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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SACRAMENTO**

10 PHILIP DEBEAUBIEN,

NO.

11 Plaintiff,

**COMPLAINT FOR VIOLATION OF  
CIVIL RIGHTS AND STATE LAW**

**(Unlimited Civil)**

12 vs.

13 STATE OF CALIFORNIA; CALIFORNIA  
14 HIGHWAY PATROL; CHP  
15 LIEUTENANT TODD BROWN; CHP  
16 SERGEANT REGGIE WHITEHEAD;  
17 CHP CHIEF BRENT NEWMAN; and  
18 DOES 1 through 25, inclusive,

(1) 42 U.S.C. section 1983 – Violation of Substantive Due Process rights; (2) 42 U.S.C section 1983 – Ratification; (3) Professional Negligence – Failure to provide *Tarasoff* warning; (4) Negligence – Violation of Mandatory Duty; (5) Negligence – Special Relationship doctrine; (6) Negligent Entrustment of Firearm; (7) Negligence – Failure to Supervise.

19 Defendants.

**JURY TRIAL DEMANDED**

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22 Plaintiff complains and alleges as follows:

23 **I. INTRODUCTION**

24 1. This case arises from the shooting and attempted murder of Philip Debeaubien on  
25 Sept. 3, 2018, by now-deceased CHP Officer Brad Wheat (Hereinafter “Wheat”). Wheat  
26 killed himself in the same incident after fatally shooting his estranged wife, Mary Wheat  
27 (hereinafter “Mary”), and severely wounding Debeaubien. The shootings occurred in and in  
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1 front of Debeaubien's business, Get Ripped Nutrition, located at 11310 Prospect Drive, #20,  
2 Jackson, California in Amador County.

3 2. Although Wheat was off-duty and not acting under color of law, under the facts  
4 of this case, defendants are both legally and morally responsible for Wheat's conduct. Wheat  
5 shot Debeaubien with his department-issued firearm and department-issued hollow-point  
6 ammunition.

7 3. Before the shooting, Defendants had actual and constructive knowledge of  
8 Wheat's homicidal inclinations toward Debeaubien. Defendants also had actual and  
9 constructive knowledge of Wheat's mental imbalances, as before the shooting they had  
10 taken away Wheat's firearm and placed him on limited duty. Such knowledge was derived  
11 from multiple sources including Brad Wheat's statements and writings, information obtained  
12 by a CHP psychologist, other CHP officers, law enforcement agencies and citizens.

13 4. Defendants also allowed Wheat to use his status as a CHP officer to access  
14 confidential law enforcement databases and to obtain other information about Debeaubien so  
15 that Wheat could hunt him down.

16 5. Despite that knowledge, defendants never warned Debeaubien of the above threat  
17 to his life.

18 6. Inexplicably and unbeknownst to Debeaubien, days before the shooting, the CHP  
19 defendants returned the murder weapon and ammunition used for the shooting to Wheat.

20 7. Defendants never attempted to warn or alert either Mary or Debeaubian that they  
21 had re-armed Wheat.

22 8. Defendants consciously chose to not investigate responsibility for this incident,  
23 preferring to avoid potential negative publicity rather than address defective policies and  
24 procedures that could put other potential victims at risk from other unbalanced CHP officers.

25 9. Debeaubien was shot in the left shoulder, causing significant structural, muscular  
26 and neurological damage. Debeaubien also injured his knee and suffered severe emotional  
27 trauma and injury as a result of the incident. Debeaubien's injuries are of a permanent and  
28 life-changing nature.

1 **II. VENUE/ JURISDICTION**

2 10. Venue is appropriate in Sacramento County Superior Court because the  
3 California Highway Patrol is a state agency based in Sacramento. Additionally, it is believed  
4 that several of the defendants worked out of the Valley Division Office in Sacramento.

5 **III. PARTIES**

6 11. During all times mentioned in this Complaint, plaintiff Philip Debeaubien was,  
7 and is, a United States citizen and is a resident of the County of Amador, California.

8 12. Defendant State of California is a public entity within the definition of California  
9 Government Code § 811.2. Pursuant to California Government Code § 945, public entities  
10 are subject to suit. Defendant State of California operates and manages the California  
11 Highway Patrol.

12 13. Defendant California Highway Patrol is a public entity within the definition of  
13 California Government Code § 811.2 and subject to suit under the Government Code.

14 14. Defendant Todd Brown (hereinafter, "Brown") was employed by the California  
15 Highway Patrol as a lieutenant. At all relevant times he was acting in the course and scope  
16 of that employment and under color of state law. Brown is being sued in his individual  
17 capacity.

18 15. Defendant Reggie Whitehead (hereinafter, "Whitehead") was employed by the  
19 California Highway Patrol as a sergeant. At all relevant times he was acting in the course  
20 and scope of that employment and under color of state law. Whitehead is being sued in his  
21 individual capacity.

22 16. Defendant Brent Newman (hereinafter, "Newman") was employed by the  
23 California Highway patrol as a chief. At all relevant times he was acting in the course and  
24 scope of that employment and under color of state law. Newman is being sued in his  
25 individual capacity.

26 17. The true name and identity of defendant Doe 1 is presently unknown to plaintiff.  
27 Defendant Doe 1 was the mental health professional who met with Wheat and assessed his  
28 mental state in connection with his firearm being taken away in August 2018. It is unknown

1 at present whether Doe 1 is an employee of or contracts with the California Highway Patrol.  
2 Plaintiff will seek to amend this Complaint as soon as the true name and identity of  
3 defendant Doe 1 has been ascertained. At all relevant times Doe 1 was acting in the course  
4 and scope of his or her employment or agency with the CHP and under color of state law.

5 18. The true names and identities of defendant Does 2 through 5 are presently  
6 unknown to plaintiff. Plaintiff alleges that each defendant Does 2 through 5 was also a  
7 mental health professional employed by or contracting with the California Highway Patrol  
8 and also was responsible for the assessment and CHP decision-making regarding Wheat's  
9 firearm status during all relevant times pled herein. Plaintiff will seek to amend this  
10 Complaint as soon as the true names and identities of defendant Does 2 through 5 have been  
11 ascertained. At all relevant times Does 2 through 5 were acting in the course and scope of  
12 their employment or agency with the CHP and under color of state law.

13 19. The true names and identities of defendant Does 6 and 7 are presently unknown  
14 to plaintiff. Plaintiff alleges that each of defendant Does 6 and 7 is an assistant chief  
15 employed by the California Highway Patrol at the time of the conduct alleged and was  
16 responsible for the supervision of the Amador County Office, and was responsible for the  
17 training supervision, discipline and retention of Wheat. Plaintiff will seek to amend this  
18 Complaint as soon as the true names and identities of defendant Does 6 and 7 have been  
19 ascertained.

20 20. The true names and identities of defendant Does 8 through 10 are presently  
21 unknown to plaintiff. Plaintiff alleges that each of defendant Does 8 through 10 was a  
22 supervisor employed by the California Highway Patrol at the time of the conduct alleged  
23 and was individually responsible for the training, supervision, discipline and retention of  
24 CHP officers, including Wheat. Plaintiff asserts that the failure to properly train, supervise,  
25 discipline and retain Wheat was a cause in fact of the injuries alleged herein. Plaintiff will  
26 seek to amend this Complaint as soon as the true names and identities of defendant Does 8  
27 through 10 have been ascertained.

28 21. The true names and identities of defendant Does 11 through 15 are presently

1 unknown to plaintiff. Plaintiff alleges that each of defendant Does 11 through 15 was  
2 employed by the California Highway Patrol at the time of the conduct alleged and was  
3 responsible for the promulgation of the customs, policies and practices which caused the  
4 acts alleged herein and which resulted in plaintiff's injuries. Plaintiff will seek to amend this  
5 complaint as soon as the true names and identities of defendant Does 11 through 15 have  
6 been ascertained.

7 22. The true name and identity of defendant Doe 16 is presently unknown to plaintiff.  
8 Plaintiff alleges that defendant Doe 16 was employed by the California Highway Patrol as  
9 the Head of the Valley Division at the time of the conduct alleged and was responsible for  
10 the supervision and training of Does 1 through 15 and promulgation of the customs, policies  
11 and practices which caused the acts alleged herein and which resulted in plaintiff's injuries.  
12 Plaintiff will seek to amend this Complaint as soon as the true name and identity of  
13 defendant Doe 16 has been ascertained.

14 23. The true names and identities of defendant Does 17 through 25 are presently  
15 unknown to plaintiff. Plaintiff alleges that each of defendant Does 17 through 25 were other  
16 California Highway Patrol officers, employees or agents whose conduct was responsible for  
17 the acts alleged herein with resulted in plaintiff's injuries. Plaintiff will seek to amend this  
18 Complaint as soon as the true names and identities of defendant Does 17 through 25 have  
19 been ascertained.

20 24. Each of the Does identified above acted in the course and scope of employment  
21 or agency with the CHP and under color of state law.

22 **IV. COMPLIANCE WITH GOVERNMENT TORT CLAIM PROCEDURES**

23 25. Plaintiff filed a timely government tort claim with the Department of General  
24 Services on Oct. 29, 2018, as a prerequisite to the state law claims alleged herein. They  
25 rejected that claim in a letter dated Dec. 4, 2018, stating that the claim involved complex  
26 issues beyond the scope of analysis and legal interpretation of the department and would  
27 best be determined by the courts.

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1 **V. FACTUAL ALLEGATIONS**

2 **Background Information**

3 26. Higher rates of domestic violence and suicide in law enforcement families are  
4 well documented. One study indicated domestic violence is two to four times more common  
5 among police families than the general population. The problem is compounded by the  
6 “code of silence” as well as by increased rates of alcoholism in law enforcement.

7 27. Officers’ possession of firearms, combined with the knowledge that their crimes  
8 likely won’t be rigorously investigated, further serve to enable officer-involved domestic  
9 violence. Police agencies such as the California Highway Patrol are aware of the problem, or  
10 should be, but often attempt to hide it rather than take measures to address and ameliorate it.

11 28. The CHP has inadequate policies to protect those at risk from domestic violence  
12 at the hands of their officers.

13 29. The CHP inadequately addresses and investigates acts of domestic violence  
14 perpetrated by its sworn personnel and specifically fails to warn those at risk, and gives the  
15 perpetrators the tools to carry out and/or intimidate their victims of domestic violence.

16 30. The CHP has inadequate safeguards regarding the misuse of confidential personal  
17 information in databases and, in particular, it fails to assess the predictable misuse of those  
18 databases by officers experiencing domestic upheaval.

19 31. The CHP has a practice of discouraging local law enforcement agencies from  
20 aggressively pursuing acts of domestic violence perpetrated by its officers by falsely  
21 representing that they are or will be in the process of adequately addressing the problem  
22 internally.

23 32. The CHP also has inadequate processes to ensure that law enforcement officers  
24 equipped with firearms are fit for duty and/or mentally fit and/or do not pose a risk to  
25 themselves and others, particularly with regard to likely domestic violence situations.

26 33. In failing to take the requisite steps needed to prevent the domestic violence that  
27 occurred in this case, named and Doe supervisors were more concerned with avoiding  
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1 adverse attention directed at their officers and, therefore, themselves, than with the safety of  
2 citizens, whom their by actions or lack thereof have placed at greater risk.

3 34. There are many documented acts of criminal domestic violence by CHP Valley  
4 Division Officers in counties including Sacramento, Placer, Yolo, El Dorado and Amador.

#### 5 **Pre-Shooting Information**

6 35. Debeaubien was 44 years old at the time of the shooting. He owned a gym and  
7 nutritional supplement store in Amador County and worked as a fitness trainer. At the time  
8 of the conduct alleged, Debeaubien was separated from his wife.

9 36. Mary was Wheat's estranged wife who had separated from her husband and was  
10 living with Debeaubien at the time of the incident.

11 37. Wheat was openly distraught about the disintegration of his marriage. His work  
12 performance was obviously suffering. He was unwilling to accept the fact that his marriage  
13 had ended and blamed Debeaubien for the separation, although, in point of fact, the marriage  
14 had been crumbling for several years.

15 38. By July of 2018, Wheat was aware that Debeaubien and Wheat's estranged wife  
16 were romantically involved. This angered Wheat, and he began stalking Debeaubien.  
17 Debeaubien saw signs that someone was watching him and evidence of an attempt to break  
18 into his home, which he attributed to Wheat. Wheat's stalking activities were assisted by his  
19 illegal access of law enforcement databases. He was further assisted by his fellow officers.

20 39. As of August 2, 2018, Mary was living with Debeaubien at a house owned by her  
21 father in Garden Valley, California. On that date, as Wheat was leaving his home he  
22 encountered Mary's brother who was his next door neighbor. Mary's brother spoke with  
23 Wheat and learned that Wheat was armed, apparently intoxicated and heading to the Garden  
24 Valley home for a potentially violent confrontation. Concerned by this, Mary's brother  
25 called 911, as well as his niece who warned Mary. Wheat stormed into the Garden Valley  
26 home, finding only his wife, who he accused of being a "whore", among other things, and  
27 took her cellphone charger. Debeaubien was not at the Garden Valley house while Wheat  
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1 was there. Wheat left the Garden Valley house before El Dorado County sheriff's deputies,  
2 responding to the 911 call, arrived.

3 40. The CHP and defendants Sergeant Whitehead and Lieutenant Brown became  
4 aware of the August 2<sup>nd</sup> incident. It is believed that on or about Aug. 4, 2018, Sergeant  
5 Whitehead and Doe 1 (a department psychologist) met with Wheat for an assessment, which  
6 found that he was unfit for patrol duty on the basis of his assaultive behavior and  
7 uncontrolled anger toward his estranged wife and Debeaubien.

8 41. As a result of the assessment, Wheat was initially suspended and then put on  
9 desk duty and his service weapon was taken away. All of the aforementioned actions were  
10 taken with the actual or constructive knowledge of Lieutenant Brown, Chief Newman and  
11 the other Doe defendants.

12 42. The only firearm which Wheat possessed was his CHP issued semi-automatic  
13 handgun.

14 43. Doe 1 never gave a *Tarasoff* warning to either plaintiff or Mary Wheat about the  
15 bona fide threat that Brad Wheat presented to their safety.

16 44. Not Lieutenant Brown, Sergeant Whitehead, Chief Newman nor any of the Doe  
17 defendants contacted either Debeaubien or Mary for additional information necessary to  
18 determine the extent of the risk posed by Wheat as an armed CHP officer.

19 45. Despite the August 2<sup>nd</sup> domestic incident and the August 4<sup>th</sup> fit-for-duty  
20 assessment, several days before the Sept. 3, 2018 shooting, defendants gave Wheat the  
21 firearm and bullets used in the shooting.

22 46. Defendants were motivated in part by their desire to avoid further bad publicity  
23 because weeks earlier a CHP officer assigned to the same small CHP office was arrested for  
24 child sexual abuse. That arrest received extensive news coverage. They also were  
25 improperly motivated to protect Brad Wheat because his father had been a patrol officer  
26 assigned to the same office. Plaintiff learned considerably more about these events in the  
27 aftermath than he knew at the time.

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1 47. In returning his firearm and bullets, defendants, including Does 1 through 5,  
2 failed to properly assess Wheat's fitness for duty and/or mental capacity.

3 48. No defendant notified either Debeaubien or Mary that the department had re-  
4 armed Wheat.

5 49. Debeaubien and Mary had previously learned that Wheat's department issued  
6 firearm had been taken away from him and both knew that Wheat had no personal weapons.  
7 Mary and Debeaubien's actions leading up to the shooting were premised on the belief  
8 Wheat remained unarmed.

9 50. After the August 2<sup>nd</sup> incident with Wheat, Debeaubien and Mary moved out of  
10 the Garden Valley house. On August 31, 2018, re-armed and re-activated to full duty,  
11 Wheat broke two (2) windows at a house in Sutter Creek belonging to a friend of  
12 Debeaubien where Debeaubian and Mary were staying. Debeaubien and Mary were not  
13 there at that time, as they were away for the Labor Day holiday. On the next day, September  
14 1, 2018, just two (2) days before the shooting, Wheat then broke all of the windows of that  
15 house. The owner of that house then reported these incidents to the Sutter Creek Police  
16 Department. That report identified Wheat as the likely perpetrator and as a CHP officer.  
17 Upon information and belief, the Sutter Creek Police Department shared this information  
18 with the California Highway Patrol. Despite these new violent acts, CHP continued to allow  
19 Wheat to have his firearm and operate under the mantel of his CHP officer status.

20 51. Wheat had been texting and calling Mary for several days. Mary had not  
21 responded to those entreaties.

### 22 **The Shooting**

23 52. Monday, September 3, 2018, was Labor Day. Debeaubien and Mary had  
24 returned to Amador County, after being away for the weekend, and decided to stop at  
25 Debeaubien's nutrition business at around 8:00 p.m. in Jackson, Amador County.

26 53. At around 10:45 p.m., Wheat arrived at the business and, without announcing  
27 himself, started banging on the back door. Although Debeaubien suspected that it might be  
28 Wheat banging on the back door, he wasn't sure.

1       54.     As Debaubien and Mary saw Wheat pulling his car into the front parking lot,  
2 their fear was confirmed that it was Wheat who had been banging on the back door.  
3 Debaubien then called 911. At that point neither Debaubien nor Mary had an inkling that  
4 Wheat had been re-armed.

5       55.     Debeaubien had more than an inkling that Wheat had a weapon when, Wheat,  
6 who had parked and gotten out of his car, shot out the large, front window with his CHP  
7 semi-automatic pistol.

8       56.     Wheat entered Debeaubien’s store through the shot-out window while  
9 brandishing the gun.

10      57.     Wheat chased Debeaubien around the store, shooting him through the shoulder,  
11 narrowly missing his aorta. Wheat took aim again, but his gun jammed. Despite his injuries,  
12 Debeaubien charged at Wheat, eventually forcing him to the ground and causing Wheat to  
13 drop the gun. Mary picked the gun up and ran outside. His hands slick with his own blood,  
14 Debeaubien lost his grip on Wheat, who got up and ran after Mary. Debeaubien yelled at her  
15 to shoot him, but she did not (or could not). Just after exiting the front window that Wheat  
16 had shot out, Debaubian heard the gunshots that ended Mary and Wheat’s lives.

17      58.     The fatal shootings were recorded by cell phone video by an uninvolved third  
18 party who had been sleeping in his car near the business and had been awoken by the initial  
19 gunfire. That video is in the possession of the Amador County Sheriff’s Department. The  
20 Amador County Sheriff’s Department has made the video available to the CHP but not to  
21 plaintiff.

22      59.     The Amador County Sheriff’s Department is also in possession of Wheat’s  
23 personal journal which, upon information and belief, includes his homicidal inclinations.  
24 The Amador County Sheriff’s Department has also made the journal available to the CHP.

#### **Breach of Legal Duties**

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26      60.     California law, including specifically Government Code section 1031, creates a  
27 duty by the defendants to take steps and put in place processes to ensure that the law  
28 enforcement officers they entrust with firearms are fit for duty and do not pose a risk to

1 themselves and others. Defendants failed to take those steps and those failures led to  
2 plaintiff's injury and damages.

3 61. California law and federal civil rights law creates a duty by the defendants to  
4 take steps and action to prevent harm when defendants have caused a situation that could  
5 lead to an individual's harm. Defendants created such a dangerous condition/special  
6 relationship in this case and failed to take steps and action which led to plaintiff's injury and  
7 damages.

8 62. Defendants had knowledge that Brad Wheat wished to seriously harm  
9 Debeaubien and Mary and that he was mentally unfit to carry a firearm. Instead of taking  
10 steps to prevent that harm and ensure compliance with the law, Defendants entrusted Brad  
11 Wheat with the firearm and ammunition (hollow point – which are designed to inflict greater  
12 injury and damage) he used to kill Mary and seriously injure Debeaubien.

13 63. Defendants have also failed to investigate and/or review the evidence in this case  
14 (including Wheat's journal and cell phone video) for either the purpose of undertaking  
15 appropriate discipline or instituting changes in policy, training and practices to lessen the  
16 likelihood of a similar tragedy re-occurring.

### 17 **Damages**

18 64. Debeaubien was shot in the left shoulder, causing significant structural, muscular  
19 and neurological damage. The injuries were complicated by the multiple fragments  
20 produced by the hollow point round which struck him. As a result, plaintiff had two (2)  
21 surgeries on his shoulder and has been informed that he may need a shoulder replacement.  
22 He is still receiving physical therapy for the shoulder injury.

23 65. Debeaubien also injured his right knee in attempting to fend off Wheat's attack,  
24 suffering a torn meniscus which was surgically repaired.

25 66. Debaubien sustained permanent nerve damage from the gun shot.

26 67. As would be expected, Debeaubien also suffered emotional distress as a result of  
27 the incident and is undergoing continuing counseling for post-traumatic stress disorder.

28 68. Debaubien was never emotionally able to re-open the now closed nutrition store.

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2 69. Debeaubien's injuries are of a permanent and life-changing nature.  
3 Debeaubien's damages include pain and suffering, nerve damage, loss of movement,  
4 internal injuries, medical bills and costs, loss of enjoyment of life, lost employment  
5 opportunities and emotional distress.

6 70. It is believed that the cost of Debeaubian's medical treatment thus far is in excess  
7 of half a million dollars.

## 8 **VI. CAUSES OF ACTION**

### 9 **FIRST CAUSE OF ACTION**

#### 10 **Individual Liability/Violation of Substantive Due Process Rights** 11 **(Actionable under 42 U.S.C. §1983)**

12 *(Against Defendants Brown, Whitehead and Does 1 through 5 and 17 through 25)*

13 71. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 70, as  
14 though fully set forth herein.

15 72. The aforementioned acts of defendants CHP Lieutenant Brown and Sergeant  
16 Whitehead and Does 1-5 and 17-25, as alleged herein, including, but not limited to,  
17 defendants providing Wheat with the instrumentalities to carry out his attack of plaintiff and  
18 Mary and allowing Wheat to continue to function under the protections of being a law  
19 enforcement officer created a danger that would not have existed without defendants  
20 affirmative acts.

21 73. In engaging in said acts, defendants acted with deliberate indifference to the  
22 foreseeable harm and danger plaintiff would face and with deliberate indifference to  
23 plaintiff's constitutional rights, including, his right to substantive due process as protected  
24 by the Fourteenth Amendment of the United States Constitution.

25 74. As a direct and proximate result of the aforementioned actions of defendants,  
26 plaintiff suffered injuries and damages as alleged herein.

27 75. The aforementioned acts and/or omissions of said defendants were willful,  
28 intentional, wanton, reckless and/or accomplished with a conscious disregard of plaintiff's  
rights entitling plaintiff to an award of punitive damages against the individual defendants.

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**SECOND CAUSE OF ACTION**  
**Individual Liability/Ratification**  
**(Actionable under 42 U.S.C. §1983)**

*(Against Defendants Newman, Brown, Whitehead and Does 6 through 16)*

76. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 75, as though fully set forth herein.

77. The aforementioned acts of defendants Newman, Brown, Whitehead and Does 6-16 as alleged herein, including but not limited to failing to investigate the shooting and by failing to promulgate policies and establish practices to prevent and deal with domestic violence and other related abuses by law enforcement personnel as alleged herein, constituted ratification of the violation of Debeaubien's constitutional rights.

78. The inaction of said defendants was a direct and proximate cause of the injuries suffered by plaintiff.

79. The aforementioned acts and/or omissions of said defendants were willful, intentional, wanton, reckless and/or accomplished with a conscious disregard of plaintiff's rights entitling plaintiff to an award of punitive damages against the individual, non-entity defendants.

**THIRD CAUSE OF ACTION**  
**Professional Negligence – Failure to provide *Tarasoff* Warning**  
**(Actionable under Government Code section 815.2 et seq.)**  
*(Against Defendants State of California, CHP and Does 1-5)*

80. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 79, as though fully set forth herein.

81. As professional mental health providers defendants Does 1 through 5 owed plaintiff a duty of care, specifically to warn him if they knew that Wheat posed a serious danger of violence towards plaintiff.

82. On or about August 4, 2018 and at all times relevant said Defendants knew that Wheat posed a serious danger of violence towards plaintiff.

1 83. Defendants breached the duty of care owed to plaintiff in that defendants  
2 provided no warnings, at all times relevant, to plaintiff despite Wheat's violent actions and  
3 intentions toward plaintiff.

4 84. Said breach led to plaintiff being attacked and shot by Wheat and proximately  
5 caused the injuries and damages alleged herein.

6 85. Defendants State of California and California Highway Patrol are liable for the  
7 conduct of Does 1 through 5 as each was acting under color of law and under the course and  
8 scope of their employment or agency with Defendant CHP.

9 **FOURTH CAUSE OF ACTION**

10 **Negligence – Violation of Mandatory Duty**

11 **(Actionable under Government Code section 815.6 et seq.)**

12 *(Against Defendants State of California, CHP and Does 11-16)*

13 86. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 85, as  
14 though fully set forth herein.

15 87. Defendants State of California and CHP, through their agents and employees,  
16 and Does 11-16 owed plaintiff and the general public a duty of care to ensure that its law  
17 enforcement personnel are mentally and physically fit to exercise police power and carry a  
18 firearm pursuant to California law including but not limited to Government Code section  
19 1031(f) which states that a peace officer shall, at a minimum, “[b]e found to be free from  
20 any physical, emotional, or mental condition that might adversely affect the exercise of the  
21 powers of a police officer.”

22 88. This duty is intended to prevent the employment and/or continued employment  
23 of individuals as law enforcement personnel who are mentally unstable and pose a risk of  
24 harm to members of the general public.

25 89. Defendants breached the duty of care owed to plaintiff by engaging in the acts  
26 and/or omissions alleged above, including but not limited to, providing Wheat when he was  
27 mentally unstable and violent with a firearm and ammunition days prior to the shooting, and  
28 providing no warnings to plaintiff despite Wheat's known violent actions and intentions  
toward plaintiff. Defendants also failed to promulgate policies and establish practices to



1 ensure compliance with the Government Code and deal with domestic violence and other  
2 related abuses by law enforcement personnel as alleged herein.

3 90. Said breach led to plaintiff being attacked and shot by Brad Wheat and  
4 proximately caused the injuries and damages alleged herein.

5 **FIFTH CAUSE OF ACTION**

6 **Negligence – Special Relationship**

7 **(Actionable under Government section 815.2 et seq.)**

8 *(Against Defendants State of California, CHP, Brown, Whitehead and Does 17 through 25)*

9 91. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 90, as  
10 though fully set forth herein.

11 92. The aforementioned acts of defendants CHP Lieutenant Brown and CHP  
12 Sergeant Whitehead and Does 17-25, as alleged herein, including, but not limited to,  
13 defendants providing Wheat with the instrumentalities to carry out his attack of plaintiff and  
14 Mary and allowing Wheat to continue to function under the protections of being a law  
15 enforcement officer, created a danger that would not have existed without defendants'  
16 affirmative acts.

17 93. In engaging in said acts, defendants owed plaintiff a duty of care arising out of  
18 the special relationship they created.

19 94. Defendants breached said duty. As a direct and proximate result of said breach,  
20 plaintiff suffered injuries and damages as alleged herein.

21 95. Defendants State of California and CHP are liable for the conduct of defendants  
22 Brown, Whitehead and Does 17 through 25 as each was acting under color of law and within  
23 the course and scope of their employment or agency with Defendant CHP.

24 **SIXTH CAUSE OF ACTION**

25 **Negligent Entrustment of Firearm**

26 **(Actionable under Government section 815.2 et seq.)**

27 *(Against Defendants State of California, CHP, Brown, Whitehead and*  
28 *Does 1 through 5 and 17 through 25)*

96. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 95, as  
though fully set forth herein.

1 97. Defendants owed plaintiff a duty of care to not entrust or provide a firearm to an  
2 individual who was going to cause injury or death with the firearm.

3 98. The aforementioned acts of defendants CHP Lieutenant Brown, CHP Sergeant  
4 Whitehead and Does 1-5 and 17-25, as alleged herein, including, but not limited to,  
5 providing Wheat, when he was mentally unstable and violent, with a firearm and  
6 ammunition days prior to the shooting, and providing no warnings to plaintiff despite  
7 Wheat's known violent actions and intentions toward plaintiff, breached said duty.

8 99. As a direct and proximate result said breach, plaintiff suffered injuries and  
9 damages as alleged herein.

10 100. Defendants State of California and CHP are liable for the conduct of defendants  
11 Brown, Whitehead and Does 1 through 5 and 17 through 25 as each was acting under color  
12 of law and under the course and scope of their employment or agency with Defendant CHP.

13 **SEVENTH CAUSE OF ACTION**

14 **Negligent Supervision**

15 **(Actionable under Government section 815.2)**

16 *(Against Defendants Newman, Brown, Whitehead and Does 6 through 10)*

17 101. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 100, as  
18 though fully set forth herein.

19 102. Defendants owed plaintiff a duty of care to supervise law enforcement personnel  
20 in such a manner to comply with the law and ensure that the act and/or omissions alleged  
21 herein did not occur.

22 103. The aforementioned acts of defendants CHP Chief Newman, CHP Lieutenant  
23 Brown, CHP Sergeant Whitehead and Does 6-10, as alleged herein, including, but not  
24 limited to, failing to supervise, investigate and discipline Wheat and failing to supervise  
25 other Does to ensure compliance with the law and prevent domestic violence incidents by  
26 law enforcement personnel, breached the owed duty of care.

27 104. As a direct and proximate result said breach, plaintiff suffered injuries and  
28 damages as alleged herein.

1 105. Defendants State of California and CHP are liable for the conduct of defendants  
2 Newman, Brown, Whitehead and Does 6 through 10 as each was acting under color of law  
3 and under the course and scope of their employment or agency with Defendant CHP.

4 **VII. PRAYER FOR RELIEF**

5 Wherefore, plaintiff prays for the following relief:

6 1. For compensatory, general and special damages against each defendant, jointly  
7 and severally, in the amount proven at trial;

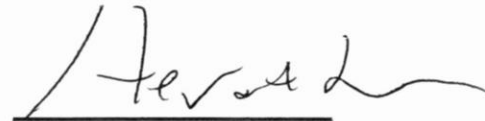
8 2. For punitive and exemplary damages against each individual, non-entity  
9 defendant in an amount appropriate to punish defendants and deter others from engaging in  
10 similar misconduct;

11 3. For costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and  
12 as otherwise authorized by statute or law;

13 4. For such other relief, including injunctive and/or declaratory relief, as the Court  
14 may deem proper.

15  
16 Dated: May 29, 2019

Respectfully submitted,

17  
18 

19 Stewart Katz,  
20 Attorney for Plaintiff

21  
22 **DEMAND FOR TRIAL BY JURY**

23 Plaintiff Philip Debeaubien hereby demands trial by jury.

24  
25 Dated: May 29, 2019

26 

27 Stewart Katz,  
28 Attorney for Plaintiff