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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

17 STEPHAN SHAY, an individual, and
 18 NATHAN SHAY, an individual,

20 Plaintiffs

21 vs.

23 CITY OF HUNTINGTON BEACH, a public
 24 entity, OFFICER BRANDON D. ROCKETT
 #422090, as an individual and a peace officer,
 25 OFFICER DANIEL M. SUBIA #421221, as
 an individual and a peace officer and DOES 1
 26 through 10 inclusive.

27 Defendants.
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-) Case No.: 8:17-CV-744
) **COMPLAINT FOR DAMAGES**
)
) 1. FOURTH AMENDMENT—EXCESSIVE
) FORCE (42 U.S.C. § 1983)
) 2. FAILURE TO INTERVENE
) 3. FIRST AMENDMENT/QUESTIONING
) POLICE ACTION- (42 U.S.C. § 1983)
) 4. UNLAWFUL SEIZURE- DETENTION-
) (42 U.S.C. § 1983)
) 5. UNLAWFUL ARREST- (42 U.S.C. § 1983)
) 6. UNLAWFUL SEIZURE OF PROPERTY-
) (42 U.S.C. § 1983)
) 7. UNLAWFUL SEARCH- (42 U.S.C. § 1983)
) 8. VIOLATION OF EQUAL PROTECTION-
) (42 U.S.C. § 1983)
) 9. MONELL LIABILITY—RATIFICATION
) (42 U.S.C. § 1983)
) 10. MONELL LIABILITY—INADEQUATE
) TRAINING (42 U.S.C. § 1983)

1) 11. MONELL LIABILITY—
2) UNCONSTITUTIONAL CUSTOM,
3) PRACTICE, POLICY (42 U.S.C. § 1983)

4) **DEMAND FOR JURY TRIAL**
5)
6)
7)

8 COMES NOW, Plaintiffs STEPHAN SHAY and NATHAN SHAY
9 (“PLAINTIFFS”) in their Complaint against DEFENDANTS CITY OF
10 HUNTINGTON BEACH, (“CITY”) OFFICER BRANDON D. ROCKETT
11 #422090 (“”), as an individual and a peace officer, OFFICER DANIEL M. SUBIA
12 #421221 (“SUBIA”), AND DOES 1 THROUGH 10, inclusive (“DEFENDANTS”
13 collectively) and allege as follows:

14 **JURISDICTION AND VENUE**

15 1. Venue and jurisdiction is proper in this Court because the parties
16 reside in and all incidents, events, and occurrences giving rise to this action
17 occurred in the County of Orange, California.

18 2. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
19 and 1343(a)(3)-(4) because this civil action is brought for the redress of alleged
20 deprivations of constitutional rights as protected by 42 U.S.C. §§ 1983, 1985,
21 1986, and 1988, and the First, Fourth and Fourteenth Amendments of the United
22 States Constitutions. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343, and
23 1367.

24 3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
25 Defendants are believed to reside in this district and all incidents, events, and
26 occurrences giving rise to this action occurred in this district.

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1 **INTRODUCTION**

2 4. This civil rights and state tort action seeks compensatory and punitive
3 damages from Defendants for violating various rights under the United States
4 Constitution and state law in connection with the false arrest, excessive and
5 unreasonable force used during the Plaintiff’s detention and arrest on January 13,
6 2016.

7 **PARTIES**

8 5. At all relevant times herein, **STEPHAN SHAY** (hereinafter referred
9 to as “PLAINTIFF”) was an individual residing in the City of Huntington Beach,
10 county of Orange, California.

11 6. At all relevant times herein, **NATHAN SHAY** (hereinafter referred to
12 as “PLAINTIFF”) was an individual residing in the City of Huntington Beach,
13 county of Orange, California

14 7. At all relevant times herein, Defendant **CITY OF HUNTINGTON**
15 **BEACH** (hereinafter “CITY”) was an incorporated public entity duly authorized
16 and existing as such in and under the laws of the State of California; authorized
17 and existing as such in and under the laws of the State of California; and at all
18 times herein mentioned, Defendant CITY has possessed the power and authority to
19 adopt policies and prescribe rules, regulations and practices affecting the operation
20 of the **CITY OF HUNTINGTON BEACH POLICE DEPARTMENT** (hereinafter
21 referred to as “HBPD”) and its tactics, methods, practices, customs and usages At
22 all relevant times, CITY was the employer Defendants **BRANDON D. ROCKETT**
23 **#422090** (“”), as an individual and a peace officer, **OFFICER DANIEL M. SUBIA**
24 (“SUBIA”) and **DOES 1-10** who were CITY police officers, managerial,
25 supervisory, and policymaking employees of HBPD. On information and belief,
26 at all relevant times, Defendant **ROCKETT**, **SUBIA** and **DOES 1-10** were
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1 residents of the County of Orange, California. Defendants ROCKETT, SUBIA
2 and DOES 1-10 are sued in their individual and official capacity.

3 8. Defendants ROCKETT, SUBIA and DOES 1-10 were acting under
4 color of law and within the course and scope of their employment, including but
5 not limited to January 13, 2016, the date the incident and Defendant CITY is
6 legally responsible for all damages caused by the intentional and/or negligent
7 and/or otherwise tortuous conduct of Defendants ROCKETT, SUBIA and DOES
8 1-10 as alleged herein.

9 9. At all relevant times, Defendants ROCKETT and SUBIA,
10 individually and as peace officers; and DOES 1-10 were duly authorized
11 employees and agents of CITY, who were acting under color of law within the
12 course and scope of their respective duties as police officers and within the
13 complete authority and ratification of their principal, Defendant CITY.

14 10. At all relevant times, Defendants ROCKETT and SUBIA,
15 individually and as peace officers; and DOES 1-10 were duly appointed officers
16 and/or employees or agents of CITY, subject to oversight and supervision by
17 CITY's elected and non-elected officials.

18 11. In doing the acts and failing and omitting to act as hereinafter
19 described, Defendants ROCKETT and SUBIA, individually and as peace officers;
20 and DOES 1-10 were acting on the implied and actual permission and consent of
21 CITY.

22 12. At all relevant times, Defendants ROCKETT and SUBIA,
23 individually and as peace officers; and DOES 1-10 were working for Defendant
24 CITY as police officers

25 13. At all times mentioned herein and material hereto, Defendant Officer
26 DOES 1 through 10 (Hereinafter "DEFENDANT DOE OFFICERS 1 through 10")
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1 whose identities are currently unknown but will be named once their identities are
2 ascertained were engaged in law enforcement as police officers, sergeants,
3 captains, lieutenants, and/or civilian employee, agent and representative of
4 Defendant CITY, duly employed as police officer by the HBPD, who was acting in
5 the course and scope of his employment all times relevant to the acts and
6 omissions herein alleged.

7 14. At all relevant times, DEFENDANT CITY were the employers of
8 DEFENDANT DOE OFFICERS 1 through 10 who were CITY police officers,
9 managerial, supervisory, and policymaking employees of CITY's Police
10 Department. On information and belief, at all relevant times, DEFENDANT DOE
11 OFFICERS 1-10 were residents of the City and/or county of Orange, California.
12 DEFENDANT DOE OFFICERS 1-10 are sued in their individual and official
13 capacity.

14 15. At all relevant times, DEFENDANT DOE OFFICERS 1-10 who were
15 CITY police officers, managerial, supervisory, and policymaking employees of
16 CITY's police department were duly authorized employees and agents of CITY,
17 who were acting under color of law within the course and scope of their respective
18 duties as police officers and within the complete authority and ratification of their
19 principal, DEFENDANT CITY.

20 16. At all relevant times, DEFENDANT DOE OFFICERS 1-10 who were
21 CITY police officers, managerial, supervisory, and policymaking employees of
22 CITY's Police Department were duly appointed deputies/officers and/or
23 employees or agents of CITY, subject to oversight and supervision by CITY's
24 elected and non-elected officials.

25 17. In doing the acts and failing and omitting to act as hereinafter
26 described, At all relevant times, DEFENDANT DOE OFFICERS 1-10 who were
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1 CITY police officers, managerial, supervisory, and policymaking employees of
2 CITY's Police Department were acting on the implied and actual permission,
3 consent and ratification of CITY.

4 18. At all times mentioned herein, each and every CITY defendant was
5 the agent of each and every other CITY defendant and had the legal duty to
6 oversee and supervise the hiring, training, retention, supervision, conduct and
7 employment of each and every CITY defendant.

8 19. At all relevant times, DEFENDANT DOE OFFICERS 1-10,
9 individually and as police officers, were working for Defendant CITY as police
10 officers and with the complete authority and ratification of their principal,
11 Defendant CITY.

12 20. PLAINTIFF is unaware of the true names and capacities of those
13 DEFENDANTS named herein as DEFENDANT DOE OFFICERS 1-10.
14 PLAINTIFF will amend this COMPLAINT to allege said DEFENDANT DOE
15 OFFICERS 1-10's true names and capacities when that information becomes
16 known to PLAINTIFFS. PLAINTIFFS is informed and believes, and thereon
17 alleges that these DEFENDANT DOE OFFICERS 1-10 are legally responsible and
18 liable for the incident, injuries, and damages hereinafter set forth, and that each of
19 said DEFENDANT DOE OFFICERS 1-10 proximately caused the injuries and
20 damages by reason of negligent, careless, deliberately indifferent, intentional,
21 willful, or wanton misconduct, including the negligent, careless, deliberately
22 indifferent, intentional, willful, or wanted misconduct in creating and otherwise
23 causing the incidents, conditions, and circumstances hereinafter set forth, or by
24 reason of direct or imputed negligence or vicarious fault or breach of duty arising
25 out of the matters herein alleged.
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27 21. This action and claims therein are brought within all applicable statute
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1 of limitations. Plaintiff's federal causes of action are not subject to government tort
2 claims filing requirements.

3 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

4 22. Plaintiff repeats and re-alleges each and every allegation in
5 paragraphs 1 through 22 of this Complaint with the same force and effect as if fully
6 set forth herein.

7 23. STEPHAN SHAY is a graduate of Brigham Young University
8 ("BYU") and an accomplished professional long distance runner. In 2014,
9 STEPHAN SHAY won the Orange County Marathon and was the 4th fastest
10 American in the New York City Marathon. In 2015, STEPHAN SHAY came in
11 6th place at the U.S. Championship Marathon in Los Angeles. STEPHAN SHAY
12 also ran for the United States in the Track and Field World Championships in the
13 half-marathon, London Marathon and has four of the top ten finishes in the U.S.
14 for the half-marathon, marathon, 15 kilometers and 10 kilometers.

15 24. On or about January 13, 2016, at approximately 7:00 p.m., Plaintiff
16 STEPHAN SHAY was training for the 2016 United States Olympic Trials. During
17 this time, Plaintiff STEPHAN SHAY went on his daily run with nothing but
18 running shorts on, a tank top and his cell phone. As STEPHAN SHAY ran, he saw
19 his brother, NATHAN SHAY, apparently detained by two City of Huntington
20 Beach police officers, later identified as defendants ROCKETT and SUBIA.
21 Officers ROCKETT and SUBIA stopped NATHAN SHAY allegedly for driving
22 under the influence. Significantly however, when NATHAN SHAY took a breath
23 test, twice, and both tests resulted in BACs of 0.00%. NATHAN SHAY had not
24 consumed any alcohol.

25 25. Officers ROCKETT and SUBIA unlawfully stopped NATHAN
26 SHAY without reasonable suspicion and probable cause.
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1 26. NATHAN SHAY graduated from Notre Dame University with two
2 degrees, and also graduated from University of Chicago with a Master's in
3 Business.

4 27. As STEPHAN SHAY ran by, he saw that his brother, NATHAN
5 SHAY, was being harassed by Officers ROCKETT and SUBIA. STEPHEN
6 SHAY then decided to use his cell phone to record NATHAN SHAY'S interaction
7 with ROCKETT and SUBIA.

8 28. When Defendants ROCKETT and SUBIA noticed that STEPHAN
9 SHAY had a cellphone in his hand, ROCKETT and SUBIA stopped STEPHAN
10 SHAY from lawfully exercising his right to use his cell phone to record the
11 incident. Further, Officers ROCKETT and SUBIA unlawfully told STEPHAN
12 SHAY that he could not remain on the sidewalk, even at a safe distance away, to
13 ensure his brother was safe. At all times, STEPHAN SHAY and NATHAN SHAY
14 complied with all of Officers ROCKETT and SUBIA's commands and orders.

15 29. ROCKETT and SUBIA then subjected STEPHEN SHAY to
16 excessive, brutal and completely unnecessary force. ROCKETT and SUBIA
17 brutally grabbed STEPHAN SHAY, threw and slammed him into the ground
18 causing STEPHAN SHAY to sustain injuries to his right shoulder, right knee, right
19 hip, palm of his hand and left ankle. Officers ROCKETT and SUBIA also
20 slammed STEPHAN SHAY's head to the ground causing great pain to the right
21 side of his head. STEPHAN SHAY had bloody lacerations to his entire body.

22 30. Neither STEPHAN SHAY nor NATHAN SHAY committed any
23 crime. Further, ROCKETT and SUBIA did not have objectively reasonable
24 suspicion or probable cause to believe that STEPHEN SHAY and/or NATHAN
25 SHAY were armed, involved in any crime or posed an objectively reasonable
26 threat of death or serious bodily harm to the ROCKETT and SUBIA (both of
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1 whom were armed, trained, larger and stronger than Plaintiffs).

2 31. After STEPHAN SHAY was subject to excessive, brutal and
3 completely unnecessary force by ROCKETT and SUBIA, ROCKETT and SUBIA
4 unlawfully detained and arrested NATHAN SHAY in a faux traffic stop
5 humiliating and intimidating him. ROCKETT and SUBIA also unlawfully
6 detained and arrested STEPHAN SHAY on a phony allegation of resisting arrest.

7 32. Both STEPHAN SHAY and NATHAN SHAY experienced terror,
8 humiliation and distress.

9 33. Officers ROCKETT and SUBIA unlawfully placed Plaintiffs under
10 arrest despite knowing or having reason to know Plaintiffs committed no crime and
11 solely to cover up Officer ROCKETT and SUBIA's known wrongdoing. Further,
12 ROCKETT and SUBIA placed Plaintiffs in tight and painful handcuffs which,
13 upon information and belief, Plaintiff complained of that were not checked or
14 loosened at any time, and unlawfully searched Plaintiff's person, effects and/or
15 NATHAN SHAY's vehicle.
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17 34. Officers ROCKETT and SUBIA had ample opportunity to intervene
18 to stop the unlawful detention, arrest and use of force, but failed to do so and, in
19 fact, were complicit in each of the aforementioned actions.

20 35. Officers ROCKETT and SUBIA knowingly and unlawfully fabricated
21 a cover story for their unlawful detention, arrest and use of in an attempt to cover
22 up their misconduct and as evidence of their guilty consciences.

23 36. Officers ROCKETT and SUBIA used excessive force in retaliation
24 for Plaintiffs' lawful First and Fourth Amendment and other rights.

25 37. A substantial and motivating reason for the Officers ROCKETT and
26 SUBIA's use of excessive force, unlawful detention and unlawful arrest was due to
27 their being emboldened to commit misconduct under a belief of impunity and
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1 subsequent ratification and *carte blanche tax payer-funded* defense, manipulation
2 and obstruction of justice by Defendant CITY.

3 38. A substantial and motivating reason for Officers ROCKETT and
4 SUBIA's use of excessive force, unlawful detention, unlawful arrest and unlawful
5 search was due to their being emboldened to commit misconduct to misuse and
6 abusing their authority or power by taking advantage of some weakness or clear
7 and apparent vulnerability in reckless disregard of Plaintiff's rights, accompanied
8 by ill will or spite, and was executed with unnecessary harshness or severity
9 warranting punitive damages.

10 39. The use of force against Plaintiff was excessive and objectively
11 unreasonable under the circumstances, especially because Plaintiff committed no
12 crime, was unarmed, did not physically or verbally threaten the officers with any
13 physical harm, was not fleeing or attempting to flee, and was not physically or
14 actively resisting or assaulting the Officers ROCKETT and SUBIA.

15 40. As result of the excessive force, Plaintiffs sustained serious and
16 ongoing physical, mental and emotional injuries, including large scars over
17 STEPHAN SHAY's body.

18 41. STEPHAN SHAY was taken to Huntington Beach Hospital because
19 of his injuries. Despite the fact that he had not committed any crimes, he was
20 placed in handcuffs as he lay bloody and in pain in the hospital.

21 42. More importantly, as a result of the excessive force used on
22 STEPHAN SHAY, he was unable to train for the Olympic Trials, which were 3 ½
23 weeks after the aforementioned incident.

24 43. Despite suffering the aforementioned injuries, STEPHEN SHAY
25 bravely competed in the United States Olympic Trials. However, due to the
26 injuries sustained by Officers ROCKETT and SUBIA, STEPHAN SHAY ran the
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1 slowest time he had ever run. STEPHAN SHAY's personal record (P.R.) was
2 enough to place him right outside of the top 3 runners at the trials and he was
3 therefore not selected for the United States Olympic Team.

4 44. Both STEPHAN and NATHAN SHAY had never been arrested
5 before the aforementioned incident. However, they both were arrested on January
6 13, 2016 and not released until January 14, 2016 for no justifiable reason other
7 than to willfully violate STEPHAN and NATHAN SHAY's Constitutional rights.

8 45. Upon information and belief, Officers ROCKETT and SUBIA have
9 had several prior complaints of excessive force brought against them by citizens of
10 the City of Huntington Beach, indicative of their propensity to use excessive force
11 that went uninvestigated and/or for which the Officers ROCKETT and SUBIA
12 were subjected to no discipline nor remedial training or repercussions indicative of
13 an unconstitutional custom and policy of inaction, inadequate training, and/or
14 ratification of unconstitutional uses of force.

15 46. Due to the aforementioned injuries and excessive force, Plaintiff
16 asserts claims of excessive force in violation of 42 U.S.C. § 1983, failure to
17 prevent excessive force in violation of 42 U.S.C. § 1986, violation of 42 U.S.C. §
18 1983-First Amendment/Questioning Police Action, violation of 42 U.S.C. § 1983-
19 equal protection, unlawful search, unlawful detention, unlawful arrest all violations
20 of 42 U.S.C. § 1983municipal liability- ratification/inadequate
21 training,/unconstitutional custom, practice, or policy- 42 U.S.C. § 1983 against the
22 Defendants CITY and DEFENDANT DOE OFFICERS 1-10, collectively.

23 47. Upon information and belief, the conduct of the Officer ROCKETT
24 and SUBIA's actions were willful, wanton, malicious, and done with reckless
25 disregard for the rights and safety of Plaintiffs and therefore warrants the
26 imposition of exemplary and punitive damages as to Officers ROCKETT and
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1 SUBIA.

2 **FIRST CLAIM FOR RELIEF**

3 **Fourth Amendment—Excessive Force (42 U.S.C. § 1983)**

4 **(STEPHAN SHAY against ROCKETT and SUBIA)**

5 48. Plaintiffs repeats and re-alleges each and every allegation in
6 paragraphs 1 through 50 of this Complaint with the same force and effect as if fully
7 set forth herein.

8 49. Despite not physically or actively resisting the defendant officers as
9 Plaintiffs were detained and/or arrested, ROCKETT and SUBIA used excessive
10 force against Plaintiffs by and without any reasonable suspicion or probable cause
11 to believe that Plaintiff was armed or involved in any crime or posed an objectively
12 reasonable threat of death or serious bodily harm to ROCKETT and SUBIA,
13 ROCKETT and SUBIA brutally grabbed STEPHAN SHAY, threw and slamming
14 Plaintiff onto the ground causing pain, terror, humiliation and distress, slammed
15 Plaintiff onto the concrete where he landed on his head and face causing pain,
16 terror, distress, humiliation, distress and bloody lacerations to Plaintiff.

17 50. As a result of the excessive force used on STEPHAN SHAY, he was
18 unable to train for the Olympic Trials which was 3 ½ weeks away. STEPHAN
19 SHAY was unable to train for at least a week.

20 51. As result of the excessive force, Plaintiff sustained serious past and
21 ongoing physical, mental and emotional injuries.

22 52. Upon information and belief, ROCKETT and SUBIA have had
23 several prior complaints of excessive force brought against them by citizens of the
24 City of Huntington Beach indicative of the defendant officers' propensity to use
25 excessive force that went uninvestigated and/or for which the deputies were
26 subjected to no discipline nor remedial training or repercussions indicative of an
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1 unconstitutional custom and policy of inaction, inadequate training, and/or
2 ratification of unconstitutional uses of force.

3 53. The excessive use of force deprived STEPHAN SHAY of his right to
4 be secure in his person against excessive force and unreasonable searches and
5 seizures as guaranteed to Plaintiff under the Fourth Amendment to the United
6 States Constitution and applied to state actors by the Fourteenth Amendment.

7 54. The conduct of ROCKETT and SUBIA was excessive, objectively
8 unreasonable, willful, wanton, malicious, and in reckless disregard for the rights
9 and safety of Plaintiff, especially because Plaintiff was unarmed, did not physically
10 or verbally threaten the deputies with any physical harm, did not commit any
11 crime, was not fleeing or attempting to flee, and was not physically or actively
12 resisting ROCKETT and SUBIA's efforts to arrest/detain him. Their conduct
13 warrants the imposition of exemplary and punitive damages as to ROCKETT and
14 SUBIA.

15 55. Upon information and belief, ROCKETT and SUBIA's conduct
16 violated their standard police training.

17 56. The aforementioned acts and omissions of Defendants, and each of
18 them, were a direct and proximate cause of Plaintiffs physical, mental, and
19 emotional injuries, which warrant the awarding of compensatory and special
20 damages in a sum according to proof.

21 57. Plaintiff seeks past, present and future general, special, compensatory
22 and consequential damages for the violation of Plaintiffs rights. Plaintiff also
23 seeks costs and reasonable attorney's fees as provided under 42 U.S.C. §§ 1983,
24 1985, and 1986.

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SECOND CLAIM FOR RELIEF

FAILURE TO PREVENT EXCESSIVE FORCE 42 U.S.C. § 1986

(STEPHAN SHAY against ROCKETT and SUBIA)

58. Plaintiffs refers to and re-alleges each and every allegation contained in paragraphs 1 through 60 of this Complaint, and by this reference incorporates the same herein and makes each a part thereof.

59. Plaintiff is informed and believes and thereupon alleges that ROCKETT and SUBIA were present, observed, and/or otherwise were aware or reasonably should have been aware that STEPHAN SHAY was being subjected to excessive force and the deprivation of rights alleged herein.

60. Plaintiff is informed and believes and thereupon alleges that ROCKETT and SUBIA had a duty to prevent and/or intervene to prevent Plaintiff from being subjected to excessive force and the deprivation of rights alleged herein under 42 U.S.C. § 1986.

61. Plaintiff is informed and believes and thereupon alleges that ROCKETT and SUBIA refused and/or failed to prevent and/or intervene to prevent Plaintiff from being subjected to excessive force and the deprivation of rights alleged herein under 42 U.S.C. § 1986.

62. The aforementioned acts and omissions of Defendants, and each of them, were a direct and proximate cause of Plaintiff's physical, mental, and emotional injuries, which warrant the awarding of compensatory and special damages in a sum according to proof.

63. The aforementioned acts and omissions of Defendants, and each of them, were willful, malicious and oppressive, without legal justification or legal authority and thereby justify the awarding of punitive damages in a sum according to proof.

THIRD CLAIM FOR RELIEF

**First Amendment/Questioning Police Action- 42 U.S.C. § 1983
(STEPHAN SHAY and NATHAN SHAY against ROCKETT and SUBIA)**

64. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 66 of this Complaint with the same force and effect as if fully set forth herein.

65. At all times relevant herein, Plaintiffs had a right to free speech and to protest police action as afforded and provided by the First Amendment and protected against retaliation by the same and 42 U.S.C. § 1983.

66. Upon information and belief, ROCKETT and SUBIA chose to use and/or used excessive force against Plaintiffs in retaliation for Plaintiffs' exercising of their right to protest police misconduct and deprivation liberty and free movement and video recording on the date of the incident.

67. The conduct of ROCKETT and SUBIA was willful, wanton, malicious, and with reckless disregard for the rights and safety of PLAINTIFFS and therefore warrants the imposition of exemplary and punitive damages as to ROCKETT and SUBIA.

68. As a result of their misconduct, ROCKETT and SUBIA are liable for PLAINTIFFS' physical, mental, and emotional injuries, either because they were integral participants in the excessive force, or because they failed to intervene to prevent these violations.

69. The aforementioned acts and omissions of Defendants, and each of them, were a direct and proximate cause of which warrant the awarding of compensatory and special damages in a sum according to proof. Plaintiff also seeks costs and attorney's fees as provided by 42 U.S.C. § 1983.

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FOURTH CLAIM FOR RELIEF

UNLAWFUL SEIZURE- DETENTION 42 U.S.C. § 1983

(STEPHAN SHAY and NATHAN SHAY against ROCKETT and SUBIA)

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70. Plaintiffs repeats and re-alleges each and every allegation in paragraphs 1 through 72 of this Complaint with the same force and effect as if fully set forth herein.

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71. At all times relevant herein, Plaintiffs had a constitutionally afforded right against unlawful detentions which are unreasonable due to no reasonable suspicion that Plaintiffs committed any crime and/or unreasonable in time and/or manner which are unnecessarily painful, degrading, harmful, intrusive, or prolonged.

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72. Upon information and belief in the instant case, Plaintiff's detention was unlawful because Plaintiff committed no crime and ROCKETT and SUBIA had no objectively reasonable suspicion that Plaintiffs committed any crime.

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73. Upon information and belief in the instant case, Plaintiffs' detention was unlawful because it was unreasonable in time and/or manner unnecessarily painful, degrading, harmful, intrusive, humiliating, prolonged, and not justified under the circumstances.

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74. Upon information and belief, ROCKETT and SUBIA unreasonably detained Plaintiff for 6-7 hours, in a fearsome, degrading, prolonged, intimidating, intrusive, and embarrassing manner despite no reasonable belief that Plaintiff was armed, verbally or physically resisting them, attempting to flee or a threat of death or serious bodily harm to ROCKETT and SUBIA. This use of force and authority made it clear that Plaintiffs were not free to go and was instead being detained as a criminal when Plaintiffs committed no crime.

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75. Upon information and belief, ROCKETT and SUBIA further

1 unreasonably, painfully, unjustifiably, degradingly, and harmfully handcuffed and
2 searched Plaintiffs and kept them in handcuffs whereby she was harmed mentally,
3 physically and/or emotionally and detained for an unreasonable amount of time
4 and/or manner.

5 76. Furthermore, STEPHAN SHAY was kept in handcuffs as he lay
6 bloody and in pain in a hospital bed.

7 77. NATHAN SHAY's person, effects and/or vehicle was searched in
8 humiliating view of other civilians in violation of his rights against unreasonable
9 search and seizure and STEPHAN SHAY's person was searched in a humiliating
10 view of other civilians in violation of his rights against unreasonable search and
11 seizure.

12 78. The aforementioned facts of Plaintiffs' unreasonable detention and
13 search directly and proximately caused Plaintiffs general and special damages in an
14 amount to be determined.

15 79. Accordingly, Defendants CITY AND ROCKETT AND SUBIA each
16 are liable to Plaintiff for compensatory damages, costs and attorney's fees under 42
17 U.S.C. § 1983.
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19 **FIFTH CLAIM FOR RELIEF**

20 **UNLAWFUL ARREST 42 U.S.C. § 1983**

21 **(STEPHAN SHAY and NATHAN SHAY against ROCKETT and SUBIA)**

22 80. Plaintiffs repeats and re-alleges each and every allegation in
23 paragraphs 1 through 82 of this Complaint with the same force and effect as if fully
24 set forth herein.

25 81. At all times relevant herein, Plaintiffs had a constitutionally afforded
26 right against unlawful arrests based on no objective probable cause that Plaintiffs
27 committed any crime.
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1 82. Upon information and belief in the instant case, Plaintiffs' arrest was
2 unlawful because Plaintiff committed no crime and ROCKETT and SUBIA had no
3 objectively reasonable probable cause that Plaintiffs committed or was committing
4 any crime.

5 83. The aforementioned facts of Plaintiffs' unlawful arrest directly and
6 proximately caused Plaintiffs general and special damages in an amount to be
7 determined.

8 84. Plaintiffs were not released until 6-7 hours, on the next day, January
9 14, 2016.

10 85. Accordingly, Defendants CITY and ROCKETT and SUBIA are liable
11 to Plaintiff for compensatory damages, costs and attorney's fees under 42 U.S.C. §
12 1983.

13 **SIXTH CLAIM FOR RELIEF**

14 **UNLAWFUL SEIZURE OF PROPERTY 42 U.S.C. § 1983**

15 **(STEPHAN SHAY and NATHAN SHAY against ROCKETT and SUBIA)**

16 86. Plaintiffs repeats and re-alleges each and every allegation in
17 paragraphs 1 through 88 of this Complaint with the same force and effect as if fully
18 set forth herein.

19 87. At all times relevant herein, Plaintiffs had a constitutionally afforded
20 right against unlawful seizure and deprivation of property without due process and
21 subject to an unlawful detention and/or unlawful arrest.

22 88. Upon information and belief in the instant case, Plaintiffs' property
23 including, but not limited to, Plaintiffs' car and cell phone and/or wallet were
24 seized by ROCKETT and SUBIA without due process and as part of an unlawful
25 detention and/or unlawful arrest.

26 89. The seizure of Plaintiffs' property was unlawful because Plaintiffs
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1 committed no crime and had Defendants no objectively reasonable probable cause
2 to believe that Plaintiff committed or was committing any crime.

3 90. The aforementioned facts of Plaintiffs' seizure of property directly
4 and proximately caused Plaintiffs general and special damages in an amount to be
5 determined.

6 91. Accordingly, Defendants CITY and ROCKETT and SUBIA each are
7 liable to Plaintiffs for compensatory damages, costs and attorney's fees under 42
8 U.S.C. § 1983.

9 **SEVENTH CLAIM FOR RELIEF**

10 **UNLAWFUL SEARCH 42 U.S.C. § 1983**

11 **(STEPHAN SHAY and NATHAN SHAY against ROCKETT and SUBIA)**

12 92. Plaintiffs repeats and re-alleges each and every allegation in
13 paragraphs 1 through 94 of this Complaint with the same force and effect as if fully
14 set forth herein.

15 93. At all times relevant herein, Plaintiffs had a constitutionally afforded
16 right against unlawful searches.

17 94. Upon information and belief in the instant case, Plaintiffs' person and
18 property including, but not limited to, Plaintiff's car, cell phone, wallet and/or
19 other personal effects were seized and searched by ROCKETT and SUBIA without
20 due process and as part of an unlawful detention and/or unlawful arrest.

21 95. Upon information and belief and despite not being under any lawful
22 arrest, Plaintiffs' person, effects and/or vehicle was searched in humiliating view
23 of other civilians in violation of her rights against unreasonable search and seizure.
24

25 96. Plaintiffs' search was unlawful because Plaintiffs committed no crime
26 and had Defendants no objectively reasonable probable cause to believe that
27 Plaintiffs committed or was committing any crime or was armed.
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1 97. The aforementioned facts of Plaintiffs' search of person and/or
2 property directly and proximately caused Plaintiffs general and special damages in
3 an amount to be determined.

4 98. Accordingly, Defendants CITY and ROCKETT and SUBIA each are
5 liable to Plaintiff for compensatory damages, costs and attorney's fees under 42
6 U.S.C. § 1983.

7 **EIGHTH CLAIM**

8 **VIOLATION OF RIGHT TO EQUAL PROTECTION- 14th**

9 **AMENDMENT/42 U.S.C. § 1983**

10 **(STEPHAN SHAY and NATHAN SHAY against ROCKETT and SUBIA)**

11 99. Plaintiffs repeats and re-alleges each and every allegation in
12 paragraphs 1 through 101 of this Complaint with the same force and effect as if
13 fully set forth herein.

14 100. At all times relevant herein, Plaintiffs had a right to equal protection
15 under the law as afforded and provided by the Fourteenth Amendment and
16 protected by the same and 42 U.S.C. § 1983.

17 101. Upon information and belief, ROCKETT and SUBIA chose to use
18 and/or used excessive force against and/or otherwise violated Plaintiffs' rights and
19 treated Plaintiff differently in retaliation for Plaintiffs' exercising of his right to
20 protest police misconduct, liberty and free movement.

21 102. Upon information and belief, a substantial and motivating reason for
22 ROCKETT and SUBIA's use of excessive force, unlawful detention and unlawful
23 arrest was due to their being emboldened to commit misconduct to misuse and
24 abusing their authority or power by taking advantage of some weakness or
25 disability or misfortune of the Plaintiffs because of Plaintiffs clear and apparent
26 vulnerability in reckless disregard of Plaintiffs' rights, accompanied by ill will or
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1 spite, and was executed with unnecessary harshness or severity warranting punitive
2 damages.

3 103. The conduct ROCKETT and SUBIA was willful, wanton, malicious,
4 and with reckless disregard for the rights and safety of PLAINTIFFS and therefore
5 warrants the imposition of exemplary and punitive damages as to ROCKETT and
6 SUBIA.

7 104. As a result of their misconduct, ROCKETT and SUBIA are liable for
8 PLAINTIFFS' physical, mental, and emotional injuries, either because they were
9 integral participants in the excessive force and equal protection deprivation, or
10 because they failed to intervene to prevent these violations.

11 105. The aforementioned acts and omissions of Defendants, and each of
12 them, were a direct and proximate cause of which warrant the awarding of
13 compensatory and special damages in a sum according to proof. Plaintiff also seeks
14 costs and attorney's fees as provided by 42 U.S.C. § 1983.
15

16 **NINTH CLAIM**

17 **MUNCIPAL LIABILITY-42 U.S.C. § 1983- RATIFICATION**
18 **(STEPHAN SHAY and NATHAN SHAY against Defendant CITY)**

19 106. Plaintiff repeats and re-alleges each and every allegation in
20 paragraphs 1 through 108 of this Complaint with the same force and effect as if
21 fully set forth herein.

22 107. ROCKETT and SUBIA acted under color of law.

23 108. The acts of ROCKETT and SUBIA deprived Plaintiff of his particular
24 rights under the United States Constitution and aforementioned statutes.

25 109. Upon information and belief, a final policymaker, acting under color
26 of law, who had final policymaking authority concerning the acts of ROCKETT
27 and SUBIA, ratified (or will ratify) ROCKETT and SUBIA's acts and the bases for
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1 them. Upon information and belief, the final policymaker knew of and specifically
2 approved of (or will specifically approve of) the acts of these defendants.

3 110. Upon information and belief, CITY ratified ROCKETT and SUBIA
4 acts and found they were “within policy” and ratified their acts alleged herein.

5 111. By reason of the aforementioned acts and omissions, Plaintiffs has
6 suffered and hereby claims loss of wages, past and ongoing economic and
7 noneconomic mental, physical, and emotional pain and suffering/damages, and
8 loss of earning capacity.

9 112. Accordingly, Defendant CITY is directly liable to Plaintiffs for
10 compensatory damages under 42 U.S.C. § 1983.

11 113. Plaintiffs are also seeks attorney fees under this claim.
12

13 **TENTH CLAIM FOR RELIEF**

14 **MUNICIPAL LIABILITY- INADEQUATE TRAINING_(42 U.S.C. § 1983)**
15 **(STEPHAN SHAY and NATHAN SHAY against Defendant CITY)**

16 114. Plaintiff repeats and re-alleges each and every allegation in
17 paragraphs 1 through 116 of this Complaint with the same force and effect as if
18 fully set forth herein.

19 115. ROCKETT and SUBIA acted under color of law.

20 116. The acts of ROCKETT and SUBIA deprived Plaintiffs of their
21 particular rights under the United States Constitution and aforementioned statutes.

22 117. The training policies of Defendant CITY were not adequate to train its
23 deputies to handle the usual and recurring situations with which they must deal.

24 118. Defendant CITY was deliberately indifferent to the obvious
25 consequences of its failure to train its officers adequately.

26 119. The failure of Defendant CITY to provide adequate training caused
27 the deprivation of the plaintiffs’ rights by ROCKETT and SUBIA; that is, the
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1 CITY's failure to train is so closely related to the deprivation of the Plaintiffs'
2 rights as to be the moving force that caused the ultimate injury.

3 120. By reason of the aforementioned acts and omissions, Plaintiffs have
4 suffered loss of wages and loss of earning capacity. The aforementioned acts and
5 omissions also caused PLAINTIFFS' past and ongoing physical, mental and
6 emotional pain and suffering.

7 121. Accordingly, Defendant CITY is directly liable to Plaintiffs for
8 compensatory damages under 42 U.S.C. § 1983. Plaintiff also seeks attorney fees
9 under this claim.

10 **ELEVENTH CLAIM FOR RELIEF**

11 **Municipal Liability – Unconstitutional Custom, Practice or Policy (42 U.S.C. §**
12 **1983)**

13 **(STEPHAN SHAY and NATHAN SHAY against Defendant CITY)**

14 122. Plaintiff repeats and re-alleges each and every allegation in
15 paragraphs 1 through 125 of this Complaint with the same force and effect as if
16 fully set forth herein.

17 123. ROCKETT and SUBIA acted under color of law.

18 124. ROCKETT and SUBIA acted pursuant to an expressly adopted
19 official policy or a longstanding practice or custom of the Defendant CITY.
20

21 125. On information and belief, ROCKETT and SUBIA were not
22 disciplined, reprimanded, retrained, suspended, or otherwise penalized in
23 connection with Plaintiffs' injuries.

24 126. ROCKETT and SUBIA, together with other CITY policymakers and
25 supervisors, maintained, inter alia, the following unconstitutional customs,
26 practices, and policies:

27 (a) Using excessive force;

- 1 (b) Providing inadequate training regarding the use of force;
- 2 (c) Employing and retaining as police officers individuals such as
- 3 ROCKETT and SUBIA, who Defendant CITY at all times
- 4 material herein knew or reasonably should have known had
- 5 dangerous propensities for abusing their authority and for using
- 6 excessive force;
- 7 (d) Inadequately supervising, training, controlling, assigning, and
- 8 disciplining CITY deputies, and other personnel, including
- 9 ROCKETT and SUBIA, who Defendant CITY knew or in the
- 10 exercise of reasonable care should have known had the
- 11 aforementioned propensities and character traits;
- 12 (e) Maintaining grossly inadequate procedures for reporting,
- 13 supervising, investigating, reviewing, disciplining and
- 14 controlling misconduct by CITY officers and ROCKETT and
- 15 SUBIA;
- 16 (f) Failing to adequately discipline CITY police officers, including
- 17 ROCKETT and SUBIA, for the above-referenced categories of
- 18 misconduct, including “slaps on the wrist,” discipline that is so
- 19 slight as to be out of proportion to the magnitude of the
- 20 misconduct, and other inadequate discipline that is tantamount
- 21 to encouraging misconduct;
- 22 (g) Announcing that unjustified uses of excessive force are “within
- 23 policy,” including incidents that were later determined in court
- 24 to be unconstitutional;
- 25 (h) Even where shootings are determined in court to be
- 26 unconstitutional, refusing to discipline, terminate, or retrain the
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1 officers involved;

2 (i) Encouraging, accommodating, or facilitating a “blue code of
3 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
4 or simply “code of silence,” pursuant to which police officers
5 do not report other officers’ errors, misconduct, or crimes.

6 Pursuant to this code of silence, if questioned about an incident
7 of misconduct involving another officer, while following the
8 code, the officer being questioned will claim ignorance of the
9 other officers’ wrongdoing; and

10 (j) Maintaining a policy of inaction and an attitude of indifference
11 towards soaring numbers of police excessive force incidents,
12 including by failing to discipline, retrain, investigate, terminate,
13 and recommend officers for criminal prosecution who
14 participate in shootings of unarmed people.

15
16 127. The aforementioned unconstitutional customs, practices, and policies,
17 in addition to the ratification of the deficient customs, practices, and policies, are
18 further evidenced by the number of prior shootings, which constituted excessive
19 force, involving police officers working for the Huntington Beach Police
20 Department. The following cases, without limitation, are examples of continued
21 misconduct by police officers working for the Huntington Beach Police
22 Department:

23 (a) Moreover, on information and belief, this is not ROCKETT and
24 SUBIA’s first complaint or lawsuit alleging excessive force.
25 Following these previous incidents, Defendant CITY failed to
26 terminate ROCKETT and SUBIA, adequately discipline or retrain
27 ROCKETT and SUBIA, or otherwise protect the public from
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1 ROCKETT and SUBIA. As a result of these actions and omissions,
2 PLAINTIFFS were injured and sustained mental, physical and
3 emotional injuries.

4 128. By reason of the aforementioned acts and omissions, Plaintiffs have
5 suffered past, present and ongoing economic and non-economic damages including
6 medical expenses, mental, physical and emotional damages.

7 129. ROCKETT and SUBIA, together with various other officials, whether
8 named or unnamed, had either actual or constructive knowledge of the deficient
9 policies, practices and customs alleged in the paragraphs above. Despite having
10 knowledge as stated above, these defendants condoned, tolerated and through
11 actions and inactions thereby ratified such policies. Said defendants also acted
12 with deliberate indifference to the foreseeable effects and consequences of these
13 policies with respect to the constitutional rights of PLAINTIFFS, and other
14 individuals similarly situated.
15

16 130. By perpetrating, sanctioning, tolerating and ratifying the outrageous
17 conduct and other wrongful acts, ROCKETT and SUBIA acted with intentional,
18 reckless, and callous disregard for Plaintiff's constitutional rights. Furthermore, the
19 policies, practices, and customs implemented, maintained, and still tolerated by
20 Defendants CITY and ROCKETT and SUBIA were affirmatively linked to and
21 were a significantly influential force behind the injuries of Plaintiffs.

22 131. Accordingly, ROCKETT and SUBIA each are liable to Plaintiff for
23 compensatory damages under 42 U.S.C. § 1983.

24 132. Plaintiff also seeks attorney fees under this claim.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment in their favor and against CITY, ROCKETT and SUBIA, inclusive, as follows and/or a jury trial:

- A. For compensatory and special damages in an amount to be proven at trial;
- B. For loss of wages and earning capacity;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For statutory damages;
- E. For interest;
- F. For reasonable attorneys' fees, including litigation expenses;
- G. For costs of suit;
- H. For mental, emotional, physical past, present and future pain and suffering and reasonable costs of medical care; and
- I. For such further other relief as the Court may deem just, proper, and appropriate.

Dated: April 24, 2017

IVIE, McNEILL & WYATT

By: /s/ Rodney S. Diggs
RODNEY S. DIGGS
JUSTIN H. SANDERS
Attorneys for Plaintiffs
STEPHAN SHAY and NATHAN SHAY

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: April 24, 2017

IVIE, McNEILL & WYATT

By: /s/ Rodney S. Diggs

**RODNEY S. DIGGS
JUSTIN H. SANDERS
Attorneys for Plaintiffs
STEPHAN SHAY and NATHAN
SHAY**