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7 PATRICK FLYNN, KYLE FLYNN, and
8 LAUREN ALCAREZ

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 PATRICK FLYNN, KYLE FLYNN, AND
12 LAUREN ALCAREZ,

12 Plaintiffs,

13 vs.

14 CITY OF SANTA CLARA, a public entity;
15 CITY OF MOUNTAIN VIEW, a public entity;
16 CITY OF GILROY, a public entity; SANTA
17 CLARA STADIUM AUTHORITY, a joint
18 powers entity; OFFICER NICHOLAS
19 CUSIMANO, an individual; SPECIAL
20 EVENTS OFFICER THEODORE RODGERS,
21 an individual; SPECIAL EVENTS OFFICER
22 DUANE WALKER, an individual; OFFICER
23 JANICE RIVERA, an individual; OFFICER
24 KEVIN FRASER, an individual; OFFICER
25 TOM NELSON, an individual; OFFICER DAN
26 MORENO, an individual; OFFICER HUGO
27 DEL MORAL, an individual; SERGEANT
28 JACOB MALAE, an individual; and DOES 1
through 50,

Defendants.

Case No.: _____

COMPLAINT FOR:

1. **42 U.S.C. § 1983 – First Amendment Retaliation;**
2. **42 U.S.C. § 1983 - False Arrest;**
3. **42 U.S.C. § 1983 - Excessive Force;**
4. **Violation of Civil Code § 52.1;**
5. **Battery;**
6. **False Arrest Without a Warrant; and**
7. **Negligent Infliction of Emotional Distress.**

DEMAND FOR JURY TRIAL

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1 Plaintiffs, Patrick Flynn, individually, Kyle Flynn, individually, and Lauren Alcaarez
2 (“Ms. Alcaarez”), individually (collectively “plaintiffs”), allege:

3 **JURISDICTION AND VENUE**

4 1. This action arises under 42 U.S.C. section 1983, the Constitution of the State of
5 California, and California law. This Court has jurisdiction over this action pursuant to 28 U.S.C.
6 sections 1331, 1332, 1343, and 1367(a).

7 2. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
8 section 1391(b) because the action arises therein, and a substantial part of the events giving rise
9 to this action occurred therein.

10 **INTRADISTRICT ASSIGNMENT**

11 3. Assignment of this action to the San Jose Division is proper under Civil Local
12 Rules 3-2(c) and 3-2(e), because a substantial part of the events giving rise to the claims alleged
13 herein occurred in the County of Santa Clara.

14 **PARTIES**

15 4. Plaintiffs Patrick Flynn and Ms. Alcaarez are and at all times herein mentioned
16 were individuals residing in the State of Massachusetts.

17 5. Plaintiff Kyle Flynn was at all times herein mentioned an individual residing in
18 the State of Virginia. Kyle Flynn is currently an individual residing in the State of
19 Massachusetts.

20 6. Defendant City of Santa Clara (“Santa Clara”) is, and at all times herein
21 mentioned was, a public entity located in the County of Santa Clara, State of California, duly
22 organized and existing under the laws of the State of California. Santa Clara is responsible for
23 the actions, omissions, policies, procedures, practices, and customs of its various agents and
24 agencies, including the Santa Clara Police Department and its employees and agents. At all
25 times relevant to the facts alleged herein, defendant Santa Clara was responsible for assuring that
26 the actions, omissions, policies, procedures, practices, and customs of the Santa Clara Police
27 Department, and its employees and agents, complied with the laws of the State of California and
28 the Constitution of the United States.

1 7. Defendant City of Mountain View (“Mountain View”) is, and at all times herein
2 mentioned was, a public entity located in the County of Santa Clara, State of California, duly
3 organized and existing under the laws of the State of California. Mountain View is responsible
4 for the actions, omissions, policies, procedures, practices, and customs of its various agents and
5 agencies, including the Mountain View Police Department and its employees and agents. At all
6 times relevant to the facts alleged herein, defendant Mountain View was responsible for assuring
7 that the actions, omissions, policies, procedures, practices, and customs of the Mountain View
8 Police Department, and its employees and agents, complied with the laws of the State of
9 California and the Constitution of the United States.

10 8. Defendant City of Gilroy (“Gilroy”) is, and at all times herein mentioned was, a
11 public entity located in the County of Santa Clara, State of California, duly organized and
12 existing under the laws of the State of California. Gilroy is responsible for the actions,
13 omissions, policies, procedures, practices, and customs of its various agents and agencies,
14 including the Gilroy Police Department and its employees and agents. At all times relevant to
15 the facts alleged herein, defendant Gilroy was responsible for assuring that the actions,
16 omissions, policies, procedures, practices, and customs of the Gilroy Police Department, and its
17 employees and agents, complied with the laws of the State of California and the Constitution of
18 the United States.

19 9. Defendant, Santa Clara Stadium Authority (“Stadium Authority”) is a joint
20 exercise of powers entity, created through Government Code section 6500 et seq., with its
21 principal place of business in the City of Santa Clara, County of Santa Clara, State of California.
22 At all times relevant to the facts alleged herein, the Stadium Authority was responsible for
23 assuring that the actions, omissions, policies, procedures, practices, and customs of the Stadium
24 Authority, and its employees and agents, complied with the laws of the State of California and
25 the Constitution of the United States.

26 10. Defendant Officer Nicholas Cusimano (“Cusimano”) is, and at all times herein
27 mentioned was, an individual employed by Santa Clara as an officer with the Santa Clara Police
28 Department. He is sued in his individual capacity and in his official capacity.

1 11. Defendant, Special Events Officer Theodore Rodgers (“Rodgers”), was an
2 individual employed by Mountain View as an officer with the Mountain View Police
3 Department. In addition, at all times herein mentioned, Rodgers was working as a Special
4 Events Officer for the Santa Clara Police Department. He is sued in his individual capacity and
5 in his official capacity.

6 12. Defendant, Special Events Officer Duane Walker (“Walker”), is, and at all times
7 herein mentioned was, an individual employed by the San Francisco Municipal Transportation
8 Agency as a traffic enforcement officer. In addition, at all times herein mentioned, Walker was
9 working as a Special Events Officer for the Santa Clara Police Department. He is sued in his
10 individual capacity and in his official capacity.

11 13. Defendant, Officer Janice Rivera (“Rivera”), is, and at all times herein mentioned
12 was, an individual employed by Santa Clara as an officer with the Santa Clara Police
13 Department. She is sued in her individual capacity and in her official capacity.

14 14. Defendant, Officer Kevin Fraser (“Fraser”), is, and at all times herein mentioned
15 was, an individual employed by Santa Clara as an officer with the Santa Clara Police
16 Department. He is sued in his individual capacity and in his official capacity.

17 15. Defendant, Officer Tom Nelson (“Nelson”) is, and at all times herein mentioned
18 was, an individual employed by Santa Clara as an officer with the Santa Clara Police
19 Department. He is sued in his individual capacity and in his official capacity.

20 16. Defendant, Officer Dan Moreno (“Moreno”) is, and at all times herein mentioned
21 was, an individual employed by Santa Clara as an officer with the Santa Clara Police
22 Department. He is sued in his individual capacity and in his official capacity

23 17. Defendant, Officer Hugo Del Moral (“Del Moral”), is, and at all times herein
24 mentioned was, an individual employed by Gilroy as an officer with the Gilroy Police
25 Department. In addition, at all times herein mentioned, Del Moral was serving as a Special
26 Events Officer or Reserve Police Officers with the Santa Clara Police Department. He is sued in
27 his individual capacity and in his official capacity.

28

1 18. Defendant, Sergeant Jacob Malae (“Malae”), is, and at all times herein mentioned
2 was, an individual employed by Santa Clara as a Sergeant with the Santa Clara Police
3 Department. He is sued in his individual capacity and in his official capacity.

4 19. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
5 as Does 1 through 50, inclusive, and therefore sue these defendants by such fictitious names.
6 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.
7 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named
8 defendants is responsible in some manner for the occurrences herein alleged, and that plaintiffs’
9 damages as herein alleged were proximately caused by their conduct.

10 20. At all times herein mentioned, defendants, including those named herein as Does
11 1 through 50, were the agents, servants, and employees of their co-defendants and in doing the
12 things herein alleged were acting in the scope of their authority as such agents, servants and
13 employees, under the direction and supervision and with the permission and consent of their co-
14 defendants. At all times mentioned, defendants, including those sued herein as Does 1 through
15 50, provided each other with armed backup, aided, incited, or conspired in denial of plaintiffs’
16 constitutional rights and plaintiffs’ rights under California law.

17 **GENERAL ALLEGATIONS**

18 21. On November 12, 2017, plaintiffs attended a professional football game at Levi’s
19 Stadium between the New York Giants (“Giants”) and the San Francisco Forty Niners
20 (“49ers”).

21 22. Levi’s Stadium is publicly-owned by the City of Santa Clara. The 49ers lease the
22 stadium through a subsidiary called the stadium management company. Within the stadium on a
23 given game day, there are police officers, private security officers, and civilian ushers.

24 23. Before working an event at Levi’s Stadium, all police officers go through a
25 stadium training, which includes explaining the stadium’s “Code of Conduct.”

26 24. Patrick Flynn and Kyle Flynn, both Giants’ fans, were seated in the rows closest
27 to the field in or around Sections 120 and 121.
28

1 25. Officer Nicholas Cusimano of the Santa Clara Police Department was working
2 the game at Levi’s Stadium that day. During the event, Cusimano was positioned on the field in
3 front of Sections 120 and 121. His duty was to prevent people in the stands from climbing down
4 to the field.

5 26. During the second half of the game, Patrick Flynn and Kyle Flynn were flipping
6 off the Giants players and yelling “You fucking suck” at them. Cusimano approached Patrick
7 Flynn and Kyle Flynn and told them to quit flipping off the players and to sit down. Patrick
8 Flynn and Kyle Flynn acknowledged and complied with Cusimano’s request. Neither Patrick
9 Flynn, nor Kyle Flynn, were warned that further similar behavior would lead to ejection or arrest.

10 27. Later in the half, after the 49ers scored again, Patrick Flynn and Kyle Flynn stood
11 up, approached the railing separating the stands from the field, and again flipped off the Giants
12 players while screaming “You fucking suck!”

13 28. Plaintiffs are informed and believe, and thereon allege, that Cusimano determined
14 the actions of Patrick Flynn and Kyle Flynn to be a violation of the Levi’s Stadium Code of
15 Conduct. Cusimano notified Stadium Communications that he needed officers to eject Patrick
16 Flynn and Kyle Flynn, although Cusimano did not provide a basis for the ejection to Stadium
17 Communications.

18 29. Plaintiffs are informed and believe, and thereon allege, that it was not, and is not,
19 a crime to stand up, flip off the players on the field (i.e., “flip the bird” or extend one’s middle
20 finger outward), and yell “You fucking suck!” Therefore, defendants did not have reasonable
21 suspicion to believe plaintiffs were engaged in or about to be engaged in activity relating to
22 crime. Moreover, defendants did not have probable cause to arrest plaintiffs for committing a
23 crime.

24 30. Plaintiffs are informed and believe, and thereon allege, that no spectators sitting
25 near or around Patrick Flynn or Kyle Flynn made any complaints to police or Levi’s Stadium
26 security about Patrick Flynn’s or Kyle Flynn’s behavior or language. Plaintiffs are further
27 informed and believe, and thereon allege, that no complaints were made by fans, staff, or players
28

1 about plaintiffs to Officer Cusimano, Officer Nelson, Levi's Stadium security, the San Francisco
2 49ers, or any other police officers working at the stadium.

3 31. Plaintiffs are informed and believe, and thereon allege, that other officers arrived
4 on scene in response to Cusimano's call to Stadium Communications, including, but not limited
5 to, Walker, Rivera, Rodgers, and Malae.

6 32. Special Events Officers, such as Walker, are sworn peace officers who work at
7 events in Santa Clara Police Department uniforms, for the Santa Clara Police Department, but
8 are regularly employed at other agencies.

9 33. Plaintiffs are informed and believe, and thereon allege, that Nelson instructed
10 Rivera to eject Patrick Flynn and Kyle Flynn due to their behavior.

11 34. Rivera and Walker approached Kyle Flynn. Kyle Flynn, who did not believe he
12 had done anything wrong, remained in his seat when the officers approached.

13 35. Rivera and Walker then attempted to pull Kyle Flynn out of his seat by grabbing
14 his arms and pulling him upward to arrest him. Walker put his arm around Kyle's neck and
15 choked him during the course of the arrest. Walker did so despite no evidence that Kyle was a
16 danger to himself, others, or the officers. At all relevant times, Kyle Flynn was never told that he
17 was being detained, why he was being detained, that he was being arrested, or why he was being
18 arrested.

19 36. Kyle Flynn was eventually handcuffed. After being handcuffed, Kyle Flynn was
20 seated on the ground pleading "why am I here?" In response, officers repeatedly told Kyle Flynn
21 to "shut [his] fucking mouth," to "be quiet," and to "know your place." Eventually, Kyle Flynn
22 was taken to the Temporary Holding Facility located beneath Levi's Stadium.

23 37. While in the Temporary Holding Facility, Kyle Flynn called out for a lawyer,
24 challenged the officers' legal authority to arrest him, and protested the warrantless search of his
25 brother Patrick Flynn. In response, and even though Kyle Flynn was not threatening or
26 committing any force or violence against any officers, he was put in a control hold used for
27 combative prisoners and laid prone on the ground with his legs crossed. Officer Fraser then
28 placed Kyle Flynn in a total body restraint called a WRAP which immobilizes the legs and upper

1 torso. Kyle Flynn's face was also wrapped. He was then leaned against the wall and left in the
2 restraint device for at least thirty to forty minutes.

3 38. Kyle Flynn was later charged by misdemeanor complaint with one count of
4 violating Penal Code section 148(a)(1). On December 10, 2018, that count was dismissed by the
5 Santa Clara County District Attorney's Office in the interests of justice and for insufficiency of
6 the evidence.

7 39. After watching his brother Kyle get choked by Walker and grabbed by Rivera,
8 Patrick Flynn protested the officers' brutality by shouting at them and pointing at them. Patrick
9 Flynn then descended down the steps, back towards his seat, and went down on one knee in the
10 aisle at the bottom of the section. Patrick Flynn put his arm over the top of the railing that
11 separates the fans from the field.

12 40. Plaintiffs are informed and believe, and thereon allege, that when Rodgers
13 arrived, Rivera told Rodgers that Patrick Flynn "needed to go." However, neither Cusimano,
14 Nelson, Rivera, Walker, or Rodgers had a reasonable suspicion to believe Patrick Flynn was
15 engaged in, or about to commit, a crime nor did they have probable cause to arrest him for
16 committing a crime in their presence or otherwise.

17 41. Rodgers and Malae approached Patrick Flynn. Patrick Flynn, who did not believe
18 he had done anything wrong, remained in a kneeling position at the railing when the officers
19 approached.

20 42. Malae and Rodgers attempted to remove Patrick Flynn from the stands and arrest
21 him by grabbing and pulling him away from the railing. Rodgers, Moreno, and Cusimano sought
22 to pull Patrick Flynn's hands off the railing. Plaintiffs are informed and believe, and thereon
23 allege, that Rodgers wanted to get Patrick Flynn's hands off the railing so Rodgers could place
24 Patrick Flynn in a chokehold and move him up the stairwell.

25 43. Malae then placed his arm across Patrick Flynn's upper body and neck area,
26 putting him in a carotid restraint even though Patrick Flynn was on one knee and was not a
27 threat to the safety of himself, others, or the officers.

28 44. Patrick Flynn's face turned red from being choked by Malae.

1 45. Patrick Flynn stood up and attempted to remove Malae’s arm from his neck to
2 stop himself from being further choked. While Patrick Flynn was still holding on to the railing,
3 Rodgers removed his collapsible baton and struck Patrick Flynn’s fingers and knuckles. Patrick
4 Flynn’s hand had recently been broken.

5 46. Ms. Alcarez was standing behind Rodgers when he used his baton on Patrick
6 Flynn. After Rodgers started hitting Patrick Flynn’s hands with his baton, Ms. Alcarez, who
7 knew that Patrick Flynn had recently broken his left hand, yelled at Rodgers to “leave him
8 alone!” and “stop hitting him!” After seeing that Rodgers would not stop hitting Patrick despite
9 her pleas, Ms. Alcarez grabbed at the baton to stop Rodgers from striking Patrick Flynn’s hands
10 with it. At no point did Ms. Alcarez have possession of the baton, nor did Rodgers ever lose
11 control of or drop the baton. Rodgers twisted the baton in order to free Ms. Alcarez’s grip on
12 it. Once Rodgers regained control of the baton, he elbowed Ms. Alcarez in the chest and
13 shoulder, driving her backward.

14 47. Officer Cusimano climbed into the stands from the field, grabbed Ms. Alcarez’s
15 right arm, pulled it behind her back and put it into a wrist lock. Ms. Alcarez was eventually
16 placed in handcuffs, arrested, and taken to the Temporary Holding Facility.

17 48. While Ms. Alcarez was being handcuffed, Patrick Flynn was pushed over the
18 railing and onto the field, some ten (10) feet below.

19 49. Plaintiffs are informed and believe, and thereon allege, that once Patrick Flynn
20 fell onto the field, Officer Del Moral rolled Patrick Flynn onto his stomach, pulled Patrick
21 Flynn’s left hand behind his back, and struck Patrick Flynn’s body two or three times.

22 50. In addition, plaintiffs are informed and believe, and thereon allege, that while
23 Patrick Flynn was on the ground and pinned down on his stomach by four or five officers, a
24 Conducted Electrical Weapon (aka, a Taser) was used on Patrick Flynn by Sargent Malae.
25 Officer Nelson used his left knee to strike Patrick Flynn in the face. Officer Nelson also used his
26 hands and knees to pin Patrick Flynn’s head and body to the ground. Patrick Flynn was
27 eventually placed in handcuffs, arrested, and taken to the Temporary Holding Facility.

28

1 51. Plaintiffs posed no threat of physical injury to any of the officers while in their
2 seats or when defendants assaulted and battered plaintiffs.

3 52. The use of force to arrest and restrain Patrick Flynn, Kyle Flynn, and Ms. Alcaarez
4 was not reasonable under the totality of the circumstances.

5 53. Defendants' excessive and unreasonable actions created a risk of harm to Patrick
6 Flynn, Kyle Flynn, and Ms. Alcaarez, causing a situation in which defendants decided to use
7 excessive force, and an escalation of events leading to the assault and battery of plaintiffs.

8 54. Plaintiffs each suffered physical and mental pain, shock, and distress due to the
9 actions of defendants.

10 55. The defendants' conduct herein, including, but not limited to, their decision to
11 seize plaintiffs; the manner in which defendants conducted the seizure of plaintiffs; and
12 defendants' use of excessive force, was contrary to generally accepted reasonable police
13 procedures and tactics, and caused the injuries complained herein.

14 56. Defendant Santa Clara failed adequately to train, supervise, and discipline the
15 defendants and other officers employed by the Santa Clara Police Department regarding the use
16 of reasonable methods to detain and arrest individuals.

17 57. Defendant Santa Clara had actual and constructive knowledge that the failure
18 adequately to train, supervise, and discipline defendants and other officers would cause
19 violations of plaintiffs' personal and constitutional rights.

20 58. Defendant Mountain View failed adequately to train, supervise, and discipline the
21 defendants and other officers employed by the Mountain View Police Department regarding the
22 use of reasonable methods to detain and arrest individuals.

23 59. Defendant Mountain View had actual and constructive knowledge that the failure
24 adequately to train, supervise, and discipline defendants and other officers would cause
25 violations of plaintiffs' personal and constitutional rights.

26 60. Defendant Gilroy failed adequately to train, supervise, and discipline the
27 defendants and other officers employed by the Gilroy Police Department regarding the use of
28 reasonable methods to detain and arrest individuals.

1 61. Defendant Gilroy had actual and constructive knowledge that the failure
2 adequately to train, supervise, and discipline defendants and other officers would cause
3 violations of plaintiffs' personal and constitutional rights.

4 62. Defendant Stadium Authority failed adequately to train, supervise, and discipline
5 the defendants and other officers employed by the Stadium Authority regarding the use of
6 reasonable methods to detain and arrest individuals.

7 63. Defendant Stadium Authority had actual and constructive knowledge that the
8 failure adequately to train, supervise, and discipline defendants and other officers would cause
9 violations of plaintiffs' personal and constitutional rights

10 64. The force used against plaintiffs was excessive, unreasonable, without cause, and
11 with deliberate indifference to their health and safety.

12 65. As a direct and proximate result of the actions and omissions of defendants
13 described above, plaintiffs suffered bodily injury, physical pain, emotional distress, and
14 deprivation of their constitutional rights, according to proof at the time of trial.

15 66. At all material times, the actions and omissions of each defendant were
16 intentional, wanton, or willful, conscience-shocking, reckless, malicious, deliberately indifferent
17 to plaintiffs' rights, and done with actual malice.

18 67. Plaintiffs served a claim on Santa Clara on May 11, 2018, for the conduct alleged
19 herein, in compliance with California Government Code sections 905, 905.2, 910, and 910.2
20 ("Government claim"). Santa Clara rejected the claim by operation of law when no response
21 was received by any of the plaintiffs within forty-five (45) days of the claim being filed.

22 68. On June 29, 2018, plaintiffs received a letter from Gennine Merritt,
23 acknowledging receipt of the claim submitted to Santa Clara and stating that her firm represents
24 the interests of the insurance carrier for defendant Stadium Authority.

25 69. Plaintiffs served a claim on Mountain View on May 11, 2018, for the conduct
26 alleged herein, in compliance with California Government Code sections 905, 905.2, 910, and
27 910.2 ("Government claim"). On June 25, 2018, Mountain View sent letters rejecting plaintiffs'
28 claims.

1 70. Plaintiffs served a claim on Gilroy on May 11, 2018, for the conduct alleged
2 herein, in compliance with California Government Code sections 905, 905.2, 910, and 910.2
3 (“Government claim”). On July 6, 2018, Gilroy sent letters rejecting plaintiffs’ claims.

4 **FIRST CAUSE OF ACTION**
5 **(42 U.S.C. § 1983 – First Amendment Retaliation –**
6 **Plaintiffs Patrick Flynn and Kyle Flynn Against All Defendants)**

7 71. Plaintiffs hereby incorporate by reference paragraphs 1 through 70, inclusive.

8 72. Patrick Flynn’s and Kyle Flynn’s comments and gestures directed towards the
9 New York Giants players, as well as Patrick Flynn’s decision to “take a knee,” were protected
10 First Amendment expression. Patrick Flynn’s and Kyle Flynn’s exercise of their protected First
11 Amendment rights angered defendants. Patrick Flynn and Kyle Flynn are informed and believe,
12 and thereon allege, that the officers subjected them to the above-described treatment in
13 retaliation for, and as punishment for, their exercise of their protected free speech rights, and to
14 deter them from asserting their First Amendment rights in the future. Patrick Flynn and Kyle
15 Flynn are informed and believe, and thereon allege, that such deterrence, retaliation, and
16 punishment were substantial motivating factors in the defendant officers’ conduct alleged herein.
17 In doing the acts complained of herein, defendants deprived Patrick Flynn and Kyle Flynn of
18 their rights under the First and Fourteenth Amendments to the United States Constitution.

19 73. In committing the acts herein alleged, defendants were acting under color of state
20 law.

21 74. At all times mentioned herein, defendants were acting in accordance with a
22 custom, policy and practice of Santa Clara, the Santa Clara Police Department, Mountain View,
23 the Mountain View Police Department, and the Stadium Authority in violating Patrick Flynn’s
24 and Kyle Flynn’s constitutional rights. Patrick Flynn and Kyle Flynn are informed and believe,
25 and thereon allege, that defendants actions alleged herein were the direct and proximate result of
26 the failure of Santa Clara, the Santa Clara Police Department, Mountain View, the Mountain
27 View Police Department, and the Stadium Authority to train the officers adequately on what is
28 required under the First and Fourteenth Amendments, and the case law interpreting them, to

1 support an arrest. Such failure amounts to deliberate indifference to the rights of persons with
2 whom the defendants come into contact.

3 75. As a direct and proximate result of defendants' wrongful acts alleged herein,
4 Patrick Flynn and Kyle Flynn suffered damages, including humiliation, damage to their
5 reputation, bodily injury, physical pain, emotional distress, and deprivation of their constitutional
6 rights, according to proof at the time of trial.

7 76. Patrick Flynn and Kyle Flynn are informed and believe, and thereon allege, that
8 defendants' acts alleged above were done with malice, fraud, and oppression, and in reckless
9 disregard of Patrick Flynn's and Kyle Flynn's constitutional rights, justifying an award of
10 exemplary and punitive damages.

11 **SECOND CAUSE OF ACTION**
12 **(42 U.S.C. § 1983 – False Arrest – All Plaintiffs Against All Defendants)**

13 77. Plaintiffs hereby incorporate by reference paragraphs 1 through 76, inclusive.

14 78. The Santa Clara Police Department falsely arrested plaintiffs without a warrant,
15 probable cause, or any reasonable belief that they had violated the law. In doing the acts
16 complained of herein, defendants deprived plaintiffs of their rights under the Fourth Amendment
17 to the United States Constitution.

18 79. In committing the acts herein alleged, defendants were acting under color of state
19 law.

20 80. At all times mentioned herein, defendants were acting in accordance with a
21 custom, policy and practice of Santa Clara, the Santa Clara Police Department, Mountain View,
22 the Mountain View Police Department, and the Stadium Authority in violating plaintiffs'
23 constitutional rights. Plaintiffs are informed and believe, and thereon allege, that defendants
24 actions alleged herein were the direct and proximate result of the failure of Santa Clara, the Santa
25 Clara Police Department, Mountain View, the Mountain View Police Department, and the
26 Stadium Authority to train the officers adequately on what is required under the Fourth
27 Amendment, and the case law interpreting it, to support an arrest. Such failure amounts to
28 deliberate indifference to the rights of persons with whom the defendants come into contact.

1 81. As a direct and proximate result of defendants' wrongful acts alleged herein,
2 plaintiffs suffered damages, including humiliation, damage to their reputation, bodily injury,
3 physical pain, emotional distress, and deprivation of their constitutional rights, according to
4 proof at the time of trial.

5 82. Plaintiffs are informed and believe, and thereon allege, that defendants' acts
6 alleged above were done with malice, fraud, and oppression, and in reckless disregard of
7 plaintiffs' constitutional rights, justifying an award of exemplary and punitive damages.

8 **THIRD CAUSE OF ACTION**
9 **(42 U.S.C. § 1983 – Excessive Force – All Plaintiffs Against All Defendants)**

10 83. Plaintiffs hereby incorporate by reference paragraphs 1 through 82, inclusive.

11 84. Defendants, acting under color of state law, deprived plaintiffs of rights,
12 privileges, and immunities secured by the Constitution and laws of the United States, including
13 those secured by the Fourth and Fourteenth Amendments to the Constitution, by, among other
14 things, subjecting plaintiffs to excessive force, and acting with deliberate indifference toward
15 their health and safety.

16 85. At all times mentioned herein, defendants were acting in accordance with a
17 custom, policy, and practice of Santa Clara, the Santa Clara Police Department, Mountain View,
18 the Mountain View Police Department, Gilroy, the Gilroy Police Department, and/or the
19 Stadium Authority in violating plaintiffs' constitutional rights. Plaintiffs are informed and
20 believe, and thereon allege, that defendants' actions alleged herein were the direct and proximate
21 result of the failure of the Santa Clara, the Santa Clara Police Department, Mountain View, the
22 Mountain View Police Department, Gilroy, the Gilroy Police Department, and the Stadium
23 Authority to train the defendant officers adequately on what is required under the Fourth
24 Amendment, and the case law interpreting it, to support the use of force. Such failure amounts to
25 deliberate indifference to the rights of persons with whom the defendant officers come into
26 contact.

27 86. Plaintiffs are informed and believe, and thereon allege, that the damages they
28 sustained as alleged herein were the proximate result of customs, policies, and practices which

1 included, but were not limited to, the failure adequately or appropriately to train officers in
2 making detentions, arrests, and using force.

3 87. The aforementioned deliberate indifference, customs, policies, and practices of
4 defendants resulted in the deprivation of plaintiffs' constitutional rights, including, but not
5 limited to, the following:

- 6 a. the right not to be deprived of liberty or property without Due Process of
7 Law;
- 8 b. the right to be free from Unreasonable Searches and Seizures;
- 9 c. the right to Equal Protection of the Law;

10 88. As a direct and proximate result of defendants' conduct alleged herein, plaintiffs
11 suffered damages, including humiliation, damage to their reputation, bodily injury, physical pain,
12 emotional distress, and deprivation of their constitutional rights, according to proof at the time of
13 trial.

14 89. In doing the foregoing wrongful acts, defendants acted with malice, fraud, and
15 oppression, and in reckless disregard of plaintiffs' constitutional rights, justifying an award of
16 exemplary and punitive damages.

17 **FOURTH CAUSE OF ACTION**
18 **(Violation of Civil Code Section 52.1 – All Plaintiffs Against All Defendants)**

19 90. Plaintiffs hereby incorporate by reference paragraphs 1 through 89, inclusive.

20 91. Defendants' conduct alleged herein interfered with, or constituted an attempt to
21 interfere with, plaintiffs' constitutional rights by threatening or committing the following violent
22 acts.

- 23 a) Defendants falsely arrested Patrick Flynn and Kyle Flynn without a warrant or
24 probable cause, or any reasonable belief that they had committed a crime.
- 25 b) Patrick Flynn's, Kyle Flynn's, and Ms. Alcarez's arrests were made with
26 excessive force.

27 92. Defendants' conduct alleged herein interfered with, or constituted an attempt to
28 interfere with, plaintiffs' rights under the First, Fourth, Fifth and Fourteenth Amendments to the

1 United States Constitution, and article I, sections 1, 7, and 13 of the California Constitution,
2 through violence or the threat of violence.

3 93. As a direct and proximate result of defendants' conduct alleged herein, plaintiffs
4 suffered damages, including humiliation, damage to their reputation, bodily injury, physical pain,
5 emotional distress, and deprivation of their constitutional rights, according to proof at the time of
6 trial.

7 94. Plaintiffs are informed and believe, and thereon allege, that defendants' acts
8 alleged above were done with malice, fraud, and oppression, and in reckless disregard of
9 plaintiffs' constitutional rights, justifying an award of exemplary and punitive damages.

10 **FIFTH CAUSE OF ACTION**
11 **(Battery – All Plaintiffs Against All Defendants)**

12 95. Plaintiffs hereby incorporate by reference paragraphs 1 through 94, inclusive.

13 96. In performing the acts alleged herein, defendants intentionally touched plaintiffs.

14 97. Defendants used unreasonable force to arrest plaintiffs.

15 98. Plaintiffs did not consent to defendants' use of force.

16 99. As a direct and proximate result of defendants' conduct alleged herein, plaintiffs
17 suffered damages, including humiliation, damage to their reputation, bodily injury, physical pain,
18 and emotional distress, according to proof at the time of trial.

19 100. Plaintiffs are informed and believe, and thereon allege, that defendants' acts
20 alleged above were done with malice, fraud, and oppression, and in reckless disregard of
21 plaintiff's constitutional rights, justifying an award of exemplary and punitive damages.

22 **SIXTH CAUSE OF ACTION**
23 **(False Arrest Without a Warrant – All Plaintiffs Against All Defendants)**

24 101. Plaintiffs hereby incorporate by reference paragraphs 1 through 100, inclusive.

25 102. On November 12, 2017, Kyle Flynn was seized and arrested while at Levi's
26 Stadium by defendants Walker and Rivera, maliciously and without warrant or order of
27 commitment or any other legal authority of any kind, when Kyle Flynn had not committed any
28 crime or public offense. Defendants did not accuse Kyle Flynn of committing any offense at the

1 time of arrest, and had no probable cause to believe that an offense had occurred or that Kyle
2 Flynn had committed it.

3 103. Kyle Flynn was delivered to the Temporary Holding Facility located beneath
4 Levi's Stadium where Kyle Flynn was held for over an hour, including being placed in a total
5 body restraint by Officer Fraser for at least thirty to forty minutes. Kyle Flynn was subsequently
6 delivered to the Santa Clara County Main Jail in San Jose, California and released that same day.

7 104. On November 12, 2017, Ms. Alcarez was seized and arrested while at Levi's
8 Stadium by defendants Rodgers and Cusimano, maliciously and without warrant or order of
9 commitment or any other legal authority of any kind, when Ms. Alcarez had not committed any
10 crime or public offense. Defendants did not accuse Ms. Alcarez of committing any offense at the
11 time of arrest, and had no probable cause to believe that an offense had occurred or that Ms.
12 Alcarez had committed it.

13 105. Ms. Alcarez was delivered to the Temporary Holding Facility located beneath
14 Levi's Stadium. Ms. Alcarez was subsequently delivered to the Santa Clara County Main Jail in
15 San Jose, California and released that same day.

16 106. On November 12, 2017, Patrick Flynn was seized and arrested while at Levi's
17 Stadium by defendants Rodgers, Malae, Nelson and Del Moral, maliciously and without warrant
18 or order of commitment or any other legal authority of any kind, when Patrick Flynn had not
19 committed any crime or public offense. Defendants did not accuse Patrick Flynn of committing
20 any offense at the time of arrest, and had no probable cause to believe that an offense had
21 occurred or that Patrick Flynn had committed it.

22 107. Patrick Flynn was delivered to the Temporary Holding Facility located beneath
23 Levi's Stadium. Subsequently, Patrick Flynn was delivered to the Santa Clara County Main Jail
24 in San Jose, California, where he was imprisoned until November 13, 2018, when he secured his
25 release by posting bail.

26 108. As a direct and proximate result of defendants' conduct, Patrick Flynn was
27 compelled to secure his release by a bail bond for which he was required to expend money to his
28 damage in an amount according to proof at the time of trial.

1 Authority knew or should have known that their failure to train Santa Clara Police Department,
2 Mountain View Police Department, and Gilroy Police Department officers adequately in the
3 requirements of the First, Fourth, Fifth, and Fourteenth Amendments to the United States
4 Constitution would cause plaintiffs severe emotional distress. Defendants Santa Clara, the Santa
5 Clara Police Department, Mountain View, the Mountain View Police Department, Gilroy, the
6 Gilroy Police Department, and the Stadium Authority knew or should have known that their
7 failure to train Santa Clara Police Department, Mountain View Police Department, and Gilroy
8 Police Department officers adequately in what is required to arrest a person would cause
9 plaintiffs severe emotional distress.

10 117. As a direct and proximate result of defendants' conduct, plaintiffs suffered severe
11 emotional distress, including highly unpleasant mental reactions, profound shock, fright, horror,
12 grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry.

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PRAYER FOR RELIEF

Plaintiffs have been damaged by the foregoing acts of defendants, and each of them, in an amount according to proof at trial. Plaintiffs seek as relief, without limitation, the following:

1. General damages;
2. Special damages;
3. Compensatory damages;
4. Punitive damages as allowed by law;
5. Civil penalties;
6. Attorneys' fees as allowed by law;
7. Costs of suit;
8. Interest as allowed by law; and
9. Such other and further relief as the Court may deem proper.

DATED: December 21, 2018

McMANIS FAULKNER

/s/ James McManis

JAMES McMANIS

Attorneys for Plaintiffs,
PATRICK FLYNN, KYLE FLYNN, and
LAUREN ALCAREZ

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Amendment VII to the United States Constitution and by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: December 21, 2018

McMANIS FAULKNER

/s/ James McManis

JAMES McMANIS

Attorneys for Plaintiffs,
PATRICK FLYNN, KYLE FLYNN, and
LAUREN ALCAREZ