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9 Attorneys for Plaintiff  
10 ERNEST DYKES

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 ERNEST DYKES, ) CASE NO. 3:26-cv-6220  
15 )  
16 Plaintiff, ) **COMPLAINT FOR DAMAGES**  
(42 U.S.C. §§ 1983 and 1988)  
17 vs. )  
18 ) DEMAND FOR JURY TRIAL  
COUNTY OF ALAMEDA, a municipal )  
19 organization; )  
20 )  
21 Defendant. )  
22 )

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

3 **INTRODUCTION**

4 1. For decades, and at least since the 1980s, the Alameda County District  
5 Attorney’s Office (“ACDAO”) has engaged in an unconstitutional pattern and  
6 practice of racial discrimination in jury selection, in violation of *Batson v. Kentucky*,  
7 476 U.S. 79, 89 (1986). The People of the State of California, through the Office  
8 of the Attorney General and the ACDAO and the final policy makers therein, have  
9 formally admitted to having engaged in this particular unconstitutional conduct  
10 against Plaintiff Ernest Dykes (“Plaintiff” or “Mr. Dykes”) and others, including  
11 Curtis Ervin. As a result of the concession of structural error, Plaintiff, and the  
12 aforementioned individuals, have been released from custody.

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

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

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

1 ordered disclosure of jury selection notes from all capital cases (approximately  
2 62,000 pages), and review of 34 capital cases prosecuted by the ACDAO. Judge  
3 Chhabria’s findings catalyzed exposure of a culture of invidious racial  
4 discrimination in jury selection that the ACDAO’s final policymakers had  
5 previously spent decades concealing.

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

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

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

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

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

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

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

16 **PARTIES**

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

20 12. Defendant County of Alameda (“County”) is a municipal organization  
21 within the State of California. The Alameda County District Attorney’s Office  
22 (previously defined as “ACDAO”) is an agency of the County of Alameda, State of  
23 California, for whose torts the County is responsible.

24 **JURISDICTION, VENUE, AND CONDITIONS PRECEDENT**

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

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

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

11 16. The Government Claims Act does not apply to Plaintiff’s federal  
12 claims. *Robinson v. Alameda Cnty.*, 875 F. Supp. 2d 1029, 1044 (N.D. Cal. 2012)  
13 (“The filing requirement does not apply to . . . causes of action based upon federal  
14 law.”); *Conner v. Raver*, 2023 WL 5498728, at \*4 (N.D. Cal. Aug. 24, 2023)  
15 (“Contrary to Defendants’ argument, the Government Claims Act does not apply to  
16 Plaintiff’s federal claims.”) (citing *Williams v. Horvath*, 548 P.2d 1125, 1130 (Cal.  
17 1976) (“[W]hile it may be constitutionally permissible for the Legislature to place  
18 [a] substantive impediment in the path of a state cause of action, it is clear that the  
19 [S]upremacy [C]lause will not permit a like abrogation of the prerequisites of a  
20 federal civil rights litigant.”)); *Felder v. Casey*, 487 U.S. 131, 153 (1988) (“A state  
21 law that conditions that right of recovery upon compliance with a rule designed to  
22 minimize governmental liability, and that directs injured persons to seek redress in  
23 the first instance from the very targets of the federal legislation, is inconsistent in  
24 both purpose and effect with the remedial objectives of the federal civil rights law.  
25 Principles of federalism, as well as the Supremacy Clause, dictate that such a state  
26 law must give way to vindication of the federal right when that right is asserted in  
27 state court.”).

**FACTUAL ALLEGATIONS**

1  
2 17. On July 26, 1993, Mr. Dykes unintentionally killed nine-year-old  
3 Lance Clark, during a robbery of his grandmother, Bernice Clark. While Mr. Dykes  
4 intended to rob Mrs. Clark, he did not intend to shoot her, and he was unaware that  
5 Lance was in the car. It was undisputed at trial that Petitioner did not intend to shoot  
6 Lance.

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

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

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

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

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

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

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

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

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

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

17 **Questioning Regarding Ms. Daly’s Residential History**

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

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

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

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

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

3 Q. Suburb of what?

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

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

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

12 Q. How far is it from the casinos?

13 A. Three hours.

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

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

28 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

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

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

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

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

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

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

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

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

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

24 38. Several jurors who gave similar answers to these questions were not  
25 stricken by DDA Carmine. Juror Montgomery stated in answer to the question on  
26 page 33 that "anyone who is in a position to receive the death penalty should be  
27 given a fair trial and there can be no doubts about lack of evidence involved."  
28

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

7 39. Juror Jones stated in his questionnaire that he supported the death  
8 penalty “in some cases” and clarified during voir dire that he “would have to be  
9 pretty sure when it pertains to the death penalty ... really believe that that’s the best  
10 choice.”

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

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

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

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

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

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

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

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

20 47. In his notes, DDA Carmine accused Ms. Daly of being “evasive” and  
21 “dodging specific Q’s.”

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

28

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

5 **Disparate Interpretation of Voir Dire Responses**

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

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

14 52. Where Ms. Daly’s responses were interpreted as “evasive,” similar  
15 answers from non-Black jurors were interpreted as positive.

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

19 54. Similarly, he noted that juror Lucas “can impose D/P but wants to hear  
20 facts.”

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

24 56. Nothing in the record suggests that her responses were improper or  
25 evasive. Her responses reflect that she would be a thoughtful juror that could serve  
26 in the manner described by the trial judge, who advised that “[w]e are trying to  
27 choose people to serve as jurors ... who really could fairly choose between the two  
28

1 possible punishments after they heard and evaluated and considered all of the  
2 evidence.”

3 **DDA Carmine Intended To Strike All Black And Jewish Jurors**

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

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

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

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

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

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

22 63. Igor Ivanov, who was Jewish, was scored a one and given a red mark.  
23 Mr. Ivanov’s card has become infamous for the reprehensible statement that, “I  
24 liked him better than any other Jew But No Way.”

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

28

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

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

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

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

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

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

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

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

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

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

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

17 75. The ACDAO is headed by a District Attorney who ultimately acts as  
18 the final policymaker for the ACDAO. The District Attorneys throughout the  
19 relevant time periods discussed herein include: John H. Meehan (1981–1994),  
20 Thomas J. Orloff (1994–2009), Nancy O’Malley (2009–2023), Pamela Price (2023–  
21 2024), and Ursula Jones Dixon (2025–2026).

22 76. Other policymakers in the ACDAO included:

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

1 practices involving the exclusion of Black and Jewish jurors  
2 from capital cases, in violation of Plaintiff’s constitutional  
3 rights. DDA Anderson has stated that eliminating Jewish and  
4 Black jurors was “not a racist thing, but just common sense.”

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

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

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

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

27 ///

28 ///

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

4 79. Plaintiff is informed and believes that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

1 she was married to a college professor, who, in turn, was “the type of person [DDA  
2 Carmine] find[s] extremely reluctant to ever impose the death penalty.” The federal  
3 court found many of these, and other reasons given by DDA Carmine to be  
4 pretextual and reversed Mr. Love’s conviction. *See Love v. Yates*, 586 F. Supp. 2d  
5 1155 (N.D. Cal. 2008).

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

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

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

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

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

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

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

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

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

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

13 106. *People v. Freeman*, Alameda No. 79502A – ACDAO and Defendant  
14 County’s deliberate indifference to the constitutional rights of capital defendants  
15 was first publicly disclosed in 2003, in post-conviction proceedings relating to the  
16 1987 capital prosecution of Fred Freeman. In postconviction litigation, DDA  
17 Quatman, who prosecuted Freeman, provided sworn testimony that the ACDAO  
18 maintained a standard practice of systematically excluding Black and Jewish  
19 jurors—a practice DDA Quatman alleged was encouraged by senior office  
20 leadership. Instead of acknowledging or investigating the claims, the ACDAO  
21 successfully conspired to discredit DDA Quatman personally.

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

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

28

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

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

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

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

### 18 **III. Mr. Dykes' Conviction Has Been Invalidated**

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

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

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

- 26 a. Voluntary Manslaughter (Cal. Pen. Code § 192), receiving a  
27 term of eleven years;  
28

- 1           b.     Attempted Murder (Cal. Pen. Code §§ 187/664), receiving a
- 2                 term of nine years;
- 3           c.     Second Degree Robbery (Cal. Pen. Code § 211-2), receiving a
- 4                 stay; and
- 5           d.     Three enhancements for use of a deadly or dangerous weapon
- 6                 during the commission or attempted commission of the three
- 7                 aforementioned felonies (Cal. Pen. Code § 12022.5), receiving
- 8                 twelve total years.

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

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

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

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

25 ///  
26 ///  
27 ///  
28 ///

**DAMAGES**

1  
2 120. Plaintiff was convicted of special circumstances murder and  
3 sentenced to death in 1995.

4 121. At the time of Plaintiff’s arrest in 1993, he was 20 years old; he was  
5 52 years old upon release in 2025.

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

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

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

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

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

28

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

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

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

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

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

28

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

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

11 134. Plaintiff also had to endure the psychological and emotional torture of  
12 being on death row in the summer of 2020, when COVID-19 ran rampant through  
13 that institution. By July 17, 2020, there were 2,063 confirmed prisoner tests and  
14 226 confirmed staff cases at San Quentin. U.S. District Court Judge Jon S. Tigar  
15 noted that the "number of inmate infections is undoubtedly even higher because  
16 hundreds of inmates have refused to be tested." *See Plata v. Newsom*, CAND Case  
17 No. 4:01-cv-01351-JST, Dkt. No. 3373, filed July 5, 2020. Even without the  
18 additional confirmed cases, the New York Times identified San Quentin State  
19 Prison as the second greatest coronavirus cluster in the United States as of July 23,  
20 2020. A dozen death row prisoners died from COVID-19. This was nearly eleven  
21 years after Plaintiff should have been released. Instead, because of the  
22 unconstitutional conduct, he was prevented from choosing where to quarantine and  
23 with whom he wanted to quarantine. Plaintiff was one of the prisoners who  
24 contracted COVID in July of 2020.

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

28

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

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

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

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

15 **CLAIMS FOR RELIEF**

16 **CLAIM 1**

17 **42 U.S.C. § 1983 and *Monell*<sup>1</sup> Municipal Liability Against the County of**  
18 **Alameda for the Misconduct of the ACDAO and its Prosecutors**

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

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

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

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28 <sup>1</sup> *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691–94 (1978).

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

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

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

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

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

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

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

23 150. Under the principles of municipal liability for federal civil rights  
24 violations, at all relevant times, the District Attorney or his/her authorized delegates,  
25 had final managerial responsibility for establishing lawful policies of the office and  
26 for training, instructing, supervising, and disciplining attorneys and other employees  
27 of the ACDAO regarding their constitutional obligations.  
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1 151. Nevertheless, at the time of Plaintiff's trial, the ACDAO maintained  
2 unlawful policies, customs, and/or practices, and was indifferent to violations of fair  
3 trial rights, all of which were a substantial cause of both the violations of his  
4 constitutional rights and his damages.

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

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

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

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

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

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

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant County as  
3 follows:

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

11 **DEMAND FOR JURY TRIAL**

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

14  
15 Dated: June 23, 2026

Respectfully submitted,

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

19 Attorneys for  
20 ERNEST DYKES