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ERNEST DYKES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERNEST DYKES, Plaintiff, vs. COUNTY OF ALAMEDA, a municipal organization; Defendant.	CASE NO. 3:26-cv-6220 **COMPLAINT FOR DAMAGES** (42 U.S.C. §§ 1983 and 1988) DEMAND FOR JURY TRIAL

Plaintiff Ernest Dykes, by and through his attorneys respectfully alleges as follows:

INTRODUCTION

1. For decades, and at least since the 1980s, the Alameda County District Attorney's Office ("ACDAO") has engaged in an unconstitutional pattern and practice of racial discrimination in jury selection, in violation of *Batson v. Kentucky,* 476 U.S. 79, 89 (1986). The People of the State of California, through the Office of the Attorney General and the ACDAO and the final policy makers therein, have formally admitted to having engaged in this particular unconstitutional conduct against Plaintiff Ernest Dykes ("Plaintiff" or "Mr. Dykes") and others, including Curtis Ervin. As a result of the concession of structural error, Plaintiff, and the aforementioned individuals, have been released from custody.

2. The admitted violations against Plaintiff, and others, were not done in isolation by rogue prosecutors. Rather, the misconduct was the product of a deeply rooted unwritten policy and custom—especially in capital cases—to keep Jewish and Black people from serving on juries. For decades, this widespread practice against Jewish potential jurors was ingrained in Alameda prosecutors based on the ACDAO's long-held belief that those of Jewish descent would be unwilling to send someone to the gas chamber—the method of execution utilized for nearly six decades before Plaintiff's trial. Plaintiff is informed and believes that Black jurors were targeted in all types of Alameda cases, not just capital ones.

3. The ACDAO intentionally failed to train, supervise, or instruct its employees regarding constitutional jury selection. The ACDAO failed to address the misconduct of its employees, reflecting a deliberate indifference to Plaintiff's constitutional rights.

4. In 2024, prompted by the discovery of prosecutor juror notes in Plaintiff's case showing invidious racial discrimination, United States District Judge Vince Chhabria found "strong evidence" of a "pattern of serious misconduct" and

ordered disclosure of jury selection notes from all capital cases (approximately 62,000 pages), and review of 34 capital cases prosecuted by the ACDAO. Judge Chhabria's findings catalyzed exposure of a culture of invidious racial discrimination in jury selection that the ACDAO's final policymakers had previously spent decades concealing.

5. On April 22, 2024, then Alameda County District Attorney Pamela Price ("DA Price") publicly acknowledged her office's history of unconstitutionally striking Jewish and Black people from juries, stating, "[t]he evidence that we have uncovered suggests plainly that people did not receive a fair trial in Alameda County and as a result, we have to review all the files." DA Price further acknowledged that "[i]t's not limited to one or two prosecutors, but a variety of prosecutors," confirming that the practice was a widespread, recognized, and ratified custom of the ACDAO.

6. Further evidence of the ACDAO's deliberate indifference is found in internal 2004 meeting notes disclosed by the ACDAO in 2024. These records reveal that when senior leadership was confronted with whistleblower allegations of systemic *Batson* violations, the ACDAO's final policymakers did not initiate corrective training or disciplinary oversight. Instead, the senior prosecutor in charge of investigating the claims coordinated a strategy to discredit the whistleblower and sanitize prosecution files of discriminatory jury selection materials. The affirmative decision to prioritize the preservation of unconstitutional convictions over constitutional mandates, constituted a formal ratification of the discriminatory practices, ensuring the custom remained the operational standard for ACDAO prosecutors.

7. Accordingly, Plaintiff has established a meritorious claim under 42 U.S.C. § 1983 and seeks justice for the immeasurable harm inflicted. There is no dispute that the ACDAO violated Plaintiff's constitutional rights—the ACDAO has admitted it. The ACDAO's unconstitutional conduct led to a death verdict that

would not have been achieved via a constitutionally constructed jury. Not only would Plaintiff not have endured the specific hardships caused by death row versus general population incarceration, he would have been incarcerated for many fewer years than he served.

8. The evidence shows that the errors were committed knowingly and not in isolation, but rather, borne from the product of a pattern and practice reinforced by those with supervisory authority within the ACDAO.

9. This civil action, pursuant to 42 U.S.C. §§ 1983 and 1988, seeks monetary damages for the extraordinary injuries and harm suffered by Plaintiff, who was wrongfully capitally charged, prosecuted, convicted, and imprisoned for more than 31 years—most of it on death row at San Quentin State Prison.

10. This lawsuit seeks to hold accountable the government entity who is responsible for its agents violating Plaintiff's constitutional rights in order to obtain his conviction, and to recover from them compensation, as well as punitive damages, for Plaintiff's grievous injuries.

PARTIES

11. Plaintiff Ernest Dykes is a 52-year-old Black man currently residing in Oakland, California. Mr. Dykes was released from custody on April 22, 2025 after 31 years, 8 months, and 15 days of incarceration.

12. Defendant County of Alameda ("County") is a municipal organization within the State of California. The Alameda County District Attorney's Office (previously defined as "ACDAO") is an agency of the County of Alameda, State of California, for whose torts the County is responsible.

JURISDICTION, VENUE, AND CONDITIONS PRECEDENT

13. This Court has jurisdiction under 28 U.S.C. § 1331 over claims arising under 42 U.S.C. §§ 1983 and 1988. This action arises under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983.

14. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions, including the prosecution of Plaintiff in Alameda County and the damages he suffered from his Marin County death row incarceration, giving rise to these claims, occurred within this judicial district.

15. Divisional Assignment (Civil Local Rule 3-5) – Pursuant to Civil Local Rule 3-2(c), this action arises in Alameda County and/or Marin County, where substantial parts of the events or omissions giving rise to the claim and damages occurred. Pursuant to Civil Local Rule 3-2(d), assignment of this action to either the San Francisco or Oakland Division is proper.

16. The Government Claims Act does not apply to Plaintiff's federal claims. *Robinson v. Alameda Cnty.,* 875 F. Supp. 2d 1029, 1044 (N.D. Cal. 2012) ("The filing requirement does not apply to . . . causes of action based upon federal law."); *Conner v. Raver*, 2023 WL 5498728, at *4 (N.D. Cal. Aug. 24, 2023) ("Contrary to Defendants' argument, the Government Claims Act does not apply to Plaintiff's federal claims.") (citing *Williams v. Horvath*, 548 P.2d 1125, 1130 (Cal. 1976) ("[W]hile it may be constitutionally permissible for the Legislature to place [a] substantive impediment in the path of a state cause of action, it is clear that the [S]upremacy [C]lause will not permit a like abrogation of the prerequisites of a federal civil rights litigant.")); *Felder v. Casey*, 487 U.S. 131, 153 (1988) ("A state law that conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law. Principles of federalism, as well as the Supremacy Clause, dictate that such a state law must give way to vindication of the federal right when that right is asserted in state court.").

FACTUAL ALLEGATIONS

17. On July 26, 1993, Mr. Dykes unintentionally killed nine-year-old Lance Clark, during a robbery of his grandmother, Bernice Clark. While Mr. Dykes intended to rob Mrs. Clark, he did not intend to shoot her, and he was unaware that Lance was in the car. It was undisputed at trial that Petitioner did not intend to shoot Lance.

18. Mr. Dykes was immediately remorseful for his actions, turning himself into the police after learning he was wanted, and tearfully confessing.

19. Despite Mr. Dykes' immediate remorse and turning himself in, and his minimal criminal history, the ACDAO charged Mr. Dykes with special circumstance murder and the jury found Mr. Dykes guilty and sentenced him to death.

I. Prosecutor Colton Carmine Engaged In Racial Discrimination In Jury Selection, In Violation Of *People v. Wheeler* And *Batson v. Kentucky*

20. At a time when roughly 16.5% of Alameda County's residents were Black, only ten percent of the sixty qualified jurors in Mr. Dykes' case were Black: Lisa Daly (#16), Robin Ford (#23), Jesse Carpenter (#27), Paulette Taylor-Pettus (#30), Dorothy Poston (#32), and Christopher Givens (#46).

21. Trial counsel inappropriately stipulated to a hardship excusal for Robin Ford, leaving just five Black jurors remaining. Lisa Daly was the only one to make it to the box and she was promptly struck by Deputy District Attorney ("DDA") Carmine.

22. DDA Carmine's impermissible exclusion of Ms. Daly is shown by the fact that similarly situated non-Black jurors were accepted by the prosecution. The record reflects that there is no valid, race-neutral reason that could have justified the striking of Ms. Daly. No answer in her juror questionnaire was controversial, provided any evidence of bias for or against the prosecution, or otherwise indicated that she would be unwilling or unable to appropriately serve as a juror in Mr. Dykes'

trial. On paper, she appeared to be an ideal, open-minded juror. Nevertheless, Ms. Daly was struck by the prosecution immediately upon entering the jury box.

23. Because no *Batson* challenge was made during trial, the prosecution was never required to provide any reason for its challenge of Ms. Daly.

24. An examination of DDA Carmine's jury selection notes, Ms. Daly's juror questionnaire, and her voir dire testimony, provide insight into the prosecutor's improper motives.

25. DDA Carmine questioned Ms. Daly on only two topics: her views on the death penalty and the neighborhoods in which she lived. DDA Carmine presumably questioned her on the topics that were the most important to him, and any race-neutral reason for her removal should be evident therein. *See Flowers v. Mississippi*, 588 U.S. 284, 312 (2019) ("A 'State's failure to engage in any meaningful voir dire examination on a subject the State alleges it is concerned about is evidence suggesting that the explanation is a sham and a pretext for discrimination.'") (quoting *Miller-El v. Dretke*, 545 U.S. 231, 246 (2005) ("*Miller-El II*") (internal quotations omitted).

Questioning Regarding Ms. Daly's Residential History

26. DDA Carmine's questioning of Ms. Daly on her residential history bore no relation to the issues in Mr. Dykes' case and was couched in racial bias from the beginning.

27. Ms. Daly's jury questionnaire indicated that she was born in Teaneck, New Jersey where she resided for seventeen years, moved to Berkeley for college, and that she had lived in Alameda County for seven years.

28. During voir dire, DDA Carmine followed up on this information, first inquiring into how long she lived in Berkeley and Oakland, and then questioning her on details related to Teaneck, New Jersey:

> Q. What kind of place is that, is that an urban center, is it rural or what?

A. It's considered a suburb. A lot of people who live in Tee-neck [*sic*] commute to New York.

Q. Suburb of what?

A. Well, it's very close to New York, so some people like to say it's a suburb of New York. It's in that tri-state area. So a lot of people who work in New York live in Tee-neck [*sic*] 'cause it's cheaper to live.

Q. Cheaper to live in Tee-neck? [*sic*]

A. Cheaper to live in Tee-neck [*sic*] than New York City.

Q. How far is it from the casinos?

A. Three hours.

29. During the mid to late twentieth century, the term "urban" became nearly interchangeable with "Black" in the public vocabulary. *See* Jemima McEvoy, *Here's How 'Urban,' A Term Plagued By Racial Stereotypes, Came To Be Used To Describe Black Musicians*, Forbes Magazine (June 10, 2020), https://bit.ly/49Pdgye. The term is used exactly once in the trial record, only in connection with Ms. Daly's voir dire.

30. DDA Carmine's questioning on this subject was a direct attempt to reinforce racial stereotypes and suggest or assume that Ms. Daly came from a low-income black neighborhood. Other jurors who had lived outside California for significant periods of time were not questioned on the demographics of their neighborhoods and often were not questioned on their prior residences at all. Juror McNiel, a white male, noted in his questionnaire that he originally was from Vassar, Michigan and had lived in Massachusetts for ten years. Yet, during his voir dire, DDA Carmine never asked about his time living in Michigan or Massachusetts.

31. Juror Miller-Duckworth noted that she was born in Indiana and had lived in Indiana for several years, but also never was questioned regarding her

residential history. If DDA Carmine believed that characteristics of jurors' prior residences were relevant to Mr. Dykes' trial, he would have inquired on this topic from all the prospective jurors.

32. DDA Carmine's disparate questioning of Black and non-Black prospective jurors "suppl[ies] a clue that the prosecutor may have been seeking to paper the record and disguise a discriminatory intent." *Flowers*, 588 U.S. at 310.

Questioning Regarding Ms. Daly's Feelings on the Death Penalty

33. The juror questionnaire used in Mr. Dykes' trial included several questions designed to gauge prospective jurors' feelings on and ability to impose the death penalty.

34. Ms. Daly provided middle of the road, non-controversial answers to these questions.

35. Page 33 of the juror questionnaire requested each juror's general feelings regarding the death penalty. In response to this question, Ms. Daly wrote:

> The death penalty was instituted for a reason to punish people found guilty of certain types of crimes (considering special circumstances). Only upon hearing the evidence and the facts can one determine the appropriateness of this punishment. Only when the criteria for the penalty is met should it be imposed.

36. When asked to rate her opinion on the death penalty, with options to check "strongly in favor," "moderately in favor," "neutral," "moderately against," or "strongly against," Ms. Daly checked "neutral."

37. Regarding whether she would vote for the death penalty if it were on the California ballot, she indicated she was "not sure."

38. Several jurors who gave similar answers to these questions were not stricken by DDA Carmine. Juror Montgomery stated in answer to the question on page 33 that "anyone who is in a position to receive the death penalty should be given a fair trial and there can be no doubts about lack of evidence involved."

During voir dire, Juror Montgomery further explained that in order to impose the death penalty, there would "have to be pretty good facts" and he'd have to be convinced "beyond a shadow of a doubt." DDA Carmine did not appear concerned with these statements and briefly asked leading questions to clarify that Montgomery would make his decision based on "what the law requires" and that he could vote for a death sentence "if the circumstances warranted it."

39. Juror Jones stated in his questionnaire that he supported the death penalty "in some cases" and clarified during voir dire that he "would have to be pretty sure when it pertains to the death penalty … really believe that that's the best choice."

40. Juror Miller-Duckworth gave similarly equivocal answers, stating in her questionnaire "I believe in the death penalty if the person has gone through the system and been found guilty and the sentencing calls for it."

41. Ms. Daly's answers were nearly identical to the answers of seated jurors in many respects. Like Montgomery, Ms. Daly stated that she would make her decision based on what the law required.

42. Like Jurors Montgomery, Jones, and Miller-Duckworth, Ms. Daly stated that she would be able to choose either LWOP or death, and that she would have to fully evaluate the facts and the law before making a decision, stating: "If I had to or if it came down to it, I would vote for it, if the circumstances were met. If life without parole would seem more appropriate, then I'd choose that. But it depends on the -- on the facts and the appropriateness of the actual punishment."

43. DDA Carmine did not accept Ms. Daly's responses at face value, as he did with other jurors, instead choosing to question her repeatedly on the same topic in an effort to make her appear unreasonable.

44. Ms. Daly was also not the only prospective juror to indicate she was "neutral" toward the death penalty or "not sure" if she would vote for the death penalty if it were on the ballot. Jurors Ablett and Roberts also indicated on their

questionnaires that they were "neutral" toward the death penalty. Juror Lucas indicated on her questionnaire both that she was "moderately in favor" and "moderately against" the death penalty, presumably another neutral response. Yet neither of these jurors were struck by DDA Carmine despite the prosecutor's excess reserve of peremptory strikes.

45. Like Ms. Daly, three seated jurors indicated in their juror questionnaires that they were unsure whether they would vote for or against the death penalty if it were on the ballet. Jurors Jones and Corman both checked "not sure" but clarified that it would depend on how the law was written. Juror Martelacci checked that she would vote "for" the death penalty, but qualified that with a question mark, and noted "[s]ometimes, I have to admit, I'm not totally sure I'm for it. Mostly, I think I am." Neither jurors Jones, Corman, nor Martellacci were questioned by DDA Carmine on their uncertainty.

46. Distinctly at odds with that, Ms. Daly was questioned relentlessly on this subject despite giving answers very similar to jurors Jones and Corman. ("I'd have to look at both arguments before voting on the ballot."). DDA Carmine not only did not take her answer at face value, he asked her to speculate regarding how she would write the law, despite her expressed discomfort with doing so because she was not a legislator.

47. In his notes, DDA Carmine accused Ms. Daly of being "evasive" and "dodging specific Q's."

48. None of the non-Black "not sure" jurors were questioned on this topic at all, yet DDA Carmine's notes indicate that the answers to this question at least partially drove his decision to strike Ms. Daly. "The lopsidedness of the prosecutor's questioning and inquiry can itself be evidence of the prosecutor's objective as much as it is of the actual qualifications of the black and white prospective jurors who are struck or seated." *Flowers*, 588 U.S. at 310.

49. By failing to question the non-Black jurors in the same way and to the same extent that the Black jurors were questioned, DDA Carmine created a self-fulfilling record designed to create "seemingly race-neutral reasons to strike the prospective jurors of a particular race." *Id.*

Disparate Interpretation of Voir Dire Responses

50. DDA Carmine exhibited animosity toward Ms. Daly from the beginning of questioning, as evidenced by the disparities in questioning discussed above. But DDA Carmine's jury selection notes further evidence the racial animus that drove him to strike the only Black juror that made it into the jury box.

51. Although DDA Carmine's voir dire notes indicate that Ms. Daly was "very thoughtful" and acknowledge that she said she could impose the death penalty, they also state that DDA Carmine did not believe her answers, noting "don't know if an act or sincere" and "I don't know if I believe her."

52. Where Ms. Daly's responses were interpreted as "evasive," similar answers from non-Black jurors were interpreted as positive.

53. Where DDA Carmine was critical of Ms. Daly because she "keeps saying 'it depends on facts,'" he noted that juror Montgomery "must hear all" before making decision, and indicated he would be a favorable juror.

54. Similarly, he noted that juror Lucas "can impose D/P but wants to hear facts."

55. Nothing in Ms. Daly's responses suggests that her desire to base her decision on the facts and circumstances of the case was any different than the desire of any of the seated jurors to do so.

56. Nothing in the record suggests that her responses were improper or evasive. Her responses reflect that she would be a thoughtful juror that could serve in the manner described by the trial judge, who advised that "[w]e are trying to choose people to serve as jurors … who really could fairly choose between the two

possible punishments after they heard and evaluated and considered all of the evidence."

DDA Carmine Intended To Strike All Black And Jewish Jurors

57. DDA Carmine utilized a 0-5 scale for ranking jurors. Jurors with a 0, 1, or 2 rating were given a red mark. It appears that those were reserved for jurors that DDA Carmine absolutely did not want on the jury. All Black and Jewish jurors received red marks. Lisa Daly, juror number 16, was scored a one and given a red mark.

58. Jesse Carpenter, juror number twenty-three, who was Black, was initially scored a "4+" on the cover of his questionnaire, which was later downgraded to a 2. The prosecution's index card scored him a three—although it is obvious the number was changed—but he was still given a red mark.

59. Paulette Taylor-Pettus, juror number thirty, who was Black, was scored a two minus and given a red mark.

60. Dorothy Poston, juror number thirty-two, who was Black, was scored a zero and given a red mark.

61. Christopher Givens, juror number forty-six, who was Black, was scored a zero and given a red mark.

62. Seated Juror #9 was flagged as "*Wheeler* fodder," indicating that the prosecutor(s) intended to strike this juror if necessary in order to justify the strike of a suspect-class juror who shared characteristics with this juror.

63. Igor Ivanov, who was Jewish, was scored a one and given a red mark. Mr. Ivanov's card has become infamous for the reprehensible statement that, "I liked him better than any other Jew <u>But No Way</u>."

64. David Lawrence, the other Jewish juror who qualified, was scored a four minus, but given a red mark. He was the only juror with a four to receive a red mark.

65. While not all potential jurors who received a red mark were Black or Jewish, every Black or Jewish potential juror received a red mark.

66. From this it is evident that DDA Carmine intended to exclude all Blacks and Jews from Mr. Dykes' jury.

67. This kind of discrimination has no place in the American justice system. In any capacity it would be anathema to the rights enumerated in the Constitution, but its intrusion into a death penalty case is especially troubling. Indeed, this systemic discrimination, first proven in Mr. Dykes' case, unleashed a review of thirty-four capital cases, many, if not all of which, were subject to the same impermissible conduct based on the policy and practice of the ACDAO.

68. The ACDAO has conceded that prosecutors selecting the jury in Mr. Dykes' case were seeking to prevent or limit the number of Black and Jewish jurors serving in his trial, in violation of Mr. Dykes' constitutional right to an impartial jury.

69. The ACDAO has conceded that the prosecution's jury selection notes make clear that the prosecution was prepared to manipulate the jury to limit the number of Black and Jewish jurors seated on Mr. Dykes' jury.

II. The Constitutional Violations Resulted From The ACDAO'S Widespread Practice Of Eliminating Black And Jewish Jurors Based On Race And/Or Ethnicity, And/Or From Failure Of The ACDAO To Train Its Employees Adequately, And/Or Supervise Its Employees

70. Death sentences in California require, *inter alia*, the defendant to be charged—at the sole and unfettered discretion of the District Attorney—with at least one special circumstance.

71. For the special circumstance allegation to be found true, the People are required to prove an enhanced burden of proof. Absent a jury finding the special circumstance(s) to be true, a defendant neither can be sentenced to death, nor to life in prison without the possibility of parole.

72. Death sentences are politically fortuitous. They bolster the "tough on crime" bona fides for District Attorney's facing re-election, and capital convictions are good résumé builders for rank-and-file deputy district attorneys who have ambitions to be appointed to the bench.

73. Determined to ensure the imposition of death sentences, and victory in those cases, the ACDAO set out to rig the juries. ACDAO prosecutors determined that Black and Jewish jurors were unfavorable to them and set out to eliminate members of those two race/ethnicities from their juries. Thus, the ACDAO routinely and as a matter of office-wide practice, used peremptory strikes to eliminate Black and Jewish jurors from service based on their race and/or ethnicity.

74. For decades, the ACDAO had an unwritten policy and/or widespread practice within its office—and particularly its capital unit—of racial discrimination in jury selection. Specifically, and as relevant here, Alameda prosecutors struck Jewish and Black people from capital juries due to a belief that they would not return a death verdict. The error deprived Plaintiff of a jury of his peers and a fair trial.

75. The ACDAO is headed by a District Attorney who ultimately acts as the final policymaker for the ACDAO. The District Attorneys throughout the relevant time periods discussed herein include: John H. Meehan (1981–1994), Thomas J. Orloff (1994–2009), Nancy O'Malley (2009–2023), Pamela Price (2023–2024), and Ursula Jones Dixon (2025–2026).

76. Other policymakers in the ACDAO included:

a. James Anderson, an Alameda County Deputy District Attorney from 1971 to 2004. From 1991 until his retirement in 2004, DDA Anderson headed the capital unit. As such, he personally set, established, oversaw, and managed the policies, customs, and practices of the ACDAO capital prosecutions for Defendant County of Alameda, including its unconstitutional

practices involving the exclusion of Black and Jewish jurors from capital cases, in violation of Plaintiff's constitutional rights. DDA Anderson has stated that eliminating Jewish and Black jurors was "not a racist thing, but just common sense."

b. John R. ("Jack") Quatman, an Alameda County Deputy District Attorney from 1973 to 1998. In 2003, he was ostracized by his former colleagues for being a whistleblower, when he publicly revealed the ACDAO's unconstitutional jury selection policies.

c. Kenneth Burr, an Alameda County Deputy District Attorney and second in command of the capital unit under James Anderson. He later sat as a judge on the Alameda County Superior Court for two decades.

d. Morris Jacobson, an Alameda County Deputy District Attorney from 1989 to 2005, and then a judge on the Alameda County Superior Court for two decades. DDA Jacobson assisted DDA Colton Carmine with jury selection during Plaintiff's trial, including the unconstitutional targeting of Black and Jewish prospective jurors. DDA Jacobson also was in charge of the investigation into the allegations raised by whistleblower Jack Quatman, instructing others in the ACDAO "to find dirt on Quatman."

77. Other Alameda County Deputy District Attorneys who handled special circumstances homicide cases, and therefore employed the ACDAO's unconstitutional policies included, *inter alia*, Colton Carmine, Ted Landswick, Jon Goodfellow, Albert Meloling, Therese Drabec, and Angela Backers.

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78. Defendant County failed to adequately train, oversee, correct, supervise, and/or discipline the ACDAO and its employees whose discriminatory method of jury selection was widely known and practiced within the office.

79. Plaintiff is informed and believes that:

a. The ACDAO did not have a written rule of excluding Black and Jewish people from juries, but the rule was known within the office and everyone was expected to follow it;

b. It was the ACDAO's standard practice to exclude Jewish and Black potential jurors from capital juries;

c. The office "had a policy of not having policies." It was the office culture not to have a written policy for fear of repercussion, because they knew what they were doing was wrong;

d. Senior prosecutors like DDAs Anderson and Quatman educated young lawyers on this unwritten policy. This "training" was often conducted where people went for camaraderie and knowledge: the office library and a bar called "The Fat Lady." These were places where oral tradition and office lore were passed along. It was there that junior attorneys learned what they were expected to know, like how to get rid of Black and Jewish jurors. The library and The Fat Lady were considered safe spaces where the prosecutors could say anything. If someone took issue with what was being said, the expectation was that they should get up and leave;

e. Many senior attorneys would not talk to younger attorneys unless they engaged in this culture; and

f. DDA Quatman formally trained prosecutors in this custom during a large prosecution conference, attended by a few

> hundred people, that took place in San Diego, California from June 17–19, 1992. On the first day of the conference, which focused on special circumstances cases, DDA Quatman did a training presentation with Martin Murray, the chief DDA in San Mateo County. During that conference DDA Quatman told those present to strike Jewish jurors from capital cases. Some members in the audience expressed shock and objected, but DDA Anderson, who was present, spoke out in defense of DDA Quatman. Kenneth Burr, second in command of the capital unit, was also present at the training, as was Colton Carmine, whose notes targeting Jewish jurors led to DA Price's admission regarding her office's history of racial discrimination. After the training, back at the office, DDA Anderson repeatedly told the story of what DDA Quatman had said. DDA Anderson did not condemn it, and DDA Quatman was never disciplined in any way. DDA Quatman further shared his jury selection advice with many other deputies within the ACDAO, both privately and in the law library where the prosecutors gathered daily to discuss cases, issues, and strategy.

80. As head of the capital unit, DDA Anderson was responsible for overseeing and disciplining each of the prosecutors handling special circumstance cases, including ensuring they were properly trained in their constitutional obligations. The capital unit prosecuted special circumstance homicide cases, but Plaintiff is informed and believes formal training as to the nature and scope of their *Batson* obligations was eschewed in favor of informal passing of the lore. The goal was to not create a trail evidencing the unconstitutional conduct. Like most DA's offices, the ACDAO was a brotherhood where prosecutors were never supposed to

"break rank" and complain about a lack of ethics or clear violations of case law. The ACDAO avoided accountability by not putting unethical instructions in writing. The ACDAO passed along its policies and practices through oral tradition, so they could deny any wrongdoing if asked. Instead of putting things in writing, as the Dallas DA infamously did, the ACDAO used the library discussions to educate prosecutors on how to prevail over *Batson* objections.

81. People like Supervising DDA Anderson, who believed that violating *Batson* was simply "common sense," told attorneys what to do. DDA Anderson routinely applied this "common sense" discriminatory policy in the cases he prosecuted, targeting Black and Jewish people for removal from capital juries. As detailed later herein, five of his cases (Ervin, Hill, Lopez, Lynch, and Thomas) have since been overturned, and/or the defendants resentenced, following the State's acknowledgment of error.

82. The ACDAO and its attorneys went to great lengths to either be ignorant of its obligations or to feign ignorance, but Tom Orloff, Bob Platt, Jim Anderson, and the other senior deputies at the superior courthouse were well aware of the unwritten jury selection policies. None of them disciplined prosecutors who were unconstitutionally striking jurors, nor did they object to the discussions about how to get away with the unconstitutional practice of striking jurors based on race and/or ethnicity. The practice was so encouraged, and discipline for such unconstitutional strategies so absent, that they did not even object to DDA Quatman's teaching them to deputies statewide at the 1992 San Diego conference.

83. As a result, at best, the ACDAO's compliance with its constitutional obligations was arbitrary, incomplete, and routinely in violation of a defendant's right to due process.

84. Defendant County had actual or constructive notice that this omission in their training program would cause its employees to violate citizens' constitutional rights.

85. The ACDAO's unconstitutional policies began in the first post-*Furman* capital trial in Alameda County, that of David and Kenneth Moore in 1980. Tried by DDA Anderson, the targeting of Black and Jewish potential jurors began there and continued at least through the 2012 trial of David Mills, tried by Jim Meehan, the son of Jack Meehan, the ACDAO District Attorney from 1981 to 1994. The discrimination against Black and Jewish jurors that appears to have begun during the Moores' trial, became systemic during Jack Meehan's time helming the office, as the practice expanded from prosecutor to prosecutor. Because his malfeasance yielded results, DDA Anderson was rewarded by being named the head of the capital unit (AKA the "death team") in 1991, a position he held until his retirement in 2004.

86. The ACDAO's history of discriminatory and unconstitutional conduct, dispensed by design through deliberate mistraining of its employees, particularly in capital cases involving special circumstance prosecutions, is clear from a review of its cases. In chronological order, below are a sampling of cases in which Alameda prosecutors were found to have engaged in racial discrimination in jury selection:

87. *People v. Mitcham*, Alameda No. 76826A – In the 1984 capital trial of Stephan Louis Mitcham, prosecutor Albert Meloling struck eight out of eight Black prospective jurors that made it to the jury box. DDA Meloling's notes showed that he rated each juror as either "K" (indicating a positive rating) or "O" (indicating a negative rating). Each Black juror was identified with the letter "B" next to their name and given an "O" rating. One juror was noted as "[k]eep if necessary to avoid *Wheeler,*" further indicating that DDA Meloling knew his actions were improper and wanted to cover them up, just as was done in Mr. Dykes' trial with a juror identified as "*Wheeler* fodder." The conviction was overturned by a federal district court based upon this misconduct.

88. *People v. Hill*, Alameda No. 84675 – DDA James Anderson prosecuted the 1987–88 capital trial of Michael Hill. As with the other cases prosecuted by DDA Anderson (Ervin, Lynch, Lopez, and Thomas), there was concern over the propriety of his conduct in jury selection. Ultimately, the ACDAO opted to resolve the matter by recommending resentencing after a court issued an order to show cause on Mr. Hill's claim that DDA Anderson engaged in prosecutorial misconduct pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959).

89. *People v. Schmeck*, Alameda No. H9033 – In the 1989 capital trial of Mark Schmeck, prosecutor Ted Landswick struck two out of three Jewish jurors, and said on the record that he would strike the third if she made it into the jury box. In justifying the strikes, DDA Landswick misrepresented the record in several respects, including by feigning ignorance that the jurors were Jewish, despite having questioned them on that subject. The ACDAO conceded misconduct, the conviction was vacated, and judgment was imposed on a lesser-related offense before Mr. Schmeck was then resentenced to a reduced term of imprisonment based on voluntary manslaughter.

90. *People v. Ervin*, Alameda No. 87023A – In the 1990–91 capital trial of Curtis Lee Ervin, DDA Anderson exercised 15 peremptory strikes, removing 9 of the 11 Black prospective jurors subject to questioning. Three Black males and six Black females were struck, leaving one Black man on the petit jury and one as an alternate. By keeping at least one Black man for the sake of appearances, DDA Anderson acted consistently with the office's unwritten policy to cover up the misconduct. The Ninth Circuit reversed and remanded on Plaintiff's *Batson* claim, finding that DDA Anderson made misrepresentations of the record in his efforts to justify the strikes. Jury selection notes showed that Anderson was exclusively tracking Black jurors and described several as untrustworthy, too cocky, or arrogant. The conviction was vacated after the Attorney General conceded the misconduct.

91. *People v. Lynch*, Alameda No. H010662 – In the 1991–92 trial of Frank Lynch, DDA Anderson used peremptory strikes against three Black women. Jury selection notes indicated that DDA Anderson tracked only the Black jurors, identifying them in some places with a "B" next to their name and in others with a red dot—which he consistently did across his cases. DDA Anderson also ranked these jurors lower than non-Black jurors, with no support in the record for the lower rankings. The conviction was vacated after an Order To Show Cause issued on Mr. Lynch's *Batson* and Racial Justice Act claims, and the ACDAO conceded error on the latter.

92. *People v. Tully*, Alameda No. H9798 – In the 1992 capital trial of Richard Christopher Tully, prosecutor Kenneth Burr used peremptory strikes against four people of color, including three Black jurors, and a juror he believed to be Jewish. With respect to at least one of the Black jurors stricken, prosecutor notes indicate that DDA Burr mischaracterized the juror's responses to create pretextual reasons for the strike. Mr. Tully was resentenced after the ACDAO recommended resentencing based in part on concern over the constitutional implications of those strikes.

93. *People v. Boyette*, Alameda No. 114009B – In the 1993 capital trial of Maurice Boyette, prosecutor Therese Drabec struck four Black women from the jury. DDA Drabec provided pretextual reasons for the strikes that conflicted with the record. Jury selection notes indicated that DDA Drabec was tracking only Black jurors, and had flagged Black jurors multiple times. Consistent with the policy of identifying Black jurors who could be kept in order to cover up the misconduct, DDA Drabec did not strike two Black jurors, and a third was seated after she had run out of peremptory strikes. The ACDAO conceded misconduct, the conviction was vacated, and judgment was imposed on a lesser-related offense before Mr. Boyette was then resentenced to a reduced term of imprisonment based on voluntary manslaughter.

94. *People v. Pollock*, Alameda No. H13546 – In the 1994 capital trial of Milton Pollock, DDA Carmine used peremptory strikes to exclude four Black women from the jury. Two of the excluded jurors provided answers that should have made them prosecution-friendly and that were similar to answers given by non-Black jurors that were not excluded. The ACDAO recommended resentencing of Mr. Pollock based in part on concern over the constitutional implications of those strikes.

95. *People v. Dykes*, Alameda No. 118376 – In Plaintiff's 1995 capital trial, DDA Carmine struck the only Black juror that made it to the jury box. Notes from this case indicate that DDA Carmine intended to strike all Black and Jewish jurors. Among the notes was the now-infamous, "I liked him better than any other Jew But No Way." The ACDAO conceded misconduct, the conviction was vacated, and judgment was imposed on a lesser-related offense before Mr. Dykes was then resentenced to a reduced term of imprisonment based on voluntary manslaughter.

96. *People v. Thomas*, Alameda No. 118686B – DDA James Anderson prosecuted the 1997 capital trial of Keith Tyson Thomas. Due in part to DDA Anderson's documented racial discrimination in jury selection (*see* Ervin, Lynch, Hill, and Lopez), and because no jury selection notes were found pertaining to Thomas' case, in 2024 the ACDAO recommended resentencing out of concern for the constitutional implications presented.

97. *People v. Love*, Alameda No. C124801 – In the 1999 trial of Terrell Love, DDA Carmine, who also prosecuted Messrs. Dykes and Pollock, struck five Black women from the jury. When a *Batson* challenge was raised, DDA Carmine defended his strikes by pointing to a Black woman who had not yet entered the jury box as one that he would have accepted. He also claimed he would have kept a Black man struck by the defense. This is reminiscent of the *Wheeler* pretext notes found in Mr. Dykes' case. Echoing DDA Anderson, DDA Carmine expressed concern about one juror's religiosity. Another Black woman was excused because

she was married to a college professor, who, in turn, was "the type of person [DDA Carmine] find[s] extremely reluctant to ever impose the death penalty." The federal court found many of these, and other reasons given by DDA Carmine to be pretextual and reversed Mr. Love's conviction. *See Love v. Yates*, 586 F. Supp. 2d 1155 (N.D. Cal. 2008).

98. *People v. Seumanu*, Alameda No. H24057 – In the 2000 capital trial of Ropati Seumanu, prosecutor Angela Backers used peremptory strikes to exclude four Black women from the jury, and the record suggests she likely would have struck a fifth Black juror if she had made it to the jury box. Prosecutor notes disclosed that DDA Backers had placed black asterisks next to the names of five Black jurors, including three of the jurors she ultimately struck. No non-Black jurors were marked with asterisks. The record indicates that some of the struck jurors provided neutral or prosecution-friendly voir dire and questionnaire answers and provided no discernable race-neutral reasons for the strikes. Mr. Seumanu was resentenced after the ACDAO recommended resentencing based in part on concern over the constitutional implications of those strikes.

99. *People v. Lopez*, Alameda No. H28492A – In the 2000–01 capital trial of Miguel Augustine Lopez, prosecutor James Anderson used seven of fourteen peremptory challenges to remove all people of color from Mr. Lopez's jury, resulting in a trial by an all-white jury. Given other evidence of DDA Anderson's discriminatory conduct in jury selection, the ACDAO recommended resentencing of Mr. Lopez based in part on concern over the constitutional implications of those strikes.

100. Although the following cases have not been overturned to date, the ACDAO employed its unconstitutional practices in many other cases, a sampling of which are below:

101. *People v. Friend*, Alameda No. 81254 – In the capital trial of Jack Friend that spanned 1988 to 1992, including a mistrial/retrial on special

circumstances and penalty, DDA Ted Landswick (whom the State conceded committed jury selection error in the prosecution of Schmeck) used peremptory challenges to exclude four Black jurors from Mr. Friend's first trial, one Black juror from his second trial, and the only two Jewish jurors from his second trial. Jury selection notes indicate that DDA Landswick was marking Black jurors with a "B" next to their names and was not identifying other jurors by race. One of the Black jurors struck by DDA Landswick had stated, "[w]ell, if somebody takes somebody's life, I just think they need to die." In contrast, a seated white juror said the death penalty was a "last resort." DDA Landswick also rated one of the Jewish jurors his lowest possible rating, with no indication in the record to support such a rating, and despite giving a seated juror who had indicated qualified support for the death penalty a high rating.

102. *People v. Stevens*, Alameda No. 102962A – In the 1992–93 trial of Charles Stevens, DDA Burr used peremptory strikes to exclude seven of eight Black jurors on the petit jury and six of six Jewish jurors. In early 2025, the Attorney General's office disclosed jury selection notes unequivocally establishing that DDA Burr was targeting Jewish jurors. In these notes, DDA Burr tagged several jurors with "Q Rule," i.e. the "Quatman Rule" promoted by DDA Quatman, that Jewish jurors should be removed from capital juries. Mr. Stevens was tried only a few months after DDA Quatman advocated this rule to prosecutors statewide during the now-infamous San Diego training seminar. The *Batson* error in Mr. Stevens' case was recognized by the federal district court judge overseeing the habeas, who denied relief only because of the procedural bars erected by 28 U.S.C. § 2254.

103. *People v. Nadey*, Alameda No. 129807 – In the 1998–99 capital trial of Giles Albert Nadey, DDA Anderson (whom the State conceded committed jury selection error in the prosecutions of Messrs. Ervin, Hill, Lopez, Lynch, and Thomas) used peremptory strikes to exclude five Black women from the jury, and no Black jurors were seated. DDA Anderson provided pretextual reasons for the

challenges that are not supported by the record, seating non-Black jurors who provided similar responses to those DDA Anderson allegedly found troublesome.

104. *People v. Lewis*, Alameda No. 128675 – In the 1999–2000 capital trial of Keith Allen Lewis, as she did in *Seumanu*, DDA Backers targeted Black women for removal, striking eight Black women from the jury. In an effort to cover for her misconduct, she left a bi-racial female and two Black men on the jury. DDA Backers' juror notes were missing from her Lewis file. The case is pending before the California Supreme Court.

105. *People v. Sifuentes,* Alameda No. H27160B – In the 2003 capital trial of Miguel Galindo Sifuentes, prosecutor Jon Goodfellow struck nine out of twelve Black jurors. A federal district court found *Batson* error, but the decision was overturned on appeal due to the extremely restrictive standard of 28 U.S.C. § 2254.

106. *People v. Freeman*, Alameda No. 79502A – ACDAO and Defendant County's deliberate indifference to the constitutional rights of capital defendants was first publicly disclosed in 2003, in post-conviction proceedings relating to the 1987 capital prosecution of Fred Freeman. In postconviction litigation, DDA Quatman, who prosecuted Freeman, provided sworn testimony that the ACDAO maintained a standard practice of systematically excluding Black and Jewish jurors—a practice DDA Quatman alleged was encouraged by senior office leadership. Instead of acknowledging or investigating the claims, the ACDAO successfully conspired to discredit DDA Quatman personally.

107. The disclosure of DDA Carmine's notes in Plaintiff's case confirmed what DDA Quatman said was true, despite DDA Carmine having arguably been the most ruinous witness to falsely discredit DDA Quatman.

108. The 62,000 pages of notes disclosed thereafter, from decades of prosecutions, confirmed DDA Quatman's testimony at the *Freeman* hearing, and the ACDAO's unconstitutional custom and practice.

109. Rather than utilizing the opportunity to implement corrective training or transparent audit protocols, the ACDAO's leadership maintained a defensive posture of non-disclosure in order to maintain the coverup. This failure to act upon decades of notice was a moving force behind the constitutional injury to Plaintiff.

110. That these notes were in the possession, custody, and control of the ACDAO and Defendant County for decades before any action was taken to acknowledge or correct the constitutional error shows that the ACDAO and Defendant County were deliberately indifferent to their constitutional obligations.

111. These violations were directly, foreseeably, proximately, and/or substantially caused by the unlawful policies, customs, or practices of the ACDAO, as well as by the deliberate indifference of policymakers at that office, acting on behalf of the Defendant County, to the occurrence of such constitutional violations.

112. Through the absence of training, oversight, and/or proper management by the ACDAO and its senior employees, the Deputy District Attorneys responsible for capital homicide prosecutions believed it was of no consequence for prosecutors to intentionally eliminate Black and Jewish jurors based on their race and ethnicity.

III. Mr. Dykes' Conviction Has Been Invalidated

113. On July 15, 2024, the ACDAO moved to have Mr. Dykes' sentence recalled and that he be resentenced in the interest of justice.

114. This motion was made as a direct result of the prosecutorial misconduct conceded in Mr. Dykes' case.

115. On August 13, 2024, the Alameda County Superior Court recalled Mr. Dykes' sentence and he was resentenced to a determinate term of 32 years, consisting of the following:

a. Voluntary Manslaughter (Cal. Pen. Code § 192), receiving a term of eleven years;

b. Attempted Murder (Cal. Pen. Code §§ 187/664), receiving a term of nine years;

c. Second Degree Robbery (Cal. Pen. Code § 211-2), receiving a stay; and

d. Three enhancements for use of a deadly or dangerous weapon during the commission or attempted commission of the three aforementioned felonies (Cal. Pen. Code § 12022.5), receiving twelve total years.

116. In 1993, when these crimes occurred, Mr. Dykes was entitled to a fifty percent credit on time earned for good behavior; therefore, he was entitled to release after sixteen years.

117. Mr. Dykes was arrested on August 7, 1993. On April 22, 2025, Mr. Dykes was released from custody after 31 years, 8 months, and 15 days of incarceration.

118. But for the Defendant County's unconstitutional conduct, even if convicted of the charges in ¶115, Mr. Dykes would have been released from prison on or about August 7, 2009, and would never have been on death row. That means he would not have been subjected to the solitary confinement of death row, the particularly egregious and unsanitary conditions of death row, the constant psychological torture of having a death sentence hanging over his head, and the emotional distress of death row.

119. Because of the unconstitutional conduct of the Defendant County, Mr. Dykes was incarcerated for at least 15 years, 8 months, and 15 days longer than he should have been.

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DAMAGES

120. Plaintiff was convicted of special circumstances murder and sentenced to death in 1995.

121. At the time of Plaintiff's arrest in 1993, he was 20 years old; he was 52 years old upon release in 2025.

122. Plaintiff suffered years of unlawful incarceration, depriving him of his freedom and adequate access to family and loved ones, confined daily to a small cell that weighed on his mental and physical health for at least 20 hours each day, and denied adequate healthcare and nutrition.

123. From 1995–2024, following his conviction and death sentence, Plaintiff was incarcerated at San Quentin State Prison.

124. As a condemned prisoner, Mr. Dykes was denied regular housing, liberties, privileges, and programming that the other 25,000+ California prisoners convicted of homicide received. Mr. Dykes was housed exclusively with hundreds of condemned prisoners for 29 years. He was surrounded by those who were, as a matter of law, deemed to be unworthy of life, and separated from other California prisoners.

125. As a condemned prisoner, Mr. Dykes was denied programming, parole eligibility, and credits toward release. As a result, he was never on track to be reviewed for, qualified for, or released on parole, as are all non-special circumstance prisoners.

126. Plaintiff was housed with other condemned men, awaiting execution. He was forced to live with unremitting, cacophonous noise as a result of the close and packed housing conditions and the screaming, banging, and other disturbed noises that many of the mentally ill men with whom he was housed make. For all of his confinement, Plaintiff endured unconstitutionally cruel and deplorable conditions.

127. In February 2008, a federal district court judge found that numerous conditions at San Quentin State Prison violated the United States Constitution, including the presence of rodents and vermin on the tiers, flooding from the showers, lack of cleaning supplies, and excessive noise. *See* Findings of Fact and Conclusions of Law after Bench Trial on Motion to Terminate Consent Decree, *Lancaster v. Tilton*, Case No. C 79-01630 (N.D. Cal. Feb. 15, 2008).

128. Food quality and quantity was substandard, depriving Plaintiff of adequate sustenance and nutrition; prisoners were routinely served food that was spoiled, such as expired milk, wilted vegetables, dry bread, and sour rotten meat. The quantity and nutritional quality of food provided by the prison was insufficient to maintain Plaintiff's health.

129. A death sentence, such as Plaintiff's, that does not serve legitimate and substantial penological goals that cannot otherwise be accomplished by an alternative sentence violates the Eighth Amendment. A punishment is deemed excessive and unconstitutional if it serves no penal purpose more effectively than would a less severe punishment. Here, the ACDAO has effectively admitted that a less severe punishment was warranted by offering Plaintiff such and aiding in the imposition of it.

130. As a condemned prisoner, Mr. Dykes suffered over three decades of never-ending severe psychological trauma from the threat of execution. He was delivered to San Quentin's death row on December 22, 1995, just as the State of California was about to embark on its most active execution period.

131. Two months after his arrival at San Quentin, California conducted its first execution in nearly three years. Thereafter, between February 1996 and January 2006, Mr. Dykes endured the psychological trauma of ten more executions. Three other men who were not executed came within hours of execution only to have those executions stayed.

132. During this same time, several of the executions were botched or unnecessarily torturous. Publicity focused on the torturous nature of the method of execution employed in California, thus adding to Plaintiff's emotional distress.

133. Between December 1995 and January 2006, he endured the psychological trauma of those thirteen executions. For fourteen years, every time a neighbor was led away to the execution chamber, Plaintiff was forced to confront his own state-sanctioned execution. Even after California conducted its last execution in 2006, the psychological trauma continued, as executions were merely on hold, not banned. As a condemned prisoner, Plaintiff suffered three decades of never-ending severe psychological trauma from the threat of execution.

134. Plaintiff also had to endure the psychological and emotional torture of being on death row in the summer of 2020, when COVID-19 ran rampant through that institution. By July 17, 2020, there were 2,063 confirmed prisoner tests and 226 confirmed staff cases at San Quentin. U.S. District Court Judge Jon S. Tigar noted that the "number of inmate infections is undoubtedly even higher because hundreds of inmates have refused to be tested." *See Plata v. Newsom*, CAND Case No. 4:01-cv-01351-JST, Dkt. No. 3373, filed July 5, 2020. Even without the additional confirmed cases, the New York Times identified San Quentin State Prison as the second greatest coronavirus cluster in the United States as of July 23, 2020. A dozen death row prisoners died from COVID-19. This was nearly eleven years after Plaintiff should have been released. Instead, because of the unconstitutional conduct, he was prevented from choosing where to quarantine and with whom he wanted to quarantine. Plaintiff was one of the prisoners who contracted COVID in July of 2020.

135. While housed at San Quentin, Plaintiff suffered under an antiquated healthcare system, oftentimes having to endure many months or more of pain while waiting for essential treatment.

136. As a condemned prisoner, all legal visits or visits by family or friends were conducted in a room with a shared wall to the California Department of Corrections and Rehabilitation ("CDCR") execution chamber.

137. As a condemned prisoner, Plaintiff's liberty was deprived, controlled, and handled by, among others, executioners from the CDCR's execution team.

138. This psychological burden was the direct and foreseeable result of a conviction the ACDAO and Defendant County knew was engineered by racism and structurally unsound.

139. Following the closure of death row at San Quentin, Plaintiff was incarcerated at the California Healthcare Facility ("CHCF") in Stockton, California. While CHCF was an improvement from San Quentin, Plaintiff continued to suffer from his confinement and the deprivations therefrom. Most importantly, while the actual "death row" was closed, death sentences persisted; thus, Plaintiff still endured the psychological torture of having a capital sentence hanging over his head.

CLAIMS FOR RELIEF

CLAIM 1

42 U.S.C. § 1983 and *Monell*[1] Municipal Liability Against the County of Alameda for the Misconduct of the ACDAO and its Prosecutors

140. Plaintiff repeats and realleges each allegation contained in the preceding paragraphs as if fully set forth herein.

141. At the time of Plaintiff's capital trial, as a criminal defendant, he was entitled to trial by an impartial jury of his peers, pursuant to the Sixth and Fourteenth Amendments to the United States Constitution.

142. The right to trial by an impartial jury prohibits the prosecution's use of peremptory challenges to eliminate jurors based on their inclusion in a protected class, including, inter alia, excluding jurors based on race, ethnicity, or gender.

[1] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691–94 (1978).

143. The well-established rules regarding prosecutorial conduct in jury selection prohibited ACDAO prosecutors from removing a juror based on race, ethnicity, or gender.

144. Those who prosecuted Plaintiff's capital trial, led by DDA Colton Carmine, violated these constitutional mandates.

145. As set forth above, Plaintiff's prosecutors targeted jurors based on their race, ethnicity, and religion, and eliminated the only Black juror that made it into the jury box. As a result, no Black or Jewish jurors sat on Plaintiff's jury.

146. The prosecution's jury selection notes establish that race was a consideration in this strike, and that the prosecution was prepared to manipulate the jury to limit the number of Black and Jewish jurors seated, and to mislead the court as to the reasons for removing Black and Jewish jurors.

147. The prosecution's actions violated Plaintiff's constitutional right to a fair trial by an impartial jury, which directly contributed to the jury's guilt and penalty verdicts.

148. The above misconduct was a substantial cause of Plaintiff's unconstitutional injuries.

149. These violations of Plaintiff's constitutional rights were directly, foreseeably, proximately, and/or substantially caused by the unlawful policies, customs, or practices of the ACDAO, as well as by the deliberate indifference of policymakers at that office, acting on behalf of the Defendant County, to the occurrence of such constitutional violations.

150. Under the principles of municipal liability for federal civil rights violations, at all relevant times, the District Attorney or his/her authorized delegates, had final managerial responsibility for establishing lawful policies of the office and for training, instructing, supervising, and disciplining attorneys and other employees of the ACDAO regarding their constitutional obligations.

151. Nevertheless, at the time of Plaintiff's trial, the ACDAO maintained unlawful policies, customs, and/or practices, and was indifferent to violations of fair trial rights, all of which were a substantial cause of both the violations of his constitutional rights and his damages.

152. Specifically, the ACDAO had an unlawful policy, custom, and/or practice of automatically excluding Jewish and Black jurors in capital cases, in violation of the ACDAO's obligations under *Batson*.

153. The ACDAO had an unlawful policy, custom, and/or practice of manipulating jury selection in order to mislead the court and defense counsel as to the real reasons for striking jurors.

154. The ACDAO had an unlawful policy, custom, and/or practice of covering up these constitutional violations by providing false reasons for their strikes to the court and defense counsel.

155. The ACDAO failed to investigate and correct these constitutional violations when they were revealed by a whistleblower.

156. The District Attorney and his/her designees, as policymakers for the ACDAO and the County, encouraged such violations through their policy of deliberate indifference to them.

157. The aforesaid policies, procedures, regulations, practices, and/or customs of the ACDAO were, collectively and individually, a substantial factor in bringing about the aforementioned violations of Plaintiff's rights under the Constitution and laws of the United States, and in causing his damages.

158. By virtue of the foregoing, the Defendant County is liable for the violation of Plaintiff's constitutional rights pursuant to 42 U.S.C. §1983, and his resultant injuries.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant County as follows:

1. Compensatory damages for the harms described above of not less than $32,000,000;
2. Punitive damages of not less than $250,000,000;
3. Reasonable attorneys' fees, together with costs and disbursements, under 42 U.S.C. § 1988 and the inherent powers of this Court;
4. Pre-judgment interest as allowed by law; and
5. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully requests a trial by jury on all appropriate issues raised in this Complaint.

Dated: June 23, 2026

Respectfully submitted,

/s/ Brian M. Pomerantz
BRIAN M. POMERANTZ
ANN-KATHRYN TRIA

Attorneys for
ERNEST DYKES