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10
 11 **UNITED STATES DISTRICT COURT**
 12 **FOR SOUTHERN DISTRICT OF CALIFORNIA**

13 [REDACTED] }
 14 [REDACTED] }
 15 Plaintiff, }
 16 vs. }
 17 City of National City; National City }
 18 Police Department Corporal T. Wilkins, }
 19 individually and in his official capacity; }
 20 NCPD Officer C. Sakamoto, }
 21 individually and in his official capacity; }
 22 Doe NCPD Officers 1-50, individually }
 and in their official capacities. }
 23 Defendants.

Civil Action No. [REDACTED]

Complaint for Damages for:

1. 42 U.S.C. § 1983: Illegal Arrest
2. 42 U.S.C. § 1983: Use of Excessive Force
3. 42 U.S.C. § 1983: Fabrication of Evidence
4. *Monell*: Failure to train and/or supervise
5. Illegal Arrest
6. Battery
7. Negligence
8. Negligent Training and Supervision
9. Cal. Civ. Code § 52.1
10. Cal Civ. Code § 52.1

Demand for Jury Trial.

INTRODUCTION

1. Plaintiff [REDACTED] [REDACTED] (“Plaintiff”) was arrested by National City Police officers for boarding a public bus with a washed, empty bottle. The officers lacked probable cause to arrest Plaintiff, because what he did was not a crime. Officers deliberately and wrongfully tased Plaintiff while he stood with his hands in the air, trying to explain his side of the story. The officers then falsified their police reports, and charged Plaintiff with three criminal offenses to cover up their misdeeds. But the event was caught on MTS bus cameras, exposing the police officers’ fabrications. The criminal complaint was eventually dismissed consequently.

This civil complaint can be summarized as follows:

Count	Claim	Defendants
1	§ 1983 / Fourth Amendment claim for illegal arrest.	Corporal T. Wilkins, Officer C. Sakamoto.
2	§ 1983 / Fourth Amendment claim for use of excessive force.	Corporal T. Wilkins, Officer C. Sakamoto.
3	§ 1983 / Fourth Amendment / Fifth Amendment / Fourteenth Amendment claim for fabrication of evidence.	Corporal T. Wilkins, Officer C. Sakamoto; Does.
4	Unconstitutional failure to train and/or supervise (<i>Monell</i> , 42 U.S.C. § 1983) in proper Taser practices and procedures.	City of National City.
5	False arrest.	Corporal T. Wilkins, Officer C. Sakamoto.
6	Battery.	Corporal T. Wilkins, Officer C. Sakamoto.

7	Negligence.	Corporal T. Wilkins, Officer C. Sakamoto, Doe NCPD Officers.
8	Negligent Training and Supervision.	City of National City.
9	Bane Act violation, Cal. Civ. Code §52.1,	Corporal T. Wilkins, Officer C. Sakamoto.
10	Bane Act violation, Cal. Civ. Code §52.1,	City of National City.

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

JURISDICTION AND VENUE

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

3. Plaintiff’s claims arise in this judicial district where the events and omissions giving rise to this complaint occurred, namely the City of National City in San Diego County, which is situated in the Southern District of California.

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

5. Plaintiff filed a timely tort claim against the City of National City and its employees under California Government Code Sections 910 *et seq.* on November 16, 2015. The claim was denied on or about January 20, 2016.

PARTIES

6. Plaintiff [REDACTED] was, at all times relevant to this lawsuit, a resident of the State of California, County of San Diego, and a citizen of the United States.

7. Defendant City of National City (“National City”) is a governmental entity organized and existing under the laws of the State of California and a municipality existing in the County of San Diego, California. At all times mentioned herein, the National City Police Department (“NCPD”) was a branch of National City and a governmental entity organized and existing under the laws of the State of California.

8. Defendant NCPD Corporal T. Wilkins, at all times relevant herein, was an officer with the National City Police Department. He was on duty near 24th Street and Highland Avenue in National City on May 15, 2015. At all times mentioned herein, this defendant was an employee of the NCPD and acting in an official capacity and under color of law. This officer’s first name is currently unknown to Plaintiff.

9. Defendant NCPD Officer C. Sakamoto, at all times relevant herein, was an officer with the National City Police Department. He was on duty near 24th Street

1 and Highland Avenue in National City on May 15, 2015. At all times mentioned
2 herein, this defendant was an employee of the NCPD and acting in an official
3 capacity and under color of law. This officer's first name is currently unknown to
4 Plaintiff.

5 10. Defendants Doe NCPD Officers 1-50, individually and in their official
6 capacities, at all times relevant herein, were officers and/or employees for the
7 National City Police Department, acting in their official capacity and under color
8 of law. These Defendants include officers in supervisory positions that participated
9 in the decision to arrest Plaintiff, in the supervision of the use of force by other
10 officers, and in reporting incidents of use of force to other employees within the
11 NCPD.

12 **FACTUAL ALLEGATIONS**

13 11. On May 15, 2015, at approximately 9:45 A.M., Plaintiff boarded bus # 2823,
14 operated by the Metropolitan Transit System ("MTS"), near the 2400 block of
15 Highland Avenue in National City.

16 12. Plaintiff carried an empty brown bottle in his hand. He had washed the
17 bottle out prior to boarding the bus, and wanted to redeem its ten-cent deposit
18 value.

19 13. Upon seeing the bottle, the MTS bus driver, Raul Valenzuela, told Plaintiff
20 that he could not "have a glass bottle in here" or words to that effect.

21 14. Plaintiff peacefully disagreed with Valenzuela, and took his seat on the bus.
22 He told Valenzuela that he could call the police if he wanted to, or words to that
23 effect.

24 15. After Plaintiff sat down, Valenzuela radioed MTS dispatch, which in turn
25 requested police assistance. Valenzuela then stepped off the bus.

26 16. Approximately 15 minutes later, at or near 10:00 AM, Defendant NCPD
27 Corporal T. Wilkins and Defendant NCPD Officer C. Sakamoto arrived in a police
28 cruiser and parked behind the bus.

1 17. Defendants Sakamoto and Wilkins spoke briefly with Valenzuela. They
2 then approached the windows directly behind Plaintiff.

3 18. Defendants Sakamoto and Wilkins stood behind Plaintiff and addressed him
4 through the window.

5 19. Defendants Sakamoto and Wilkins ordered Plaintiff to get off the bus.

6 20. Complying with the order, Plaintiff stood up and walked toward the front
7 door of the bus.

8 21. As soon as Plaintiff stood up, Defendant Wilkins drew his firearm and
9 pointed it at Plaintiff.

10 22. Defendant Sakamoto drew his Taser and also pointed it at Plaintiff at the
11 same time.

12 23. As Plaintiff walked toward the door of the bus, Defendant Sakamoto yelled:
13 “Put down the bottle.”

14 24. Plaintiff stopped and stood at the top of the stairs at the entrance of the bus.
15 He stood in the doorway of the bus, facing Defendants Sakamoto and Wilkins, who
16 remained on the curb with their weapons pointed at Plaintiff.

17 25. Plaintiff said: “This is a civil matter, not a criminal matter.”

18 26. Plaintiff then set the bottle on a shelf next to him and stood with his hands in
19 the air, empty palms facing towards the officers.

20 27. After Plaintiff had placed the bottle on the platform, Defendant Sakamoto
21 again yelled: “Put down the bottle.”

22 28. Plaintiff pointed to the bottle and answered: “This is my property though,”
23 or words to that effect.

24 29. Defendant Sakamoto replied: “Put your hands on top of your head.”

25 30. Plaintiff then asked: “Is this a felony arrest?”

26 31. Defendant Sakamoto answered: “You’re under arrest for having an open
27 container.”
28

1 32. Plaintiff replied “Sir...” and picked up the bottle with his right hand, holding
2 it upside down to show Defendants Sakamoto and Wilkins that the bottle was
3 empty. He held the bottle at approximately eye level, with his elbow bent.

4 33. At no time did Plaintiff move the bottle in a threatening manner.

5 34. Nevertheless, Defendant Wilkins screamed: “Drop the fucking bottle now!”
6 or words to that effect.

7 35. Plaintiff immediately placed the bottle back on the shelf.

8 36. Plaintiff then raised both hands next to his head and remained standing
9 passively at the top of the stairs, facing the officers.

10 37. As Plaintiff remained stationary with his hands in the air, Defendant Wilkins
11 shouted: “Get the fuck down here and get down on the ground!” or words to that
12 effect.

13 38. Defendant Sakamoto also screamed at Plaintiff to get down on the ground.

14 39. Plaintiff answered: “Officers, I’m obeying your full orders” or words to that
15 effect.

16 40. Defendants Sakamoto and Wilkins again screamed at Plaintiff to get down
17 on the ground, continuing to point their weapons at Plaintiff.

18 41. Plaintiff, who was still standing calmly with his hands in the air, answered:
19 “I’m not going to the ground.” He did so because it was a rainy day, and he did
20 not want to lie down on his face in the muddy gutter when he had done nothing
21 wrong.

22 42. Defendant Sakamoto then fired his Taser at Plaintiff, striking Plaintiff in the
23 chest with the Taser’s electrified barbs. Plaintiff was unarmed, with his hands in
24 the air, when he was tased.

25 43. Plaintiff immediately began convulsing and he collapsed backward. He
26 struck a metal pole behind him, fell to the floor, and writhed in pain as the
27 electrical current coursed through his body.
28

1 44. It was dumb luck that Plaintiff fell backwards into a pole, rather than
2 forwards down the stairs and onto the curb. Defendants Sakamoto and Wilkins
3 knew or should have known that Plaintiff could easily have collapsed forward from
4 his elevated position, resulting in substantial bodily injury or death.

5 45. Defendants Sakamoto and Wilkins knew or should have known that NCPD
6 policies on the use of electronic control devices require particular care and
7 consideration when a Taser is deployed against a subject in an elevated position.

8 46. Defendants Sakamoto and Wilkins knew or should have known that
9 deployment of a Taser should be reserved for situations that require a heightened
10 level of force, not for interacting with a person engaged in (at most) passive
11 resistance, as Plaintiff was.

12 47. Defendants Sakamoto and Wilkins knew or should have known that NCPD
13 policies only allow for Tasers to be deployed against subjects that are “actively
14 resisting.”

15 48. Defendant National City’s policies on the use of electronic control devices
16 such as Tasers state that they must only be used “where there is an immediate
17 threat to the officer or others, apart from active resistance by the subject.”

18 49. Defendants Sakamoto and Wilkins knew or should have known that NCPD
19 policies and prevailing Taser standards require that a subject be issued a verbal
20 warning before a Taser is deployed against that person.

21 50. Defendants Sakamoto and Wilkins knew or should have known that NCPD
22 policies and prevailing Taser standards require that a subject be given a reasonable
23 opportunity to comply before a Taser is deployed against that person.

24 51. Defendants Sakamoto and Wilkins knew or should have known that NCPD
25 policies and prevailing Taser standards require targeting a subject’s lower
26 abdomen, legs, or back as a target zone for the Taser barbs, and specifically
27 discourage targeting a subject’s chest.

28

1 52. Defendants Sakamoto and Wilkins knew or should have known that NCPD
2 policies require Tasers to be discharged in five-second intervals, to prevent serious
3 injury or death to a subject.

4 53. Defendant National City’s policies on the use of electronic control devices
5 such as Tasers require that officers consider the severity of the alleged crime being
6 committed before deploying a Taser.

7 54. Defendant National City’s policies on the use of electronic control devices
8 such as Tasers only authorize the use of such a device when a subject cannot be
9 subdued through conventional and less deadly techniques.

10 55. Defendants Sakamoto and Wilkins are apparently not the only NCPD
11 officers to “tase first” and ask questions later, however.

12 56. Official National City records indicate that in 2015, NCPD officers—by
13 their own admission—used tasers in 40% of all cases that used *any* force. (Under
14 the NCPD’s methodology for these statistics, a “use of force” incident includes all
15 manner of deadly and non-deadly incidents, and can be anything from a defensive
16 maneuver to a controlled hold to a dog bite.) These numbers represent an increase
17 from approximately 30% and 32% in the preceding two years.

18 57. The high frequency of Taser use by NCPD officers, along with Defendants
19 Sakamoto and Wilkins’ actions against Plaintiff, indicate that Defendant National
20 City has failed to provide adequate training to its employees on the proper use of
21 electronic control devices.

22 58. The high frequency of Taser use by NCPD officers, along with Defendants
23 Sakamoto and Wilkins’ actions against Plaintiff, indicate that Defendant National
24 City has failed to properly supervise its employees on their use of electronic
25 control devices.

26 59. Defendant Sakamoto tased Plaintiff for at least 10 seconds, while Plaintiff
27 rolled around on the floor of the bus in pain and agony.

28

1 60. While still delivering the powerful electric current into Plaintiff's body,
2 Defendant Sakamoto stepped into the bus and said: "Shut the fu... Put your hands
3 behind your back," or words to that effect.

4 61. Defendant Wilkins entered the bus at that point, placed his knees and full
5 body weight on Plaintiff's back, and handcuffed him as he lay helpless on the floor
6 of the bus.

7 62. Defendant Sakamoto then reached for the glass bottle and, without even
8 looking at it, placed it in a nearby trashcan.

9 63. Soon after, Defendants Sakamoto and Wilkins attempted to remove Plaintiff
10 from the bus, but he collapsed after stepping on the sidewalk. Defendants
11 Sakamoto and Wilkins then dragged Plaintiff away to a nearby bench.

12 64. After paramedics and other officers arrived at the scene, Defendant Wilkins
13 knowingly misrepresented the nature of their encounter with Plaintiff, telling a
14 paramedic that Plaintiff had the bottle in his hand at the time he was tased.

15 65. When making that statement, Defendant Wilkins simulated a hand motion to
16 suggest that Plaintiff was holding the bottle by the neck and brandishing it as a
17 weapon at the time he was tased.

18 66. A short time later, Defendant Wilkins knowingly repeated this
19 misrepresentation, telling another officer that Plaintiff was tased because he had
20 the bottle in his hand and charged at them while wielding the bottle in a threatening
21 fashion.

22 67. Defendant National City's policies on the use of electronic control devices
23 require immediate notice to the on-duty supervisor or watch commander about the
24 use of a Taser during an arrest.

25 68. Defendant National City's policies on the use of electronic control devices
26 require a supervisor to "download the ECD event information from all ECD
27 deployments" and that "this event deployment information shall be made available
28

1 to the deploying officer(s) for their use in completing all use of force
2 documentation and the printout shall be attached to the police report.”

3 69. On information and belief, Defendant Doe NCPD Officers failed to comply
4 with this procedure. Based on the police reports disclosed during the criminal
5 case, no event deployment information was obtained, and no printout was attached
6 to the police report.

7 70. Defendant National City’s policies on the use of force require the on-duty
8 watch commander to review arrest reports that involve the use of force. Defendant
9 National City’s policies also require the on-duty supervisor to send an email to
10 both division commanders and the Chief of Police describing any incident of use of
11 force in which injury results to a person.

12 71. Defendant National City did not properly review or investigate this incident.
13 To the contrary, Defendants National City, Sakamoto, Wilkins, and Does falsely
14 claimed that Plaintiff’s actions had justified the use of force, and they presented
15 false criminal charges against Plaintiff.

16 72. After Plaintiff’s arrest, Defendants Sakamoto and Wilkins drafted reports in
17 which they knowingly presented falsehoods and misrepresentations about their
18 encounter with Plaintiff.

19 73. Defendant Wilkins wrote, for example, that Plaintiff “abruptly picked up the
20 bottle in his right hand and advanced toward Officer Sakamoto and myself. I saw a
21 clear difference between the manner in which [REDACTED] was initially handling the
22 bottle and then transitioning to holding it as a weapon in a threatening manner. I
23 based this on the fact [REDACTED] was now holding the bottle inverted by the neck.”

24 74. Similarly, Defendant Sakamoto wrote that Plaintiff “stood up holding the
25 bottle by the neck” and that Plaintiff was in an “agitated and irrational state.”

26 75. Defendants Sakamoto and Wilkins knew or should have known that drafting
27 a police report with misrepresentations and falsehoods would result in the filing of
28

1 unfounded felony charges against Plaintiff and expose Plaintiff to significant time
2 in custody and other serious repercussions.

3 76. After being taken to the hospital, Plaintiff was booked into custody for
4 alleged violations of California Penal Code §69 (resisting arrest) and California
5 Penal Code § 417.8 (brandishing a weapon at a peace officer).

6 77. Based on the deliberate falsehoods and misrepresentations by Defendants
7 Sakamoto and Wilkins about the incident at the bus, Plaintiff was ultimately
8 charged with three criminal offenses.

9 78. Defendants Sakamoto, Wilkins, National City, and Does persisted in
10 fabricating evidence against Plaintiff even after they knew or should have known
11 that MTS cameras contradicted their accounts.

12 79. Plaintiff suffered humiliation, anxiety, distress, and other consequences as a
13 result of being exposed to potential conviction and incarceration on the false felony
14 charges.

15 80. Ultimately, the District Attorney's Office dismissed all charges against
16 Plaintiff shortly before the matter proceeded to trial.

17 **I.**

18 **FIRST CAUSE OF ACTION**

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

20 **(False arrest)**

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

23 82. Defendants Sakamoto and Wilkins, during all times relevant herein were
24 acting under color of state law. These defendants are being sued in their individual
25 capacities for the purposes of this cause of action.

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

28

1 84. Defendants Sakamoto and Wilkins violated this right by ordering Plaintiff
2 off of a bus at gunpoint, detaining and arresting Plaintiff for alleged possession of
3 an open container without reasonable suspicion or probable cause, and / or
4 arresting plaintiff for resisting arrest and threatening an officer without probable
5 cause. These defendants were not acting in good faith, were acting under color of
6 law, and violated Plaintiff's Fourth Amendment rights.

7 85. Defendants Sakamoto and Wilkins' actions in illegally detaining and
8 arresting Plaintiff caused damage to him, in an amount to be proven at trial.

9 **II.**

10 **SECOND CAUSE OF ACTION**

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

12 **(Use of excessive force)**

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

15 87. Defendants Sakamoto and Wilkins, during all times relevant herein were
16 acting under color of state law. These defendants are being sued in their individual
17 capacities for the purposes of this cause of action.

18 88. Plaintiff had a Fourth Amendment right to be free from being subjected to
19 the use of excessive force by arresting officers.

20 89. Defendants Sakamoto and Wilkins violated this right by using a Taser
21 against a Plaintiff suspected of, at most, a minor offense; who was not actively
22 resisting arrest; and who did not pose a threat to officers or anyone else. These
23 defendants were not acting in good faith, were acting under color of law, and
24 violated Plaintiff's Fourth Amendment rights to be free from excessive force.

25 90. Defendants Sakamoto and Wilkins' actions in using a Taser against Plaintiff
26 as part of an illegal and unreasonable arrest caused damage to him, in an amount to
27 be proven at trial.

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1 **III.**

2 **THIRD CAUSE OF ACTION**

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

4 **(Fabrication of evidence)**

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

7 92. Defendants Sakamoto and Wilkins, during all times relevant herein were
8 acting under color of state law. These defendants are being sued in their individual
9 capacities for the purposes of this cause of action.

10 93. Plaintiff had a Fourth Amendment, Fifth Amendment, and Fourteenth
11 Amendment right not to be subjected to criminal charges on the basis of fabricated
12 evidence. *See e.g. Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2001)
13 (en banc) (“there is a clearly established constitutional due process right not to be
14 subjected to criminal charges on the basis of false evidence that was deliberately
15 fabricated by the government.”).

16 94. Defendants Sakamoto, Wilkins, and Does violated this right by drafting and
17 submitting arrest reports with material misrepresentations and omissions, and
18 providing falsehoods to secure Plaintiff’s arrest and prosecution. These defendants
19 were not acting in good faith, were acting under color of law, and violated
20 Plaintiff’s Fourth, Fifth, and Fourteenth Amendment rights.

21 95. Defendants Sakamoto, Wilkins’, and Does actions in drafting and submitting
22 arrest reports with material misrepresentations and omissions, and providing
23 falsehoods to secure Plaintiff’s arrest and prosecution, caused damage to him, in an
24 amount to be proven at trial.

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1 IV.

2 FOURTH CAUSE OF ACTION

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

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

6 97. Defendant City of National City, as a matter of custom, practice, or policy,
7 failed to institute, require, and enforce proper and adequate training and
8 supervision for the use of Tasers by its employees, when the need for such training
9 and supervision was obvious. Defendants' failure to properly train and supervise
10 its employees resulted in a violation of Plaintiff's Fourth Amendment rights.

11 98. Defendant National City failed to train its employees on proper techniques
12 for deploying a Taser, such as activating the device for only a brief interval—five
13 seconds or less—before reevaluating whether further activation is necessary.

14 99. Defendant National City failed to train its employees on providing a verbal
15 warning to the subject before deploying a Taser against that person.

16 100. Defendant National City failed to train its employees on only using a Taser
17 against subjects that are actively resisting lawful authority. Defendant National
18 City failed to train its employees that Tasers should not be deployed against
19 subjects that are providing only passive resistance.

20 101. Defendant National City failed to train its employees that Tasers should not
21 be used against subjects that are in an elevated position, where a fall may cause
22 substantial injury or death.

23 102. Defendant National City failed to supervise its employees on their
24 knowledge and adherence to the practices outlined above, and others, and on the
25 proper use and deployment of Tasers generally as part of a response to a request
26 for police assistance.

27 103. Defendant National City's failure to properly train and supervise its officers,
28 as a matter of policy, custom, and practice, was deliberately indifferent to

1 Plaintiff's Fourth Amendment rights and done with conscious disregard for the
2 dangers of harm and injury to Plaintiff and others similarly situated.

3 104. Defendant's failure to train and supervise its employees was the moving
4 force behind the violation of Plaintiff's Fourth Amendment rights, and
5 proximately, foreseeably, and actually caused Plaintiff to suffer damages in an
6 amount to be proven at trial. The fact that 40% of all force incidents of any kind
7 now result in the suspect being tased underscores the deficient supervision and
8 training by National City in this regard.

9 **V.**

10 **FIFTH CAUSE OF ACTION**

11 **False arrest**

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

14 106. Plaintiff has a Fourth Amendment right to freedom of movement and
15 freedom from unreasonable seizures which Defendants Sakamoto and Wilkins
16 violated by detaining and arresting Plaintiff without probable cause for alleged
17 possession of an open container and / or resisting arrest. These defendants were
18 not acting in good faith, were acting under color of law, and violated Plaintiff's
19 Fourth Amendment rights.

20 107. Defendants Sakamoto and Wilkins' actions in illegally detaining and
21 arresting Plaintiff caused damage to him, and led to later harms that occurred.
22 Defendants Sakamoto and Wilkins are being sued in their individual capacities for
23 the purposes of this cause of action.

24 **VI.**

25 **SIXTH CAUSE OF ACTION**

26 **Battery**

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

1 109. Defendants Sakamoto and Wilkins acted with an intent to cause harmful or
2 offensive contact with the person of Plaintiff and the intended harmful or offensive
3 contact did in fact occur.

4 110. Defendant Sakamoto fired a Taser at Plaintiff, striking him in the chest with
5 the metal barbs of the device, which needed to be removed by medical personnel.

6 111. Defendant Sakamoto repeatedly pressed the trigger of the Taser, causing
7 electricity to course through Plaintiff's body and resulting in extreme pain and
8 agony.

9 112. Defendant Wilkins placed his knees and full body weight on Plaintiff's back
10 as Plaintiff lay on the ground, and later dragged Plaintiff away from the bus.

11 113. Defendants Sakamoto and Wilkins acted in their official capacity and in the
12 scope of their employment as officers of the National City Police Department.

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

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

22
23 **VII.**

24 **SEVENTH CAUSE OF ACTION**

25 **Negligence**

26 116. Plaintiff realleges and incorporates herein by reference each and every
27 allegation contained in the preceding paragraphs.
28

1 117. Defendants Sakamoto and Wilkins had a duty to use reasonable care when
2 responding to a request for police assistance. They had a duty to avoid creating an
3 unnecessary risk to innocent persons that they would be arrested on erroneous or
4 false information. They had a duty to use reasonable care in determining whether
5 probable cause existed to detain and arrest a person. They had a duty to use
6 reasonable care in executing an arrest without resorting to unnecessary and
7 excessive force. They had a duty to use reasonable care when deploying an
8 electronic control device such as a Taser.

9 118. Defendant Doe NCPD Supervisor had a duty to use reasonable care when
10 reviewing an arrest report about an incident involving the use of force, and begin
11 an investigation if required. He or she had a duty to use reasonable care to
12 investigate the incident and send an email to both division commanders and the
13 Chief of Police describing the incident and its circumstances.

14 119. These defendants breached their duty of care and caused harm to Plaintiff,
15 including physical pain and suffering, terror, mental anguish, humiliation,
16 degradation, damage to reputation, and financial loss.

17 120. All individual defendants acted in their official capacity and in the scope of
18 their employment as officers for the National City Police Department.

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

22
23 **VIII.**

24 **EIGHTH CAUSE OF ACTION**

25 **Negligent Training and Supervision**

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

1 123. Defendant National City had a duty to use reasonable care in the training and
2 supervision its employees, including Defendants Sakamoto, Wilkins, and Doe.
3 Defendant National City had a duty to train its officers in the proper means of
4 responding to requests for police assistance. Defendant National City had a duty to
5 properly train its officers to avoid exposing innocent persons to illegal arrests and
6 avoid exposing them to the risk of excessive force. Defendant National City had a
7 duty to properly train its officers in the use of Tasers and other potentially lethal
8 devices. Defendant National City had a duty to ensure that incidents of use of
9 force by its employees are properly investigated and supervised.

10 124. This defendant breached its duty of care and caused harm to Plaintiff,
11 including physical pain and suffering, terror, mental anguish, humiliation,
12 degradation, damage to reputation, and financial loss

13 125. As a direct, proximate, and foreseeable result of this Defendant's breach of
14 its duty of care, Plaintiff suffered damages in an amount according to proof at the
15 time of trial.

16
17 **IX.**

18 **NINTH CAUSE OF ACTION**

19 **Bane Act (Cal. Civ. Code §52.1)**

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

22 127. Defendants Sakamoto and Wilkins violated Plaintiff's clearly established
23 rights under the California Constitution and statutes, which include, but are not
24 limited to, the following:

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

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

1 128. The California Legislature has declared that it is a violation of state civil
2 rights act for any person to interfere with the exercise or enjoyment by any
3 individual of his rights secured by the United States Constitution or state or federal
4 law. This includes any interference of these rights by threats, intimidation,
5 coercion or attempted threats, intimidation or coercion.

6 129. These Defendants interfered with Plaintiff's rights under the California
7 Constitution and statutes by the detention and seizure alleged above.

8 130. The conduct alleged herein caused Plaintiff to be deprived of his civil rights
9 that are protected under the California Constitution and statutes which has also
10 legally, proximately, foreseeably and actually caused him to suffer emotional
11 distress, pain and suffering, damage to reputation, and further damages according
12 to proof at the time of trial.

13 **X.**

14 **TENTH CAUSE OF ACTION**

15 **Bane Act (Cal. Civ. Code §52.1)**

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

18 132. Defendant National City violated Plaintiff's clearly established rights under
19 the California Constitution and statutes, which include, but are not limited to, the
20 following:

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

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

25 133. The California Legislature has declared that it is a violation of state civil
26 rights act for any person to interfere with the exercise or enjoyment by any
27 individual of his rights secured by the United States Constitution or state or federal
28

1 law. This includes any interference of these rights by threats, intimidation,
2 coercion or attempted threats, intimidation or coercion.

3 134. This Defendant interfered with Plaintiff's rights under the California
4 Constitution and statutes by the negligent training and supervision alleged above,
5 and by condoning, permitting, authorizing, and/or ratifying the conduct of
6 Defendants Sakamoto, Wilkins, and Doe.

7 135. The conduct alleged herein caused Plaintiff to be deprived of his civil rights
8 that are protected under the California Constitution and statutes which has also
9 legally, proximately, foreseeably and actually caused him to suffer emotional
10 distress, pain and suffering, damage to reputation, and further damages according
11 to proof at the time of trial.

12
13 **PRAYER FOR RELIEF**

14 Plaintiff prays for judgment against defendants as follows:

- 15 1. General and compensatory damages in an amount according to proof;
- 16 2. Punitive and exemplary damages;
- 17 3. Civil penalties as provided by law;
- 18 4. Declaratory and injunctive relief remedying the continued policies, customs
19 and practices governing how the National City Police Department uses
20 Tasers and similar devices in responding to requests for police assistance;
- 21 5. Attorney fees under 42 U.S.C. § 1983 and Cal. Civ. Code §52.1;
- 22 6. Costs of suit;
- 23 7. And for such other and further relief as the Court may deem proper.

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25 Dated: July 18, 2016

26 Respectfully Submitted,

27 *s/ Timothy A. Scott*

28 *s/ Nicolas O. Jimenez*

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