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11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED JURISDICTION

15 LERONNE ARMSTRONG, an individual,

16 Plaintiff,

17 v.

18 THE CITY OF OAKLAND, CALIFORNIA, a
19 public corporation; SHENG THAO, an
individual,

20 Defendants.

CASE NO. **24CV062749**

COMPLAINT FOR DAMAGES:

- (1) Retaliation in violation of California Labor
Code § 1102.5
(2) Retaliation in violation of First Amendment,
42 U.S.C. § 1983

DEMAND FOR JURY TRIAL

1 Plaintiff, LeRonne Armstrong (“Plaintiff” or “Chief Armstrong”), by and through his counsel of
2 record, for his Complaint against Defendants, the City of Oakland, California (“Oakland” or “the City”),
3 and Mayor Sheng Thao (“Mayor Thao”), alleges as follows:

4 **SUMMARY OF ACTION**

5 1. The City illegally terminated Plaintiff as Chief of the Oakland Police Department
6 (“OPD”) in retaliation for Chief Armstrong having the courage to speak out about misconduct by the
7 federal monitor overseeing OPD.

8 2. For approximately 20 years, OPD has been subject to supervision and control by a federal
9 court-appointed monitor in connection with a 2003 settlement of a class-action lawsuit alleging civil
10 rights violations by OPD. Under this arrangement, the City and its taxpayers pay the monitor and his
11 team substantial sums – roughly one million dollars annually (now totaling nearly \$20 million) –
12 purportedly to evaluate OPD’s progress in complying with policies, procedures, and laws intended to
13 strengthen the City’s ability to decrease instances of police misconduct. Under Chief Armstrong, OPD
14 made substantial progress on its nearly 20-year-old monitoring and was on track to regain full
15 independence in mid-2023.

16 3. Despite good intentions of monitoring generally, the practical financial realities of a
17 monitorship incentivize the monitor to continue to find “systemic problems” and “leadership failures”
18 because the monitor personally benefits by requiring further supervision under the monitor’s well-
19 compensated gaze.

20 4. In Oakland, Robert Warshaw has long served as the federal monitor. Warshaw’s job is to
21 oversee the successful implementation of reforms at OPD. Curiously, according to Warshaw himself, –
22 he has failed for over a dozen years. Oakland has had more than ten individuals serve in the role of
23 police chief since 2013. Yet somehow, Warshaw has managed to play both sides of the fence by
24 continuously claiming that OPD needs more change – under his watch – while escaping serious scrutiny
25 for his own complete, self-professed failure.

26 5. In reality, courageous, reform-minded OPD Chiefs put their reputations and careers on
27 the line to do the right thing and change the culture of OPD – and they succeeded. Unfortunately, the
28 monitorship leaders – since 2014, Robert Warshaw – unfairly discredited and minimized the former

1 Chiefs' efforts because Warshaw stood to personally benefit by finding fault at the top of OPD. As long
2 as Warshaw opines that OPD has leadership problems, Warshaw can argue his continued supervision –
3 at great expense to Oakland and its taxpayers – remains necessary.

4 6. Chief Armstrong is the latest example of this well-documented pattern. Chief Armstrong
5 is a native of West Oakland who spent his entire career with OPD. As he rose through the ranks, Chief
6 Armstrong established a strong record of implementing reforms and demonstrating a commitment to
7 progressive policing that prioritizes accountability. Chief Armstrong was appointed as Chief in
8 February 2021, and he promptly made good on his reputation as an effective reformer by bringing OPD
9 to the brink of ending federal oversight altogether through compliance with the monitorship
10 requirements.

11 7. With OPD nearing the finish line, Warshaw announced he had discovered another serious
12 problem with OPD leadership stretching to the Chief. Warshaw required Oakland to commission an
13 outside law firm to investigate and issue reports on the handling of two internal affairs investigations.
14 The reports were issued in early 2023 and documented misconduct by one subject officer (a Sergeant),
15 as well as intentional misconduct by another officer (a Captain) who, according to the reports, tried to
16 cover up and minimize his Sergeant friend's misconduct.

17 8. Warshaw and his team transformed routine instances of lower-level misconduct into a
18 complete indictment of OPD and Chief Armstrong. Warshaw's reports were nothing less than a hatchet
19 job on Chief Armstrong; Warshaw went to great lengths to insist Chief Armstrong was personally
20 responsible and not candid in his statements to investigators. Media reports based on the evidence, as
21 well as an administrative appeal with a reportedly favorable outcome, confirmed the reports' criticisms
22 of Chief Armstrong were baseless. Chief Armstrong never engaged in wrongdoing, and the reports'
23 suggestion otherwise had no basis in facts, logic, or department policy.

24 9. Nevertheless, Warshaw issued the reports. Faced with inaccurate criticisms of his
25 integrity and performance and threats to his career, Chief Armstrong had the courage to identify the
26 elephant in the room. In a series of direct reports to the Mayor and public statements, Chief Armstrong
27 defended his actions on the merits and called out Warshaw's misconduct. Chief Armstrong explained
28

1 that this was merely the latest example of Warsaw intentionally leveling false and unfair criticisms at
2 OPD leadership to justify Warsaw's own position and continued lucrative monitorship.

3 10. At the time Warsaw issued his reports, Oakland had a brand-new Mayor (Thao) who
4 was intimidated by Warsaw and who bowed to his pressure instead of standing up for Oakland. Mayor
5 Thao placed Chief Armstrong on paid leave and then quickly terminated him before the Police
6 Commission, the media, and the public had time to assess the accuracy of Warsaw's outside law firm's
7 criticisms of Armstrong. Remarkably, after retaliating against Armstrong by terminating him, Mayor
8 Thao admitted her decision to terminate Chief Armstrong was retaliatory in nature.

9 11. Mayor Thao stated that she terminated Chief Armstrong not because of his performance
10 or problems with the way Chief Armstrong handled the incidents under investigation, but because Chief
11 Armstrong spoke out and criticized Warsaw. In sum, the Mayor is on record numerous times
12 explaining that she fired Chief Armstrong because Chief Armstrong pointed out that Warsaw's
13 criticisms of the Chief were factually baseless and were the latest instance of Warsaw destabilizing
14 OPD leadership for Warsaw's personal benefit.

15 12. This is an unusual wrongful termination case. The City's sole decision-maker (Mayor
16 Thao) has repeatedly and publicly explained her reasons for the unlawful termination – and those
17 reasons are illegal and retaliatory on their face. The City and its agents violated the California Labor
18 Code and Chief Armstrong's federal constitutional rights.

19 **PARTIES**

20 13. Chief Armstrong is a resident and citizen of Oakland, Alameda County, California. He
21 worked for OPD for over twenty years and rose through the ranks from patrol officer to Chief. He was
22 sworn in as Chief in February 2021.

23 14. The City is a public municipal corporation and a California Charter City located within
24 Alameda County, California.

25 15. Mayor Thao is an individual. On information and belief, she is a resident and citizen of
26 Oakland, Alameda County, California. She was the Mayor of Oakland during Chief Armstrong's tenure
27 as Chief, and she was the Oakland city official responsible for the decision to terminate Chief
28 Armstrong as Chief of OPD as well as the decision not to re-hire Chief Armstrong.

1 OPD.

2 22. In particular, Chief Armstrong built a reputation and track record as an effective internal
3 reformer who was committed to improving the professionalism and effectiveness of the Department
4 through cultural and institutional change. For example, Chief Armstrong led OPD’s Stop-Data
5 Collection Project, which has been recognized nationally for OPD’s implementation of strategies that
6 have reduced the number of OPD traffic stops by 60% and stops of African Americans by over 50%.

7 23. Similarly, Chief Armstrong served as the department’s liaison to the Stanford University
8 police-reform SPARQ (Social Psychological Answers to Real-world Questions) Program, which
9 involved a team of experts analyzing Department data and conducting qualitative research to determine
10 if specific reforms could improve police-community relations. Chief Armstrong led the implementation
11 of all 50 recommendations resulting from the research.

12 **Federal Monitorship of OPD**

13 24. The Chief’s background as a reformer was key because at the time Chief Armstrong
14 became Chief – and to this day – OPD has long operated under the supervision of a federal judge and a
15 federally court-appointed monitor. The monitorship stemmed from a 2003 settlement of a federal civil
16 rights lawsuit alleging systemic police misconduct at OPD (the *Allen* case, sometimes referred to as the
17 “Oakland Riders” case). The monitorship was intended to ensure the successful implementation of
18 reforms at OPD to avoid the problems that led to the *Allen* case.

19 25. The federal *Allen* lawsuit resulted in a Negotiated Settlement Agreement and later an
20 Amended Memorandum of Understanding (AMOU) (collectively, “NSA”) that specifies approximately
21 52 “Tasks” for federal oversight.

22 26. The NSA Tasks cover nearly every aspect of policing, including the internal affairs
23 process, integrity tests, use of force, academy and field training, supervision, detentions/arrests,
24 community policing, and consistency of discipline. Most tasks have numerous requirements OPD must
25 implement and maintain. The Monitor reviews and reports on compliance with each Task and makes a
26 finding of “in compliance,” “out of compliance,” or “partial compliance” in regular reports to the federal
27 court handling the *Allen* case.

28

1 money.”³

2 32. Former Chief Whent, who was Chief from 2014 to 2016, likewise criticized Monitor
3 Warsaw, stating that Warsaw provided no clear guidance on what was needed to bring OPD into full
4 “compliance” with the NSA. Whent described a dinner with Warsaw in 2015 where Whent expressed
5 feeling “ethically challenged” in his role assisting with the monitorship oversight because he felt
6 “complicit in, basically, a fraud.” *Id.*

7 33. Former OPD Captain Ersie Joyner, who retired in 2019, also worked with Monitor
8 Warsaw on OPD’s compliance and had similar complaints. Captain Joyner stated that “Warsaw, for
9 whatever reason, has treated the city of Oakland as his personal annuity.” Joyner noted that Warsaw’s
10 approach led to never-ending oversight, observing: “There’s a saying, that if you’re teaching a class and
11 five people fail, they didn’t study. If 20 people fail, you didn’t teach.”

12 34. Former OPD Chief Howard Jordan, who retired in 2013, also criticized Monitor
13 Warsaw, stating in 2020 that Warsaw should be fired and that his work for Oakland amounts to “the
14 fox guarding the henhouse.”⁴

15 35. In addition, Oakland is not the only community and law enforcement agency to complain
16 about Monitor Warsaw. Warsaw also serves as the federal monitor overseeing the Maricopa County
17 Sheriff’s Office in Arizona. In connection with a community meeting Warsaw held in October 2023,
18 then-Maricopa County Sheriff Penzone criticized Warsaw as preventing the department from operating
19 effectively, and a community member questioned Warsaw’s financial incentives and salary.⁵ Others
20 have questioned the utility and cost-effectiveness of Warsaw’s earlier similar work in New York.⁶

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24 ³ <https://www.sfchronicle.com/crime/article/Ouster-of-Oakland-chief-inflames-tensions-over-15101813.php>.

25 ⁴ <https://www.ktvu.com/news/2-former-opd-chiefs-city-councilman-criticize-federal-oversight-of-police-lawsuit-pending>.

26 ⁵ <https://www.phoenixnewtimes.com/news/maricopa-county-sheriffs-office-ignoring-racial-profiling-residents-say-17406766>.

27 ⁶ <https://niagarafallsreporter.com/Stories/2013/Jul23/rochester.html>.

1 Division (IAD) investigation related to an Instagram page. The Instagram page contained offensive
2 (e.g., sexist, racist, anti-police-reform, and otherwise inappropriate) law-enforcement related memes.
3 An OPD officer invited to “follow” the page brought it to the OPD’s intelligence unit’s attention, which
4 resulted in a department-wide email to all sworn officers that noted the Instagram page could be a plot to
5 gain police “followers” and obtain sensitive information about officers or the department. The email
6 also warned, “[s]omething as simple as following an account that is questionable or spouts negative
7 rhetoric could reflect poorly on you.”

8 41. The outside law firm concluded that the person who created the Instagram page was not
9 an active OPD officer; rather, the creator was a former OPD officer who had been terminated. On
10 information and belief, the investigation did not reveal any active OPD officers responsible for posting
11 any of the content on the page. Nevertheless, Warshaw’s commissioned report leveled scathing
12 criticisms of OPD, its leadership, and its “culture.”

13 42. The harsh condemnations in the report included: “[t]he issues surfaced by this
14 investigation go beyond the conduct of individual officers to the culture of the Department at large;”
15 “[t]his failure occurred at every level of OPD;” “[t]he failure of anyone at OPD to flag these memes, or
16 to recognize the extent to which they undermined years of efforts to comply with the NSA, suggests that
17 the views expressed by the memes remain alarmingly widespread;” and the “Instagram page has rocked
18 the Oakland Police Department on many levels. OPD’s anemic response to the page bespeaks the need
19 for a culture shift aided by robust anti-discrimination and social media policies.” This rhetoric caught
20 the attention of the federal Judge overseeing the NSA and was cited as a reason for concern that OPD
21 may not be ready to advance toward ending the monitorship, and OPD needed to show efforts to address
22 its culture.¹¹

23 43. This massive (and expensive) Instagram investigation by an outside law firm at Monitor
24 Warshaw’s direction involved six months of work, forty-three witness interviews, and a review of data
25 from over 140 OPD-issued cell phones. The investigation generated two detailed reports, one of which
26 is publicly available, and is 23-pages.

27 _____
28 ¹¹ <https://oaklandside.org/2022/01/06/federal-judge-opd-instagram-case-spotlighted-a-number-of-troubling-problems/>.

1 investigation to the federal judge in the *Allen* case as part of the Court’s ongoing review of OPD’s
2 compliance with the NSA.

3 49. On January 18, 2023, the federal judge presiding over the *Allen* case ordered the public
4 release of a summary report the outside law firm prepared (the “Summary Report”). The Summary
5 Report purported to provide an overview of findings and conclusions concerning Warshaw’s and the law
6 firm’s investigation into whether OPD mishandled two internal investigations.

7 50. The Summary Report referenced three underlying confidential reports prepared by the
8 same law firm that authored the Summary Report, which contained findings and conclusions related to
9 three IAD investigations. Warshaw signed as “approved” each confidential report.

10 51. The first investigation, IAD Case No. 22-0858, involved a suspected hit-and-run incident
11 in San Francisco involving OPD Sgt. Michael Chung while Chung was off-duty. The second
12 investigation, IAD Case No. 22-0443, involved a suspected unreported discharge of a firearm in an OPD
13 elevator by Chung. The third investigation, IAD No. 22-1723, examined the OPD’s process in
14 responding to the first two incidents.

15 52. The outside law firm’s reports made separate findings regarding Chief Armstrong’s role
16 and purported responsibility for policy violations in the first (hit-and-run, No. 22-0858) and third
17 (overall IAD investigation, No. 22-1723) investigations. Chief Armstrong was not a “witness” or
18 “subject officer” in the second report (No. 22-0443) involving the elevator discharge incident. In other
19 words, investigators understood that Chief Armstrong had been “walled off” by Warshaw from
20 supervising the elevator discharge investigation, and given Armstrong’s lack of participation in and
21 responsibility for that investigation, investigators had no reason to assess whether Armstrong violated
22 any policies.

23 53. The Summary Report referenced conclusions in the underlying confidential report that
24 the Chief violated two policies—“gross dereliction of duty” and “performance of duty”—by purportedly
25 failing to properly supervise the hit-and-run investigation (No. 22-0858). The investigators did not
26 conclude that Chief Armstrong violated any policy in connection with the other two reports (No. 22-
27 0443 and No. 22-1723).

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1 60. Mayor Thao’s understanding that Chief Armstrong’s January 23 statements were directed
2 to her is reflected by her behavior shortly before Chief Armstrong’s statements. The Mayor met with
3 Chief Armstrong’s Chief of Staff a few hours before Chief Armstrong was scheduled to make his
4 statements. The Mayor wanted to discuss the substance of Chief Armstrong’s looming statements. The
5 Mayor told Chief Armstrong’s Chief of Staff that she understood the Chief was going to criticize
6 Warsaw publicly. The Mayor asked the Chief to refrain from singling out the Mayor for criticism
7 because the Mayor was optimistic that the Chief and the Mayor could reach a common understanding
8 and keep the Chief in his position.

9 61. During Chief Armstrong’s widely reported and recorded January 23 statements, Chief
10 Armstrong openly criticized Warsaw. The Chief issued a statement accusing the federal monitor of
11 acting “in the interest of his own pocketbook by manufacturing a false crisis to justify extending his
12 lucrative monitoring contract.” Further, Chief Armstrong stated that (i) the Monitor’s conclusions were
13 plainly inconsistent with the truth and the reports’ own recitation of the facts, (ii) the Monitor had a
14 financial motivation to levy such unfair criticisms to extend Oakland’s federal oversight and thus his
15 monitorship, and (iii) the report was “a last ditch effort to destroy the credibility of me, destroy the
16 credibility of this department, and to make the community believe that, again, OPD is involved in some
17 shady business – and that’s not what this is.”

18 62. Further, Chief Armstrong stated:

19 a. He deserved to be reinstated because he had done nothing wrong. He followed
20 “all policies, protocols and procedures in the two incidents” referred to in the reports. The
21 findings in the reports are not supported by evidence.

22 b. He had a proven track record of holding people accountable. As Chief of Police
23 for the past two years, he brought the Department into almost full compliance [with the NSA].
24 The Department was only five months away from exiting federal oversight. This was not a
25 systemic problem. The Department had changed; it has the ability to investigate itself. That did
26 not, however, make it immune from misconduct. Police officers are human and will make
27 mistakes.

1 c. His decision [regarding the vehicle incident] was based on the information that his
2 investigators and staff brought to him. He cannot read all of the hundreds of reports that are
3 sent to him, or he would not have time to do his job as Chief. That is why he has a chain of
4 command; the Commanders in charge review the reports, and the Chief decides based on all
5 evidence presented to him at Friday meetings. The Chief expects the Commanders to provide
6 all evidence because it would otherwise be unfair to the officer under investigation and the
7 community.

8 d. The IAD (i.e., internal investigation) process has been in place for several years,
9 and the federal monitor has never stated there were any problems with it. The Chief agrees
10 that, based on some of the recommendations in the Reports, the Department could tighten the
11 investigative structure and ensure higher-level reviews within OPD. But, he is concerned that
12 Reports such as this “pull at the credibility of the Department” and ignore all of the work that
13 has been done to come into compliance. It misleads the community into believing this is the
14 “same old Oakland Police Department” they have experienced over the last two decades and
15 “that’s not who we are.”

16 63. In sum, Chief Armstrong’s January 23 statements reiterated his commitment to reforms
17 and accountability at OPD and expressly acknowledged the existence of problems at OPD, including
18 problems identified in the outside law firm’s investigation. Chief Armstrong reiterated his track record
19 of and ongoing commitment to leading the effort to address those problems through continued reform
20 and accountability: “I think I have a proven track record of holding people accountable. As the Chief of
21 Police in Oakland for the last two years we’ve gotten eight Tasks into full compliance.” The Chief
22 noted the Monitor’s prior conclusions of sustained progress under Chief Armstrong’s leadership and
23 noted further, “[T]hat’s the question do we have a willingness to hold ourselves accountable and I
24 believe I have demonstrated that I am willing to hold people accountable and have held people
25 accountable.” Further, the Chief noted if subordinate officers intentionally covered-up information
26 related to the hit-and-run investigation before the investigation reached the Chief, that would be
27 misconduct that needed to be addressed.
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1 64. In addition, on February 7, 2023, Chief Armstrong (via his counsel) sent a letter to the
2 Mayor, copying the Police Commission, explaining in detail why the conclusions that the Chief violated
3 policies and lacked credibility in connection with the hit-and-run investigation were wrong.

4 65. Chief Armstrong’s letter explained:

5 a. the report’s conclusion that Chief Armstrong’s statements were not credible
6 were based on six predicate conclusions, but each of the six predicate conclusions were either
7 contradicted by the report’s own factual conclusions or the content of the audio-recorded
8 statements;

9 b. the report faulted the Chief for supposedly misstating the reporting structure in
10 the department, for “declining” to show a video of the suspected hit-and-run incident at a
11 disciplinary decision-making meeting, and for “shutting down” questioning at that meeting,
12 but none of those conclusions had factual support;

13 c. the report’s suggestion that the Chief committed misconduct was, to say the
14 least, puzzling in light of the Monitoring team’s active participation (without raising
15 objections) in the incidents the report concluded amounted to misconduct; and

16 d. the report’s analysis of specific Manual of Rules (“MOR”) policy violations was
17 fundamentally flawed because it argued that a heading of the MOR that set forth no actual rule
18 was violated, it referenced a “gross dereliction of duty” MOR that does not apply in substance
19 and conspicuously failed to cite the actual (inapplicable) “gross dereliction of duty” MOR, and
20 it accused the Chief of failing to perform his duties without specifying which duties were at
21 issue (Letter at 9-10).

22 66. The specific criticisms in the letter did not identify gray areas of judgment where
23 reasonable people could disagree. Rather, it highlighted that the conclusions completely lacked factual
24 support and made no sense. The letter concluded that it was clear Chief Armstrong committed no
25 misconduct and was credible, and he should be reinstated immediately.

26 67. The Mayor’s office never responded in substance to Chief Armstrong’s February 7, 2023
27 letter. To date, the Mayor’s office has never offered a substantive rebuttal to the points in Chief
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1 Armstrong's letter and has not defended the outside law firm's criticisms of Chief Armstrong as
2 substantively reasonable.

3 68. Chief Armstrong was not provided with a copy of the third outside law firm report
4 regarding OPD's investigation of the elevator incident (IAD No. 22-1723) until after he sent his letter to
5 the Mayor and the Police Commission on February 7, 2023.

6 69. The third report's conclusion that Chief Armstrong lacked credibility was also
7 unpersuasive, inconsistent with the underlying evidence and made no sense. The report's authors
8 acknowledged that the Chief was "walled off" from this investigation relatively early when the Monitor
9 shifted it to outside investigators. The Chief's role in the investigation was extremely limited, which is
10 why the report could not and did not conclude that Chief Armstrong violated any policies in connection
11 with an investigation that he was instructed not to run.

12 70. Yet, for unclear reasons, the report's authors devoted significant effort to attacking the
13 Chief's credibility even after concluding he committed no misconduct. The report generally offered a
14 few sentences or a paragraph about each witness's credibility but inexplicably devoted a full page to the
15 Chief's credibility. The report's theory on this point was inherently self-contradictory. The authors
16 criticized the Chief for "minimizing" his knowledge of the investigation, even though he was ordered to
17 do exactly that when he was "walled off." The report also omits a statement Chief Armstrong made to
18 investigators that he informed the Monitor he was still receiving high-level information about the
19 investigation – an omission that completely undercuts the report's theory that Chief Armstrong was
20 downplaying to investigators the fact he still received information about the investigation after being
21 walled off.

22 71. The transparently flimsy and illogical nature of the report's findings and conclusions that
23 critically criticized the Chief were outlined not only by Chief Armstrong himself in his letter and public
24 statements but also by the media when it subsequently had a chance to review the reports and evidence
25 in detail.¹²

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28 ¹² E.g., <https://www.mercurynews.com/2023/04/01/borensteinoakland-police-chief-was-unfairly-fired-confidential-reports-show/>.

1 The Community Swiftly Backs Chief Armstrong

2 72. Reflecting the significant reservoir of trust and goodwill Chief Armstrong built with the
3 community through his leadership and accomplishments, community leaders rallied around the Chief
4 after the Mayor placed the Chief on leave and called for the Chief’s reinstatement.

5 73. Numerous groups publicly criticized the Mayor for hastily placing Chief Armstrong on
6 leave and called for his immediate reinstatement.¹³ Local media extensively covered the public
7 demonstrations for Chief Armstrong, and at the demonstrations, Chief Armstrong continued to speak out
8 publicly about Warsaw’s conduct. As an example, Chief Armstrong suggested Warsaw’s false
9 criticisms were so unfounded and unfair they must be intentionally false.¹⁴

10 The Police Commission Acts to Address Chief Armstrong’s Status

11 74. The Oakland Police Commission has the responsibility under Oakland law to formally
12 evaluate the Oakland Police Chief’s performance and the authority to terminate the Chief for cause.

13 75. On February 9, 2023, after receiving Chief Armstrong’s letter, the Police Commission
14 noticed a special meeting of its Discipline Committee to assess the Chief’s status on leave and whether
15 any discipline or termination was appropriate based on the existing reports. The meeting was scheduled
16 for February 15, 2023, at 8:00 p.m. PT.

17 The Mayor Terminates Chief Armstrong Before the Commission Can Act

18 76. On February 15, 2023, at 4:00 p.m. PT, the Mayor held a press conference hours before
19 the Police Commission was scheduled to hold its own meeting to discuss the Chief’s status on leave.
20 The Mayor announced that she decided to terminate Chief Armstrong.

21 77. Fifteen minutes before the press conference, the City notified Chief Armstrong that he
22 was going to be (i) disciplined and (ii) terminated. Specifically, the City notified Chief Armstrong that
23 he was being disciplined with a 30-day suspension for “gross dereliction of duty” and “performance of
24 duty” – the two violations referenced in the outside law firm’s hit-and-run report (IAD Case No. 22-

25 _____
26 ¹³ E.g., <https://oaklandside.org/2023/01/24/chief-leronne-armstrong-large-downtown-rally-naacp/>
27 (noting the presence of the Oakland NAACP, faith leaders, 100 Black Men of the Bay Area, Oakland
28 Chinatown Chamber of Commerce, and others).

¹⁴ E.g., <https://www.ktvu.com/news/naacp-rallies-behind-oakland-police-chief-placed-on-administrative-leave>.

1 0858). The City also notified Chief Armstrong he was simultaneously being terminated “without
2 cause.” The Mayor signed the termination notice.

3 78. During her press conference, the Mayor made clear she was terminating Chief Armstrong
4 because he criticized Warshaw. The Mayor’s explanation revealed that she decided to terminate Chief
5 Armstrong due to his statements that Warshaw unfairly criticized the Chief because Warshaw stood to
6 personally benefit from extended oversight resulting from instability in senior OPD leadership.

7 79. The Mayor stated her opinion that OPD needed to “welcome opportunities for
8 improvement rather than immediately rejecting criticism,” and she elaborated further, “Armstrong made
9 a number of statements that troubled me.”¹⁵ Without any reference to or discussion of underlying facts
10 and details of the relevant investigations, the Mayor criticized and faulted Chief Armstrong for
11 disagreeing with Warshaw’s conclusions. Indeed, the Mayor openly declined to offer any factual
12 justification based on the details of the reports or the Chief’s refutation of the reports and instead merely
13 opined that her review of the reports revealed “systemic” problems at OPD.

14 80. The Mayor also characterized Chief Armstrong’s public statements as reflecting a lack of
15 commitment to accountability and reform at OPD. She suggested that Chief Armstrong’s statements
16 minimized misconduct that occurred by officers below the Chief and rejected any notion of systemic
17 problems.

18 81. The Mayor explained that she based her decision on Warshaw’s negative conclusions
19 about the Chief, and she was unwilling to employ a Police Chief who disagreed with the Monitor: “We
20 must be confident that our Chief will be effective in making sustainable improvements that can be
21 recognized by the federal monitor, the federal court, and the people of Oakland.” Erasing all doubt, the
22 Mayor continued: “It’s an absolute requirement, that my administration, including the Chief of Police,
23 be able to work closely with the Monitoring team . . .”

24 82. The Mayor has separately stated on at least three other occasions that she terminated
25 Chief Armstrong because she felt pressure from Warshaw to get rid of a Chief who had criticized him.
26 First, as already noted, the Mayor told Chief Armstrong directly in a phone call just before placing the
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28 ¹⁵ A video of the Mayor’s remarks is available at <https://www.youtube.com/watch?v=W5nP35DmsDA>.

1 Chief on leave that the Mayor concluded she had to place him on leave because the Monitor told the
2 Mayor if she did not do so the Monitor would and that would look bad for the City.

3 83. Second, immediately after the Mayor’s February 15, 2023 press conference announcing
4 the Chief’s termination, the Mayor openly stated to a group that she felt the Monitor forced her to
5 terminate the Chief. After the conference concluded, the Mayor left the press room and entered a
6 private caucus room where a small group of city staff were gathered. The Mayor then openly expressed
7 her frustration with the Monitor. At least five people were present (besides the Mayor) when the Mayor
8 made these statements. While the exact details of witnesses’ recollections vary slightly, in sum and
9 substance, the Mayor stated in an angry tone: “F—k the Monitor for making me do this. I really didn’t
10 want to do this.”

11 84. Third, at a neighborhood association event in approximately April 2023 where the Mayor
12 answered questions during a panel discussion, including a question about the Mayor’s decision to
13 terminate Chief Armstrong, the Mayor conveyed that the Monitor pressured her to terminate the Chief.

14 The Police Commission and the Community Respond to the Chief’s Termination

15 85. On February 15, 2023, after the Mayor fired Chief Armstrong, the Police Commission
16 met and issued its own statement responding to the Mayor’s rushed termination decision. The
17 Commission noted the Mayor’s decision to preempt the Commission’s process and issued a “heartfelt
18 farewell to Chief Armstrong.”

19 86. The Commission further stated that (i) Chief Armstrong had led the Department through
20 an incredibly challenging pandemic with a huge surge in violent crime (ii) brought OPD into compliance
21 with 51 out of 52 of the NSA Tasks; (iii) brought OPD into Sustainability after 20 years of federal
22 oversight; and (iii) “crafted one of the most, if not the most diverse leadership team in the country.”

23 87. The Commission additionally flagged the “[t]he questionable quality, sufficiency, and
24 credibility of the outside investigations” the Mayor relied on in deciding to terminate the Chief.

1 88. Community leaders and groups again rallied in support of Chief Armstrong and against
2 his termination. The media covered the public demonstrations.¹⁶

3 89. Notably, one of the plaintiffs' attorneys (John Burriss) in the *Allen* case who sued to
4 reform OPD in the first place has publicly supported Chief Armstrong. As plaintiffs' counsel in the
5 *Allen* case, Mr. Burriss is responsible for weighing in on the progress of OPD toward reforms in the
6 federal court case during quarterly updates. In responses to questions about whether Mayor Thao's
7 termination of Chief Armstrong was appropriate, Burriss stated, "The chief did nothing wrong here. And
8 that's the point that I was arguing at the very outset, is that the investigative report reached by the
9 lawyers and the investigators really jumped to conclusions and made assertions, made assumptions, that
10 when you analyzed the report, the facts did not support it." Burriss has also noted that Chief Armstrong's
11 firing slowed OPD's efforts to get out from under federal oversight. "This [firing] became a major
12 stumbling block and set us back," he said, adding that if Chief Armstrong is not reinstated, it could send
13 a message that any police chief can be fired without due process or cause, which could harm future
14 hiring efforts.¹⁷

15 The Chief's Administrative Appeal

16 90. The Chief exercised his right to administratively appeal his discipline and termination.

17 91. Under the City's administrative appeal process for Police Chiefs, the appeal involves a
18 hearing before a neutral Hearing Officer resulting in a report issued by the Hearing Officer making
19 findings and non-binding recommendations to the City. The Hearing Officer does not have the authority
20 to change the City's decision about discipline or termination and can only make recommendations to the
21 City.

22 92. A retired California Court of Appeal Justice serving as a neutral hearing officer presided
23 over Chief Armstrong's hearing and, on September 7, 2023, issued a 55-page Report and
24

25
26 ¹⁶ See, e.g., <https://abc7news.com/oakland-police-chief-leronne-armstrong-fired-naacp-rally-reinstate-mayor-sheng-thao/12850236/>; <https://www.postnewsgroup.com/community-leaders-respond-to-the-firing-of-chief-leronne-armstrong-mayor-sheng-thao-is-wrong/>.

27 ¹⁷ <https://www.kqed.org/news/11961636/report-recommends-oakland-mayor-consider-reinstating-former-police-chief-leronne-armstrong>.
28

1 Recommendation. Under the City’s stated Administrative Appeal procedures, that report is supposedly
2 confidential.

3 93. Several media outlets, however, reported they had been able to review a copy of the
4 Hearing Officer’s report. Those media outlets reported:

5 a. the Hearing Officer recommended that the discipline against Chief Armstrong be
6 reversed because the outside law firm’s reports the City relied on in concluding the Chief
7 violated policies were not backed by evidence, and the conclusions relied on speculation and
8 poor reasoning;

9 b. the Hearing Officer concluded that Chief Armstrong may have a plausible First
10 Amendment claim arising out of his termination;

11 c. the Hearing Officer recommended the Chief and the City sit down and discuss a
12 potential resolution, including the possibility of reinstatement.¹⁸

13 94. Chief Armstrong approached the City about discussing a potential resolution shortly after
14 the Hearing Officer issued the report. Despite the Hearing Officer’s recommendation about having such
15 discussions, the City never agreed to discuss resolution. To date, the City has not reversed Chief
16 Armstrong’s 30-day suspension based on the supposed policy violations the Hearing Officer reportedly
17 found baseless.

18 The Mayor Doubles Down on her Retaliation and Refuses to Consider Re-Hiring Chief Armstrong

19 95. After the media widely reported on the Hearing Officer’s conclusions, Mayor Thao stated
20 she would not consider re-hiring the Chief. The Mayor distanced herself from the discredited
21 conclusions in the outside law firm’s reports and instead insisted that she decided to terminate the Chief
22 based on Chief Armstrong’s statements after he learned about the leave, regardless of any alleged
23 wrongdoing that led to Warsaw’s investigation.

24
25
26 _____
27 ¹⁸ E.g., <https://www.sfchronicle.com/eastbay/article/oakland-police-chief-arbitrator-18373820.php>;
28 <https://oaklandside.org/2023/09/19/arbitrator-report-fired-oakland-police-chief-leronne-armstrong/>;
<https://www.kqed.org/news/11961636/report-recommends-oakland-mayor-consider-reinstating-former-police-chief-leronne-armstrong>.

1 96. Under Oakland law, the selection of a new Police Chief requires that the Police
2 Commission present a list of candidates to the Mayor for consideration. After Mayor Thao fired Chief
3 Armstrong, the Police Commission began the process of vetting candidates to be presented to the Chief.

4 97. After the Hearing Officer’s report was provided to the Police Commission, the
5 Commission announced that it would place on its agenda whether Chief Armstrong should be
6 considered as finalist for Mayor Thao’s consideration since it appeared that Chief Armstrong should not
7 have been fired in the first place.¹⁹

8 98. The Police Commission vetted Chief Armstrong as a potential candidate. In October
9 2023, the media reported that Chief Armstrong made the Police Commission’s shortlist of potential
10 candidates for the new permanent Police Chief and asked the Mayor to comment. The Mayor publicly
11 threatened additional retaliation against Chief Armstrong stating she would not re-hire Chief Armstrong
12 because the Chief criticized the Monitor.

13 99. The Mayor explained that she was “determined to get us out of federal oversight” and
14 “the next police chief is going to have to be able to work with the monitor and with the federal judge as
15 well.” She said that the Chief “will not be LeRonne Armstrong in this case” because the Mayor did “not
16 have the belief that he can lead this city out through that process.”²⁰

17 100. Ultimately, the Police Commission included Chief Armstrong on a list of three
18 candidates presented to Mayor Thao in December 2023 as options for a new permanent Oakland Police
19 Chief.

20 101. Mayor Thao made good on her threat to retaliate against Armstrong again. She did so by
21 rejecting all three candidates later the same month and instead asked for a new slate of candidates.

22 **First Cause of Action: Retaliation In Violation of First Amendment, 42 U.S.C. § 1983**

23 **(Against Oakland and Sheng Thao)**

24 102. Chief Armstrong repeats and incorporates each of the prior allegations in this Complaint
25 set forth above.

26 _____
27 ¹⁹ <https://cao-94612.s3.amazonaws.com/documents/Press-Statement-9.18.23.pdf>.

28 ²⁰ <https://abc7news.com/oakland-mayor-sheng-thao-leronne-armstrong-opd-chief-public-safety/13935386/>.

1 103. Chief Armstrong’s public statements constituted protected speech that substantially
2 addressed matters of public concern. Chief Armstrong’s statements concerned the Monitor’s self-
3 serving wrongdoing, malfeasance, and violations of law, which the City, through the Mayor, ratified.
4 Chief Armstrong’s speech bore directly on critical issues of government mismanagement at the policy
5 level involving an essential public safety agency, and the Mayor’s blind deference to a Monitor that has
6 failed for over a dozen years, abused a vulnerable system to his advantage, and cost Oakland taxpayers
7 millions while doing so. Chief Armstrong’s speech did not address mere employment grievances.

8 104. Chief Armstrong’s public statements were not made in the ordinary course of his job
9 duties, which involved managing OPD’s day-to-day operations. The statements were made while Chief
10 Armstrong was on administrative leave. Chief Armstrong’s speech was made in his capacity as a
11 concerned citizen and involved reports that were necessary to reveal self-dealing, corrupt acts, and
12 conduct fundamentally contrary to the purposes of the monitorship, which is designed to enhance
13 community trust and increase transparency through *fair and thorough* assessments of OPD’s
14 compliance with the law. Chief Armstrong directed his protected speech to the only city personnel
15 capable of standing up to Warsaw’s misconduct and demanding that Oakland’s oversight be fair and
16 backed by evidence and reasonable judgment.

17 105. Chief Armstrong’s protected speech, made in his capacity as a private citizen and which
18 substantially addressed matters of public concern, was a substantial motivating factor in the City’s
19 adverse employment actions, including the City’s termination of the Chief’s employment in direct
20 retaliation for his whistleblowing activities and the failure to rehire Chief Armstrong.

21 106. Thao and the City had no adequate justification for terminating the Chief’s employment
22 based on his protected whistleblowing speech under *Pickering v. Board of Education of Township High*
23 *School District 205, Will County, Illinois*, 391 U.S. 563 (1968). Chief Armstrong’s protected speech did
24 not disrupt the City’s ability to control its work environment or the relationships between coworkers
25 within OPD, and it did not impair his ability to perform his job duties or obstruct OPD’s routine
26 operations. Chief Armstrong’s speech was aimed at protecting OPD’s integrity and the ability of its
27 personnel to continue operating effectively.

28

1 107. Chief Armstrong’s protected speech was the logical and proximate cause of his
2 termination, and the protected speech was a substantial and motivating factor for his termination.
3 Indeed, the City and its sole decision-maker, the Mayor, have explained the retaliatory basis for Chief
4 Armstrong’s termination.

5 108. In terminating Armstrong, Mayor Thao acted on the City’s behalf and as its agent, and
6 she is a City official responsible for establishing final policy for Oakland in terminating a police chief,
7 as evidenced by Chief Armstrong’s letter of appointment expressly stating that the Mayor had authority
8 to terminate him “at any time,” California Government Code Section 3304(c), and Oakland City Charter
9 Article IV, Section 604(b)(1). As such, Mayor Thao’s termination of Chief Armstrong was the decision
10 of a final policymaker of Oakland for purposes of *Monell v. Department of Social Services of the City of*
11 *New York*, 436 U.S. 658 (1978).

12 109. Mayor Thao and the City’s wrongful conduct was a substantial factor in causing Chief
13 Armstrong harm, including worry, anxiety, mental anguish, emotional and physical distress, and
14 humiliation; lost compensation, retirement, and fringe benefits; damage to Chief Armstrong’s reputation,
15 and loss of future income.

16 110. The acts of Thao were malicious and in conscious disregard for, or with deliberate
17 indifference to, the rights of Chief Armstrong as set forth above. Thao’s decision to terminate Chief
18 Armstrong was predicated on a refusal to employ or rehire any Chief that publicly criticized Monitor
19 Warsaw regardless of the merits of the criticisms against Warsaw and regardless of the merits of
20 Warsaw’s criticisms of the Chief. Mayor Thao intentionally terminated Chief Armstrong after learning
21 of myriad flaws and inaccurate statements in the reports. She deliberately short-circuited the process of
22 revealing the truth that the reports’ criticisms had no merit., She disregarded the baseless nature of the
23 allegations and the Chief’s rights in deciding to terminate the Chief and refusing to rehire him even after
24 he had the support of the community, the Police Commission, and the administrative appeal hearing
25 officer. Chief Armstrong is therefore entitled to an award of punitive damages against Mayor Thao.

Second Cause of Action: Retaliation in Violation of Labor Code § 1102.5
(Against Oakland)

111. Chief Armstrong repeats and incorporates repeats and incorporates Paragraphs 1-101 in this Complaint set forth above.

112. At all relevant times, Labor Code § 1102.5 was in effect and binding on the City. This statute prohibits an employer from retaliating against an employee for raising complaints of actual or potential illegality for providing information of such actual or potential illegality because the employee is believed to have engaged in such conduct or because the employee may engage in such conduct.

113. At all relevant times, the City was Chief Armstrong's employer, and Chief Armstrong was an employee under the Labor Code.

114. Chief Armstrong disclosed information he reasonably believed violated the law by raising concerns directly to the Mayor in a private conversation that the Monitor's conclusions were unfounded and unreasonable, and the Monitor made invalid and self-serving criticisms about the Chief to benefit himself personally. Chief Armstrong expressed his concern to the Mayor that she would prematurely judge Chief Armstrong without seeing the underlying evidence or individual reports and make a rash disciplinary decision based on unfounded accusations. The City, through the Mayor, retaliated against Chief Armstrong and placed him on leave. Chief Armstrong continued to disclose information he reasonably believed violated the law by a) issuing public statements that the Monitor acted "in the interest of his own pocketbook by manufacturing a false crisis to justify extending his lucrative monitoring contract", and the Monitor was financially motivated to levy unfair criticisms against Chief Armstrong to extend his monitorship, and b) sending a letter to the Mayor, copying the Police Commission, that explained in detail the reasons Warshaw unfairly and falsely criticized him and the conclusions in Warshaw's report lacked credibility. On February 15, 2023, less than a month after Chief Armstrong's disclosures, the City, again through the Mayor, retaliated against him by hastily terminating his employment.

115. In sum, Chief Armstrong raised complaints of actual and/or potential illegality, including but not limited to complaints about violations of California Penal Code § 68(a); 18 U.S.C. §§ 201, 1341, 1343, and 1346; Oakland Municipal Code § 2.25.06; and Oakland Municipal Code § 2.24.100 while

1 working for the City, and the City retaliated against him by taking adverse employment actions, including
2 placement on leave, termination, and the failure to rehire him notwithstanding the Police Commission's
3 support and revelations that the criticisms of Armstrong's performance had no merit.

4 116. Chief Armstrong's disclosure of Warshaw's self-dealing and fraud in serving as the
5 Monitor for his own financial benefit and to the detriment of the City and its taxpayers was a contributing
6 factor in the City's decision to place Chief Armstrong on leave, discharge him, and fail to rehire him.

7 117. The City's wrongful conduct was a substantial factor in causing Chief Armstrong harm,
8 including worry, anxiety, mental anguish, emotional and physical distress, and humiliation; lost
9 compensation, retirement and fringe benefits; damage to Chief Armstrong's reputation, and loss of future
10 income.

11 118. Chief Armstrong has incurred and will continue to incur legal expenses and attorneys' fees,
12 and he is entitled to recover attorneys' fees and costs (including expert costs) under Labor Code §
13 1102.5(j) in an amount according to proof.

14 119. Chief Armstrong seeks reinstatement to the position of Chief of Police for OPD.

15 120. On July 17, 2023, Chief Armstrong timely filed a tort claim with the City and included all
16 required elements under Government Code § 910.

17 **PRAYER FOR RELIEF**

18 Wherefore, Chief Armstrong prays that the Court award judgment against Oakland as follows:

- 19 1. For an award of economic damages in an amount to be determined at trial;
- 20 2. For injunctive relief under Labor Code § 1102.5, including Chief Armstrong's
21 reinstatement to Chief of Police for OPD;
- 22 3. For punitive damages against Thao in an amount to be determined according to proof;
- 23 4. For an award of emotional distress damages in an amount to be determined at trial;
- 24 5. For an award providing recovery of attorneys' fees and costs of suit incurred in
25 connection with this action;
- 26 6. For an award of prejudgment interest;
- 27 7. For an award of post-judgment interest for the maximum amount allowed by law;
- 28 8. For an award of costs; and

