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11
 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 JACORY BROWN and DE'VON
 15 HAMILTON, individuals,
 16 Plaintiff,

17 v.

18 CITY OF BERKELEY, a municipal
 19 corporation; 'FNU' MILES, individually and
 20 in his official capacity as Police Officer for the
 21 City of Berkeley Police Department and
 22 DOES 1-50, inclusive; individually and in
 23 their capacities as law enforcement officers
 24 and/or personnel for the Berkeley Police
 25 Department,

26 Defendants

) Case No.:

) COMPLAINT FOR DAMAGES
) (42 U.S.C § 1983 and pendent tort claims)

) JURY TRIAL DEMANDED

27 INTRODUCTION

28 1. This is an action for damages brought pursuant to Title 42 U.S.C § 1983 and 1988
 and the Fourth and Fourteenth Amendments to the United States Constitution, under California
 Civil Code § 52.1 and under the common law of California. This action is against the City of
 Berkeley.

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2 JURISDICTION

3 2. This action arises under Title 42 of the United States Code, Section 1983.
4 Jurisdiction is conferred upon this Court by Title 42 of the United States Code, Section 1331 and
5 1343. The unlawful acts and practices alleged herein occurred in the City of Berkeley which is
6 within this judicial district.

7 PARTIES

8 3. At all times relevant to this complaint, Plaintiff JACORY BROWN (hereinafter
9 "Plaintiff") was and is a resident of El Sobrante, California and a United States Citizen.

10 4. At all times relevant to this complaint, Plaintiff DE'VON HAMILTON
11 (hereinafter "Plaintiff") was and is a resident of Stockton, California and a United States Citizen.

12 5. Defendant CITY OF BERKELEY (hereinafter "Defendant") are and at all times
13 herein mentioned is a municipal entities duly organized and existing under the laws of the State
14 of California. Under its supervision, the City of Berkeley operates the Berkeley Police
15 Department.

16 6. Defendant "FNU" MILES (hereinafter "MILES") is a natural person. He is being
17 sued in his individual and official capacity as Police Officer for the City of Berkeley.

18 7. Plaintiffs are ignorant of the true names and/or capacities of defendants sued
19 herein as DOES 1 through 25, inclusive, and therefore sue said defendants by such fictitious
20 names. Plaintiffs will amend this complaint to allege their true names and capacities when
21 ascertained. Plaintiffs believe and allege that each of the DOE defendants is legally responsible
22 and liable for the incident, injuries and damages hereinafter set forth. Each defendant
23 proximately caused injuries and damages because of their negligence, breach of duty, negligent
24 supervision, management or control, violation of public policy, and false arrests. Each defendant
25 is liable for his/her personal conduct, vicarious or imputed negligence, fault, or breach of duty,
26 whether severally or jointly, or whether based upon agency, employment, ownership,
27 entrustment, custody, care or control or upon any other act or omission. Plaintiffs will ask leave
28 to amend this complaint subject to further discovery.

- 1 c. The right to be free from the use of excessive force, which is guaranteed by the
2 Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;
3 d. The right to be free from interference within the zone of privacy, as protected
4 by the Fourth and Ninth Amendments to the United States Constitution;

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
6

7 SECOND CAUSE OF ACTION

8 (Assault and Battery)

9 (Plaintiffs Against MILES and DOES 1-10)

10 23. Plaintiff re-allege and incorporate by reference herein paragraphs 1 through 22 of
11 this Complaint.
12

13 24. Defendants MILES and DOES 1-10, inclusive, placed Plaintiffs in immediate
14 fear of bodily harm by assaulting them without any just provocation or cause. Defendants placed
15 Plaintiffs in immediate fear of severe bodily harm or death without any just provocation or cause.
16 Defendants and DOES 1-10, inclusive, placed Plaintiffs in immediate fear of severe bodily harm
17 or death by using excessive and unwarranted force against him by strip and body cavity
18 searching them without just provocation or cause.
19

20 25. These defendants' conduct was neither privileged nor justified under statute or
21 common law.
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23 26. As a proximate result of defendants' conduct, Plaintiffs suffered damages as
24 hereinafter set forth.
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26 WHEREFORE, Plaintiffs pray for relief, as hereinafter set forth.
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THIRD CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

(Plaintiffs Against Defendants MILES and DOES 1-10)

27. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 26 of this Complaint.

28. The conduct of Defendants MILES and DOES 1 through 10, inclusive, as set forth herein, was extreme and outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized society. Defendants committed these extreme and outrageous acts with the intent to inflict severe mental and emotional distress upon Plaintiffs.

29. As a proximate result of Defendants' willful, intentional and malicious conduct, plaintiffs suffered severe and extreme mental and emotional distress. Therefore, Plaintiffs are entitled to an award of punitive damages as against said defendants. Plaintiffs have suffered damages as hereinafter set forth.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Violation of Civil Code Section 52.1)

(Plaintiffs Against Defendants MILES and DOES 1-10)

30. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 29 of this Complaint.

31. The conduct of Defendants, MILES and DOES 1 through 10, inclusive, as described herein, acting in the course and scope of their employment for Defendant City of Berkeley Police Department violated California Civil Code Section 52.1, in that they interfered

1 with Plaintiffs' exercise and enjoyment of their civil rights, through use of wrongful and
2 excessive force.

3 32. As a direct and proximate result of Defendants' violation of Civil Code Section
4 52.1. Plaintiffs suffered violation of his constitutional rights, and suffered damages as set forth
5 herein.
6

7 33. Since this conduct occurred in the course and scope of their employment,
8 Defendant is therefore liable to Plaintiffs pursuant to respondent superior.
9

10 34. Plaintiffs are entitled to injunctive relief and an award of their reasonable
11 attorney's fees pursuant to Civil Code Section 52.1(h).
12

13 WHEREFORE, Plaintiffs pray for relief, as hereinafter set forth.

14 FIFTH CAUSE OF ACTION

15 (Negligence)

16 (Plaintiffs Against MILES and DOES 1-10)

17 35. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 34 of
18 this complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,
19 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive
20 damages.
21

22 36. At all times herein mentioned, Defendants and DOES 1 through 10, inclusive,
23 were subject to a duty of care to avoid causing unnecessary physical harm and distress to persons
24 through their use of force and making of arrests. The wrongful conduct of Defendants, as set
25 forth herein, did not comply with the standard of care to be exercised by reasonable persons,
26 proximately causing plaintiff to suffer injuries and damages as set forth herein thereby breaching
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28

1 the duty owed. Pursuant to Government Code Section 815.2(a), Defendant is vicariously liable
2 to Plaintiffs for their injuries and damages suffered as alleged herein, incurred as a proximate
3 result of the aforementioned wrongful conduct of Defendants.

4 37. As a proximate result of Defendants' negligent conduct, Plaintiffs suffered
5 physical injury, severe emotional and mental distress, injury having a traumatic effect on
6 Plaintiffs' emotional tranquility, and damages.
7

8 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.
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10 JURY DEMAND

11 38. Plaintiffs hereby demand a jury trial in this action.
12

13 PRAYER

14 WHEREFORE, Plaintiffs pray for relief, as follows:

- 15 1. For general damages in a sum according to proof;
- 16 2. For special damages in a sum according to proof;
- 17 3. For punitive damages in a sum according to proof;
- 18 4. For violation of California Civil Code Sections 52, statutory damages, and
19 reasonable attorney's fees;
- 20 5. For violation of California Civil Code Section 52(b), punitive damages against
21 Defendant sheriffs/police, \$25,000.00 for each offense and reasonable attorney's
22 fees;
- 23 6. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
- 24 7. For cost of suit herein incurred; and
- 25 8. For such other and further relief as the Court deems just and proper.
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1 Dated: September 21, 2013

The Law Offices of John L. Burris

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4 /s/ John L. Burris

5 John L. Burris

6 Attorney(s) for Plaintiff
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