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10 JAMES SMITH, and JA.S. by and through
11 their mother and guardian TERESA SMITH

12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 JAMES SMITH, a handicapped adult and)
15 JA.S., a minor; all by and through their)
16 mother and guardian TERESA SMITH,)

17 Plaintiffs)

18 v.)

19 CITY OF STOCKTON; ERIC JONES,)
20 individually and in his capacity as Chief of)
21 the Stockton Police Department;)
22 HOUSTON SENSABAUGH, individually;)
23 TRAVIS WEBER, individually; T. REES,)
24 individually; BENJAMIN RATZLAFF,)
25 individually; KENNY HOANG MINH)
26 PHAM, individually; and DOES 1 to 100.)

27 Defendants.)

Case No.

COMPLAINT FOR DAMAGES

1. 4th Amendment Violations – Excessive Force,
2. 4th Amendment Violations – Unlawful Search & Seizure,
3. 4th Amendment – Malicious Prosecution,
4. Assault,
5. Battery,
6. False Arrest,
7. Intentional Infliction of Emotional Distress,
8. Negligent Infliction of Emotional Distress,
9. Ralph Act (CA Civil Code § 51.7),
10. Bane Act (CA Civil Code § 52.1), and
11. Bystander Emotional Distress

DEMAND FOR JURY TRIAL

28 Plaintiffs, and each of them, allege the following:

JURISDICTION

1. Counts in this action arise under 42 U.S.C. § 1983. This Court has original jurisdiction pursuant to 28 U.S.C. § 1343(3). This Court also has supplemental jurisdiction over

1 Plaintiffs' related state claims pursuant to 28 U.S.C. § 1367.

2 **VENUE**

3 2. Venue is proper in the United States District Court for the Eastern District of
4 California, pursuant to 28 U.S.C. sections 84 and 1391. The events that gave rise to this complaint
5 occurred in San Joaquin County in the State of California, and one or more of the defendants
6 resides in San Joaquin County, California.
7

8 **INTRADISTRICT ASSIGNMENT**

9 3. The actions that gave rise to this complaint occurred in San Joaquin County,
10 California. Assignment of this action to the Sacramento Division of this Court is appropriate
11 according to Local Rule 120(d).
12

13 **PARTIES**

14 4. Plaintiff JAMES SMITH is an adult and a resident of the State of California. He
15 suffers from severe developmental and mental disabilities and is not competent. He is bringing
16 this action through his natural mother, TERESA SMITH, who will apply to the Court to be
17 appointed as his guardian ad litem, pursuant to Local Rule 202(a).
18

19 5. Plaintiff "JA.S." is a minor and a resident of the State of California. She also has a
20 mental handicap. She is bringing this action through her natural mother, TERESA SMITH, who
21 will apply to the Court to be appointed as her guardian ad litem, pursuant to Local Rule 202(a).
22 (The initials of the minor are being used rather than her full name, pursuant to FRCP 5.2(a)(3)).
23 At the time of the incidents complained of herein, JA.S was 13 years old.

24 6. Plaintiff TERESA SMITH is a competent adult and the natural mother of JAMES
25 SMITH, JO.S., AND JA.S. She was not present during the incident that is at issue in this litigation
26 and does not have any of her own personal claims. Her involvement in this litigation is only to
27 represent her children JAMES SMITH and JA.S. She is petitioning to be appointed as the
28

1 guardian ad litem for her children, pursuant to Local Rule 202(a).

2 7. The CITY OF STOCKTON is a governmental entity responsible for the actions of
3 its subdivision, the Stockton Police Department.

4 8. Plaintiffs are informed and believe the following: Defendant ERIC JONES is
5 and/or was the chief of the Stockton Police Department. Plaintiff alleges that he personally
6 participated in promulgating the policies and practices that led to the misconduct of the individual
7 officers, and ratified the misconduct of the individual defendant officers. He is being sued in his
8 official and individual capacities.

9 9. Plaintiffs are informed and believe the following: Defendant HOUSTON
10 SENSABAUGH is an adult and resident of the State of California. At all times relevant herein, he
11 was an officer employed by the City of Stockton Police Department and was acting under color of
12 law within the course and scope of his employment. He is being sued in his individual capacity.

13 10. Plaintiffs are informed and believe the following: Defendant TRAVIS WEBER is
14 an adult and resident of the State of California. At all times relevant herein, he was an officer
15 employed by the City of Stockton Police Department and was acting under color of law within the
16 course and scope of his employment. He is being sued in his individual capacity.

17 11. Plaintiffs are informed and believe the following: Defendant T. REES is an adult
18 and resident of the State of California. At all times relevant herein, he was an officer employed by
19 the City of Stockton Police Department and was acting under color of law within the course and
20 scope of his employment. Plaintiffs are not currently aware of his first name. He is being sued
21 herein in his individual capacity.

22 12. Plaintiffs are informed and believe the following: Defendant BENJAMIN
23 RATZLAFF is an adult and resident of the State of California. At all times relevant herein, he was
24 an officer employed by the City of Stockton Police Department and was acting under color of law
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1 within the course and scope of his employment. He is being sued in his individual capacity.

2 13. Plaintiffs are informed and believe the following: Defendant KENNY HOANG
3 MINH PHAM is an adult and resident of the State of California. At all times relevant herein, he
4 was an officer employed by the City of Stockton Police Department and was acting under color of
5 law within the course and scope of his employment. He is being sued in his individual capacity.
6

7 14. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
8 Does 1 through 100, inclusive, and therefore sue these defendants by such fictitious names and
9 capacities. Plaintiffs are informed and believe and based thereon allege that each of the fictitiously
10 named defendants is responsible in some manner for the occurrences herein alleged, and that
11 plaintiffs' injuries as herein alleged were proximately caused by the actions and/or in-actions of
12 said Doe defendants. Plaintiffs will amend this complaint to include the true identities of said doe
13 defendants when they are ascertained.
14

15 15. At all times mentioned, each of the defendants was acting as the agent, principal,
16 employee, and/or employer of one or more of the remaining defendants and was, at all times herein
17 alleged, acting within the purpose, course, and scope of such agency and/or employment for
18 purposes of respondent superior and/or vicarious liability as to all other defendants.
19

20 16. At all times mentioned herein, the defendants, and each of them, employed, hired,
21 trained, retained, and/or controlled the actions of all other defendants, and each of them.
22

23 FACTS

24 17. JAMES SMITH is an incompetent adult. At the time of the incidents at issue,
25 herein, he was 18 years old, but he has the mental capacity of a young child. His severe mental
26 delays are readily apparent in his appearance and speech. He is African American. Teresa Smith
27 is his natural mother.

28 18. JA.S. is a minor. She is African American. Teresa Smith is their natural mother.

1 19. JAMES SMITH and JA.S were lawfully at or near their home on November 21,
2 2014. They reside at 415 East Flora Street in Stockton, California. On November 21, 2014,
3 JAMES SMITH was with his brother (minor JO.S. – now deceased) and their friends in front of
4 the building at or about 411 East Flora Street. They were not breaking any laws. There was no
5 reasonable suspicion that JAMES SMITH or JO.S. had engaged in any criminal conduct, and there
6 were was no probable cause to arrest either of them.
7

8 20. A Stockton Police Officer pulled up to JAMES SMITH, JO.S., and their friends.
9 The officer spoke to JAMES SMITH and JO.S. The officer was told that JAMES SMITH is
10 mentally handicapped. JAMES SMITH was afraid of the officer and walked toward his home at
11 415 East Flora Street, which is next door to 411 East Flora Street. The officer pursued JAMES
12 SMITH to 415 East Flora Street, tackled him to the ground, physically restrained him, and placed
13 him in stress positions. At least two other officers arrived. JAMES SMITH was struck multiple
14 times by the officers. He was also handcuffed by one or more of the defendants.
15

16 21. There was no warrant for JAMES SMITH'S arrest, and he was not on probation or
17 parole.
18

19 22. During the course of the arrest, a Stockton Police dog was sicced upon JAMES
20 SMITH by one or more of the Stockton police officers. The dog was under the control of the
21 defendant officers and was being used as a tool or a weapon. The dog initially attacked a
22 bystander. One of the defendants took the dog off the bystander and sicced it on JAMES SMITH.
23

24 23. The police dog was allowed and encouraged to maul, bite, scratch, and attack
25 JAMES SMITH all over his body for an extended period of time after JAMES SMITH was on the
26 ground and after JAMES SMITH was handcuffed or otherwise under the defendants' physical
27 control. The dog ripped the clothes off JAMES SMITH and bit him all over his body, including,
28 but not limited to, on his torso, chest, stomach, arms, legs, buttocks, arms, hands, and shoulder.

1 24. At least one video reveals that the police dog was allowed to bite, attack, and maul
2 JAMES SMITH after he had been detained and was under police control. While JAMES SMITH
3 was being bitten and mauled by the police dog, defendant officers, and each of them, stood around
4 and watched without taking steps to protect him from the dog.

5 25. As a result of the physical violence exerted by the defendants and their dog,
6 JAMES SMITH suffered cuts, lacerations, scrapes, and deep puncture wounds on his legs,
7 buttocks, arms, hands, torso, face, neck, and head. His teeth were cracked, chipped, and broken.
8 The defendants also placed handcuffs too tightly on JAMES SMITH, causing physical injuries to
9 his wrist, including cuts. He suffered extreme physical pain and mental suffering. Today he bears
10 the physical and mental scars of what defendants did to him.

11 26. While JAMES SMITH was being detained, arrested, and physically injured by the
12 defendant police officers and the police dog, J.O.S. and members of the public shouted to the
13 officers that he is "disabled." Members of the public pleaded with the defendants to stop.

14 27. JA.S was present and witnessed her brother JAMES SMITH being detained,
15 arrested, punched, struck, and physically abused by the defendant officers, and
16 mauled/bitten/attacked by the police dog. She was fearful and contemporaneously aware that it
17 was their brother who was being mistreated and injured by the defendants. JA.S suffered
18 emotional distress and is making bystander emotional distress claims, also known as *Dillon v.*
19 *Legg* claims. (See *Dillon v. Legg* (1968) 68 Cal.2d 728 and the cases based thereon.) JA.S. was
20 not arrested or physically harmed during the incident.

21 28. JAMES SMITH was arrested and taken to the hospital and then to jail, where he
22 was incarcerated for approximately five (5) days.

23 29. Plaintiffs are informed and believe that the officer who initially detained and
24 arrested JAMES SMITH was HOUSTON SENSABAUGH and that other officers, including, but
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1 not limited to, TRAVIS WEBER, SERGEANT T. REES, BENJAMIN RATZLAFF, and KENNY
2 HOANG MINH PHAM were also present and participated. Plaintiffs are informed and believe
3 that all of the involved defendants were employed by the Stockton Police Department and were
4 wearing law enforcement clothing.

5 30. JAMES SMITH did not forcibly resist Defendants. There was no reasonable
6 suspicion that he had committed any crimes before he was detained and no probable cause to
7 believe that he had committed any crimes before he was arrested. There was no good cause to
8 exert any force, much less the amount of force that was exerted upon him.

9 31. Following the above described incident, defendants HOUSTON SENSABAUGH,
10 and TRAVIS WEBER wrote police reports that contained incorrect and misleading information
11 and that failed to include exculpatory evidence about JAMES SMITH, including that JAMES
12 SMITH is outwardly and clearly mentally delayed and that people at the scene were telling the
13 officers that JAMES SMITH is disabled before, while, and after force described above was used
14 upon him and he was arrested. HOUSTON SENSABAUGH'S report incorrectly claimed that
15 people in the vicinity had asked HOUSTON SENSABAUGH to "get him," referring to JAMES
16 SMITH. HOUSTON SENSABAUGH'S report misrepresented that JAMES SMITH appeared to
17 be under the influence of drugs. The police reports improperly claimed that JAMES SMITH had
18 struggled with the officers and had tried to hit them. The police reports improperly misrepresented
19 when, why, and how the dog was sicced on JAMES SMITH and failed to note that JAMES
20 SMITH was handcuffed and/or otherwise detained while he was being bitten, scratched, attacked,
21 and mauled by the police dog. The report also failed to report the extent of the dog attack upon
22 JAMES SMITH, claiming only that the dog bit his leg.

23 32. HOUSTON SENSABAUGH'S report did not identify any potential criminal
24 offense that JAMES SMITH had allegedly committed that caused HOUSTON SENSABAUGH to
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1 initially detain JAMES SMITH. The only offenses listed in the report were for alleged battery on
2 an officer (Penal Code 243(B)) and obstructing, resisting, and delaying an officer (Penal Code 69).

3 33. JAMES SMITH was prosecuted by the San Joaquin County District Attorney's
4 Office. Plaintiff is informed and believes that the district attorney's office based decisions to
5 prosecute JAMES SMITH upon the misstatements, inaccuracies, and omissions of fact in the
6 reports that were written by the defendants and each of them.
7

8 34. All charges against JAMES SMITH were eventually dropped. He was not
9 convicted of any crimes and did not plead guilty or no contest to any of the charges.

10 **CUSTOM, PRACTICE, AND POLICY**

11 35. The unconstitutional actions and/or omissions of the individual police officers, on
12 information and belief, were pursuant to the following customs, policies, practices and/or
13 procedures of the CITY OF STOCKTON and its police chief ERIC JONES as follows:
14

- 15 a. To use, tolerate, or instruct the use of excessive and/or unjustified force;
16 b. To engage in or tolerate unreasonable seizures and restraints;
17 c. To engage in or tolerate the improper and dangerous use of police dogs;
18 d. To fail to institute, require, and enforce proper and adequate training, supervision,
19 policies, and procedures concerning stops, arrests, and the use of force, including, but not limited
20 to, force exerted upon a citizen through the use of a police dog;
21 e. To fail to use appropriate and generally accepted law enforcement procedures for
22 handling mentally ill and/or emotionally disturbed people;
23 f. To fail to institute, require, and enforce proper and adequate training, supervision,
24 policies, and procedures concerning handling mentally ill and/or emotionally disturbed people;
25 g. To hide or cover up violations of constitutional rights by any of the following:
26
27 i. By failing to properly investigate and/or evaluate complaints or incidents of
28

- 1 excessive and unreasonable force, unlawful seizures, and/or handling of
2 mentally ill and/or emotionally disturbed people;
- 3 ii. By ignoring and/or failing to properly investigate and/or discipline
4 unconstitutional or unlawful law enforcement activity; and
- 5
6 iii. By allowing, tolerating, and/or encouraging law enforcement officers to fail
7 to file complete and accurate reports; file false reports; make false statements; collude in report
8 writing; and/or obstruct or interfere with investigations of unconstitutional or unlawful law
9 enforcement conduct by withholding and/or concealing material information; and
- 10 h. To allow, tolerate, and/or encourage a 'code of silence' among law enforcement
11 officers and police department personnel, whereby an officer or member of the police department
12 does not provide adverse information against a fellow officer or member of the department; and
- 13
14 x. Defendants CITY OF STOCKTON and chief ERIC JONES failed to properly hire,
15 train, instruct, monitor, supervise, evaluate, investigate, and discipline the individual officers
16 involved herein, with deliberate indifference to Plaintiffs' constitutional rights.

17 36. It is the custom, practice, and policy of the CITY OF STOCKTON'S police
18 department and its chief ERIC JONES and Does 1 to 20 to inadequately and improperly
19 investigate complaints of police misconduct, thereby directly and/or indirectly endorsing and
20 encouraging such actions.

21
22 37. Plaintiffs are informed and believe that, despite numerous complaints that Stockton
23 officers were using excessive force upon citizens, CHIEF ERIC JONES has not properly
24 investigated or disciplined officers based upon a citizen's complaint of excessive force. This
25 custom, practice, and/or policy condones, ratifies, supports and encourages the improper,
26 unnecessary, and/or excessive use of force by officers employed by the CITY OF STOCKTON
27 and under CHIEF ERIC JONES' command.
28

1 38. Plaintiffs are informed and believe that it is the custom, practice, and/or policy of
2 the CITY OF STOCKTON'S police department and CHIEF ERIC JONES and Does 1 to 20 not to
3 monitor and track the number of times officers under his command are accused of using excessive
4 force. They do not keep statistics on individual officers. This custom, practice, and/or policy
5 condones, ratifies, supports and encourages the improper, unnecessary, and/or excessive use of
6 force by CITY OF STOCTON officers under CHIEF ERIC JONES' command.
7

8 39. Plaintiffs are informed and believe that it is the custom, practice, and policy of the
9 CITY OF STOCKTON'S police department and CHIEF ERIC JONES and Does 1 to 20 not to
10 monitor and track the number of times officers under his command use force on citizens. They do
11 not keep statistics on individual officers. This custom, practice, and/or policy condones, ratifies,
12 supports and encourages the improper, unnecessary, and/or excessive use of force by CITY OF
13 STOCKTON officers under CHIEF ERIC JONES' command.
14

15 40. Plaintiffs are informed and believe that it is the custom, practice, and policy of the
16 CITY OF STOCKTON'S police department and CHIEF ERIC JONES and Does 1 to 20 not to
17 monitor and track the frequency that forced is used by officers he commands or whether the use of
18 force is increasing or decreasing over time. This custom, practice, and/or policy condones, ratifies,
19 supports and encourages the improper, unnecessary, and/or excessive use of force by CITY OF
20 STOCKTON officers under CHIEF ERIC JONES' command.
21

22 41. Plaintiffs are informed and believe that it is the custom, practice, and policy of the
23 CITY OF STOCKTON'S police department and CHIEF ERIC JONES and Does 1 to 20 not to
24 monitor and track the percentage of citizen complaints that include allegations that one or more
25 officers under his command used excessive force. This custom, practice, and/or policy condones,
26 ratifies, supports and encourages the improper, unnecessary, and/or excessive use of force by
27 CITY OF STOCKTON officers under CHIEF ERIC JONES' command.
28

1 42. Plaintiffs are informed and believe that it is the custom, practice, and policy of the
2 CITY OF STOCKTON'S police department and CHIEF ERIC JONES, and Does 1 to 20 to try to
3 avoid the disclosure of the improper, unnecessary, and excessive use of force by officers under his
4 command. This custom, practice, and/or policy condones, ratifies, supports and encourages the
5 improper, unnecessary, and/or excessive use of force by CITY OF STOCKTON officers under
6 CHIEF ERIC JONES' command.
7

8 43. Notwithstanding knowledge on the part of the CITY OF STOCKTON and its chief
9 ERIC JONES that their officers injured Plaintiffs and violated JAMES SMITH'S civil rights by
10 engaging in the activities alleged above, the CITY OF STOCKTON and its police chief ERIC
11 JONES have expressed an affirmative agreement with the individual defendant officers' actions
12 and have ratified the unconstitutional and unlawful acts by the individual defendant officers.
13

14 **CLAIMS PROCEDURE**

15 44. Plaintiffs have made the necessary claims, pursuant to California Government Code
16 § 910, to preserve the state causes of action set forth below.
17

18 **FIRST COUNT**
19 **(Violation of Fourth Amendment Rights – Excessive Force)**
20 **(42 USC § 1983)**
21 **(Brought by Plaintiff JAMES SMITH)**

22 45. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
23 set forth herein.

24 46. This action arises under the United States Constitution, particularly under the
25 provisions of the Fourth Amendment to the Constitution of the United States, and under federal
26 law, particularly Title 42 of the United States Code, § 1983.

27 47. Each of the acts complained of herein was committed against JAMES SMITH by
28 the Defendants, and each of them, under the color and pretense of the statutes, ordinances,

1 regulations, customs, and usages of the State of California, the City of Stockton and San Joaquin
2 County, and under the authority of their offices as law enforcement officers for the City of
3 Stockton.

4 48. The conduct of the Defendants, and each of them, deprived Plaintiff JAMES
5 SMITH of the right of not to be subjected to excessive force during the course of a search, an
6 arrest, an investigatory stop, or a seizure of his person, as secured by the Fourth Amendment to the
7 Constitution of the United States.
8

9 49. At no time did JAMES SMITH attempt to resist a lawful command by fleeing or
10 exerting unlawful physical force to the defendant officers. A no time did any of the Plaintiffs act
11 violently with the defendant officers.
12

13 50. The actions of the Defendants, and each of them, were the result of policies and/or
14 customs by CHIEF ERIC JONES and/or Does 1 to 20, whose inadequacy in training the defendant
15 officers with respect to the performance of their duties, including, but not limited to, searches,
16 seizures, use of force, arrests, detentions, and discrimination constituted a deliberate indifference
17 to citizens.
18

19 51. The Defendants, and each of them, knowingly and willfully conspired and agreed
20 among themselves to violate JAMES SMITH'S civil rights. The Officers conspired to injure
21 JAMES SMITH.

22 52. As a direct and proximate result of Defendants' conduct, as alleged herein, Plaintiff
23 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, inconvenience, anxiety,
24 and extreme mental anguish. Accordingly JAMES SMITH suffered past and future general
25 damages in amounts to be determined by proof at trial.
26

27 53. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
28 required medical treatment, was incarcerated, and/or missed time from educational pursuits. He

1 suffered past and future special damages in amounts to be determined by proof at trial.

2 54. Through their conduct, the individual officers acted maliciously and oppressively,
3 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
4 to harm JAMES SMITH. JAMES SMITH is therefore entitled to punitive or exemplary damages
5 from the individual officers in an amount to be determined by proof at trial.
6

7 55. As a proximate cause of the Defendants' conduct, JAMES SMITH is incurring
8 attorney fees and litigation costs, including the costs of retaining experts.

9
10 **SECOND COUNT**
11 **(Violation of Fourth Amendment Rights – Illegal Search & Seizure)**
12 **(42 USC § 1983)**
13 **(Brought by Plaintiff JAMES SMITH)**

14 56. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
15 set forth herein.

16 57. This action arises under the United States Constitution, particularly under the
17 provisions of the Fourth Amendment to the Constitution of the United States, and under federal
18 law, particularly Title 42 of the United States Code, § 1983.

19 58. Each of the acts complained of herein was committed by the Defendants, and each
20 of them, under the color and pretense of the statutes, ordinances, regulations, customs, and usages
21 of the State of California, the City of Stockton, and San Joaquin County, and under the authority of
22 their offices as law enforcement officers for the City of Stockton.

23 59. The conduct of the Defendants, and each of them, deprived JAMES SMITH of the
24 right of the right to be secure in his person and effects against unreasonable search and seizure, as
25 secured by the Fourth Amendment to the Constitution of the United States.

26 60. The actions of the Defendants, and each of them, were the result of policies and/or
27 customs by CHIEF ERIC JONES, and/or Does 1 to 20, whose inadequacy in training the defendant
28

1 officers with respect to the performance of their duties, including, but not limited to, searches,
2 seizures, use of force, arrests, and detentions, constituted a deliberate indifference to citizens'
3 rights.

4 61. The Defendants, and each of them, knowingly and willfully conspired and agreed
5 among themselves to violate JAMES SMITH'S civil rights. The Officers conspired to injure
6 JAMES SMITH.
7

8 62. As a direct and proximate result of the Defendants' conduct, as alleged herein,
9 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, inconvenience, anxiety,
10 and extreme mental anguish. Accordingly JAMES SMITH has suffered past and future general
11 damages in amounts to be determined by proof at trial.
12

13 63. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
14 required medical treatment, was incarcerated, and/or missed time from educational pursuits. He
15 suffered past and future special damages in amounts to be determined by proof at trial.
16

17 64. Through their conduct, the individual officers acted maliciously and oppressively,
18 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
19 to harm JAMES SMITH. JAMES SMITH is entitled to punitive or exemplary damages from the
20 individual officers in an amount to be determined by proof at trial.

21 65. As a proximate cause of the Defendants' conduct, JAMES SMITH is incurring
22 attorney fees and litigation costs, including the costs of retaining experts.
23

24 **THIRD COUNT**
25 **(Violation of Fourth Amendment Rights - Malicious Prosecution)**
26 **(Brought by Plaintiff JAMES SMITH)**

27 66. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
28 set forth herein.

67. This action arises under the United States Constitution, particularly under the

1 provisions of the Fourth Amendment to the Constitution of the United States, and under federal
2 law.

3 68. Each of the acts complained of herein was committed by the Defendants, and each
4 of them, under the color and pretense of the statutes, ordinances, regulations, customs, and usages
5 of the United States, and under the authority of their offices as law enforcement officers for the
6 City of Stockton.

7
8 69. The defendants acted maliciously or for a purpose other than bringing JAMES
9 SMITH to justice, in that they sought to have criminal charges brought against JAMES SMITH to
10 cover for their own misdeeds and to punish JAMES SMITH for not immediately complying with
11 their unlawful detention, arrest, and search. Defendants knew that their statements, misstatements,
12 omissions, and exaggerations would be reviewed and considered by prosecutors in deciding
13 whether to file and/or pursue criminal charges against JAMES SMITH.

14
15 70. JAMES SMITH suffered deprivation of his liberty consistent with the concept of a
16 seizure as a consequence of the legal proceedings. He was incarcerated for approximately (5)
17 days. JAMES SMITH was prosecuted based upon the Defendants' statements, and had to appear
18 in court for hearings until the charges were dismissed.

19
20 71. The Defendants, and each of them, knowingly and willfully conspired and agreed
21 among themselves to violate JAMES SMITH'S civil rights and to injure him.

22 72. As a direct and proximate result of the conduct of the Defendants, and each of
23 them, as alleged herein, JAMES SMITH suffered physical injuries, fright, shock, pain, suffering,
24 inconvenience, anxiety, and extreme mental anguish. Accordingly he suffered past and will suffer
25 future general damages in amounts to be determined by proof at trial.

26
27 73. As a direct and proximate result of the conduct of the defendants, and each of them,
28 Plaintiff required medical treatment and/or missed time from educational pursuits. Plaintiff

1 suffered past and future special damages in amounts to be determined by proof at trial.

2 74. Through their conduct, the defendants, and each of them, acted maliciously and
3 oppressively, in willful and conscious disregard for JAMES SMITH'S rights and safety, and with
4 the sole intent to harm him. He is entitled to punitive or exemplary damages from the individual
5 rangers in an amount to be determined by proof at trial.

6
7 75. As a proximate cause of the conduct of the Defendants, and each of them, attorney
8 fees and expenses were incurred in the defense of the criminal charges. JAMES SMITH is also
9 incurring attorney fees and litigation costs, including the costs of retaining experts in the present
10 case.

11 **FOURTH COUNT**
12 **(Assault)**
13 **(Brought by Plaintiff JAMES SMITH)**

14 76. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
15 set forth herein.

16 77. The Defendants, and each of them, demonstrated an unlawful intent to inflict
17 immediate injury upon plaintiff JAMES SMITH. They acted with the intent to cause a harmful or
18 offensive contact with him. For example, Defendants threatened JAMES SMITH with physical
19 harm and threatened him with being attacked by the police dog.
20

21 78. JAMES SMITH was aware of the defendants' actions and was caused and placed in
22 imminent apprehension of physical and emotional harm.

23 79. The defendants' actions constituted excessive force that was not reasonable.

24 80. The defendants, and each of them, knowingly and willfully conspired and agreed
25 among themselves to assault plaintiff JAMES SMITH. The Officers at the scene conspired to
26 injure him.
27

28 81. As a direct and proximate result of the Defendants' conduct, as alleged herein,

1 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and/or extreme mental
2 anguish. Accordingly he has suffered past and future general damages in amounts to be
3 determined by proof at trial.

4 82. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
5 required medical treatment and/or missed time from educational pursuits. He suffered past and
6 future special damages in amounts to be determined by proof at trial.

7 83. Through their conduct, the individual officers acted maliciously and oppressively,
8 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
9 to harm him. He is therefore entitled to punitive or exemplary damages from the individual
10 officers in an amount to be determined by proof at trial.

11
12 **FIFTH COUNT**

13 **(Battery)**

14 **(Brought by Plaintiff JAMES SMITH)**

15 84. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
16 set forth herein.

17 85. The Defendants, and each of them, intended to cause and did cause harmful and/or
18 offensive contact with JAMES SMITH. JAMES SMITH was grabbed, struck, choked, wrenched,
19 manhandled, handcuffed, and bitten by the dog.

20 86. JAMES SMITH did not consent to the Defendants' harmful contact.

21 87. The Defendants' actions constituted excessive force that was not reasonable.

22 88. The Defendants, and each of them, knowingly and willfully conspired and agreed
23 among themselves to batter JAMES SMITH. The Officers at the scene conspired to injure JAMES
24 SMITH.

25 89. As a direct and proximate result of the Defendants' conduct, as alleged herein, each
26 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and extreme mental
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1 anguish. Accordingly JAMES SMITH has suffered past and future general damages in amounts to
2 be determined by proof at trial.

3 90. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
4 required medical treatment and/or missed educational pursuits. He suffered past and future special
5 damages in amounts to be determined by proof at trial.

6
7 91. Through their conduct, the individual officers acted maliciously and oppressively,
8 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
9 to harm him. JAMES SMITH is therefore entitled to punitive or exemplary damages from the
10 individual officers in an amount to be determined by proof at trial.

11 **SIXTH COUNT**
12 **(False Arrest & False Imprisonment)**
13 **(Brought by Plaintiff JAMES SMITH)**

14 92. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
15 set forth herein.

16 93. The Defendants, and each of them, intentionally acted with the purpose of
17 confining JAMES SMITH against his will. JAMES SMITH was detained and seized by the
18 defendant officers who were at the scene. The detentions and seizures amounted to unlawful
19 arrests.

20
21 94. The arrest of JAMES SMITH was made without an arrest warrant. The arrest was
22 unreasonable and lacked probable cause. The arrest was unlawful and the Defendants were
23 without reasonable cause to believe the arrest was lawful at the time it was made.

24 95. The Defendants, and each of them, knowingly and willfully conspired and agreed
25 among themselves to falsely arrest JAMES SMITH. The Officers at the scene conspired to injure
26 JAMES SMITH.

27
28 96. As a direct and proximate result of the Defendants' conduct, as alleged herein,

1 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and extreme mental
2 anguish. Accordingly JAMES SMITH suffered past and future general damages in amounts to be
3 determined by proof at trial.

4 97. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
5 required medical treatment and/or missed time from educational pursuits. He suffered past and
6 future special damages in amounts to be determined by proof at trial.

7 98. Through their conduct, the individual officers acted maliciously and oppressively,
8 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
9 to harm him. JAMES SMITH is therefore entitled to punitive or exemplary damages from the
10 individual officers in an amount to be determined by proof at trial.

11
12 **SEVENTH COUNT**
13 **(Intentional Infliction of Emotional Distress)**
14 **(Brought by Plaintiff JAMES SMITH)**

15 99. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
16 set forth herein.

17 100. The conduct of the Defendants, and each of them, was intentional, outrageous,
18 malicious, and done with ill will and with the intent to cause JAMES SMITH to suffer humiliating
19 mental anguish, as well as emotional and physical distress.

20 101. The conduct of the Defendants, and each of them, was so severe and outrageous
21 that as a proximate result JAMES SMITH suffered humiliation, mental anguish, and emotional
22 and physical distress. JAMES SMITH was humiliated before his family members. He has
23 exhibited manifestations of the humiliation, mental anguish, and emotional distress he suffered,
24 including, but not limited to, sleeplessness, anxiety, nightmares, ruminating on the events, and/or
25 crying. He now also exhibits an extreme fear of the police that manifests itself in running away
26 when he sees police officers.
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1 102. The Defendants, and each of them, knowingly and willfully conspired and agreed
2 among themselves to inflict emotional distress upon JAMES SMITH. The officers at the scene
3 conspired to injure JAMES SMITH.

4 103. As a direct and proximate result of the Defendants' conduct, as alleged herein,
5 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and/or extreme mental
6 anguish. Accordingly he has suffered past and future general damages in amounts to be
7 determined by proof at trial.

8 104. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
9 required medical treatment and/or missed time from educational pursuits. He suffered past and
10 future special damages in amounts to be determined by proof at trial.

11 105. Through their conduct, the individual officers acted maliciously and oppressively,
12 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
13 to harm him. JAMES SMITH is therefore entitled to punitive or exemplary damages from the
14 individual officers in an amount to be determined by proof at trial.

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17 **EIGHTH COUNT**
18 **(Negligent Infliction of Emotional Distress)**
19 **(Brought by Plaintiff JAMES SMITH)**

20 106. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
21 set forth herein.

22 107. The conduct of the Defendants, and each of them, negligently caused JAMES
23 SMITH to suffer humiliating mental anguish, as well as emotional and physical distress.

24 108. The conduct of the Defendants, and each of them, was so severe and outrageous
25 that as a proximate result JAMES SMITH suffered humiliation, mental anguish, and emotional
26 and physical distress. JAMES SMITH was humiliated before his family members. He has
27 exhibited manifestations of the humiliation, mental anguish, and emotional distress he suffered,
28

1 including, but not limited to, sleeplessness, anxiety, nightmares, ruminating on the events, and/or
2 crying. He now also exhibits an extreme fear of the police that manifests itself in running away
3 when he sees police officers.

4 109. The Defendants, and each of them, knowingly and willfully conspired and agreed
5 among themselves to act in such a manner that JAMES SMITH would be caused to suffer
6 emotional distress. The officers at the scene conspired to injure JAMES SMITH.
7

8 110. As a direct and proximate result of the Defendants' conduct, as alleged herein,
9 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and/or extreme mental
10 anguish. Accordingly he has suffered past and future general damages in amounts to be
11 determined by proof at trial.

12 111. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
13 required medical treatment and/or missed time from educational pursuits. He suffered past and
14 future special damages in amounts to be determined by proof at trial.
15

16 112. Through their conduct, the individual officers acted maliciously and oppressively,
17 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
18 to harm him. He is, therefore, entitled to punitive or exemplary damages from the individual
19 officers in an amount to be determined by proof at trial.
20

21 **NINTH COUNT**
22 **(Ralph Act – California Civil Code § 51.7)**
23 **(Brought by Plaintiff JAMES SMITH)**

24 113. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
25 set forth herein.

26 114. JAMES SMITH is African American and mentally disabled.

27 115. In performing the actions alleged above, Defendants, and each of them violated
28 JAMES SMITH'S right to be free from any violence or intimidation by threat of violence

1 committed against his person because of discrimination, including, but not limited to
2 discrimination based upon his actual or perceived disability, medical condition, race, color,
3 ancestry, economic status, place of residence, or familial affiliation.

4 116. The Defendants, and each of them, knowingly and willfully conspired and agreed
5 among themselves to discriminate against JAMES SMITH and to violate JAMES SMITH'S civil
6 rights. The Officers at the scene conspired to injure JAMES SMITH.
7

8 117. As a direct and proximate result of the Defendants' conduct, as alleged herein,
9 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and/or extreme mental
10 anguish. Accordingly JAMES SMITH has suffered past and future general damages in amounts to
11 be determined by proof at trial.

12 118. As a direct and proximate result of the defendants' conduct, JAMES SMITH
13 required medical treatment and/or missed time from educational pursuits. He suffered past and
14 future special damages in amounts to be determined by proof at trial.
15

16 119. Through their conduct, the individual officers acted maliciously and oppressively,
17 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
18 to harm him. JAMES SMITH is, therefore entitled to punitive or exemplary damages from the
19 individual officers in an amount to be determined by proof at trial.
20

21 120. As a proximate cause of the Defendants' conduct, JAMES SMITH is incurring
22 attorney fees.

23 121. Defendant's violation of JAMES SMITH'S rights, as guaranteed by California
24 Civil Code section 51.7, entitles him to compensatory and punitive damages, as well as attorney
25 fees, all of which are provided for in California Civil Code section 52 and are requested, herein.
26

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TENTH COUNT
(Bane Act – California Civil Code § 52.1)
(Brought by Plaintiff JAMES SMITH)

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2
3 122. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
4 set forth herein.

5
6 123. In performing the actions alleged above, the Defendants, and each of them,
7 interfered by threats, intimidation, violence, or coercion with JAMES SMITH'S exercise or
8 enjoyment of rights secured by the Constitution or laws of the United States and/or the rights
9 secured by the Constitution or laws of the State of California. These laws include, but are not
10 limited to, the first, fourth, and fourteenth amendments to the United States Constitution; Article 1,
11 sections 1, 2, 13 and 17 of the California Constitution; and California Civil Code § 43.

12
13 124. The Defendants, and each of them, knowingly and willfully conspired and agreed
14 among themselves to violate JAMES SMITH'S civil rights and to injure him.

15 125. As a direct and proximate result of the Defendants' conduct, as alleged herein, each
16 JAMES SMITH suffered physical injuries, fright, shock, pain, suffering, and/or extreme mental
17 anguish. Accordingly, he has suffered past and future general damages in amounts to be
18 determined by proof at trial.

19
20 126. As a direct and proximate result of the Defendants' conduct, JAMES SMITH
21 required medical treatment and/or missed time from educational pursuits. He suffered past and
22 future special damages in amounts to be determined by proof at trial.

23 127. Through their conduct, the individual officers acted maliciously and oppressively,
24 in willful and conscious disregard for JAMES SMITH'S rights and safety and with the sole intent
25 to harm him. He is, therefore, entitled to punitive or exemplary damages from the individual
26 officers in an amount to be determined by proof at trial.

27
28 128. As a proximate cause of the Defendants' conduct, JAMES SMITH is incurring

1 attorney fees and litigation costs.

2 129. Defendant's violation of Plaintiff's rights as guaranteed by California Civil Code
3 section 52.1 entitles JAMES SMITH to compensatory and punitive damages, treble damages, as
4 well as attorney fees, all of which are provided for in California Civil Code sections 52, et seq.,
5 and are requested, herein.
6

7 **ELEVENTH COUNT**
8 **(Bystander Emotional Distress)**
9 **(Brought By Plaintiff JA.S.)**

10 130. Plaintiffs incorporate, herein by reference, paragraphs 1 through 44 as though fully
11 set forth herein.

12 131. Plaintiffs are the close personal relatives of each other. JA.S. was present and was
13 contemporaneously aware that her brother JAMES SMITH was being injured by the defendants, as
14 described above.

15 132. Plaintiff JA.S. reiterates and realleges the allegations of tortious conduct by the
16 defendants, and each of them, as set forth in the preceding counts. JA.S. was injured by
17 witnessing the tortious conduct that was committed against her brother JAMES SMITH.

18 133. JA.S. suffered emotional distress as a result of witnessing her brother being injured
19 by the Defendants and each of them. She has exhibited manifestations of the shock, humiliation,
20 mental anguish, and emotional distress they suffered, including, but not limited to, sleeplessness,
21 anxiety, nightmares, and/or crying. Accordingly, she has suffered past and future general damages
22 in amounts to be determined by proof at trial.
23

24 134. As a direct and proximate result of the Defendants' conduct, JA.S. missed time
25 from educational pursuits. She suffered past and future special damages in amounts to be
26 determined by proof at trial.
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PRAYER

Wherefore, Plaintiffs pray for judgment against the Defendants as follows:

First Count.

1. Past and future general damages, including, but not limited to, pain and suffering, and emotional distress, in an amount to be determined according to proof at trial;
2. Past and future special damages, including, but not limited to, medical and related expenses as well lost educational pursuits and property damage in an amount to be determined according to proof at trial;
3. Costs of suit incurred herein, including expert fees and costs;
4. Punitive or exemplary damages against the individual defendant officers, in an amount to be determined according to proof at trial;
5. Attorney fees; and
6. For such other and further relief as the court may deem proper.

Second Count

7. Past and future general damages, including, but not limited to, pain and suffering, and emotional distress, in an amount to be determined according to proof at trial;
8. Past and future special damages, including, but not limited to, medical and related expenses as well as property damage, in an amount to be determined according to proof at trial;
9. Costs of suit incurred herein, including expert costs and fees;
10. Punitive or exemplary damages against the individual defendant officers, in an amount to be determined according to proof at trial;
11. Attorney fees; and
12. For such other and further relief as the court may deem proper.

1 **Third Count**

- 2 13. Past and future general damages, including, but not limited to, pain and suffering,
3 and emotional distress, in an amount to be determined according to proof at trial;
4 14. Past and future special damages, including, but not limited to, medical and related
5 expenses as well as lost educational pursuits, and travel expenses to hearings, in an
6 amount to be determined according to proof at trial;
7 15. Costs of suit incurred herein, including expert fees and costs;
8 16. Punitive or exemplary damages against the individual defendant officers, in an
9 amount to be determined according to proof at trial;
10 17. Attorney fees; and
11 18. For such other and further relief as the court may deem proper.

12
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14 **Fourth Count**

- 15 19. Past and future general damages, including, but not limited to, pain and suffering,
16 and emotional distress, in an amount to be determined according to proof at trial;
17 20. Past and future special damages, including, but not limited to, medical and related
18 expenses as well as lost educational pursuits and property damage, in an amount to
19 be determined according to proof at trial;
20 21. Costs of suit incurred herein;
21 22. Punitive or exemplary damages against the individual defendant officers, in an
22 amount to be determined according to proof at trial; and
23 23. For such other and further relief as the court may deem proper.

24
25 **Fifth Count**

- 26 24. Past and future general damages, including, but not limited to, pain and suffering,
27 and emotional distress, in an amount to be determined according to proof at trial;
28

1 25. Past and future special damages, including, but not limited to, medical and related
2 expenses as well as lost educational pursuits and property damage, in an amount to
3 be determined according to proof at trial;

4 26. Costs of suit incurred herein; and

5 27. For such other and further relief as the court may deem proper.
6

7 **Sixth Count**

8 28. Past and future general damages, including, but not limited to, pain and suffering,
9 and emotional distress, in an amount to be determined according to proof at trial;

10 29. Past and future special damages, including, but not limited to, medical and related
11 expenses as well as lost income and property damage, in an amount to be
12 determined according to proof at trial;

13 30. Costs of suit incurred herein;

14 31. Punitive or exemplary damages against the individual defendant officers, in an
15 amount to be determined according to proof at trial; and
16

17 32. For such other and further relief as the court may deem proper.
18

19 **Seventh Count**

20 33. Past and future general damages, including, but not limited to, pain and suffering,
21 and emotional distress, in an amount to be determined according to proof at trial;

22 34. Past and future special damages, including, but not limited to, medical and related
23 expenses as well as lost educational pursuits, in an amount to be determined
24 according to proof at trial;

25 35. Costs of suit incurred herein;

26 36. Punitive or exemplary damages against the individual defendant officers, in an
27 amount to be determined according to proof at trial; and
28

1 37. For such other and further relief as the court may deem proper.

2 **Eighth Count.**

3 38. Past and future general damages, including, but not limited to, pain and suffering,
4 and emotional distress, in an amount to be determined according to proof at trial;

5 39. Past and future special damages, including, but not limited to, medical and related
6 expenses as well as lost educational pursuits, in an amount to be determined
7 according to proof at trial;

8 40. Costs of suit incurred herein;

9 41. Punitive or exemplary damages against the individual defendant officers, in an
10 amount to be determined according to proof at trial; and

11 42. For such other and further relief as the court may deem proper.

12 **Ninth Count.**

13 43. Past and future general damages, including, but not limited to, pain and suffering,
14 and emotional distress, in an amount to be determined according to proof at trial;

15 44. Past and future special damages, including, but not limited to, medical and related
16 expenses as well as lost educational pursuits and property damage, in an amount to
17 be determined according to proof at trial;

18 45. Costs of suit incurred herein, including expert fees and costs;

19 46. Punitive or exemplary damages against the individual defendant officers, in an
20 amount to be determined according to proof at trial;

21 47. Treble damages;

22 48. Attorney fees; and

23 49. For such other and further relief as the court may deem proper.

1 **Tenth Count.**

- 2 50. Past and future general damages, including, but not limited to, pain and suffering,
3 and emotional distress, in an amount to be determined according to proof at trial;
4 51. Past and future special damages, including, but not limited to, medical and related
5 expenses as well as lost educational pursuits and property damage, in an amount to
6 be determined according to proof at trial;
7 52. Costs of suit incurred herein, including expert fees and costs;
8 53. Punitive or exemplary damages against the individual defendant officers, in an
9 amount to be determined according to proof at trial;
10 54. Treble damages;
11 55. Attorney fees; and
12 56. For such other and further relief as the court may deem proper.

13
14
15 **Eleventh Count.**

- 16 57. Past and future general damages, including, but not limited to, pain and suffering,
17 and emotional distress, in an amount to be determined according to proof at trial;
18 58. Past and future special damages, including, but not limited to, medical and related
19 expenses as well as lost educational pursuits, in an amount to be determined
20 according to proof at trial;
21 59. Costs of suit incurred herein;
22 60. Punitive or exemplary damages against the individual defendant officers, in an
23 amount to be determined according to proof at trial; and
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61. For such other and further relief as the court may deem proper.

Dated: December 2, 2015

THE DOLAN LAW FIRM

By: 

CHRISTOPHER B. DOLAN, ESQ.
QUINTON B. CUTLIP, ESQ.
MEGAN R. IRISH, ESQ.
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: December 2, 2015

THE DOLAN LAW FIRM

By: 

CHRISTOPHER B. DOLAN, ESQ.
QUINTON B. CUTLIP, ESQ.
MEGAN R. IRISH, ESQ.
Attorneys for Plaintiffs

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