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

16 ABDUL R. D. SALEM,

17 Plaintiff,

18 vs.

19 UNITED STATES OF AMERICA,  
20 CITY OF LOS ANGELES,  
21 SUPERVISORY CUSTOMS AND  
22 BORDER PROTECTION OFFICER  
23 (“SCBPO”) BRYAN MCKENRICK,  
24 in his official and individual capacity;  
25 CUSTOMS AND BORDER  
26 PROTECTION OFFICER (“CBPO”) ROBERT RECTOR, in his official

Case No.: 5:15-cv-02091-JBG-SP

THIRD AMENDED COMPLAINT

1. Violation of 4<sup>th</sup> Amend. Unreasonable Search and Seizure (*Bivens*)
2. Violation of 4<sup>th</sup> Amend. Excessive Force (*Bivens*)
3. Violation of 5<sup>th</sup> Amend. Equal Protection (*Bivens*)
4. Assault (28 U.S.C. § 2671, *et seq.*)
5. Battery (28 U.S.C. § 2671, *et seq.*)
6. False Imprisonment (28 U.S.C. § 2671, *et seq.*)

1 and individual capacity; CBPO ZOILA  
2 FLORES, in her official and  
3 individual capacity; CBPO ANGEL  
4 COLMENERO, in his official and  
5 individual capacity; CBPO JEREMY  
6 NEWBOLD, in his official and  
7 individual capacity; LOS ANGELES  
8 FIRE DEPARTMENT (“LAFD”)  
9 JEFFREY DAPPER, in his individual  
10 and official capacity; LAFD JEFFREY  
11 SWEGLES, in his individual and  
12 official capacity; and LAFD LADD  
13 STILSON, in his individual and  
14 official capacity, inclusive,

Defendants.

- 7. Intentional Infliction of Emotional Distress (28 U.S.C. § 2671, *et seq.*)
- 8. Negligent Infliction of Emotional Distress (28 U.S.C. § 2671, *et seq.*)
- 9. Negligence (28 U.S.C. § 2671, *et seq.* & Cal. Civ. Code § 1714)
- 10. Violation of Substantive Due Process; Denial of Medical Attention (42 U.S.C. § 1983)

**Demand for Jury Trial**

*Assigned to the Honorable  
Jesus G. Bernal*

**INTRODUCTION**

15 1. Plaintiff Abdul R. D. Salem, Ph.D. (“Plaintiff”) brings this lawsuit  
16 pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of*  
17 *Narcotics*, 403 U.S. 388 (1971), the Constitution of the United States, and the  
18 Federal Tort Claims Act (28 U.S.C. § 2671, *et seq.*) (“FTCA”), and 42 U.S.C. §  
19 1983 for violations of his constitutionally protected rights and for various torts  
20 arising from an abuse of power by United States Customs and Border Protection  
21 officers and local paramedics. Plaintiff is a 77-year-old United States citizen who  
22 was forcibly restrained, searched, injured, and detained by CBP agents.  
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1           2.     The actions of the CBP officers were unwarranted and excessive.  
 2 Plaintiff was forcibly stopped, injured, and detained by CBP officers after clearing  
 3 the Transportation Security Administration’s (“TSA”) security checkpoint without  
 4 incident, remitting his boarding pass to gate agents, and entering the passenger  
 5 boarding bridge. Plaintiff never behaved in a manner that could give rise to  
 6 suspicion of criminal activity, and no contraband was found in his carry-on bags or  
 7 checked luggage. He fully cooperated with the CBP officers at all times. Despite  
 8 his cooperation, CBP officers used unnecessary and disproportionate force against  
 9 Plaintiff. Plaintiff was seen by paramedics during his detention, was not treated  
 10 despite suffering from an obvious arm fracture caused by the CBP officers, and was  
 11 then released from custody without being charged for any offense.

12           3.     This incident was a violation of Plaintiff’s constitutionally protected  
 13 rights. It also directly caused him to experience significant physical and emotional  
 14 injuries, the treatment of which has caused him to incur medical expenses and lose  
 15 work productivity. Plaintiff seeks relief from this Court for his injuries.

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 22                           **JURISDICTION AND VENUE**

23           4.     This Court has subject matter jurisdiction over Plaintiff’s federal  
 24 claims under 28 U.S.C. §§ 1331 and 1346(b).  
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9. Defendant United States of America (“United States”) is the government of the United States of America and is the appropriate defendant under the FTCA for the tort claims in this complaint.

10. Plaintiff is informed and believes, and on that basis alleges, that Supervisory Custom and Border Protection Officer (“CBPO”) Bryan McKenrick, Custom and Border Protection Officer (“CBPO”) Robert Rector, CBPO Newbold, CBPO Flores, and CBPO Angel Colmenero, are employees of CBP, an agency of the government of the United States, charged with the enforcement of customs and immigration laws. At all times relevant to this complaint, SCBPO McKenrick, CBPO Rector, CBPO Newbold, CBPO Flores and CBPO Colmenero are employees of CBP and were acting within the course and scope of their employment for CBP, and under color of law and are in some manner responsible for the acts and omissions herein alleged.

11. Plaintiff is informed, believes and thereupon alleges that each of the individual defendants’ acts were known to, discovered by, approved and/or ratified by CBP and the government of the United States, by and through policymakers, and/or supervisors. Defendants SCBPO McKenrick, CBPO Rector, CBPO Newbold, CBPO Flores and CBPO Colmenero are sued in their individual and official capacities.



1 responsible for creating new artistic works as well as translating numerous plays  
2 from English to Arabic.  
3

4 15. He is approximately five-feet-five inches in height and weighs  
5 approximately 175 pounds. Like many senior citizens, Plaintiff suffers from myriad  
6 age-related diseases including osteoporosis, a medical condition that results in  
7 fragile and brittle bones, and high blood pressure, which is exacerbated during  
8 periods of high stress.  
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11 16. Plaintiff has no criminal record in the United States or in Egypt. He  
12 regularly travels to Egypt to serve as an adjunct professor of literature at the  
13 Academy of Arts in Cairo. For the past several years, he has traveled to Egypt  
14 approximately once per year. On each of those occasions, Plaintiff was never  
15 subjected to a stop, seizure, or search by airport authorities.  
16  
17

18 17. On February 21, 2014 Plaintiff was scheduled to travel to Cairo, Egypt  
19 on British Airways flight 263 (“BA 263”), departing Los Angeles International  
20 Airport (“LAX”) at 8:45 p.m. Plaintiff arrived at LAX around 6:45 p.m. and  
21 checked his baggage with British Airways personnel at approximately 7:15 p.m.  
22 Shortly thereafter, he went through the Transportation Security Administration  
23 (“TSA”) security checkpoint with two carry-on bags.  
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1 Rector and Angel Colmenero (collectively, “officers”), wearing blue uniforms  
2 intercepted Plaintiff and began to angrily yell accusations that he was a “bad man.”  
3

4 21. One of the officers was a heavily-built male with dark skin and black  
5 hair. Another officer was fair skinned with medium build and blonde to light blonde  
6 hair. Finally, the third male officer had a light build and blonde to light blonde hair.  
7  
8 Plaintiff is informed and believes that the officers were CBP employees.

9 22. Once the officers stopped Plaintiff, he was accused of intending to  
10 physically strike CBPO Flores despite making no verbal or non-verbal indication  
11 that he intended to do so. While on the bridge, one of the male officers tightly  
12 grabbed Plaintiff’s right arm. A second male officer tightly grabbed his left arm  
13 and a third male officer tightly gripped Plaintiff’s neck. One of these male officers  
14 exclaimed that they had the right to search him.  
15  
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17 23. Plaintiff made absolutely no attempt to resist the officers’ stop or  
18 physical restraint or to attempt to flee from the officers. His speech was limited to  
19 queries as to why he was being treated like a criminal and pleas to stop hurting him.  
20  
21 No evidence of contraband, weapons, or illegal activity was found on Plaintiff’s  
22 person.  
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25 24. The officers then physically directed Plaintiff approximately ten feet  
26 away from the aircraft but within the bridge area. They instructed him to place his  
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1 two carry-on bags on a nearby table. Plaintiff again inquired why he was being  
2 singled out while other passengers were permitted to uneventfully board the aircraft.  
3  
4 The officers ignored his query and forcefully instructed him to remain silent while  
5 the officers searched through Plaintiff's two carry-on bags.

6  
7 25. The officers continued to physically restrain Plaintiff. He did not resist  
8 their physical restraint or attempt to flee. Instead, he cooperated with every request  
9 by the officers. One of the officers then informed Plaintiff that he would not be  
10 boarding his flight that day.  
11

12 26. The Plaintiff's carry-on bags took approximately 15 to 20 minutes.  
13 Like the prior TSA searches, nothing objectionable was found in the carry-on bags.  
14 The officers found no evidence of contraband or illegal activity during their search.  
15

16 27. Plaintiff did not attempt to obstruct the officers' search of his carry-on  
17 bags. He did not resist the officers' physical restraint nor did he attempt to flee.  
18 Plaintiff's speech was limited to queries as to why he was being treated like a  
19 criminal and pleas to stop hurting him.  
20  
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22 28. Despite finding no evidence of contraband, weapons, or illegal activity  
23 on Plaintiff's person or luggage, Plaintiff was forcefully escorted out of the bridge  
24 and into two separate interrogation rooms at LAX where he was detained,  
25 interrogated, and physically battered and assaulted over the course of several hours.  
26  
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1 been stopped or detained by law enforcement in his life. The officers ignored his  
2 pleas and continued their interrogation in an excessively abusive manner.  
3

4 33. At no point did the CBP officers explain to Plaintiff why he was being  
5 detained, or why a custodial search and seizure was being conducted. Shortly  
6 thereafter, he was escorted to a second detention room on a subterranean floor at  
7  
8 LAX.

9 34. Plaintiff is informed and believes that this second sublevel detention  
10 room was a maximum-security room. There, the officers physically searched  
11 Plaintiff's checked luggage, which had been removed from flight BA 263, and  
12 informed him that he would be arrested and incarcerated if any contraband or  
13 objectionable items were found in his luggage. This search also failed to uncover  
14 any contraband or objectionable items.  
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18 35. A CBP officer then instructed the CBP officer restraining Plaintiff to  
19 remove the handcuffs worn by Plaintiff. At approximately 10:00 p.m., Plaintiff's  
20 luggage was returned to him and he was advised that he was free to leave and that  
21 he had not done anything wrong.  
22

23 36. Plaintiff requested medical attention from the officers because the  
24 bones in his right arm were visibly protruding out of place under his skin. He is  
25 informed and believes that the CBP officers contacted the Los Angeles Fire  
26  
27

1 Department (“LAFD”). Around 10:15 or 10:30 p.m., LAFD sent four (4)  
2 Emergency Medical Services paramedics. Upon their initial examination, LAFD  
3 paramedics diagnosed his injuries as an “obvious” fractured right arm.  
4

5 37. LAFD paramedics advised the CBP officers that Plaintiff required  
6 further medical attention. Although Plaintiff was in the officers’ custody and  
7 received a diagnosis from the LAFD paramedics, neither the officers nor LAFD  
8 paramedics fulfilled their legal duty by offering any medical assistance to treat his  
9 fractured arm or transport to a nearby hospital for immediate medical attention.  
10  
11

12 38. At approximately 1:00 a.m., nearly four hours after he was originally  
13 detained, Plaintiff was released from custody. Plaintiff’s cell phone was not  
14 returned.  
15

16 39. Throughout this encounter, the officers were acting within the course  
17 and scope of their employment with CBP. As the agency charged with securing the  
18 borders of the United States, CBP authorizes its officers to enforce customs and  
19 immigration laws. To achieve this purpose, officers are given the authority to  
20 conduct searches without a warrant and arrest individuals pursuant to 8 U.S.C. §  
21 1357 and 8 C.F.R. § 287.5. The search of Plaintiff’s person and property, along with  
22 his detainment, were conducted under this authority.  
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1           40. The U.S. Constitution, however, prohibits officers from conducting  
2 unreasonable searches and seizures and from using excessive force. Indeed, on  
3 April 26, 2013, the secretary of the Department of Homeland security wrote, “In all  
4 we do to secure America, our strategies and our actions must be consistent with the  
5 individual rights and civil liberties by the Constitution and the rule of law.”<sup>1</sup>  
6  
7 Nevertheless, excessive use of force appears to a cultural problem at CBP. For  
8 example, on March 10, 2014, the American Civil Liberties Union wrote to the  
9 United Nations Human Rights Committee complaining of CBP’s pervasive use of  
10 excessive force and lack of transparency. Similarly, in February 2013, The Police  
11 Executive Research Forum, a nonpartisan think tank, found CBP was not diligent  
12 in internal investigations of alleged excessive use of force and that its lax approach  
13 to internal investigations could “lead to tacit approval of bad practices.”<sup>2</sup>  
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22 <sup>1</sup> Janet Napolitano, The Department of Homeland Security’s Commitment to Nondiscriminatory  
23 Law Enforcement and Screening Activities (Dep’t of Homeland Sec., Apr. 26, 2013), *available*  
24 *at* [https://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013\\_0\\_1.pdf](https://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013_0_1.pdf) (last visited  
25 Apr. 28, 2016).

26 <sup>2</sup> U.S. Customs and Border Protection Use of Force Review: Cases and Policies (The Police  
27 Executive Research Forum, Feb. 2013), *available at* [https://www.cbp.gov/sites/default/files/](https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf)  
28 [documents/PERFReport.pdf](https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf) (last visited Apr. 28, 2016); *see also* Vahe Mesropyan, United States  
Customs And Border Protection Engages In Excessive Force For Which There Is No Accountability  
(United Nations Universal Periodic Review, Apr. – May 2015), *available at*  
<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1632&file=EnglishTranslation> (last visited Apr. 28,  
2016).



1 44. As a consequence, Plaintiff has incurred medical expenses and  
2 suffered a loss of income.  
3

4 **FIRST CAUSE OF ACTION**

5 **Unreasonable Search, Seizure, False Arrest, and False Imprisonment in**  
6 **Violation of the Fourth Amendment to the U.S. Constitution Against**  
7 **Defendants SCBPO McKenrick, CBPO Rector, CBPO Newbold, and CBPO**  
8 **Colmenero**  
9 **(*Bivens* Claim)**

10 45. Plaintiff re-alleges each and every allegation above, incorporates them  
11 by reference here, and further alleges the following:  
12

13 46. By their actions described above, including the detention and  
14 interrogation of Plaintiff, Defendants SCBPO McKenrick, CBPO Rector, CBPO  
15 Newbold, and CBPO Colmenero acted under the color of federal law to deprive  
16 Plaintiff of his right to be free from unreasonable searches and seizures, by  
17 searching, seizing, and detaining Plaintiff without reasonable suspicion or probable  
18 cause that he had committed or was committing a crime, in violation of the Fourth  
19 Amendment to the U.S. Constitution.  
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22 47. This cause of action for the violation of Plaintiff's Fourth Amendment  
23 right is brought against these defendants in their individual capacities pursuant to  
24 *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).  
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1 deprived Plaintiff of equal protection of the laws, as guaranteed by the Fifth  
2 Amendment to the Constitution of the United States.

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4 55. As a direct and proximate result of Defendants SCBPO McKenrick,  
5 CBPO Rector, CBPO Flores and CBPO Colmenero's actions, Plaintiff experienced  
6 psychiatric trauma and emotional distress for being profiled on account of his  
7 ethnicity, race, and/or national origin.

8  
9 56. Defendants SCBPO McKenrick, CBPO Rector, CBPO Flores, and  
10 CBPO Colmenero were acting under the color of federal law in their capacity as  
11 CBP officers and their actions were conducted within the scope of their official  
12 duties or employment.  
13

14  
15 57. This cause of action for the violation of Plaintiff's Fifth Amendment  
16 right is brought against these defendants in their individual capacities pursuant to  
17 *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).  
18

19 **FOURTH CAUSE OF ACTION**

20 **Assault in Violation of California Law**

21 **Against Defendant United States of America**

22 **(Federal Tort Claims Act claim)**

23  
24 58. Plaintiff re-alleges each and every allegation above, incorporates them  
25 by reference here, and further alleges the following:  
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**FIFTH CAUSE OF ACTION**

**Battery in Violation of California Law Against Defendant United States  
(Federal Tort Claims Act claim)**

62. Plaintiff re-alleges each and every allegation above, incorporates them by reference here, and further alleges the following:

63. By their actions described above, including stopping, searching, and detaining Plaintiff, and forcibly pushing Plaintiff's head against the table and forcibly pulling his arms behind his back and causing injury to Plaintiff's skull and arm, Defendants SCBPO McKenrick, CBPO Rector, CBPO Newbold, and CBPO Colmenero intended to cause harmful contact, and in fact caused harmful contact to Plaintiff.

64. As a proximate result of the acts alleged herein Plaintiff suffered harm, entitling him to damages in an amount to be proven at trial. Defendants SCBPO McKenrick, CBPO Rector, CBPO Newbold, and CBPO Colmenero committed these actions as law enforcement officers employed by the CBP while acting under the course and scope of their employment and Defendant United States is liable for authorizing and/or acquiescing in the actions of, and/or employing said officers.



1 McKenrick, CBPO Rector, CBPO Newbold, and CBPO Colmenero committed  
2 these actions as employees of the CBP while acting under the course and scope of  
3 their employment and Defendant United States is liable for authorizing and/or  
4 acquiescing in the actions of, and/or employing Defendants SCBPO McKenrick,  
5 CBPO Rector, CBPO Newbold, and CBPO Colmenero.  
6  
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8 This action is brought pursuant to the FTCA under which Defendant United  
9 States is liable for the actions of said officers.  
10

11 **SEVENTH CAUSE OF ACTION**

12 **Intentional Infliction of Emotional Distress in Violation of California Law**  
13 **Against Defendant United States of America**  
14 **(Federal Torts Claims Act claim)**

15 69. Plaintiff re-alleges each and every allegation above, incorporates them  
16 by reference here, and further alleges the following:  
17

18 70. By the actions described above, including, but not limited to, angrily  
19 yelling accusations that he was a “bad man;” refusing to allow him to board his  
20 flight despite finding no evidence of contraband or illegal activity during their  
21 search; forcefully escorting Plaintiff out of the bridge and into two separate  
22 interrogation rooms at LAX, detaining, interrogating; and, causing physical injury  
23 to Plaintiff to the point of causing Plaintiff to nearly faint despite his pain-filled  
24 pleas, Defendants SCBPO McKenrick, CBPO Rector, CBPO Newbold, and CBPO  
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1 Colmenero engaged in extreme and outrageous conduct with the intention and/or  
2 with reckless disregard to the probability of causing severe emotional distress to  
3 Plaintiff. Plaintiff in fact suffered severe emotional distress and Defendants'  
4 actions were a substantial factor in causing such distress.  
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6  
7 71. As a proximate result of the acts alleged herein Plaintiff suffered harm,  
8 entitling him to damages in an amount to be proven at trial. Defendants SCBPO  
9 McKenrick, CBPO Rector, CBPO Newbold, and CBPO Colmenero committed  
10 these actions as law enforcement officers employed by the CBP while acting under  
11 the course and scope of their employment and Defendant United States is liable for  
12 authorizing and/or acquiescing in the actions of, and/or employing Defendants  
13 SCBPO McKenrick, CBPO Rector, CBPO Newbold, and CBPO Colmenero.  
14  
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17 72. This action is brought pursuant to the FTCA under which Defendant  
18 United States is liable for the actions of said officers.  
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20 **EIGHTH CAUSE OF ACTION**

21 **Negligent Infliction of Emotional Distress in Violation of California Law**  
22 **Against Defendant United States of America**  
23 **(Federal Torts Claims Act claims)**

24 73. Plaintiff re-alleges each and every allegation above, incorporates them  
25 by reference here, and further alleges the following:  
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1           79. Defendants breached their duty of reasonable care by negligently  
2 acting or omitting to act in such a way that resulted in Plaintiff's wrongful detention,  
3 the use of excessive force against Plaintiff, and failure to provide subsequent  
4 medical assistance to Plaintiff which these Defendants knew or should have known  
5 posed a substantial risk of grave harm to Plaintiff.  
6  
7

8           80. The Defendants were negligent in performing their duties and failed,  
9 neglected and/or refused to properly and fully discharge their responsibilities by,  
10 among other things:  
11

- 12           a. Failing to review readily available documentation provided by  
13 Plaintiff, specifically his passport and boarding pass;
- 14           b. Failing to respond to Plaintiff's query as to why he was being detained;
- 15           c. Failing to protect Plaintiff from coercive interrogation tactics;
- 16           d. Creating and/or sanctioning policies, patterns, practices and customs  
17 of selecting individuals to detain, interrogate and deny boarding based  
18 on their race and/or ethnicity;
- 19           e. Failing to adequately train and supervise agents performing CBP  
20 duties;  
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- 1 f. Failing to perform a reasonable search of Plaintiff's belongings and
- 2 failing to cease detention and interrogation of Plaintiff upon failure to
- 3 produce evidence of weapons and/or contraband;
- 4
- 5 g. Failing to provide subsequent medical attention; and
- 6
- 7 h. Detaining, holding and seriously injuring a United States citizen.

8 81. As a proximate result of the acts alleged herein Plaintiff suffered harm,  
9 entitling him to damages in an amount to be proven at trial. Defendants SCBPO  
10 McKenrick, CBPO Rector, CBPO Newbold, and CBPO Colmenero committed  
11 these actions as employees of the CBP while acting under the course and scope of  
12 their employment and Defendant United States is liable for authorizing and/or  
13 acquiescing in the actions of, and/or employing Defendants SCBPO McKenrick,  
14 CBPO Rector, CBPO Newbold, and CBPO Colmenero.

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18 82. This action as it applies to Defendant United States is brought pursuant  
19 to the FTCA under which Defendant United States is liable for the actions of  
20 Defendants said officers.

21  
22 83. This action as it applies to Defendant LAFD is brought pursuant to  
23 California Civil Code § 1714 and pursuant to the principles of *respondeat superior*  
24 under which Defendant LAFD is liable for the actions of Defendants LAFD Jeffrey  
25 Dapper, LAFD Jeffrey Swegles, and LAFD Ladd Stilson who committed the  
26  
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1 a. Compensatory damages for torts committed against Plaintiff in an  
2 amount to be proven at trial;

3  
4 b. Compensatory damages for violation of constitutional rights in an  
5 amount to be proven at trial;

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7 c. Declaratory relief for violation of constitutional rights, the FTCA,  
8 Civil Code § 1714, and 42 U.S.C. § 1983.

9 d. Punitive damages in an amount to be proven at trial;

10 e. Nominal damages;

11 f. Reasonable attorneys' fees, costs, and expenses of litigation; and

12 g. All other relief this Court deems just and proper.  
13  
14

15 **JURY TRIAL**

16 Plaintiff requests a trial by jury for all claims so triable.  
17

18 Respectfully submitted,

19 *s/ Timothy A. Scott*

20 *s/ Yalda Satar*

21 Dated: January 4, 2017

22 TIMOTHY A. SCOTT

23 YALDA SATAR

24 *Attorneys for Plaintiff*  
25  
26  
27