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 13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 THE ESTATE OF ANTON PAT BARRETT,)
 16 by and through its representatives ANTON)
 17 FRANK BARRETT, PASHANEY)
 18 BARRETT and A.P.B., a minor, by and)
 19 through his guardian ad litem TASHA)
 20 PERRY; ANTON FRANK BARRETT)
 21 individually; PASHANEY BARRETT,)
 22 individually and A.P.B., a minor, by and)
 23 through his guardian ad litem TASHA)
 24 PERRY,)

25 Plaintiffs,)

26 v.)

27 CITY OF VALLEJO, a municipal)
 28 corporation; SEAN KENNEY; WAYLON)
 BOYCE; MARK THOMPSON; and DOES 1-)
 50, inclusive; individually and in their official)
 capacities as Police Officers for the CITY OF)
 VALLEJO,)

Defendants.)

Case No.:

COMPLAINT FOR DAMAGES

(42 U.S.C §§ 1983; and pendant tort claims)

JURY TRIAL DEMANDED

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INTRODUCTION

1. These claims arise out of the wrongful death of ANTON PAT BARRETT, an unarmed father of 3, who was gunned down and then tasered by Vallejo Police Officers while attempting to surrender, on May 28, 2012. Additional claims arise out of the civil rights violations and personal injuries suffered by ANTON FRANK BARRETT, who was mauled by a police dog while his father ANTON PAT BARRETT laid dying a few yards away.

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JURISDICTION

2. This action arises under Title 42 of the United States Code, Section 1983. Title 28 of the United States Code, Section 1331 and 1343 confers jurisdiction upon this Court. The unlawful acts and practices alleged herein occurred in the City of Vallejo, County of Solano, California, which is within this judicial district.

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PARTIES

3. ANTON PAT BARRETT, an African American male, was shot and killed by Defendant City of Vallejo Police Officer SEAN KENNEY. ANTON PAT BARRETT was not married at the time of his death and died without leaving a will. To the extent that this action seeks to recover damages for the violation of rights personal to ANTON PAT BARRETT, this action is maintained on behalf of the ESTATE OF ANTON PAT BARRETT, and by his successors in interest, A.P.B., a minor, by and through his guardian ad litem, TASHA PERRY, his daughter PASHANEY BARRETT, and his son ANTON FRANK BARRETT. Said plaintiffs are persons with standing to bring the action pursuant to California Code of Civil Procedure Sections 377.30.and 377.60 and California Probate Code Section 6402.

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4. Plaintiffs herein ANTON FRANK BARRETT and PASHANEY BARRETT are now and at all times mentioned herein, competent adults and United States Citizens. Plaintiffs are the surviving biological adult children of decedent, Anton Pat Barrett and have legal standing to maintain an action for wrongful death based upon the death of their father Anton Pat Barrett.

5. ANTON FRANK BARRETT presents his individual claims against the

1 City of Vallejo and individual Vallejo Police Officer's for injuries he incurred
2 during his own detention and arrest on May 28, 2012 in addition to the unlawful
3 shooting, tasing and death of his father, ANTON PAT BARRETT on the same
4 date.

5 6. At all times mentioned herein, Plaintiff, A.P.B. by and through his
6 guardian ad litem TASHA PERRY, is and was a resident of the State of
7 California, County of Solano, and is a biological surviving son of Anton Pat
8 Barrett and has legal standing to maintain an action for wrongful death based
9 upon the death of his father, and is entitled to maintain causes of action which
survive the death of Anton Pat Barrett Sr.

10 7. Defendant CITY OF VALLEJO (Hereinafter "Defendant") is, and at
11 all times herein mentioned, a municipal entity duly organized and existing under
12 the laws of the State of California.

13 8. At all times mentioned herein, SEAN KENNEY, is sued in his
14 individual and official capacity as a Police Officer for the City of VALLEJO.

15 9. At all times mentioned herein, WAYLON BOYCE, is sued in his
16 individual and Individual and official capacity as a Police Officer for the City of
VALLEJO.

17 10. At all times mentioned herein, MARK THOMPSON, is sued in his
18 individual and official capacity as a Police Officer for the City of VALLEJO.

19 11. Plaintiffs are ignorant of the true names and/or capacities of
20 Defendants sued herein as DOES 1 through 50, inclusive, and therefore sue said
21 defendants by such fictitious names. Plaintiffs will amend this complaint to
22 allege their true names and capacities when ascertained. Plaintiffs believe and
23 allege that each of the DOE defendants is legally responsible and liable for the
24 incident, injuries and damages hereinafter set forth. Each defendant proximately
25 caused injuries and damages because of their negligence, breach of duty,
26 negligent supervision, management or control, violation of public policy, false
27 arrests and unlawful use of force. Each defendant is liable for his/her personal
28 conduct, vicarious or imputed negligence, fault, or breach of duty, whether
severally or jointly, or whether based upon agency, employment, ownership,

1 entrustment, custody, care or control or upon any other act or omission.

2 Plaintiffs will ask leave to amend this complaint subject to further discovery.

3 12. In doing the acts alleged herein, Defendants, and each of them acted
4 within the course and scope of their employment.

5 13. In doing the acts and/or omissions alleged herein, Defendants, and
6 each of them, acted under color of authority and/or under color of law.

7 14. Due to the acts and/or omissions alleged herein, Defendants, and each
8 of them, acted as the agent, servant, and employee and/or in concert with each of
9 said other Defendants herein.

10 15. For State causes of action related to Federal claims, Plaintiffs are
11 required to comply with an administrative claim requirement under California
12 law. Plaintiffs have complied with all applicable requirements.

12 **FACTS**

13 16. On May 28, 2012 at approximately 12:00 a.m. Mr. Anton Pat Barrett
14 was driving in the City of Vallejo when Vallejo Police attempted to stop his
15 vehicle. Mr. Anton Pat Barrett was accompanied by his nineteen-year-old son
16 Mr. Anton Frank Barrett.

17 17. The Vallejo Police Officers reportedly suspected Mr. Anton Frank
18 Barrett, of driving under the influence. The Officers pursued Mr. Barrett until
19 he stopped his car in the rear of an apartment complex on Wilson Court. When
20 the father brought the car to a stop, he and his son both got out of the car and
21 ran.

22 18. Mr. Anton Frank Barrett ran through the apartment complex's
23 parking and lot and toward a set of stairs. As he neared the stairs, he looked and
24 saw his father attempting to surrender to the Officers. Mr. Barrett continued
25 running towards Farragut Avenue when he suddenly heard gunshots coming from
26 the direction of where he last saw his father. Knowing that his father was
27 unarmed, he sensed the Officers had shot his father.

28 19. Anton Frank Barrett was frightened and scrambled to find a hiding

1 place, in order to prevent the Vallejo Police from shooting him too, so he
2 climbed behind some bushes and cowered in fear.

3 20. As Anton Pat Barrett attempted to surrender to the Vallejo Police
4 Officers, Officer Sean Kenney shot this unarmed man, several times, without
5 legal justification. As Mr. Anton Pat Barrett lay on the ground bleeding and in
6 agony from his gunshot wounds, a yet to be identified Vallejo Police Officer
7 added further insult to the fatal injuries by tasing the dying man.

8 21. At some point during the incident Vallejo Police Officers Waylon
9 Boyce and Mark Thompson arrived on the scene and pursued Anton Frank
10 Barrett.

11 22. Officer Thompson released his dog “Yago” and directed the animal
12 to attack Anton Frank Barrett who was still frozen with fear in the bushes after
13 hearing multiple gunshots. The animal began to maul Anton Frank Barrett
14 causing him to scream in pain as the dog mercilessly ripped into his flesh. Like
15 his father, Mr. Anton Frank Barrett was unarmed.

16 23. Vallejo Police Officer Waylon Boyce grabbed Mr. Anton Frank
17 Barrett and threw him onto the ground and handcuffed him. After Anton Frank
18 Barrett was handcuffed, Officer Boyce put pressure on Anton Frank Barrett’s
19 head with his knee. Officer Boyce continued to increasingly apply pressure to
20 Mr. Anton Frank Barrett’s head while asking him a series of questions.

21 24. Next Officer Thompson unjustifiably ordered “Yago” to viciously
22 maul Mr. Anton Frank Barrett again, despite the fact that he was handcuffed
23 and in custody. Officer Thompson threatened to kill Anton Frank Barrett during
24 the dog attack and called him a ‘nigger.’ The dog continued to bite Anton
25 Frank Barrett in the face and legs until Officer Thompson physically restrained
26 the animal. The dog was so out of control that it bit Officer Thompson too.

27 25. Mr. Anton Frank Barrett survived the attack and was later
28 transported to Sutter Hospital where he was treated for multiple dog bites to his
29 face and legs. Unfortunately, Anton Pat Barrett died as a result of his gunshot
30 wounds.

31 26. Plaintiffs are informed and believe and thereon allege that CITY OF

1 VALLEJO and DOES 26-50, inclusive, breached their duty of care to the public
2 in that they have failed to discipline defendants: Vallejo Police Officers SEAN
3 KENNEY, WAYLON BOYCE, MARK THOMPSON and DOES 1-25 inclusive,
4 for their respective misconduct and involvement in the incident described
5 herein. Their failure to discipline the defendants demonstrates the existence of
6 an entrenched culture, policy or practice of promoting, tolerating and/or
7 ratifying with deliberate indifference the making of improper detentions and
8 arrests, the use of racial profiling, the use of excessive and/or deadly force and
9 the fabrication of official reports to cover up the defendants' misconduct.

9 27. Plaintiffs are informed and believe and thereon allege that members
10 of the Vallejo Police Department, including, but not limited to, defendants:
11 SEAN KENNEY, WAYLON BOYCE, MARK THOMPSON and DOES 1-25
12 and/or each of them, have individually and/or while acting in concert with one
13 another, engaged in a repeated pattern and practice of using excessive, arbitrary
14 and/or unreasonable force against individuals, including, but not limited to
15 decedent, Anton Pat Barrett and Plaintiff Anton Frank Barrett.

15 28. Plaintiffs' are further informed, believe and therein allege that as a matter of
16 official policy -- rooted in an entrenched posture of deliberate indifference to the
17 constitutional rights of primarily the minority citizens who live in the City of Vallejo--
18 defendant CITY OF VALLEJO has long allowed its citizens, such as the decedent and
19 Plaintiff Anton Frank Barrett to be abused by its police officers, including by and Vallejo
20 Police Officers SEAN KENNEY, WAYLON BOYCE, MARK THOMPSON and/or
21 DOES 1-25 and/or each of them, individually and/or while acting in concert with one
22 another.

22 29. Plaintiffs' are informed, believe and therein allege that CITY OF VALLEJO
23 Police Officers shot and killed four men during a six-week period from May 25-July 4,
24 2012 and a total of six men during 2012 and further that the CITY OF VALLEJO has
25 failed to discipline, or retrain any of the officers who used deadly force during the
26 aforementioned 12 separate incidents. The CITY OF VALLEJO'S failure to discipline or
27 retrain any of the involved Officers is evidence of an official policy, entrenched culture
28 and posture of deliberate indifference toward protecting citizen's rights and the resulting

1 deaths, false arrests and injuries is a proximate result of the CITY OF VALLEJO'S failure
2 to properly supervise its Police Officers.

3 30. Plaintiffs' are informed, believe and therein allege that CITY OF VALLEJO
4 knew, had reason to know by way of actual or constructive notice of the aforementioned
5 policy, culture, pattern and/or practice along with the complained of conduct and resultant
6 injuries/violations.

6 DAMAGES

7 31. As a consequence of Defendants' violation of Plaintiffs' federal civil rights
8 under 42 U.S.C. §1983 and the Fourteenth Amendment, Plaintiff's ESTATE OF ANTON
9 PAT BARRETT, ANTON FRANK BARRETT, PASHANEY BARRETT and A.P.B were
10 mentally, and emotionally injured and damaged as a proximate result of decedent's
11 wrongful death, including but not limited to: Plaintiffs' loss of familial relations,
12 decedent's society, comfort, protection, companionship, love, affection, solace, moral and
13 financial support.

14 32. ANTON FRANK BARRETT, PASHANEY BARRETT and A.P.B, by and
15 through his Guardian Ad Litem, TASHA PERRY, is entitled to recover wrongful death
16 damages pursuant to C.C.P. Sections 377.60 and 377.61 and Probate Code Section
17 6402(b). Additionally, plaintiffs are entitled to the reasonable value of funeral and burial
18 expenses pursuant to C.C.P. §§ 377.60 and 377.61.

19 33. Plaintiff, ESTATE OF ANTON PAT BARRETT is entitled to recover
20 damages pursuant to the right of survivorship for the pain and suffering A.P.B endured as a
21 result of the violation of his civil rights.

22 34. As a further direct and proximate result of defendants' intentional and/or
23 negligent conduct, plaintiffs ANTON FRANK BARRETT, PASHANEY BARRETT and
24 A.P.B. have been deprived of decedent's support.

25 35. Plaintiffs' found it necessary to engage the services of private counsel to
26 vindicate the rights of decedent and plaintiffs' rights under the law. Plaintiffs are therefore
27 entitled to an award of attorneys' fees and/or costs pursuant to statute(s) in the event that
28 they are the prevailing parties in this action under 42 U.S.C. §§§§ 1983, 1985-86 and 1988.

1 **FIRST CAUSE OF ACTION**

2 **Violation of Fourth Amendment of the United States Constitution**

3 **(42 U.S.C. §1983)**

4 (Plaintiffs ESTATE OF ANTON PAT BARRETT and ANTON FRANK
5 BARRETT Against Defendants SEAN KENNEY, WAYLON BOYCE, MARK
6 THOMPSON and DOES 1-25)

7 36. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35 of
8 this complaint.

9 37. Defendants' above-described conduct violated Decedent and ANTON
10 FRANK BARRETT'S right as provided for under the Fourth Amendment to the United
11 States Constitution to be free from excessive force and/or the arbitrary and/or unreasonable
12 use of force against them.

13 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

14 **SECOND CAUSE OF ACTION**

15 **(Wrongful Death)**

16 **(42 U.S.C. §1983)**

17 (Plaintiffs ESTATE OF ANTON PAT BARRETT;
18 Plaintiff A.P.B., by and through his Guardian Ad Litem, TASHA PERRY; ANTON
19 FRANK BARRETT, and PASHANEY BARRETT against Defendants KENNEY and
20 DOES 1 – 25)

21 38. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through
22 37 of this Complaint.

23 39. Defendants acted under color of law by shooting and killing Decedent without
24 lawful justification and subjecting decedent to excessive force thereby depriving Plaintiffs
25 and the decedent of certain constitutionally protected rights, including, but not limited to:

26 a. The right to be free from unreasonable searches and seizures, as guaranteed by
27 the Fourth Amendment to the United States Constitution;

28 b. The right not to be deprived of life or liberty without due process of law, as
guaranteed by the Fourteenth Amendments to the United States Constitution;

1 c. The right to be free from the use of excessive force by police officers, which is
2 guaranteed by the Fourth Amendment to the United States Constitution.

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4 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

5 **THIRD CAUSE OF ACTION**

6 **(Violations of Plaintiffs' 14th Amendment Rights/Right to Familial Relationship)**

7 **(42 U.S.C. § 1983)**

8 (Plaintiffs A.P.B., by and through his Guardian Ad Litem, TASHA PERRY; ANTON
9 FRANK BARRETT and PASHANEY BARRETT against Defendants KENNEY and
10 DOES 1 – 25)

11 40. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1
12 through 39 of this Complaint as though fully set forth;

13 41. Defendants, acting under color of state law, and without due process of law,
14 deprived Plaintiffs of their right to a familial relationship by seizing decedent by use of
15 unreasonable and unjustifiable deadly force and violence, causing injuries which resulted
16 in Decedent's death, all without provocation and did attempt to conceal their excessive use
17 of force and hide the true cause of Decedent's demise to deprive Plaintiffs of their right to
18 seek redress, all in violation of rights, privileges, and immunities secured by the Fourth
19 and Fourteenth Amendments to the United States Constitution.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21 **FOURTH CAUSE OF ACTION**

22 **(Survival action: Violation of Decedent's 4th Amendment Rights)**

23 **(42 U.S.C. §1983)**

24 (Plaintiff ESTATE OF ANTON PAT BARRETT against Defendants KENNEY and DOES
25 1 – 25)

26 42. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1
27 through 41 of this Complaint.

28 43. ANTON PAT BARRETT was forced to endure great conscious pain and

1 suffering because of the Defendants' conduct before his death;

2 44. ANTON PAT BARRETT did not file a legal action before his death;

3 45. Plaintiff ESTATE OF ANTON PAT BARRETT claims damages for the
4 conscious pain and suffering incurred by ANTON PAT BARRETT, as provided for under
5 42 U.S.C. §1983.

6 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

7 **FIFTH CAUSE OF ACTION**
8 **(*Monell* – 42 U.S.C. section 1983)**

9 (ESTATE OF ANTON PAT BARRETT and ANTON FRANK BARRETT against
10 Defendant CITY OF VALLEJO and DOES 26-50)

11 46. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1
12 through 45 of this Complaint.

13 47. Plaintiffs are informed and believe and thereon allege that high-ranking CITY
14 OF VALLEJO officials, including high-ranking police supervisors such as DOES 26
15 through 50, and/or each of them, knew and/or reasonably should have known about
16 repeated acts of misconduct by Defendant Officers SEAN KENNEY, WAYLON
17 BOYCE, MARK THOMPSON and DOES 1-25, and/or each of them.

18 48. Despite having such notice, Plaintiff is informed and believes and
19 thereon alleges that Defendant DOES 26-50, and/or each of them, approved, ratified,
20 condoned, encouraged, sought to cover up, and/or tacitly authorized the continuing pattern
21 and practice of misconduct and/or civil rights violations by said police officers.

22 49. Plaintiff is further informed and believes and thereon alleges that as
23 a result of the deliberate indifference, reckless and/or conscious disregard of the
24 misconduct by Defendants DOES 26-50 and/or each of them, encouraged these officers to
25 continue their course of misconduct and caused these officers' lack of training, resulting in
26 the violation of the Plaintiffs' rights as alleged herein.

27 50. Plaintiff further alleges that Defendant DOES 26-50, and/or each of
28 them, were on notice of the Constitutional defects in their training of CITY OF
VALLEJO police officers, including, but not limited to unlawful arrests, detentions and
unreasonable uses of force not based on probable cause or legal justification.

1 plaintiffs incurred funeral and burial expenses, in an amount according to proof at trial.

2 56. Pursuant to California C.C.P. Sections 377.60 and 377.61, plaintiffs have
3 brought this action, and claim damages from said defendants for the wrongful death of
4 decedent, and the resulting injuries.

5 WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

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7 **SEVENTH CAUSE OF ACTION**

8 **(CALIFORNIA CIVIL CODE §52.1)**

9 (Plaintiffs ESTATE OF ANTON PAT BARRETT and ANTON FRANK BARRETT
10 against Defendants KENNEY, BOYCE, THOMPSON and DOES 1 – 25)

11 57. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 56 of this
12 complaint.

13 58. Defendants' above-described conduct constituted interference, and attempted
14 interference, by threats, intimidation and coercion, with the Decedent and ANTON
15 FRANK BARRETT'S peaceable exercise and enjoyment of rights secured by the
16 Constitution and laws of the United States and the State of California, in violation of
17 California Civil Code §52.1.

18 WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

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20 **EIGHTH CAUSE OF ACTION**

21 **(Violation of State Statutory Rights)**

22 **(Violation of CALIFORNIA CIVIL CODE §51.7)**

23 (Plaintiffs ESTATE OF ANTON PAT BARRETT and ANTON FRANK BARRETT
24 against Defendants KENNEY, THOMPSON, BOYCE and DOES 1 – 25)

25 59. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 57
26 of this complaint.

27 60. Plaintiffs are informed and believe and thereon allege that the conduct of
28 Defendants KENNEY, BOYCE, THOMPSON and DOES 1-25, inclusive, as described

1 herein, was motivated by racial prejudice against ANTON PAT BARRETT and ANTON
2 FRANK BARRETT. Plaintiffs are and were readily recognizable as African-American. In
3 addition, one or more of the Defendants used a racial epithet while in the process of using
4 force and/or detaining ANTON FRANK BARRETT thereby violated his rights under
5 California Civil Code §51.7 to be free from violence, or intimidation by threat of violence
6 committed against him because of his race.

6 61. Under the provisions of California Civil Code §52(b), Defendants are liable for
7 punitive damages for each violation of Civil Code §51.7, reasonable attorney's fees and an
8 additional \$25,000.00.

9 62. As a proximate result of Defendants' wrongful conduct, decedent suffered
10 damages as hereinafter set forth.

11 WHEREFORE, plaintiffs pray for relief as hereinafter set forth.
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13 **NINTH CAUSE OF ACTION**

14 **(Intentional Infliction of Emotional Distress)**

15 (Plaintiffs ESTATE OF ANTON PAT BARRETT & ANTON FRANK BARRETT v

16 Defendants KENNEY, BOYCE, THOMPSON and DOES 1-25)

17 63. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 62 of this
18 complaint.

19 64. Defendants' above-described conduct was extreme, unreasonable and
20 outrageous.

21 65. In engaging in the above-described conduct, defendants intentionally ignored or
22 recklessly disregarded the foreseeable risk that decedent would suffer extreme emotional
23 distress as a result of defendants' conduct.

24 WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

25 **TENTH CAUSE OF ACTION**

26 **(Assault And Battery)**

27 (Plaintiffs ESTATE OF ANTON PAT BARRETT and ANTON FRANK BARRETT
28

1 Against Defendants KENNEY, BOYCE, THOMPSON, and DOES 1-25)

2 66. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 65 of
3 this complaint.

4 67. Defendants' above-described conduct constituted assault and battery.

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth

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7 **ELEVENTH CAUSE OF ACTION**

8 **(Negligent Infliction of Emotional Distress)**

9 (Plaintiff ANTON FRANK BARRETT against Defendants KENNEY & DOES 1-25)

10 68. Plaintiff re-alleges and incorporates by reference herein paragraphs
11 1 through 67 of this Complaint, except for any and all allegations of
12 intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by
13 defendants, and any and all allegations requesting punitive damages.

14 69. The wrongful conduct of Defendants KENNEY and DOES 1-25
15 inclusive, as set forth herein, constitutes negligent conduct done with conscious
16 disregard for the rights of Anton Frank Barrett.

17 70. As a proximate result of Defendants KENNEY and DOES 1-25
18 inclusive, negligent conduct, Anton Frank Barrett has suffered severe
19 emotional and mental distress from being present and hearing his father being
20 gunned down and killed by Defendants KENNEY and DOES 1-25. This event
21 resulted in a devastating traumatic effect on Plaintiff's emotional tranquility.

22 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

23 **JURY DEMAND**

24 Plaintiffs hereby demand a jury trial in this action.

25 **PRAYER**

26 WHEREFORE, plaintiffs pray for relief, as follows:
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