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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 **KALI ORFF, an individual; and**
12 **MICHELLE KRISTOL, an individual;**

13 Plaintiffs,

14 vs.

15
16 **CITY OF IMPERIAL; IMPERIAL**
17 **POLICE DEPARTMENT; CHIEF**
18 **MIGUEL COLON, an individual;**
19 **ANDREW SMITHSON, an individual;**
20 **and DOE OFFICERS 1-10;**

21 Defendants.

Case No. **'17CV116 W AGS**

COMPLAINT FOR DAMAGES:

1. **VIOLATION OF CIVIL RIGHTS—42 U.S.C. § 1983;**
2. **VIOLATION OF CIVIL RIGHTS—MONELL CLAIM;**
3. **DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION—CAL. CIV. CODE §§ 51(b), 52(a);**
4. **VIOLATION OF CIVIL RIGHTS—CAL. CIV. CODE § 52.1;**
5. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
6. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;**
7. **PUBLIC DISCLOSURE OF PRIVATE FACTS;**
8. **FALSE LIGHT;**
9. **DEFAMATION;**
10. **SEXUAL BATTERY—CAL. CIV. CODE § 1708.5;**
11. **BATTERY**

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**UNLIMITED CIVIL
JURISDICTION**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Detective Kali Orff was the victim of a sexual assault committed by Defendant Andrew Smithson that was investigated by Defendant City of Imperial Police Department (“IPD”). Since the night on which she was molested, Detective Orff has been repeatedly re-victimized by the Chief of IPD, Defendant Miguel Colon. Despite securing a confession from Detective Orff’s assailant, Chief Colon refused to submit the sexual assault investigation to the District Attorney’s office for over 100 days. Instead, Chief Colon has made repeated harassing phone calls to Detective Orff’s commanding officer and her wife’s commanding officer, suggesting Detective Orff is to blame for the assault she suffered and that she is unfit for duty.

2. Detective Orff and her wife, Detective Michelle Kristol, bring this action against Andrew Smithson, the City of Imperial, IPD, and Imperial Police Chief Miguel Colon, for Violations of 42 U.S.C. § 1983, *Monell* Violations, Discrimination on the Basis of Sexual Orientation (Cal. Civ. Code §§ 51(b), 52(a), Violations of Civil Rights (Cal. Civ. Code § 52.1), Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Public Disclosure of Private Facts, False Light, Defamation, Sexual Battery (Cal. Civ. Code § 1708.5), and Battery.

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THE PARTIES

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2 3. At all times herein mentioned, Plaintiff, Detective Kali Orff, was and is a
3 resident of the State of California, County of Imperial.

4 4. At all times herein mentioned, Plaintiff, Detective Michelle Kristol, was
5 and is a resident of the State of California, County of Ventura.

6 5. At all times herein mentioned, the City of Imperial was and is a
7 governmental entity organized and existing under the laws of the State of California.

8 6. At all times herein mentioned, the Imperial Police Department was and is
9 a governmental entity organized and existing under the laws of the State of
10 California.

11 7. At all times herein mentioned, Chief Miguel Colon was and is a resident
12 of the State of California, County of Imperial.

13 8. At all times herein mentioned, Andrew Smithson was and is a resident of
14 the State of California, County of Imperial.

15 9. Plaintiffs are unaware of the true names and capacities of the Defendants
16 named herein as DOE OFFICERS 1 through 10, inclusive, and therefore sue said
17 Defendants by such fictitious names. Plaintiffs will seek leave of court to amend this
18 Complaint to allege the true names and capacities of said Defendants when the same
19 are ascertained. Plaintiffs are informed and believe and thereon allege that each of
20 the aforesaid fictitiously named Defendants is responsible in some manner for the
21 happenings and occurrences hereinafter alleged, and that the Plaintiffs' damages and
22 injuries as herein alleged were caused by the conduct of said Defendants.

23 10. Plaintiffs are informed and believe and thereupon allege that at all times
24 mentioned herein, Defendants DOE OFFICERS 1 through 10, inclusive, were, and
25 now are, the agents, employees, servants, officers, and/or safety officers employed or
26 retained by any or all Defendants.

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1 **JURISDICTION AND VENUE**

2 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
3 and 1343 because it is a civil rights action arising under the Constitution and laws of
4 the United States. This Court has supplemental jurisdiction over the remaining state
5 law and common law claims pursuant to 28 U.S.C. § 1367. Venue is proper in this
6 Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving
7 rise to Plaintiffs' claims occurred in the Southern District of California. Pursuant to
8 California Government Code section 910, Plaintiffs, and each of them, submitted a
9 Government Tort Claim to the appropriate City of Imperial officials on June 29,
10 2016. The instant action is timely brought within 6 months of the City of Imperial's
11 July 22, 2016 rejection of Plaintiffs' Government Tort Claim.

12 **FACTUAL BACKGROUND**

13 12. Detective Orff is a detective with the Brawley Police Department. Her
14 wife, Detective Kristol, is a detective with the Ventura County Sheriff's Office. Both
15 have had long and decorated careers in law enforcement and enjoy the proud
16 distinction of being female officers in the LGBT community.

17 13. On or about January 31, 2016; Detective Orff and a group of close
18 friends all met at a friend's home in the City of Imperial to celebrate a birthday.
19 After a night out of celebration, Detective Orff and her friends returned to the
20 Imperial City home, where everybody was staying the night.

21 14. Hours after going to bed, Detective Orff awoke to find that she was being
22 sexually assaulted by Defendant Agent Andrew Smithson of U.S. Customs and
23 Border Protection. Defendant Smithson was the significant other of Orff's friend.
24 Detective Orff's pants had been unfastened and pulled down, and her assailant was
25 rubbing his penis against her buttocks.

26 15. Detective Orff punched her attacker in the face, called 911, and reported
27 the sexual battery to the responding officers of Defendant IPD.

28 16. After being interviewed by IPD officers, Detective Orff was transported

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1 to Pioneers Memorial Hospital, where she had a S.A.R.T. rape exam completed by a
2 nurse.

3 17. Detective Orff's assailant was taken into custody, and then released the
4 same day.

5 18. IPD never made any attempt to determine the assailant's blood alcohol
6 content or to gather any biological evidence from the assailant or his person.

7 19. To date, Defendant Smithson has not been charged with any crime, and
8 remains free to work in a position of authority on the United States border, despite
9 confessing to the sexual assault.

10 20. Following the assault, Defendant IPD failed to submit Detective Orff's
11 case to the District Attorney's Office for over 100 days. This failure on the part of
12 IPD was the result of actions by Defendant Miguel Colon, Chief of Defendant IPD,
13 who made an active effort to interfere with the case.

14 21. Shortly after the sexual assault, Chief Colon called Detective Orff's boss
15 at the Brawley Police Department, and gave him the details of Orff's sexual assault.
16 During his conversation with Orff's boss, Chief Colon also accused Orff of being
17 immoral because of her sexual orientation. He further blamed Orff for being
18 victimized. In disclosing details about the assault that Detective Orff suffered, Chief
19 Colon violated Detective Orff's rights under the California Constitution, which grants
20 the victim of a crime the right to "be treated with fairness and respect for his or her
21 privacy and dignity, and to be free from intimidation, harassment, and abuse
22 throughout the criminal or juvenile justice process." Cal. Const. art. I, § 28(b)(1).

23 22. On or about May 16, 2016, Detective Orff's wife, Detective Kristol,
24 contacted IPD to get an explanation as to why Detective Orff's case had not been
25 submitted to the District Attorney. In response, Chief Colon contacted Detective
26 Kristol's boss, and began to divulge details of Detective Orff's assault to him and to
27 attack Detective Orff's character and fitness as an officer.

28 23. Contrary to standard procedure, Detective Orff's case was not promptly

1 submitted to the District Attorney's office for review upon completion of the
2 investigation.

3 24. Only after receipt of the Government 910 claim related to this action did
4 IPD and Chief Colon submit their investigation to the District Attorney.

5 25. Under pressure from Chief Colon, the District Attorney's Office declined
6 to prosecute, citing an unknown level of intoxication of the assailant. This was a
7 simple piece of evidence that IPD failed to recover.

8 26. To date, Detective Orff's attacker has not been taken into custody, and he
9 currently remains as a U.S. Customs and Border Protection agent, months after
10 having confessed to his assault of Detective Orff.

11 **FIRST CAUSE OF ACTION**

12 **Violation of Civil Rights—42 U.S.C. § 1983**

13 **(Plaintiffs Against Officer Defendants)**

14 27. Plaintiffs reallege and incorporate by reference each and every allegation
15 contained in the preceding paragraphs as if fully set forth herein.

16 28. Defendants Chief Miguel Colon and Doe Officers 1–10 (hereinafter
17 collectively referred to as "Officer Defendants") were, at all relevant times, law
18 enforcement officers with the Imperial Police Department who were acting under
19 color of state law.

20 29. Officer Defendants, acting under color of state law, deprived Plaintiffs of
21 rights, privileges, and immunities secured by the Constitution and laws of the United
22 States, including the rights of Due Process and Equal Protection secured by the Fifth
23 and Fourteenth Amendments, and the right to privacy as established in *Griswold v.*
24 *Connecticut*, 381 U.S. 479 (1965), by interfering with the prosecution of the sexual
25 assault to which Detective Orff was subjected, and by disclosing the details of this
26 sexual assault and of Detective Orff's sexual orientation to her employer and the
27 employer of her spouse.

28 30. As a proximate result of the foregoing wrongful acts of Officer

1 Defendants, and each of them, Plaintiffs suffered damages, including embarrassment,
2 emotional distress, and harm to reputation in an amount in accordance with proof.

3 31. In doing the foregoing wrongful acts, Officer Defendants, and each of
4 them, acted with reckless and callous disregard for the constitutional rights of
5 Plaintiffs. The wrongful acts, and each of them, were wilful, oppressive, fraudulent
6 and malicious, thus warranting the award of punitive damages against each individual
7 Officer Defendant in an amount adequate to punish the wrongdoers and deter future
8 misconduct.

9 32. Due to the conduct of Officer Defendants, and each of them, Plaintiffs
10 have been required to incur attorney's fees and will continue to incur attorney's fees,
11 and pursuant to 42 U.S.C. § 1988 are entitled to recovery of said fees.

12 **SECOND CAUSE OF ACTION**

13 **Violation of Civil Rights—*Mönell* Claim**

14 **(Plaintiffs Against Defendants City of Imperial and Imperial Police Department)**

15 33. Plaintiffs reallege and incorporate by reference the allegations contained
16 in the preceding paragraphs of this complaint, as though fully set forth herein.

17 34. Defendants City of Imperial and Imperial Police Department knowingly,
18 with gross negligence, and in deliberate indifference to the Constitutional rights of
19 citizens, maintain and permit an official policy and custom of permitting the
20 occurrence of the types of wrongs set forth hereinabove and hereafter.

21 35. These policies and customs include, but are not limited to, the deliberately
22 indifferent training of law enforcement officers in the mishandling of criminal cases
23 to be prosecuted, the misuse of confidential information that officers come to know in
24 the exercise of their law enforcement duties, the ratification of police misconduct, and
25 the failure to conduct adequate unbiased investigations of police misconduct such that
26 future violations do not occur.

27 36. Plaintiffs are informed and believe, and thereon allege, that the
28 abovementioned customs and policies were the moving force behind the violations of

1 Plaintiffs' rights. Based upon the principles set forth in *Monell v. New York City*
2 *Dep't of Social Services*, Defendants City of Imperial and IPD are liable for all of the
3 injuries sustained by Plaintiffs as set forth above.

4 37. As a proximate result of the foregoing wrongful acts of Defendants, and
5 each of them, Plaintiffs sustained damages, including embarrassment, emotional
6 distress, and harm to reputation, in an amount in accordance with proof.

7 38. Due to the conduct of Defendants, and each of them, Plaintiffs have been
8 required to incur attorney's fees and will continue to incur attorney's fees, and
9 pursuant to 42 U.S.C. § 1988 are entitled to recovery of said fees.

10 **THIRD CAUSE OF ACTION**

11 **Discrimination on the Basis of Sexual Orientation—Cal. Civ. Code §§ 51(b),**

12 **52(a)**

13 **(Plaintiff Orff Against Defendants City of Imperial, IPD, and Officer**
14 **Defendants)**

15 39. Plaintiffs reallege and incorporate by reference the allegations contained
16 in the preceding paragraphs of this complaint, as though fully set forth herein.

17 40. Section 51(b) of the California Civil Code Provides: "All persons within
18 the jurisdiction of this state are free and equal, and no matter what their . . . sexual
19 orientation . . . are entitled to the full and equal accommodations, advantages,
20 facilities, privileges, or services in all business establishments of every kind
21 whatsoever." Cal. Civ. Code § 51(b). Section 51(e)(7) further defines sexual
22 orientation as "heterosexuality, homosexuality, and bisexuality." Cal. Civ. Code §
23 51(e)(7), Cal. Gov't Code § 12926(s).

24 41. For purposes of Civil Code section 51(b) "the term 'business
25 establishment' [is] used in the broadest sense reasonably possible." *Harris v. Mothers*
26 *Against Drunk Driving* (1995) 40 Cal.App.4th 16, 21 (quoting *O'Connor v. Village*
27 *Green Owners Assn.* (1983) 33 Cal.3d 790, 795) *as modified* (Nov. 30, 1995). "The
28 term 'business' 'embraces everything about which one can be employed, and it is

1 often synonymous with ‘calling, occupation, or trade’ *Id.* (quoting *O’Connor*,
2 33 Cal.3d at 795). It is thus clear that a law enforcement facility at which police
3 personnel serve the public to sustain their livelihood constitutes a “business
4 establishment” under Civil Code section 51(b).

5 42. Section 52(a) of the California Civil Code provides: “Whoever denies,
6 aids or incites a denial, or makes any discrimination or distinction contrary to Section
7 51 . . . is liable for each and every offense for the actual damages, and any amount
8 that may be determined by a jury, or a court sitting without a jury”

9 43. Defendants discriminated against Detective Orff in violation of Civil
10 Code sections 51(b) and 52(a) by refusing to submit her case to the District Attorney
11 pursuant to standard procedure, and by calling Detective Orff’s employer and her
12 wife’s employer to assassinate Detective Orff’s character in response to Plaintiffs’
13 inquiries regarding the status of the case. Defendants’ conduct violated sections 51(b)
14 and 52(a) of the Civil Code because their unfavorable treatment of Detective Orff was
15 premised on Detective Orff’s homosexual sexual orientation.

16 44. As a direct and proximate result of the tortious, unlawful, and wrongful
17 acts of Defendants, Detective Orff has suffered past and future special damages and
18 past and future general damages in an amount according to proof at trial. Plaintiff has
19 been damaged emotionally and financially, including but not limited to emotional
20 suffering from emotional distress and ridicule.

21 45. In engaging in the conduct as hereinabove alleged, Defendants acted with
22 malice, fraud, and oppression and/or in conscious disregard of Detective Orff’s health,
23 rights, and wellbeing, and intended to subject Detective Orff to unjust hardship,
24 thereby warranting an assessment of punitive damages in an amount sufficient to
25 punish Defendants and deter others from engaging in similar conduct.

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FOURTH CAUSE OF ACTION

Violation of Civil Rights—Cal. Civ. Code § 52.1

(Plaintiff Orff Against Defendant Colon)

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4 46. Plaintiffs reallege and incorporate by reference the allegations contained
5 in the preceding paragraphs of this complaint, as though fully set forth herein.

6 47. Section 52.1 of the California Civil Code provides: “Any individual
7 whose exercise or enjoyment of rights secured by . . . the Constitution or laws of this
8 state, has been interfered with . . . [by threat, intimidation, or coercion], may institute
9 and prosecute in his or her own name and on his or her own behalf a civil action for
10 damages”

11 48. The California Constitution, provides that the victim of a crime has the
12 right to “be treated with fairness and respect for his or her privacy and dignity, and to
13 be free from intimidation, harassment, and abuse throughout the criminal or juvenile
14 justice process.” Cal. Const. art. I, § 28(b)(1).

15 49. Defendant Chief Colon interfered with Detective Orff’s right to be treated
16 with fairness and respect for her privacy and dignity as the victim of the crime of
17 sexual assault.

18 50. Defendant Chief Colon’s interference with Detective Orff’s rights
19 violated Civil Code section 52.1 because (1) Defendant Chief Colon unfairly refused
20 to forward Detective Orff’s case to the District Attorney in violation of Chief Colon’s
21 duty as a law enforcement officer, and (2) because Defendant Chief Colon violated
22 Detective Orff’s right to privacy and dignity by attempting to coerce Defendant Orff’s
23 commanding officer into terminating Detective Orff through Defendant Chief Colon’s
24 allegations that Detective Orff was unfit for duty.

25 51. In engaging in the conduct as hereinabove alleged, Defendant Chief
26 Colon acted with malice, fraud, and oppression and/or in conscious disregard of
27 Detective Orff’s health, rights, and wellbeing, and intended to subject Detective Orff
28 to unjust hardship, thereby warranting an assessment of punitive damages in an

1 amount sufficient to punish Defendant Chief Colon and deter others from engaging in
2 similar conduct.

3 **FIFTH CAUSE OF ACTION**

4 **Intentional Infliction of Emotional Distress**

5 **(Plaintiffs Against all Defendants)**

6 52. Plaintiffs reallege and incorporate by reference the allegations contained
7 in the preceding paragraphs of this complaint as though fully set forth herein.

8 53. By interfering with the prosecution of Detective Orff's sexual assault
9 case, and by disclosing the details of this case to her employer and the employer of
10 her spouse, Officer Defendants perpetrated extreme and outrageous conduct against
11 Plaintiffs of a type that exceeds the bounds of decency tolerated in a civilized society.

12 54. Officer Defendants engaged in their extreme and outrageous conduct
13 against Plaintiffs with the intent to cause Plaintiffs extreme emotional distress, or else
14 with reckless disregard for the fact that extreme emotional distress in Plaintiffs would
15 result from this conduct.

16 55. By placing and keeping Defendant Colon in a position of authority at the
17 Imperial Police Department, and by ignoring Defendant Colon's heinous conduct,
18 Defendants City of Imperial and IPD engaged in extreme and outrageous conduct
19 against Plaintiffs of a type that exceeds the bounds of decency tolerated in a civilized
20 society.

21 56. Defendants City of Imperial and Imperial Police Department engaged in
22 their extreme and outrageous conduct against Plaintiffs with the intent to cause
23 Plaintiffs extreme emotional distress, or else with reckless disregard for the fact that
24 extreme emotional distress in Plaintiffs would result from this conduct.

25 57. By rubbing his penis against Detective Orff's buttocks while Detective
26 Orff was sleeping, Defendant Smithson perpetrated extreme and outrageous conduct
27 against Detective Orff of a type that exceeds the bounds of decency tolerated in a
28 civilized society.

1 58. Defendant Smithson engaged in his extreme and outrageous conduct
2 against Detective Orff with the intent to cause Detective Orff extreme emotional
3 distress, or else with reckless disregard for the fact that extreme emotional distress in
4 Detective Orff would result from this conduct.

5 59. Defendants' acts constitute the tort of Intentional Infliction of Emotional
6 Distress under the laws of this State. Defendants' intentional infliction of emotional
7 distress against Plaintiffs was a direct and proximate cause of harm to them. As a
8 direct and proximate result of Defendants' intentional infliction of emotional distress,
9 Plaintiffs have suffered past and future damages in an amount according to proof at
10 trial.

11 60. Defendants' wrongful conduct, alleged hereinabove, was willful, wanton,
12 malicious, and oppressive in that Defendants intentionally inflicted emotional distress
13 upon Plaintiffs for the purpose of harming and injuring Plaintiffs. This conduct,
14 therefore, justifies the awarding of punitive damages in an amount sufficient to punish
15 Defendants and deter others from engaging in similar conduct.

16 **SIXTH CAUSE OF ACTION**

17 **Negligent Infliction of Emotional Distress**

18 **(Plaintiffs Against All Defendants)**

19 61. Plaintiffs reallege and incorporate by reference the allegations contained
20 in the preceding paragraphs of this complaint, as though fully set forth herein.

21 62. Officer Defendants and Defendants City of Imperial and IPD owed a duty
22 to Plaintiffs to exercise due care in carrying out their law enforcement functions so as
23 not to create an unreasonable risk of harm to Plaintiffs.

24 63. Defendant Chief Colon breached his duty by unjustifiably disclosing the
25 details of Detective Orff's sexual assault to her employer and the employer of her
26 spouse and by unjustifiably berating Detective Orff to both employers, assassinating
27 her character, and claiming that she was unfit for duty.

28 64. Defendants City of Imperial, IPD, and Doe Officers 1-10 breached their

1 duty to Plaintiffs by retaining Defendant Chief Colon in a position of authority within
2 the City of Imperial law enforcement system, and or cooperating with him despite his
3 failure to see to the prompt and proper prosecution of the criminal case arising out of
4 the sexual assault that Detective Orff suffered.

5 65. Defendant Smithson owed a duty to Detective Orff to conduct himself
6 with due care, and to behave in such a manner as to avoid creating an unreasonable
7 risk of harm to Detective Orff.

8 66. Defendant Agent Smithson Breached this duty by sexually assaulting
9 Orff.

10 67. As a direct, proximate, and foreseeable result of Defendants' conduct,
11 Plaintiffs suffered shame, humiliation, and severe emotional distress. Plaintiffs have
12 accordingly suffered special and general damages in excess of the jurisdictional limit
13 of this Court.

14 **SEVENTH CAUSE OF ACTION**

15 **Public Disclosure of Private Facts**

16 **(Plaintiff Orff Against Defendant Colon)**

17 68. Plaintiffs reallege and incorporate by reference the allegations contained
18 in the preceding paragraphs of this complaint, as though fully set forth herein.

19 69. Defendant Chief Colon publicized private information concerning
20 Plaintiff Orff by disclosing the details of the sexual assault to which Plaintiff Orff was
21 subjected to her employer and to the employer of her spouse.

22 70. Due to the fact that the crime of sexual assault causes great trauma to its
23 victims, that this crime involves the most private and intimate parts of the human
24 body, and that disclosure of the details of an instance of sexual assault tends to expose
25 the victim of the assault to shame, embarrassment, and obloquy, a reasonable person
26 in Detective Orff's position would consider the disclosure of the details of the sexual
27 assault to which Detective Orff was subjected to be highly offensive.

28 71. Due to the highly sensitive nature of information related to the crime of

1 sexual assault, Defendant Chief Colon knew—or else acted with reckless disregard
2 for the fact—that his disclosure of the details of the sexual assault to which Detective
3 Orff was subjected would be highly offensive to a reasonable person.

4 72. Defendant Chief Colon made his disclosures regarding the sexual assault
5 to which Detective Orff was subjected to Detective Orff's employer, and to the
6 employer of her spouse, even though neither employer had any legitimate interest in
7 or concern for the information disclosed.

8 73. Defendant Chief Colon's disclosure of the details of the sexual assault to
9 which Detective Orff was subjected was a direct and proximate cause of harm to
10 Detective Orff. As a direct and proximate result of Defendant Chief Colon's
11 disclosure, Detective Orff has suffered past and future damages in an amount
12 according to proof at trial.

13 74. Defendant Chief Colon's wrongful conduct, alleged hereinabove, was
14 willful, wanton, malicious, and oppressive in that Defendant Chief Colon intentionally
15 disclosed private facts about Detective Orff for the purpose of harming and injuring
16 Detective Orff. This conduct, therefore, justifies the awarding of punitive damages in
17 an amount sufficient to punish Defendant Chief Colon and deter others from engaging
18 in similar conduct.

19 **EIGHTH CAUSE OF ACTION**

20 **False Light**

21 **(Plaintiff Orff Against Defendant Colon)**

22 75. Plaintiffs reallege and incorporate by reference the allegations contained
23 in the preceding paragraphs of this Complaint as though fully set forth herein.

24 76. Defendant Chief Colon painted Detective Orff as an immoral and sexually
25 deviant individual who was responsible for the attack that she suffered when he made
26 his improper disclosures of the details of the sexual assault to which she was
27 subjected to Detective Orff's employer and to the employer of her spouse.

28 77. In so characterizing Detective Orff, Defendant Chief Colon presented

1 Detective Orff in a false light that would be highly offensive to a reasonable person in
2 her position.

3 78. Defendant Chief Colon knew that the manner in which he characterized
4 Detective Orff during his disclosures about her would create false and offensive
5 impressions about Plaintiff, or else he should have known this or he acted with
6 reckless disregard for the possibility that his disclosures would create false and
7 offensive impressions about Detective Orff.

8 79. Defendant Chief Colon's presentation of Detective Orff in a false and
9 offensive light was a direct and proximate cause of harm to Detective Orff. As a
10 direct and proximate result of Defendant Chief Colon's disclosure, Detective Orff has
11 suffered past and future damages in an amount according to proof at trial.

12 80. Defendant Chief Colon's wrongful conduct, alleged hereinabove, was
13 willful, wanton, malicious, and oppressive in that Defendant Chief Colon intentionally
14 cast Detective Orff in a false and offensive light for the purpose of harming and
15 injuring her. This conduct, therefore, justifies the awarding of punitive damages in an
16 amount sufficient to punish Defendant and deter others from engaging in similar
17 conduct.

18 NINTH CAUSE OF ACTION

19 **Defamation**

20 **(Plaintiff Orff Against Defendant Colon)**

21 81. Plaintiffs reallege and incorporate by reference the allegations contained
22 in the preceding paragraphs of this Complaint as though fully set forth herein.

23 82. Defendant Chief Colon spread false and injurious information regarding
24 Detective Orff by stating to Detective Orff's employer and her spouse's employer that
25 Detective Orff was immoral and unfit for duty, when in actuality Detective Orff was
26 an upstanding officer with an excellent service record.

27 83. Detective Orff is an upstanding law enforcement officer with an excellent
28 reputation in the community. Defendant Chief Colon's false communication

1 concerning Detective Orff tended to injure her reputation by painting Detective Orff
2 as unfit for her profession.

3 84. The fact that the above-referenced false communication painted Detective
4 Orff as unfit for her profession renders the communication slander per se, but
5 nevertheless, Detective Orff has suffered actual damages as a result of the false
6 communication in the form of shame, humiliation, and embarrassment.

7 85. Defendant Chief Colon's act of making a false and injurious
8 communication about Detective Orff constitutes the tort of Defamation under the laws
9 of this State. Defendant Chief Colon's defamation of Detective Orff's character was a
10 direct and proximate cause of harm to her. As a direct and proximate result of
11 Defendant Chief Colon's defamation, Detective Orff has suffered past and future
12 general damages, and past and future special damages in an amount according to
13 proof at trial.

14 86. Defendant Chief Colon's wrongful conduct, alleged hereinabove, was
15 willful, wanton, malicious, and oppressive in that Defendant Chief Colon intentionally
16 defamed Detective Orff for the purpose of harming and injuring her. This conduct,
17 therefore, justifies the awarding of punitive damages in an amount sufficient to punish
18 Defendant Chief Colon and deter others from engaging in similar conduct.

19 **TENTH CAUSE OF ACTION**

20 **Sexual Battery**

21 **(Plaintiff Orff Against Defendant Smithson)**

22 87. Plaintiffs reallege and incorporate by reference the allegations contained
23 in the preceding paragraphs of this Complaint as though fully set forth herein.

24 88. Section 1708.5(a)(1) of the California Civil Code states that a person
25 commits sexual battery when that person "[a]cts with the intent to cause a harmful or
26 offensive contact with an intimate part of another, and a sexually offensive contact
27 with that person directly or indirectly results." Section 1708.5(d) further defines
28 "intimate part" to include the "buttocks of any person."

1 89. Section 1708.5(b) of the California Civil Code provides that “[a] person
2 who commits a sexual battery upon another is liable to that person for damages,
3 including, but not limited to, general damages, special damages, and punitive
4 damages.”

5 90. Defendant Smithson’s act of rubbing his penis against Detective Orff’s
6 buttocks was an act of sexual battery against Detective Orff, and entitles Detective
7 Orff to appropriate remedies. Defendant Smithson’s sexual battery against Detective
8 Orff was a direct and proximate cause of harm to her. As a direct and proximate
9 result of Defendant Smithson’s sexual battery against Detective Orff, Detective Orff
10 has suffered past and future general damages, and past and future special damages in
11 an amount according to proof at trial.

12 91. Defendant Smithson’s wrongful conduct, alleged hereinabove, was
13 willful, wanton, malicious, and oppressive in that Defendant Smithson intentionally
14 engaged in sexual battery against Detective Orff for the purpose of harming and
15 injuring Detective Orff. This conduct, therefore, justifies the awarding of punitive
16 damages in an amount sufficient to punish Defendant Smithson and deter others from
17 engaging in similar conduct.

18 **ELEVENTH CAUSE OF ACTION**

19 **Battery**

20 **(Plaintiff Orff Against Defendant Smithson)**

21 92. Plaintiffs reallege and incorporate by reference the allegations contained
22 in the preceding paragraphs of this Complaint as though fully set forth herein.

23 93. By willfully rubbing his penis against Detective Orff’s buttocks,
24 Defendant Smithson intended to cause and did in fact cause harmful and offensive
25 contact with the person of Detective Orff, which resulted in harm to Detective Orff.

26 94. Defendant Smithson’s act of intentionally bringing about harmful and
27 offensive contact with the person of Detective Orff constitutes the tort of Battery
28 under the laws of this State.

1 95. As a direct and proximate result of Defendant Smithson's battery against
2 Detective Orff, Detective Orff has suffered past and future general damages, and past
3 and future special damages in an amount according to proof at trial.

4 96. In engaging in the conduct as hereinabove alleged, Defendant Smithson
5 acted with malice, fraud, and oppression and/or in conscious disregard of Detective
6 Orff's health, rights, and wellbeing, and intended to subject Detective Orff to unjust
7 hardship, thereby warranting an assessment of punitive damages in an amount
8 sufficient to punish Defendant Smithson and deter others from engaging in similar
9 conduct.

10
11 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 12 1. For general damages in an amount to be determined by proof at trial;
- 13 2. For special damages in an amount to be determined by proof at trial;
- 14 3. For punitive and exemplary damages with respect to the First, Third,
15 Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Causes of
16 Action;
- 17 4. For costs of suit;
- 18 5. For reasonable attorney's fees and costs as provided by statute; and
- 19 6. For such other and further relief as the Court deems just and proper.

20
21 DATED: January 20 , 2017

GERAGOS & GERAGOS, APC

22
23 By: s/Mark J. Geragos
24 **MARK J. GERAGOS**
25 **BEN J. MEISELAS**
26 Attorneys for Plaintiffs
27 **KALI ORFF and MICHELLE**
28 **KRISTOL**

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DEMAND FOR JURY TRIAL

Plaintiffs Kali Orff and Michelle Kristol hereby demand a jury trial.

DATED: January 20 , 2017

GERAGOS & GERAGOS, APC

By: s/Mark J. Geragos
MARK J. GERAGOS
BEN J. MEISELAS
Attorneys for Plaintiffs
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