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**BHBA RESOLUTION UPHOLDING CONSTITUTIONAL RIGHTS DURING PROTESTS**

We have all witnessed protests and other actions taking place in cities across the US, including Seattle, Portland, Los Angeles, Beverly Hills and elsewhere. There have also been challenges to the use and deployment of Federal Agents. Some voices have characterized these actions as a violation of the Constitution and attempts to interfere with peaceful protesters exercising their constitutional rights. Some have welcomed this intervention in order to protect life and property where local officials have been unwilling or unable to control violence, looting and bodily harm.

The following factual allegations have been alleged in sworn declarations recently filed in US District Court in Portland by attorneys representing protesters:

- (a) On July 11, 2020, federal agents swept through downtown Portland far from federal property, clearing a city park, shooting tear gas directly at a person riding a scooter, and launching smoke grenades and pepper balls.
- (b) On July 15, 2020, federal agents shot a tear gas canister directly at clearly marked journalist Justin Yau, while he was clearly separated from protesters by 40 feet.
- (c) On July 18, 2020, federal agents violently assaulted Navy veteran Christopher David, who was wearing a Navy sweatshirt and Navy logos. He approached a group of federal agents and stood with his hands empty and at his sides, without any weapon and making no threatening movement toward the armed officers. David asked whether the agents were enlisted and why they were not obeying an oath to the Constitution. In response, one federal agent clubbed David with a baton three times in the torso and lower body, a second federal agent sprayed him in his face with a chemical agent, and a third federal agent clubbed him twice from behind. All told, federal agents broke David's hand in two places and he required surgery.
- (d) On July 19, 2020, federal agents shot photojournalist Jungho Kim just below his heart with a less lethal projectile munition, while he was observing federal agents firing munitions into a group of press and legal observers.
- (e) On July 19, 2020, federal agents shot Associated Press photojournalist Noah Berger twice with less lethal munitions, while he was covering protests. As federal agents rushed an area he was photographing, Berger identified himself as press and retreated from the rushed area, saying he was leaving. While holding his press pass and stating he was with the press, he was struck by one federal agent, then by two others, hit several times with batons, and pepper sprayed in his face.
- (f) On July 21, 2020, Professor Maureen Healy, the Chair of the History Department of Lewis and Clark College, was peacefully protesting when federal agents gassed her and shot her in the head, concussing her.
- (g) On July 20, 2020, Amanda Dunham was demonstrating peacefully near the Multnomah County Justice Center – not the Hatfield Federal Courthouse. Without warning and without declaring the gathering unlawful, federal agents swarmed into the crowd of demonstrators, shooting rubber bullets and deploying tear gas. They struck Dunham from behind with three rubber bullets in her back, upper arm, and elbow, causing extreme pain and injuring her elbow. Rather than pursuing anyone in

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particular, the agents indiscriminately chased off protesters, continuing to shoot rubber bullets and deploying tear gas. The agents followed already dispersed protesters blocks away. Without ever speaking to Dunham, the federal agents chased her two and a half blocks to where her car was parked. As multiple federal agents trained their weapons on her, she could see the beams from the laser scopes of the agents' weapons on her dashboard. Dunham was afraid of being shot or killed, despite having done nothing wrong. The federal agents did not arrest, question, or detain her.

- (h) On July 22, 2020, at 11 p.m., Portland Mayor Ted Wheeler gathered in a public assembly with his constituents protesting near the Hatfield Courthouse. Federal agents gassed the crowd in which the Mayor was standing while he was speaking with Oregonians about law enforcement and the federal presence. The Mayor was not engaged in any unlawful activity, nor did he see unlawful or disorderly behavior that would have justified the gassing of the crowd in which he stood.
- (i) On July 25, 2020, federal agents advanced on protesters blocks from federal property, firing munitions, tackling protesters and making arrests. Federal agents abducted persons outside the jurisdiction of federal law enforcement, including but not limited to Mark Pettibone, who was attacked, while walking home after peacefully protesting.

If these reports are correct, this is contrary to the constitutional and due process rights of protesters and is unacceptable.

As lawyers, we are sworn to uphold our laws, the United States Constitution and our State Constitutions. As such we uphold our oaths and resolve as follows:

1. The BHBA vigorously insists that all officials wherever situated assure the ability of protesters to peacefully protest as protected under the law and under the US Constitution, and where federal law enforcement is utilized, that they be identified as federal law enforcement officers and what agency unless acting in an undercover capacity;
2. The BHBA vigorously insists that our local, state and federal officials act in coordination with one another to avoid the unlawful destruction of property, looting, bodily injury and other unlawful and violent behavior within the bounds of constitutionally permissible state actions, and recognizes that failure to take action itself can impair the ability of citizens to peacefully protest.
3. The BHBA vigorously supports lawyers who speak out and oppose any actions that violate 1 and 2 above.
4. The BHBA demands that our local, state, federal elected officials take all appropriate means to take actions that accommodate paragraphs 1 and 2 and adopt means to protect the principles set forth in paragraphs 1 and 2.
5. The BHBA resists any attempt by any official to violate anyone's constitutional, civil and human rights.