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23 **UNITED STATES DISTRICT COURT**
24 **SOUTHERN DISTRICT OF CALIFORNIA**

25 Christina GRIFFIN-JONES,

Case No. '21 CV0024 CAB JLB

26 Plaintiff,

COMPLAINT

27 v.

28 CITY OF SAN DIEGO; J. DOE Nos. 1–25,

Defendants.

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INTRODUCTION

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2 1. In August 2020, the San Diego Police Department (“SDPD”) arrested several
3 participants in a protest against police brutality, confiscated their cell phones, and refused
4 to return them after the participants were released.

5 2. Over a month after those arrests, SDPD admitted it was holding the cell
6 phones and had not sought warrants to search them.

7 3. After arresting Plaintiff Christina Griffin-Jones at a protest against police
8 brutality in September 2020, SDPD confiscated and retained her cell phone far longer than
9 necessary to seek or obtain a search warrant, even assuming the arrest was otherwise
10 justified.

11 4. In requiring a warrant to search a cell phone seized incident to arrest, the
12 Supreme Court recognized the ubiquity and centrality of modern cell phones to daily life,
13 acknowledging they are “minicomputers” with “immense storage capacity” for holding or
14 accessing “detailed information about all aspects of a person’s life,” including all manner
15 of private, personal, and proprietary data. *Riley v. California*, 573 U.S. 373, 393–96
16 (2014).

17 5. The data contained on or accessed through a modern cell phone allow police
18 to reconstruct “[t]he sum of an individual’s private life” through accessing “millions of
19 pages of text, thousands of pictures, or hundreds of videos,” as well as “photographs,
20 picture messages, text messages, Internet browsing history, a calendar,” contact lists,
21 various apps, and numerous other items. *Id.* at 394.

22 6. Like “the more than 90% of American adults who own a cell phone,” Ms.
23 Griffin-Jones keeps on her “person a digital record of nearly every aspect” of her life
24 “from the mundane to the intimate.” *Id.* at 395.

25 7. “Indeed, a cell phone search would typically expose to the government far
26 *more* than the most exhaustive search of a house: A phone not only contains in digital
27 form many sensitive records previously found in the home; it also contains a broad array
28 of private information never found in a home in any form—unless the phone is.” *Id.* at

1 396–97.

2 8. Individuals pervasively rely on cell phones for numerous tasks and facets of
3 daily living, including but not limited to internet access, work and business, social
4 interaction, professional networking, navigation and transportation, shopping, ordering
5 food and meals, and fitness and health.

6 9. Accordingly, “[c]ell phones differ in both a quantitative and a qualitative
7 sense from other objects that might be kept on an arrestee’s person.” *Id.* at 393.

8 10. Recognizing the importance of privacy in electronic information, the
9 California Legislature adopted the landmark California Electronic Communications
10 Privacy Act (“CalECPA”), which imposes stringent requirements for warrants to search
11 electronic devices and requires written notice of such warrants.

12 11. SDPD’s unjustified and prolonged retention of cell phones seized from
13 protesters is especially alarming to the extent it threatens to invade their associational
14 privacy and thus chill their ability to organize and participate in protests against police
15 brutality and systemic racism. The unjustified retention of cell phones threatens to chill
16 the speech not only of Ms. Griffin-Jones but also of everyone with whom Ms. Griffin-
17 Jones interacted by use of her cell phone, because records of those interactions could be
18 accessed through search of the phone.

19 12. By impounding and retaining Ms. Griffin-Jones’s cell phone for a prolonged
20 time without promptly seeking a warrant or providing an opportunity for judicial review,
21 Defendants violated or are violating the United States and California Constitutions. This
22 Court’s intervention is urgently necessary to enforce Ms. Griffin-Jones’s bedrock
23 constitutional rights against unreasonable search and seizure and deprivation of property
24 without due process.

25 **JURISDICTION AND VENUE**

26 13. The Court has original jurisdiction over Ms. Griffin-Jones’s federal claims
27 under 28 U.S.C. §§ 1331 and 1343(a)(3).

28 14. The Court has supplemental jurisdiction over Ms. Griffin-Jones’s state law

1 claims under 28 U.S.C. § 1367 because the state law claims are so related to the claims
2 over which the Court has original jurisdiction that they form part of the same case or
3 controversy under Article III of the United States Constitution.

4 15. The Court may award damages and grant declaratory and injunctive relief for
5 constitutional violations pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, Federal Rules
6 of Civil Procedure 57 and 65, or Calif. Civil Code § 52.1.

7 16. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events
8 that give rise to this action occurred within this district and the defendants reside in this
9 district and state.

10 17. The Court has personal jurisdiction over Defendants, all of whom, on
11 information and belief, are residents of the state of California.

12 **PARTIES**

13 18. Plaintiff Christina Griffin-Jones is a resident of the State of California and
14 County of San Diego.

15 19. Defendant City of San Diego (“City”) is a duly organized and existing
16 municipality under California law, located in San Diego County, California. The City has
17 direct supervisory authority over SDPD and its officers, and SDPD policies are City
18 policies for purposes of municipal liability.

19 20. J. Doe Nos. 1-25 (collectively, “Officers”) are SDPD officers employed by
20 the City of San Diego. The identities of the Officers are currently unknown to Ms. Griffin-
21 Jones, who reserves the right to amend this complaint to identify them when such
22 information becomes available through discovery or otherwise. The Officers are sued in
23 their individual and official capacities.

24 21. At all times relevant to this action, the Officers were agents and employees
25 of the City acting under color of state law and within the course and scope of their agency
26 and employment. At all times relevant to this action, the Officers were knowingly aiding
27 and abetting or acting in concert with each other as to all acts or omissions alleged herein.

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FACTS PLEADED

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2 22. Video of police killings and other forms of police violence, often taken by
3 cell phone cameras, have provided evidence and information that has helped to mobilize
4 support for protests and the broader “Black Lives Matter” and racial justice movements.

5 23. Ms. Griffin-Jones, like the vast majority of the adult population of the United
6 States, also relies on a cell phone to navigate daily life in many ways, ranging from
7 communicating with friends and family to using ride sharing software to conducting
8 business.

9 24. Like those of many other persons, Ms. Griffin-Jones’s cell phone stores or
10 provides a means to access vast amounts of private, personal, or proprietary information.

11 25. On or about September 23, 2020, Ms. Griffin-Jones attended a protest in the
12 City of San Diego calling for justice for Breonna Taylor, who was killed by police in
13 Louisville, Kentucky.

14 26. During the September 23 protest, Ms. Griffin-Jones was arrested by one or
15 more SDPD officers.

16 27. SDPD officers seized all belongings Ms. Griffin-Jones had on her person
17 when she was arrested, including her cell phone.

18 28. SDPD did not seek or obtain Ms. Griffin-Jones’s consent to seize, retain, or
19 search her cell phone.

20 29. SDPD did not seek or obtain a warrant to seize, retain, or search Ms. Griffin-
21 Jones’s cell phone at, near, or after the time when Ms. Griffin-Jones was arrested.

22 30. No exigent circumstances existed that would justify seizing, retaining, or
23 searching Ms. Griffin-Jones’s cell phone without a warrant or consent.

24 31. No criminal charges have been filed against Ms. Griffin-Jones.

25 32. There is no reason to believe Ms. Griffin-Jones’s cell phone ever contained
26 evidence material or relevant to any charge for which Ms. Griffin-Jones was arrested or is
27 under investigation, and therefore there was no probable cause to search, seize, or retain
28 Ms. Griffin-Jones’s phone.

1 33. There is no reason to believe Ms. Griffin-Jones's cell phone was itself the
2 instrument or means of committing any criminal offense.

3 34. Ms. Griffin-Jones was booked into jail following her arrest. All of the
4 property she had on her person when she was arrested, including her cell phone, was
5 impounded upon her arrest.

6 35. Ms. Griffin-Jones was eventually released from jail following her arrest and
7 booking.

8 36. When Ms. Griffin-Jones was released from jail, most of her property was
9 returned to her, but her cell phone was not.

10 37. Ms. Griffin-Jones sought return of her personal property that was impounded,
11 including her cell phone, from SDPD.

12 38. SDPD did not return her cell phone to her.

13 39. SDPD officers seized cell phones belonging to other persons arrested at the
14 August, September, or other protests, and SDPD impounded those cell phones for a
15 prolonged time without seeking search warrants.

16 40. On September 24, 2020, counsel for Plaintiff sent a letter ("cell phone seizure
17 letter") to SDPD Chief David Nisleit, among others, expressing concern about the
18 prolonged duration of the seizure of phones from protesters who were arrested at the
19 August 28 protest.

20 41. As a result of the cell phone seizure letter, on September 29, 2020, SDPD
21 indicated that it would finally start returning some protesters' phones, more than a month
22 after the August 28 protest.

23 42. Following the cell phone seizure letter, SDPD informed certain protesters
24 who had been arrested that SDPD would return their cell phones, and those protesters have
25 since retrieved their phones.

26 43. However, SDPD has not returned Ms. Griffin-Jones's phone to her.

27 44. Ms. Griffin-Jones has not received any notice in writing or otherwise that a
28 search warrants has been sought, issued, or executed to search her cell phone.

1 45. According to SDPD policy, “All property discovered, gathered, or received
2 in the course of performing Departmental duties that is determined to be of some
3 evidentiary or monetary value shall be impounded and physically deposited in the
4 Property Room by the end of shift.” SDPD Policy 3.02 § V(A).

5 46. SDPD policy provides, “Detectives must maintain a system to track
6 evidence/property associated to cases assigned to them.... All new impounds are assigned
7 a retention period automatically based on criteria predetermined by the Property Room. If
8 a detective requests the retention period be extended, that date will change.” SDPD Policy
9 3.02 § XII(F).

10 47. By vesting the investigating detective with unfettered discretion to extend the
11 seizure of impounded cell phones, SDPD policy authorized the prolonged detention of
12 Ms. Griffin-Jones’s phone without a warrant, consent, exigent circumstances, or judicial
13 review.

14 48. SDPD policy 3.02 § XII(G)(1)(a) provides that property impounded as
15 evidence in misdemeanor cases shall generally be retained “until the case has been
16 adjudicated,” or until “[o]ne year after the offense date, if the City Attorney’s Office has
17 not filed charges, based on the statute of limitations,” or until “[o]ver 3 years since the
18 arrest date.”

19 49. SDPD policy 3.02 § XII(G)(1)(b) provides that property impounded as
20 evidence in misdemeanor/felony “wobbler” cases shall generally be retained “until the
21 case has been adjudicated,” or until “[o]ver 5 years since arrest date.”

22 50. SDPD policy 3.02 § XII(G)(1)(c) provides that property impounded as
23 evidence in felony cases shall generally be retained “until the case has been adjudicated.”

24 51. SDPD policy does not recognize the unique nature of cell phones as digital
25 storage and access devices or distinguish between cell phones and other forms of
26 impounded property, for example a weapon used in an assault, that do not contain or reveal
27 immense amounts of personal, sensitive, or proprietary data.

28 52. SDPD policy does not contain guidelines or criteria for determining whether

1 a cell phone may be impounded for the purpose of seeking a search warrant based on
2 probable cause to believe the phone contains evidence of a crime, or for otherwise
3 believing the phone should be used as evidence in a prosecution.

4 53. By authorizing retention of impounded cell phones for an extended time
5 without regard to the unique nature of cell phones as digital storage and access devices or
6 stating guidelines or criteria for determining whether cell phones may be impounded to
7 seek a warrant or for use as evidence in a prosecution, the foregoing SDPD policy or
8 policies caused the prolonged seizure of Ms. Griffin-Jones's phone without a warrant,
9 consent, exigent circumstances, or judicial review.

10 54. On information and belief, SDPD officers routinely seize and retain for
11 prolonged times the cell phones of arrested persons, including but not limited to persons
12 arrested at the August and September 2020 protests discussed above, without a warrant or
13 judicial review pursuant to a widespread or longstanding practice or custom that
14 constitutes a standard operating procedure of the City which caused the violations of Ms.
15 Griffin-Jones's constitutional rights arising from seizure and prolonged retention of her
16 cell phone.

17 55. Despite the ubiquity of cell phones possessed by arrested persons, the City
18 failed to train SDPD officers on the usual and recurring issues of (a) seizing cell phones
19 from arrested persons; (b) promptly seeking search warrants to justify impounding said
20 phones; or (c) promptly ensuring an opportunity for judicial review of the seizure of
21 impounded property.

22 56. By failing to train SDPD officers about constitutional limits on the amount
23 of time cell phones seized from arrested persons may be retained without seeking a warrant
24 or providing judicial review, the City was deliberately indifferent to the substantial risk
25 that its policies were inadequate to prevent constitutional violations arising from such
26 retention or the known and obvious consequences of its failure to train SDPD officers
27 adequately.

28 57. The City's deliberately indifferent failure to train SDPD officers or otherwise

1 prevent SDPD officers from violating the Constitution caused the violations of Ms.
2 Griffin-Jones's constitutional rights arising from prolonged seizures of her cell phone
3 without a warrant, consent, exigent circumstances, or judicial review.

4 58. An actual controversy has arisen and now exists between Ms. Griffin-Jones
5 and Defendants regarding Ms. Griffin-Jones's right to possess, access, and use her cell
6 phone, as well as damages incurred as a result of the seizure of her phone.

7 59. Ms. Griffin-Jones has submitted a timely administrative claim to the City and
8 reserves the right to amend this complaint to seek damages for any state law claims if the
9 City denies said claim.

10 **CLAIMS**

11 **FIRST CLAIM**

12 **42 U.S.C. § 1983 – Unreasonable Seizure**

13 60. Plaintiff repeats and realleges all the allegations above and incorporates them
14 by reference here.

15 61. By impounding and retaining Plaintiff's phone for a prolonged time after her
16 arrest without a warrant, consent, or exigent circumstances, Defendants violated or are
17 violating Plaintiff's Fourth Amendment rights against unreasonable seizure of her
18 property, papers, or effects.

19 62. The City is liable for violating Plaintiff's Fourth Amendment rights because
20 the violations were caused by the City's official policies or settled customs and practices.

21 63. The City is liable for violating Plaintiff's Fourth Amendment rights because
22 the violations were caused by the City's deliberately indifferent failure to train SDPD
23 officers or prevent SDPD officers from committing such violations.

24 64. As a proximate and foreseeable result of Defendants' violations of Plaintiff's
25 Fourth Amendment rights, Plaintiff has suffered, is suffering, and will continue to suffer
26 damages.

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1 **SECOND CLAIM**

2 **42 U.S.C. § 1983 – Due Process Violation**

3 65. Plaintiff repeats and realleges all the allegations above and incorporates them
4 by reference here.

5 66. By impounding and retaining Plaintiff’s cell phone for a prolonged time after
6 her arrest and release from jail without judicial review or other notice and opportunity for
7 hearing before a neutral magistrate, Defendants violated or are violating Plaintiff’s
8 Fourteenth Amendment rights to due process of law.

9 67. The City is liable for violating Plaintiff’s Fourteenth Amendment rights
10 because the violations were caused by the City’s official policies or settled customs and
11 practices.

12 68. The City is liable for violating Plaintiff’s Fourteenth Amendment rights
13 because the violations were cause by the City’s deliberately indifferent failure to train
14 SDPD officers or prevent SDPD officers from committing such violations.

15 69. As a proximate and foreseeable result of Defendants’ violations of Plaintiff’s
16 Fourteenth Amendment rights, Plaintiff has suffered, is suffering, and will continue to
17 suffer damages.

18 **THIRD CLAIM**

19 **Calif. Const. Art. I, § 13 – Unreasonable Seizure**

20 70. Plaintiff repeats and realleges all the allegations above and incorporates them
21 by reference here.

22 71. By impounding and retaining Plaintiff’s cell phone for a prolonged time
23 without a warrant, consent, or exigent circumstances, Defendants violated or are violating
24 Plaintiff’s rights under Article I, section 13 of the California Constitution against
25 unreasonable seizure of her property, papers, or effects.

26 **FOURTH CLAIM**

27 **Calif. Const. Art. I, § 7 – Due Process Violation**

28 72. Plaintiff repeats and realleges all the allegations above and incorporates them

1 by reference here.

2 73. By impounding and retaining Plaintiff’s cell phone for a prolonged time after
3 her arrest and release from jail without judicial review or other notice and opportunity for
4 hearing before a neutral magistrate, Defendants violated or are violating Plaintiff’s rights
5 to due process of law under Article I, section 7 of the California Constitution.

6 **FIFTH CLAIM**

7 **Cal. Civ. Code § 52.1(b) – Bane Act**

8 74. Plaintiff repeats and realleges all the allegations above and incorporates them
9 by reference here.

10 75. In violation of the Bane Act, Cal. Civil Code § 52.1(b), Defendants
11 intentionally interfered with Plaintiff’s state and federal constitutional rights against
12 unreasonable seizure and retention of her cell phone without a warrant, consent, or exigent
13 circumstances, as well as prolonged retention of her cell phone without judicial review.

14 76. Plaintiff is therefore entitled to “injunctive relief, and other appropriate
15 equitable relief.” Cal. Civil Code § 52.1(c).

16 **SIXTH CLAIM**

17 **Recovery of Personal Property (Claim and Delivery)**

18 77. Plaintiff repeats and realleges all the allegations above and incorporates them
19 by reference here.

20 78. Plaintiff is entitled to possession of her cell phone.

21 79. Defendants are in wrongful possession of Plaintiff’s cell phone.

22 80. Plaintiff demanded return of her cell phone.

23 81. Defendants have failed to return Plaintiff’s cell phone.

24 82. Plaintiff is entitled to immediate return of her cell phone.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment against Defendants as follows:

Declaring that the retention of Plaintiff’s cell phone without warrant, consent, exigent circumstances, or judicial review was unlawful;

Requiring Defendants to return the cell phone belonging to Plaintiff;

Enjoining Defendants and Defendants’ officers, agents, servants, and employees and any other persons who are in active concert or participation with any of the foregoing persons from maintaining possession of any data or information obtained from searching Plaintiff’s phone;

Entering an order voiding any warrant, order, or process issued for the search of her cell phone and compelling destruction of any information obtained in violation of CalECPA, the California Constitution, or United States Constitution;

Awarding Plaintiff nominal, actual, and punitive damages, although no punitive damages are sought against the City and no damages are currently sought for state law violations;

Awarding Plaintiff costs and attorney fees under Fed. R. Civ. P. 54, 42 U.S.C. § 1988, Cal. Civil Code § 52.1, or any other applicable law; and

Awarding other such relief as the Court deems just and proper.

DATED: January 7, 2021

Respectfully submitted,

By: s/Brody McBride
Singleton Law Firm
Attorneys for Plaintiff