

1 SANFORD JAY ROSEN – 62566
ERNEST GALVAN – 196065
2 AMY WHELAN – 215675
3 SUMANA COOPPAN – 267967
ROSEN, BIEN & GALVAN, LLP
4 315 Montgomery Street, 10th Floor
5 San Francisco, California 94104-1823
Telephone: (415) 433-6830
6 Facsimile: (415) 433-7104

7 GERI LYNN GREEN – 127709
8 LAW OFFICES OF GERI LYNN GREEN, LC
155 Montgomery Street, Suite 901
9 San Francisco, California 94104-4166
Telephone: (415) 982-2600
10 Facsimile: (415) 358-4562

11 Attorneys for Plaintiff MICHEAL JONATHON DANIELS

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15

16 MICHEAL JONATHON DANIELS,

17 Plaintiff,

18 v.

19 CITY OF FOLSOM, SERGEANT ANDREA
20 CHAPMAN, POLICE CHIEF SAM SPIEGEL,
21 SHARON BLACKBURN, SERGEANT RICK
HILLMAN, FOLSOM POLICE DEPARTMENT
22 FIELD OPERATIONS DIVISIONS CAPTAIN
PAUL BONAVENTURE, CITY MANAGER
23 KERRY MILLER, OFFICER WARNER
24 HERNDON, OFFICER C. FRIEDERICH,
OFFICER JAMES DORRIS, OFFICER H.R.
25 ALVAREZ, OFFICER PAUL RICE, and
DOES 1 through 50, inclusive,

26 Defendants.
27
28

Case No.

**COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This case involves the FOLSOM POLICE DEPARTMENT’S unlawful and
3 unwarranted use of force against Plaintiff MICHEAL JONATHON DANIELS, and the
4 Department’s subsequent wrongful arrest and detention of Mr. DANIELS.

5 2. On March 17, 2009, Plaintiff DANIELS joined a group of friends, two men and
6 two women, to celebrate St. Patrick’s Day in the Historic Folsom restaurant district in Folsom,
7 California. As the restaurants and bars in the area prepared to close in the very early morning
8 hours of March 18, 2009, Plaintiff DANIELS and his friends walked to the downtown common
9 parking lot shared by several Historic Folsom businesses. They were walking to
10 Mr. DANIELS’s car in the parking lot. On the way to the car, they saw and heard a group of
11 four or five men talking loudly. The men appeared to yell something toward Mr. DANIELS’s
12 group. One of Mr. DANIELS’s companions answered back, and after pausing briefly,
13 Mr. DANIELS’s group continued toward their car. Almost immediately, Defendant Sergeant
14 ANDREA CHAPMAN of the Folsom Police Department drove into the lot, and the group of
15 four or five men got in their car and left.

16 3. Defendant CHAPMAN got out of her vehicle. Without issuing any warning to
17 Mr. DANIELS, and despite the fact that Mr. DANIELS had not done and was not doing anything
18 to give her legal cause to use any force against him, Defendant CHAPMAN shot Mr. DANIELS
19 with her Taser gun.

20 4. Defendant CHAPMAN’s Taser completely debilitated Plaintiff DANIELS,
21 freezing his body with an electrical shock and causing him to fall against a car, and then to the
22 ground. Plaintiff DANIELS suffered a head injury from the fall and one of the Taser prongs
23 embedded itself directly into a nerve in his arm, causing extreme pain.

24 5. Although Plaintiff DANIELS informed Defendant CHAPMAN and the other
25 responding officers of the extreme pain in his wrist and hand from the Taser prong still
26 embedded in his arm, Defendants CHAPMAN and H.R. ALVAREZ applied handcuffs to his
27 injured wrist in a manner that pressed against the dart that was embedded in his arm, increasing
28 his already excruciating pain. Mr. DANIELS pleaded with the officers to adjust the cuffs so that

1 they would not contact the dart that was pressing into his nerve. The officers disregarded his
2 complaints, and mockingly accused him of faking.

3 6. Defendants CHAPMAN, ALVAREZ and JAMES DORRIS then purported to
4 arrest the agonized Mr. DANIELS on charges of resisting arrest, California Penal Code
5 § 148(a)(1), and disturbing the peace, California Penal Code § 415(1). The District Attorney
6 never filed either of these charges, or any other charges, against Mr. DANIELS.

7 7. Plaintiff DANIELS had to have the Taser prong surgically removed from his wrist.
8 As a result of the Tasing, Mr. DANIELS suffered nerve damage in his wrist and arm which has
9 prevented him from working. He has undergone a strenuous and painful regime of physical
10 therapy for his injuries and may require additional surgery or surgeries to correct his nerve
11 damage. He continues to experience pain from his physical injury and suffers emotional distress
12 typical of persons who are subjected to excessive force and police misconduct.

13 **JURISDICTION AND VENUE**

14 8. This action is brought pursuant to 42 U.S.C. § 1983 for violations of the Fourth and
15 Fourteenth Amendments to the United States Constitution. The court has jurisdiction over this
16 action pursuant to 28 U.S.C. §§ 1331 and 1343. With respect to those claims brought pursuant to
17 California law, Plaintiff has complied with the administrative claims requirements. The court
18 has supplemental jurisdiction over Plaintiff's state claims pursuant to 28 U.S.C. § 1367.

19 9. The claims alleged herein arose in the City of Folsom, County of Sacramento,
20 California. Therefore, venue in the Eastern District of California is proper pursuant to 28 U.S.C.
21 § 1391(b)(2); E.D. Local Rule 120(d).

22 **PARTIES**

23 10. Plaintiff MICHEAL JONATHON DANIELS is a citizen of the United States, and
24 a resident of the City of Orangevale, County of Sacramento, and the State of California.
25 MICHEAL JONATHON DANIELS is presently a free person and brings this action on his own
26 behalf.

1 11. Defendant CITY OF FOLSOM is a public entity, duly organized and existing
2 under the laws of the State of California. Under its authority, Defendant CITY OF FOLSOM
3 operates the Folsom Police Department.

4 12. Defendant Sergeant ANDREA CHAPMAN was, at all times relevant hereto, a
5 Sergeant in the Folsom Police Department. In committing the acts and omissions alleged herein,
6 Defendant CHAPMAN was acting under color of state law and within the course and scope of
7 her employment as a Sergeant of the Folsom Police Department. Plaintiff DANIELS is informed
8 and believes and thereon alleges that as a Sergeant, Defendant CHAPMAN was the ranking
9 police official with final policy-making authority for the officers under her command on the
10 scene. Defendant CHAPMAN is sued in her official and individual capacities.

11 13. Defendant Police Chief SAM SPIEGEL was at all times relevant hereto, the Chief
12 of the Folsom Police Department. Plaintiff DANIELS is informed and believes and thereon
13 alleges that Defendant SPIEGEL is the responsible party and final decision maker for the hiring,
14 retention, screening, supervision, training, instruction, discipline, control, equipping and conduct
15 of Defendant police officers. He is also charged with promulgating all orders, rules, instructions
16 and regulations of the Folsom Police Department including but not limited to those orders, rules,
17 instructions and regulations concerning the authority to use electronic weapons. In committing
18 the acts and omissions alleged herein, Defendant SPIEGEL was acting under color of state law
19 and within the course and scope of his employment as Chief of the Folsom Police Department.
20 Defendant SPIEGEL is sued in his official and individual capacities.

21 14. Defendant SHARON BLACKBURN was at all times relevant hereto, a member of
22 the Folsom Police Department Training Division. Plaintiff DANIELS is informed and believes
23 and thereon alleges that Defendant BLACKBURN is the responsible party and final decision
24 maker for the training and instruction of the Folsom Police Department including, but not limited
25 to the training and instruction concerning the use of electric shock weapons. In committing the
26 acts and omissions alleged herein, Defendant BLACKBURN was acting under color of state law
27 and within the course and scope of her employment as a member of the Folsom Police
28

1 Department Training Office. Defendant BLACKBURN is sued in her official and individual
2 capacities.

3 15. Defendant RICK HILLMAN was at all times relevant hereto, the Professional
4 Standards/Media Relations Sergeant of the Folsom Police Department. Plaintiff DANIELS is
5 informed and believes and thereon alleges that Defendant HILLMAN is the responsible party for
6 and final decision maker with regard to maintaining professional standards in the police
7 department, including but not limited to standards related to hiring, training, and disciplining
8 officers. In committing the acts and omissions alleged herein, Defendant HILLMAN was acting
9 under color of state law and within the course and scope of his employment as the Professional
10 Standards Sergeant of the Folsom Police Department. Defendant HILLMAN is sued in his
11 official and individual capacities.

12 16. Defendant PAUL BONAVENTURE was at all times relevant hereto, the Folsom
13 Police Department Field Operations Divisions Captain. Plaintiff DANIELS is informed and
14 believes and thereon alleges that Defendant BONAVENTURE is an official with final policy-
15 making authority regarding the discipline, training and equipping of field officers for the Folsom
16 Police Department. In committing the acts and omissions alleged herein, Defendant
17 BONAVENTURE was acting under color of state law and within the course and scope of his
18 employment as a captain of the Folsom Police Department. Defendant BONAVENTURE is
19 sued in his official and individual capacities.

20 17. Defendant KERRY MILLER was at all times relevant hereto, the City Manager for
21 the City of Folsom. Defendant MILLER is the chief executive and administrative officer of the
22 city with broad responsibilities regarding discipline, firing, investigations and contracting.
23 Plaintiff DANIELS is informed and believes and thereon alleges that Defendant MILLER is an
24 official with final policy-making authority regarding the discipline, investigation and termination
25 of officers for the Folsom Police Department. In committing the acts and omissions alleged
26 herein, Defendant MILLER was acting under color of state law and within the course and scope
27 of her employment as the City of Folsom's City Manager. Defendant MILLER is sued in her
28 official and individual capacities.

1 18. Defendant WARNER HERNDON was at all times relevant hereto, an officer in the
2 Folsom Police Department. In committing the acts and omissions alleged herein, Defendant
3 HERNDON was acting under color of state law and within the course and scope of his
4 employment as an officer in the Folsom Police Department. Defendant HERNDON is sued in
5 his official and individual capacities.

6 19. Defendant C. FRIEDERICH was at all times relevant hereto, an officer in the
7 Folsom Police Department. In committing the acts and omissions alleged herein, Defendant
8 FRIEDERICH was acting under color of state law and within the course and scope of his
9 employment as an officer in the Folsom Police Department. Defendant FRIEDERICH is sued in
10 his official and individual capacities.

11 20. Defendant JAMES DORRIS was at all times relevant hereto, an officer in the
12 Folsom Police Department. In committing the acts and omissions alleged herein, Defendant
13 DORRIS was acting under color of state law and within the course and scope of his employment
14 as an officer in the Folsom Police Department. Defendant DORRIS is sued in his official and
15 individual capacities.

16 21. Defendant H.R. ALVAREZ was at all times relevant hereto an officer in the
17 Folsom Police Department. In committing the acts and omissions alleged herein, Defendant
18 ALVAREZ was acting under color of state law and within the course and scope of his
19 employment as an officer in the Folsom Police Department. Defendant ALVAREZ is sued in his
20 official and individual capacities.

21 22. Defendant PAUL RICE was at all time relevant hereto, an officer in the Folsom
22 Police Department. In committing the acts and omissions alleged herein, Defendant RICE was
23 acting under color of state law and within the course and scope of his employment as an officer
24 in the Folsom Police Department. Defendant RICE is sued in his official and individual
25 capacities.

26 23. Plaintiff DANIELS is ignorant of the true names and capacities of Defendants sued
27 herein as DOES 1 through 50, and therefore sues said Defendants by such fictitious names.
28 Plaintiff DANIELS is informed and believes and thereon alleges, that each of them is responsible

1 in some manner for the injuries and damages alleged herein and that each DOE, in committing
2 the acts herein alleged, acted within the scope of his or her employment and under color of state
3 law, including supervisory and policy-making DOES. Plaintiff will seek leave to amend this
4 complaint to add their true names when the identities have been ascertained. DOES 1 through 50
5 (including supervisory and policy-making DOES) are sued in their official and individual
6 capacities.

7 24. At all times mentioned herein, the Defendants and each of them, acted within the
8 course and scope of their employment.

9 25. At all times mentioned herein, the Defendants, and each of them acted under color
10 of state law.

11 26. Plaintiff DANIELS is informed and believes, and on that basis alleges, that each
12 Defendant acted in concert with and as an agent of each other Defendant.

13 **EXHAUSTION OF PRE-LAWSUIT STATE LAW PROCEDURES**

14 27. Plaintiff DANIELS filed a timely administrative claim with the CITY OF
15 FOLSOM, pursuant to Cal. Gov't Code § 910, on or about September 9, 2009. Defendants
16 rejected the claim "by operation of law" on October 26, 2009 and provided notice of that
17 rejection in a letter dated October 28, 2009.

18 **FACTS**

19 **A. Excessive Force**

20 28. On the evening of March 17, 2009, Plaintiff DANIELS gathered with a small
21 group of companions, two men and two women, in the Historic Folsom restaurant district in
22 Folsom, California to celebrate St. Patrick's Day.

23 29. At approximately 1:40 a.m. on March 18, 2009, Plaintiff DANIELS and his
24 companions were walking through the large common parking lot shared by several Historic
25 Folsom restaurants, going to Mr. DANIELS's car, so that their designated driver could drive
26 them home.

27 30. In the parking lot, Mr. DANIELS saw and heard a group of four or five men who
28 were talking loudly. It appeared to Mr. DANIELS that the group of four or five men directed

1 some of their loud remarks to Mr. DANIELS and his companions. One of Mr. DANIELS's
2 companions answered back. After pausing very briefly, Mr. DANIELS and his group continued
3 toward their car.

4 31. According to her written report, Defendant CHAPMAN drove past the parking lot
5 at approximately 1:42 a.m., in a marked patrol vehicle, and observed a group of people there.
6 According to her written report, Defendant CHAPMAN circled the parking lot, stopped and got
7 out of her car.

8 32. Plaintiff is informed and believes and thereon alleges that it is the ordinary practice
9 of the Folsom Police Department to send one or more police cars to the Historic Restaurant
10 district parking areas around "last call" and "closing time," and that this practice includes
11 sending a police officer to the specific area of the parking lot where Mr. DANIELS was shot by
12 the Taser.

13 33. Mr. DANIELS observed that as Defendant CHAPMAN pulled into the parking lot,
14 the group of four or five men quickly got into their car and left, leaving only Mr. DANIELS and
15 his companions in the immediate area around Mr. DANIELS.

16 34. Defendant CHAPMAN had not observed Mr. DANIELS engaging in any criminal
17 activity, violent acts or threats of violent acts, and she did not make any attempts to investigate
18 the situation to determine if criminal activity or violence by Mr. DANIELS were even possible
19 concerns. Rather, without any reason to believe that Plaintiff DANIELS posed a threat to anyone
20 or had engaged in any illegal activities, and without provocation or warning, Defendant
21 CHAPMAN Tasered Plaintiff DANIELS.

22 35. Defendants DORRIS and ALVAREZ arrived in the parking lot soon after
23 Defendant CHAPMAN discharged her Taser gun at Plaintiff DANIELS. According to their
24 written reports, Defendants DORRIS and ALVAREZ approached Defendant CHAPMAN and
25 observed that the wires from her Taser gun were still connected to Plaintiff DANIELS as he lay
26 on the ground. One of these Taser prongs embedded itself in Plaintiff DANIELS's left wrist and
27 was not removed until several hours later during orthopedic surgery.
28

1 36. Despite the fact that a Taser dart was painfully embedded in Plaintiff DANIELS's
2 left wrist, and despite Plaintiff DANIELS's bleeding head injury, Defendants CHAPMAN and
3 ALVAREZ placed him handcuffs and charged him with resisting arrest and disturbing the peace.
4 These charges were never pursued by the District Attorney.

5 **B. Plaintiff's Injuries**

6 37. The Taser completely debilitated Plaintiff DANIELS, causing his muscles to freeze
7 and his body to fall against a car and then to the ground without any ability to break the fall.
8 Plaintiff DANIELS hit his head during the fall and immediately began bleeding.

9 38. Defendant CHAPMAN then called for medical assistance, and Folsom Paramedics
10 arrived on the scene. The paramedics wrapped a bandage around Mr. DANIELS's left wrist,
11 covering the Taser dart that was embedded in his wrist. One of the officers then applied
12 handcuffs tightly over the bandage, pressing on the dart that was embedded in Mr. DANIELS's
13 nerve, aggravating the unbearable excruciating stabbing pain that Mr. DANIELS was already
14 suffering. Mr. DANIELS immediately told the officers about the agonizing pain he was in, and
15 begged them to move the handcuffs to another location. The officers' only response was to
16 deliver a mocking stream of profanity and to tell him to "stop faking."

17 39. Mr. DANIELS was transported to Mercy Folsom Hospital, where Defendant
18 CHAPMAN and other, presently unknown, officers met him. At the hospital, Plaintiff
19 DANIELS informed the emergency room doctor of the extreme pain in his left hand, caused by
20 the embedded Taser dart. The interaction between the bandage and the cuffs continued to
21 transmit the slightest movement directly into Mr. DANIELS's injured nerve, causing terrible
22 pain. Though Plaintiff DANIELS posed no safety threat and was obviously in excruciating pain
23 as a result of the embedded Taser dart, Defendants CHAPMAN, DORRIS, ALVAREZ and
24 other, presently unknown, officers ignored his agonized pleas. The officers did not take any
25 action to remove or adjust the cuffs, or to reduce the torturous infliction of pain directly through
26 Mr. DANIELS's injured nerves. Mr. DANIELS requested that they at least remove the one
27 handcuff from his injured wrist, but the officers refused, leaving him cuffed that way for hours.
28

1 40. The emergency room doctor eventually attempted to remove the Taser dart from
2 Plaintiff DANIELS's wrist, but was unable to do so. The emergency room doctor determined
3 that Plaintiff DANIELS should have an orthopedic doctor remove the Taser dart, a process that
4 would require surgery.

5 41. Doctors eventually determined that the dart became embedded in the superficial
6 branch of the median nerve of Plaintiff DANIELS's wrist. In the early morning of March 18,
7 2009, Plaintiff DANIELS underwent surgery to remove the Taser dart. During the surgery, the
8 doctors noted that the superficial branch of Plaintiff DANIELS's median nerve was completely
9 transected, meaning that the Taser dart had penetrated DANIELS's tendon and slashed through
10 the top-part of the nerve in his wrist, requiring the doctors to attempt surgical repair of the nerve.

11 42. Although the surgery was successful to remove the Taser prong, it failed to repair
12 Plaintiff DANIELS's nerve damage. Plaintiff DANIELS continues to suffer from the significant
13 nerve damage in his left hand and arm and has been unable to return to his work as a security
14 alarm technician due to his injuries. He is unable to perform even basic tasks with his left hand,
15 including grabbing, holding and carrying items. He has undergone extensive strenuous and
16 painful physical therapy for his injuries, but may require additional surgery or surgeries in order
17 to regain full use of his left hand and wrist. Because he is unable to work, he continues to
18 experience ongoing financial hardship as a direct result of the Taser injury.

19 **C. False Arrest**

20 43. Without probable cause or any legal reason, Defendant CHAPMAN arrested
21 Mr. DANIELS and falsely charged him with violations of California Penal Code sections
22 148(a)(1) (resisting public or peace officers) and 415(1) (disturbing the peace). The District
23 Attorney never filed these or any other charges against Plaintiff DANIELS.

24 **D. Policies and Practices**

25 44. Plaintiff is informed and believes and thereon alleges that the Defendant CITY OF
26 FOLSOM and its decision makers, with deliberate indifference, gross negligence, and reckless
27 disregard to the safety, security, and constitutional and statutory rights of Plaintiff DANIELS,
28 maintained, enforced, tolerated, permitted, acquiesced in, and applied policies, practices, or

1 customs and usages that caused his injuries. These policies, practices, or customs and usages,
2 include:

3 a. Selecting, retaining, and assigning employees with demonstrable
4 propensities for excessive force, violence and other misconduct;

5 b. Failing to screen, hire, appoint, promote, train, supervise and discipline
6 Defendant Police Officers who will enforce the laws and protect the constitutional rights of its
7 citizens;

8 c. Failing to adequately train, supervise, and control the officers in the Folsom
9 Police Department in the use and dangers of electronic weapons, including the use and dangers
10 of Taser guns;

11 d. Failing to adequately train, supervise, and control the officers in the Folsom
12 Police Department in the use of force;

13 e. Failing to enforce the provisions of the Constitution of the United States
14 concerning excessive force;

15 f. Failing to promulgate, distribute and enforce clear, consistent and
16 reasonable policies concerning the use of force as required by the Fourth and Fourteenth
17 Amendments of the United States Constitution;

18 g. Failing to promulgate, distribute and enforce clear, consistent and
19 reasonable policies concerning the use of electronic weapons, including Taser guns, and the risks
20 associated with such use as required by the Fourth and Fourteenth Amendments of the United
21 States Constitution.

22 45. Plaintiff is informed and believes and thereon alleges that the City of Folsom and
23 its decision makers ordered, authorized, acquiesced in, tolerated, permitted or maintained custom
24 and usages permitting the other Defendants herein to engage in the unlawful and unconstitutional
25 actions, policies, practices, and customs or usages as alleged herein. Defendants' conduct as
26 alleged herein constitutes a pattern of constitutional violations based either on a deliberate plan
27 by Defendants or on Defendants' deliberate indifference, gross negligence, or reckless disregard
28 to the safety, security, and rights of Plaintiff DANIELS.

1 **FIRST CLAIM FOR RELIEF**
2 **42 U.S.C. § 1983**
3 **Violation of the Fourth and/or Fourteenth Amendments to the Constitution:**
4 **Excessive Force**
5 **(Against All Defendants)**

6 For his cause of action against all Defendants, Plaintiff states:

7 46. Plaintiff realleges and incorporates by reference paragraphs 1 through 45 of this
8 complaint as though fully set forth therein.

9 47. Plaintiff DANIELS was subjected to the deprivation of rights by these Defendants,
10 acting or pretending to act under color of state law and of statutes, or ordinances, regulations,
11 customs and usages of the law of the United States, the State of California and of the County of
12 Sacramento which rights include, but are not limited to, privileges and immunities secured to
13 Plaintiff DANIELS by the Constitution and laws of the United States. By reason of the acts
14 specified herein, these Defendants violated the constitutional rights and liberty interests of
15 Plaintiff DANIELS, including those provided in the Fourth and Fourteenth Amendments to the
16 United States Constitution.

17 48. Specifically, Defendants violated Plaintiff DANIELS's well established rights
18 under the Fourth Amendment to be free from physical abuse, assault, battery, and to be free from
19 excessive force being used against him to effectuate an arrest, search or seizure when
20 Defendants:

21 a. Tasered Plaintiff DANIELS without warning or provocation, causing him
22 severe pain and discomfort and resulting in serious injuries;

23 b. Handcuffed Plaintiff DANIELS even though a Taser dart was embedded in
24 his left wrist, causing him extreme pain;

25 c. Refused to remove the handcuffs from Plaintiff DANIELS at the hospital,
26 even though Plaintiff DANIELS posed no safety threat and was obviously suffering from serious
27 pain due to the embedded dart.

28 49. As a direct and proximate result of this conduct, Plaintiff DANIELS has suffered
and continues to suffer from physical injuries, and has incurred general damages for the

1 deprivation of his constitutional rights. He also suffers from emotional distress typical of
2 persons who are subjected to excessive force and police misconduct as described herein.

3 WHEREFORE, Plaintiff DANIELS prays for relief as set forth below.

4
5 **SECOND CLAIM FOR RELIEF**
6 **42 U.S.C. § 1983**
7 **Failure to Supervise and Train Adequately**
8 **Folsom Police Department Officers**
9 **(Against Defendants CITY OF FOLSOM, CHAPMAN, SPIEGEL,**
10 **BLACKBURN, HILLMAN, BONAVENTURE, MILLER, DORRIS and**
11 **DOES 1 through 50 in their official capacities)**
12 **(Monell Claim)**

13 For his cause of action against Defendants CITY OF FOLSOM, CHAPMAN, SPIEGEL,
14 BLACKBURN, HILLMAN, BONAVENTURE, MILLER, DORRIS, and DOES 1 through 50 in
15 their official capacities, Plaintiff states:

16 50. Plaintiff realleges and incorporates by reference paragraphs 1 through 49 of this
17 complaint as though fully set forth therein. The allegations contained in paragraphs 51 through
18 54 below will likely have evidentiary support after a reasonable opportunity for further
19 investigation or discovery.

20 51. Defendants CITY OF FOLSOM, CHAPMAN, SPIEGEL, BLACKBURN,
21 HILLMAN, BONAVENTURE, MILLER, DORRIS and DOES 1 through 50, under color of law,
22 intentionally, negligently, and with complete and deliberate indifference to Plaintiff's rights,
23 proximately caused Plaintiff to be deprived of his constitutional rights including, but not limited
24 to, the Fourth and Fourteenth Amendments by:

25 a. Failing to properly supervise the training and conduct of Defendant Police
26 Officers despite constructive or actual knowledge of unlawful actions by Defendant Police
27 Officers;

28 b. Failing to screen, hire, appoint, promote, train, supervise and discipline
29 Defendant Police Officers who will enforce the laws and protect the constitutional rights of its
30 citizens;

31 c. Failing to properly and adequately train the officers in the Folsom Police
32 Department regarding the use of electronic weapons, including Taser guns;

1 d. Failing to properly and adequately train the officers in the Folsom Police
2 Department regarding the use of force;

3 e. Failing to enforce the provisions of the Constitution of the United States
4 concerning excessive force;

5 f. Failing to issue clear, consistent and reasonable policies concerning the use
6 of force as required by the Fourth and Fourteenth Amendments of the United States Constitution;

7 g. Failing to issue clear, consistent and reasonable policies concerning the use
8 of electronic weapons and the risks associated with such use as required by the Fourth and
9 Fourteenth Amendments of the United States Constitution;

10 h. Presenting electronic weapons, including the Taser gun, to police officers as
11 non-deadly control devices that could be used on violent or potentially violent individuals
12 without causing serious injury, when in fact Defendants knew or should have known that since
13 2001, Tasers have been implicated in more than 346 deaths;

14 i. Maintaining a policy and custom of encouraging police officers to use
15 electronic weapons, including the Taser gun, under the theory that the use of such devices would
16 result in fewer serious injuries to officers and suspects, when in fact Defendants knew or should
17 have known that the use of Tasers has lowered the threshold at which force is used, resulting in
18 officers' overuse and abuse of Taser guns;

19 j. Condoning the use of electronic weapons, including the Taser gun, on
20 suspects who do not pose an immediate threat to police officers or others, and without adequate
21 warning to suspects of the impending Taser deployment.

22 52. Plaintiff is informed and believes, and on the basis of such information and belief
23 alleges, that the entity Defendants and their respective decision makers ordered, authorized,
24 acquiesced in, tolerated, permitted or maintained customs and usages permitting the other
25 Defendants herein to engage in the unlawful and unconstitutional actions, policies, practices, and
26 customs or usages set forth in the foregoing paragraph. Defendants' conduct as alleged herein
27 constitutes a pattern of constitutional violations based either on a deliberate plan by Defendants
28

1 or on Defendants' deliberate indifference, gross negligence, or reckless disregard to the safety,
2 security, and rights of Plaintiff DANIELS.

3 53. Defendants knew or should have known that the policy, custom or practice of
4 failing to properly supervise and train Defendant Police Officers would cause grievous injury to
5 Plaintiff DANIELS in violation of his constitutional rights.

6 54. As a direct and proximate result of this conduct, Plaintiff DANIELS has suffered
7 and continues to suffer from physical injuries, and has incurred general damages for the
8 deprivation of his constitutional rights. He also suffers from emotional distress typical of
9 persons who are subjected to violations as described herein.

10 WHEREFORE, Plaintiff DANIELS prays for relief as set forth below.

11 **THIRD CLAIM FOR RELIEF**
12 **Assault and Battery**
(Against Defendants CHAPMAN, ALVAREZ, DORRIS and DOES 1-50)

13 For his cause of action against Defendants CHAPMAN, ALVAREZ, DORRIS, and
14 DOES 1-50, Plaintiff states:

15 55. Plaintiff realleges and incorporates by reference paragraphs 1 through 54 as though
16 fully set forth herein.

17 56. Defendants CHAPMAN, ALVAREZ, DORRIS and DOES 1-50 acted with an
18 intent to cause harmful or offensive contact with Plaintiff, and the intended harmful or offensive
19 contact did in fact occur.

20 57. The harmful or offensive contact was neither privileged nor consented to and was
21 excessive, unreasonable and done with deliberate indifference to Plaintiff's rights and safety with
22 the intent to inflict punishment above and beyond the reason for using the force in the first place.

23 58. As a result of Defendants CHAPMAN, ALVAREZ, DORRIS and DOES 1-50's
24 intent to cause harmful or offensive contact with Plaintiff and the fact that the intended harmful
25 or offensive contact did in fact occur, Plaintiff has suffered damages according to proof at the
26 time of trial. Said damages are currently in excess of the jurisdictional minimum of this court
27 and include general and special damages according to proof at the time of trial.

28

1 59. Defendants' conduct also amounts to oppression, fraud or malice within the
2 meaning of California Civil Code sections 3294 *et seq.*, and punitive damages should be assessed
3 against Defendants CHAPMAN, ALVAREZ and DORRIS for the purpose of punishment and
4 for the sake of example.

5 WHEREFORE, Plaintiff prays for relief as set forth below.

6 **FOURTH CLAIM FOR RELIEF**
7 **Police Negligence**
8 **(Against All Defendants in their official capacities)**

9 For his cause of action against all Defendants in their official capacities, Plaintiff states:

10 60. Plaintiff realleges and incorporates by reference paragraphs 1 through 59 as though
11 fully set forth herein.

12 61. At all times mentioned in this Complaint, Defendants owed a duty of reasonable
13 care to Plaintiff DANIELS. Defendants breached that duty of care by Tasering Plaintiff
14 DANIELS without provocation or warning, by arresting Plaintiff DANIELS without probable
15 cause, and by continuing to keep Plaintiff DANIELS in handcuffs despite the fact that he posed
16 no threat and was suffering from a severe and painful wrist injury. Defendants also breached
17 their duty of care by:

18 a. Failing to properly and adequately supervise the training and conduct of
19 Defendant Police Officers despite constructive or actual knowledge of unlawful actions by
20 Defendant Police Officers;

21 b. Failing to screen, hire, appoint, promote, train, supervise and discipline
22 Defendant Police Officers who will enforce the laws and protect the constitutional rights of its
23 citizens;

24 c. Failing to properly and adequately train the officers in the Folsom Police
25 Department regarding the use of electronic weapons, including Taser guns;

26 d. Failing to properly and adequately train the officers in the Folsom Police
27 Department in the use of force;

28 e. Failing to enforce the provisions of the Constitution of the United States
concerning excessive force;

1 f. Failing to issue clear, consistent and reasonable policies concerning the use
2 of force as required by the Fourth and Fourteenth Amendments of the United States Constitution.

3 g. Failing to issue clear, consistent and reasonable policies concerning the use
4 of electronic weapons and the risks associated with such use as required by the Fourth and
5 Fourteenth Amendments of the United States Constitution.

6 62. It was reasonably foreseeable that the aforementioned conduct would subject
7 Plaintiff DANIELS to an undue risk of harm.

8 63. As a direct and proximate result of this conduct, Plaintiff DANIELS has suffered
9 and continues to suffer from physical injuries, and is entitled to compensatory damages
10 according to proof. He also suffers from emotional distress typical of persons who are subjected
11 to violations as described herein.

12 64. The negligent conduct of Defendants was committed within the course and scope
13 of their employment.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15 **FIFTH CLAIM FOR RELIEF**
16 **False Arrest**
(Against Defendants CHAPMAN, ALVAREZ and DORRIS)

17 For his cause of action against Defendants CHAPMAN, ALVAREZ and DORRIS
18 Plaintiff states:

19 65. Plaintiff realleges and incorporates by reference paragraphs 1 through 64 as though
20 fully set forth herein.

21 66. On March 18, 2009, Defendants CHAPMAN, ALVAREZ and DORRIS deprived
22 Plaintiff DANIELS of his clearly established right to be free from unlawful arrest without
23 probable cause or a warrant, in violation of the Fourth and/or Fourteenth Amendments to the
24 United States Constitution. Specifically, Defendants CHAPMAN, ALVAREZ and DORRIS
25 violated Plaintiff DANIELS's constitutionally protected rights by:

26 a. Tasing and arresting Plaintiff without probable cause and in the absence of
27 exigent circumstances;

1 b. Falsely charging Plaintiff DANIELS with violations of California Penal
2 Code sections 148(a) (resisting public or peace officers) and 415(1) (disturbing the peace).

3 67. Plaintiff DANIELS was subjected to the deprivation of rights by Defendants
4 CHAPMAN, ALVAREZ and DORRIS acting or pretending to act under color of state law and of
5 statutes, or ordinances, regulations, customs and usages of the law of the United States, the State
6 of California and the County of Sacramento which rights include, but are not limited to,
7 privileges and immunities secured to Plaintiff DANIELS by the Constitution and laws of the
8 United States. By reason of the acts specified herein Defendants CHAPMAN, ALVAREZ and
9 DORRIS have violated Plaintiff's constitutional rights, including those provided by the Fourth
10 and Fourteenth Amendments to the U.S. Constitution.

11 68. As a direct and proximate result of this conduct, Plaintiff DANIELS has suffered
12 and continues to suffer from physical injuries, and is entitled to compensatory damages
13 according to proof. He also suffers from emotional distress typical of persons who are subjected
14 to violations described herein.

15 WHEREFORE, Plaintiff prays for relief as set forth below.

16 **SIXTH CLAIM FOR RELIEF**
17 **California Civil Code §§ 52, 52.1**
(Against All Defendants)

18 For his cause of action against all Defendants, Plaintiff states:

19 69. Plaintiff realleges and incorporates by reference paragraphs 1 through 68 as though
20 fully set forth herein.

21 70. Defendants acting within the course and scope of their employment interfered and
22 attempted to interfere with the rights of Plaintiff DANIELS secured under the Fourth and
23 Fourteenth Amendments to the Constitution and under the California Constitution and laws of
24 California.

25 71. By engaging in the aforementioned interference, Defendants, and each of them,
26 acted in reckless and callous disregard of Plaintiff's rights. The wrongful acts, and each of them,
27 were willful, oppressive, fraudulent, and malicious, thus warranting the award of punitive
28 damages against each individual Defendant (but not the entity Defendants, which are immune

1 from such damages) in an amount adequate to punish the wrongdoers and deter future
2 misconduct.

3 72. As a proximate result of Defendants' aforementioned conduct, Plaintiff DANIELS
4 suffered economic damages and non-economic damages, including, but not limited to, emotional
5 distress, pain and suffering, lost wages and earnings, loss of employment, medical expenses and
6 fear caused by the acts complained of herein.

7 73. As a proximate result of the conduct of Defendants, Plaintiff is entitled to the
8 statutory civil penalties set forth in California Civil Code section 52.1, and attorneys' fees and
9 costs of suit incurred herein.

10 WHEREFORE, Plaintiff prays for relief as set forth below.

11 **PRAAYER FOR RELIEF**

12 Wherefore, Plaintiff DANIELS prays for judgment against Defendants as follows:

- 13 1. For compensatory damages, including special damages for lost income, medical
14 expenses, and any other economic damages according to proof;
- 15 2. For general damages in an amount according to proof, including pain and suffering,
16 and emotional distress damages typical of persons who are subjected to violations as described
17 herein.;
- 18 3. For treble actual damages pursuant to Cal. Civ. Code §§ 52 and 52.1;
- 19 4. For exemplary damages against each Defendant (except the immune entity
20 Defendants) in an amount sufficient to make an example of those Defendants and to deter future
21 misconduct;
- 22 5. For injunctive and other equitable relief as appropriate;
- 23 6. For reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, Cal. Civ.
24 Code §§ 52 and 52.1; Cal. Civ. Code § 1021.5, and as otherwise authorized by statute or law;
- 25 7. For costs of suit, and;
- 26
- 27
- 28

1 8. For such other and further relief as the court deems just and proper.
2 Plaintiff hereby demands a jury trial.
3

4 Dated: March 17, 2010

Respectfully submitted,

ROSEN, BIEN & GALVAN, LLP

6
7 By: /s/ Ernest Galvan

Ernest Galvan

8 Attorney for Plaintiff

9 Dated: March 17, 2010

Respectfully submitted,

10 LAW OFFICES OF GERI LYNN GREEN, LC

11 By: /s/ Geri Green

12 Geri Green

13 Attorney for Plaintiff
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