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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH FLICK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; SAN FRANCISCO POLICE
DEPARTMENT; SAN FRANCISCO
ACTING POLICE CHIEF, ALEX FAGAN,
SR., IN HIS INDIVIDUAL CAPACITY,
COUNTY SHERIFF'S DEPARTMENT; SAN
FRANCISCO COUNTY SHERIFF
MICHAEL HENNESSEY, IN HIS
INDIVIDUAL CAPACITY, AND SAN
FRANCISCO POLICE OFFICERS R.L.
LOCK, NELSON, GRIFFIN, SERGEANT
O'SULLIVAN, AND DOES 1 THROUGH 35,
SAN FRANCISCO COUNTY SHERIFF'S
DEPUTIES DOES 36 THROUGH 100, AND
DOES 101 THROUGH 200, ALL OF
WHOM ARE SUED IN THEIR INDIVIDUAL
CAPACITY,

Defendants.

Case No. C 03 04022 CRB

FIRST AMENDED COMPLAINT

VIOLATION OF CIVIL RIGHTS

**42 U.S.C. § 1983, 1988
STATE LAW CLAIMS**

JURY TRIAL DEMANDED

1
2 PLAINTIFF DEBORAH FLICK COMES BEFORE THIS HONORABLE COURT, AND
3 ALLEGES:

4 **JURISDICTION**

5 1. This action is brought pursuant to 42 USC § 1983 and 1988, and the
6 Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is
7 founded upon 28 USC § 1331 and 1341(3) and (4) and the aforementioned statutory
8 and constitutional provisions. This Court has supplemental jurisdiction over Plaintiff's
9 state law claims pursuant to 28 U.S.C. § 1367(a).

10 2. The amount in controversy exceeds \$10,000, excluding interest and costs.

11 **PARTIES**

12 3. Plaintiff, Deborah Flick (hereinafter "Flick" or "Plaintiff") is, and at all
13 material times herein, was a citizen of the United States and resident of the state of
14 California.

15 4. Defendant San Francisco Acting Police Chief Alex Fagan, Sr., is, and at
16 all material times referred to herein, was the Acting Police Chief of the City of San
17 Francisco and that individual who was the policymaker in matters of law enforcement
18 for the City and County of San Francisco who set, enforced and ratified the policies of
19 the San Francisco Police Department. At all times herein Fagan was acting under color
20 of law. Plaintiff sues Fagan in his individual capacity.

21 5. Defendant City And County Of San Francisco Sheriff Michael Hennessey
22 is, and at all material times referred to herein, was the duly elected Sheriff of the City
23 and County of San Francisco, responsible for administering the Jail facilities and for
24 making, overseeing, and implementing the policies, practices, and customs challenged
25 herein relating to the operation of the San Francisco Jail. At all times herein,
26 Hennessey was the policymaker in matters of jail administration for the County of San
27 Francisco who set, enforced and ratified the policies of the San Francisco Sheriff's
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1 Department and the San Francisco County Jails. At all times herein Hennessey was
2 acting under color of law. Plaintiff sues Hennessey in his individual capacity.

3 6. Defendants San Francisco Police Officers R.L. Lock, Nelson, Griffin,
4 Sergeant O'Sullivan and Does 1 through 35 are and, at all times relevant were San
5 Francisco Police Officers acting under color of law. These defendants seized,
6 arrested, transported, detained and imprisoned Plaintiff on March 28, 2003 without any
7 reasonable cause or suspicion that she had committed any felony and without having
8 observed the commission of any misdemeanor or infraction. In doing the acts alleged,
9 these officers were acting under color of law within the course and scope of their
10 employment by the Defendant City And County Of San Francisco. Plaintiff sues these
11 officers in their individual capacity.

12 7. Defendants San Francisco County Sheriff's Deputies sued herein by their
13 fictitious names (Does 36 through 100) are sheriff's deputies who, as part of their
14 duties at the San Francisco Jails stripped Plaintiff of her clothing without any reasonable
15 or lawful basis and then placed her, without clothing, in a "cold room" where she was
16 viewed by other Jail personnel. These Defendants engaged in this conduct, and other
17 conduct which this complaint describes in greater detail below, to gain compliance with
18 illegal orders, to punish Plaintiff and to satisfy these Defendants' sadism. Plaintiff sues
19 these deputies in their individual capacity.

20 8. Defendants Does 101 through 150 are personnel employed by the City
21 and County of San Francisco who, as part of their duties at the San Francisco Jails
22 stripped Plaintiff of her clothing without any reasonable or lawful basis and then placed
23 her, without clothing, in a "cold room" where she was viewed by other deputies and Jail
24 personnel. These Defendants engaged in this conduct, and other conduct which this
25 complaint describes in greater detail below, to gain compliance with illegal orders, to
26 punish Plaintiff and to satisfy these Defendants' sadism. Defendants Does 151 through
27 200 are other employees of the City and County of San Francisco whose conduct also
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1 deprived Plaintiff of her constitutional rights and contributed to the injuries Plaintiff
2 sustained. Plaintiff sues these individuals in their individual capacity.

3 9. Defendant City And County Of San Francisco is, and at all material times
4 referred to herein, was, a division of the state of California, that maintained or permitted
5 an official policy or custom or practice causing or permitting the occurrence of the types
6 of wrongs complained of herein, which wrongs damaged Plaintiffs as herein alleged.
7 Plaintiffs' allegations against the City and County are based on acts and omissions of
8 the Acting Chief of Police and his police officers and on the acts and omissions of the
9 Sheriff and his deputies and on acts and omissions of persons who are City and/or
10 County employees, and on the City and County's breach of its duty to protect Plaintiff
11 from the wrongful conduct of said persons and employees. At all material times
12 mentioned herein, all individual Defendants were acting under the color of law, to wit,
13 under color of statutes, ordinances, regulations, policies, customs and usages of the
14 State of California, the City And County Of San Francisco and/or the San Francisco
15 Police Department and/or the San Francisco County Sheriff.

16 10. Plaintiff is ignorant of the true names and capacity of Defendants Does 1
17 through 200, and therefore sues these Defendants by such fictitious names. Plaintiff is
18 informed and believes and thereon alleges that each Defendant so named is
19 responsible in some manner for the injuries and damages suffered by Plaintiff as
20 described in this complaint. Plaintiff will amend her complaint to state the true names
21 and capacity of Defendants Does 1 through 200 when they have been ascertained.
22 Each of these fictitiously named defendants was acting under color of law and within
23 the scope of his or her employment. Plaintiff sues these defendants in their individual
24 capacity.

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1 **EVENTS PRECIPITATING THIS COMPLAINT**

2 **DEBORAH FLICK'S ARREST**

3 11. Shortly after midnight on March 28, 2003, Plaintiff Deborah Flick was
4 standing near the intersection of Fillmore and Union Streets in the City of San
5 Francisco, California.

6 12. As Flick was walking to her car that was parked on the street, a man
7 began to harass her. She ignored him and continued to her car. The unknown man
8 then yelled that if she did not stop to talk to him, he would call the police and claim Flick
9 was driving while intoxicated. Flick ignored him, knowing she was not intoxicated. Flick
10 got into her car and attempted to call her boyfriend from her cell phone to let him know
11 she was heading home.

12 13. Suddenly, San Francisco Police Officers Nelson and Griffin began
13 pounding on the window of Plaintiff's car. She rolled the window down slightly and
14 asked what was wrong. She explained that a man had been harassing her, that she
15 had done nothing wrong, that she was fine, and they should be speaking with the man
16 who had harassed her.

17 14. The officers pounded on her window yelling "you think that because you're
18 pretty and a rich bitch, you can do whatever you want." At some point these officers
19 were joined by Officer R.L. Lock and O'Sullivan. Plaintiff became frightened and dialed
20 911 because she was alarmed by the officers' conduct.

21 15. Officers Nelson and Griffin, assisted by Officer R.L. Lock and Sergeant
22 O'Sullivan, then yanked Plaintiff's car door open, dragged her into the street and
23 handcuffed her. After Plaintiff complained, the officers tightened the handcuffs, and
24 threw Plaintiff into the police car. Plaintiff was so frightened she urinated in her pants.

25 16. Although lacking any reasonable cause to detain or arrest Plaintiff, police
26 officers, Nelson, Griffin, R.L. Lock, Sergeant O'Sullivan and Does 1-35 transported her
27 to San Francisco County Jail No. 9.

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1 17. Plaintiff eventually was advised that she had been arrested for public
2 intoxication, but no officer or deputy administered a sobriety test.

3 18. No citation or any criminal charges were filed against Plaintiff.

4 19. Neither Acting Police Chief Fagan nor other superiors of those San
5 Francisco Police Officers Nelson, Griffin, R.L. Lock, Sergeant O'Sullivan and Does 1
6 through 35 disciplined Officers Nelson, Griffin, R.L. Lock, Sergeant O'Sullivan or Does 1
7 through 35 in any way, thereby ratifying the actions of those officers.

8
9 **SHERIFF'S DEPUTIES STRIP DEBORAH FLICK AND PLACE HER NAKED IN**
10 **A "COLD ROOM" SUBJECT TO VIEW BY MALE AND FEMALE POLICE**
11 **OFFICERS, SHERRIF'S DEPUTIES, AND OTHER JAIL PERSONNEL**

12 20. Following Plaintiff's arrival at the County Jail, sheriff's deputies, and/or
13 other jail personnel, acting under color of law, pursuant to the policies of Defendants
14 City and County of San Francisco and the Sheriff of the County of San Francisco, and
15 within the scope of their employment, held Plaintiff down while other sheriff's deputies
16 and/or other jail personnel forcibly removed all of Plaintiff's clothes.

17 21. Plaintiff did not possess contraband and was not engaged in any conduct
18 threatening to herself or to others.

19 22. Sheriff's deputies and/or other jail personnel were aware that Plaintiff had
20 not committed any crime punishable as a felony.

21 23. Sheriff's deputies and/or jail personnel threw Plaintiff into the "cold room"
22 in the San Francisco County Jail and left her there naked.

23 24. Male and female sheriff's deputies and other jail personnel were able to
24 look into the room and did in fact look into the "cold room" and saw her naked.

25 25. Those actions permitted sheriff's deputies and other jail personnel to
26 visually inspect Plaintiff's breasts, buttocks, and genitalia.

27 26. While in the "cold room" Plaintiff started cramping and bleeding, but the
28 sheriff's deputies and other personnel responsible for her detention refused to give her
clothes or a pad for her bleeding.

27. She was lying naked on the dirty floor in the “cold room” and feared developing an infection.

28. Plaintiff spent several hours alone in the “cold room” bleeding and being subjected to continual verbal harassment.

29. While in the jail facility, Plaintiff was not permitted to make a telephone call.

30. Plaintiff was released later that morning.

31. San Francisco County Sheriff Michael Hennessey was responsible for promulgating and ensuring the implementation of the policy pursuant to which Plaintiff was stripped at San Francisco County Jail No. 9.

32. San Francisco County Sheriff Michael Hennessey was responsible for promulgating and ensuring the implementation of the policy pursuant to which Plaintiff was placed naked in a “cold room” at San Francisco County Jail No. 9.

33. Neither Sheriff Michael Hennessey nor other superiors of those San Francisco County Sheriff's Deputies sued herein as Does 36 through 100 disciplined Does 36 through 100 in any way, thereby ratifying the actions of those deputies.

34. Neither Sheriff Michael Hennessey nor other superiors of those San Francisco City and County employees sued herein as Does 101 through 200 disciplined Does 101 through 200 in any way, thereby ratifying the actions of those employees.

FIRST CLAIM FOR RELIEF
Violation Of Plaintiff's Rights Protected By The Fourth Amendment To Be
Free From Unreasonable Search, Seizure, Arrest, Transportation, Detention And
Imprisonment
Against San Francisco Police Officers Nelson, Griffin, R.L. Lock, Sergeant
O'Sullivan and Does 1 Through 35
In Their Individual Capacity

35. At all times relevant to the allegations of this complaint, Plaintiff Deborah Flick was protected by the Fourth Amendment to the United States Constitution against seizure, arrest, transportation, detention and imprisonment without reasonable cause.

36. The actions of San Francisco Police Officers in seizing, arresting, detaining, transporting and imprisoning Plaintiff under color of law violated Plaintiff's

rights guaranteed to her by the Fourth Amendment to be free from unreasonable seizure, arrest, transportation, detention and imprisonment.

37. As a proximate result of these Defendants' conduct, Plaintiff suffered ridicule, disgrace, physical and emotional distress and the loss of her rights guaranteed by the Fourth Amendment to the United States Constitution.

38. The conduct of these police officers was malicious and oppressive, carried out in reckless disregard of Plaintiff's rights guaranteed by the Fourth Amendment to the United States Constitution. These police officers' malicious and oppressive conduct makes them personally liable for exemplary damages.

Wherefore, Plaintiff seeks relief as set forth below.

SECOND CLAIM FOR RELIEF
Violation Of Plaintiff's Rights Protected By The Fourth Amendment
Against San Francisco County Sheriff's Deputies And San Francisco
County Jail Personnel Does 36-Through 150
In Their Individual Capacity

39. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 38 as if they were set forth *in haec verba* herein.

40. At all times relevant to the allegations of this complaint, Plaintiff Deborah Plaintiff was protected by the Fourth Amendment to the United States Constitution against a search without reasonable cause.

41. The actions of San Francisco County Sheriff's Deputies and San Francisco County Jail Personnel, acting under color of law, in stripping Plaintiff while she was detained at San Francisco County Jail No. 9 constituted an unreasonable search in violation of Plaintiff's rights guaranteed by the Fourth Amendment to the United States Constitution.

42. All sheriff's deputies and jail personnel who assisted in the stripping of Plaintiff were aware that no reasonable suspicion existed that Plaintiff possessed any contraband or weapon and that, in fact, she possessed no contraband or weapon.

43. As a proximate result of these Defendants' conduct, Plaintiff suffered ridicule, disgrace, physical and emotional distress and the loss of her rights guaranteed by the Fourth Amendment to the United States Constitution.

44. The conduct of these sheriff's deputies was malicious and oppressive, carried out in reckless disregard of Plaintiff's rights guaranteed by the Fourth Amendment to the United States Constitution. These sheriff's deputies malicious and oppressive conduct makes them personally liable for exemplary damages.

Wherefore, Plaintiff seeks relief as set forth below.

THIRD CLAIM FOR RELIEF
Violation Of Plaintiff's Rights Protected By The Fourteenth Amendment
Against San Francisco County Sheriff's Deputies And San Francisco
County Jail Personnel Does 36 Through 150
In Their Individual Capacity

45. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 44 as if they were set forth *in haec verba* herein.

46. At all times relevant to the allegations of this complaint, Plaintiff Deborah Plaintiff was protected by the Fourteenth Amendment to the United States Constitution against a denial of her right to due process of law.

47. The actions of San Francisco County Sheriff's Deputies and San Francisco County Jail Personnel, acting under color of law, in placing and confining Plaintiff (a detainee who posed no threat to herself or others) in a "cold room" while she was detained at San Francisco County Jail No. 9 constituted punishment in violation of Plaintiff's rights to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

48. All sheriff's deputies and jail personnel who assisted in placing and confining Plaintiff in a "cold room" were aware that no reasonable suspicion existed that Plaintiff possessed any contraband or weapon and that, in fact, she possessed no contraband or weapon, and that she posed no threat of harm to herself or to others.

49. As a proximate result of these Defendants' conduct, Plaintiff suffered ridicule, disgrace, physical and emotional distress and the loss of her rights guaranteed by the Fourteenth Amendment to the United States Constitution.

50. The conduct of these sheriff's deputies was malicious and oppressive, carried out in reckless disregard of Plaintiff's rights guaranteed by the Fourteenth Amendment to the United States Constitution. These sheriff's deputies' malicious and oppressive conduct makes them personally liable for exemplary damages.

Wherefore, Plaintiff seeks relief as set forth below.

FOURTH CLAIM FOR RELIEF
Violation Of Plaintiff's Rights Protected By The Fourth Amendment
Against San Francisco Acting Police Chief Alex Fagan, Sr. In His Individual
Capacity

51. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 19 and as if they were set forth *in haec verba* herein.

52. At all times relevant to the allegations of this complaint, Plaintiff Deborah Plaintiff was protected by the Fourth Amendment to the United States Constitution against unreasonable seizure, arrest, transportation, detention and imprisonment without probable cause.

53. Acting Police Chief Alex Fagan, Sr. failed to reprimand, suspend, or discipline those San Francisco police officers who seized, arrested, transported and imprisoned and detained Plaintiff without probable or reasonable cause.

54. The failure of Acting Police Chief Alex Fagan, Sr. to reprimand, suspend, or discipline those San Francisco police officers whose misconduct is detailed in this complaint ratified the conduct of those officers and renders Acting Police Chief Alex Fagan, Sr. individually liable for the deprivation of Plaintiff's rights guaranteed by the Fourth amendment to the United States Constitution alleged in this complaint.

55. As a proximate result of this Defendant's conduct, Plaintiff suffered ridicule, disgrace, physical and emotional distress and the loss of her rights guaranteed by the Fourth Amendment to the United States Constitution.

56. The conduct of Acting Police Chief Alex Fagan, Sr. was malicious and oppressive, and carried out in reckless disregard of Plaintiff's rights guaranteed by the Fourth Amendment to the United States Constitution. Defendant Fagan's malicious and oppressive conduct makes him personally liable for exemplary damages.

Wherefore, Plaintiff seeks relief as set forth below.

FIFTH CLAIM FOR RELIEF
Violation Of Plaintiff's Rights Protected By The Fourth And Fourteenth
Amendments
Against San Francisco County Sheriff Michael Hennessey In His Individual
Capacity

57. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 49 as if they were set forth *in haec verba* herein.

58. San Francisco County Sheriff Michael Hennessey was responsible for promulgating and ensuring the implementation of the policy pursuant to which Plaintiff was stripped at San Francisco County Jail No. 9.

59. San Francisco County Sheriff Michael Hennessey was responsible for promulgating and ensuring the implementation of the policy pursuant to which Plaintiff was placed naked in a “cold room” at San Francisco County Jail No. 9.

60. San Francisco County Sheriff Michael Hennessey also was responsible for the training of deputies and jail personnel under his command. Defendant Hennessey failed to train and instruct subordinate sheriff's deputies or jail personnel that those detained may not be stripped of their clothing absent a prior determination that such individuals possessed contraband or weapons and absent prior action of a supervisor approving the stripping of the detainee. Defendant Hennessey also failed to train and instruct subordinate sheriff's deputies or jail personnel that a detainee may not be placed naked in a "cold room" absent a determination that the detainee posed a threat to herself or to others.

61. Indeed, Defendant Hennessey approved a training regimen which instructed subordinate sheriff's deputies and/or jail personnel that those detained may

1 be subject to being stripped of their clothing even absent approval by a supervisor and
2 absent a prior determination that the detainee possessed a weapon or contraband.

3 62. Defendant Hennessey also approved a training regimen which instructed
4 subordinate sheriff's deputies and/or jail personnel that those detained may be placed in
5 a "cold room" even when such detainees posed no threat to themselves or to others.

6 63. Prior to March 28, 2003, long-established statutory law, California
7 regulations and controlling court decisions had forbidden both such stripping of
8 detainees and the placing of detainees in a "cold room."

9 64. San Francisco County Sheriff Michael Hennessey failed to reprimand,
10 suspend, or discipline those San Francisco sheriff's deputies and jail personnel who
11 stripped Plaintiff and placed her into and confined her naked in a "cold room" at San
12 Francisco Jail No. 9.

13 65. The failure of San Francisco County Sheriff Michael Hennessey to
14 reprimand, suspend, or discipline those San Francisco sheriff's deputies and jail
15 personnel whose misconduct is detailed in this complaint ratified the conduct of those
16 sheriff's deputies and jail personnel and renders San Francisco County Sheriff Michael
17 Hennessey individually liable for the deprivation of Plaintiff's rights guaranteed by the
18 Fourth and Fourteenth Amendments to the United States Constitution alleged in this
19 complaint.

20 66. As a proximate result of this Defendant's conduct, Plaintiff suffered
21 ridicule, disgrace, physical and emotional distress and the loss of her rights guaranteed
22 by the Fourth and Fourteenth Amendment to the United States Constitution.

23 67. The conduct of San Francisco County Sheriff Michael Hennessey was
24 malicious and oppressive, carried out in reckless disregard of Plaintiff's rights
25 guaranteed by the Fourth and Fourteenth Amendments to the United States
26 Constitution. Sheriff Hennessey's malicious and oppressive conduct makes him
27 personally liable for exemplary damages.

28 Wherefore, Plaintiff seeks relief as set forth below.

SIXTH CLAIM FOR RELIEF
Violation Of Plaintiff's Rights Protected By The Fourth And Fourteenth
Amendments
Against The City And County Of San Francisco

68. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 67 as if they were set forth *in haec verba* herein.

69. Prior to March 28, 2003, the City and County of San Francisco was well aware that absent proper training of police officers, individuals in the City and County of San Francisco would be subject to unreasonable search, seizure, arrest, transportation, detention and imprisonment. In failing to train those individuals, the City and County of San Francisco was deliberately indifferent to the constitutional rights of Plaintiff guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

70. Prior to March 28, 2003, the City and County of San Francisco was well aware that absent proper training of sheriff's deputies and jail personnel, individuals in the City and County of San Francisco would be subject to being stripped of their clothing and placed naked in and confined while naked in "cold rooms" at San Francisco County Jail facilities without any proper basis for such punishment in violation of the Fourth and Fourteenth Amendments to the United States Constitution. In failing to train those individuals, the City and County of San Francisco was deliberately indifferent to the constitutional rights of Plaintiff guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

71. The conduct of the individual defendants sued Does 1 through 200 occurred due to the failure of the San Francisco Police Department and San Francisco Sheriff's Department to properly train their employees in the following areas: (1) the reasonable cause which must exist prior to the search, seizure, arrest, transportation and detention of an individual; (2) the documentation which must exist to verify the existence of the reasonable cause to justify the search, seizure, detention, transportation and arrest of an individual; (3) the justification which must exist prior to the stripping of the clothes from an individual detained in a San Francisco County Jail;

(4) the justification which must exist prior to the placing of an individual in a “cold room” in a San Francisco County Jail facility and the confinement of that individual naked in that “cold room;” and (5) that stripping and placing an individual naked in a “cold room” was illegal and deprived the individual of his or her constitutional rights protected by the Fourth and Fourteenth Amendments to the United States Constitution.

72. At all times relevant to the allegations of this complaint, Defendant City and County of San Francisco had the policy of searching, seizing, arresting, transporting, detaining and imprisoning individuals without reasonable cause and failing properly to document such arrests.

73. At all times relevant to the allegations of this complaint, Defendant City and County of San Francisco had the policy of authorizing its personnel, including sheriff’s deputies and other jail personnel, without reasonable cause, to strip those detained in its jail facilities and to place such individuals naked in “cold rooms” in the jail facilities, regardless of whether such detainees possessed contraband or weapons or posed a threat to themselves or others.

74. The conduct of Defendant Michael Hennessey in promulgating and ensuring the implementation of the policies pursuant to which Plaintiff was stripped of her clothing and placed naked in a “cold room” at San Francisco County Jail No. 9 reflected the policy of the City and County of San Francisco.

75. The failure of the City and County of San Francisco to reprimand, suspend, or discipline those employees of the City and County of San Francisco (1) who searched, seized, arrested, transported, detained and imprisoned Plaintiff without reasonable cause; (2) who failed to document Plaintiff’s arrest and detention; (3) who stripped Plaintiff without any legal justification and (4) who placed and confined Plaintiff naked in a “cold room” at San Francisco County Jail No. 9 ratified that misconduct and reflected City and County policies to (1) arrest individuals without probable cause; (2) to fail to document such arrests; (3) notwithstanding any reasonable cause, to strip individuals detained in San Francisco County Jail facilities although such individuals

1 possessed no contraband or weapons; and (4) without reasonable cause or any legal
2 basis, to place and confine such individuals, without any clothing, in a "cold room"
3 located in a San Francisco County jail facility.

4 76. As a proximate result of the failure to train its personnel and as a
5 proximate result of the promulgation, implementation and enforcement of those policies
6 of the City and County of San Francisco alleged in this claim, Plaintiff suffered ridicule,
7 disgrace, physical and emotional distress and the loss of her rights guaranteed by the
8 Fourth and Fourteenth Amendment to the United States Constitution.

9 Wherefore, Plaintiff seeks relief as set forth below.

10 **SEVENTH CLAIM FOR RELIEF**
11 **False Arrest, Detention And Imprisonment**
12 **Against San Francisco Police Officers Does 1 Through 35 And Against The**
13 **City and County Of San Francisco**

14 77. Plaintiff realleges and incorporates by reference the allegations of
15 paragraphs 1 through 10 as if they were set forth *in haec verba* herein.

16 78. On September 3, 2003, Plaintiff submitted a claim to the City and County
17 of San Francisco pursuant to the relevant provisions of the California Government
18 Code. On October 17, 2003, the City and County of San Francisco denied Plaintiff's
19 claim.

20 79. Shortly after midnight on March 28, 2003, Plaintiff Deborah Flick was
21 standing near the intersection of Fillmore and Union Streets in the City of San
22 Francisco, California.

23 80. As Flick was walking to her car that was parked on the street, a man
24 began to harass her. She ignored him and continued to her car. The unknown man
25 then yelled that if she did not stop to talk to him, he would call the police and claim Flick
26 was driving while intoxicated. Flick ignored him, knowing she was not intoxicated. Flick
27 got into her car and attempted to call her boyfriend from her cell phone to let him know
28 she was heading home.

1 81. Suddenly, two male San Francisco Police Department officers began
2 pounding on the window of Plaintiff's car. She rolled the window down slightly and
3 asked what was wrong. She explained that a man had been harassing her, that she
4 had done nothing wrong, that she was fine, and they should be speaking with the man
5 who had harassed her. The officers pounded on her window yelling "you think that
6 because you're pretty and a rich bitch, you can do whatever you want." Plaintiff
7 became frightened and dialed 911 because she was alarmed by the officers' conduct.

8 82. The officers then yanked Plaintiff's car door open, dragged her into the
9 street and handcuffed her. After Plaintiff complained, the officers tightened the
10 handcuffs, and threw Plaintiff into the police car. Plaintiff was so frightened she
11 urinated in her pants.

12 83. Although lacking any reasonable cause to detain or arrest Plaintiff, police
13 officers transported her to San Francisco County Jail No. 9.

14 84. Plaintiff eventually was advised that she had been arrested for public
15 intoxication, but no officer or deputy administered a sobriety test.

16 85. Police officers neither prepared nor filed any report setting forth the
17 events of Plaintiff's arrest and/or detention.

18 86. No citation or any criminal charges were filed against Plaintiff.

19 87. In doing the acts alleged in this claim, these defendants were acting within
20 the course and scope of their employment with the City and County of San Francisco.

21 88. Neither Acting Police Chief Fagan nor other superiors of those San
22 Francisco Police Officers Nelson, Griffin, R.L. Lock, Sergeant O'Sullivan and Does 1
23 through 35 disciplined Officers Nelson, Griffin, R.L. Lock, Sergeant O'Sullivan or Does 1
24 through 35 in any way, thereby ratifying the actions of those officers and confirming that
25 those officers were acting within the course and scope of their employment.

26 89. As a proximate result of the Plaintiff's false arrest, detention and
27 imprisonment effected by San Francisco police officers acting within the course and
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1 scope of their employment, Plaintiff suffered ridicule, disgrace, physical and emotional
2 distress.

3 Wherefore, Plaintiff seeks relief as set forth below.

4 **EIGHTH CLAIM FOR RELIEF**
5 **Intentional Infliction Of Emotional Distress**
6 **Against San Francisco Police Officers Nelson, Griffin, R.L. Lock, Sergeant**
7 **O'Sullivan And Does 1 Through 35 And Against The City and County Of San**
8 **Francisco**

9 90. Plaintiff realleges and incorporates by reference the allegations of
10 paragraphs 1 through 10 and 78 through 89 as if they were set forth *in haec verba*
11 herein.

12 91. The conduct of San Francisco Police Officers Nelson, Griffin, R.L. Lock,
13 Sergeant O'Sullivan and Does 1 through 35, carried out in the course and scope of their
14 employment as San Francisco Police Department officers in arresting, detaining and
15 imprisoning Plaintiff without probable cause was extreme and outrageous and was
16 carried out with the intention of causing, or reckless disregard of the probability of
17 causing, emotional distress.

18 92. As a proximate result of the conduct of Officers Nelson, Griffin, R.L. Lock,
19 Sergeant O'Sullivan and Does 1 through 35, Plaintiff suffered severe or extreme
20 emotional distress.;

21 93. The conduct of the San Francisco Police Department Officers Nelson,
22 Griffin, R.L. Lock, Sergeant O'Sullivan and Does 1 through 35 was malicious and
23 oppressive, carried out in reckless disregard of Plaintiff's rights and safety. These
24 police officers' malicious and oppressive conduct makes them personally liable for
25 exemplary damages.

26 Wherefore, Plaintiff seeks relief as set forth below.

27 **NINTH CLAIM FOR RELIEF**
28 **Violation Of Rights Protected By The California Constitution; Art. 1 § 13;**
Civil Code §§ 52, 52.1
Against San Francisco Police Officers Nelson, Griffin, R.L. Lock, Sergeant
O'Sullivan And Does 1 Through 35 And Against The City and County Of San
Francisco

1 94. Plaintiff realleges and incorporates by reference the allegations of
2 paragraphs 1 through 10 and 78 through 89 as if they were set forth *in haec verba*
3 herein.

4 95. The conduct of each of these defendants violated Plaintiff's rights
5 guaranteed her by the California Constitution, including Article 1, § 13, which forbids
6 unreasonable seizures. Plaintiff may enforce claims based on a violation of this right
7 under Civil Code § 52 and 52.1.

8 96. As a proximate result of the Plaintiff's false arrest, detention and
9 imprisonment effected by San Francisco police officers acting within the course and
10 scope of their employment, these officers violated Plaintiff's rights guaranteed by Article
11 1, § 13.

12 97. As a result of that violation, Plaintiff suffered ridicule, disgrace, physical
13 and emotional distress.

14 98. The conduct of the San Francisco Police Department officers Does 1
15 through 35 was malicious and oppressive, carried out in reckless disregard of Plaintiff's
16 rights and safety. These police officers' malicious and oppressive conduct makes them
17 personally liable for exemplary damages.

18 Wherefore, Plaintiff seeks relief as set forth below.
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TENTH CLAIM FOR RELIEF
False Imprisonment
Against San Francisco County Sheriff's Deputies And San Francisco
County Jail Personnel Does 36-Through 150, Against The City And County Of
San Francisco And Against Sheriff Michael Hennessey

99. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 38 and 78 as if they were set forth *in haec verba* herein.

100. Following Plaintiff's arrival at the County Jail, sheriff's deputies, and/or other jail personnel, acting pursuant to the policies of Defendants City and County of San Francisco and the Sheriff of the County of San Francisco, and within the scope of their employment, held Plaintiff down while other sheriff's deputies and/or other jail personnel forcibly removed all of Plaintiff's clothes.

101. Plaintiff did not possess contraband and was not engaged in any conduct threatening to herself or to others.

102. Sheriff's deputies and/or other jail personnel were aware that Plaintiff had not committed any crime punishable as a felony.

103. Sheriff's deputies and/or jail personnel threw Plaintiff into the "cold room" in the San Francisco County Jail and left her there naked.

104. Male and female sheriff's deputies and other jail personnel were able to look into the room and did in fact look into the "cold room" and saw her naked.

105. Those actions permitted sheriff's deputies and other jail personnel to visually inspect Plaintiff's breasts, buttocks, and genitalia.

106. While in the "cold room" Plaintiff started cramping and bleeding, but the sheriff's deputies and other personnel responsible for her detention refused to give her clothes or a pad for her bleeding.

107. She was lying naked on the dirty floor in the "cold room" or and feared developing an infection.

108. Plaintiff spent several hours alone in the "cold room" bleeding and being subjected to continual verbal harassment.

109. While in the jail facility, Plaintiff was not permitted to make a telephone call.

110. Plaintiff was released later that morning.

111. San Francisco County Sheriff Michael Hennessey was responsible for promulgating and ensuring the implementation of the policy pursuant to which Plaintiff was stripped at San Francisco County Jail No. 9.

112. San Francisco County Sheriff Michael Hennessey was responsible for promulgating and ensuring the implementation of the policy pursuant to which Plaintiff was placed naked in a “cold room” at San Francisco County Jail No. 9.

113. Neither Sheriff Michael Hennessey nor other superiors of those San Francisco County Sheriff's Deputies sued herein as Does 36 through 100 disciplined Does 36 through 100 in any way, thereby ratifying the actions of those deputies.

114. Neither Sheriff Michael Hennessey nor other superiors of those San Francisco City and County employees sued herein as Does 101 through 200 disciplined Does 101 through 200 in any way, thereby ratifying the actions of those employees.

115. In doing the acts alleged in this claim, these defendants were acting within the course and scope of their employment with the City and County of San Francisco.

116. As a proximate result of the Plaintiff's false imprisonment effected by San Francisco police officers acting within the course and scope of their employment, Plaintiff suffered ridicule, disgrace, physical and emotional distress.

117. The conduct of City and County of San Francisco Sheriff's Deputies, Jail Personnel and City and County officials sued as Does 36 through 200 and the conduct of Defendant Michael Hennessey was malicious and oppressive, carried out in reckless disregard of Plaintiff's rights and safety. This malicious and oppressive conduct makes these defendants

Wherefore, Plaintiff seeks relief as set forth below.

ELEVENTH CLAIM FOR RELIEF
Violation Of California Penal: Code § 4030

1 **Against San Francisco County Sheriff's Deputies And San Francisco**
2 **County Jail Personnel Does 36-Through 200, Against Sheriff Michael Hennessey,**
3 **And Against The City and County Of San Francisco**

4 118. Plaintiff realleges and incorporates by reference the allegations of
5 paragraphs 1 through 38 and 78 and 100 through 117 as if they were set forth *in haec*
6 *verba* herein.

7 119. In removing Plaintiff's clothes and permitting sheriff's deputies and other
8 jail personnel to visually inspect Plaintiff's breasts, buttocks, and genitalia Does 36 to
9 150 violated California Penal Code § 4030. In committing these violations, Does 36
10 through 150 were acting within the course and scope of their employment with the City
11 and County of San Francisco.

12 120. Does 151 through 200 assisted in the promulgation and/or approval
13 and/or enforcement of policies and practices of the City and County of San Francisco
14 which violated Penal Code § 4030. In committing these violations, Does 151 through
15 200 were acting within the course and scope of their employment with the City and
16 County of San Francisco.

17 121. Sheriff Michael Hennessey is also liable for violating Penal Code § 4030
18 by promulgating, and/or approving and/or enforcing San Francisco County policies and
19 practices violating Penal Code § 4030. In violating Penal Code § 4030, Hennessey was
20 acting within the course and scope of his employment with the County of San Francisco.

21 122. The conduct of the defendants sued as Does 36 through 200 occurred
22 within the course and scope of their employment and pursuant to the policies and
23 practices of the City and County of San Francisco.

24 123. As a proximate result of these defendants' violation of Penal Code § 4030
25 while acting within the course and scope of their employment, Plaintiff suffered ridicule,
26 disgrace, physical and emotional distress and may recover damages as set forth in
27 Penal Code § 4030.
28

124. This violation of Penal Code § 4030 by City and County of San Francisco Sheriff's Deputies, Jail Personnel and City and County officials sued as Does 36 through 200 and the conduct of Defendant Michael Hennessey was malicious and oppressive, carried out in reckless disregard of Plaintiff's rights and safety. This malicious and oppressive conduct makes these defendants

Wherefore, Plaintiff seeks relief as set forth below.

TWELFTH CLAIM FOR RELIEF
Violation Of Rights Protected By The California Constitution; Art. 1 §§ 1,
13; 17, Civil Code §§ 52, 52.1, 52.3; California Code of Regulations, Title 15, §§
1055 and 1083
Against San Francisco County Sheriff's Deputies And San Francisco
County Jail Personnel Does 36-Through 200, Against Sheriff Michael Hennessey,
And Against The City and County Of San Francisco

125. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 38 and 78 and 95 through 124 as if they were set forth *in haec verba* herein.

126. The conduct of each of these defendants violated Plaintiff's rights guaranteed her by the California Constitution, including Article 1, § 1, which guarantees the right to privacy; Article 1, § 13, which forbids unreasonable seizures; and Article I, § 17, which forbids cruel or unusual punishment. Defendants' conduct also violated provisions of the California Code of Regulations, including, but not limited to Title 15, §§ 1055 and 1083, governing these defendants' use of "cold cells" or "safety cells."

127. Defendants' violation of plaintiff's right to privacy was effected by threat, intimidation and coercion in violation of Civil Code § 52.1

128. Defendants' conduct also violated Civil Code § 52.3 which forbids law enforcement personnel from engaging in a pattern or practice of conduct that deprives a person of rights guaranteed by the Constitution of the United States or the Constitution or laws of the State of California.

135. The conduct of these defendants who either carried stripped Plaintiff and placed her without clothing in the “cold cell” and/or promulgated, and/or approved, and/or implemented and/or or enforced practices and policies pursuant to which Plaintiff was stripped and placed without clothing in a “cold cell” constituted “gender violence” as defined in Civil Code § 52.4(c).

136. The conduct of the individual defendants occurred within the course and scope of their employment and pursuant to the policies and practices of the City and County of San Francisco.

137. That conduct entitles Plaintiff to the recovery of compensatory damages, exemplary damages and attorney's fees on proof of such violation.

138. As a result of that violation, Plaintiff suffered ridicule, disgrace, physical and emotional distress.

139. The conduct of Does 36 through 200 and defendant Michael Hennessey was malicious and oppressive, carried out in reckless disregard of Plaintiff's rights and safety. These defendants' malicious and oppressive conduct makes them personally liable for exemplary damages.

Wherefore, Plaintiff seeks relief as set forth below.

**FOURTEENTH CLAIM FOR RELIEF
ASSAULT AND BATTERY
Against San Francisco County Sheriff's Deputies And San Francisco
County Jail Personnel Does 36-Through 200, Against Sheriff Michael Hennessey,
And Against The City and County Of San Francisco**

140. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 38 and 78 and 95 through 139 as if they were set forth *in haec verba* herein.

141. The conduct of these defendants who either stripped Plaintiff and placed her without clothing in the “cold cell” constituted “gender violence” as defined in Civil Code § 52.4(c).

1 142. The conduct of Does 36 through 150 occurred within the course and
2 scope of their employment and pursuant to the policies and practices of the City and
3 County of San Francisco.

4 143. Supervisors of Does 36 through 150 ratified this conduct. Defendants
5 sued as Does 36 through 150 suffered no discipline whatsoever as a result of their
6 conduct toward plaintiff.

7 144. As a result of that violation, Plaintiff suffered ridicule, disgrace, physical
8 and emotional distress.

9 145. The conduct of Does 36 through 150 was malicious and oppressive,
10 carried out in reckless disregard of Plaintiff's rights and safety. These defendants'
11 malicious and oppressive conduct makes them personally liable for exemplary
12 damages.

13 Wherefore, Plaintiff seeks relief as set forth below.

14 **FIFTEENTH CLAIM FOR RELIEF**
15 **Negligent Hiring, Retention, Training And Discipline**
16 **Against Acting San Francisco Police Chief Alex Fagan, Jr., Sheriff Michael**
17 **Hennessey, Does 151 Through 200 And The City And County Of San Francisco.**

18 146. Plaintiff realleges and incorporates by reference the allegations of
19 paragraphs 1 through 38 and 78 and 95 through 138 as if they were set forth *in haec*
20 *verba* herein.

21 147. At all times relevant, these defendants were obligated to use reasonable
22 care in the hiring, retention, training, supervision and discipline of members of the San
23 Francisco Police Department and sworn and unsworn personnel of County of San
24 Francisco Sheriff's Department.

25 148. Defendants breached this obligation by failing to properly hire personnel
26 who would refrain from committing the violation of constitutional provisions, statutes and
27 regulations alleged in this complaint.
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6. For such other relief as the Court deems proper.

Dated: November ___, 2003 CASPER, MEADOWS & SCHWARTZ
A Professional Corporation
LAW OFFICES OF MARK E. MERIN

By Thom Seaton