

1 **TIMOTHY A. SCOTT**
California Bar No. 215074
2 LAW OFFICES OF TIMOTHY A. SCOTT, APC
1350 Columbia Street, Suite 600
3 San Diego, California 92101
Telephone: (619) 794-0451
4 Facsimile: (619) 652-9964
Email: tscott@timscottlaw.com

5 Attorneys for Plaintiffs
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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
9

10 Joanne Lewis,

11 Plaintiff,

12 v.

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14
15 United States; CBP Officer Amir,
individually and in his official capacity;
16 CBP Officer Ramos, individually and in
his official capacity; CBP Officer
17 Gomez, individually and in
his official capacity; Doe CBP
18 Officers 1-50, individually and in their
official capacities; San Diego County
19 Sheriff's Department; Doe SDCS
Deputies 1-50, individually and in their
20 official capacities; Contra Costa County
Sheriff's Department; CCCSD Deputy
21 A. Charles, individually and in his
official capacity; CCCSD Deputy
22 M. Bailey, individually and in his
official capacity; Doe CCCSD
23 Deputies 1-50, individually and in
their official capacities,
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25 Defendants.
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Civil Action No. 15-CV-02319-CAB-JLB

**First Amended
Complaint for Damages for:**

1. *Bivens*: Unlawful Detention
2. FTCA: False Imprisonment
3. FTCA: Negligence
4. APA : 5 U.S.C. § 702, injunctive relief
5. APA : 5 U.S.C. § 702, injunctive relief
6. *Bivens*: Illegal Search
7. FTCA: Battery
8. *Bivens*: Illegal Search
9. FTCA: Battery
10. FTCA: Unlawful arrest, CCC 52.1
11. FTCA: Illegal search, CCC 52.1
12. 42 U.S.C. § 1983: Illegal Arrest
13. 42 U.S.C. § 1983: Illegal Arrest
14. *Monell*: Unconstitutional customs, policies, and procedures
15. *Monell*: Failure to train and/or supervise
16. *Monell*: Unconstitutional customs, policies, and procedures
17. *Monell*: Failure to train and/or supervise
18. Negligence
19. Cal. Civ. Code 52.1

Demand for Jury Trial.

1 INTRODUCTION

2 1. U.S. Customs and Border Protection officers arrested Plaintiff Joanne Lewis
3 (“Plaintiff”) on an outstanding warrant. The warrant was sixteen years old. It alleged the
4 simple possession of narcotics. But while the warrant was for *a* Joanne Lewis, it was not
5 for *this* Joanne Lewis.

6 Plaintiff and the other Joanne Lewis do not resemble each other. Plaintiff is a
7 Caucasian woman. She stands 5'2". She weighs 120 pounds. She is 52 years old. She
8 had no criminal history. She had never visited Contra Costa County. She spent the day
9 volunteering at a Tijuana orphanage before her arrest.

10 The warrant was for an African-American woman. That woman stood 5'8". That
11 woman weighed 150 pounds. That woman lived in Contra Costa County. That woman
12 failed to appear in court after her 1997 arrest for the possession of heroin.

13 Although the names of these two women were the same, and although Contra Costa
14 County wrongfully included Plaintiff’s driver’s license number in the warrant, the
15 birthdates were a year apart also. Given these objective discrepancies between Plaintiff
16 and the other Joanne Lewis, officers knew or should have known that the warrant was not
17 for Plaintiff. But they arrested her anyway.

18 And it got worse. After the arrest, a Customs officer sexually assaulted Plaintiff.
19 She subjected her to repeated and illegal body-cavity searches. Officers mocked her
20 when she complained and wept. When CBP finally contacted Contra Costa County about
21 the warrant—hours later—an officer instructed CBP to continue to detain Plaintiff. They
22 did so even though they knew or should have known that it was not the right person. The
23 San Diego County Sheriff later repeated the same error that CBP did. They ignored
24 Plaintiff’s protestations of innocence. They ignored information that conflicted with the
25 facts on the warrant. They too knowingly booked and held Plaintiff on someone else’s
26 warrant.

27 This resulting complaint can be summarized as follows:

Count	Claim	Defendant(s)
1	<i>Bivens</i> / Fourth Amendment claim for unlawful arrest.	Individual CBP Officers Amir, Ramos, Gomez, and CBP Does
2	Federal Tort Claims Act claim for false imprisonment.	United States
3	FTCA Claim for negligence.	United States
4	Administrative Procedures Act claim for injunctive relief regarding CBP policies and procedures for executing a warrant.	United States
5	Administrative Procedures Act claim for injunctive relief to purge Ms. Lewis's wrongful criminal history.	United States
6	<i>Bivens</i> / Fourth Amendment claim for first illegal body cavity search.	Doe CBP officer(s)
7	FTCA claim for battery for first illegal body cavity search.	United States
8	<i>Bivens</i> / Fourth Amendment claim for second illegal body cavity search.	Doe CBP officer(s)
9	FTCA for battery for second illegal body cavity search.	United States
10	Bane Act violation, Cal. Civ. Code §52.1, via the FTCA, for unlawful arrest and detention in violation of California law.	United States
11	Bane Act violation, Cal. Civ. Code §52.1, via the FTCA, for body cavity search in violation of California law.	United States

12	§ 1983 / Fourth Amendment claim for illegal arrest at Los Colinas Detention Facility	Doe San Diego County Sheriff's Deputies
13	§ 1983 / Fourth Amendment claim for deliberate indifference in drafting warrant, and for illegal arrest in directing CBP to continue Ms. Lewis's unlawful arrest.	Doe Contra Costa County Sheriff's Deputies, CCCSD Officers A. Charles, M. Bailey
14	Unconstitutional customs, policies or practices (<i>Monell</i> , 42 U.S.C. § 1983) for unlawful practices and procedures in executing warrants.	San Diego County Sheriff's Department
15	Unconstitutional failure to train and/or supervise (<i>Monell</i> , 42 U.S.C. § 1983) regarding practices and procedures in executing warrants.	San Diego County Sheriff's Department
16	Unconstitutional customs, policies or practices (<i>Monell</i> , 42 U.S.C. § 1983) for unlawful practices and procedures in drafting, issuing, and executing warrants.	Contra Costa County Sheriff's Department
17	Unconstitutional failure to train and/or supervise (<i>Monell</i> , 42 U.S.C. § 1983) regarding practices and procedures in drafting, issuing, and executing warrants.	Contra Costa County Sheriff's Department

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18	Negligence.	Contra Costa County Sheriff's Department; Doe Contra Costa County Sheriff's Deputies; CCCSD Officers A. Charles, M. Bailey
19	Bane Act violation, Cal. Civ. Code §52.1, for unlawful arrest and detention in violation of California law.	Contra Costa County Sheriff's Department; Doe Contra Costa County Sheriff's Deputies; CCCSD Officers A. Charles, M. Bailey

Plaintiff requests a jury trial to pursue justice on these claims.

1 **JURISDICTION AND VENUE**

2 2. This is a civil action where jurisdiction is founded on a federal question
3 under 28 U.S.C. § 1331.

4 3. Plaintiff's claims arise in this judicial district where the events or
5 omissions giving rise to this complaint occurred, namely the Otay Mesa Port of Entry, the
6 San Ysidro Port of Entry, and the Las Colinas Detention Facility, all of which are situated
7 in the Southern District of California.

8 4. Venue is proper in the United States District Court for the Southern
9 District of California under 28 U.S.C. § 1391.

10 5. Plaintiff filed timely tort claims against the federal defendants under 28
11 U.S.C. §§1346, and 2671-2680 (the Federal Tort Claims Act), on or about October 31,
12 2014. The United States denied the claims on or about April 28, 2015.

13 5a. Plaintiff filed state tort claims against the Contra Costa County
14 defendants under Cal. Gov. Code § 910 on or about October 2, 2015. These claims were
15 also timely under the discovery rule, as set forth in a letter accompanying Plaintiff's
16 claim. (A copy of that letter is attached as Appendix A, and is incorporated here by
17 reference.) Contra Costa County denied the tort claims on or about November 20, 2015.

18 **PARTIES**

19 6. Plaintiff was, at all times relevant to this lawsuit, a resident of the State of
20 California, County of Orange, and a citizen of the United States. She was traveling
21 through the Otay Mesa Port of Entry, in the Southern District of California, on November
22 2, 2013.

23 7. At all times relevant herein, Customs and Border Protection ("CBP") was
24 a sub-agency of the Department of Homeland Security, which in turn is an agency of
25 defendant United States.

26 8. Defendant CBP Officer Ramos, at all times relevant herein, was an officer
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1 and/or agent with Customs and Border Protection. He was on duty at the Otay Mesa Port
2 of Entry on November 2, 2013. At all times mentioned herein, this defendant was an
3 employee of CBP and acting in an official capacity and under color of law. This
4 defendant participated in the decision to arrest Plaintiff on a warrant that he knew, should
5 have known, and/or strongly suspected pertained to a different person. This officer's first
6 name is presently unknown to plaintiff.

7 9. Defendant CBP Officer Amir, at all times relevant herein, was an officer
8 and/or agent with Customs and Border Protection. He was on duty at the Otay Mesa Port
9 of Entry on November 2, 2013. At all times mentioned herein, this defendant was an
10 employee of CBP and acting in an official capacity and under color of law. This
11 defendant participated in the decision to arrest Plaintiff on a warrant that he knew, should
12 have known, and/or strongly suspected pertained to a different person. This officer's first
13 name is presently unknown to plaintiff.

14 10. Defendant CBP Officer Gomez, at all times relevant herein, was an
15 officer and/or agent with Customs and Border Protection. He was on duty at the San
16 Ysidro Port of Entry on November 2 and the morning of November 3, 2013. At all times
17 mentioned herein, this defendant was an employee of CBP and acting in an official
18 capacity and under color of law. This defendant participated in the decision to arrest
19 Plaintiff on a warrant that he knew, should have known, and/or strongly suspected
20 pertained to a different person. This officer's first name is presently unknown to plaintiff.

21 11. Doe CBP Officers 1-50 were, at all times relevant to this lawsuit, officers
22 and/or agents with Customs and Border Protection. The Doe CBP Officers include, but
23 are not limited to, a female CBP officer who was on duty at the San Ysidro Port of Entry
24 on or about November 2, 2013, and who subjected Plaintiff to two separate body-cavity
25 examinations; other officers who participated in the decision to arrest Plaintiff; other
26 officers who participated in or witnessed the body-cavity searches; and other supervisory
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1 officials within CBP.

2 12. Defendant San Diego County Sheriff’s Department (“SDCSD”) is a law
3 enforcement agency for the county of San Diego, organized under the laws of the state of
4 California. Las Colinas Detention Facility is a local jail for female inmates within the
5 county of San Diego, and is controlled and maintained by the San Diego County Sheriff’s
6 Department. Doe SDCSD Deputies 1-50 were, at all times relevant to this lawsuit,
7 sheriff’s deputies working at the Las Colinas Detention Facility where Plaintiff was
8 booked after being transported from the San Ysidro Port of Entry. Doe SDCSD Deputies
9 booked Plaintiff into custody at Las Colinas despite the fact that they knew, should have
10 known, and/or strongly suspected that she was not the person wanted on the warrant.

11 13. Defendant Contra Costa County Sheriff’s Department (“CCCSD”) is a
12 law enforcement agency for the county of Contra Costa, organized under the laws of the
13 state of California. CCCSD Deputies A. Charles and M. Bailey, at all times relevant
14 herein, were deputies with the Contra Costa County Sheriff’s Department, and were
15 acting in an official capacity and under color of law. These deputies swore out a
16 complaint and a warrant for Joanne Lewis that unlawfully, negligently, and with
17 deliberate indifference to the constitutional rights of Plaintiff, included Plaintiff’s
18 Driver’s License number. CCCSD Deputy A. Charles, CCCSD Deputy M. Bailey, and
19 Defendant CCCSD also failed to institute precautions and training to properly describe
20 the person wanted on the warrant and exclude innocent persons from the risk of arrest,
21 thereby demonstrating a deliberate indifference of the risk to the public that it posed. Doe
22 CCCSD Deputies 1-50 were, at all times relevant to this lawsuit, working as employees of
23 Contra Costa county, performing in an official capacity and under color of state law.
24 These employees include but are not limited to the person who, when finally contacted by
25 CBP and advised of the discrepancies between Plaintiff and the person wanted on the
26 warrant, advised CBP to continue to hold her anyway, despite the fact that he or she

1 knew, should have known, and/or strongly suspected that it was not the correct person.

2 **FACTUAL ALLEGATIONS**

3 14. The warrant that caused Plaintiff's arrest had been issued sixteen years
4 earlier. On June 27, 1997, defendant CCCSD deputies P. Omary and J. Rubin arrested a
5 woman named Joanne Lewis ("Lewis") after responding to a call about an apparent
6 heroin overdose at a house in Richmond, California.

7 15. According to the CCCSD police report, Lewis is African-American,
8 stands 5'8" tall, and was born on April 20, 1962. She weighed approximately 150
9 pounds. She lived in Contra Costa County.

10 16. Defendant CCCSD deputies P. Omary and J. Rubin arrested Lewis for
11 possession of drugs and being under the influence of a controlled substance, but released
12 her pursuant to California Penal Code Section 849.

13 17. Several months later, on October 17, 1997, defendant CCCSD deputy A.
14 Charles (on behalf of defendant CCCSD deputy M. Bailey) submitted a sworn declaration
15 in support of a complaint charging Lewis with a violation of Health & Safety Code
16 Section 11350 for possession of a controlled substance.

17 18. Defendant CCCSD deputy Charles incorporated by reference the files
18 from CCCSD Case No. 97-17638, and requested that a warrant be issued for Lewis's
19 arrest.

20 19. As part of the warrant request, Defendants CCCSD and CCCSD deputies
21 A. Charles, M. Bailey, and Doe CCCSD Deputies 1-50, with deliberate indifference to the
22 foreseeable risks to Plaintiff and others, alleged that Lewis was using Plaintiff's
23 California Driver's License number. They included this allegation in their warrant
24 paperwork, and thereby tied Plaintiff's DMV number to the wanted Lewis in the warrant
25 abstract.

26 20. Defendant CCCSD, CCCSD deputies A. Charles and M. Bailey, and Doe

1 CCCSD Deputies 1-50 did not include any other identifying information—such as
2 Lewis’s physical description—on the warrant or warrant abstract as required by
3 California Penal Code Section 850.

4 21. Defendant CCCSD, CCCSD deputies A. Charles and M. Bailey, and Doe
5 CCCSD Deputies 1-50 knew or should have known that an innocent person could suffer
6 an unlawful arrest and a violation of their Fourth Amendment rights if they attached
7 someone else’s driver’s license number to the warrant and warrant abstract issued against
8 Lewis, and failed to describe Lewis in sufficient detail to avoid risk to innocent members
9 of the public.

10 22. Defendant CCCSD was deliberately indifferent to Plaintiff’s and the
11 public’s Fourth Amendment rights by failing to provide its employees, officers, and
12 deputies with adequate training on properly preparing, drafting, and requesting arrest
13 warrants.

14 23. Defendant CCCSD was deliberately indifferent to Plaintiff’s Fourth
15 Amendment rights by failing to have in place practices or procedures for including and
16 reviewing information attached to an arrest warrant and warrant abstract. CCCSD and its
17 agents knew, or should have known, that given enough time, an innocent person could be
18 arrested on this warrant.

19 24. On November 2, 2013, an innocent person was arrested on this warrant.
20 On that date, Plaintiff traveled to Tijuana, Mexico with her church group to volunteer at
21 an orphanage.

22 25. She spent the day with fellow members of her congregation playing with
23 the children, providing food and other goods, and generally trying to be of service to the
24 orphanage.

25 26. The church group, including Plaintiff, returned to the Otay Mesa Port of
26 Entry (at the United States / Mexico border) at approximately 4:00 p.m. the same day.

1 27. They were on foot, having left their vehicles on the American side of the
2 border.

3 28. The group was accompanied by several clergy members of Plaintiff's
4 church.

5 29. At the Port of Entry, Plaintiff handed her passport to the Customs and
6 Border Protection officer who was assigned to the pedestrian lane she was standing in.

7 30. The passport had a color photograph of Plaintiff and it correctly listed her
8 date of birth as xx-xx-1963.

9 31. In response to questions by the CBP officer, Plaintiff explained that she
10 had been in Mexico working at an orphanage with her church group.

11 32. This information was consistent with the account of the other members of
12 Plaintiff's congregation who entered before and after her in line, as well as the account of
13 the pastors who passed through the Port of Entry with the group.

14 33. Plaintiff also provided her correct social security number to the CBP
15 officer, ending in 1218.

16 34. The CBP officer wrote down this information on a piece of paper.

17 35. This first officer gave the paper to CBP Officer Amir, who was on duty at
18 the Otay Mesa Port of Entry that day.

19 36. Officer Amir was stationed behind a computer approximately 10 feet
20 away from where Plaintiff first gave her passport to CBP in line.

21 37. Officer Amir typed some information into the computer. On information
22 and belief, Officer Amir was entering information into the computer from Plaintiff's
23 passport and from the piece of paper provided by the first officer.

24 38. Officer Amir then asked Plaintiff some additional questions.

25 39. In response to Amir's questions, Plaintiff provided, again, her correct
26 social security number, ending in 1218.

1 40. In response to Amir's questions, Plaintiff also stated that she was 5'2".
2 She specifically denied that she was 5'8", and reiterated that she was 5'2".

3 41. In response to Amir's questions, Plaintiff stated that she was born on xx-
4 xx-1963. She specifically denied that she was born on the same day in 1962.

5 42. Officer Amir then told Plaintiff that she was being detained.

6 43. Amir placed Plaintiff in handcuffs. This occurred within view of
7 members of her church congregation.

8 44. Amir did not tell Plaintiff why she was being detained at that time. He
9 simply took her to a back room within the Port of Entry instead.

10 45. After Plaintiff was in the back room for some time, CBP officer Ramos
11 entered the room and spoke to Plaintiff.

12 46. Officer Ramos took Plaintiff's personal belongings from her.

13 47. Officer Ramos ordered Plaintiff to take down her hair so that it could be
14 inspected.

15 48. Officer Ramos immediately fingerprinted Plaintiff.

16 49. A female officer performed a search of Plaintiff at the Otay Mesa Port of
17 Entry. This search consisted of the female officer running a gloved hand around
18 Plaintiff's bra area and along the top of her underwear line.

19 50. The search revealed no contraband or weapons.

20 51. Approximately an hour later, Officer Ramos returned to the back room,
21 where Plaintiff was still being held.

22 52. He handed Plaintiff her property back and stated "this isn't you" or words
23 to that effect. Officer Ramos told Plaintiff that she was going to be released.

24 53. By that time, Officer Ramos did not believe that Plaintiff was the person
25 wanted on an outstanding warrant.

26 54. The person actually wanted on the warrant: 1) had a date of birth of xx-
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1 xx-1962 (not 1963); 2) was African-American (not Caucasian); was 5'8" (not 5'2"); and
2 was 150 lbs. (not 120). That person also had an address in Contra Costa County, where
3 Plaintiff had never even visited.

4 55. Officer Ramos took Plaintiff back to where Officer Amir was still
5 standing, behind the computer. Officer Ramos informed Officer Amir that Plaintiff was
6 not the person wanted on a warrant.

7 56. Officer Amir heard and understood Officer Ramos to be saying that
8 Ramos did not believe that Plaintiff was the person wanted on the warrant.

9 57. Officer Ramos told Officer Amir to clear Plaintiff and let her go because
10 she was not the person wanted on the warrant.

11 58. Officer Amir verbally confronted Officer Ramos, and inquired if he had
12 checked other databases. Officer Amir refused to release Plaintiff.

13 59. The prevailing standard of care for law-enforcement officers required that
14 someone contact the jurisdiction that issued the warrant, defendants Contra Costa County
15 and CCCSD, to compare Plaintiff's physical description with the warrant and warrant
16 abstract issued against Lewis.

17 60. Reasonably trained officers would know that probable cause cannot be
18 established by relying only on electronic wanted persons systems.

19 61. Reasonably trained officers would have confirmed with the issuing
20 jurisdiction, defendants Contra Costa County and CCCSD, whether Plaintiff and Lewis
21 were the same person.

22 62. On information and belief, defendants CBP, Officer Amir, Officer
23 Ramos, and Does 1-50 detained Plaintiff at the Otay Mesa Port of Entry by relying only
24 on the electronic wanted persons systems.

25 63. Officer Ramos took Plaintiff to the back room once more, and took her
26 property from her again.

1 64. During this time at Otay Mesa, Plaintiff's pastor and a number of the
2 members of her church group waited for her to be released. A CBP officer eventually
3 told them that Plaintiff was not going to be released. He did not tell the church members
4 why she was being arrested, leaving them to speculate on what she had done wrong.

5 65. Plaintiff was humiliated and suffered fear and other emotional distress
6 during her detention.

7 66. Plaintiff later suffered humiliation and embarrassment and damage to her
8 reputation due to the fact that her arrest was known to her church congregation and
9 clergy.

10 67. Several hours later, at approximately 7:45 p.m., CBP transported Plaintiff
11 from the Otay Mesa Port of Entry to the San Ysidro Port of Entry.

12 68. CBP handcuffed Plaintiff with her hands behind her back, and loaded her
13 into a van for transport to San Ysidro.

14 69. There were other detainees in this van at the time, including men.

15 70. Being handcuffed behind her back was physically painful to Plaintiff.

16 71. Plaintiff suffered terror and emotional distress by being detained with
17 male and female detainees in the back of a van, while handcuffed.

18 72. After her arrival at the San Ysidro Port of Entry, Plaintiff was
19 fingerprinted a second time.

20 73. CBP officers took Plaintiff into a separate room at the San Ysidro Port of
21 Entry.

22 74. Three other female detainees were also in this room.

23 75. A CBP officer ordered Plaintiff and the three other female detainees to
24 turn and face one of the walls in the room. The officer ordered the women to put their
25 hands on a counter and spread their feet apart.

26 76. Plaintiff did as she was instructed, not because she consented, but
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1 because it was an order under color of law.

2 77. Plaintiff observed a female CBP officer working her way down the line of
3 women, inspecting and searching each of them.

4 78. Plaintiff could observe the female CBP officer placing a gloved hand
5 down each of the first three women's pants as part of this search.

6 79. Plaintiff was last in line. When it was her turn to be searched, the female
7 CBP officer did not merely run a hand over Plaintiff's bra line, as the first officer had
8 done at Otay Mesa. Rather, this officer squeezed Plaintiff's breasts hard, causing
9 physical pain and emotional distress.

10 80. The female CBP officer then placed her hand down Plaintiff's pants and
11 underwear. The officer inserted her gloved finger inside Plaintiff's vagina.

12 81. During this vaginal search, the CBP officer was still wearing the same
13 glove that she had used to search the previous three detainees.

14 82. CBP purports to have specific rules and procedures governing the
15 circumstances under which a body cavity search may be performed, including but not
16 limited to those set forth in the Customs and Border Protection "Personal Search
17 Handbook."

18 83. CBP rules and regulations require there to be a specific and articulable
19 suspicion that contraband is concealed in a body cavity in order to justify a search.

20 84. CBP rules and regulations require approval from a Port Director before
21 proceeding with a body cavity search.

22 85. CBP rules and regulations require that a body cavity search be performed
23 in a medical setting, by trained medical personnel. CBP officers are not allowed to
24 perform body-cavity searches themselves, per their own rules and regulations.

25 86. CBP rules require that if a body-cavity search is to be performed, it must
26 not occur in the presence of officers of the other gender, and it must be done in
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1 reasonable privacy.

2 87. The female officer who searched Plaintiff did not have a specific and
3 articulable suspicion that Plaintiff was concealing contraband or weapons in her vagina.

4 88. On information and belief, the female officer who searched Plaintiff was
5 not a trained physician, nurse, or medical assistant.

6 89. The body cavity search was performed in the presence of three other
7 female detainees, and at least one male CBP officer.

8 90. The body cavity search was performed in a room at the Port of Entry, not
9 in a medical setting.

10 91. On information and belief, the officer who searched Plaintiff did not
11 obtain permission from a supervisor to conduct a body cavity search prior to doing so.

12 92. This body cavity search caused Plaintiff physical pain, emotional distress,
13 and subjected her to the risk of sexually transmitted disease and infection.

14 93. Plaintiff was visibly upset, crying and professing her innocence during
15 and after this invasive search.

16 94. CBP officers mocked Plaintiff for her emotional distress before and after
17 the search. They called her a “basket case” and made other similar derogatory comments
18 about her.

19 95. Less than 20 minutes after the first body cavity search, the same female
20 officer made Plaintiff stand up for another search.

21 96. Plaintiff complained that she had just been searched, and inquired why
22 the officer was searching her again.

23 97. The female officer responded, “Because I am!”

24 98. As part of this second search, the female officer inserted her finger into
25 Plaintiff’s vagina for a second time.

26 99. The female officer instructed Plaintiff to look straight ahead during this
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1 second body-cavity search; she threatened Plaintiff that she “better not move” during the
2 search. Plaintiff began to cry uncontrollably after this second invasive search.

3 100. Officers mocked her more, making additional derogatory comments and
4 insults.

5 101. Plaintiff asked the female officer who had conducted the searches if she
6 could use the restroom. The female officer refused, telling Plaintiff to “hold it.” At
7 approximately 10:00 p.m. the same night, CBP Officer Gomez entered the room.

8 102. Officer Gomez fingerprinted Plaintiff for a third time. Plaintiff explained
9 to Officer Gomez that she had no criminal history whatsoever, and had never failed to
10 appear on a criminal matter—in Contra Costa County or anywhere else.

11 103. Officer Gomez reviewed what appeared to be paperwork associated with
12 Plaintiff and her detention and stated, “this is all wrong” or words to that effect.

13 104. Officer Gomez left the room, saying he was going to investigate further.

14 105. Officer Gomez returned and asked Plaintiff her maiden name. She
15 replied, truthfully, “Constestabile.”

16 106. Plaintiff protested to Officer Gomez that she was not the person wanted
17 on a warrant.

18 107. Plaintiff told Officer Gomez her correct date of birth, her height, and her
19 maiden name. Officer Gomez also had access to Plaintiff’s passport, fingerprints, and
20 social security number. CBP Officers actually spoke to members of Plaintiff’s family on
21 the phone that night. They did not use that opportunity to determine that Plaintiff was not
22 the person wanted on the warrant.

23 108. Officer Gomez represented to Plaintiff that he had been on the phone with
24 authorities from Contra Costa County, where the warrant originated. On information and
25 belief, no one from CBP contacted Contra Costa County prior to Officer Gomez’s phone
26 call, and that call did not occur until after 10:00 p.m. that night.

1 109. Officer Gomez informed the officer or deputy from Contra Costa County
2 about the discrepancies between Plaintiff's identifying information and the person wanted
3 on the warrant, including the different date of birth, the half-foot discrepancy in height,
4 and the difference in race.

5 110. Defendant CCCSD instructed Officer Gomez to continue to detain
6 Plaintiff and to send her up to Contra Costa County on the warrant.

7 111. Defendant CCCSD did so despite the fact that he or she knew, or should
8 have known, that Plaintiff was not the person wanted on the warrant.

9 112. Defendants CCCSD and Doe CCCSD Deputies 1-50 knew or should have
10 known that Plaintiff and/or other innocent persons would suffer an unlawful arrest and a
11 violation of her Fourth Amendment rights if her identity was not confirmed.

12 113. If Defendant CCCSD had an adequate policy and procedure for
13 ascertaining the identity of persons wanted on a warrant, and whether a person in custody
14 was that person, they would have been able to determine that Plaintiff was not the person
15 wanted on the warrant. With adequate policies and procedures in place, CCCSD could
16 and would have determined that a 5'2", 120-pound Caucasian woman with a different
17 birth year was not the person wanted on the warrant.

18 114. Defendant CCCSD did not have adequate policies or procedures in place.
19 Rather, CCCSD's custom and practice was to issue warrants without sufficient details,
20 and then detain a person by default when in doubt about the identity of a person arrested
21 on a warrant.

22 115. CBP Officer Gomez explained to Plaintiff that he did not believe that she
23 was the person wanted on the warrant, but that there was nothing he could do. He refused
24 to release her.

25 116. Beginning at approximately 1:40 the next morning, CBP officers
26 transported Plaintiff to the Las Colinas Detention Facility, a jail for women run by the
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1 San Diego County Sheriff's Department.

2 117. CBP officers again placed Plaintiff in handcuffs, handcuffing her hands
3 behind her back. She remained handcuffed in this fashion until she arrived at Las
4 Colinas.

5 118. CBP officers placed her in the back of a van. The van contained other
6 male detainees who were being transported from the Port of Entry. Plaintiff had also
7 been left in a holding cell alone and unattended with male detainees prior to being
8 transported by van.

9 119. Plaintiff was in excruciating pain from having her hands handcuffed
10 behind her back during this transport.

11 120. Plaintiff was terrified at being caged at the Port of Entry, and later in the
12 back of a van, handcuffed, in the presence of male detainees.

13 121. Eventually Plaintiff was deposited at the Las Colinas Detention Facility.
14 She was subjected to a DNA swab at Las Colinas, which she did not consent to.

15 122. Plaintiff informed at least six different SDCS deputies and/or employees
16 at Las Colinas, at various times, that she was not the person wanted on the warrant.

17 123. Plaintiff informed at least six different SDCS deputies and/or employees
18 at Las Colinas, at various times, that her date of birth was wrong, and gave them her
19 correct identifying information.

20 124. One SDCS deputy at Las Colinas responded to Plaintiff's claims of
21 innocence by stating, "I don't care." The others ignored her and/or stated it was not their
22 problem.

23 125. SDCS deputies knew that Plaintiff was born in 1963, that she was 5'2",
24 and that she was Caucasian.

25 126. SDCS deputies knew or should have known that Plaintiff was not the
26 person wanted on the warrant. But they accepted her into custody and detained her
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1 anyway.

2 127. Plaintiff continued to attempt to tell SDCS deputies at Las Colinas that
3 she had the wrong person, but her claims were ignored.

4 128. Defendant San Diego County Sheriff's Department has written policies
5 and procedures that govern the acceptance of arrestees on out-of-county warrants. But
6 these written protocols require only matching the name on the warrant abstract to the
7 name of the person arrested.

8 129. These policies and procedures do not require verifying any other
9 identifying information between the person sought on the warrant and the person arrested.

10 130. These policies and procedures fail to adequately guard against the
11 foreseeable risk that a person could be arrested on a warrant intended for someone else.
12 Despite the obvious and foreseeable risk that wrongful arrest poses to innocent members
13 of the public, Defendant San Diego County Sheriff's Department did not have an
14 adequate procedure for addressing claims of mistaken identity on a warrant.

15 131. Instead, Defendant San Diego County Sheriff's Department relies on a
16 policy of detention by default when in doubt about the identity of a person arrested on a
17 warrant.

18 132. Specifically, Defendant SDCSD's current policies and procedures relating
19 to claims of mistaken identity state that "if a watch commander is unable to determine if
20 the inmate is the subject of the warrant, the inmate will remain in custody." On
21 information and belief, this policy was at least the prevailing custom and practice, if not
22 the written policy, in place at the time of Plaintiff's arrest.

23 134. Plaintiff remained in custody at Los Colinas as a result of the
24 unconstitutional policies, practices, and customs of Defendant San Diego County
25 Sheriff's Department, and because of the deliberate indifference of Doe SDCS Deputies
26 at Los Colinas.

1 135. Plaintiff, with the help of a sympathetic inmate, was finally able to
2 contact a bailbondsman. She eventually posted a \$10,000 bond (which cost a \$1,000
3 premium plus miscellaneous costs and fees).

4 136. Upon her release from Las Colinas, Plaintiff was given some of property
5 back, but not all of it.

6 137. In particular, she was given back one diamond hoop earring that was a
7 gift from her son. The other earring was missing. The earrings held significant
8 sentimental value to Plaintiff.

9 138. Plaintiff told the property deputy that she was wearing two earrings, and
10 that one of them was missing.

11 139. The deputy responded, "That's your problem."

12 140. The other earring has never been returned.

13 141. After making bail, Plaintiff hired an attorney to address the warrant and
14 criminal case in Contra Costa county.

15 142. The Contra Costa County District Attorney's Office almost immediately
16 dismissed the case against Plaintiff.

17 143. On November 12, 2013 the Superior Court for the County of Contra
18 Costa granted the District Attorney's motion for a finding of Factual Innocence as to
19 Plaintiff.

20 144. On November 18, 2013, Plaintiff contacted the Customs and Border
21 Protection Customer Information center, and spoke to Branch Chief Norman Bright. She
22 reported her treatment at the Ports of Entry stated that she wanted to find out who was
23 responsible and what went wrong.

24 145. CBP generated a reference number for her complaint and report:
25 131118-002347.

26 146. On November 18, 2013, Chief Norman Bright sent Plaintiff an email,
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1 thanking her for contacting the U.S. Customs and Border Protection INFO Center. Chief
2 Bright instructed Plaintiff to “contact the Joint Intake Center at 877-246-8253. Please
3 send me an email with the details of what happened with your arrest.”

4 147. Plaintiff called the number as instructed. She also sent a detailed email to
5 CBP Chief Bright. The email described what had happened to Plaintiff on the day of her
6 arrest.

7 148. This email was sent to Chief Norman Bright at the email address:
8 [“customs@customs-mail.custhelp.com”](mailto:customs@customs-mail.custhelp.com).

9 149. On information and belief, Chief Bright received Plaintiff’s November
10 18, 2013 email.

11 150. This email to Chief Bright included a description of the discrepancy
12 between the wanted person and herself—namely that she was 5'2" not 5'8"; that she was
13 Caucasian not African-American; and that her birth year was 1963 not 1962. In
14 summary, it described in detail the facts of her arrest on a warrant for someone else.

15 151. Plaintiff’s November 18, 2013 email to Chief Bright also told him
16 explicitly that she was subjected to multiple illegal vaginal searches at the Port of Entry.
17 The email included the following paragraph:

18 “At aprox 7:45 pm they cuffed me again and moved me to San Ysidro. When I
19 arrived I was patted down again. This time very aggressively! This officer
20 squeezed my breasts very hard and went into my underwear and in my vagina with
21 her finger. She did this with the same glove that she did three other women before
22 me!! I was mortified!!!! I never felt so violated!!! I was told to sit in a chair. I kept
23 asking why I was there and I just kept being told to be quiet. After about 20
24 minutes the same female officer called my name again and repeated the pat down!
25 When I questioned why she was doing it again she told me" because I am" and the
26 male officer behind her said "What do you work here?" Even if I was a criminal
27 NO ONE should be treated in this manner!!!

28 152. CBP never responded to Plaintiff’s email.

153. On information and belief, neither Chief Norman Bright nor any other
CBP employee took any follow-up action in response to Plaintiff’s email and telephonic
complaints.

1 154. As late as 2014, Plaintiff’s federal “rap sheet” continued to reflect an
2 arrest for narcotics charges. On information and belief, her rap sheet continues to be
3 associated with that arrest and charge.

4 155. In approximately June of 2014, Plaintiff underwent a background check
5 as part of a new job opportunity. The background check, which utilized F.B.I. and
6 Department of Justice databases, revealed a November 2, 2013 arrest at San Ysidro. It
7 included a description of the charge as “COUNTS OF POSSESS NARCOTIC CNTL
8 SUB.” The records show that this arrest is tied to Plaintiff’s “TEN-PRINT
9 SUBMISSION,” i.e., her fingerprints.

10 156. Plaintiff now suffers from distress, fear, and humiliation from the fact that
11 *her* personal information—including date of birth, fingerprints, social security number,
12 and even DNA—is now tied to this warrant and arrest at the Port of Entry. She also
13 believes that other background checks for other job opportunities revealed this wrongful
14 criminal record, costing her job opportunities and loss of income.

15 157. Plaintiff lives in fear that she will wrongfully be associated with the felon
16 from Contra Costa County in the future.

17 158. Since the arrest, Plaintiff has been unable to travel outside of the United
18 States, for fear of being wrongfully arrested at the border and subjected to the same
19 treatment that she suffered in 2013.

20 159. Plaintiff’s church group continues to travel to Mexico regularly to
21 volunteer at the orphanage, but she is unable to participate even though she would like to.

22 160. Plaintiff has also been unable to travel with friends or family as a result of
23 this incident.

24 161. Plaintiff suffers continuing harm from her wrongful arrest and sexual
25 assault, including but not limited to fear of law enforcement, anxiety, emotional distress,
26 restrictions on her daily movements and life, and nightmares.

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I.

FIRST CAUSE OF ACTION

***Bivens* action: Unlawful Arrest**

162. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs.

163. This cause of action is based upon *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

164. Plaintiff had a Fourth Amendment right to freedom of movement and freedom from unreasonable seizures which Defendants Amir, Ramos, Gomez, and CBP Doe Officers violated by detaining and arresting her on a warrant that they actually knew or should have known pertained to someone else. These defendants were not acting in good faith, were acting under color of law, and violated Plaintiff's Fourth Amendment rights.

165. Defendants CBP Officers Amir, Ramos, Gomez, and CBP Doe Officers' actions in illegally detaining and arresting Plaintiff caused damage to her, and led to the later harms that occurred. These defendants are being sued in their individual capacities for the purposes of this cause of action.

II.

SECOND CAUSE OF ACTION

FTCA: False Imprisonment

166. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs.

167. Defendants Amir, Ramos, Gomez, and CBP Doe Officers intentionally deprived Plaintiff's freedom of movement by force, threats of force, menace, and duress.

168. Defendants Amir, Ramos, Gomez, and CBP Doe Officers arrested Plaintiff, or contributed to her arrest, in their official capacity and in the scope of their

1 employment as Customs and Border Protections Officers of the United States.

2 169. Plaintiff was not allowed to leave for an appreciable time.

3 170. Plaintiff did not consent to be imprisoned.

4 171. Plaintiff was actually harmed by the conduct of the Defendants and
5 Defendants' conduct was a substantial factor in causing harm to Plaintiff.

6 **III.**

7 **THIRD CAUSE OF ACTION**

8 **FTCA: Negligence**

9 172. Plaintiff realleges and incorporates herein by reference each and every
10 allegation contained in the preceding paragraphs.

11 173. Defendants Amir, Ramos, Gomez, and CBP Doe Officers had a duty to
12 avoid violating Plaintiff's rights to freedom of movement and bodily integrity, and to use
13 reasonable care in the execution of an arrest warrant to ensure that it was for the correct
14 person.

15 174. Defendants Amir, Ramos, Gomez, and CBP Doe Officers breached their
16 duty of care and caused harm to Plaintiff, including physical pain, terror, mental anguish,
17 humiliation, damage to reputation, and financial loss.

18 175. Defendants Amir, Ramos, Gomez, and CBP Doe Officers acted in their
19 official capacity and in the scope of their employment as Customs and Border Protections
20 Officers of the United States.

21 176. As a direct, proximate, and foreseeable result of the Defendants' breach
22 of their duty of care, Plaintiff suffered damages in an amount according to proof at
23 the time of trial.

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IV.

FOURTH CAUSE OF ACTION

Administrative Procedures Act Claim, 5 U.S.C. § 701 *et seq.*

177. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs.

178. Defendant United States has adopted customs, policies, rules, and/or procedures for the execution of arrest warrants that are arbitrary, capricious, an abuse of discretion, not in accordance with the law, and without observance of the procedures required by law.

179. Plaintiff suffered and continues to suffer legal wrong, and was and continues to be adversely aggrieved, by the customs, policies, rules, and/or procedures regarding the execution of warrants adopted by the United States. Specifically, Plaintiff cannot travel without the justified fear that she will be wrongly identified again, that she will be wrongly associated with another person's warrant or criminal record, and that her prior mistreatment will be repeated.

180. These policies, rules, and procedures resulted and continue to result in violations of Plaintiff's statutory and constitutional rights, as alleged in the prior paragraphs of this complaint, and are considered a final agency action for which there is no other adequate remedy in court.

V.

FIFTH CAUSE OF ACTION

Administrative Procedures Act Claim, 5 U.S.C. § 701 *et seq.*

181. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs.

182. Defendant United States has adopted customs, policies, rules, and/or procedures for entering and purging information (and refusing to purge information) from

1 a person's criminal history record, and these practices are arbitrary, capricious, an abuse
2 of discretion, not in accordance with the law, and without observance of the procedures
3 required by law.

4 183. Plaintiff suffered and continues to suffer legal wrong, and was and
5 continues to be adversely aggrieved, by the policies, rules, and procedures for entering
6 and purging information from a person's criminal history record adopted by the United
7 States. Specifically, Plaintiff continues to have a "rap sheet" and criminal history records
8 reflecting a narcotics arrest at the Port of Entry, associating her identifying information
9 and fingerprints with this arrest, and incorrectly tying her to a different person's warrant
10 and crimes.

11 184. These policies, rules, and procedures resulted and continue to result in
12 violations of Plaintiff's statutory and constitutional rights, as alleged in the prior
13 paragraphs of this complaint, and are considered a final agency action for which there is
14 no other adequate remedy in court.

15 VI.

16 SIXTH CAUSE OF ACTION

17 *Bivens* action: Illegal Search

18 185. Plaintiff realleges and incorporates herein by reference each and every
19 allegation contained in the preceding paragraphs.

20 186. This cause of action is based upon *Bivens v. Six Unknown Federal*
21 *Narcotics Agents*, 403 U.S. 388 (1971).

22 187. Plaintiff had a Fourth Amendment right to be free of unreasonable
23 searches, which Defendants CBP Doe Officers violated by subjecting her to an invasive
24 and unjustified body cavity search. These defendants were not acting in good faith, were
25 acting under color of law, and violated Plaintiff's Fourth Amendment rights.

26 188. Defendant CBP Doe Officers' actions in illegally searching Plaintiff

1 caused damage to her, in an amount to be proven at trial. These defendants are being
2 sued in their individual capacities for the purposes of this cause of action.

3 **VII.**

4 **SEVENTH CAUSE OF ACTION**

5 **FTCA: Battery**

6 189. Plaintiff realleges and incorporates herein by reference each and every
7 allegation contained in the preceding paragraphs.

8 190. Defendant CBP Doe Officers acted with an intent to cause harmful or
9 offensive contact with the person of Plaintiff and the intended harmful or offensive
10 contact did in fact occur.

11 191. Defendant CBP Doe Officers subjected Plaintiff to an invasive and
12 unlawful body cavity examination, including placing a gloved finger inside her vagina.

13 192. CBP Doe Officers acted in their official capacity and in the scope of their
14 employment as Customs and Border Protections Officers of the United States.

15 193. The harmful or offensive contact was not privileged nor consented to and
16 was excessive, unreasonable, and done with deliberate indifference to the rights and
17 safety of Plaintiff.

18 194. As a result of CBP Doe Officers' intent to cause harmful or offensive
19 contact with the person of Plaintiff, and the fact that the intended harmful or offensive
20 contact did in fact occur, Plaintiff suffered damages according to proof at the time of trial.
21 Said damages are currently in excess of the jurisdictional minimum of this court and
22 include general and special damages according to proof at the time of trial.

1 **VIII.**

2 **EIGHTH CAUSE OF ACTION**

3 ***Bivens* action: Second Illegal Search**

4 195. Plaintiff realleges and incorporates herein by reference each and every
5 allegation contained in the preceding paragraphs.

6 196. This cause of action is based upon *Bivens v. Six Unknown Federal*
7 *Narcotics Agents*, 403 U.S. 388 (1971).

8 197. Plaintiff had a Fourth Amendment right to be free of unreasonable
9 searches, which defendants CBP Doe Officers violated by subjecting her to a *second*
10 invasive and unjustified body cavity search. These defendants were not acting in good
11 faith, were acting under color of law, and violated Plaintiff's Fourth Amendment rights.

12 198. Defendant CBP Doe Officers' actions in illegally searching Plaintiff for a
13 second time caused damage to her, in an amount to be proven at trial. These defendants
14 are being sued in their individual capacities for the purposes of this cause of action.

15 **IX.**

16 **NINTH CAUSE OF ACTION**

17 **FTCA: Battery**

18 199. Plaintiff realleges and incorporates herein by reference each and every
19 allegation contained in the preceding paragraphs.

20 200. Defendant CBP Doe Officers acted with an intent to cause harmful or
21 offensive contact with the person of Plaintiff and the intended harmful or offensive
22 contact did in fact occur.

23 201. Defendant CBP Doe Officers subjected Plaintiff to a second invasive and
24 unlawful body-cavity examination, including placing a gloved finger inside her vagina.

25 202. CBP Doe Officers acted in their official capacity and in the scope of their
26 employment as Customs and Border Protections Officers of the United States.

1 Constitution and statutes by the detention and seizure alleged above.

2 209. The conduct alleged herein caused Plaintiff to be deprived of her civil
3 rights that are protected under the California Constitution and statutes which has also
4 legally, proximately, foreseeably and actually caused her to suffer emotional distress, pain
5 and suffering, damage to reputation and further damages according to proof at the time of
6 trial.

7 **XI.**

8 **ELEVENTH CAUSE OF ACTION**

9 **(FTCA: Cal. Civ. Code §52.1)**

10 210. Plaintiff realleges and incorporates herein by reference each and every
11 allegation contained in the preceding paragraphs.

12 211. Defendants CBP Doe Officers violated Plaintiff's clearly established
13 rights under the California Constitutions and statutes, which include, but are not limited
14 to, the following:

15 (a) Article I, Section 13 of the California Constitution - right to be free
16 from unreasonable detentions, searches, and seizures; and

17 (b) California Civil Code Section 43 - right of protection from bodily
18 restraint or harm, from personal insult and from defamation.

19 212. The California Legislature has declared that it is a violation of state civil
20 rights act for any person to interfere with the exercise or enjoyment by any individual of
21 her rights secured by the United States Constitution or state or federal law. This includes
22 any interference of these rights by threats, intimidation, coercion or attempted threats,
23 intimidation or coercion.

24 213. These Defendants interfered with Plaintiff's rights under the California
25 Constitution and statutes by the illegal and invasive body-cavity searches alleged above.

26 214. The conduct alleged herein caused Plaintiff to be deprived of her civil
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1 rights that are protected under the California Constitution and statutes which has also
2 legally, proximately, foreseeably and actually caused her to suffer emotional distress, pain
3 and suffering, damage to reputation and further damages according to proof at the time of
4 trial.

5 **XII.**

6 **TWELFTH CAUSE OF ACTION**

7 **Violation of constitutional rights under color of law (42 U.S.C. § 1983)**

8 215. Plaintiff realleges and incorporates herein by reference each and every
9 allegation contained in the preceding paragraphs.

10 216. Defendants Doe SDCS Deputies, during all times relevant herein were
11 acting under color of state law. These defendants are being sued in their individual
12 capacities for the purposes of this cause of action.

13 217. Plaintiff had a Fourth Amendment right to freedom of movement, and to
14 be free from illegal and unreasonable arrests.

15 218. Plaintiff had a Fourth Amendment right to freedom of movement which
16 Defendants Doe SDCS Deputies violated by detaining and arresting her on a warrant that
17 they actually knew or should have known pertained to someone else. These defendants
18 were not acting in good faith, were acting under color of law, and violated Plaintiff's
19 Fourth Amendment rights.

20 219. Defendants Doe SDCS Deputies' actions in illegally detaining and
21 arresting Plaintiff caused damage to her, in an amount to be proven at trial.

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XIII.

THIRTEENTH CAUSE OF ACTION

Violation of constitutional rights under color of law (42 U.S.C. § 1983)

220. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs.

221. Defendants Contra Costa County Sheriff’s Department (“CCCSD”) Deputies A. Charles and M. Bailey, and Doe CCCSD Deputies, during all times relevant herein were acting under color of state law. These defendants are being sued in their individual capacities for the purposes of this cause of action.

222. Plaintiff had a Fourth Amendment right to freedom of movement, and to be free from illegal and unreasonable arrests.

223. Plaintiff had a Fourth Amendment right to freedom of movement which Defendant CCCSD Deputies A. Charles and M. Bailey, and Doe CCCSD Deputies violated by issuing, with deliberate indifference, a warrant that carried a foreseeable and obvious risk to Plaintiff and the public of wrongful arrest. Doe CCCSD Deputies also violated Plaintiff’s Fourth Amendment rights by instructing U.S. Customs and Border Protection Officers to continue to detain her on a warrant that they actually knew or should have known pertained to someone else. These defendants were not acting in good faith, were acting under color of law, and violated Plaintiff’s Fourth Amendment rights.

224. Defendants Doe CCCSD Deputies’ actions in illegally detaining and arresting Plaintiff caused damage to her, in an amount to be proven at trial.

XIV.

FOURTEENTH CAUSE OF ACTION

Unconstitutional customs, policies or practices (*Monell*, 42 U.S.C. § 1983)

225. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs.

1 foreseeable. Defendant SDCSD failure to properly train and supervise its employees
2 resulted in a violation of Plaintiff's Fourth Amendment rights.

3 231. Defendant SDCSD failed to train its employees to consider a person's
4 physical description or other distinguishing personal information before booking that
5 person into custody on an arrest warrant.

6 232. Defendant SDCSD failed to train its employees on how to properly
7 address claims of mistaken identity from a person arrested on a warrant.

8 234. Defendant SDCSD failed to train its employees adequately by instructing
9 them to rely on a policy of detention by default when in doubt about the identity of a
10 person arrested on a warrant.

11 235. Defendant SDCSD failed to supervise its employees on the manner in
12 which they verified the identity of a person arrested on a warrant and the manner in which
13 they resolved claims of mistaken identity on a warrant.

14 236. Defendant SDCSD's failure to properly train and supervise its officers
15 and employees, as a matter of policy, custom and practice, was deliberately indifferent to
16 Plaintiff's Fourth Amendment rights and done with conscious disregard for the dangers of
17 harm and injury to Plaintiff and others similarly situated. This failure to train and
18 supervise was the moving force behind the violation of Plaintiff's Fourth Amendment
19 rights, and proximately, foreseeably and actually caused Plaintiff to suffer damages in an
20 amount to be proven at trial.

21 **XVI.**

22 **SIXTEENTH CAUSE OF ACTION**

23 **Unconstitutional customs, policies or practices (*Monell*, 42 U.S.C. § 1983)**

24 237. Plaintiff realleges and incorporates herein by reference each and every
25 allegation contained in the preceding paragraphs.

26 238. Defendant Contra Costa County Sheriff's Department maintained
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1 unconstitutional customs, policies, or practices, within the meaning of *Monell*, for issuing
2 warrants and verifying the identity of a person arrested on a warrant. These customs,
3 policies, or practices resulted in a violation of Plaintiff's Fourth Amendment rights.

4 239. Defendant CCCSD's unconstitutional customs, policies, and practices
5 included but were not limited to: issuing warrants with insufficient personal identifying
6 information, such as physical description, to avoid foreseeable risk to innocent persons;
7 failing to institute safeguards to avoid inclusion of erroneous information, such as
8 Plaintiff's driver's license number, in an arrest warrant; failing to consider personal
9 identifying information, such as physical description, before requesting the booking of a
10 person into custody on an arrest warrant; maintaining inadequate policies, practices, or
11 procedures for preparing, requesting, and issuing arrest warrants; maintaining inadequate
12 policies, practices, or procedures for addressing claims of mistaken identity; and adopting
13 a policy of detention by default when in doubt about a person's identity.

14 240. Defendant CCCSD's unconstitutional customs, policies, and practices
15 amounted to deliberate indifference of Plaintiff's Fourth Amendment rights. These
16 customs, policies, and practices were the moving force behind the violation of Plaintiff's
17 Fourth Amendment rights, and proximately, foreseeably and actually caused Plaintiff to
18 suffer damages in an amount to be proven at trial.

19 XVII.

20 SEVENTEENTH CAUSE OF ACTION

21 Failure to train and/or supervise (*Monell*, 42 U.S.C. § 1983)

22 241. Plaintiff realleges and incorporates herein by reference each and every
23 allegation contained in the preceding paragraphs.

24 242. Defendant Contra Costa County Sheriff's Department, as a matter of
25 custom, practice or policy, failed to institute, require, and enforce proper and adequate
26 training and supervision for verifying the identity of a person arrested on a warrant, when
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1 the need for such training and supervision was obvious. Defendants' failure to properly
2 train and supervise its employees resulted in a violation of Plaintiff's Fourth Amendment
3 rights.

4 243. Defendant CCCSD failed to train their employees on proper procedures
5 for preparing, requesting, and issuing arrest warrants, including attaching to the warrant
6 and warrant abstract any distinguishing personal information for the person sought on the
7 warrant.

8 244. Defendant CCCSD failed to train their employees to consider a person's
9 physical description or other distinguishing personal information before requesting that a
10 person be booked into custody on an arrest warrant.

11 245. Defendant CCCSD failed to train their employees on a proper policy to
12 address claims of mistaken identity from a person arrested on a warrant.

13 246. Defendant CCCSD failed to train their employees by instructing them to
14 rely on a policy of detention by default when in doubt about the identity of a person
15 arrested on a warrant.

16 247. Defendant CCCSD failed to supervise their employees on the manner in
17 which they prepared, requested, and issued arrest warrants, verified the identity of a
18 person arrested on a warrant, and resolved claims of mistaken identity on a warrant.

19 248. Defendant CCCSD's failure to properly train and supervise its officers, as
20 a matter of policy, custom, and practice, was deliberately indifferent to Plaintiff's Fourth
21 Amendment rights and done with conscious disregard for the dangers of harm and injury
22 to Plaintiff and others similarly situated. Defendant's failure to train and supervise its
23 employees was the moving force behind the violation of Plaintiff's Fourth Amendment
24 rights, and proximately, foreseeably and actually caused Plaintiff to suffer damages in an
25 amount to be proven at trial.

1 **XVIII.**

2 **EIGHTEENTH CAUSE OF ACTION**

3 **Negligence**

4 249. Plaintiff realleges and incorporates herein by reference each and every
5 allegation contained in the preceding paragraphs.

6 250. Defendants Contra Costa County Sheriff’s Department, CCCSD Deputies
7 M. Bailey, Deputy A. Charles, and Doe CCCSD Deputies had a duty to use reasonable
8 care in preparing, drafting, and executing arrest warrants. They had a duty to avoid
9 creating an unnecessary risk to innocent persons that they would be arrested on a warrant
10 intended for someone else. They had a duty to use reasonable care in the execution of an
11 arrest warrant to ensure that it was for the correct person.

12 251. These defendants breached their duty of care and caused harm to Plaintiff,
13 including physical pain, terror, mental anguish, humiliation, damage to reputation, and
14 financial loss.

15 252. All individual defendants acted in their official capacity and in the scope
16 of their employment as Contra Costa County Sheriff’s Deputies.

17 253. As a direct, proximate, and foreseeable result of the Defendants’ breach
18 of their duty of care, Plaintiff suffered damages in an amount according to proof at
19 the time of trial.

20 **XIX.**

21 **NINETEENTH CAUSE OF ACTION**

22 **(Cal. Civ. Code §52.1)**

23 254. Plaintiff realleges and incorporates herein by reference each and every
24 allegation contained in the preceding paragraphs.

25 255. Defendants Contra Costa County Sheriff’s Department, CCCSD Deputies
26 M. Bailey, Deputy A. Charles, and Doe CCCSD Deputies violated Plaintiff’s clearly

1 established rights under the California Constitution and statutes, which include, but are
2 not limited to, the following:

3 (a) Article I, Section 13 of the California Constitution: right to be free from
4 unreasonable detentions, searches, and seizures; and

5 (b) California Civil Code Section 43: right of protection from bodily restraint or
6 harm, from personal insult and from defamation.

7 256. The California Legislature has declared that it is a violation of state civil
8 rights act for any person to interfere with the exercise or enjoyment by any individual of
9 her rights secured by the United States Constitution or state or federal law. This includes
10 any interference of these rights by threats, intimidation, coercion or attempted threats,
11 intimidation or coercion.

12 257. These Defendants interfered with Plaintiff's rights under the California
13 Constitution and statutes by the detention and seizure alleged above.

14 258. The conduct alleged herein caused Plaintiff to be deprived of her civil
15 rights that are protected under the California Constitution and statutes which has also
16 legally, proximately, foreseeably and actually caused her to suffer emotional distress, pain
17 and suffering, damage to reputation and further damages according to proof at the time of
18 trial.

19 **PRAYER FOR RELIEF**

20 Plaintiff prays for judgment against defendants as follows:

- 21 1. General and compensatory damages in an amount according to proof;
- 22 2. Punitive and exemplary damages;
- 23 3. Civil penalties as provided by law;
- 24 4. Declaratory and injunctive relief remedying the continued policies, customs and
25 practices governing how CBP, SDCS, and CCCSD acts upon warrants and ascertains
26 the identities of the wanted persons to avoid future harm;

- 1 5. Declaratory and injunctive relief expunging any criminal record, rap sheet, or similar
2 document reflecting that Plaintiff Lewis was arrested for a narcotics offense, and/or
3 linking her to the warrant or criminal history of the person wanted on that warrant
4 from Contra Costa County.
- 5 6. Attorney fees under 42 U.S.C. § 1983, Cal. Civ. Code §52.1, and the Equal Access to
6 Justice Act, 28 U.S.C. § 2412 et seq.
- 7 7. Costs of suit;
- 8 8. And for such other and further relief as the Court may deem proper.

9
10 Date: November 30, 2015

Respectfully submitted,

11 *s/ Timothy A. Scott*

12 TIMOTHY A. SCOTT
13 NICOLAS O. JIMENEZ

14 Law Offices of Timothy A. Scott, APC
15 Attorneys for Plaintiff Joanne Lewis

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