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 CITY OF SAN DIEGO

8
 9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11	EUGENE DAVIDOVICH, an individual,	)	Case No. 11-cv-2675 WQH (NLS)
	DAVINA LYNCH, an individual, and JOHN)	
12	KENNEY, an individual,	)	DECLARATION OF CAPTAIN MARK
		)	JONES IN SUPPORT OF DEFENDANT
13	Plaintiffs,	)	CITY OF SAN DIEGO'S OPPOSITION
		)	TO PLAINTIFFS' EX PARTE
14	v.	)	APPLICATION FOR TEMPORARY
		)	RESTRAINING ORDER
15	CITY OF SAN DIEGO,)	
)	
16	Defendant.	)	District Judge: Hon. William Q. Hayes
		)	Courtroom: 4 – 4 th Floor
17)	
		)	Complaint filed: November 16, 2011
18)	

19 I, MARK JONES, declare as follows:

20 1. I am a San Diego Police Officer and Captain of the Central Division of the City of
 21 San Diego's Police Department. Except where stated on information and belief, I have personal
 22 knowledge of the facts set forth in this declaration, and could and would testify competently to
 23 those facts if called as a witness.

24 2. I have been employed by the San Diego Police Department ("SDPD") for over 28
 25 years. Currently, I report directly to Assistant Chief of Police Boyd Long and oversee
 26 approximately 175 police officers and 10 administrative support staff.

27 3. As Captain of the Central Division, I am responsible for general oversight and
 28 management of all police activities in the geographic area between the north end of Balboa Park

1 and the 32nd Street Naval Base to the south, and running from east to west, Interstate 15 to the
2 San Diego harbor. This includes downtown San Diego, and within that, the City Administration
3 Building and City Concourse (202 C Street), the Civic Theatre (1100 Third Avenue), the Civic
4 Center Plaza building (1200 Third Avenue), the adjacent open-air plaza (“Civic Center Plaza”),
5 and other surrounding structures, commonly known as, collectively, “the Civic Center.”

6 4. As Captain of the Central Division, I have either been personally present, or
7 received direct reports from police officers that were personally present, during the events which
8 have occurred in the Civic Center in connection with the protest known as “Occupy San Diego”
9 or “Occupy SD.” Occupy SD appears to be associated with the nationwide movement that
10 commenced with “Occupy Wall Street” in New York City.

11 5. At no point since the Occupy SD protests began in October 2011, to my
12 knowledge, has SDPD refused to permit anyone from entering Civic Center Plaza or the adjacent
13 grassy area with their belongings (except during enforcement operations and subsequent cleaning
14 for safety reasons), so long as they did not indicate an intent to remain or camp indefinitely by
15 setting up tents, sleeping bags, tables, chairs, large coolers, cooking equipment, or other items of
16 that nature.

17 6. At no point, to my knowledge, has SDPD prohibited anyone from, or arrested
18 anyone for, temporarily placing items or belongings on the ground in and around Civic Center
19 Plaza. To the contrary, individuals have been permitted to carry and temporarily set down signs,
20 backpacks, and other personal belongings. I am informed and believe that officers have
21 informed individuals, who may or may not be affiliated with Occupy SD, that if they set items
22 down they could be arrested. While members of Occupy SD may be interpreting that to mean
23 that they cannot ever set any items down, even for a moment, in fact, what SDPD is attempting
24 to convey is that individuals cannot set their items down and leave them there indefinitely and
25 that if they set their items down and allowed them to remain, then they could be arrested. I am
26 informed and believe that officers have also told individuals, who may or may not be affiliated
27 with Occupy SD, not to set down items in such a way as to interfere with access or otherwise
28 create an obstruction in Civic Center Plaza.

1 7. Approximately three weeks ago, SDPD reduced staffing at or near Civic Center
2 Plaza. Staffing levels were reduced from four to eight officers in the area to two officers per
3 watch who patrol a three block area in and around Civic Center Plaza on foot.

4 8. SDPD has enforced San Diego Municipal Code (SDMC) section 54.0110 for
5 years, well before the Occupy movement, and enforces the ordinance elsewhere within the City
6 with respect to individuals having no relationship to Occupy SD. For example, SDPD has
7 enforced SDMC § 54.0110 to address encroachment, clutter, blockage of sidewalks, and other
8 health and safety issues in the East Village area.

9 9. SDPD's current enforcement of SDMC § 54.0110 in Civic Center Plaza has
10 nothing to do with the content of Occupy SD's message, protests, or other free speech activities,
11 or the fact that they are demonstrators or demonstrating. In fact, at times it is difficult to tell
12 whether individuals in Civic Center Plaza are affiliated with Occupy SD or there for some other
13 purpose. SDPD's purpose for enforcing SDMC § 54.0110 has consistently been to keep Civic
14 Center Plaza free from obstructions and clutter and prevent future encampments. As set forth in
15 more detail in my prior declaration, dated November 18, 2011 (Doc. #18-1), since October 7,
16 2011, and over the duration of Occupy SD's presence in Civic Center Plaza, the group has
17 repeatedly cluttered Civic Center Plaza with items that indicated an intent to remain, including
18 camping equipment, tents, canopies, tarps, sleeping bags, tables, chairs, food and beverage
19 stations, cooking equipment (such as propane-fired grills), refrigeration units, exercise
20 equipment, luggage, and a "garden." Many, if not all of these items, obstructed the use and
21 enjoyment of Civic Center Plaza by others and/or posed a serious threat to public health and
22 safety. At times, the obstruction, clutter, and health and safety hazards have been so severe that
23 the City of San Diego has incurred significant costs to clean, sanitize, and repair the area.

24 10. Throughout the Occupy SD protest, beginning in October 2011, protestors have
25 been permitted to, and consistently have, exercised a wide range of speech activities in Civic
26 Center Plaza, such as marching, demonstrating, carrying signs and symbols, shouting and
27 chanting, assembling, and meeting, without interference from SDPD. A significant number of
28 ///

1 protestors are currently engaged in these activities, in and around Civic Center Plaza, as of the
2 date of this declaration.

3 11. On December 27, 2011, and at my direction, Officer Eckhard made one video
4 recording of the clutter and obstructions at Civic Center Plaza. I have reviewed those videos
5 which depict the conditions in Civic Center Plaza that day. The recordings also show a member
6 of Occupy SD approaching Officer Nigro and essentially asking Officer Nigro what Officers
7 Eckhard and Nigro were doing. Officer Nigro responded that they were videotaping the mess. I
8 did not hear any officers on that video telling anyone that they could not set their items down.

9 12. I have reviewed the San Diego Regional Arrest/Juvenile Contact Report ("Kenney
10 Arrest Report") for Incident No. 11120016629, pertaining to the arrest of John Kenney on or
11 about December 10, 2011. I have also reviewed the accompanying San Diego Regional
12 Officer's Report Narrative ("Armentano Officer Narrative") prepared by Officer Armentano,
13 dated December 10, 2011. True and correct copies of the Kenney Arrest Report and Armentano
14 Officer Narrative, redacted to remove Mr. Kenney's private information, such as his address,
15 date of birth, and driver's license information, are attached hereto as Exhibit 1. The reports
16 provide the basis for Mr. Kenney's arrest.

17 13. I believe that without the ability to enforce SDMC § 54.0110, the Occupy SD
18 protestors will attempt to reassemble camp in Civic Center Plaza or the adjacent grassy areas and
19 leave their items in Civic Center Plaza indefinitely, resuming the cycle of unsafe and unsanitary
20 conditions and precluding the free use and enjoyment of Civic Center Plaza by all.

21 I declare under penalty of perjury, under the laws of the State of California, that the
22 foregoing is true and correct.

23 Executed this 25th day of January, 2012, at San Diego, California.


24
25 
26 Captain Mark Jones
27 San Diego Police Department
28

EXHIBIT 1

Booking Number: 11189850

Incident No. 11120018829

SAN DIEGO REGIONAL
ARREST / JUVENILE CONTACT REPORT

ARREST REPORT	WARRANT		AGENCY		AR/RA ASSISTED?		PAGE		AGENCY NUMBER					
	None		SDPD		N		1 OF 4		11120018829					
ARREST DATE	TIME	BEAT/DISTRICT	RELATED REPORTS (TYPE, NUMBER)						CITATION NUMBER					
			12/10/2011 01:15 524.											
CHARGE(S)								ADPNT. CHGR.	ADULT RELEASED					
14B / PC / OBSTRUCT/RESIST PUB OFFICER								Y						
PERSON ARRESTED (L, F, M)														
Kennedy, John														
NICKNAME					D.O.B.	P.O.B.								
						Unk								
FACE	SEX	AGE	HEIGHT	WEIGHT	BUILD	HAIR	EYES							
W	M	31	5'00"	160	NOR	BRO	BRO							
ALIASES/MAIDEN NAME (L, F, M)														
ARRESTER'S ADDRESS														
CITY STATE ZIP														
EMPLOYER/SCHOOL														
MILITARY OCCUPATION/RANK														
N HOME PHONE BUSINESS PHONE														
BUSINESS OR MILITARY ADDRESS														
CITY STATE ZIP														
EMERGENCY CONTACT (NEXT OF KIN (L, F, M)														
EMERGENCY ADDRESS														
CITY STATE ZIP														
HOME PHONE		IS SUBJECT A SUSPECTED USER OF NARCOTICS/DRUG?		INTERPRETER REQUIRED?		LANGUAGE		SUSPECT'S RELATION TO VICTIM(S)						
		N		N										
LOCATION OF ARREST														
CITY														
202 C ST San Diego														
LOCATION OF OFFENSE														
CITY														
202 C ST San Diego														
OFFENSE DATE	OFFENSE TIME	CITIZEN ARREST?	ARRESTING OFFICER			ID.	ADMINISHED BY		I.D.					
12/10/2011	01:00	N	ARMENTANO, KEVIN			8232								
DID YOU UNDERSTAND EACH OF THESE RIGHTS THAT I HAVE EXPLAINED TO YOU?														
HAVING IN MIND AND UNDERSTANDING YOUR RIGHTS AS I HAVE TOLD YOU, ARE YOU WILLING TO TALK WITH US?										STATEMENT				
ARRESTEE DESCRIPTION	HAIR LENGTH/TYPE		HAIR STYLE		FACIAL HAIR		COMPLEXION		SPEECH		VOICE		IDENTIFICATION NUMBERS	
	5. Short		8. Straight		0. Unshaven		4. Light		5. Quiet		6. Median		DRIVER'S LICENSE NO. STATE	
	6. Thick												SOCIAL SECURITY NO.	
													FBI NO.	
													GI NO.	
													OTHER I.D. TYPE	
	FURTHER SUSPECT DESCRIPTION (I.E., GLASSES, TATTOOS, TEETH, BIRTHMARKS, JEWELRY, SCARS, MANNERISMS, ETC.)											UNDOCUMENTED PERSON		
	CLOTHING DESCRIPTION													
	grey sweater/jeans													
	SUBJECT VEHICLE	YEAR	MAKE	MODEL	COLOR / UCLOR		BODY TYPE		LICENSE NO.		STATE			
ADDITIONAL VEHICLE IDENTIFIERS (CHROME, DAMAGE, ETC.)											VIN NUMBER	DISPOSITION OF VEHICLE		
REGISTERED OWNER (L, F, M)														
REGISTERED OWNER'S ADDRESS											CITY STATE ZIP			
E.V.	PROPERTY TAG NOS.					DISPOSITION OF EVIDENCE								
	18829					Impounded at HQ								
REPORTING OFFICER					ID.	DIVISION	REPORT DATE	TIME						
ARMENTANO					1	8232	CS	12/10/2011	01:55					

Booking Number: 11189850		PAGE 2 OF 4		AGENCY NUMBER 11120016628			
COMPANIONS	COMPANIONS NAME (L, F, M)						
	ADDRESS		CITY		STATE ZIP		
	PHONE	RACE	SEX	D.O.B.	ARRESTED <input type="checkbox"/> ADDITIONAL COMPANIONS LISTED <input type="checkbox"/>		
VICTIM / WIT.	VICTIM/WITNESS NAME (L, F, M)						
	RESIDENT ADDRESS		CITY		STATE ZIP		
	BUSINESS ADDRESS		CITY		STATE ZIP		
	HOME PHONE	BUSINESS PHONE	RACE	SEX	D.O.B. ADDNL. VIC/WIT. LISTED <input type="checkbox"/>		
JUVENILE ONLY	FATHER/STEPFATHER'S NAME (L, F, M)						
	FATHER/STEPFATHER'S ADDRESS				HOME PHONE		
	CITY		STATE ZIP		BUSINESS PHONE		
	MOTHER/STEPMOTHER'S NAME (L, F, M)						
	MOTHER/STEPMOTHER'S ADDRESS				HOME PHONE		
	CITY		STATE ZIP		BUSINESS PHONE		
	SCHOOL GRADE LIVES WITH						
	PARENTS NOTIFIED BY: WHOM AND HOW			DATE	TIME	RELEASE DATE	RELEASE TIME
	FIELD DISP:						
	ATTITUDE OF JUVENILE			ATTITUDE OF PARENTS / GUARDIAN			
DET. DISPO: <input type="checkbox"/> Refer Court/Prob <input type="checkbox"/> Dept. Diversion <input type="checkbox"/> Counsel/Informal <input type="checkbox"/> Other: _____							
ADDITIONAL CHARGES \$4,0115/MC/DEBRIS DEPOSITED/DROPPED/THROW;							
CITIZEN ARREST	I have arrested: <u>Karney, John</u>						
	I know that pursuant to Section 849 of the Penal Code of the State of California, it is necessary for me to sign a complaint stating the charge against the prisoner, which complaint must be made before a magistrate, and I agree to sign said complaint and appear in said matter without delay.						
	Date: <u>12/10/2011</u> Computer generated form, signature is not obtained; disclaimer read to the citizen.						
	ARRESTING CITIZEN (L, F, M) PRINT						
	RESIDENT ADDRESS		CITY		STATE ZIP		
BUSINESS ADDRESS		CITY		STATE ZIP			
HOME PHONE	BUSINESS PHONE	RACE	SEX	D.O.B.			
ADULT - MISD ONLY	Check each reason for not releasing the subject with a written notice to appear. (ADULTS ONLY)						
	There was a reasonable likelihood that the offense(s) would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.						

Booking Number: 11189830

Continued From: AFF/JUV, CON.		San Diego Regional Officer's Report Narrative		Incident Number 11120016629	
Page 3 of 4				Case Number	
Code Section And Description (one incident only) 148 / PC / OBSTRUCT/RESIST PUB OFFICER			Date 12/10/2011	Day of Week SAT	Time 01:16
Location Of Incident (Or Address) 202 C ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Kenney, John					
Property Tag No.(s) 16829					

CHARGES:

John Kenney was arrested for obstruction/ delaying a Police officer in the performance of his duties (148 (a) (1) PC) and encroachment (54.0110 SDMC). Kenney was subsequently transported and booked into county jail.

ORIGIN:

On 12-10-2011, at about 0100 hours, Officer Eraca # 6333 and I were assigned to monitor the "Occupy San Diego" group at the Civic Center Plaza (202 C Street). When we arrived at the location, there were several subjects loitering in the plaza. They were in the area, between the office building and the civic theatre.

INVESTIGATION:

There was trash all over the ground. A cart was at the bottom of the stairs with a laptop computer on top of it. Speakers were attached to the laptop and a movie was playing. Two cases of bottled water and one five-gallon jug of water were near the cart. Empty pizza boxes and homemade signs cluttered the area. Several people were lying on the sidewalk and were covered with blankets. There was a large blue tarp on the floor. Subjects were lying on top of the tarp. Officer Eraca and I walked through the plaza and warned several subjects for sleeping. The crowd became very upset and surrounded us. Several subjects were shouting at us and reading city ordinance laws.

I notified Sergeant Milano # 3669 that several subjects were sleeping/lying down in the plaza. Sergeant Milano and Lt. Mitchell # 4578 arrived at the plaza. Sergeant Milano explained that the tarp needed to be removed. John Kenney was lying on the tarp. He was covered by a sleeping bag and had a scarf over his eyes.

Kenney had earplugs in his ears. Officer Sainte Agathe # 6318 and I were instructed to get Kenney up. I said, "San Diego Police" and took the cover off of Kenney's eyes. I assisted in taking off Kenney's sleeping bag and we helped Kenney sit up. Lt. Mitchell spoke to Kenney and Kenney said he would move off the tarp but would still sleep. Kenney later said he wanted to sleep "here" referring to staying on the tarp. Kenney was arrested and the tarp was removed from the area. No one claimed the tarp as being his/her property. I later impounded the tarp at the SDFD headquarters building as found property.

Officer Eraca filmed Kenney's arrest and the area where the subjects were loitering. Officer Eraca later impounded the camera's memory card at the SDFD headquarters building. Officer Eraca and I attempted to make a CD copy of the video footage, but was unable to.

While Officer Sainte Agathe and I were arresting Kenney, a subject was attempting to get close to us. Officer Eraca told him to step back and the subject did not move. The male was slowly creeping in. Officer Eraca used his arm to stop the male. The male stopped and backed away.

Reporting Officer ARMENTANO	ID # 6232	Division C9	Approved By	Date of Report 12/10/2011	Time 01:38
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Continued Y

Booking Number: 11189850

Continued From: ARMIJUV, CON.		San Diego Regional Officer's Report Narrative		Incident Number 11180016620	
Page 4 of 4				Page Number	
Code Section And Description (one incident only) 148 / PC / OBSTRUCT/RESIST PUB OFFICER			Date 12/10/2011	Day of Week SAT	Time 01:16
Location Of Incident (Or Address) 202 G ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Kennedy, John					
Property Tag No. (a) 16520					

BACKGROUND:

None.

STATEMENTS:

None.

EVIDENCE:

See the investigative portion of this report.

INJURIES:

None.

PROPERTY DAMAGE:

None.

FOLLOW-UP:

Deemed necessary by the investigator.

RELATED REPORTS:

None.

Approved By: Sgt D Grubbs #4776

Reporting Officer ARMENTANO	ID # 6282	Division C8	Approved By	Date of Report 12/10/2011	Time 01:58
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