fully justified. The Court entered the TRO.

65. Since the filing of the original complaint, CMPD created and published misleading social media content that have had the effect of denigrating both the protesters and the ongoing court proceedings.

66. On June 19, 2020, the Court granted a Temporary Restraining Order enjoining the CMPD from kettling peaceful protesters and from using munitions for crowd control absent specific conditions.

67. CMPD posted an attack on the judge and the order on Twitter and Facebook, claiming the court prohibited CMPD from responding to property damage by protestors.

68. The posting generated caustic rebukes of the judge on social media, leading her to seek protection from the sheriff.

69. On June 22, 2020, the judge convened a conference call of parties, including the CMPD Public Information Officer, to address the characterization of the court’s order by CMPD.

70. The judge ordered CMPD to take down the postings, which it has failed to do.

71. As a result of Defendants’ unlawful and unconstitutional use of force against the

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<sup>1</sup> *City of Charlotte Hosts Community Forums After Incident Between Protestors and Police*, WCNC, June 4, 2020 (available at <https://www.wcnc.com/article/news/local/charlotte-news-conference-wednesday/275-08b7983a-7f46-4f1c-a006-890768d10035>).

<sup>2</sup> <https://www.wfae.org/post/cmpd-chief-says-tear-gas-ban-would-lead-officers-using-brute-force-shields-and-batons#stream/0>

individual Plaintiffs and members of organizational Plaintiffs NAACP, TruBlue, SEAC and ACLU-NC, Plaintiffs fear that they cannot safely exercise their rights to free speech and assembly free from unlawful seizures and use of excessive force without due process in Charlotte.

**FIRST CLAIM FOR RELIEF**  
**(North Carolina State Constitution - Article I, Section 12)**

72. All prior paragraphs are incorporated by reference.

73. Plaintiffs have a fundamental right to assemble under Article I, Section 12 of the North Carolina State Constitution.

74. Defendants' violent actions, which targeted Plaintiffs and other protestors because of the content and viewpoint expressed in their protests, violated Plaintiffs' constitutional rights to assemble.

75. Defendants' violent actions were not a reasonable regulation of the time, place, or manner of Plaintiffs' constitutionally protected activity.

76. Defendants' actions were not justified by a compelling—or even substantial—government interest.

77. Assuming arguendo that there was a compelling or important government interest in dispersing protesters, Defendants' actions on June 2 were not narrowly or substantially tailored to serve that government interest in a lawful manner.

78. Using crowd-control weapons and equipment, including but not limited to tear gas, flash bang explosives, rubber bullets and pepper balls, and unlawful “crowd control” containment practices such as kettling on peaceful marchers violates the right to assemble under the North Carolina Constitution.

79. Plaintiffs have no adequate remedy at state law to address the violation of their constitutional rights.

80. Given that this unlawful use of force, particularly the aggressive use of chemicals on peaceful protesters occurred back in 2016, has occurred again in past weeks, and is likely to occur again in the future, and given CMPD's defense of its use of munitions in response to current protests, leading to imposition of a TRO, Plaintiffs seek and are entitled to a court order preliminarily and permanently enjoining such actions under the terms of the TRO.

81. Plaintiffs also seek the costs of this action. Given the flagrant and deliberate violation of state constitutional rights by the City through its agents, Plaintiffs seek attorneys' fees under N.C. Gen. Stat. § 6-21.7.

**SECOND CLAIM FOR RELIEF**  
**(North Carolina State Constitution - Article I, Section 14)**

82. All prior paragraphs are incorporated by reference.

83. Plaintiffs have a fundamental right to freedom of speech under Article I, Section 14 of the North Carolina State Constitution.

84. Defendants' egregious actions of kettling peaceful protesters, firing tear gas grenades, shooting rubber bullets and pepper balls, and hurling flash bang explosives at those gathered peacefully to object to police violence is a use of unwarranted force in reaction to their protected speech and violates Article I, section 14 of the North Carolina Constitution.

85. Plaintiffs have no adequate remedy at state law to address the violation of their constitutional rights.

86. The continued threat of such violent tactics only serves to chill protected speech and dissuade peaceful protesters from engaging in their constitutional right to express their views, and has in fact chilled Plaintiffs and their members and makes them fearful to participate in future demonstrations.

87. Given that this unlawful use of force, particularly the aggressive use of chemicals on peaceful protesters occurred back in 2016, has occurred again in past weeks, and is likely to occur again in the future, and given CMPD's defense of its use of munitions in response to current protests, leading to imposition of a TRO, Plaintiffs seek and are entitled to a court order preliminarily and permanently enjoining such actions under the terms of the TRO.

88. Plaintiffs seek the costs of this action. Given the flagrant and deliberate violation of state constitutional rights by the City through its agents, Plaintiffs seek their attorneys' fees under N.C. Gen. Stat. § 6-21.7.

**THIRD CLAIM FOR RELIEF**  
**(North Carolina State Constitution - Article I, Section 19)**

89. All prior paragraphs are incorporated by reference.

90. Plaintiffs have a fundamental right to be free from conscience-shocking, extrajudicial use of force and punishment without due process pursuant to "the law of the land" under Article I, Section 19 of the North Carolina State Constitution.

91. Defendants' unwarranted and egregious actions of deliberately trapping peaceful protesters, firing tear gas grenades, flash bang explosives and shooting pepper balls at those gathered peacefully to object to police violence, is a shocking use of unwarranted and unreasonable force in violation of the Plaintiffs' due process rights as guaranteed by Article I, Section 19 of the North Carolina Constitution.

92. Plaintiffs have no adequate remedy at state law to address the violation of their constitutional rights.

93. Given that this unlawful use of force, particularly the aggressive use of chemicals on peaceful protesters occurred in 2016, has occurred again in past weeks, and is likely to occur again in the future, and given CMPD's defense of its use of munitions in response to current protests, leading to imposition of a TRO, Plaintiffs seek and are entitled to a court order preliminarily and permanently enjoining such actions under the terms of the TRO.

94. Plaintiffs seek the costs of this action. Given the flagrant and deliberate violation of state constitutional rights by the City through its agents, Plaintiffs seek attorneys' fees under N.C. Gen. Stat. § 6-21.7.

**FOURTH CLAIM FOR RELIEF**  
**(Declaratory Judgment – N.C.G.S. § 1-253, *et seq.*)**

95. All prior paragraphs are incorporated by reference.

96. There exists a real and justiciable controversy between the parties as to the application of N.C. Gen. Stat. § 14-288.5.

97. Police are authorized to issue a dispersal order when “a riot or disorderly conduct by an assemblage of three or more persons[] is occurring.”

98. There was no basis for issuing such an order on June 2, 2020, nor at the end of May protests.

99. If any dispersal order was given, it was not given in a “manner reasonably calculated to be communicated to the assemblage.”

100. None of the Plaintiffs brutalized by the kettling incident on June 2 heard a dispersal order or had forewarning of the police violence planned for them.

101. Specifically, Plaintiffs seek a declaration that:

- a. Defendants' unlawful actions on June 2 were motivated by an attempt to suppress the Plaintiffs' message, and had the effect of chilling Plaintiffs' protected free speech and right to assemble;
- b. If any dispersal order was given during the June 2 incident, it was not provided in a manner “reasonably calculated to be communicated to the assemblage” and thus did not provide notice requisite to claim a violation of the order;
- c. If any dispersal order was given before the June 2 kettling incident, it did not provide sufficient notice or opportunity for compliance; and

- d. The manner in which Plaintiffs were forcibly and unlawfully dispersed on June 2 violated their due process rights under the North Carolina Constitution.

102. Plaintiffs are entitled to a court order temporarily, preliminarily, and permanently enjoining the manner and method of issuing and communicating any dispersal order that CMPD claims it issued on June 2, 2020.

103. Plaintiffs seek the costs of this action. Given the flagrant and deliberate violation of state constitutional rights by the City through its agents, Plaintiffs seek attorneys' fees under N.C. Gen. Stat. § 6-21.7.

### **MOTION FOR PRELIMINARY INJUNCTION**

104. Pursuant to Rule 65 of the North Carolina Rules of Civil Procedure and N.C.G.S. § 1-485, Plaintiffs respectfully request that the Court, having entered a temporary restraining order, now enter a preliminary injunction – and at the conclusion of this action that the Court enter a permanent injunction – for the reasons set forth below:

105. Plaintiffs restate, re-allege, and incorporate by reference the matters set forth in the Amended Complaint, above.

106. By preventing Plaintiffs from assembling and expressing their views against police violence, Defendants have already caused irreparable harm in the form of suppression of speech, assembly, and the right to due process to plaintiffs.

107. Plaintiffs have demonstrated a likelihood of success on the merits of each of their claims for relief.

108. Plaintiffs have no adequate remedy at law and irreparable harm will continue without an order from this Court enjoining Defendants' unconstitutional acts. Specifically, Plaintiffs request injunctive relief enjoining the kettling of, and the use of chemical munitions, irritants, explosives and rubber bullets against, peaceful protesters, and for the Court to order that such force can be used if and only if:

- A. Officers are faced with imminent threat of physical harm to themselves or other identifiable persons;
- B. Protesters are committing or clearly threatening acts of violence that cannot be controlled by singling out and removing the perpetrators;
- C. Chemical munitions, irritants, “non-lethal” projectiles, and explosives may be only used if (i) efforts to subdue an imminent threat of physical harm to people by alternative crowd measures have been exhausted and were ineffective and (ii) the CMPD Chief or a Deputy Chief has determined the use of such chemical agents is the only reasonable alternative available to safeguard persons' bodies and lives;

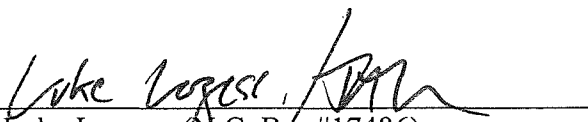
- D. That clear, loud, continuous and provable orders of dispersal are issued before munitions are threatened, and up until any munitions or force are used. All such orders should be given using enhanced auditory methods, such as bullhorns or speakers, as much as possible;
- E. Any such dispersal orders are reasonably limited in temporal and geographic scope and tailored to defusing an imminent threat of physical harm to people—not simply used for the police’s convenience or desire to enforce crowd control;
- F. The kettling of peaceful protesters is forbidden. Exits must be available and clearly identified for voluntary dispersal of a crowd before any munitions or other force are used.

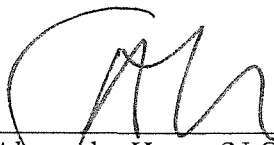
**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray the Court for the following relief:

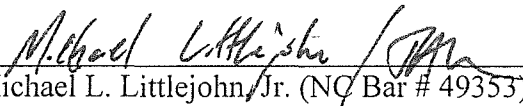
- 1. Entry of preliminary injunctive relief on a finding that Defendants have violated Plaintiff’s rights under the North Carolina State Constitution, Article I, Sections 12, 14, and 19.
- 2. Entry of a declaratory judgment as to the unlawful use of dispersal orders;
- 3. Award Plaintiffs their costs in bringing this action pursuant to N.C. Gen. Stat. § 6-18;
- 4. Award their attorneys’ fees pursuant to N.C. Gen. Stat. § 6-21.7; and
- 5. For all such other and further equitable relief that the court deems appropriate.

Respectfully submitted this 7th day of July, 2020.

  
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S. Luke Largess (N.C. Bar #17486)  
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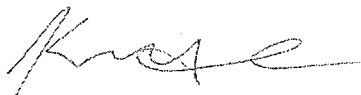
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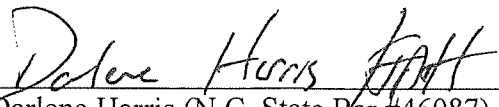
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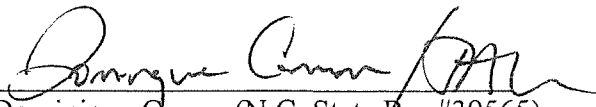
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