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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 **Carey L. Johnson**, a married man acting in
12 his individual capacity,

13 Plaintiff,

14 vs.

15 **United States of America;**
16 **Kirstjen M. Nielsen**, Secretary of the United
17 States Department of Homeland Security;
18 **U.S. Border Patrol Agent Clark**, an officer
19 with the United States Customs and Border
20 Protection; and
21 **U.S. Border Patrol Agents John Does I-X**,
22 officers with the United States Customs and
23 Border Protection,

24 Defendants.

No. 3:18-cv-02178-BEN-WVG

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

- (1) *Bivens*: Unlawful Seizure and Excessive Use of Force;
- (2) Violation of Section 504 of the Rehabilitation Act;
- (3) FTCA: Assault and Battery;
- (4) FTCA: False Arrest;
- (5) FTCA: Negligence/Gross Negligence;
- (6) FTCA: Conversion;
- (7) FTCA: Intentional Infliction of Emotional Distress; and
- (8) FTCA: Violation of California Civil Code § 52.1

25 For his Complaint against Defendant, Plaintiff Carey Johnson alleges as follows:

26 **PARTIES**

27 1. Plaintiff Carey L. Johnson is a married man, acting in his individual capacity,
28 and was at all times relevant to this Complaint a resident of Contra Costa County,
California, United States of America.

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1 2. The Department of Homeland Security is a federal agency of Defendant
2 United States of America and, at all relevant times, was operating in San Diego County,
3 California.

4 3. Defendant Kirstjen M. Nielsen is the Secretary of the U.S. Department of
5 Homeland Security, the agency of the United States government that operates the United
6 States Customs and Border Protection (“CBP”), which was at all relevant times operating
7 in San Diego County, California. Defendant Nielsen is responsible for the establishment
8 and implementation of policy governing the operation of the CBP, and is responsible for
9 the acts and omissions of her employees acting in the course and scope of their
10 employment.

11 4. Defendant U.S. Border Patrol Agent Clark is a law enforcement agent and
12 employee of the United States. At all times relevant to this complaint, Defendant Clark
13 was acting within the course and scope of his employment as a U.S. Border Patrol Agent
14 and under color of his authority as a federal law enforcement agent.

15 5. Defendants U.S. Border Patrol Agents John Does I-X are law enforcement
16 agents and employees of the United States whose identities are presently unknown to
17 Plaintiff. Plaintiff will amend this complaint once their identities and facts giving rise to
18 their liability have been ascertained. At all times relevant to this complaint, John Does I-
19 X were acting within the course and scope of their employment as U.S. Border Patrol
20 Agents and under color of their authority as federal law enforcement agents.

21 6. Defendants were agents, servants, and employees of each of the other named
22 Defendants and were at all times within the full course and scope of their agency and
23 employment, with the full knowledge and consent, either express or implied, of their
24 principal and/or employer and each of the other named Defendants. Each of the Defendants
25 approved or ratified the actions of the other Defendants, thereby making the currently
26 named Defendants liable for the acts and/or omissions of their agents, servants, and/or
27 employees.

28

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JURISDICTION AND VENUE

1
2 7. Plaintiff brings these causes of action under *Bivens v. Six Unknown Agents*,
3 403 U.S. 388 (1971), Section 504 of the Rehabilitation Act of 1973, the Federal Tort
4 Claims Act, and California state law.

5 8. This Court has jurisdiction over Plaintiff’s federal law claims pursuant to 28
6 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1346(b) (United States as
7 defendant).

8 9. Venue is proper in the United States District Court for the Southern District
9 of California pursuant to 28 U.S.C. §1391(b) because the acts or omissions which form the
10 basis of Plaintiff’s claims occurred in San Diego, California.

11 10. Notice of Plaintiff’s claims under the Federal Tort Claims Act were timely
12 served upon Defendants pursuant to 28 U.S.C. § 2675. More than six (6) months have
13 passed since this Notice of Claim was served upon the Defendants.

14 11. All conditions precedent to the filing of this suit have occurred or have been
15 performed.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

16
17 12. Plaintiff Carey Johnson is a U.S. citizen who resides in the State of
18 California, and due to health reasons, also maintains a home in Mexico.

19 13. Plaintiff is a U.S. military veteran with a disability under Section 504 of the
20 Rehabilitation Act of 1973.

21 14. Plaintiff lives in Mexico for part of the year in order to help manage his
22 disability, and he must cross the U.S./Mexico border to meet with care providers and
23 conduct business.

24 15. “Sentri”—Secure Electronic Network for Travelers Rapid Inspection—is a
25 CBP program that allows expedited clearance for pre-approved, low risk travelers upon
26 arrival in the United States.

27 16. The only known procedure for requesting accommodation for emergency,
28 medical or disability issues into the United States at the US/Mexico border in San Diego is

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1 to approach the Senti gate and request permission to proceed to secondary inspection to
2 obtain approval for expedited crossing.

3 17. On September 22, 2016 Plaintiff approached the Senti gate, presented his
4 VA identification card with a disability designation and his passport and explained his need
5 for a disability accommodation as a qualified disabled person, and was sent to secondary
6 inspection, where he was told by a supervisor that he should instead speak with an agent at
7 the Otay Mesa Gate about formalizing his request for continuing and ongoing
8 accommodation.

9 18. At the Otay Mesa Gate Plaintiff was informed by agent Murillo that the
10 proper procedure was that one he already was employing; that is, to approach the agents at
11 the Senti gate and present his ID card supporting his disability, along with his passport,
12 and that he should be allowed to go through after being sent to secondary inspection.

13 19. Plaintiff was told that he would have to do this each time he needed to cross
14 the border, and that the agent on duty would have discretion about whether or not to grant
15 his request for disability accommodation.

16 20. The very next day, on September 23, 2016, at approximately 8:30 a.m.,
17 Plaintiff went to the Senti gate and presented his passport and ID to the agent and
18 explained to him that he needed to proceed to secondary and speak to supervisor regarding
19 his request for accommodations based upon his disability.

20 21. While sitting in the car waiting to be processed, a couple of agents
21 approached Plaintiff and started harassing him because of his request for accommodation,
22 saying things like there was nothing wrong with him, and that they were veterans with
23 Department of Defense ID cards too.

24 22. These agents soon left and their supervisor, a young woman, appeared and
25 immediately became aggressive and abusive towards Plaintiff, and threatened to take
26 Plaintiff's car for Senti lane violations, and then abruptly left, without considering
27 Plaintiff's request.

28 23. As Plaintiff sat in his car waiting to be released, Agent Ferguson from the

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1 CBP approached his car and asked him what was going on.

2 24. Agent Ferguson advised Plaintiff that he should present his VA disability
3 award letter showing his true disability.

4 25. Approximately 45 minutes later, Plaintiff returned from his home in Mexico
5 with his VA award letter, and explained to the Senti gate agent that he needed to go to
6 “secondary” to talk to a supervisor and show them his disability paperwork.

7 26. Once again, Plaintiff was sent to “secondary” and as he sat in his car waiting
8 to be processed, a male supervisor approached him in an aggressive manner, saying “So do
9 you have the letter?”

10 27. When Plaintiff gave the male supervisor the paperwork, his Department of
11 Defense ID and his passport, the supervisor dismissed Plaintiff’s status and qualifications
12 as a disabled veteran and began to chastise Plaintiff, telling him that there was nothing was
13 wrong with him.

14 28. When Plaintiff asked the supervisor if he would give him something in
15 writing saying he was disapproving Plaintiff’s request, so that he could challenge the denial
16 and further document his disability accommodation requests, the supervisor disappeared
17 into the building and sent 10 agents out to take him into custody.

18 29. The agents who detained him told Plaintiff that he was being detained, but
19 not arrested.

20 30. The agents handcuffed Plaintiff and took him to a bench where he was
21 shackled and left for 3 hours.

22 31. After 3 hours they told Plaintiff he could go, but that they were going to
23 impound his car, and that he could only get his car back if he paid a fine of \$5,000.00.

24 32. Plaintiff paid the \$5,000.00 fine out of fear that something worse than having
25 his car impounded would occur if he refused to pay.

26 33. The receipt Plaintiff was given when the money was taken from him that day
27 falsely identified the \$5,000 as a fine for Senti lane violations.

28 34. On September 25, 2016, Plaintiff chose to cross the border by using the walk-

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1 through gate because he was afraid of a repeat of the events which had unfolded just days
2 before.

3 35. When Plaintiff presented his passport to the agent, she looked at the screen
4 and appeared startled as she looked back up, giving Plaintiff the impression that he had
5 been somehow tagged in the electronic system used at the border crossing.

6 36. On October 21, 2016, at approximately 3:25 p.m., as Plaintiff was crossing
7 the border at the Otay Mesa Crossing, he handed his passport to the agent, who said, “I see
8 you like to use the Senti lane, huh?”

9 37. After extensively questioning Plaintiff, the agent took it upon himself to
10 inspect the trunk of Plaintiff’s car and began to grill Plaintiff’s 8-year-old daughter, who
11 was a passenger in the car, as to “who the person she was with was.” When the child
12 responded that this person was her daddy, the agent even asked her if she was sure.

13 38. Plaintiff was frightened about being delayed for no apparent reason, and
14 concerned that he was being targeted and tracked because he had requested to use the Senti
15 lane for disability accommodations.

16 39. On October 31, 2016, Plaintiff was using the regular lanes, and began having
17 an episode of severe anxiety attacks while crossing the border.

18 40. Two or more unknown CBP agents physically abused Plaintiff by dragging
19 him from his car, putting Tasers to his chest, wrenching his arms behind his back and piling
20 up on top of him.

21 41. Plaintiff complained to the agents that they were hurting his back, and when
22 they finally got off of him, he could not feel his legs and was suffering from extreme
23 anxiety and fear of further abuse.

24 42. An ambulance then arrived and transported Plaintiff to the Scripps Hospital
25 Chula Vista Emergency Room.

26 43. On November 1, 2016, Plaintiff was having severe emotional distress and
27 was trying to reach the VA clinic in San Diego to seek help for his problem. Plaintiff had
28 his daughter in the car with him, and he tried to get expedited crossing using the Senti lane

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1 due to the nature of his disability and due to the intensity of the symptoms he was
2 experiencing.

3 44. Plaintiff's request for assistance was met with heckling and disbelief on the
4 part of the agents, who appeared not to believe he was having a crisis. Plaintiff asked them
5 to call an ambulance, and they refused.

6 45. Based on the physical abuse Plaintiff had experienced the prior day, he was
7 afraid to interact directly with the CBP agents, so he locked his doors and rolled up his
8 windows out of fear of being beat up again.

9 46. When Plaintiff proceeded to call an ambulance on his cell phone, the 911
10 operator asked to speak with the border agent, so Plaintiff lowered the window and handed
11 the agent his phone.

12 47. After the CBP agents talked Plaintiff into unlocking his car and getting out,
13 they verbally abused him, accused him of having a fake Department of Defense ID card,
14 and threatened to have his privileges revoked.

15 48. The Agents further informed Plaintiff that if he insisted on taking an
16 ambulance to the hospital that they would be required to call CPS and put his daughter into
17 foster care since he could not care for her and she would not be allowed to accompany him
18 in the ambulance.

19 49. But for the intervention of the ambulance driver who had arrived on scene
20 by that time, and who had called ahead to the VA Medical Center and requested approval
21 to transport Plaintiff along with his daughter, the CBP agents would have had Plaintiff's
22 daughter placed into foster care.

23 50. The CBP Agents had requested that Plaintiff leave the keys to the car with
24 them so that they could move it out of the way, and he complied, giving them his keychain
25 with his car and house keys on it.

26 51. Plaintiff spent several days in the hospital, and upon being released from the
27 hospital, CBP would not return his keys, and Plaintiff had to hire a locksmith to get into
28 his house.

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1 52. Plaintiff’s agent was informed by CBP Agent Clark at the San Ysidro Port
2 that the vehicle had been seized for Sentri lane violations and that it was going to be
3 forfeited unless he paid a \$10,000.00 fine.

4 53. After Plaintiff was deprived of the use of his vehicle he had to use a rental
5 car for almost a year, which caused an extreme financial burden on his limited resources
6 as a disabled veteran.

7 54. Plaintiff was eventually able to purchase another vehicle in order to have
8 transportation, but had to continue making car and insurance payments on his confiscated
9 vehicle.

10 55. After Plaintiff’s car was confiscated, he avoided crossing the border using
11 the driving lanes whenever possible, because he was in fear for his safety, and so he began
12 using the San Ysidro Border foot lanes to cross, because he had been advised that this
13 location had a special lane for people with disabilities and those requiring medical
14 assistance.

15 56. At first, Plaintiff was allowed expedited crossing simply by showing his
16 documentation, but then agents began to insist on calling a supervisor each time to get
17 approval for Plaintiff’s expedited crossing.

18 57. Some of the CBP agents took the position that Plaintiff was not entitled to
19 accommodations and should wait in line to cross just like everyone else, and things began
20 to get more difficult and time-consuming each time Plaintiff crossed, causing him great
21 anxiety.

22 58. On the dates of December 1, 2016 and on December 7, 2016, the U.S. Border
23 Agents and Private Security Guards working at the border asked the Mexican Police to
24 arrest Plaintiff, making him afraid to attempt to cross the border thereafter.

25 59. Plaintiff had an attorney representing him engage in multiple conversations
26 with CBP attorney Erik Gantzel, in which it was requested that CBP return Plaintiff’s car,
27 waive the “fines,” and grant Plaintiff reasonable medical accommodations for his necessary
28 border crossings, but CBP’s attorney would not agree to do so.

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1 60. After filing formal complaints with CBP on November 6, 2016, November
2 17, 2016, and December 10, 2016, the Fines, Forfeitures & Penalties Division reduced the
3 initial \$5,000 fine to \$500, and refunded Plaintiff \$4,500 of the money he had paid.

4 61. The second \$10,000 fine was reduced to \$1,000 and CBP said they would
5 release Plaintiff’s car if he paid \$1,000 and signed a “hold harmless” agreement, which
6 would forfeit his right to seek redress. Plaintiff declined to accept this offer because it
7 asked him to plead guilty to charges which were not true.

8 62. On October 20, 2017 Plaintiff and his attorney had a phone conference with
9 the Assistant Port Director of the San Ysidro Port of Entry, Sally Carillo, in an attempt to
10 accommodate his written request for medical accommodation. Thereafter, things appeared
11 to settle down for a while, and Plaintiff was harassed less and less when he was crossing
12 the border.

13 63. Then on December 1, 2017, Plaintiff was crossing the border in the regular
14 walk-through lanes, and upon presenting his passport, was told that he would need to go to
15 secondary for additional screening. Plaintiff was made to wait an extraordinary amount of
16 time, and when he questioned why he was being detained, he was thrown to the ground,
17 roughed up, and handcuffed, before eventually being released and allowed to cross, with
18 no explanation given as to why he had been singled out.

19 64. Plaintiff suffered multiple bruises, sprains, scarring on his body, and physical
20 pain due to the brutal way in which he was treated by CBP.

21 65. Plaintiff also suffered anxiety and emotional distress due to the way in which
22 he was treated by CBP, and he continues to suffer from emotional distress, mental anguish,
23 humiliation, and anxiety when he is required to cross the border.

24 66. Plaintiff’s written request for ongoing medical accommodation was
25 approved on January 5, 2018, allowing disability accommodation through the San Ysidro
26 pedestrian lanes by showing the letter of approval and appropriate identification; however,
27 it does not address the issue of crossing in an automobile, which is the primary mode of
28 travel for Plaintiff.

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1 67. As a result of Defendants’ described above, Plaintiff has suffered physical,
 2 psychological, and emotional injuries and has incurred, and will continue to incur, medical
 3 treatment and expenses to address those injuries. Defendants’ actions, including the
 4 unlawful seizure of Plaintiff’s 2009 Mercedes Benz E350, have also caused Plaintiff to
 5 suffer considerable economic losses because he has continued to make automobile,
 6 insurance, and registration payments for the 2009 Mercedes since it was seized on
 7 November 1, 2016. Plaintiff has also incurred the expense of renting a car for
 8 approximately nine (9) months following the unlawful seizure and the expense of
 9 purchasing a replacement vehicle. He has also incurred, and will continue to incur, the
 10 cost of hotel rooms and other incidental expenses as a result of having to cross the border
 11 on foot.

FIRST CAUSE OF ACTION

***Bivens: Unlawful Seizure and Use of Excessive Force in Violation of the
 Fourth Amendment
 (Against Defendants Agent Clark and John Does I-X)***

16 68. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

17 69. The Fourth Amendment to the United States Constitution protects the “right
 18 of the people to be secure in their persons, houses, papers, and effects” and prohibits state
 19 actors from conducting unreasonable searches and seizures and from engaging in excessive
 20 force.

21 70. Between September 2016 and December 2017, Defendants violated
 22 Plaintiff’s constitutional rights by engaging in repeated instances of abuse, aggression,
 23 harassment, and intimidation in an apparent effort to punish or retaliate against Plaintiff for
 24 his persistence in requesting the reasonable accommodation to which he is entitled.

25 71. On October 31, 2016, Plaintiff was attempting to cross the border using the
 26 regular travel lanes when he began to experience a severe anxiety attack. While waiting
 27 for an ambulance to transport him to the hospital, Defendants John Does I-X violated
 28 Plaintiff’s constitutional rights by dragging Plaintiff from his vehicle, putting Tasers to his

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1 chest, wrenching his arms behind his back, and piling on top of him. Defendants’
2 misconduct caused Plaintiff physical and emotional suffering and distress, extreme anxiety,
3 and fear.

4 72. Defendants, Agent Clark and John Does I-X, violated Plaintiff’s
5 constitutional rights on November 1, 2016, when they seized Plaintiff’s black 2009
6 Mercedes Benz E350 without probable cause when Plaintiff was taken from the border to
7 the VA Medical Center in San Diego by ambulance. This violation is ongoing, and, to
8 date, Plaintiff has been deprived of his vehicle for more than twenty-two (22) months.

9 73. Defendants John Does I-X again violated Plaintiff’s constitutional rights on
10 December 1, 2017, when they detained Plaintiff as he tried to cross the border in the regular
11 walk-through lanes. When Plaintiff questioned why he was being detained, the unknown
12 CBP agents threw Plaintiff to the ground, roughed him up, and handcuffed him, before
13 eventually releasing him and allowing his to cross the border, with no explanation of why
14 he had been singled out. As a result of Defendants’ abusive behavior, Plaintiff suffered
15 numerous injuries, including bruises, sprains, scars, physical pain, anxiety, and emotional
16 distress.

17 74. As a direct and proximate result of Defendants’ breaches of Plaintiff’s
18 constitutional rights as described herein, Plaintiff sustained special and general damages,
19 including but not limited to, medical expenses, loss of use of his personal vehicle, costs to
20 replace his vehicle, other economic losses, emotional distress, and attorneys’ fees.

21 **SECOND CAUSE OF ACTION**

22 **Violation of Section 504 of the Rehabilitation Act of 1973**
23 **Against Defendant Kirstjen M. Nielsen**

24 75. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

25 76. The Rehabilitation Act of 1973 prohibits recipients of federal financial
26 assistance, including government agencies such as the CBP, from discriminating against
27 individuals with disabilities, and it requires that they provide services and support in the
28 most integrated setting appropriate to the needs of individuals with disabilities.

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1 77. As an individual with a disability, Plaintiff is covered by Section 504 of the
2 Rehabilitation Act and is entitled to receive services from CBP in a more integrated setting.

3 78. CBP can provide services to persons with disabilities in more integrated
4 settings by making reasonable accommodations or modifications to its policies, programs,
5 and services, including, for example, by modifying its policies with respect to allowing
6 disabled individuals to use the Senti lane for expedited crossing at the US/Mexico border
7 in San Diego.

8 79. CBP discriminated, and continues to discriminate, against Plaintiff by
9 denying him a reasonable accommodation for his disability and failing to provide him
10 services and support in a more integrated setting during his crossings at the US/Mexico
11 border in San Diego, in violation of Section 504 of the Rehabilitation Act.

12 80. By reason of CBP’s discrimination, Plaintiff is entitled to all legal and
13 equitable remedies available under the Rehabilitation Act.

14 81. Plaintiff is also entitled to an award of attorneys’ fees under 29 U.S.C. §
15 794(a)(1).

THIRD CAUSE OF ACTION
FTCA: Assault and Battery
Against the United States of America

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17
18
19 82. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

20 83. On or about October 31, 2016 and December 1, 2017, unknown CBP agents
21 acted with an intent to cause harmful or offensive contact with Plaintiff, and the intended
22 harmful or offensive contact did in fact occur.

23 84. The harmful or offensive contact was not privileged, nor did Plaintiff consent
24 to it.

25 85. Under the Federal Tort Claims Act, the United States is the proper defendant
26 for this cause of action.

27
28

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1 86. Pursuant to 28 U.S.C. § 2680(h), the United States has waived sovereign
2 immunity for this claim, which arises out of the acts or omissions of federal law
3 enforcement officers. *See also Sanchez v. Rowe*, 651 F. Supp. 571, 574 (N.D. Tex. 1986).

4 87. As a result of Defendants’ assault and battery against Plaintiff, Plaintiff
5 suffered economic and non-economic damages, including but not limited to, medical
6 expenses, emotional distress, pain and suffering, anxiety, and fear.

7
8 **FOURTH CAUSE OF ACTION**

9 ***FTCA: False Arrest***

10 **Against the United States of America**

11 88. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

12 89. On or about October 31, 2016 and December 1, 2017, CBP agents detained
13 Plaintiff without lawful privilege for an appreciable period of time.

14 90. Plaintiff did not consent to the confinement.

15 91. Under the Federal Tort Claims Act, the United States is the proper defendant
16 for this cause of action.

17 92. Pursuant to 28 U.S.C. § 2680(h), the United States has waived sovereign
18 immunity for this claim, which arises out of the acts or omissions of federal law
19 enforcement officers. *See also Sanchez v. Rowe*, 651 F. Supp. 571, 574 (N.D. Tex. 1986).

20 93. As a result of Defendants’ unlawful detention of Plaintiff, Plaintiff suffered
21 economic and non-economic damages, including but not limited to, medical expenses,
22 emotional distress, pain and suffering, anxiety, and fear.

23 **FIFTH CAUSE OF ACTION**

24 ***FTCA: Negligence/Gross Negligence***

25 **Against the United States of America**

26 94. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

27 95. Defendants owe a duty of care to members of the public with whom they
28 come into contact, including a duty to act with ordinary care and prudence so as not to
cause harm or injury to an individual.

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1 96. By engaging in the conduct described above, Defendants breached their duty
2 of care to Plaintiff.

3 97. Under the Federal Tort Claims Act, the United States is the proper defendant
4 for this cause of action.

5 98. As a result of Defendants’ negligence, Plaintiff suffered physical, emotional,
6 and psychological injuries. He has incurred economic and non-economic damages,
7 including but not limited to, medical expenses, emotional distress, pain and suffering,
8 anxiety, and fear.

9 **SIXTH CAUSE OF ACTION**

10 ***FTCA: Conversion***

11 **Against the United States of America**

12 99. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

13 100. Defendant Agent Clark and other unknown CBP agents seized Plaintiff’s
14 2009 Mercedes Benz E350, unlawfully and without privilege or justification, on November
15 1, 2016.

16 101. Defendants intended to, and did, exercise dominion or control over Plaintiff’s
17 vehicle.

18 102. Plaintiff has been deprived of possession and use of his vehicle since
19 November 1, 2016.

20 103. Under the Federal Tort Claims Act, the United States is the proper defendant
21 for this cause of action.

22 104. Defendants’ unlawful and unauthorized custody, control, and retention of
23 Plaintiff’s vehicle constitutes conversion, for which Plaintiff is entitled to damages.

24 **SEVENTH CAUSE OF ACTION**

25 ***FTCA: Intentional Infliction of Emotional Distress***

26 **Against the United States of America**

27 105. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

28 106. Defendants acted with intent and/or recklessness when they engaged in
repeated instances of abuse, aggression, harassment, and intimidation against Plaintiff

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1 between September 2016 and December 2017.

2 107. Defendants’ conduct was extreme and outrageous.

3 108. Under the Federal Tort Claims Act, the United States is the proper defendant
4 for this cause of action.

5 109. Defendants’ conduct caused Plaintiff to suffer severe emotional distress,
6 anxiety, fear, and humiliation, for which Plaintiff is entitled to damages.

7

8 **EIGHTH CAUSE OF ACTION**
9 **Violation of the Unruh Act, California Civil Code § 52.1**
10 **Against the United States of America**

11 110. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

12 111. Plaintiff had a firmly established right to be free from excessive force under
13 the Fourth Amendment to the United States Constitution, as well as the State Constitution
14 of California.

15 112. The California Legislature has declared that it violates the state civil rights
16 act for any person to interfere with the exercise or enjoyment by any individual of his rights
17 secured by the United States Constitution or state of federal law. This includes any
18 interference of these rights by threats, intimidation, coercion or attempted threats,
19 intimidation, or coercion.

20 113. Defendants interfered with Plaintiff’s right to be free from excessive force.

21 114. Defendants committed this interference with Plaintiff’s rights in violation of
22 California Civil Code § 52.1 and the Fourth Amendment.

23 115. Under the Federal Tort Claims Act, the United States is the proper defendant
24 for this cause of action.

25 116. Due to the violation of Plaintiff’s rights by all Defendants, Plaintiff suffered
26 economic and non-economic damages, including but not limited to, medical expenses,
27 emotional distress, pain and suffering, anxiety, and fear.

28 **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

ROBBINS & CURTIN, P.L.L.C.

301 East Bethany Home Road, Suite B-100

Phoenix, Arizona 85012

Telephone: (602) 285-0100 ♦ Fax: (602) 265-0267

- 1 A. For special damages, including but not limited to current and future medical
- 2 fees and expenses, the reasonable value of converted property, and other economic losses;
- 3 B. For other general damages, including but not limited to loss of consortium,
- 4 pain and suffering, and loss of enjoyment of life;
- 5 C. For all legal and equitable remedies available under the Section 504 of the
- 6 Rehabilitation Act;
- 7 D. For taxable costs and pre- and post-judgment interest to the extent permitted
- 8 by law;
- 9 E. For exemplary damages to the extent permitted by law;
- 10 F. For attorney’s fees and costs; and
- 11 G. Such other relief as the Court deems just and proper.

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13 DATED this 21st day of September, 2018.

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15 LAW OFFICES OF LEIGH E. JOHNSON

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17 By: /s/ Leigh E. Johnson
18 Leigh E. Johnson
19 3150 Hilltop Mall Road, #63
20 Richmond, CA 94806
21 *Attorney for Plaintiff*
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