

FILED

AUG - 7 2015

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CLERK OF THE SUPERIOR COURT
[Signature]
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CASE MANAGEMENT CONFERENCE
DATE: 12-08-2015
TIME: 9:00 AM
PLACE: Courtroom 14, 2nd Floor
1200 Aguajito Rd. Monterey CA 93940

7 **SUPERIOR COURT OF CALIFORNIA**

8 **COUNTY OF MONTEREY – UNLIMITED JURISDICTION**

9 JENNIFER DA SILVA,

10 Plaintiff,

11 vs.

12 CITY OF CARMEL-BY-THE-SEA; LUKE E.
13 POWELL, individually and in his official
14 capacity as a Police Officer for the CITY OF
15 CARMEL-BY-THE-SEA; COUNTY OF
16 MONTEREY; MONTEREY COUNTY
17 SHERIFF’S OFFICE, and DOES 1 through 50,
inclusive,

Defendants.

Case No. M 132929

COMPLAINT FOR DAMAGES

[JURY TRIAL DEMANDED]

18 Plaintiff JENNIFER DA SILVA, formerly known as Jennifer Little (“Plaintiff”) hereby
19 alleges as follows:

20 **INTRODUCTION**

21 This case arises from a non-violent, verbal dispute between two parents regarding their
22 eleven year-old daughter’s cell phone use that was unnecessarily escalated into an incident of
23 excessive force and unlawful detainment, whereby Plaintiff suffered serious and permanent
24 bodily injury and other damages.

25 **PARTIES**

26 1. Plaintiff is a resident of Carmel, California in the County of Monterey and a
27 citizen of the United States of America. At the time of the incidents complained of herein,
28 Plaintiff was a 37-year-old female with no prior criminal record.

1 2. Defendant CITY OF CARMEL-BY-THE-SEA is a local entity in the State of
2 California within the meaning of Part 3 (beginning with § 900) of Division 3.6 of Title 1 of the
3 Government Code. The claims herein are brought against CITY OF CARMEL-BY-THE-SEA by
4 and through the acts and omissions of its Police Sergeant, Defendant LUKE E. POWELL.

5 3. Defendant LUKE E. POWELL (“SERGEANT POWELL”) was a Police Sergeant
6 with the Carmel Police Department employed by CITY OF CARMEL BY-THE-SEA at all
7 relevant times mentioned herein. At all times material to the incidents giving rise to Plaintiff’s
8 claims in this matter, SERGEANT POWELL was acting within the course and scope of his
9 employment for CITY OF CARMEL BY-THE-SEA. The claims herein are brought against
10 SERGEANT POWELL in his individual capacity and in his official capacity as a Police Sergeant
11 for the CITY OF CARMEL BY-THE-SEA.

12 4. Defendant COUNTY OF MONTEREY is a public entity, duly organized and
13 existing under the laws of the State of California. Under its authority, Defendant COUNTY OF
14 MONTEREY operates and manages the Monterey County Jail and is, and was at all relevant
15 times mentioned herein, responsible for the actions and/or inactions and the policies, procedures,
16 practices, and customs of the MONTEREY COUNTY SHERIFF’S OFFICE. COUNTY OF
17 MONTEREY employs 50 or more persons.

18 5. Defendant MONTEREY COUNTY SHERIFF’S OFFICE (the “SHERIFF’S
19 OFFICE”) is a public entity, duly organized and existing under the laws of the State of California.
20 Sheriff Scott Miller was the duly elected Sheriff of COUNTY OF MONTEREY at all times
21 material to the incidents giving rise to Plaintiff’s claims in this matter. The SHERIFF’S OFFICE
22 is responsible for the day-to-day operations of Monterey County Jail, including promulgating
23 policies and procedures for the intake and detention of inmates and all other procedures relating
24 to the operation of the facilities.

25 6. The claims herein are brought against Defendants COUNTY OF MONTEREY
26 and the SHERIFF’S OFFICE, in part, by and through the acts and omissions of DOE 1, a female
27 employee of COUNTY OF MONTEREY who was working at Monterey County Jail during
28 Plaintiff’s intake and incarceration complained of herein. At all times mentioned herein, DOE 1

1 was the agent of both COUNTY OF MONTEREY and the SHERIFF'S OFFICE and was acting
2 within the course and scope of this agency.

3 7. Plaintiff is ignorant of the true names and capacities of defendants DOES 1
4 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is
5 informed and believes and thereon alleges that each of these fictitiously named defendants is
6 responsible in some manner for the occurrences alleged in this complaint. Plaintiff will seek
7 leave of the Court to amend her complaint to state the names and capacities of DOES 1 through
8 50 once ascertained.

9 **JURISDICTION AND VENUE**

10 8. This action is brought pursuant to 42 U.S.C. § 1983, the Fourth and Fourteenth
11 Amendments to the United States Constitution, and by the laws and Constitution of the State of
12 California.

13 9. The amount in controversy, excluding interest and costs, exceeds the minimum
14 jurisdictional limit of this Court.

15 10. Venue is proper in this Court because all of the events alleged herein occurred
16 within the County of Monterey; Plaintiff is and was at all times mentioned herein a resident of the
17 County of Monterey; all defendants conduct operations within the County of Monterey; and all
18 witnesses either work or live within the County of Monterey.

19 **FACTS**

20 11. Plaintiff resides in Carmel, California with her daughter, Jenna, who was eleven
21 years old on the night in question. Jenna's father, Daniel Balint ("Balint"), is Plaintiff's ex-
22 husband and resides in a separate residence in Carmel, California, approximately one mile away
23 from Plaintiff's residence at the time in question. Plaintiff and Balint had been divorced for
24 approximately six years when the events complained of herein took place and they generally
25 enjoyed an amicable relationship. The shared custody agreement between Plaintiff and Balint
26 provided that Plaintiff had custody of Jenna on weekdays, while Balint had custody of Jenna on
27 weekends.

28 ///

1 12. On the evening of August 7, 2013, a Wednesday, Plaintiff and her daughter Jenna
2 had a disagreement at their house regarding Jenna's online activities via a cellular telephone that
3 had recently been given to Jenna by Balint without Plaintiff's consent. Plaintiff was concerned
4 about certain safety implications of her eleven-year-old daughter having unsupervised internet
5 access at her fingertips at all times, and threatened to take the phone away from Jenna. Being
6 upset with her mother for threatening to take her cell phone away, Jenna called her father and
7 asked him to come pick her up.

8 13. Even though it was approximately 9:00 p.m. on a weeknight, during which time
9 Plaintiff undisputedly had legal custody of Jenna, Balint drove to Plaintiff's house, picked up
10 Jenna, drove her to the house of a nearby family member (Jenna's Aunt) and left her there for the
11 night. Plaintiff protested Balint's taking of Jenna, but did not physically try to stop him.

12 14. Plaintiff subsequently called 911 and asked who she should contact to report her
13 daughter being taken by Balint in contradiction with their custody agreement. The 911 operator
14 referred Plaintiff to the SHERIFF'S OFFICE. Rather than involve the SHERIFF'S OFFICE,
15 Plaintiff decided to try to work things out directly with Balint.

16 15. Balint had not yet returned to his apartment when Plaintiff arrived. In accordance
17 with their usual custom and practice, Plaintiff entered Balint's apartment through his front door,
18 which he regularly kept unlocked, and waited for Balint to return from dropping Jenna off at her
19 nearby aunt's house.

20 16. Upon Balint's return, he and Plaintiff began to argue regarding the cell phone that
21 Balint had given Jenna and the safety issues relating to Jenna's internet access through this phone.
22 The argument, while non-violent, became heated. At one point, Plaintiff threatened to report
23 Balint's taking of Jenna in contradiction with their custody agreement. Balint responded by
24 saying he would call the police himself to report that Plaintiff was trespassing on his property. In
25 her frustration, Plaintiff encouraged Balint to call the police and then walked outside of Balint's
26 apartment to wait for the police by her vehicle.

27 17. Shortly thereafter, at approximately 10:00 p.m., two officers from the Carmel
28 Police Department arrived at Balint's residence. Sergeant Brian Pon ("Sergeant Pon") began to

1 question Plaintiff, while SERGEANT POWELL began questioning Balint (Sergeant Pon and
2 SERGEANT POWELL hereinafter collectively referred to as the “officers”). Both Plaintiff and
3 Balint confirmed that their dispute had been verbal only, and that there was no prior history of
4 domestic violence or physical altercations of any sort between them.

5 18. After questioning Balint, SERGEANT POWELL returned to Plaintiff, who was in
6 the process of giving her statement to Sergeant Pon. While Sergeant Pon had been civil in his
7 questioning of Plaintiff, SERGEANT POWELL was immediately confrontational and aggressive.
8 Plaintiff maintained a calm, respectful tone as SERGEANT POWELL repeatedly demanded to
9 know why Plaintiff was “so mad” or “so angry” despite Plaintiff’s repeated response that she was
10 not angry. Plaintiff attempted to explain to SERGEANT POWELL that she was at Balint’s
11 residence because Balint had inappropriately taken her daughter in contradiction with their
12 custody agreement, and that the whole ordeal related to a disagreement about their daughter’s cell
13 phone access. Plaintiff became disconcerted as SERGEANT POWELL repeatedly interrupted
14 her and accused her of lying.

15 19. As SERGEANT POWELL continued his aggressive questioning, Plaintiff grew
16 increasingly agitated and expressed her confusion as to why she was suddenly being interrogated
17 in this manner. Plaintiff finally stated, “OK, I need to have my attorney here. I’m sorry, I’m not
18 talking” and began to back away from the officers. At this point, SERGEANT POWELL
19 advanced towards Plaintiff, telling her to calm down and physically blocking her from moving
20 further down the driveway. Feeling threatened, Plaintiff walked towards Balint’s apartment, in
21 the hopes that Balint could help defuse the situation. SERGEANT POWELL advanced closer to
22 Plaintiff, telling her that she could not enter Balint’s apartment. As Plaintiff turned back from
23 Balint’s apartment, SERGEANT POWELL grabbed her arm and applied an arm bar takedown to
24 force Plaintiff to the ground. This takedown caused Plaintiff’s head to hit the asphalt ground with
25 such force as to give Plaintiff a black eye and open a large laceration on her forehead, which
26 would eventually require eight stitches, a CT scan, and other treatment. In the course of this
27 takedown by SERGEANT POWELL Plaintiff further suffered additional wounds to the left side
28 of her face and her arms, as well as permanent damage to her right thumb. Once on the ground,

1 Plaintiff was placed in handcuffs.

2 20. Plaintiff began to scream as she immediately felt the blood dripping from her head
3 wound down her face, into her mouth, and onto her clothes. As Plaintiff began to scream,
4 SERGEANT POWELL stated, "Do you like it? Stay right there. Stand up straight."

5 21. Balint, having emerged from his apartment upon hearing Plaintiff's screaming,
6 retrieved a towel from his residence and held it on Plaintiff's head to help control the bleeding
7 until Monterey Fire Department and Carmel Regional Fire Ambulance arrived on the scene.

8 22. Plaintiff was transported to Community Hospital of the Monterey Peninsula
9 (CHOMP) by Carmel Fire Ambulance for treatment, where she was attended to by the
10 Emergency Room physician. Plaintiff was dressed in workout clothes (yoga pants and a tank
11 top), which were now covered in blood from the wound on her head. She had not been allowed to
12 retrieve her jacket out of her car. The Emergency Room medical staff, having seen Plaintiff
13 arrive at CHOMP late at night, in the custody of a police officer, and covered in her own blood,
14 repeatedly accused Plaintiff of being on drugs. One nurse in particular kept shining a flashlight in
15 Plaintiff's eyes, as she asserted: "You're on drugs. Just tell me what you're on. Crank? Pep?
16 Pot?" While Plaintiff had consumed two glasses of wine earlier that evening, she had not
17 ingested any illegal substances, prescription drugs, or even over-the-counter medications at the
18 time in question.

19 23. Plaintiff was subsequently transported by SERGEANT POWELL to the Carmel
20 Police Department for processing. Eventually, Plaintiff was transported by Sergeant Pon to
21 Monterey County Jail. However, the staff at Monterey County Jail would not accept Plaintiff
22 because her injuries required further treatment. Accordingly, Sergeant Pon transported Plaintiff
23 to Natividad Medical Center, where Plaintiff received eight stitches to close the laceration on her
24 forehead; multiple CT scans of her face, head/brain, neck, and spine; at least one x-ray of her
25 hand; and other treatment.

26 24. Upon being released from Natividad Medical Center, Plaintiff was transported
27 back to Monterey County Jail and placed in a group holding cell where various other inmates
28 came and went during Plaintiff's detention. After several hours, when Plaintiff's head wound

1 began to bleed through the gauze, a jail nurse changed the dressing on Plaintiff's wound and
2 warned Plaintiff that she should use extra caution to avoid the wound getting contaminated
3 because the holding cell was very dirty.

4 25. Several hours later, the gauze covering Plaintiff's head wound had once again
5 become saturated with blood. At this time, another inmate in the holding cell with Plaintiff
6 pushed the button to call the deputy for assistance. DOE 1, a female deputy, appeared in response
7 to the inmate's call. While DOE 1 was present at the holding cell attending to the other inmate,
8 Plaintiff mentioned to DOE 1 that she was in need of new gauze for her head wound. Appearing
9 annoyed, DOE 1 replied to Plaintiff's request by saying, "you wouldn't need more gauze if you
10 would stop picking at it." When Plaintiff replied that she had not been picking at the wound,
11 DOE 1 turned to Plaintiff, smiled, and said in a sarcastic tone, "I think you're a danger to
12 yourself." Plaintiff immediately replied to DOE 1, "You know that's not true." At which time,
13 DOE 1 physically removed Plaintiff from the group holding cell and escorted her to a solitary
14 cell.

15 26. Plaintiff was informed that she was being placed on a psychiatric hold pursuant to
16 Cal. Welf. and Inst. Code section 5150 ("5150 hold") for being a danger to herself. Plaintiff was
17 stripped of all of her clothing in view of multiple county employees and at least one male inmate
18 and then given a rectangular heavyweight garment, approximately the size of a bath towel, to
19 wrap around herself.

20 27. For several hours, Plaintiff was held in a very hot solitary holding cell with cement
21 walls. In place of a toilet, there was a hole in the floor with visible feces from previous inmates.
22 The cell contained one glass window, which faced the glass window of the adjacent holding cell.
23 When Plaintiff attempted to look out her window to get the guard's attention, she was subjected
24 to obscene sexual gestures from the male inmate in the adjacent cell, who had previously
25 witnessed Plaintiff being stripped naked by the guards.

26 28. While sound was limited through the solid cement walls of the solitary cell,
27 Plaintiff could hear some conversation by the jail employees when she pressed her face close to
28 the cell's glass window. Plaintiff was ultimately able to get the attention of one jail employee by

1 making a praying symbol with her hands. Plaintiff subsequently observed this same employee
2 through the cell window as she reviewed Plaintiff's records with a look of disapproval on her face
3 and then stated to another employee, "There are no priors." Approximately one hour later,
4 Plaintiff was allowed to put her blood-covered clothes back on and return to the group holding
5 cell.

6 29. In total, Plaintiff was detained for approximately 18 hours at the Monterey County
7 Jail. Plaintiff estimates that approximately three of such hours were spent in the solitary cell on
8 the alleged 5150 hold. Plaintiff was not allowed to contact her family at any time during her
9 detention. Plaintiff was ultimately released on her own accord without bail.

10 30. Plaintiff had been booked into Monterey County Jail on two charges: Obstructing
11 an Officer, Penal Code § 148(a)(1), and Public Intoxication, Penal Code § 647(f). No testing of
12 any sort was ever conducted by any officers, medical staff, or any employee of COUNTY OF
13 MONTEREY or CITY OF CARMEL-BY-THE-SEA in connection with the charge of Public
14 Intoxication. All such charges against Plaintiff were dismissed on March 18, 2014.

15 31. As a direct, proximate, and legal result of the acts, omissions, policies, patterns,
16 practices, and/or customs of defendants alleged herein, Plaintiff has suffered damages including,
17 but not limited to: bodily injury, loss of income and employment, substantial physical and
18 emotional pain and suffering, shock and injury to her nervous system, humiliation, acute anxiety,
19 emotional and physical distress and fear; and Plaintiff continues to suffer from post-traumatic
20 stress and anxiety relating to the events complained of herein.

21 32. As a further direct, proximate, and legal result of the injuries alleged herein,
22 Plaintiff has incurred, and may continue to incur medical expenses in an amount according to
23 proof.

24 33. Pursuant to Section 910 of the Government Code, Plaintiff filed a "CLAIM FOR
25 DAMAGES AGAINST THE CITY OF CARMEL-BY-THE-SEA" on March 19, 2014 (the
26 "Claim"). The Claim was not presented within the time prescribed by Government Code section
27 911.2 because of the following facts:

28 a) Plaintiff had a pending and related criminal matter before the court in

1 Monterey County (Case No. CRMS314352A).

2 b) Plaintiff was a defendant in a criminal case that arose out of the same operative
3 facts as set forth in the Claim filed against the CITY OF CARMEL-BY-THE-SEA.

4 c) The charges against Plaintiff were dismissed on March 18, 2014 following the
5 presentation of evidence and arguments by counsel in a Motion to Suppress Evidence (PC
6 1538.5) before the Hon. Samuel Lavorato, Jr.

7 d) Plaintiff genuinely believed that, as a prerequisite to her filing of a claim
8 against CITY OF CARMEL-BY-THE-SEA, the criminal matter needed to reach final disposition.

9 34. After denials by CITY OF CARMEL-BY-THE-SEA of both the Claim and
10 Plaintiff's subsequent Application for Leave to File Late Claim, Plaintiff filed a Petition for Order
11 Relieving Petitioner from Provisions of Gov't Code § 945.4 (the "Petition") in Monterey County
12 Superior Court.

13 35. On November 19, 2014, the Hon. Robert O'Farrell granted the Petition, holding
14 that Plaintiff acted under a reasonable mistake when she waited to file her Claim until the day
15 after the related criminal matter reached its final disposition.

16 **FIRST CAUSE OF ACTION**

17 **42 U.S.C. § 1983—VIOLATION OF CIVIL RIGHTS**
18 **(Against Defendants LUKE E. POWELL and**
19 **CITY OF CARMEL-BY-THE-SEA)**

20 36. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1
21 through 35, and by this reference incorporates the same herein as though fully set forth.

22 37. Defendant CITY OF CARMEL-BY-THE-SEA is and was responsible for
23 overseeing the implementation and promulgation of official policy for its police force, Carmel
24 Police Department, which included SERGEANT POWELL at all times herein mentioned. CITY
25 OF CARMEL-BY-THE-SEA was deliberately indifferent to the need for adequate training and
26 supervision for its police officers, the failure of which caused constitutional violations upon the
27 citizenry in general, including Plaintiff in particular.

28 38. Defendant SERGEANT POWELL was acting under the color of law, as an
authorized agent of Defendant CITY OF CARMEL-BY-THE-SEA, while detaining,

1 interrogating, and arresting Plaintiff, in furtherance of his duties.

2 39. Defendant SERGEANT POWELL violated Plaintiff's civil rights by brutalizing
3 and inflicting severe injury upon Plaintiff under the color of law with force that was grossly
4 disproportionate in relation to the need for action under the circumstances, and by subjecting
5 Plaintiff to an illegal, improper, and unlawful seizure of her person without probable cause,
6 privilege, or consent. Furthermore, SERGEANT POWELL's actions in aggressively
7 interrogating Plaintiff needlessly and intentionally escalated an otherwise non-violent, verbal
8 domestic dispute into a physical altercation that facilitated Plaintiff's physical injury and arrest.

9 40. The constitutional deprivation of Plaintiff's rights was also caused by a deliberate
10 indifference demonstrated by CITY OF CARMEL-BY-THE-SEA and perpetrated upon citizens,
11 such as Plaintiff. Such failures include not having officers appropriately trained in the proper
12 procedures for handling non-violent domestic disputes and improper use of force training and
13 supervision that allows and permits the detention of persons without just cause and through
14 unreasonably injurious methods.

15 41. The above described actions of Defendant SERGEANT POWELL and the policies
16 and practices of Defendants CITY OF CARMEL-BY-THE-SEA deprived Plaintiff of her rights
17 and privileges under the Fourth, and Fourteenth Amendments to the United States Constitution.

18 42. As a direct, proximate, and legal result of the acts, omissions, policies, patterns,
19 practices, and/or customs of defendants alleged herein, Plaintiff has suffered damages including,
20 but not limited to: bodily injury, loss of income and employment, substantial physical and
21 emotional pain and suffering, shock and injury to her nervous system, humiliation, acute anxiety,
22 emotional and physical distress and fear; and Plaintiff continues to suffer from post-traumatic
23 stress and anxiety relating to the events complained of herein.

24 43. As a further direct, proximate, and legal result of the injuries alleged herein,
25 Plaintiff has incurred, and may continue to incur, substantial medical and other out-of-pocket
26 expenses in an amount according to proof.

27 44. As a further direct and proximate consequence of the acts of CITY OF CARMEL-
28 BY-THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff was transported to

1 Monterey County Jail, where she was placed on an unreasonable 5150 hold in solitary
2 confinement, during which Plaintiff was subjected to humiliating and traumatic conditions,
3 including being stripped of all of her clothing in view of multiple county employees and at least
4 one male inmate.

5 45. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees and
6 costs pursuant to 42 U.S.C. §1988 and any such other and further relief as this Court deems just.

7 **SECOND CAUSE OF ACTION**

8 **FALSE IMPRISONMENT**

9 **(Against Defendants LUKE E. POWELL and
10 CITY OF CARMEL-BY-THE-SEA)**

11 46. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1
12 through 45, and by this reference incorporates the same herein as though fully set forth.

13 47. Defendant CITY OF CARMEL-BY-THE-SEA through its employee,
14 SERGEANT POWELL, intentionally confined Plaintiff, without consent or lawful privilege, for
15 an unreasonable period of time, without probable cause, in deprivation of her rights. In his
16 response to a call regarding a non-violent, verbal dispute between two parents, SERGEANT
17 POWELL interrogated and detained Plaintiff without probable cause, needlessly escalating a non-
18 violent dispute into a confrontational detention of Plaintiff, whereby Plaintiff was prohibited from
19 leaving and subsequently suffered severe bodily injury and other damages.

20 48. Defendant CITY OF CARMEL-BY-THE-SEA is vicariously liable for the tortious
21 acts of its employee, SERGEANT POWELL, that were committed within the scope and
22 furtherance of his employment.

23 49. As a direct and proximate consequence of the acts of CITY OF CARMEL-BY-
24 THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff has suffered damages
25 including, but not limited to: bodily injury, loss of income and employment, substantial physical
26 and emotional pain and suffering, shock and injury to her nervous system, humiliation, acute
27 anxiety, emotional and physical distress and fear; and Plaintiff continues to suffer from post-
28 traumatic stress and anxiety relating to the events complained of herein.

50. As a further direct, proximate, and legal result of the injuries alleged herein,

1 Plaintiff has incurred, and may continue to incur, substantial medical and other out-of-pocket
2 expenses in an amount according to proof.

3 51. As a further direct and proximate consequence of the acts of CITY OF CARMEL-
4 BY-THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff was transported to
5 Monterey County Jail, where she was placed on an unreasonable 5150 hold in solitary
6 confinement, during which Plaintiff was subjected to humiliating and traumatic conditions,
7 including being stripped of all of her clothing in view of multiple county employees and at least
8 one male inmate.

9 52. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
10 under CCP §1021.5, costs and any such other and further relief as this Court deems just.

11 **THIRD CAUSE OF ACTION**

12 **BATTERY**

13 **(Against Defendants LUKE E. POWELL and**
14 **CITY OF CARMEL-BY-THE-SEA)**

15 53. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1
16 through 52, and by this reference incorporates the same herein as though fully set forth.

17 54. Defendant CITY OF CARMEL-BY-THE-SEA through its employee,
18 SERGEANT POWELL, intentionally caused bodily harm to Plaintiff through the use of
19 unreasonable force. SERGEANT POWELL's unnecessary arm bar takedown of Plaintiff caused
20 her head to hit the asphalt ground with such force as to give Plaintiff a black eye and open a large
21 laceration on her forehead, which would eventually require eight stitches, a CT scan, and other
22 treatment. In the course of this takedown by SERGEANT POWELL Plaintiff further suffered
23 additional wounds to the left side of her face and her arms, as well as permanent damage to her
24 right thumb.

25 55. Defendant CITY OF CARMEL-BY-THE-SEA is vicariously liable for the tortious
26 acts of its employee, SERGEANT POWELL, that were committed within the scope and
27 furtherance of his employment.

28 56. As a direct and proximate consequence of the acts of CITY OF CARMEL-BY-
THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff has suffered damages

1 including, but not limited to: bodily injury, loss of income and employment, substantial physical
2 and emotional pain and suffering, shock and injury to her nervous system, humiliation, acute
3 anxiety, emotional and physical distress and fear; and Plaintiff continues to suffer from post-
4 traumatic stress and anxiety relating to the events complained of herein.

5 57. As a further direct, proximate, and legal result of the injuries alleged herein,
6 Plaintiff has incurred, and may continue to incur, substantial medical and other out-of-pocket
7 expenses in an amount according to proof.

8 58. As a further direct and proximate consequence of the acts of CITY OF CARMEL-
9 BY-THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff was transported to
10 Monterey County Jail, where she was placed on an unreasonable 5150 hold in solitary
11 confinement, during which Plaintiff was subjected to humiliating and traumatic conditions,
12 including being stripped of all of her clothing in view of multiple county employees and at least
13 one male inmate.

14 59. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
15 under CCP §1021.5, costs and any such other and further relief as this Court deems just.

16 **FOURTH CAUSE OF ACTION**

17 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

18 **(Against Defendants LUKE E. POWELL and
19 CITY OF CARMEL-BY-THE-SEA)**

20 60. Plaintiff repeats and realleges Paragraphs 1 through 59, and incorporates them by
21 reference herein.

22 61. Defendant CITY OF CARMEL-BY-THE-SEA through its employee,
23 SERGEANT POWELL, intentionally caused bodily and emotional harm to Plaintiff, and they
24 knew, or should have known, that emotional distress would likely occur as a result of their
25 conduct.

26 62. The conduct of Defendant CITY OF CARMEL-BY-THE-SEA through its
27 employee, SERGEANT POWELL, was outrageous; that is, as to go beyond all bounds of
28 decency, and to be regarded as odious and utterly intolerable in a civilized community.

63. Said intentional conduct was willful, malicious and in total disregard of Plaintiff's

1 rights.

2 64. Defendant CITY OF CARMEL-BY-THE-SEA is vicariously liable for the tortious
3 acts of its employee, SERGEANT POWELL, that were committed within the scope and
4 furtherance of his employment.

5 65. As a direct and proximate consequence of the acts of CITY OF CARMEL-BY-
6 THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff has suffered damages
7 including, but not limited to: bodily injury, loss of income and employment, substantial physical
8 and emotional pain and suffering, shock and injury to her nervous system, humiliation, acute
9 anxiety, emotional and physical distress and fear; and Plaintiff continues to suffer from post-
10 traumatic stress and anxiety relating to the events complained of herein.

11 66. As a further direct, proximate, and legal result of the injuries alleged herein,
12 Plaintiff has incurred, and may continue to incur, substantial medical and other out-of-pocket
13 expenses in an amount according to proof.

14 67. As a further direct and proximate consequence of the acts of CITY OF CARMEL-
15 BY-THE-SEA by and through its employee, SERGEANT POWELL, Plaintiff was transported to
16 Monterey County Jail, where she was placed on an unreasonable 5150 hold in solitary
17 confinement, during which Plaintiff was subjected to humiliating and traumatic conditions,
18 including being stripped of all of her clothing in view of multiple county employees and at least
19 one male inmate.

20 68. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
21 under CCP §1021.5, costs and any such other and further relief as this Court deems just.
22 Additionally, Plaintiff requests punitive damages due to the malicious nature of the conduct.

23 **FIFTH CAUSE OF ACTION**

24 **MALICIOUS PROSECUTION**

25 **(Against Defendants DOE 1, COUNTY OF MONTEREY,
26 And MONTEREY COUNTY SHERIFF'S OFFICE)**

27 69. Plaintiff repeats and realleges Paragraphs 1 through 68, and incorporates them by
28 reference herein.

70. Defendants COUNTY OF MONTEREY and the SHERIFF'S OFFICE through its

1 employee, DOE 1, intentionally caused the institution of a legal action under Cal. Welf. and Inst.
2 Code §§ 5150 and 5150.05 while Plaintiff was detained at Monterey County Jail, resulting in
3 placement of Plaintiff on a psychiatric hold in solitary confinement. This psychiatric hold places
4 a person under detention for up to three days without legal recourse or further hearings, save for
5 the discretion of medical staff.

6 71. As part of this 5150 hold, Plaintiff was stripped of all of her clothing in view of
7 multiple county employees and at least one male inmate and then allowed only a bath towel sized
8 garment to cover herself. For several hours, Plaintiff was held in a very hot solitary holding cell
9 with cement walls. In place of a toilet, there was a hole in the floor with visible feces from
10 previous inmates. The cell contained one glass window, which faced the glass window of the
11 adjacent holding cell. When Plaintiff attempted to look out her window to get the guard's
12 attention, she was subjected to obscene sexual gestures from the male inmate in the adjacent cell,
13 who had previously witnessed Plaintiff being stripped naked by the guards.

14 72. Said intentional conduct was willful, malicious, oppressive, and in total disregard
15 of Plaintiff's rights, safety, and welfare. No medical assessment was ever conducted for this 5150
16 hold. Upon review of Plaintiff's file by a different employee in the SHERIFF'S OFFICE, who
17 clearly saw that such a hold was unjustified, Plaintiff was released back to the group holding cell
18 and subsequently allowed to leave the Monterey County Jail.

19 73. Defendants COUNTY OF MONTEREY and the SHERIFF'S OFFICE are
20 vicariously liable for the tortious acts of their employee, DOE 1, that were committed within the
21 scope and furtherance of her employment.

22 74. As a direct and proximate consequence of the acts of Defendants COUNTY OF
23 MONTEREY and the SHERIFF'S OFFICE through its employee, DOE 1, Plaintiff sustained
24 severe emotional distress, humiliation, emotional pain and suffering, and Plaintiff continues to
25 suffer from post-traumatic stress and anxiety relating to this event, which has led to Plaintiff's
26 loss of income and employment, and additional out-of-pocket expenses.

27 75. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
28 under CCP §1021.5, costs, and any such other and further relief as this Court deems just.

1 Additionally, Plaintiff requests punitive damages due to the malicious nature of the conduct.

2 **SIXTH CAUSE OF ACTION**

3 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
4 **(Against Defendants DOE 1, COUNTY OF MONTEREY,**
5 **And MONTEREY COUNTY SHERIFF'S OFFICE)**

6 76. Plaintiff repeats and realleges Paragraphs 1 through 75, and incorporates them by
7 reference herein.

8 77. Defendant Defendants COUNTY OF MONTEREY and MONTEREY COUNTY
9 SHERIFF'S OFFICE, by and through their employee, DOE 1, intentionally caused emotional
10 harm to Plaintiff by placing her on an unjustified and unreasonable 5150 hold; and they knew, or
11 should have known, that emotional distress would likely occur as a result of their conduct.

12 78. The conduct of Defendant COUNTY OF MONTEREY and MONTEREY
13 COUNTY SHERIFF'S OFFICE, by and through their employee, DOE 1 was outrageous; that is,
14 as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a
15 civilized community.

16 79. As part of this 5150 hold, Plaintiff was stripped of all of her clothing in view of
17 multiple county employees and at least one male inmate and then allowed only a bath towel sized
18 garment to cover herself. For several hours, Plaintiff was held in a very hot solitary holding cell
19 with cement walls. In place of a toilet, there was a hole in the floor with visible feces from
20 previous inmates. The cell contained one glass window, which faced the glass window of the
21 adjacent holding cell. When Plaintiff attempted to look out her window to get the guard's
22 attention, she was subjected to obscene sexual gestures from the male inmate in the adjacent cell,
23 who had previously witnessed Plaintiff being stripped naked by the guards.

24 80. Said intentional conduct was willful, malicious, oppressive, and in total disregard
25 of Plaintiff's rights, safety, and welfare. No medical assessment was ever conducted for this 5150
26 hold. Upon review of Plaintiff's file by a different employee in the SHERIFF'S OFFICE, who
27 clearly saw that such a hold was unjustified, Plaintiff was released back to the group holding cell
28 and subsequently allowed to leave the Monterey County Jail.

81. Defendants COUNTY OF MONTEREY and the SHERIFF'S OFFICE are

1 vicariously liable for the tortious acts of their employee, DOE 1, that were committed within the
2 scope and furtherance of her employment.

3 82. As a direct and proximate consequence of the acts of Defendants COUNTY OF
4 MONTEREY and the SHERIFF'S OFFICE through its employee, DOE 1, Plaintiff sustained
5 severe emotional distress, humiliation, emotional pain and suffering, and Plaintiff continues to
6 suffer from post-traumatic stress and anxiety relating to this event, which has led to Plaintiff's
7 loss of income and employment, and additional out-of-pocket expenses.

8 83. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
9 under CCP §1021.5, costs, and any such other and further relief as this Court deems just.
10 Additionally, the malicious nature of the conduct entitles Plaintiff to the recovery of punitive
11 damages.

12 84. Defendants COUNTY OF MONTEREY and MONTEREY COUNTY
13 SHERIFF'S OFFICE are vicariously liable for the tortious acts of its employee, DOE 1, that were
14 committed within the scope and furtherance of her employment.

15 85. As a direct and proximate consequence of the acts of COUNTY OF MONTEREY
16 and MONTEREY COUNTY SHERIFF'S OFFICE, by and through their employee, DOE 1
17 Plaintiff was placed on an unreasonable 5150 hold in solitary confinement, during which Plaintiff
18 was subjected to humiliating and traumatic conditions, including being stripped of all of her
19 clothing in view of multiple county employees and at least one male inmate.

20 86. As a direct and proximate consequence of the acts of COUNTY OF MONTEREY
21 and MONTEREY COUNTY SHERIFF'S OFFICE, by and through their employee, DOE 1,
22 Plaintiff has suffered damages including, but not limited to: loss of income and employment,
23 substantial physical and emotional pain and suffering, shock and injury to her nervous system,
24 humiliation, acute anxiety, emotional and physical distress and fear; and Plaintiff continues to
25 suffer from post-traumatic stress and anxiety relating to the events complained of herein.

26 87. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
27 under CCP §1021.5, costs and any such other and further relief as this Court deems just.
28 Additionally, the malicious nature of the conduct entitles Plaintiff to the recovery of punitive

1 damages.

2 **SEVENTH CAUSE OF ACTION**

3 **NEGLIGENCE**

4 **(Against Defendants LUKE E. POWELL and**
5 **CITY OF CARMEL-BY-THE-SEA)**

6 88. Plaintiff repeats and realleges Paragraphs 1 through 87, and incorporates them by
7 reference herein.

8 89. Defendants LUKE E. POWELL and CITY OF CARMEL-BY-THE-SEA, and
9 each of them, were negligent in performing their duties; and each failed, neglected, and/or refused
10 to properly and fully discharge their responsibilities by, among other things:

- 11 a. Improper compliance with policies, practices, and procedures in the questioning
12 and detention of Plaintiff;
- 13 b. Allowing a culture to exist of improper or non-compliance with policies, practices
14 and procedures in the questioning and detention of a citizen, including Plaintiff;
- 15 c. Improper and/or erroneous threat assessment in the questioning and detention of
16 Plaintiff;
- 17 d. Exercising an excessive and unreasonable level of force against Plaintiff for the
18 circumstances; and
- 19 e. Failure to use reasonable care in the hiring, training, and/or supervising of officers.

20 90. As a direct and proximate consequence of the negligent acts of Defendants,
21 Plaintiff sustained severe emotional distress, humiliation, emotional pain and suffering, and
22 Plaintiff continues to suffer from post-traumatic stress and anxiety relating to this event, which
23 has led to Plaintiff's loss of income and employment, and additional out-of-pocket expenses.

24 91. Defendant CITY OF CARMEL-BY-THE-SEA is vicariously liable for the tortious
25 acts of its employee, SERGEANT POWELL, that were committed within the scope and
26 furtherance of his employment.

27 92. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
28 under CCP §1021.5, costs, and any such other and further relief as this Court deems just.

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1 **EIGHTH CAUSE OF ACTION**

2 **NEGLIGENCE**

3 **(Against Defendants DOE 1, COUNTY OF MONTEREY,**
4 **And MONTEREY COUNTY SHERIFF'S OFFICE)**

5 93. Plaintiff repeats and realleges Paragraphs 1 through 92, and incorporates them by
6 reference herein.

7 94. Defendants COUNTY OF MONTEREY and MONTEREY COUNTY
8 SHERIFF'S OFFICE, and each of them, were negligent in performing their duties; and each
9 failed, neglected, and/or refused to properly and fully discharge their responsibilities by, among
10 other things:

- 11 a. Improper compliance with policies, practices, and procedures in the assessment
12 and implementation of 5150 holds;
- 13 b. Allowing a culture to exist of improper or non-compliance with policies, practices
14 and procedures in the assessment and implementation of 5150 holds;
- 15 c. Improper and/or erroneous threat assessment in the assessment and
16 implementation of 5150 holds; and
- 17 d. Failure to use reasonable care in the hiring, training, and/or supervising of deputies
18 and other staff at Monterey County Jail.

19 95. As a direct and proximate consequence of the negligent acts of Defendants
20 COUNTY OF MONTEREY and MONTEREY COUNTY SHERIFF'S OFFICE, Plaintiff
21 sustained severe emotional distress, humiliation, emotional pain and suffering, and Plaintiff
22 continues to suffer from post-traumatic stress and anxiety relating to this event, which has led to
23 Plaintiff's loss of income and employment, and additional out-of-pocket expenses.

24 96. Defendants COUNTY OF MONTEREY and MONTEREY COUNTY
25 SHERIFF'S OFFICE are vicariously liable for the tortious acts of its employee, DOE 1, that were
26 committed within the scope and furtherance of her employment at Monterey County Jail.

27 97. As such, Plaintiff requests compensatory damages, reasonable attorneys' fees
28 under CCP §1021.5, costs, and any such other and further relief as this Court deems just.
Additionally, Plaintiff requests punitive damages due to the malicious nature of the conduct.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

1. For an award of compensatory damages from Defendants, jointly and severally, in an amount to be proven at trial;
2. For an award of punitive damages against the individual defendants sued in their personal capacity for all actions complained of, including those outside the scope of the employment;
3. For an award of attorneys' fees and cost of suit; and
4. For such other and further relief as the court may deem just and proper.

Dated: August 7, 2015

BOHNEN, ROSENTHAL & KREEFT

By: 
Andrew B. Kreeft
Attorneys for Plaintiff Jennifer Da Silva

JURY DEMAND

Plaintiff JENNIFER DA SILVA hereby demands a trial by jury.

Dated: August 7, 2015

BOHNEN, ROSENTHAL & KREEFT

By: 
Andrew B. Kreeft
Attorneys for Plaintiff Jennifer Da Silva