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FILED
2010 JUN 11 PM 3:09
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

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COPY
UNITED STATES DISTRICT COURT
STATE OF CALIFORNIA, CENTRAL DISTRICT

11 KARI BODE and GINA NASTASI,
12 Plaintiffs,

13 v.

14 CITY OF FULLERTON; OFFICER
15 ALBERT RINCON; OFFICER
16 CHRISTOPHER WREN; and DOES 1
17 to 100, inclusive,

18 Defendants.

NO. **SACV10-835 AG(MLGx)**

**DEFENDANTS' NOTICE OF
REMOVAL UNDER U.S.C.
SECTION 1441(b)**

(Federal Question)

19 TO: THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT
20 OF CALIFORNIA:

21 COMES NOW Defendants City of Fullerton, Officer Rincon and Officer
22 Wren, who file this Notice of Removal of the cause described herein from the
23 Superior Court of the State of California for the County of Orange, Central
24 District, in which it is now pending, to the United States District Court, Central
25 District of California. In support of such removal, Defendant respectively alleges
26 and show as follows:

27 1. Plaintiffs commenced this action in the Superior Court of the State of
28 California for the County of Orange, Central District, by filing, on or about

1 December 17, 2009, a Complaint alleging federal constitutional and civil rights
2 violations pursuant to 42 U.S.C. Section 1983, as well as state claims of assault,
3 sexual battery, battery by a peace officer, false imprisonment, negligence,
4 intentional infliction of emotional distress and negligent infliction of emotional
5 distress.

6 Plaintiffs' Complaint lists the parties as Kari Bode and Gina Nastasi v. City
7 of Fullerton, Officer Albert Rincon, Officer Christopher Wren and Does 1 to 100,
8 Inclusive, and was assigned to the Orange County Superior Court, Central District,
9 Case No. 30-2009 00328738.

10 2. The Summons and Complaint were served on the Defendants _____
11

12 True and correct copies of the Summons and Complaint are attached to this Notice
13 as Exhibit "A", as part of the complete State Court file applicable to Plaintiffs'
14 action maintained in the Orange County Superior Court, Central District, and are
15 incorporated herein by reference as if set forth in full and complete detail pursuant
16 to 28 U.S.C. Section 1447(a).

17 3. This action is properly removable to the United States District Court
18 in accordance with 28 U.S.C. 1441(a) in that this Court has original jurisdiction
19 over Plaintiffs' federal claims pursuant to 28 U.S.C. Section 1331 and is one
20 which may be removed to this Court by Defendants pursuant to the provisions of
21 28 U.S.C. Section 1441(b) in that it arises under constitutional provisions,
22 specifically, the Complaint alleges a violation of the United States Constitution
23 and civil rights pursuant to 42 U.S.C. Section 1983. (See Exhibit "A").

24 4. This Notice of Removal to this Court is timely pursuant to 28 U.S.C.
25 Section 1446(b) in that this Notice was filed before a responsive pleading was
26 filed and within thirty (30) days of service.

27 5. All Defendants have agreed to removal.
28



FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 17 2009

ALAN CARLSON, Clerk of the Court
[Signature]
ALAN CARLSON

JUDGE JAMONAL MOBER
JAN 1 2010

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

30-2009

00328738

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John H. Upton, Esq. (SBN 137169)
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Attorneys for Plaintiff

KARI BODE and GINA NASTASI,
Plaintiffs,

v.

CITY OF FULLERTON; OFFICER
ALBERT RINCON; OFFICER
CHRISTOPHER WREN; and DOES 1 To
100, Inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES:

1. ASSAULT;
2. SEXUAL BATTERY;
3. BATTERY BY PEACE OFFICER;
4. FALSE IMPRISONMENT;
5. NEGLIGENCE;
6. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
7. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS; AND
8. VIOLATION OF CIVIL RIGHTS (42 U.S.C. 1983).

Plaintiffs Kari Bode and Gina Nastasi (collectively, "Plaintiffs") hereby demand a jury trial and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Kari Bode ("Bode") is, and at all times mentioned herein was, an individual residing in Buena Park, California.

///

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2. Plaintiff Gina Nastasi ("Nastasi") is, and at all times mentioned herein was, an individual residing in Buena Park, California.

3. Plaintiffs allege on information and belief that defendants City of Fullerton ("City"), and DOES 1 through 20, and each of them, are, and at all times mentioned herein were, municipalities and public entities duly organized and existing under and by virtue of the laws of the State of California. Each reference herein to the City refers also to defendants DOES 1 through 40, and each of them.

4. Plaintiffs allege on information and belief that, at all times mentioned herein, the City, through the Fullerton Police Department ("FPD"), was charged with the supervision, training, management, control, operation and administration of the FPD, including the responsibility for the control, supervision, training, employment, assignment and removal of police officers at the FPD.

5. Plaintiffs allege on information and belief that defendant Officer Albert Rincon ("Officer Rincon"), and DOES 41 through 45, and each of them, were residents of the County of Orange, State of California at all times mentioned herein. Each reference herein to Officer Rincon refers also to Defendants DOES 41 through 45, and each of them. At all times mentioned herein, Officer Rincon was an agent and/or employee of the City and the FPD. All actions of Officer Rincon described herein were undertaken in the course and scope of said agency and/or employment with the City and the FPD and were undertaken under color of law.

6. Plaintiffs allege on information and belief that Officer Christopher Wren ("Officer Wren") and DOES 46 through 50, and each of them, were residents of the County of Orange, State of California at all times mentioned herein. Each reference herein to Officer Wren refers also to Defendants DOES 46 through 50, and each of them. At all times mentioned herein, Officer Wren was an agent and/or employee of the City and the FPD. All actions of Officer Wren described

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1 herein were undertaken in the course and scope of said agency and/or employment with the City
2 and the FPD and were undertaken under color of law.

3
4 7. Plaintiffs allege on information and belief that defendants DOES 51 through 70,
5 and each of them, are, and at all times mentioned herein were, individuals. Plaintiffs further alle
6 on information and belief that each of these defendants are, and at all times mentioned herein
7 were, officers, directors, supervisors, managing agents, agents' independent contractors and/or
8 employees of City and FPD, acting within the course and scope of said agency and employment
9 and under color of law.

10
11 8. Plaintiffs allege on information and belief that this court is the proper court
12 because: relief sought is within the jurisdiction of this court; at least one defendant now resides in
13 this court's jurisdictional area; the principal place of business of a corporation or unincorporated
14 association is in this court's jurisdictional area; and injury to person or damage to personal
15 property occurred in this court's jurisdictional area.

16
17 9. Plaintiffs are unaware of the true names of the defendants sued herein as DOES 1
18 through 100 and sue these defendants under such fictitious names pursuant to California Code of
19 Civil Procedure §474.

20
21 10. Plaintiffs allege on information and belief that each of the defendants named herein
22 as DOES 1 through 100, inclusive, performed, participated in, or abetted in some manner, the acts
23 alleged herein, proximately caused the damages alleged herein, and are liable to Plaintiffs for the
24 relief sought herein.

25
26 11. Plaintiffs allege on information and belief that, in performing the acts and
27 omissions alleged herein, and at all times mentioned herein, each of the defendants was the agent
28 and employee of each of the other defendants and was at all times acting within the course and

1 scope of such agency and employment and with the prior knowledge and approval and subsequent
 2 ratification of each of the other defendants.

3
 4 12. Each reference herein to "Defendants" refers to all defendants, and each of them,
 5 including all defendants sued as DOES. Accordingly, a reference to "Defendants" refers to the
 6 City, Officer Rincon, Officer Wren, and DOES 1 through 100, and each of them.

7 8 FACTUAL ALLEGATIONS

9
 10 13. Plaintiffs allege on information and belief that prior to August 1, 2008, the City and
 11 DOES 1 through 100, and each of them, were on notice that Officer Rincon had allegedly
 12 unlawfully stopped, searched, detained, arrested, assaulted, battered, sexually harassed and/or
 13 sexually molested female individuals and failed to take appropriate steps to protect Plaintiffs
 14 including, but not limited to, properly supervising Officer Rincon and conducting a complete and
 15 thorough investigation of these prior allegations and issuing appropriate discipline including
 16 suspension and termination.

17
 18 14. On or about August 1, 2008, Nastasi was employed as a bartender at a bar called
 19 "Bananas," located in Fullerton. That evening, Officer Rincon entered Nastasi's workplace,
 20 ordered Plaintiff to approach him and asked her if she was on probation. Nastasi replied, "Yes."
 21 Officer Rincon then searched Nastasi's purse and the surrounding area in the public bar. Officer
 22 Rincon claimed he allegedly found a small packet containing illegal drugs in the "surrounding
 23 area." Officer Rincon did not find any drugs on Nastasi's person or in her purse and did not
 24 witness Nastasi in possession of the alleged illegal drugs. Plaintiffs allege on information and
 25 belief that Officer Rincon did not possess a search warrant or have sufficient probable cause to
 26 search Nastasi or the "surrounding area" or to arrest Nastasi.

27
 28 15. Officer Rincon then wrongfully arrested, handcuffed, and placed Nastasi in a police

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1 vehicle. Under the auspices of performing a "pat-down," Officer Rincon ran his hands over
 2 Nastasi's shirt, touching her breasts. Officer Rincon then ran his hands along Nastasi's legs whe
 3 he cupped her groin area. Under the auspices of putting on Nastasi's seat belt, Officer Rincon
 4 used his arm to force Nastasi's shirt over her chest, exposing her right breast. Nastasi requested
 5 Officer Rincon to fix her top, to cover her breast. Officer Rincon refused, replying "No, you're
 6 fine. You have nice breasts." Officer Rincon then proceeded to drive to the Fullerton police
 7 station, leaving Nastasi in the back seat with her shirt over her chest and her right breast exposed.

8
 9 16. During the ride to the Fullerton police station, Officer Rincon asked if Nastasi
 10 would perform fellatio on him in exchange for possibly releasing her. Nastasi refused. Officer
 11 Rincon then continued to make comments about Nastasi's physical appearance, including her
 12 breasts, and leered at her in the rearview mirror throughout the drive to the police station.

13
 14 17. Upon arrival at the police station, Officer Rincon retrieved Nastasi from the back
 15 seat, brushing against her exposed breast to "undo" her seatbelt. When Nastasi attempted to exit
 16 the vehicle voluntarily, Officer Rincon stopped her. He then grabbed her handcuffs with one hand
 17 and put his other hand in between her legs whereby he cupped her groin area and applied pressure
 18 to her vagina with his middle finger, all to allegedly assist Nastasi in exiting the patrol car.
 19 Officer Rincon proceeded to cup Nastasi's exposed breast with one hand, and used his other hand
 20 to pull her shirt down. Officer Rincon then walked Nastasi into the station.

21
 22 18. Following the above, Officer Rincon repeatedly visited Nastasi's work, harassing
 23 her, and asking her why they could not be friends. On one occasion, in October 2008, Officer
 24 Rincon approached her and told her that he heard the district attorney was dropping some of the
 25 charges against her stemming from her arrest. He again commented on Nastasi's physical
 26 appearance and stated that he hoped there would not be any hard feelings between them. Plaintiff:
 27 allege on information and belief that Officer Rincon made these visits and statements in an effort
 28 to further sexually and otherwise harass and intimidate Nastasi into submitting to sexual acts and

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1 to not complain about his conduct.

2
3 19. In or about November 2008, an officer who identified himself as belonging to the
4 Internal Affairs Bureau with the FPD, approached Nastasi at the bar to discuss her arrest. Nastasi
5 met with the Internal Affairs Bureau at the FPD the next day and spoke with a female investigator
6 and they discussed her arrest.

7
8 20. Nastasi was subsequently booked and thereafter appeared at a preliminary hearing
9 in the Superior Court of California, County of Orange, North Justice Center.

10
11 21. The Orange County District Attorney's office dismissed the charges against
12 Nastasi, citing insufficient evidence.

13
14 22. On or about November 14, 2008, Bode was lawfully in her vehicle in the parking
15 lot located at or near the 1300 S. Raymond block of Fullerton, California. Officer Rincon, without
16 probable cause and absent exigent circumstances, pulled Bode over for allegedly driving without
17 her headlights on.

18
19 23. Officer Rincon proceeded to administer several field sobriety tests on Bode.
20 Plaintiffs allege on information and belief that Bode passed the tests, indicating she was sober.
21 Plaintiffs allege on information and belief that FPD Officer Eric Song ("Officer Song") then
22 arrived on the scene to administer additional testing, believed to be a preliminary alcohol
23 screening ("PAS") test. After performing the PAS test on Bode, Officer Song showed Officer
24 Rincon the results. Plaintiffs allege on information and belief that these results confirmed Bode's
25 sobriety. Officer Rincon then instructed Officer Song to leave. Plaintiffs allege on information
26 and belief that Officer Rincon did not possess a search warrant or have sufficient probable cause to
27 stop, detain, search or arrest Bode.

28 ///

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1 24. Officer Rincon then wrongfully arrested Bode for driving under the influence,
2 handcuffed her, and placed her in a police vehicle. Under the guise of searching Bode, Officer
3 Rincon groped her vaginal area and digitally penetrated her vagina. Under the auspices of putting
4 on Bode's seat belt, Officer Rincon forced Bode's shirt and bra over her chest, thereby exposing
5 her breasts. Officer Rincon also rubbed Bode's breasts several times with his forearm.

6
7 25. Another marked FPD patrol car arrived at the scene containing unidentified FPD
8 officers, defendants DOES 57 through 60. Bode's breasts were still exposed. None of these
9 unidentified officers attempted to stop Officer Rincon or assist Bode. Instead, these unidentified
10 officers inquired about Bode's daughter, Kandice Bode, who was present at the scene, and
11 whether she was available for a date. Kandice Bode requested permission to fix Bode's shirt but
12 Officer Rincon denied her request. Officer Rincon then informed Bode that he would release her
13 if she would set him up on a date with Kandice Bode. Officer Rincon then proceeded to drive to
14 the police station, with Bode in the back seat with her shirt and bra over her chest and her breasts
15 exposed.

16
17 26. When Bode and Officer Rincon arrived at the police station, Officer Rincon
18 retrieved Bode from the back seat and pulled her shirt and bra down prior to taking her into the
19 station. While in the station, Officer Rincon enlisted Officer Wren to administer a breath test on
20 Bode. After performing the test, Officer Wren consulted with Officer Rincon. Bode was then
21 required to undergo additional tests; however, Bode was never advised of the results. Plaintiffs
22 allege on information and belief that all of these tests were negative and that Officer Rincon and
23 Officer Wren conspired to falsify test results and reports to misrepresent Bode as intoxicated to
24 deprive Bode of her liberty and support her unlawful arrest. Officer Rincon then took Bode to a
25 room, wherein he advised her that he would be keeping her driver's license.

26
27 27. Bode was subsequently booked and thereafter appeared at a preliminary hearing in
28 the Superior Court of California, County of Orange, North Justice Center.

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28. The Orange County District Attorney's office dismissed the charges against Bode citing insufficient evidence.

29. Plaintiffs further allege that Officer Rincon, and DOES 51 through 60, and each of them, improperly touched their bodies, made inappropriate remarks and otherwise sexually harassed, assaulted and battered them in addition to that alleged above.

30. Plaintiffs allege that their detentions, arrests, searches, tests and all other conduct of Officer Rincon, as alleged above, was designed to sexually harass, assault, batter, intimidate and otherwise deny Plaintiffs their constitutional rights.

31. On April 24, 2009, Bode and Nastasi timely submitted government claims (the "Claims") to Defendants, true and correct copies of which are attached hereto as Exhibit "A," and incorporated herein by this reference.

32. Plaintiffs allege on information and belief that Defendants rejected the Claims on or about June 17, 2009. Copies of the pertinent rejection letters are attached hereto as Exhibit "B."

33. Plaintiffs further allege on information and belief that Officer Rincon, Officer Wren and DOES 51 through 70, and each of them, are liable to Plaintiffs pursuant to, among other things, Cal. Gov't Code § 820 and that the City is liable to Plaintiffs pursuant to, among other things, Cal. Gov't Code § 815.2. and/or 815.4.

FIRST CAUSE OF ACTION

(Against Rincon, the City and DOES 1 through 100 for Assault)

34. Plaintiffs reallege and incorporate by this reference each and every allegation contained in paragraphs 1 through 33, inclusive, as set forth above.

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1 35. Plaintiffs allege on information and belief that, as alleged above, Officer Rincon
2 and DOES 1 through 100, and each of them, intended to cause, and/or to place Plaintiffs in
3 apprehension of, harmful or offensive contact with their persons.

4
5 36. As a result of these defendants' acts, as alleged above, Plaintiffs were, in fact,
6 placed in great apprehension of harmful or offensive contact with their persons.

7
8 37. At no time did Plaintiffs consent to any of the acts alleged in this cause of action.

9
10 38. As a direct and proximate result of the aforementioned conduct of these defendants
11 Plaintiffs sustained and will sustain, physical and mental injury, severe emotional distress,
12 disability, wage loss, hospital and medical expenses, loss of earning capacity and general damage
13 in an amount, the precise sum of which is presently unknown, but which will be determined in
14 accordance with proof at trial.

15
16 39. Plaintiffs allege on information and belief that, in performing the acts and
17 omissions alleged above, each of these defendants acted oppressively, fraudulently and
18 maliciously, entitling Plaintiffs to recover damages for the sake of example and by way of
19 punishing each of these defendants in an amount to be established according to proof at the time of
20 trial.

21
22 **SECOND CAUSE OF ACTION**

23 (Against Officer Rincon, City and Defendants DOES 1 through 100 for Sexual Battery)

24
25 40. Plaintiffs reallege and incorporate by this reference each and every allegation
26 contained in paragraphs 1 through 33, inclusive, as set forth above.

27
28 41. Plaintiffs allege on information and belief that in touching Plaintiffs, as alleged

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1 above, Rincon and Defendants DOES 1 through 100, and each of them, intended to make contact
2 with Plaintiffs' persons.

3
4 42. At no time did Plaintiffs consent to any of the acts alleged in this cause of action.

5
6 43. As a direct and proximate result of the aforementioned conduct of these defendants
7 Plaintiffs sustained and will sustain, physical and mental injury, severe emotional distress,
8 disability, wage loss, hospital and medical expenses, loss of earning capacity and general damages
9 in an amount, the precise sum of which is presently unknown, but which will be determined in
10 accordance with proof at trial.

11
12 44. Plaintiffs allege on information and belief that, in performing the acts and
13 omissions alleged above, each of these defendants acted oppressively, fraudulently and
14 maliciously, entitling Plaintiffs to recover damages for the sake of example and by way of
15 punishing each of these defendants in an amount to be established according to proof at the time of
16 trial.

17
18 **THIRD CAUSE OF ACTION**

19 (Against Officer Rincon, City and DOES 1 through 100 for Battery by Peace Officer)

20
21 45. Plaintiffs reallege and incorporate by this reference each and every allegation
22 contained in paragraphs 1 through 33, and 40 through 44, inclusive, as set forth above.

23
24 46. Plaintiffs allege on information and belief that Officer Rincon and DOES 1 through
25 100, and each of them, used unreasonable and unjustified force to arrest and/or detain Plaintiffs as
26 alleged above.

27
28 47. At no time did Plaintiffs consent to the use of that force.

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1 48. Plaintiffs were harmed by the use of that force.

2
3 49. The use of unreasonable force by these defendants was a substantial factor in
4 causing Plaintiffs' harm.

5
6 50. As a direct and proximate result of the aforementioned conduct of these defendants
7 Plaintiffs sustained and will sustain, physical and mental injury, severe emotional distress,
8 disability, wage loss, hospital and medical expenses, loss of earning capacity and general damage
9 in an amount, the precise sum of which is presently unknown, but which will be determined in
10 accordance with proof at trial.

11
12 51. Plaintiffs allege on information and belief that, in performing the acts and
13 omissions alleged above, each of these defendants acted oppressively, fraudulently and
14 maliciously, entitling Plaintiffs to recover damages for the sake of example and by way of
15 punishing each of these defendants in an amount to be established according to proof at the time of
16 trial.

17
18 **FOURTH CAUSE OF ACTION**

19 (Against Defendants for False Imprisonment)

20
21 52. Plaintiffs reallege and incorporate by this reference each and every allegation
22 contained in paragraphs 1 through 33, inclusive, as set forth above.

23
24 53. As alleged above, and otherwise, Officer Rincon, Officer Wren, and DOES 1
25 through 100, and each of them, intentionally deprived Plaintiffs of their freedom of movement and
26 liberty by, among other things, the use of physical barriers, commands, threats, handcuffs, force,
27 unreasonable duress, fabrication, and conspiracy.

28 ///

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1 54. Plaintiffs did not consent to these defendants' acts.

2
3 55. Plaintiffs were actually harmed physically and emotionally.

4
5 56. These defendants conduct was a substantial factor in causing Plaintiffs' harm.

6
7 57. As a direct and proximate result of the aforementioned conduct of these defender
8 Plaintiffs sustained and will sustain, physical and mental injury, severe emotional distress,
9 disability, wage loss, hospital and medical expenses, loss of earning capacity and general damag
10 in an amount, the precise sum of which is presently unknown, but which will be determined in
11 accordance with proof at trial.

12
13 58. Plaintiffs allege on information and belief that, in performing the acts and
14 omissions alleged above, each these defendants acted oppressively, fraudulently and maliciously,
15 entitling Plaintiffs to recover damages for the sake of example and by way of punishing each of
16 these defendants in an amount to be established according to proof at the time of trial.

17
18 **FIFTH CAUSE OF ACTION**

19 (Against Defendants for Negligence)

20
21 59. Plaintiffs reallege and incorporate by this reference each and every allegation
22 contained in paragraphs 1 through 33, inclusive, as set forth above.

23
24 60. At all times relevant herein, Defendants were under a duty to use reasonable care i
25 the performance of their jobs as peace officers; to act reasonably in the performance of searches,
26 sobriety tests, and arrests; to supervise reasonably FPD officers; to conduct reasonable
27 investigations into alleged improper conduct of FPD officers and take appropriate action; and to
28 treat citizens with dignity and respect.

1 trial.

2

3

SEVENTH CAUSE OF ACTION

4

(Against Defendants for Negligent Infliction of Emotional Distress)

5

6

68. Plaintiffs reallege and incorporate by this reference each and every allegation contained in paragraphs 1 through 33, and 59 through 62, inclusive, as set forth above.

8

9

69. As alleged above, Defendants were negligent.

10

11

70. As a direct and proximate result of the aforementioned conduct of these defendant Plaintiffs sustained and will sustain severe emotional distress in an amount, the precise sum of which is presently unknown, but which will be determined in accordance with proof at trial.

14

15

EIGHTH CAUSE OF ACTION

16

(Against Defendants for Violation of Civil Rights)

17

18

71. Plaintiffs reallege and incorporate by this reference each and every allegation contained in paragraphs 1 through 33, inclusive, as set forth above.

20

21

72. This cause of action arises under the Civil Rights act of 1871 (42 USC Section 1983) as hereinafter more fully appears.

23

24

73. By reason of Defendants' intentional, willful and malicious conduct, as alleged above, Plaintiffs were deprived of rights, privileges, and immunities secured to them by the Constitution of the United States and laws enacted there under in that, among other things, the searches and seizures amounted to an arbitrary intrusion by Defendants into the security of Plaintiffs' privacy, persons, and vehicles and were not authorized by law, and in that the contacts

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on Plaintiffs' persons, restrictions of their movements, and handling of their property deprived Plaintiffs of life, liberty, and property without due process of law.

74. As a direct and proximate result of the aforementioned conduct of these defendants Plaintiffs sustained and will sustain, physical and mental injury, severe emotional distress, disability, wage loss, hospital and medical expenses, loss of earning capacity and general damage in an amount, the precise sum of which is presently unknown, but which will be determined in accordance with proof at trial.

75. Plaintiffs allege on information and belief that, in performing the acts and omissions alleged above, each of these defendants acted oppressively, fraudulently and maliciously, entitling Plaintiffs to recover damages for the sake of example and by way of punishing each of these defendants in an amount to be established according to proof at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. For compensatory damages according to proof at trial;
- b. For exemplary damages according to proof at trial;
- c. For costs of suit incurred;
- d. For attorney's fees as allowed by law;
- e. For pre-judgment interest;
- f. For exemplary damages subject to Cal Civil Code Section 52(b);
- g. For a civil penalty of \$25,000 subject to Cal Civil Code Section 52; and

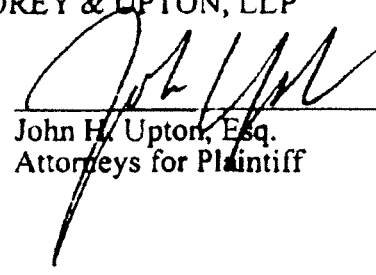
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///

1 h. For such other and further relief as the court deems proper.

2
3 DATED: December 16, 2009

MOREY & UPTON, LLP

4
5 By: 
6 John H. Upton, Esq.
7 Attorneys for Plaintiff
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EXHIBIT

A



FILE COMPLETED FORM BY MAIL OR IN PERSON AT:

CITY OF FULLERTON
City Clerk's Office
303 W. Commonwealth Avenue
Fullerton, CA 92832

OFFICE USE ONLY
RESERVE FOR FILING STAMP

CITY CLERK APR 24 '09 AM 11:59

CLAIM FOR DAMAGES

TO PERSON OR PROPERTY

CLAIM NO. _____

INSTRUCTIONS

1. Claim for death, injury to person or to personal property must be filed no later than six months after the occurrence (Gov. Code Sec. 911.2).
2. Claims for damages to real property must be filed no later than 1 year after the occurrence (Gov. Code Sec. 911.2).
3. Read entire claim form before filing.
4. See page 2 for diagram upon which to depict location of accident.
5. **THIS CLAIM FORM MUST BE SIGNED AND DATED ON PAGE 2 AT BOTTOM.**
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.

TO: CITY OF FULLERTON		Date of Birth of Claimant 04/21/1975
Name of Claimant Gina Nastasi		Occupation of Claimant unemployed
Home Address of Claimant withheld for privacy concerns; please contact authorized representative stated below	City, State & Zip	Home Telephone Number () withheld
Business Address of Claimant withheld for privacy concerns; please contact authorized representative stated below	City, State & Zip	Business Telephone Number () withheld
If different from above state name, address and telephone number to which you desire notices or communications to be sent regarding this claim: Poole & Shaffery, LLP; 445 S. Figueroa St., Ste. 2520, Los Angeles, CA 90071; (213) 439-5390		Cellular Telephone Number () withheld

When did DAMAGE or INJURY occur? Date <u>approximately 11/15/08</u> Time _____ A.M. or P.M.	Names of any city employees involved in INJURY or DAMAGE Officer Albert Rincon Officer Christopher Wren Fullerton Police Department
If claim is for Equitable Indemnity, give date claimant served with the complaint: Date _____	

Where did DAMAGE or INJURY occur? Describe fully, and depict on diagram on reverse side of this sheet. Where appropriate, give street names and address and distances from landmarks:
601 S. Raymond Ave., Fullerton, CA

Describe in detail how the DAMAGE or INJURY occurred:
Please see "Attachment A".

Why do you claim the City is responsible?

The City is responsible pursuant to 42 U.S.C. §§ 1983, 1985, 1986, and 1988 for the violations of Claimant's civil rights under the U.S. Constitution. The City is further responsible pursuant to Calif. Govt. Code §§ 815.2, 820, and 820.4 for the violations of Claimant's civil rights under the California Constitution. Claimant reserves the right to supplement this response.

Describe in detail each INJURY or DAMAGE:

Claimant suffered, and continues to suffer, from loss of self-esteem, loss of self-worth, anxiety, anguish, fear, worry, embarrassment, a sense of alienation, depression, irritability, shock, horror, grief, humiliation, anger, and hopelessness. Claimant has been unable to attend to her usual employment and activities, suffering lost income, and she will continue to suffer loss of future income, support, and maintenance.

THIS CLAIM MUST BE SIGNED ON REVERSE SIDE

CC to Claimant _____

The amount claimed, as of the date of presentation of this claim, is computed as follows:

Damages incurred to date (exact):

Damage to property\$
 Expenses for medical/hospital care\$
 Loss of earnings\$ 25,000.00

Total damages incurred to date.....\$ 25,000.00

Estimated prospective damages as far as known:

Future expenses for medical/hospital care...\$ 75,000.00
 Future loss of earnings\$ 50,000.00
 Other prospective damages (detail)\$ 7,500,000.00

Pain and Suffering\$ 2,500,000.00
 Punitive Damages\$ 5,000,000.00

Total estimated prospective damages.....\$ 7,625,000.00

TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF THIS CLAIM ...\$ 7,650,000.00

Was damage and/or injury investigated by police? yes If so, what city? Fulton Case No. Internal Affairs
 Were paramedics or an ambulance called? no If so, name city or ambulance _____
 If injured, state date, time, name and address of doctor for your first visit: _____

WITNESSES to DAMAGE or INJURY. List all persons and addresses of persons known to have information.

Name Mike Fagan Address unknown at this time Phone () _____
 Name Mike Carver Address unknown at this time Phone () _____
 Name Coco (last name unknown at this time) Address unknown at this time Phone () _____

DOCTORS and HOSPITAL:

Hospital _____ Address _____ Date Hospitalized _____
 Doctor _____ Address _____ Date of Treatment _____
 Doctor _____ Address _____ Date of Treatment _____

READ CAREFULLY

For all accident claims place on the following diagram names of streets, including North, South, East and West. Indicate place of accident by "X" and by showing house numbers or distances to street corners. If city vehicle was involved, designate by letter "A" location of City vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw City vehicle. Indicate place of City vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X". NOTE - if the diagram below does not fit the situation, attach a proper diagram signed by claimant.

Signature of Claimant or person filing on behalf of
 Claimant (give relationship to Claimant):

Type or Print Name:

John H. Shaffery, Esq.; Poole & Shaffery, LLP
 Attorney for Claimant

Date:

4-22-09

NOTE: CLAIMS MUST BE FILED IN THE CITY CLERK'S OFFICE (Gov. Code Sec. 915.A) PRESENTATION OF A FALSE CLAIM IS A FELONY (Pen. Code Sec. 72).

CC to Claimant _____

ATTACHMENT A

On August 1, 2008 at approximately 7:45 p.m., Officer Albert Rincon entered a bar called Bananas, where Claimant was working as a bartender. At that time, Claimant was wearing a very short skirt, a "G-string" panty, and a sheer, halter bikini top. Officer Rincon ordered Claimant to approach him and asked her if she was on probation, which Claimant replied, "Yes." Officer Rincon then searched Claimant's purse and the surrounding area, wherein he allegedly found a small packet containing methamphetamine. Officer Rincon arrested Claimant.

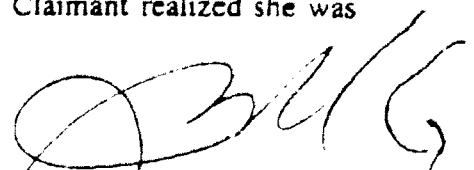
Officer Rincon's seizure of Claimant, in which he used unreasonable force, was unlawful. Under the auspices of performing a "pat-down", Officer Rincon ran his hands over her sheer, bikini top, touching her breasts. Officer Rincon then ran his hands along her legs where he cupped her groin area. Officer Rincon proceeded to handcuff Claimant, and placed her in the rear seat on the passenger side of his police vehicle. Under the auspices of putting on Claimant's seat belt, Officer Rincon used his arm to force Claimant's sheer bikini top over Claimant's chest, exposing her right breast. Claimant requested Officer Rincon to fix her top, to which Officer Rincon replied, "No, you're fine. You have nice breasts." Officer Rincon denied requests by witnesses to fix Claimant's top. Officer Rincon then proceeded to drive to the Fullerton police station, leaving Claimant in the back seat with her sheer, bikini top over her chest and her right breast exposed.

During the ride to the Fullerton police station, Officer Rincon asked if Claimant would perform fellatio on him in exchange for possibly releasing her. Claimant rejected his offer, commenting how she probably had already lost her job because of the arrest. Officer Rincon then continued to make comments about Claimant's physical appearance, including her breasts, and leered at her in the rearview mirror throughout the drive to the police station.

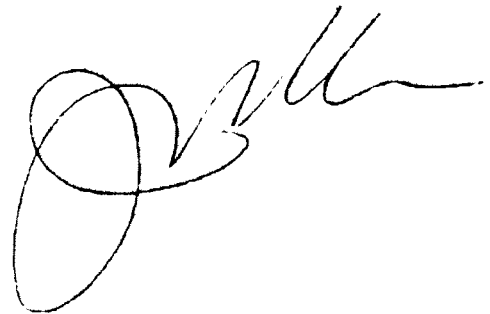
When they arrived at the police station, Officer Rincon retrieved Claimant from the back seat, brushing against her exposed breast to "undo" her seatbelt. She attempted to exit the vehicle but Officer Rincon stopped her. He then grabbed her handcuffs with his left hand and put his right hand in between her legs to lift her out of the car whereby he cupped her groin area and applied pressure to her vagina through her "G-string panty" with his middle finger. Officer Rincon proceeded to cup her exposed, right breast with one hand, and used his other hand to pull her sheer bikini top down. He then walked her to the station.

Following the incident, Officer Rincon continued to visit the bar where Claimant worked. He continuously harassed her, asking her why they could not be friends. On one occasion, in October 2008, Officer Rincon approached her and told her that he heard the district attorney was dropping some of the charges against her stemming from her arrest. He again commented on Claimant's physical appearance and stated that he hoped there would not be any hard feelings between them.

In early to mid- November 2008, an officer who identified himself as belonging to the Internal Affairs Bureau with the Fullerton Police Department, approached Claimant at the bar to discuss her arrest. Claimant stated that she could not talk at the moment and agreed to come into the police station the next day. There, she met with a female investigator and they discussed her arrest. After meeting with the female investigator in the Internal Affairs Bureau, Claimant realized she was wronged by the actions of Officer Rincon.



Based on the foregoing, Officer Rincon and other members of the Fullerton Police Department are liable for violating Claimant's civil rights under the U.S. and California Constitutions including: unlawful arrest, unlawful imprisonment, illegal search and seizure, excessive force, false arrest, false imprisonment, use of unreasonable force, sexual assault, sexual battery, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, conspiracy, and malicious prosecution. Moreover, the City of Fullerton is further liable given the city's prior knowledge of Officer Rincon's prior sexual assaults and its failure to remove him from public interaction prior to this incident.

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a series of loops and a horizontal line extending to the right.



FILE COMPLETED FORM BY MAIL OR IN PERSON AT:

CITY OF FULLERTON
City Clerk's Office
303 W. Commonwealth Avenue
Fullerton, CA 92832

OFFICE USE ONLY
RESERVE FOR FILING STAMP

CITY CLERK: PRR20109 AM11:55

CLAIM FOR DAMAGES

TO PERSON OR PROPERTY

CLAIM NO. _____

INSTRUCTIONS

1. Claim for death, injury to person or to personal property must be filed no later than six months after the occurrence (Gov. Code Sec. 911.2).
2. Claims for damages to real property must be filed no later than 1 year after the occurrence (Gov. Code Sec. 911.2).
3. Read entire claim form before filing.
4. See page 2 for diagram upon which to depict location of accident.
5. **THIS CLAIM FORM MUST BE SIGNED AND DATED ON PAGE 2 AT BOTTOM.**
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.

TO: CITY OF FULLERTON		Date of Birth of Claimant 08/28/1961
Name of Claimant Kari Denise Bode		Occupation of Claimant construction
Home Address of Claimant withheld for privacy concerns; please contact authorized representative stated below		Home Telephone Number () withheld
Business Address of Claimant withheld for privacy concerns; please contact authorized representative stated below		Business Telephone Number () withheld
If different from above state name, address and telephone number to which you desire notices or communications to be sent regarding this claim: Poole & Shaffery, LLP; 445 S. Figueroa St., Ste. 2520, Los Angeles, CA 90071; (213) 439-5390		Cellular Telephone Number () withheld
When did DAMAGE or INJURY occur? Date <u>approximately 11/15/08</u> Time _____ A.M. or P.M.		Names of any city employees involved in INJURY or DAMAGE Officer Albert Rincon Officer Christopher Wren Fullerton Police Department
If claim is for Equitable Indemnity, give date claimant served with the complaint: Date _____		
Where did DAMAGE or INJURY occur? Describe fully, and depict on diagram on reverse side of this sheet. Where appropriate, give street names and address and distances from landmarks: 1300 S. Raymond Ave., Fullerton, CA.		
Describe in detail how the DAMAGE or INJURY occurred: Please see "Attachment A".		
Why do you claim the City is responsible? The City is responsible pursuant to 42 U.S.C. §§ 1983, 1985, 1986, and 1988 for the violations of Claimant's civil rights under the U.S. Constitution. The City is further responsible pursuant to Calif. Govt. Code §§ 815.2, 820, and 820.4 for the violations of Claimant's civil rights under the California Constitution. Claimant reserves the right to supplement this response.		
Describe in detail each INJURY or DAMAGE: Claimant suffered, and continues to suffer, from loss of self-esteem, loss of self-worth, anxiety, anguish, fear, worry, embarrassment, a sense of alienation, depression, irritability, shock, horror, grief, humiliation, anger, and hopelessness. Claimant has been unable to attend to her usual employment and activities, suffering lost income, and she will continue to suffer loss of future income, support, and maintenance.		

CC to Claimant _____

THIS CLAIM MUST BE SIGNED ON REVERSE SIDE

The amount claimed, as of the date of presentation of this claim, is computed as follows:

Damages incurred to date (exact):

Damage to property \$ _____
 Expenses for medical/hospital care \$ _____
 Loss of earnings \$ 20,000.00

Total damages incurred to date \$ 20,000.00

Estimated prospective damages as far as known:

Future expenses for medical/hospital care... \$ 75,000.00
 Future loss of earnings \$ 50,000.00
 Other prospective damages (detail) \$ 7,500,000.00

Pain and Suffering \$ 2,500,000.00
 Punitive Damages \$ 3,000,000.00

Total estimated prospective damages \$ 7,625,000.00

TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF THIS CLAIM ... \$ 7,645,000.00

Was damage and/or injury investigated by police? yes If so, what city? Orange County D.A. Office Case No. _____

Were paramedics or an ambulance called? no If so, name city or ambulance _____

If injured, state date, time, name and address of doctor for your first visit: _____

WITNESSES to DAMAGE or INJURY. List all persons and addresses of persons known to have information.

Name Kandice Bode Address same as Claimant Phone () _____
 Name Louis C. Hayes Address same as Claimant Phone () _____
 Name _____ Address _____ Phone () _____

DOCTORS and HOSPITAL:

Hospital _____ Address _____ Date Hospitalized _____
 Doctor _____ Address _____ Date of Treatment _____
 Doctor _____ Address _____ Date of Treatment _____

READ CAREFULLY

For all accident claims place on the following diagram names of streets, including North, South, East and West. Indicate place of accident by "X" and by showing house numbers or distances to street corners. If city vehicle was involved, designate by letter "A" location of City vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw City vehicle. Indicate place of City vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X". NOTE - if the diagram below does not fit the situation, attach a proper diagram signed by claimant.

Signature of Claimant or person filing on behalf of Claimant (give relationship to Claimant) _____

Type or Print Name: _____

John H. Shaffery, Esq.; Poole & Shaffery, LLP

Attorney for Claimant

Date: _____

4-22-09

NOTE: CLAIMS MUST BE FILED IN THE CITY CLERK'S OFFICE (Gov. Code Sec. 915.A) PRESENTATION OF A FALSE CLAIM IS A FELONY (Pen. Code Sec. 72).

CC to Claimant _____

ATTACHMENT A

On November 14, 2008 at approximately 8:30 p.m., Officer Albert Rincon pulled Claimant over for allegedly driving without her headlights on in the 1300 S. Raymond block in Fullerton, California. Officer Rincon proceeded to administer several field sobriety tests on Claimant, which established that Claimant was sober. Officer Eric Song then arrived on the scene to administer a preliminary alcohol screening ("PAS") test. After performing the PAS test on Claimant, Officer Song showed Officer Rincon the results. Officer Rincon then instructed Officer Song to leave. Despite undergoing various tests that established Claimant was not alcohol-impaired, and therefore, without any probable cause, Officer Rincon arrested claimant for driving under the influence.

Officer Rincon's seizure of Claimant, in which he used unreasonable force, was unlawful. After arresting Claimant for driving under the influence, Officer Rincon performed a search on Claimant, groping her vaginal area and digitally penetrating her. Officer Rincon then handcuffed Claimant and placed her in the rear seat on the passenger side. Under the auspices of putting on Claimant's seat belt, Officer Rincon used his elbow and forearm to force Claimant's shirt and bra over Claimant's chest, thereby exposing her breasts. Officer Rincon also used the same forearm to rub Claimant's breasts several times. Another marked patrol car arrived at this time to observe Officer Rincon and Claimant; none of the officers attempted to stop Officer Rincon but rather, they inquired about Claimant's daughter, Kandice Bode, who was present at the scene along with Claimant's boyfriend, Louis Hayes. Both of them had observed the actions of Officer Rincon. Officer Rincon denied Kandice Bode's request to fix Claimant's shirt. Officer Rincon informs Claimant that he would release her if she would set him up on a date with Kandice Bode. Officer Rincon then proceeded to drive to the police station, leaving Claimant in the back seat with her shirt and bra over her chest and breasts exposed.

When they arrived at the police station, Officer Rincon retrieved Claimant from the back seat and pulled her shirt and bra down prior to taking her into the station. While in the station, Officer Rincon enlisted Officer Christopher Wren to administer a breath test on Claimant. After performing the test, Officer Wren consulted with Officer Rincon. Claimant underwent two more breath tests; however, Claimant was never advised of the results. However, in a DMV form entitled "Age 21 and Older Officer's Statement," Officer Wren signed under penalty of perjury that he administered two breath test results on Claimant, with the first test resulting in a BAC of .16% and a second test resulting in a BAC of .17%. Officer Rincon then took Claimant to a room, wherein he advised her that he would be keeping her driver's license. Eventually, sometime after Claimant lodged a complaint with the Fullerton Police Department regarding Officer Rincon's actions, and an investigation was commenced, Claimant's driver's license was found by a tenant of the property where the incident occurred.

Based on the foregoing, Officer Rincon and other members of the Fullerton Police Department are liable for violating Claimant's civil rights under the U.S. and California Constitutions including: unlawful arrest, unlawful imprisonment, illegal search and seizure, excessive force, false arrest, false imprisonment, use of unreasonable force, sexual assault, sexual battery, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, conspiracy, and malicious prosecution. Moreover, the City of Fullerton is further liable given the city's prior knowledge of Officer Rincon's prior sexual assaults and its failure to remove him from public interaction prior to this incident.

EXHIBIT

B



CITY OF FULLERTON

Human Resources Department

Personnel Services (714) 738-6
Employee Benefits (714) 738-6
Risk Management (714) 738-5

June 17, 2009

Mr. John Shaffery
Poole & Shaffery, LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

RE: Kari Denise Bode v City of Fullerton
Our Claim No.: 208100
Date of Loss: November 14, 2008

Dear Mr. Shaffery:

Notice is hereby given that the Risk Manager for the City of Fullerton, the authorized delegate of the City Council pursuant to Government Code Section 935.2, denied the claim that you filed on behalf of Kari Denise Bode against the City on May 14, 2009.

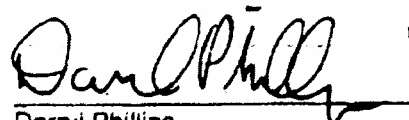
Denial of the claim was based upon the results of an investigation that determined that there is no liability on the part of the City.

For your protection, California law requires that the following warning appear within this letter:

WARNING - Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file an action in the state court based upon a claim under state law. See Government Code Section 945.6. This limitation does not apply to actions filed under the Federal Civil Rights Act."

Please also be advised that pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedures, the City will seek to recover all costs of defense in the event an action is filed in this matter, and it is determined that the action was not brought in good faith and with reasonable cause.

If you have any questions regarding this claim, please contact Olga Vellanoweth at 714/738-6868.


Darryl Phillips
Risk Manager



CITY OF FULLERTON

Human Resources Department

Personnel Services (714) 738-6
Employee Benefits (714) 738-6
Risk Management (714) 738-5

June 17, 2009

John Shaffery
Poole & Shaffery, LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

RE: Gina Nastasi v City of Fullerton
Our Claim No.: 208099
Date of Loss: August 1, 2008

Dear Mr. Shaffery:

Notice is hereby given that the Risk Manager for the City of Fullerton, the authorized delegate of the City Council pursuant to Government Code Section 935.2, denied the claim that you filed on behalf of Gina Nastasi against the City on April 24, 2009.


Denial of the claim was based upon the results of an investigation that determined that there is no liability on the part of the City.

For your protection, California law requires that the following warning appear within this letter:

WARNING - Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file an action in the state court based upon a claim under state law. See Government Code Section 945.6. This limitation does not apply to actions filed under the Federal Civil Rights Act."

Please also be advised that pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedures, the City will seek to recover all costs of defense in the event an action is filed in this matter, and it is determined that the action was not brought in good faith and with reasonable cause.

If you have any questions regarding this claim, please contact Olga Vellanoweth at 714/738-6868.


Darryl Phillips
Risk Manager

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Cathy Sherman, employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action. My business address is 1631 East 18th Street, Santa Ana, California 92705-7101.

On June 11, 2010, I caused to be served the **DEFENDANTS' NOTICE OF REMOVAL UNDER U.S.C. SECTION 1441(b)** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

John H. Upton, Esq.
Leah Berry, Esq.
MOREY & UPTON LLP
949 South Coast Drive, Suite 475
Costa Mesa, CA 92626

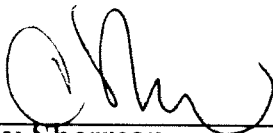
XXX (By Mail) I placed such envelope for deposit in accordance with office practice, sealed, with postage thereon fully paid and the correspondence to be deposited in the United States mail at Santa Ana, California on the same day.

— (By e-filing) The above noted individuals are registered with the Court to receive notice of electronically filed documents. Per ECF rules, hard copies must be served only on parties who are not set up for electronic notification.

— (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

XXX (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 11, 2010, at Santa Ana, California.


Cathy Sherman

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Andrew Guilford and the assigned discovery Magistrate Judge is Marc Goldman.

The case number on all documents filed with the Court should read as follows:

SACV10- 835 AG (MLGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

KARI BODE and GINA NASTASI

DEFENDANTS

CITY OF FULLERTON; OFFICER ALBERT RINCON;
 OFFICER CHRISTOPHER WREN; and DOES 1 to
 100, Inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

John H. Upton
 MOREY & UPTON, LLP
 949 South Coast Drive, Suite 475
 Costa Mesa, CA 92626
 (714) 432-9555

Attorneys (If Known)

Bruce D. Praet
 FERGUSON, PRAET & SHERMAN
 1631 E. 18th Street
 Santa Ana, CA 92705
 714-953-5300
 bpraet@aol.com

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT:** \$ 0.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violation of civil rights under 42 USC Section 1983

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability MIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **SACV10-835 AG(MLGx)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Orange	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Orange	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):


 Bruce D. Praet

Date June 11, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))