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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17  
18  
19 SHAUN A. ANDERSON, individually and  
as Successor-In-Interest of Decedent,  
20 ROBERT W. ANDERSON,

21 Plaintiff,

22 v.

23 COUNTY OF CONTRA COSTA, a  
24 municipal corporation; DAVID O.  
25 LIVINGSTON, in his individual and official  
26 capacities; CONTRA COSTA HEALTH  
27 SERVICES; DENNIS MCBRIDE, M.D.;  
MICHELLE CUNNINGHAM, M.D.;  
ADAM BUCK, M.D., and DOES 1-10,

28 Defendants.

Case No.

**COMPLAINT FOR CIVIL RIGHTS  
VIOLATIONS, ETC.**

**(42 U.S.C. § 1983)**

**JURY DEMAND**

1 Plaintiff alleges:

2 **JURISDICTION**

3 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1343 to secure protection of  
4 and to redress deprivations of rights secured by the Eighth Amendment and/or Fourteenth  
5 Amendment to the U.S. Constitution as enforced by 42 U.S.C. § 1983, which provides for the  
6 protection of all persons in their civil rights and the redress of deprivation of rights under color  
7 of law.

8 2. This Court also has jurisdiction under 28 U.S.C. § 1331 to resolve a controversy  
9 arising under the Constitution and laws of the U.S., particularly the Eighth and/or Fourteenth  
10 Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

11 3. This Court has supplemental jurisdiction over the state law claims asserted herein  
12 pursuant to 28 U.S.C. § 1367, since the claims form part of the same case or controversy arising  
13 under the U.S. Constitution and federal law.

14 **VENUE AND INTRADISTRICT ASSIGNMENT**

15 4. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) as a substantial part of  
16 the events and/or omissions giving rise to Plaintiff’s claims occurred in the County of Contra  
17 Costa, California. This action is properly assigned to the Oakland or San Francisco Division of  
18 the United States District Court for the Northern District of California, pursuant to Local Rule 3-  
19 2(d).

20 **PARTIES AND PROCEDURE**

21 5. Plaintiff, Shaun A. Anderson (“Plaintiff”), is a resident of California, and the  
22 surviving son of Robert W. Anderson (“Mr. Anderson”), the decedent. Plaintiff brings his  
23 claims individually and as the successor-in-interest to Mr. Anderson. The survival causes of  
24 action in this matter are based on violations of Mr. Anderson’s rights under the Eighth and/or  
25 Fourteenth Amendments to the U.S. Constitution and California State Law.

26 6. Defendant County of Contra Costa (“County”) is a municipal corporation, duly  
27 organized and existing under the laws of the State of California. Under its authority, the County  
28 operates the Contra Costa County Sheriff’s Office (“CCCSO”).

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1           7. Defendant David O. Livingston (“Sheriff Livingston” or “Defendant  
2 Livingston”) is, and was at all times relevant hereto, the Sheriff of the County of Contra Costa,  
3 California, and acting under color of state law. Defendant Livingston, as Sheriff and the head of  
4 the CCCSO, was, at all times relevant hereto, responsible for ensuring the safety and well-being  
5 of inmates detained and housed at the Martinez Detention Facility (“Jail”), including the  
6 provision of appropriate medical and mental health care and treatment to inmates in need of  
7 such care. In addition, Defendant Livingston is, and was at all times pertinent hereto,  
8 responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations,  
9 policies, practices, procedures, and/or customs of CCCSO and Jail, including the policies,  
10 practices, procedures, and/or customs that violated Mr. Anderson’s rights as set forth in this  
11 Complaint. Defendant Livingston is sued in his individual and official capacities.

12           8. Defendant Contra Costa Health Services (“CCHS”) is a department of the  
13 County. CCHS provides medical and mental health services to inmates at the Jail. More  
14 specifically, CCHS provides all primary care medical services for inmates in the Jail, including  
15 diagnostic testing, treatment, and nursing care. CCHS also operates the Contra Costa County  
16 Regional Medical Center (“Hospital”). At all times relevant hereto, CCHS was responsible, in  
17 part, for providing medical services and medication to Mr. Anderson while he was in the  
18 custody of CCCSO. CCHS was additionally responsible, in part, for creating and implementing  
19 policies, practices and protocols that govern the provision of medical and mental health care to  
20 inmates at the Jail and Hospital, and for training and supervising its employees. CCHS was, at  
21 all times relevant hereto, endowed by the County with powers or functions governmental in  
22 nature, such that CCHS became an agency or instrumentality of the State and subject to its  
23 constitutional limitations.

24           9. Defendant Dennis McBride, M.D. (“Dr. McBride”) was at all times relevant  
25 hereto, an employee and/or agent of the County/CCHS, who was, in part, responsible for  
26 overseeing and treating Mr. Anderson’s health and well-being, and assuring that Mr. Anderson’s  
27 medical needs were met, during the time he was in the custody of CCCSO. Dr. McBride was  
28 the County/CCHS Medical Director at the Jail. At all pertinent times, Dr. McBride was acting

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1 within the scope of his employment under color of State law. Dr. McBride is being sued in his  
2 individual capacity.

3 10. Defendant Michelle Cunningham, M.D. (“Defendant Cunningham” or “Dr.  
4 Cunningham”) was at all times relevant hereto, an employee and/or agent of the County/CCHS,  
5 who was, in part, responsible for overseeing and treating Mr. Anderson’s health and well-being,  
6 and assuring that Mr. Anderson’s medical needs were met, during the time he was in the custody  
7 of CCCSO. Dr. Cunningham was a resident at the Hospital on March 24, 2014 when Mr.  
8 Anderson was discharged back to the Jail. At all pertinent times, Dr. Cunningham was acting  
9 within the scope of her employment under color of State law. Dr. Cunningham is being sued in  
10 her individual capacity.

11 11. Defendant Adam Buck, M.D. (“Defendant Buck” or “Dr. Buck”) was at all times  
12 relevant hereto, an employee and/or agent of the County/CCHS, who was, in part, responsible  
13 for overseeing and treating Mr. Anderson’s health and well-being, and assuring that Mr.  
14 Anderson’s medical needs were met, during the time he was in the custody of CCCSO. Dr.  
15 Buck was an attending physician at the Hospital on March 24, 2014 when Mr. Anderson was  
16 discharged back to the Jail. At all pertinent times, Dr. Buck was acting within the scope of his  
17 employment under color of State law. Dr. Buck is being sued in his individual capacity.

18 12. Plaintiff is ignorant of the true names and capacities of Defendants DOES 1  
19 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is  
20 informed and believes and thereon alleges that each Defendant so named is responsible in some  
21 manner for the injuries and damages sustained by Mr. Anderson and Plaintiff as set forth herein.  
22 Plaintiff will amend his Complaint to state the names and capacities of DOES 1-10, inclusive,  
23 when they have been ascertained.

24 **FACTUAL ALLEGATIONS**

25 13. Mr. Anderson died on March 31, 2014. According to the Contra Costa County  
26 Coroner, the cause of death was “sepsis” due to bronchopneumonia of the right lung. Mr.  
27 Anderson was 58-years-old. Were it not for the negligence and/or deliberate indifference of  
28

1 employees and agents of the CCCSO and/or the CCHS, Mr. Anderson would not have died in  
2 this manner.

3 14. On information and belief, Mr. Anderson was booked into the Jail in February  
4 2014. On February 27, 2014, Mr. Anderson was taken to the Hospital, a division of the CCHS.  
5 Upon admission, Mr. Anderson reported chest pain, a painful cough, shortness of breath,  
6 “yellow sputum with ... streaks of blood,” nausea and a history of serious health problems,  
7 including COPD and asthma. He was admitted into the Hospital and remained there for seven  
8 (7) days. During this initial stay in the Hospital, Mr. Anderson was diagnosed with community-  
9 acquired pneumonia complicated by COPD, chronic kidney disease, Hepatitis C infection,  
10 asthma and coronary artery disease, among other diagnoses. Hospital medical personnel  
11 determined that the pneumonia resulted from a staph infection. On March 6, 2014, the Hospital  
12 discharged Mr. Anderson back to the Jail, and under the care of CCCSO, with significant  
13 discharge medication and medical care instructions (including the provision of Symbicort, an  
14 inhaler used for the treatment of COPD).

15 15. After staying at the Jail for 11 days, Mr. Anderson returned to the Hospital on  
16 March 17, 2014. Once again, Mr. Anderson reported chest pain and significant pain when he  
17 took a deep breath. Additionally, medical personnel noted that he was wheezing and had  
18 rhonchi in the “right lower quadrant...” Apparently, with negligence and deliberate  
19 indifference, responsible personnel at the *Jail failed to place Mr. Anderson on Symbicort as*  
20 *ordered.* The Hospital discharged Mr. Anderson back to the Jail on March 17, noting that he  
21 was “not likely going to get his Symbicort” and instructing Mr. Anderson to follow up with the  
22 physician at the Jail.

23 16. Upon Mr. Anderson’s return to the Jail, upon information and belief, that Jail  
24 medical personnel failed to provide Mr. Anderson with necessary medication, despite his  
25 obvious needs and the substantial and known risks he faced, and Jail medical staff failed to  
26 adequately monitor or supervise Mr. Anderson, despite his delicate condition and serious  
27 medical needs. On March 23, 2014, Mr. Anderson fainted in his cell, and was taken to the  
28 Hospital again. Medical personnel determined that Mr. Anderson fainted due to hypotension

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1 and “medications.” Mr. Anderson complained of chest pain again. Hospital personnel found  
2 that the chest pain was due to COPD exacerbation. *Jail nurses, “Judy” and “Mary Tess”,*  
3 *admitted to Hospital personnel that Mr. Anderson had been given improper doses of his*  
4 *medications.* Mr. Anderson reported that he had been given “too many pills” at the Jail.  
5 Further, Mr. Anderson’s lab results indicated elevated white blood cells. In deliberate  
6 indifference to the known risks, the Hospital medical personnel, namely Defendants  
7 Cunningham and Buck, did not attempt to determine whether the staph infection and/or  
8 pneumonia persisted. Rather, the Hospital recklessly discharged Mr. Anderson back to the Jail  
9 on March 24, 2014.

10 17. After returning to the Jail on March 24, despite Mr. Anderson’s continuing and  
11 serious medical problems, upon information and belief, the Jail completely failed to supervise,  
12 monitor or treat his condition. Without the necessary treatment and supervision, Mr. Anderson’s  
13 condition continued to deteriorate.

14 18. Upon information and belief, Jail medical staff, including Dr. McBride, failed to  
15 perform basic tests on Mr. Anderson to monitor and assess his dire respiratory illnesses and  
16 infections, despite obvious signs that his condition was rapidly growing worse, including Mr.  
17 Anderson’s complaints of “chest pains.” Despite the obvious symptoms of staph-induced  
18 pneumonia, medical staff at the Jail, including Dr. McBride, did not perform appropriate  
19 diagnostic testing nor provide the timely care that Mr. Anderson’s life-threatening condition  
20 demanded.

21 19. On March 30, 2014, just six (6) days after returning to the Jail, Mr. Anderson was  
22 rushed to the Hospital with dangerously low blood pressure (hypotension), and complaining of  
23 chest pain yet again. *Mr. Anderson reported that the chest pain had started again at the Jail*  
24 *“a few days” before. Further, Mr. Anderson had dangerously low blood pressure at the Jail*  
25 *days before he was finally taken to the Hospital.* Yet, it does not appear that medical staff at  
26 the Jail did anything to assess or treat Mr. Anderson’s serious medical needs. By the time Mr.  
27 Anderson was finally rushed to the Hospital, on March 30, it was too late. Hospital medical  
28

1 personnel determined that Mr. Anderson was in septic shock due to severe pneumonia. After  
2 multi-organ failure, Mr. Anderson was pronounced dead at the Hospital on March 31, 2014.

3 20. Mr. Anderson's death was imminently preventable and only occurred as a result  
4 of negligence and/or deliberate indifference to his serious medical needs.

5 21. The deliberate indifference to Mr. Anderson's serious medical needs, as  
6 summarized above, was in furtherance of and consistent with: (a) policies, customs and/or  
7 practices which the County/Sheriff Livingston promulgated, created, implemented or possessed  
8 responsibility for the continued operation of; and (b) policies, customs and/or practices which  
9 CCHS had responsibility for implementing and which CCHS assisted in developing.

10 22. First, the County/Sheriff Livingston and/or CCHS have failed to adequately train  
11 Jail personnel and medical staff with respect to the proper and timely assessment, classification,  
12 supervision and treatment of inmates with serious and complex health needs. This failure to  
13 train constitutes deliberate indifference to the health and safety of inmates like Mr. Anderson.  
14 This failure to train was a proximate cause of Mr. Anderson's death and the damages alleged  
15 herein.

16 23. Second, the County/Sheriff Livingston and/or CCHS have failed to implement  
17 and enforce generally accepted, lawful health care policies and procedures at the Jail. This  
18 failure to implement and enforce generally accepted, lawful health care policies and procedures  
19 constitutes deliberate indifference to the health and safety of inmates like Mr. Anderson. This  
20 failure to implement and enforce generally accepted, lawful health care policies and procedures  
21 was a proximate cause of Mr. Anderson's death and the damages alleged herein.

22 24. Third, the County/Sheriff Livingston and/or CCHS have adopted and  
23 maintained a medical computer system, EPIC/ccLink, which is dangerously deficient and  
24 creates unreasonable risks that inmates with serious medical needs. Specifically, EPIC/ccLink  
25 has been known to recommend incorrect, life-threatening, doses of medication. More generally,  
26 the EPIC/ccLink system has had bugs that cause it to malfunction and fail to provide correct or  
27 timely patient information. It is believed that failures with EPIC/ccLink were a proximate cause  
28 of Mr. Anderson's injuries, particularly the failure to provide him with the correct medications

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1 and/or correct doses of medication. The County/Sheriff Livingston and/or CCHS knew about  
2 the dangers created by EPIC/ccLink, but failed to alleviate those dangers, in deliberate  
3 indifference to inmates like Mr. Anderson.

4 25. As a direct and proximate result of each Defendants' acts and/or omissions as set  
5 forth above, Plaintiff sustained the following injuries and damages, past and future, among  
6 others:

- 7 a. Wrongful death of Mr. Anderson;
- 8 b. Hospital and medical expenses;
- 9 c. Coroner's fees, funeral and burial expenses;
- 10 d. Loss of support and familial relationships, including loss of love,  
11 companionship, comfort, affection, society, services, solace, and moral  
12 support;
- 13 e. Loss of economic support;
- 14 f. Violation of constitutional rights;
- 15 g. Emotional distress;
- 16 h. Mr. Anderson's loss of life, pursuant to federal civil rights law;
- 17 i. Mr. Anderson's conscious pain, suffering, and disfigurement,  
18 pursuant to federal civil rights law;
- 19 j. All damages and penalties recoverable under 42 U.S.C. §§ 1983 and  
20 1988, and as otherwise allowed under California and United States  
21 statutes, codes, and common law.

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**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**Cruel and Unusual Punishment in Violation of the Eighth and/or Fourteenth Amendment to the U.S. Constitution (42 U.S.C. § 1983)**

26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25, as though fully set forth herein.

27. Defendants McBride, Cunningham, Buck and DOES 1-10 knew that Mr. Anderson had serious medical and mental health needs, due to his reported medical condition, symptoms and requests for medical treatment, and the conditions of medical care at the Jail. In addition, such Defendants were put on notice of Mr. Anderson’s need for emergent care and treatment by other medical and detention staff, as well by his severe and obvious physical symptoms.

28. Defendants McBride, Cunningham, Buck and DOES 1-10 failed to provide an adequate physical evaluation on a number of occasions, and failed to provide timely or adequate treatment for Mr. Anderson while he was under CCCSO custody.

29. The acts and/or omissions of deliberate indifference as alleged herein, include but are not limited to: the failure to treat Mr. Anderson’s serious medical condition properly; failure to conduct appropriate medical assessments; failure to create and implement appropriate medical treatment plans; failure to promptly evaluate Mr. Anderson’s physical health; failure to properly monitor Mr. Anderson’s physical health; failure to provide access to medical personnel capable of evaluating and treating his serious health needs; and a failure to take precautions to prevent further injury to Mr. Anderson.

30. Defendants McBride, Cunningham, Buck and DOES 1-10 knew of (either through direct knowledge or constructive knowledge) and disregarded substantial risks to Mr. Anderson’s health and safety.

31. As a direct and proximate result of Defendants McBride, Cunningham, Buck and DOES 1-10’s conduct, Mr. Anderson experienced physical pain, severe emotional distress, mental anguish, death, and the damages alleged herein.

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1 32. The aforementioned acts and/or omissions of these individually named  
2 Defendants were malicious, reckless and/or accomplished with a conscious disregard of Mr.  
3 Anderson’s rights thereby entitling Plaintiff to an award of exemplary and punitive damages  
4 according to proof.

5 **Supervisor Liability and Official Capacity Liability**  
6 **(Sheriff Livingston)**

7 33. As alleged in paragraphs 21-24, Sheriff Livingston possessed responsibility for  
8 policies, customs and/or practices which were a proximate cause of Mr. Anderson’s injuries,  
9 death and the damages sought herein.

10 34. Sheriff Livingston knew (either through actual or constructive knowledge), or it  
11 was obvious, that these policies, practices and/or customs posed substantial risks to the health  
12 and safety of inmates like Mr. Anderson. Further, Sheriff Livingston failed to take reasonable  
13 steps to alleviate those risks with deliberate indifference to inmate’s serious medical needs,  
14 including Mr. Anderson’s serious medical needs.

15 35. Sheriff Livingston tacitly encouraged, ratified, and/or approved of the acts and/or  
16 omissions alleged herein, knew that such conduct was unjustified and would result in violations  
17 of constitutional rights, and evinced deliberate indifference to prisoners’ serious medical needs.

18 36. There is an affirmative causal link between the aforementioned acts and/or  
19 omissions in being deliberately indifferent to Mr. Anderson’s serious medical needs, health  
20 and safety and violating Mr. Anderson’s civil rights, and the policies, practices and/or customs  
21 described herein which Sheriff Livingston promulgated, created, implemented and/or possessed,  
22 and Mr. Anderson’s injuries and damages as alleged herein.

23 **Municipal Liability**  
24 **(County and/or CCHS)**

25 37. The County and CCHS are “persons” for purposes of 42 U.S.C. § 1983.

26 38. At all times pertinent hereto, the County and CCHS were acting under color of  
27 state law.  
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1 39. CCHS was endowed by the County with powers or functions governmental in  
2 nature, such that CCHS became an instrumentality of the State and subject to its constitutional  
3 limitations.

4 40. As alleged in paragraphs 21-24, the County and/or CCHS possessed  
5 responsibility for policies, customs and/or practices which were a proximate cause of Mr.  
6 Anderson’s injuries, death and the damages sought herein.

7 41. There is an affirmative causal link between the aforementioned acts and/or  
8 omissions in being deliberately indifferent to Mr. Anderson’s serious medical needs, health,  
9 and safety, and violating Mr. Anderson’s civil rights, and above-described customs, policies,  
10 and/or practices carried out by the County and/or CCHS.

11 42. The County and/or CCHS knew (either through actual or constructive  
12 knowledge), or it was obvious, that these policies, practices and/or customs posed substantial  
13 risks to the health and safety of inmates like Mr. Anderson. Nevertheless, the County and/or  
14 CCHS failed to take reasonable steps to alleviate those risks in deliberate indifference to  
15 inmates’, including Mr. Anderson’s, serious medical needs.

16 43. The County and/or CCHS tacitly encouraged, ratified, and/or approved of the  
17 acts and/or omissions alleged herein, knew that such conduct was unjustified and would result  
18 in violations of constitutional rights, and evinced deliberate indifference to prisoners’ serious  
19 medical needs.

20 44. There is an affirmative causal link between the aforementioned customs,  
21 policies, and/or practices and Mr. Anderson’s injuries and damages as alleged herein.

22 **SECOND CAUSE OF ACTION**  
23 **Negligence/Wrongful Death**

24 45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44, as  
25 though fully set forth herein.

26 46. All Defendants owed a duty to Mr. Anderson, and all other inmates in custody, to  
27 use reasonable care to provide inmates in need of medical attention with appropriate treatment.  
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1           47. Defendants breached that duty by wholly failing to provide Mr. Anderson with  
2 prompt and adequate medical treatment despite repeated requests and obvious need.

3           48. Defendants’ breaches of the duty of care include, among other things: failure to  
4 treat Mr. Anderson’s serious medical condition properly; failure to conduct appropriate medical  
5 assessments; failure to create and implement appropriate medical treatment plans; failure to  
6 promptly evaluate Mr. Anderson’s physical health; failure to properly monitor Mr. Anderson’s  
7 physical health; failure to provide access to medical personnel capable of evaluating and treating  
8 his serious health needs; and a failure to take precautions to prevent Mr. Anderson from further  
9 injury.

10           49. Additionally, the duties of reasonable care and due care owed to Mr. Anderson  
11 by Defendants County, Sheriff Livingston, CCHS and Dr. McBride include but are not limited  
12 to the following specific obligations:

- 13           a. To properly and reasonably hire, supervise, train, retain, investigate,  
14 monitor, evaluate, and discipline each person (i) who was responsible for  
15 providing medical and mental health care for Mr. Anderson, (ii) who  
16 denied Mr. Anderson timely or adequate medical attention or access to  
17 medical care and treatment, and/or (iii) who failed to summon necessary  
18 and appropriate medical care for Decedent;
- 19           b. To properly and adequately hire, investigate, train, supervise, monitor,  
20 evaluate, and discipline their employees, agents, and/or law enforcement  
21 officers to ensure that those employees/agents/officers act at all times in  
22 the public interest and in conformance with the law;
- 23           c. To refrain from making, enforcing, and/or tolerating the wrongful policies  
24 and customs set forth above.

25           50. Defendants, through their acts and omissions, breached each of the  
26 aforementioned duties owed to Mr. Anderson.

27           51. Plaintiff complied with the Governmental Tort Claim notice requirements of Cal.  
28 Gov. Code § 900, et seq.

1 52. As a direct and proximate cause of Defendants’ negligence, Mr. Anderson  
2 experienced physical pain, severe emotional distress, mental anguish and death.

3 53. As a direct and proximate cause of Defendants’ negligence, Plaintiff has suffered  
4 real and actual damages, including the damages alleged in paragraph 25, supra, in excess of  
5 \$75,000.00.

6 54. The County and CCHS are vicariously liable for the negligence of their  
7 employees and agents.

8 **THIRD CAUSE OF ACTION**  
9 **Violation of California Government Code § 845.6**

10 55. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 54, as  
11 though fully set forth herein.

12 56. Defendants knew or had reason to know that Mr. Anderson was in need of  
13 immediate and higher level medical care, treatment, observation and monitoring, due to his  
14 severe, obvious and life-threatening health condition. Each individual Defendant, employed by  
15 and acting within the course and scope of his/her employment with the County and/or CCHS,  
16 knowing and/or having reason to know this, failed to take reasonable action to summon and/or  
17 provide Mr. Anderson access to care and treatment in violation of California Government Code  
18 § 845.6.

19 57. As legal cause of the aforementioned acts of all Defendants, Mr. Anderson was  
20 injured as set forth above, and Plaintiff’s losses entitle him to all damages allowable under  
21 California law.

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff respectfully requests the following relief against each and every  
24 Defendant herein, jointly and severally:

- 25 a. Actual, compensatory and exemplary damages in an amount according to
- 26 proof and which is fair, just, and reasonable;
- 27 b. Punitive damages under 42 U.S.C. § 1983 and California law in an
- 28 amount according to proof and which is fair, just, and reasonable;

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- c. All other damages, costs, interest, and attorneys’ fees as allowed by 42 U.S.C. §§ 1983 and 1988 and California law; and
- d. All other relief deemed appropriate by this Court.

Dated: April 13, 2015

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By /s/ David M. Given  
David M. Given  
Attorneys for Plaintiff

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Daniel Smolen  
Donald E. Smolen, II  
Robert M. Blakemore

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: April 13, 2015

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By /s/ David M. Given  
David M. Given  
Attorneys for Plaintiff