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8 Attorney for Defendant
9 JEREMY JONATHAN WHITE

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN DIEGO

12 PEOPLE OF THE STATE OF CALIFORNIA, No. SCD274477

13
14 Plaintiff,

**NOTICE OF DEMURRER AND
DEMURRER TO THE AMENDED
INDICTMENT**

15 v.

Date: 3/18/24

16 Time: 9 AM

17 Dept.: 1901

18 JEREMY JONATHAN WHITE,

19 Defendant.
20

21 _____/
22 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
23 ATTORNEY FOR THE COUNTY OF SAN DIEGO:

24 PLEASE TAKE NOTICE that the above-referenced date and time, or as soon thereafter
25 as this matter may be heard, JEREMY JONATHAN WHITE, by and through counsel, will and
26 hereby does demur to Count One and referenced Overt Acts of the Amended Information,
27 conspiracy to commit a riot, pursuant Penal Code sections 1004(4) and (5), on the following
28 grounds:

The Indictment and the prosecution are legally barred under the First Amendment to the United States Constitution. The overt acts underlying Count One amount to constitutionally protected activity and thus cannot form the basis of a conspiracy riot. (See *People v. Huss* (1966) 241 Cal.App.2d 361, 371, citing *Terminiello v. City of Chicago* (1949) 337 U.S. 1; U.S.

1 Const. amend. I.) Because imposing criminal liability for the overt acts underlying Count One
2 will severely chill lawful assembly and freedom of speech, the demurrer should be sustained
3 without leave to amend. In the alternative, Overt Acts 10, 11, 18, 33, 34, 39, 40, 69, 71, and 79
4 must be stricken.

5 This motion is based upon the following Memorandum of Points and Authorities, the
6 files and records in this matter, and upon any such argument and evidence as may be permitted
7 at the motion hearing.
8

9 Dated: March 5, 2024
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13 CURTIS L. BRIGGS
14 Attorney for Defendant
15 JEREMY JONATHAN WHITE
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

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3 **I. INTRODUCTION**

4 The prosecution of protestors under a broad conspiracy framework creates First
5 Amendment prosecution’s choice to proceed under a framework of conspiracy against counter-
6 protestors has numerous Constitutional pitfalls and should be treated with skepticism.

7 Charged overt acts must be directed toward the attainment of engaging in a riot, not
8 directed toward some other objective, such as constitutionally protected speech. “If an
9 allegation of an overt act shows on its face that such act was independent of the alleged
10 conspiracy, then it is not properly pled and subject to demurrer because it cannot support a
11 conviction for the crime of conspiracy.” (People v. Zamora, supra, 18 Cal.3d 538, 550.)

12 Additional scrutiny is required when the overt acts underlying a charge of conspiracy to
13 riot amount to activity that is protected by the First Amendment. This is because the First
14 Amendment prohibits a criminal prosecution where the jury is permitted to “infer a conspiracy
15 to riot” from the expression of speech or conduct that the First Amendment protects. (See
16 People v. Huss (1966) 241 Cal.App.2d 361, 369 (Huss).)

17 **II. STATEMENT OF THE CASE**

18 On May 2, 2022, the San Diego County District Attorney’s Office convened a criminal
19 grand jury seeking an indictment against Jeremy White and ten co-defendants alleged to be
20 affiliated with antifa. As to Mr. White, the District Attorney’s office sought an indictment for
21 the following charges: (1) Count One, a violation of Penal Code § 182(a)(1)/404 [conspiracy to
22 commit a riot]; (14) Count Fourteen, a violation of Penal Code § 22810(g) [use of tear gas, not
23 in self-defense]; (15) Count Fifteen, a violation of Penal Code § 597(a) [animal cruelty]; (21)
24 Count Twenty-One, a violation of Penal Code § 245(a)(4) [assault upon an unidentified victim
25 by means of force likely to produce great bodily injury]; (22) Count Twenty-Two, a violation of
26 Penal Code § 245(a)(4) [assault upon R.L. by means of force likely to produce great bodily
27 injury]; and (24) Count Twenty-Four, a violation of Penal Code § 245(a)(4) [assault upon J.C.
28 by means of force likely to produce great bodily injury].

On May 23, 2022, the grand jury returned an Indictment charging Mr. White as follows:
(1) in Count One, with a violation of Penal Code § 182(a)(1)/404 [conspiracy to commit a riot];

1 and (22) in Count Twenty-Two, with a violation of Penal Code § 245(a)(4) [assault upon R.L.
2 by means of force likely to produce great bodily injury].

3 On March 1, 2024, an Amended Indictment was filed. Mr. White now stands charged
4 by way of Amended Indictment with the following: (1) in Count One, with a violation of Penal
5 Code § 182(a)(1)/404 [conspiracy to commit a riot]; and (19) in Count Nineteen, with a
6 violation of Penal Code § 245(a)(4) [assault upon R.L. by means of force likely to produce great
7 bodily injury].

8 The Amended Information lists 107 Overt Acts to support Count One. Only 11 of the
9 107 Overt Acts mention Jeremy White.

10
11 **III. STATEMENT OF FACTS**

12 Of the 107 “overt acts” listed in the indictment in Count One, only 11 of them apply to
13 Mr. White. Only two Overt Acts apply to the assault of R.L. The Overt Acts against MR.
14 White are: he pointed out victim R.L. to other coconspirators (No. 69) and moved to surround
15 victim R.L. (No. 71) relevant to the alleged assault of R.L.. In support of the Conspiracy, eight
16 additional Overt Acts pertain to Mr. White. Mr. White is alleged to: have gathered black
17 clothing, a gas mask, a tactical helmet, a tactical vest, gloves, and armed himself with a tear
18 gas weapon (No. 10); traveled to Pacific Beach (No. 11); gathered in Pacific Beach (No. 18);
19 sprayed an unidentified victim three and his dog with tear gas (No. 33)¹; traveled up the
20 boardwalk while some members of the group chanted antifa-related slogans, including but not
21 limited to "ALL COPS ARE BASTARDS" and "ACAB." (No. 34); confronted victim J.C.
22 (No. 39); surrounded victim J.C. (No. 40); pointed out victim R.L. to other coconspirators (No.
23 69); moved to surround victim R.L. (No. 71); refused to disperse (No. 79) and sprayed an
24 unidentified victim eight with a tear gas weapon. (No. 95)².

25 All of the aforementioned acts are protected by the First Amendment and therefore
26 cannot form the basis of a criminal prosecution.

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¹ The grand jury found this did not amount to animal cruelty; rather, it was done in self-defense and defense of others.

² This grand jury did not buy the prosecution’s theory on this because the video shows that Mr. White did not pepper spray the unidentified person.

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4 **ARGUMENT**

5 **I. STANDARDS FOR A DEMURRER UNDER PENAL CODE § 1004.**

6 Penal Code section 1004 authorizes a defendant to demur to an accusatory pleading that
7 (1) alleges facts that “do not constitute a public offense,” or (2) “contains matter which, if true,
8 would constitute a legal justification or excuse of the offense charged, or other legal bar to the
9 prosecution.” (Pen. Code, §§ 1004(d), (e).) A demurrer “tests only those defects appearing on
10 the face of [the accusatory] pleading,” and is appropriate when it “raises an issue of law as to
11 the sufficiency of the ... pleading.” (*People v. Osorio* (2015) 235 Cal. App. 4th 1408, 1412,
12 quoting *People v. Manfredi* (2008) 169 Cal. App. 4th 622, 626.) “[F]or purposes of demurrer
13 ... matters which may be judicially noticed may be said to appear constructively on the face of
14 the pleading.” (*People v. Tolbert* (1986) 176 Cal. App. 3d 685, 689.)

15 A demurrer is appropriate to dismiss charges that are unconstitutional or preempted.
16 (See *Williams v. Superior Court* (2003) 111 Cal. App. 4th Supp. 1, 6 [“A demurrer’s purpose
17 under section 1004 is dismissal of a pleading which lacks adequate notice of the public offense
18 charged or charges one that is unconstitutional so as to generate a legally sufficient
19 accusation.”], disagreed with on other grounds in *Osman v. Appellate Div. of Superior Court*
20 (2005) 134 Cal. App. 4th 32.) In fact, the California Supreme Court has often sustained
21 demurrers dismissing criminal charges that violate the First Amendment. (See, e.g., *People v.*
22 *Superior Court (Lucero)* (1989) 49 Cal.3d 14, 27 [sustaining superior court demurrer to
23 charges against theatre for unlawfully displaying adult films based on standards that violated
24 the First Amendment]; *Dulaney v. Municipal Court* (1974) 11 Cal. 3d 77, 89 [sustaining
25 demurrer and entering writ of prohibition prohibiting prosecution under municipal ordinance
26 precluding posting of signs on utility poles as violating the First Amendment]; *Whitney v.*
27 *Municipal Court* (1962) 58 Cal. 2d 907, 910-11 [sustaining demurrer to prosecution under
28 municipal obscenity ordinance preempted by state law]; see also *Mandel v. Municipal Court*
(1969) 276 Cal. App. 2d 649, 673-74 [reversing trial court decision refusing to grant demurrer
and holding that prosecution of defendant under vagrancy ordinance for distributing anti-draft
leaflets on high school campuses violated First Amendment].

1 First Amendment concerns are particularly acute where the state has commenced a
2 criminal prosecution. (*Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004) [speech restrictions
3 “enforced by severe criminal penalties, have the constant potential to be a repressive force in
4 the lives and thoughts of a free people”].) As the case law demonstrates, when the State seeks
5 to prosecute in violation of the First Amendment, a Section 1004 demurrer is the proper
6 remedy to dismiss the charges and stop the prosecution at the outset.

7
8 **A. Count One of the Amended Indictment Is Legally Barred by the First Amendment
9 to the United States Constitution.**

10 "Speech is often provocative and challenging. It may strike at
11 prejudices and preconceptions and have profound unsettling effects
12 as it presses for acceptance of an idea. That is why freedom of
13 speech . . . is . . . protected against censorship or punishment....
14 There is no room under our Constitution for a more restrictive
15 view."

16 (*Cox v. La.* (1965) 379 U.S. 536, 551-552.)

17 The First Amendment protects an individual's right to join groups and associate with
18 others holding similar beliefs. (See *Aptheker v. Secretary of State*, 378 U.S. 500, 507 (1964)
19 [communist party].) Courts must be wary of government attempts to censor a particular view,
20 especially on the basis that certain ideas cause disturbances. This is because “a function of free
21 speech under our system of government is to invite dispute.” (*Terminiello v. Chicago*, 337
22 U.S. 1, 4 (1949) (*Terminiello*)). “It may indeed best serve its high purpose when it induces a
23 condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to
24 anger.” (*Ibid.*)

25 In other words, “[t]he government has no valid interest in restricting or prohibiting
26 speech or speech-related activity simply in order to avert the sort of disturbance, argument or
27 unrest which is inevitably generated by the expression of ideas which are controversial and
28 invite dispute. The danger justifying restriction or prohibition must be one which ‘rises far
above public inconvenience, annoyance, or unrest.’” (*Los Angeles Teachers Union, etc. v. Los
Angeles City Board of Education*, 71 Cal. 2d 551, 558 (1969), quoting *Terminiello, supra*, 337
U.S. at p. 4.)

Here, Mr. White and his co-defendants are charged in Count One with conspiracy to
commit the crime of riot as defined in Penal Code section 404, in violation of Penal Code

1 section 182(a)(1). Importantly, rioting, in history and by nature, almost invariably occurs as an
2 expression of political, social, or economic reactions, if not ideas. (*U.S. v. Dellinger* (7th Cir.
3 1972) 472 F.2d 340, 359.) A riot may well erupt out of an originally peaceful demonstration
4 which many participants intended to maintain as such. (*Ibid.*) Therefore, “[e]ach participant is
5 entitled to a careful distinction between responsibility for the lawful and constitutionally
6 protected demonstration and responsibility for the activity for which the legislative body
7 validly prescribes a penalty.” (*Ibid.*)

8 The crime of riot is defined in California as: “[a]ny use of force or violence, disturbing
9 the public peace, or any threat to use force or violence, if accompanied by immediate power of
10 execution, by two or more persons acting together, and without authority of law...” (Pen.
11 Code, § 404, subd. (a).) Under California law, the crime of conspiracy cannot exist unless one
12 or more of the conspirators commit an overt act in furtherance of the object of the conspiracy.
13 (Pen. Code, § 184.) “It is not enough that the conspiracy be directed to the attainment of some
14 unlawful object, or to the attainment of some lawful object by unlawful means; it must be
15 directed toward the attainment of one of the objects specified. Nor is it enough that the overt
16 act be directed to the attainment of some other object; it must be directed to the attainment of
17 the object which brings the conspiracy within the interdiction.” (*People v. Zamora* (1976) 18
18 Cal.3d 538, 550.)

19 Therefore, here, the charged overt acts must be directed toward the attainment of
20 engaging in a riot, not directed toward some other objective, such as constitutionally protected
21 speech. **“If an allegation of an overt act shows on its face that such act was independent of
22 the alleged conspiracy, then it is not properly pled and subject to demurrer because it
23 cannot support a conviction for the crime of conspiracy.”** (*People v. Zamora*, supra, 18
24 Cal.3d 538, 550.)

25 Additional scrutiny is required when the overt acts underlying a charge of conspiracy to
26 riot amount to activity that is protected by the First Amendment. This is because **the First
27 Amendment prohibits a criminal prosecution where the jury is permitted to “infer a
28 conspiracy to riot” from the expression of speech or conduct that the First Amendment
protects.** (See *People v. Huss* (1966) 241 Cal.App.2d 361, 369 (*Huss*).)

For example, in *Huss*, five members of the American Nazi Party, wearing party uniforms, steel helmets, and swastika armbands, picketed a meeting held to celebrate the

1 fifteenth anniversary of the independence of Israel. (*Huss, supra*, 241 Cal.App.2d at p. 363.)
2 The defendants arrived to find a large crowd gathered on the sidewalk. The defendants carried
3 signs with provocative language, such as “American Nazi Party” and began marching back and
4 forth through the crowd. (*Id.*, at p, 364.) Numerous witnesses testified that the defendants
5 were pushing and shoving their way through the crowd, although the defendants denied this
6 and the plainclothes officers assigned to interview them watched without taking action. (*Ibid.*)
7 On the defendants’ third pass through the crowd, fighting broke out at both ends of the picket
8 line and general disorder ensued. (*Ibid.*)

9 Four of the defendants were charged with felonious assaults upon the individual police
10 officers and civilians. (*Huss, supra*, 241 Cal.App.2d at p. 364.) All five defendants were
11 charged with conspiracy to assault and riot. (*Ibid.*) The conspiracy count, on which all
12 defendants were convicted, charged a criminal agreement among them to commit the crimes of
13 forcible assault, forcible assault on a police officer, assault, battery, and riot. The evidence
14 relied upon by the prosecution to support the conspiracy charge included the use by the
15 defendants of signs, slogans, and symbols known to and intended to provoke, incite, agitate,
16 and inflame those in attendance at the celebration. (*Ibid.*)

17 The jury was instructed that the definition of riot included the use of force or violence
18 and disturbing the peace, which included “Any act or conduct inciting to violence or Tending
19 to provoke or incite others to break the peace.” (*Huss, supra*, 241 Cal.App.2d at p. 364.) The
20 court refused to instruct the jury “that words of abuse or insult do not justify forcible assault
21 and that one so assaulted may defend himself against the assault.” (*Ibid.*)

22 On appeal, the Second District held that “the instructions unconstitutionally invaded
23 the domain of free speech by suggesting to the jury it could infer a conspiracy to riot from
24 defendants' display of provocative signs and slogans which might incite others to break the
25 peace.” (*Huss, supra*, 241 Cal.App.2d at p. 364.) “The jury was not told that those picketed
26 had no right to break the peace or resort to violence because of antipathy towards defendants'
27 signs, slogans, symbols, and costumes, but rather the jury was advised that acts of the
28 defendants which tended to incite others to break the peace could be construed as evidence of
their conspiracy to riot.” (*Ibid.*)

The court found, “We think the existence of a constitutional right to speak,
demonstrate, and picket on behalf of causes known to be highly offensive to those picketed

1 was settled in *Terminiello*, where the court upheld such a right in sweeping terms and ruled that
2 under the First Amendment it cannot be made an offense ‘merely to invite dispute, or to bring
3 about a condition of unrest.’” (*Id.*, at p. 366, citing *Terminiello, supra*, 337 U.S. at p. 5
4 [invalidating an ordinance that permitted a conviction for disorderly conduct if the defendant
5 stirred people to anger, invited public dispute, or brought about a condition of unrest].)

6 In so holding, the court noted:

7 “Speech is free under the First Amendment, not so much because
8 free speech is inherently good as because its suppression is
9 inherently bad. In the American garden we let a hundred flowers
10 bloom, knowing that among them may be skunkweed and thistle,
11 dandelion and poison oak. For us excess of speech involves a
12 lesser evil than does restriction on its exercise. In our Eden, Satan
13 and the Archangel Gabriel may both be heard.”

14 (*Huss, supra*, 241 Cal.App.2d at p. 368.)

15 The Second District also rejected the prosecution’s argument that the jury could have
16 found the defendants guilty not by reasons of the party slogan and symbols that were used, but
17 by other evidence in the case, such as the use of steel helmets, the purchases of poles suitable
18 for clubs, and the defendants’ pushing and shoving the crowd outside the argument. (*Huss,*
19 *supra*, 241 Cal.App.2d at p. 369.) To this end, the court held that because the conviction
20 could have been based on “constitutionally protected” activity, it was invalid under the Federal
21 Constitution and could not be upheld. (*Ibid.*)

22 Here, Mr. White asserts that *Huss* stands for the proposition that the overt acts
23 underlying a charge of conspiracy to riot cannot be comprised of activity that is protected by
24 the First Amendment. To allow the jury to be presented with an indictment, such as the
25 Amended Indictment here, that describes political speech as an overt act underlying a crime
26 will allow a conviction for conspiracy to riot to be inferred from constitutionally protected
27 activity.

28 Of the 107 “overt acts” listed in the indictment as to Count One, Mr. White is alleged to
have: gathered black clothing, a gas mask, a tactical helmet, a tactical vest, gloves, and armed
himself with a tear gas weapon (No. 10); traveled to Pacific Beach (No. 11); gathered in
Pacific Beach (No. 18); sprayed an unidentified victim three and his dog with tear gas (No.
33); traveled up the boardwalk while some members of the group chanted Antifa related
slogans, including but not limited to "ALL COPS ARE BASTARDS" and "ACAB." (No. 34);

1 confronted victim J.C. (No. 39); surrounded victim J.C. (No. 40); pointed out victim R.L. to
2 other coconspirators (No. 69); moved to surround victim R.L. (No. 71); refused to disperse
3 (No. 79) and sprayed an unidentified victim eight with a tear gas weapon. (No. 95).³ Each of
4 the two pepper spraying incidents were not persuasive to the grand jury. Thus, outside of Over
5 Acts Nos. 33 and 95, Mr. White is charged with conspiracy to riot based on his actions that
6 amount to the “display of provocative signs and slogans which might incite others to break the
7 peace.” (*Huss, supra*, 241 Cal.App.2d at p. 369.) Because these overt acts will allow the jury
8 to infer conspiracy to riot from activity that is protected by the First Amendment, Count One
9 cannot survive a demurrer. In the alternative, Overt Acts 10, 11, 18, 33, 34, 39, 40, 69, 71, and
10 79, must be stricken from the Amended Indictment.
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12
13 **CONCLUSION**
14

15 Under the First Amendment, Mr. White maintains that Count One alleges facts that “do
16 not constitute a public offense,” or (2) “contains matter which, if true, would constitute a legal
17 justification or excuse of the offense charged, or other legal bar to the prosecution.” (Pen.
18 Code, §§ 1004(d), (e).) Therefore, Count One must be dismissed. In the alternative, Overt
19 Acts 10, 11, 18, 33, 34, 39, 40, 69, 71, and 79 must be stricken from the Amended Indictment.
20

21 Dated: March 5, 2024

22 

23 CURTIS L. BRIGGS
24 Attorney for Defendant
25 JEREMY JONATHAN WHITE
26
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³ Nor does the activity described in the overt acts amount to speech that is likely to produce “imminent lawless action” that falls outside of the First Amendment’s protection. (See *Brandenburg v. Ohio* (1969) 395 U.S. 444, 449.) Mr. White concedes that acts of violence are not protected under the First Amendment. (See *NAACP v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 916.) However, aside from Overt Act No. 95, the alleged overt acts cannot be construed as acts of violence.

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PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is 1211 Embarcadero # 200, Oakland, CA 94606. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within NOTICE OF DEMURRER AND DEMURRER TO THE AMENDED INDICTMENT

to be served on the following parties via electronic service:

Office of District Attorney Count of San Diego Makenzie Harvey and Will Hopkins

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on March 5, 2024, at San Francisco, California.


CURTIS L. BRIGGS