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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CHARLES OWENS, an individual,)

13 Plaintiff,)

14 vs.)

15 COUNTY OF SANTA BARBARA,)
16 CHRISTOPHER JOHNSON, an)
17 individual, ROBERT KIRSCH, an)
18 individual, ROCKWELL ELLIS, an)
19 individual, JOHN LANE, an individual,)
20 RICHARD ZEPF, an individual, and)
21 DOES 3-10.)

22 Defendants.)

Case No. 2:14-CV-04149-PA-SS

**SECOND AMENDED COMPLAINT
FOR DAMAGES**

- 1. 42 U.S.C. § 1983
Deprivation of Liberty Without
Due Process
- 2. 42 U.S.C. § 1983
Excessive Use of Force
- 3. *Monell* Claims on 42 U.S.C. §
1983 Claims
- 4. 42 U.S.C. § 1983
Deliberate Indifference to
Right to Reasonable Security
- 5. 42 U.S.C. § 1983
Infringement Upon Right to Speech
- 6. *Monell* Claims on 42 U.S.C. §
1983 Claims
- 7. Assault
- 8. Battery
- 9. Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This is a complaint for money damages arising under 42 U.S.C. §§ 1983 and 1988.
3
4 Plaintiff seeks redress for deprivation of his rights, privileges and immunities, secured by
5 the Fourth and Fourteenth Amendments to the United States Constitution.

6 **JURISDICTION AND VENUE**

7
8 2. Subject matter jurisdiction for this action is conferred upon this Court pursuant to
9 28 U.S.C. §§1331 and 1343, as it arises under 42 U.S.C. §1983.

10 3. This suit includes supplemental state law claims for assault, battery, and violations
11 of California Civil Code § 52.1. This Court has supplemental jurisdiction over these state
12 law claims pursuant to 28 U.S.C. § 1367(a).

13
14 4. The acts complained of arose in the Central District of California. Therefore,
15 venue properly lies here pursuant to 28 U.S.C. § 1391. Venue in this Court is also proper
16 pursuant to 28 U.S.C. §1391(b)(1) in that one or more Defendants resides in or has its
17 principal place of business in the Central District of California.
18

19 **PARTIES**

20
21 5. At all times material herein, Plaintiff CHARLES OWENS (“OWENS”) was
22 incarcerated in the Santa Barbara County Jail in cell IRC-215 while awaiting trial on
23 criminal charges.
24

25 6. At all times material herein, Defendant COUNTY OF SANTA BARBARA, (the
26 “COUNTY”) was a public entity authorized by law to establish certain departments
27 responsible for enforcing the laws and protecting the welfare of the citizens and public
28

1 employees of Santa Barbara County. At all time mentioned herein, Santa Barbara
2 County Sheriff's Department ("SBSD") was a department of Defendant COUNTY
3 responsible for overseeing the operation, management, and supervision of the Santa
4 Barbara County Jail ("SBCJ"). At all relevant times, the SBCJ was and is managed
5 directly by the SBSB. Defendant COUNTY was ultimately responsible for the
6 management and supervision of the SBSB deputies, including Defendants
7 CHRISTOPHER JOHNSON, ROBERT KIRSCH, ROCKWELL ELLIS, JOHN LANE
8 and RICHARD ZEPF.
9

10
11 7. At all times material herein, Defendant CHRISTOPHER JOHNSON
12 ("JOHNSON") was, and is, a natural person, residing in the Central District of California
13 and acting as a duly appointed sheriff's custody deputy, under color of law, employed by
14 Defendant COUNTY at SBSB which is also located in the Central District of California.
15

16
17 8. At all times material herein, Defendant ROBERT KIRSCH ("KIRSCH") was, and
18 is, a natural person, residing in the Central District of California and acting as a duly
19 appointed sheriff's custody deputy, under color of law, employed by Defendant
20 COUNTY at SBSB which is also located in the Central District of California.
21

22 9. At all times material herein, Defendant ROCKWELL ELLIS ("ELLIS") was, and
23 is, a natural person, residing in the Central District of California and acting as a duly
24 appointed sheriff's custody deputy, under color of law, employed by Defendant
25 COUNTY at SBSB which is also located in the Central District of California.
26

27 10. At all times material herein, Defendant JOHN LANE ("LANE") was, and is, a
28

1 natural person, residing in the Central District of California and acting as a duly
2 appointed sheriff's custody deputy, under color of law, employed by Defendant
3
4 COUNTY at SBSB which is also located in the Central District of California.

5 11. At all times material herein, Defendant RICHARD ZEPF ("ZEPF") was, and is, a
6 natural person, residing in the Central District of California and acting as a duly
7 appointed sheriff's custody deputy, under color of law, employed by Defendant
8
9 COUNTY at SBSB which is also located in the Central District of California.

10 12. Upon information and belief, Defendants DOES 3-10 were each responsible in
11 some manner for the injuries and damages alleged herein. The true names and identities
12 of Defendants DOES 3-10 are presently unknown to Plaintiff. At all relevant times
13 herein Defendants DOES 3-10 were employees and/or agents of COUNTY, acting at all
14 relevant times within the scope of their employment with COUNTY. Defendant DOES
15 3-10 include, *inter alia*, COUNTY agents, officers or supervising employees and/or
16 agents who were involved in any manner in the incidents alleged in this Complaint.
17 Plaintiff will amend this Complaint to allege their true names and capacities when they
18 are ascertained. Plaintiff is informed, believes, and based thereon alleges that each
19 Defendant DOE herein is in some manner responsible for the injuries and damages
20 suffered by Plaintiff OWENS.
21
22
23
24

25 **GENERAL ALLEGATIONS**

26 13. This action is brought under Title 42 U.S.C. §§1983, 1988, and the Fourth and
27 Fourteenth Amendments of the United States Constitution and pursuant to the general
28

1 laws of the United States. Plaintiff alleges that he was assaulted and severely beaten by
2 SBSD deputies with excessive use of force.

3
4 14. At all times relevant to the facts alleged herein Defendants JOHNSON, KIRSCH,
5 ELLIS, LANE and ZEPF, were responsible for the unlawful conduct and resulting injury
6 because they personally participated in the conduct, acted jointly and in concert with
7 others who did so, or authorized, acquiesced, or failed to take action to prevent the
8 unlawful conduct. Each said defendant was acting in the course and scope of their
9 employment and acting under color of law.
10

11
12 15. Defendants JOHNSON, KIRSCH, ELLIS, LANE and ZEPF are being sued in
13 their individual capacities. At the time of the acts complained, each individual defendant
14 was a duly appointed SBSD deputy employed as such by Defendant COUNTY in one of
15 COUNTY'S departments. At the time of the acts hereinafter complained of, each said
16 defendant acted in the course and scope of such employment and acted under color of
17 law, and with the permission of COUNTY.
18

19
20 16. At all material times, municipal Defendant COUNTY was at all times ultimately
21 responsible for the hiring, training, supervision, and discipline of Defendants JOHNSON
22 and KIRSCH, and were responsible for the violations of Plaintiff's rights alleged herein.

23
24 17. At all material times, each Defendant was individually and jointly engaged in
25 tortious activity, resulting in the deprivation of Plaintiff's constitutional rights and other
26 harm.

27
28 18. Plaintiff is informed and believes that each Defendant sued herein was responsible

1 in some manner for the events as hereinafter described, and proximately caused injuries
2 and damages to Plaintiff.

3
4 **NOTICE TO PUBLIC ENTITIES FOR STATE TORT CLAIMS**

5 19. Plaintiff has fully complied with California Government Code §§ 910 *et seq.* by
6 timely filing claims with Defendants and timely filing this lawsuit thereafter.

7
8 **FACTUAL ALLEGATIONS**

9 20. On June 17, 2013, Plaintiff was incarcerated in the Santa Barbara County
10 Jail in cell IRC-215 while awaiting trial on criminal charges. Plaintiff was originally
11 incarcerated on November 23, 2011.

12
13 21. At approximately 11:30 a.m. on June 17, 2013, Plaintiff was in his cell when he
14 pushed the call button and inquired about when he would visit the day room because it
15 was past his scheduled day room time.

16
17 22. JOHNSON responded to the call and replied in words to the effect of, "Don't you
18 fuckin' worry about it, we'll give you day room when we're ready to give you day room."
19 Plaintiff responded, "You don't have to get an attitude about it."

20
21 23. JOHNSON then said, "Don't push the fuckin' call button again." Plaintiff said
22 words to the effect of, "Don't come at me all stupid" to which JOHNSON responded
23 words to the effect of, "I'll come down there and rough you up" (or "...fuck you up").
24 Plaintiff responded "Not without backup or some handcuffs you won't."

25
26 24. Plaintiff is informed and believes that JOHNSON was in the IRC Tower when he
27 said the above. Plaintiff is informed and believes that JOHNSON was not supposed to
28

1 leave the IRC Tower unless there was some type of emergency which required an
2 immediate response.

3
4 25. A short time later, JOHNSON arrived at Plaintiff's cell. KIRSCH was with
5 JOHNSON. They both entered Plaintiff's cell. JOHNSON, in a threatening tone, asked
6 Plaintiff, "Now what did you say?" Plaintiff responded, "Don't come down here
7 demanding some respect when you came at me all disrespectful." JOHNSON then said,
8 "Well, you pushed the button on the intercom and you know you're not supposed to push
9 it unless it's an emergency." Plaintiff then stated "I pushed the button to see when we
10 were coming out and you got all stupid in the mouth." JOHNSON replied, "Just for that,
11 I'm gonna have you slammed down for the rest of the day," which Plaintiff understood to
12 mean that he would be locked in his cell for the rest of the day.

13
14
15 26. JOHNSON AND KIRSCH walked out of the cell and as they were leaving,
16 Plaintiff said words to the effect of, "That's some bullshit." One of the deputies tried to
17 grab the cell door as it was closing, but the door closed and locked.

18
19 27. The deputies then called up to the tower to request that it be reopened. The door
20 was again unlocked. JOHNSON entered the cell and ordered Plaintiff to turn around and
21 put his hands behind his back. Plaintiff complied.

22
23 28. At the time of the incident Plaintiff was 5'6" and weighed 195 pounds. JOHNSON
24 was approximately 6'0" and more than 250 pounds.

25
26 29. JOHNSON told Plaintiff to face the cell wall and put his hands behind his back.
27 Plaintiff complied. JOHNSON then approached Plaintiff. JOHNSON leaned down, with
28

1 his face an inch or two from Plaintiff's ear. He was close enough that Plaintiff could feel
2 the heat from JOHNSON's breath on his ear and neck, when, again in a threatening tone,
3 JOHNSON asked, "Now what did you say?"
4

5 30. Plaintiff took a step forward, kept his hands behind his back, turned his head to the
6 side and said, "What the fuck are you doing?" JOHNSON ordered him to turn around,
7 and immediately grabbed one of Plaintiff's arms. KIRSCH then stepped forward and
8 grabbed Plaintiff's other arm. They then applied handcuffs to both wrists and tightened
9 them down very tight so that they hurt both of Plaintiff's wrists. KIRSCH grabbed the
10 chain between the cuffs and twisted it causing Plaintiff pain.
11
12

13 31. Plaintiff was then escorted out of his cell with JOHNSON holding one arm and
14 KIRSCH holding the other. As they proceeded down the hallway, KIRSCH pushed
15 Plaintiff against the closed door of one of the holding cells in the booking area. Plaintiff
16 believed that KIRSCH was trying to get a reaction out of him and Plaintiff just smiled and
17 shook his head from side to side. They then continued walking down the hallway and
18 then KIRSCH again pushed Plaintiff into another closed door.
19
20

21 32. Plaintiff said words to the effect of, "Why would you do that? That's some
22 coward ass shit." KIRSCH told Plaintiff to shut up and then they continued down the
23 hall. When they got to a hallway door, one of the deputies ordered Plaintiff to stand
24 against the wall, which Plaintiff understood to mean stand close to the wall facing the
25 wall. Plaintiff complied. They waited a little while for the hallway door to be opened and
26 during this time, Plaintiff again asked the deputies, "Why did you push me into the door?"
27
28

1 That was some coward ass shit.” One of the deputies told Plaintiff to shut up.

2 33. Plaintiff was standing with his face close to the wall, shaking his head back and
3 forth and possibly mumbling about what he perceived to be the deputies’ mistreatment of
4 himself when JOHNSON suddenly grabbed one of his arms, (which remained tightly
5 handcuffed to the other arm behind his back), and then spun him away from the wall and
6 slammed him down face first on the cement floor.
7
8

9 34. JOHNSON then held Plaintiff face down on the cement floor when KIRSCH
10 approached. KIRSCH then dropped from a standing position knee first and landed on top
11 of Plaintiff. KIRSCH’s knee connected to the side of Plaintiff’s rib cage. One or both of
12 the deputies then delivered repeated strikes to Plaintiff’s torso with their knees. Plaintiff
13 also felt a blow to the small of his back which he believed felt more like an elbow. The
14 last two blows from the deputies’ knees were the hardest and they knocked the wind out
15 of Plaintiff and caused him significant pain.
16
17

18 35. After the final knee strike, a jail deputy by the name of Ms. Reynoso and two
19 uniformed non-custodian or “street” deputies arrived and asked JOHNSON AND
20 KIRSCH if they needed any help. JOHNSON or KIRSCH then said, “No, we got this.”
21 JOHNSON or KIRSCH then pulled Plaintiff up by his arms from the floor, causing him
22 further pain because his handcuffed arms were bent backwards in an unnatural position
23 causing his full weight to borne at his shoulder joints. The entire incident in the hallway
24 was captured on video by a security camera.
25
26

27 36. KIRSCH asked JOHNSON where they should take Plaintiff. JOHNSON replied
28

1 words to the effect of, "Let's throw his ass in the safety cell." Defendant ELLIS was
2 close by and said, "I'll get the door." Defendant ELLIS opened the door to the safety cell
3 and KIRSCH, JOHNSON and Defendant ELLIS walked Plaintiff inside.
4

5 37. KIRSCH then grabbed Plaintiff's handcuffs, twisted them, and took him to the
6 ground. One of the Defendants or Defendant ELLIS then said, "Get his legs." Plaintiff
7 was then told to cross his legs, and Defendant ELLIS sat on Plaintiff's crossed ankles so
8 that he could not move his legs. Deputies JOHNSON and KIRSCH each held one of
9 Plaintiff's arms. While he was on the ground, KIRSCH again twisted Plaintiff's
10 handcuffs causing him severe pain. Plaintiff called JOHNSON a "coward" for doing that
11 while he had his handcuffs on and could not defend himself. The handcuffs were then
12 removed. One or more of JOHNSON, KIRSCH and Defendant ELLIS then told Plaintiff
13 not to get up until they had left the cell. They then got up, left, and closed the door.
14
15
16

17 38. The beating by Defendants caused Plaintiff to have the wind knocked out of him,
18 and he laid on the ground for a short time trying to catch his breath. When he got up, he
19 began coughing up blood.
20

21 39. After a short period of time, Plaintiff called out to an administrative worker, Mrs.
22 Smith, and told her that he needed to see a nurse. She asked him what happened and he
23 explained that he was beaten and kneed by Defendants. Mrs. Smith said that she would
24 summon medical staff. Mrs. Smith then came back with Cpl. Williams. Mrs. Smith
25 asked Plaintiff if he "was going to give her problems." Plaintiff said no, he needed to see
26 the nurse because he was coughing up blood. Mrs. Smith told Plaintiff to calm down and
27
28

1 try to catch his breath.

2 40. A nurse was then summoned. She diagnosed Plaintiff with bruised ribs, internal
3 bleeding, and bruises, among other injuries. Battered, bruised, and coughing up blood,
4 Plaintiff was then left alone in the safety cell for approximately fifteen hours.
5

6 41. On or about June 18, 2013, the Public Defender's Office for the County of Santa
7 Barbara submitted a complaint of unnecessary use of force by Defendants JOHNSON and
8 KIRSCH to SBSD. SBSD allegedly immediately initiated an investigation into the
9 complaint.
10

11 42. Prior to the beating by Defendants JOHNSON and KIRSCH, Plaintiff was housed
12 in IRC 200 which, in the SBCJ, is Protective Custody and houses a maximum of 32
13 inmates. One day after the beating, Plaintiff is informed and believes that Defendants
14 KIRSCH and JOHNSON made the decision to hold Plaintiff in a safety cell for
15 approximately 15 hours after he was beaten. Defendant LANE made the decision to
16 classify Plaintiff as a violent/assaultive inmate and give him a "red band," and then move
17 him from the IRC 200 (Protective Custody), and place him in Administrative Segregation.
18 Defendant ZEPF repeatedly made the decisions to maintain and continue the mis-
19 classification of Plaintiff throughout the remainder of his incarceration in the jail.
20
21

22 43. The cell Plaintiff was assigned to in the Administrative Segregation Unit was
23 small, bare and isolating. Many inmates in SBCJ colloquially refer to Administrative
24 Segregation as "the hole." Due to his classification, his visitors were restricted and he
25 was shackled whenever he was moved from the cell. In addition, Defendant JOHNSON
26
27
28

1 was assigned to Administrative Segregation and Plaintiff saw him regularly which caused
2 Plaintiff to be fearful and uncomfortable.

3
4 44. Although Plaintiff wrote several grievances complaining that he did not deserve
5 the "red-band" reclassification or the placement into Administrative Segregation, he was
6 told that he would have to stay there pending further investigation. For instance, on or
7 about July 2, 2013, Plaintiff requested that Defendant ZEPF look at the video of
8 Defendants Johnson and Kirsch to see that the police reports filed by them were wrong,
9 and to reclassify him.

10
11 45. On or about August 19, 2013, the Chief Investigator at the Santa Barbara County
12 Public Defenders Office wrote SBSO Chief Laz Salinas requesting that Plaintiff be taken
13 off of "Red Band" and allowed to return to IRC 215 in light of the fact that Defendants
14 Johnson and Kirsch were facing felony charges related to the incident.

15
16 46. Plaintiff remained in Administrative Segregation during the remainder of his time
17 at the Santa Barbara County Jail. He was released to the custody of the California
18 Department of Corrections and Rehabilitation in December 2014.

19
20 47. Plaintiff is informed and believes that Defendant LANE was the initial decision-
21 maker as to Plaintiff's custody classification after his release from the safety cell. Plaintiff
22 is further informed and believes that Defendant ZEPF was the decision-maker as to
23 Plaintiff's custody classification during the remainder of his detention at the Santa
24 Barbara Jail.
25
26

27 48. At some point after the incident, JOHNSON prepared and submitted a police
28

1 report falsely stating that Plaintiff had physically resisted the Defendant Deputies and
2 omitted the fact that while Plaintiff was handcuffed on the ground, Plaintiff was kicked
3 and kneed by Defendant Deputies.
4

5 49. Eight days after the beating, Plaintiff was finally taken to the hospital for a medical
6 examination.
7

8 50. Plaintiff suffered severe injuries as a result of being beaten and tightly handcuffed
9 by JOHNSON and KIRSCH, including but not limited to, bruised ribs, internal bleeding,
10 wrist injuries and blunt force trauma.
11

12 51. On August 16, 2013, Defendants JOHNSON and KIRSCH were each charged with
13 a felony violation of California Penal Code § 149, assault by a public officer, stemming
14 from their assault on Plaintiff in Santa Barbara County Superior Court Case No. 1430539.
15 The complaint against them alleged that they beat Plaintiff “under color of authority, the
16 defendants being then and there public officers.”
17

18 52. On August 30, 2013, JOHNSON and KIRSCH were arraigned on the charges in
19 Santa Barbara.
20

21 53. On April 10, 2014, JOHNSON and KIRSCH were indicted by a federal grand jury
22 in the United States District Court for the Central District of California on felony
23 violations of 18 U.S.C. §§ 242, 2, deprivation of rights under the color of law and aiding
24 and abetting in USDC case no. 2:14-CR-00208. JOHNSON was also charged with a
25 violation of U.S.C. § 18:1512(b)(3), obstruction of justice. They were arraigned on these
26 charges on April 11, 2014.
27
28

1 54. Plaintiff is informed and believes that JOHNSON and KIRSCH have used threats
2 of violence and excessive force on inmates other than himself prior to the incident,
3 including but not limited to, several instances in which one or both of them used
4 excessive force on mentally ill inmates.
5

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of Civil Rights: Deprivation of Liberty Without Due Process**

8 **(42 U.S.C. § 1983/4th, 8th and 14th Amendments):**

9 **Against Defendants JOHNSON, KIRSCH, ELLIS and DOES**

10 55. Plaintiff incorporates by reference and realleges paragraphs 1 through 54, as
11 though set forth herein *verbatim*.
12

13 56. This action arises under 42 U.S.C. §§ 1983 and 1988, the United States
14 Constitution, and common law principles. On or about June 17, 2013, in Santa Barbara
15 County, within the Central District of California, Defendants JOHNSON, KIRSCH,
16 ELLIS and DOES, then sworn law enforcement officers and custody deputies at the
17 SBCJ, each aiding and abetting the other, while acting under color of law, assaulted
18 Plaintiff, which resulted in bodily injury to Plaintiff, and thereby willfully deprived
19 Plaintiff of the right and privilege secured and protected by the Constitution and laws of
20 the United States not to be deprived of liberty without due process of law, which includes
21 the right of a pretrial detainee not to be subjected to a law enforcement officer's use of
22 force amounting to punishment.
23
24
25
26

27 57. As a direct and proximate result of Defendants' wrongful conduct described
28

1 hereinabove, Plaintiff suffered physical and emotional injuries, including but not limited
2 to, bruised ribs, internal bleeding, wrist injuries and blunt force trauma, and severe
3 emotional distress.
4

5 58. Plaintiff has suffered special and general damages in an amount to be proven at
6 trial. These injuries and damages are ongoing.
7

8 59. In engaging in the conduct alleged herein, Defendants JOHNSON, KIRSCH,
9 ELLIS and DOES acted with the intent to injure, vex, annoy and harass Plaintiff, and
10 subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
11 with the intention of causing Plaintiff injury and depriving him of his constitutional
12 rights.
13

14 60. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
15 against Defendants JOHNSON, KIRSCH, ELLIS and DOES.
16

17 61. Further, as a result of the foregoing, Plaintiff seeks an award of reasonable
18 attorneys' fees and costs according to proof, pursuant to 42 U.S.C. §1988.
19

20 **SECOND CLAIM FOR RELIEF**

21 **Violation of Civil Rights: Excessive Use of Force**

22 **(42 U.S.C. § 1983/4th Amendment):**

23 **Against Defendants JOHNSON, KIRSCH, ELLIS and DOES**

24 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 54 and 55
25 through 61, as though set forth herein *verbatim*.
26

27 63. This action arises under 42 U.S.C. §§ 1983 and 1988, the United States
28

1 Constitution, and common law principles. By engaging in the conduct described
2 hereinabove, Defendants JOHNSON, KIRSCH, ELLIS and DOES, were acting or
3 pretending to act, under the color of state law as law enforcement deputies and agents
4 employed by Defendant COUNTY at SBSB, and violated Plaintiff's civil rights afforded
5 to him under the United States Constitution, including privileges and immunities secured
6 to Plaintiff by the Constitution of the United States, namely, Plaintiff's right to be free
7 from excessive and unreasonable force in violation of his rights protected under the
8 Fourth Amendment.
9

10
11 64. As a direct and proximate result of Defendants' wrongful conduct described
12 hereinabove, Plaintiff suffered physical and emotional injuries, including but not limited
13 to, bruised ribs, internal bleeding, wrist injuries and blunt force trauma, and severe
14 emotional distress.
15

16
17 65. Plaintiff has suffered special and general damages in an amount to be proven at
18 trial. These injuries and damages are ongoing.

19
20 66. In engaging in the conduct alleged herein, Defendants JOHNSON, KIRSCH,
21 ELLIS and DOES acted with the intent to injure, vex, annoy and harass Plaintiff, and
22 subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
23 with the intention of causing Plaintiff injury and depriving him of his constitutional
24 rights.
25

26 67. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
27 against Defendants JOHNSON, KIRSCH, ELLIS and DOES.
28

1 68. Further, as a result of the foregoing, Plaintiff seeks an award of reasonable
2 attorneys' fees and costs according to proof, pursuant to 42 U.S.C. §1988.
3

4 **THIRD CLAIM FOR RELIEF**

5 ***Monell Claims (42 U.S.C. 1983/1st, 4th, 8th, and 14th Amendments)***

6 **Against Defendant COUNTY**

7
8 69. Plaintiff incorporates by reference and realleges paragraphs 1 through 54, 55
9 through 61, 63 through 68, as though set forth herein *verbatim*.

10 70. Plaintiff brings this cause of action under 42 U.S.C. § 1983, as against Defendant
11 COUNTY.

12
13 71. The individual defendant deputies' violations of Plaintiff's Fourth and Fourteenth
14 Amendment rights to be free from excessive use of force were the direct and proximate
15 results of Defendant COUNTY'S maintaining longstanding customs, policies, practices
16 and/or procedures which tolerate and condone Defendant deputies' violations, set forth
17 hereinbelow.
18

19 72. These longstanding customs, policies, practices and/or procedures, include, but are
20 not limited to, Defendant COUNTY'S standard operating procedures as well as accepted
21 practices.
22

23 73. Said customs, policies, practices and/or procedures include, *inter alia*: an ongoing
24 pattern of condoning and having a deliberate indifference towards citizens' constitutional
25 rights in connection with the use of excessive force or violence in a reckless and
26 unreasonable manner committed by SBSB deputies and the public denial or minimization
27
28

1 of rampant problems of dishonesty and brutality within the SBSB.

2 74. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
3 knew, or in the exercise of reasonable care should have known prior to June 17, 2013,
4 that SBSB deputies, including Defendants JOHNSON, KIRSCH, ELLIS and DOES,
5 were engaging in the conduct described hereinabove.
6

7 75. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
8 knew, or in the exercise of reasonable care should have known prior to June 17, 2013,
9 that Defendants JOHNSON, KIRSCH, ELLIS and DOES and other deputies employed at
10 SBSB had a history, propensity, pattern and practice of adhering to the unlawful and
11 unconstitutional actions taken under the color of law as described herein and above.
12

13 76. Notwithstanding this information and the history of the deputies, including
14 Defendants JOHNSON, KIRSCH, ELLIS and DOES, Plaintiff is informed, believes and
15 based thereon alleges that Defendant COUNTY failed to properly screen applicants and
16 hired persons who were psychologically unfit for duty, and allowed the use of
17 unreasonable police tactics which lead to the constitutional violations of Plaintiff's
18 constitutional rights as alleged herein and above.
19
20

21 77. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
22 generally failed to train and supervise SBSB deputies, including Defendants JOHNSON,
23 KIRSCH, ELLIS and DOES, in order to halt and prevent the type of conduct which
24 resulted in violating Plaintiff's constitutional rights.
25
26

27 78. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
28

1 has customs, policies or practices which reject and ignore misconduct of SBSB deputies
2 and fail to impose discipline. As a result, the custom, practice or policy results in the
3 retention of deputies such as Defendants JOHNSON, KIRSCH, ELLIS and DOES who
4 have a propensity to cause constitutional violations such as use of excessive and brutal
5 force on jail inmates. This failure to discipline condones, ratifies, promotes and
6 perpetuates SBSB deputies' misconduct and their "code of silence" and was a moving
7 force behind the violations of Plaintiff's constitutional rights.
8
9

10 79. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
11 expressly or tacitly encouraged, ratified, and/or approved of the acts and/or omissions
12 alleged herein, and knew that such conduct was unjustified and would result in violations
13 of Plaintiff's constitutional rights.
14

15 80. As a result of the foregoing, Plaintiff was subjected to physical and
16 emotional injuries that were a direct and proximate result of Defendant COUNTY'S
17 failure to maintain customs, policies, practices or procedures designed to protect the
18 constitutional rights of the inmates and pre-trial detainees in the SBCJ.
19
20

21 81. The above described customs, policies, practices and/or procedures demonstrate a
22 deliberate indifference on the part of the policy makers of Defendant COUNTY to the
23 constitutional rights of persons within COUNTY and were a moving force behind the
24 violations of Plaintiff's rights alleged herein.
25

26 82. Defendant COUNTY expressly or tacitly encouraged, ratified, and/or approved of
27 the acts and/or omissions of the Defendant deputies alleged herein, and knew that such
28

1 conduct was unjustified and would result in violations of Plaintiff's constitutional rights.

2 **FOURTH CLAIM FOR RELIEF**

3
4 **Violation of Civil Rights: Deliberate Indifference to Right to Reasonable Security**

5 **(42 U.S.C. § 1983/8th and 14th Amendments):**

6 **Against Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES**

7
8 83. Plaintiff incorporates by reference and realleges paragraphs 1 through 54, 55
9 through 61, 63 through 68 and 70 through 82, as though set forth herein *verbatim*.

10 84. This action arises under 42 U.S.C. §§ 1983 and 1988, the United States
11 Constitution, and common law principles. By engaging in the conduct described
12 hereinabove, Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES
13 violated Plaintiff's civil rights afforded to him under the United States Constitution,
14 including privileges and immunities secured to Plaintiff by the Constitution of the United
15 States, namely, Plaintiff's right as a pre-trial detainee to be free from cruel and unusual
16 punishment as well as his right to due process, all in violation of his rights protected
17 under the Eighth and Fourteenth Amendments. Specifically, Defendants JOHNSON,
18 KIRSCH and ELLIS wrongfully held Plaintiff in a safety cell for approximately 15 hours
19 after he was beaten. Thereafter, Defendant LANE wrongfully classified Plaintiff as a
20 violent/assaultive inmate and gave him a "red band," and then moved him from the IRC
21 200 (Protective Custody), and placed him in Administrative Segregation. Then
22 Defendant ZEPF wrongfully maintained and continued the classification of Plaintiff as a
23 violent/assaultive inmate and gave him a "red band," Further, despite Plaintiff's
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1 numerous complaints that he was misclassified, Defendants failed to reclassify Plaintiff
2 during the remainder of his incarceration at the Santa Barbara County Jail. Plaintiff was
3 released to the custody of the California Department of Corrections and Rehabilitation in
4 December 2014.
5

6 85. Because the cells in the Administrative Segregation Unit are small and bare and
7 inmates are housed alone in their cells, many inmates in SBCJ colloquially refer to
8 Administrative Segregation as “the hole.” Defendants committed these acts for three
9 reasons: (1) to punish Plaintiff; (2) to silence Plaintiff so that he would not report the
10 beating; and (3) to retaliate against Plaintiff for the exercise of his First Amendment right
11 to free speech. Generally, it appears that Plaintiff was beaten, reclassified as a
12 violent/assaultive inmate, and rehoused in a more restrictive setting because he rang the
13 buzzer, inquired about his day room time, protested against Defendant JOHNSON’s
14 threatened use of force, complained about Defendant JOHNSON pushing him against
15 walls and/or doors when he was handcuffed and helpless, and complained afterwards
16 about the beating he received from the Deputy Defendants.
17

18 86. As a direct and proximate result of Defendants JOHNSON, KIRSCH, ELLIS,
19 LANE, ZEPF and DOES’ wrongful conduct described hereinabove, Plaintiff suffered
20 physical and emotional injuries.
21

22 87. Plaintiff has suffered special and general damages in an amount to be proven at
23 trial. These injuries and damages are ongoing.
24

25 88. In engaging in the conduct alleged herein, Defendants JOHNSON, KIRSCH,
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1 ELLIS, LANE, ZEPF and DOES acted with the intent to injure, vex, annoy and harass
2 Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of
3 Plaintiff's rights with the intention of causing Plaintiff injury and depriving him of his
4 constitutional rights.
5

6 89. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
7 against Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES.
8

9 90. Further, as a result of the foregoing, Plaintiff seeks an award of reasonable
10 attorneys' fees and costs according to proof, pursuant to 42 U.S.C. §1988.
11

12 **FIFTH CLAIM FOR RELIEF**

13 **Violation of Civil Rights: Infringement Upon Right to Speech**

14 **(42 U.S.C. § 1983/1st Amendment):**

15 **Against Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES**
16

17 91. Plaintiff incorporates by reference and realleges paragraphs 1 through 54, 55
18 through 61, 63 through 68, 70 through 82, and 84 through 90, as though set forth herein
19 *verbatim*.
20

21 92. This action arises under 42 U.S.C. §§ 1983 and 1988, the United States
22 Constitution, and common law principles. By engaging in the conduct described
23 hereinabove, Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES
24 violated Plaintiff's civil rights afforded to him under the United States Constitution,
25 including privileges and immunities secured to Plaintiff by the Constitution of the United
26 States, namely, Plaintiff's right to free speech under the First Amendment. Specifically,
27
28

1 Defendants JOHNSON, KIRSCH, ELLIS, and LANE each took part in the wrongful
2 incarceration of Plaintiff in a safety cell and in the wrongful classification of Plaintiff as a
3 violent/assaultive inmate and gave him a “red band” which resulted in his being moved
4 from the IRC 200 which is Protective Custody and placed in Administrative Segregation.
5 Further, Defendant ZEPF maintained the misclassification of Plaintiff throughout the
6 remainder of Plaintiff’s detention at Santa Barbara Jail in spite of complaints from
7 Plaintiff and personnel at the Santa Barbara County Public Defender’s Office. Plaintiff
8 alleges Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES committed
9 these acts in order to silence Plaintiff so that he would not report the beating and also in
10 retaliation for the exercise of his right to speech in context with his right to use the day
11 room.
12

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15 93. As a direct and proximate result of Defendants JOHNSON, KIRSCH, ELLIS,
16 LANE, ZEPF and DOES wrongful conduct described hereinabove, Plaintiff suffered
17 physical and emotional injuries.
18

19 94. Plaintiff has suffered special and general damages in an amount to be proven at
20 trial. These injuries and damages are ongoing.
21

22 95. In engaging in the conduct alleged herein, Defendants JOHNSON, KIRSCH,
23 ELLIS, LANE, ZEPF and DOES acted with the intent to injure, vex, annoy and harass
24 Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of
25 Plaintiff’s rights with the intention of causing Plaintiff injury and depriving him of his
26 constitutional rights.
27
28

1 96. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
2 against Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES.

3
4 97. Further, as a result of the foregoing, Plaintiff seeks an award of reasonable
5 attorneys' fees and costs according to proof, pursuant to 42 U.S.C. §1988.

6 **SIXTH CLAIM FOR RELIEF**

7
8 ***Monell* Claims on 42 U.S.C. 1983 Claims for Deliberate Indifference to Right to**
9 **Reasonable Security and Infringement Upon Right to Speech**

10 **Against Defendant COUNTY**

11 98. Plaintiff incorporates by reference and realleges paragraphs 1 through 54, 55
12 through 61, 63 through 68, 70 through 82, 84 through 90, and 92 through 98, as though
13 set forth herein *verbatim*.

14
15 99. Plaintiff brings this cause of action under 42 U.S.C. § 1983, as against Defendant
16 COUNTY.

17
18 100. Defendant JOHNSON, KIRSCH, ELLIS, LANE, and ZEPF's violations of
19 Plaintiff's rights to reasonable security and speech were the direct and proximate results
20 of Defendant COUNTY'S maintaining longstanding customs, policies, practices and/or
21 procedures which tolerate and condone Defendant deputies' violations, set forth
22 hereinbelow.

23
24 101. These longstanding customs, policies, practices and/or procedures, include, but are
25 not limited to, Defendant COUNTY'S standard operating procedures as well as accepted
26 practices.
27
28

1 102. Said customs, policies, practices and/or procedures include, *inter alia*: an ongoing
2 pattern of condoning and having a deliberate indifference towards citizens' constitutional
3 rights to reasonable security and speech committed by SBSB deputies and the public
4 denial or minimization of rampant problems of dishonesty and brutality within the SBSB.
5

6 103. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
7 knew, or in the exercise of reasonable care should have known prior to June 17, 2013,
8 that SBSB deputies, including Defendants JOHNSON, KIRSCH, ELLIS, LANE, and
9 ZEPF, were engaging in the conduct described hereinabove.
10

11 104. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
12 knew, or in the exercise of reasonable care should have known prior to June 17, 2013,
13 that Defendants JOHNSON, KIRSCH, ELLIS, LANE, and ZEPF and other deputies
14 employed at SBSB had a history, propensity, pattern and practice of adhering to the
15 unlawful and unconstitutional actions taken under the color of law as described herein
16 and above.
17

18 105. Notwithstanding this information and the history of the deputies, including
19 Defendants JOHNSON, KIRSCH, ELLIS, LANE, and ZEPF, Plaintiff is informed,
20 believes and based thereon alleges that Defendant COUNTY failed to properly screen
21 applicants and hired persons who were psychologically unfit for duty, and allowed the use
22 of unreasonable police tactics which lead to the constitutional violations of Plaintiff's
23 constitutional rights as alleged herein and above.
24
25

26 106. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
27
28

1 generally failed to train and supervise SBSB deputies, including Defendants JOHNSON,
2 KIRSCH, ELLIS, LANE, and ZEPF, in order to halt and prevent the type of conduct
3 which resulted in violating Plaintiff's constitutional rights.
4

5 107. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
6 has customs, policies or practices which reject and ignore misconduct of SBSB deputies
7 and fail to impose discipline. As a result, the custom, practice or policy results in the
8 retention of deputies such as Defendants JOHNSON, KIRSCH, ELLIS, LANE, and ZEPF
9 who have a propensity to cause constitutional violations such as use of excessive and
10 brutal force on jail inmates. This failure to discipline condones, ratifies, promotes and
11 perpetuates SBSB deputies' misconduct and their "code of silence" and was a moving
12 force behind the violations of Plaintiff's constitutional rights.
13
14

15 108. Plaintiff is informed, believes and based thereon alleges that Defendant COUNTY
16 expressly or tacitly encouraged, ratified, and/or approved of the acts and/or omissions
17 alleged herein, and knew that such conduct was unjustified and would result in violations
18 of Plaintiff's constitutional rights.
19
20

21 109. As a result of the foregoing, Plaintiff was subjected to physical and
22 emotional injuries that were a direct and proximate result of Defendant COUNTY'S
23 failure to maintain customs, policies, practices or procedures designed to protect the
24 constitutional rights of the inmates and pre-trial detainees in the SBCJ.
25

26 110. The above described customs, policies, practices and/or procedures demonstrate a
27 deliberate indifference on the part of the policy makers of Defendant COUNTY to the
28

1 constitutional rights of persons within COUNTY and were a moving force behind the
2 violations of Plaintiff's rights alleged herein.

3
4 112. Defendant COUNTY expressly or tacitly encouraged, ratified, and/or approved of
5 the acts and/or omissions of the Defendant deputies alleged herein, and knew that such
6 conduct was unjustified and would result in violations of Plaintiff's constitutional rights.

7
8 **SEVENTH CLAIM FOR RELIEF**

9 **Assault**

10 **Against Defendants JOHNSON, KIRSCH, ELLIS and DOES.**

11 113. Plaintiff incorporates by reference and realleges each and every allegation
12 contained in paragraphs 1 through 54, 55 through 61, 63 through 68, 70 through 82, 84
13 through 90, 92 through 98, and 100 through 113 of this Complaint, as fully set forth
14 herein *verbatim*.

15
16
17 114. The conduct of Defendants JOHNSON, KIRSCH, ELLIS and DOES intentionally
18 and negligently caused Plaintiff to reasonably believe that he was about to be touched in a
19 harmful and/or offensive manner.

20
21 115. Plaintiff did not consent to the conduct of any Defendant.

22 116. Plaintiff was harmed by the conduct of Defendants JOHNSON, KIRSCH, ELLIS
23 and DOES.

24
25 117. Plaintiff is informed, believes, and based thereon alleges that in engaging in the
26 conduct alleged herein, Defendants JOHNSON, KIRSCH, ELLIS and DOES acted with
27 the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel and
28

1 unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing
2 Plaintiff injury and depriving him of his constitutional rights.

3
4 118. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
5 against Defendants JOHNSON, KIRSCH, ELLIS and DOES.

6 **EIGHTH CLAIM FOR RELIEF**

7
8 **Battery**

9 **Against Defendants JOHNSON, KIRSCH, ELLIS and DOES.**

10 119. Plaintiff incorporates by reference and realleges each and every allegation
11 contained in paragraphs 1 through 54, 55 through 61, 63 through 68, 70 through 82, 84
12 through 90, 92 through 98, 100 through 113, and 115 through 118 of this Complaint, as
13 fully set forth herein *verbatim*.

14
15 120. Defendants JOHNSON, KIRSCH, ELLIS and DOES intentionally and negligently
16 performed acts that resulted in harmful and/or offensive contacts with Plaintiff's person.

17
18 121. Defendants JOHNSON, KIRSCH, ELLIS and DOES harmful and/or offensive
19 contact caused injury, damage, loss and harm to Plaintiff.

20
21 122. Plaintiff is informed, believes, and based thereon alleges that in engaging in the
22 conduct alleged herein, Defendants JOHNSON, KIRSCH, ELLIS and DOES acted with
23 the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel and
24 unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing
25 Plaintiff injury and depriving him of his constitutional rights.

26
27 123. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
28

1 against Defendants JOHNSON, KIRSCH, ELLIS and DOES.

2 **NINTH CLAIM FOR RELIEF**

3 **California Civil Code § 52.1**

4 **Interference with Exercise of Civil Rights**

5 **Against Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES.**

6
7
8 124. Plaintiff incorporates by reference and realleges each and every allegation
9 contained in paragraphs 1 through 54, 55 through 61, 63 through 68, 70 through 82, 84
10 through 90, 92 through 98, 100 through 113, 115 through 118, and 120 through 123 of
11 this Complaint, as fully set forth herein *verbatim*.

12
13 125. Plaintiff brings this cause of action as against Defendants JOHNSON, KIRSCH,
14 ELLIS, LANE, ZEPF and DOES.

15
16 126. As alleged above, the conduct of the Defendants as described herein violated
17 California Civil Code § 52.1, in that they interfered with Plaintiff's exercise and
18 enjoyment of his civil rights, including but not limited to, his right to be free from
19 excessive use of force, to be secure in his person and effects and his rights to due process
20 and speech.

21
22 127. Plaintiff is informed, believes, and based thereon alleges that in engaging in the
23 conduct alleged herein, Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and
24 DOES acted with the intent to injure, vex, annoy and harass Plaintiff, and subjected
25 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights with the
26 intention of causing Plaintiff injury and depriving him of his constitutional rights.
27
28

1 128. As a result of the foregoing, Plaintiff seeks exemplary and punitive damages
2 against Defendants JOHNSON, KIRSCH, ELLIS, LANE, ZEPF and DOES.

3
4 129. As a direct and proximate cause of the aforementioned actions of Defendants and
5 DOES, Plaintiff was injured as set forth above, thereby entitling Plaintiff to damages
6 against Defendants under Cal. Civil Code § 52.1, including but not limited to actual
7 damages, exemplary damages, civil penalties, and attorney's fees.
8

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, on
11 each and every cause of action as follows:
12

- 13 1. For declaratory and injunctive relief preventing similar future harm;
- 14 2. For general damages according to proof at trial;
- 15 3. For special damages according to proof at trial;
- 16 4. For an award of exemplary damages against Defendants JOHNSON, KIRSCH,
17 ELLIS, LANE, ZEPF and DOES;
- 18 5. For attorney's fees and costs under 42 U.S.C. § 1988, Civil Code §§ 52(b)(3),
19 52.1(h); C.C.P. § 1021.5, or under any other applicable statutes or law;
20
21 6. For an award of Plaintiff's costs of suit incurred herein;
- 22 7. For an award of any applicable statutory penalties;
- 23 8. For an award of any applicable interest amounts; and
24
25 9. For any other relief the Court deems appropriate.
26

27 Dated: February 20, 2015

LAW OFFICES OF BRIAN A. VOGEL, PC.

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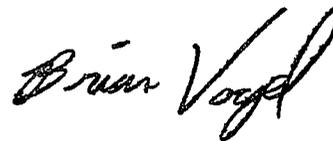
By: 
BRIAN A. VOGEL
Attorney for Plaintiff CHARLES OWENS

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: February 20, 2015

LAW OFFICES OF BRIAN A. VOGEL, PC

By: 
BRIAN A. VOGEL
Attorney for Plaintiff CHARLES OWENS