

1 MARK C. ZEBROWSKI (BAR NO. 110175)
 MZebrowski@mofocom
 2 JOHN R. LANHAM (BAR NO. 289382)
 JLanham@mofocom
 3 KEVIN M. BROWN (BAR NO. 306698)
 KBrown@mofocom
 4 MORRISON & FOERSTER LLP
 12531 High Bluff Drive, Suite 100
 5 San Diego, CA 92130
 Telephone: 858.720.5100
 6 Facsimile: 858.720.5125

7 Attorneys for Plaintiffs
 BRANDON DUNCAN and AARON HARVEY
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9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11
 12 BRANDON DUNCAN, an individual;
 and AARON HARVEY, an individual,

13 Plaintiffs,

14 v.

15 CITY OF SAN DIEGO, a California
 16 municipal corporation;
 RUDY CASTRO, in his individual and
 17 official capacity;
 SCOTT HENDERSON, in his
 18 individual and official capacity; and
 DOES 1-10, in their official capacities,

19 Defendants.
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Case No. '17CV0052 BTM MDD

**COMPLAINT FOR VIOLATION OF
 CONSTITUTIONAL RIGHTS
 UNDER THE CIVIL RIGHTS ACT
 (42 U.S.C. § 1983)**

JURY TRIAL DEMANDED

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COMPLAINT

Plaintiff Brandon Duncan and Plaintiff Aaron Harvey seek entry of judgment in their favor against Defendants the City of San Diego, Rudy Castro (in his individual and official capacity), Scott Henderson (in his individual and official capacity), and Does 1 through 10 (in their official capacities) (collectively and individually, “Defendants”) and in support of such Complaint allege as follows.

This is a civil action under 42 U.S.C. § 1983 seeking damages against Defendants for committing acts, under color of law, that deprived Brandon Duncan and Aaron Harvey of their rights secured by the United States Constitution. Defendants targeted Plaintiffs for arrest, and caused them to be arrested and jailed for seven months, because Plaintiffs engaged in speech or expressive conduct protected by the First Amendment. By causing Plaintiffs’ arrest without probable cause, as well as causing the search of Plaintiff Brandon Duncan’s home without a warrant, consent, or exigent circumstances, Defendants also violated Plaintiffs’ Fourth Amendment rights.

JURISDICTION

1. This case arises under the United States Constitution and 42 U.S.C. § 1983. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.
2. The Court has personal jurisdiction over Defendants as each is domiciled in or has substantial, continuous, and systematic contact with the State of California.
3. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Mr. Harvey’s and Mr. Duncan’s claims occurred in this district.

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PARTIES

4. Plaintiff Brandon Duncan is a musician, father, and resident of San Diego, California. Mr. Duncan was raised in the Lincoln Park neighborhood of San Diego and currently resides there.

5. Plaintiff Aaron Harvey is a college student, community organizer, and resident of San Diego, California. Mr. Harvey was raised in the Lincoln Park neighborhood of San Diego and currently resides there.

6. Defendant City of San Diego is a California municipal corporation organized, acting, and existing under the laws of California. The City of San Diego Police Department is the law enforcement division of the City of San Diego and is organized under the City Charter of the City of San Diego.

7. Defendant Rudy Castro was, at all times discussed herein, a detective with the City of San Diego Police Department. He is sued in his individual and official capacity.

8. Defendant Scott Henderson was, at all times discussed herein, a detective with the City of San Diego Police Department. He is sued in his individual and official capacity.

9. Does 1 through 10 at all relevant times herein were officers, officials, and/or employees of the City of San Diego Police Department and/or City of San Diego, who made, delegated, or ratified the decisions described herein that violated Plaintiffs’ Constitutional rights. Plaintiffs are ignorant of the true names of Does 1 through 10 and this information is peculiarly within the knowledge of Defendants. Plaintiffs therefore sue by fictitious names. Plaintiffs will amend this Complaint to allege the true names of Does 1 through 10 when that information is ascertained. Does 1 through 10 are sued in their official capacities.

10. With respect to all facts and allegations stated in this Complaint, Defendants acted under color of state law.

FACTS

Brandon Duncan’s Arrest

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11. Mr. Duncan is a musician, hip-hop artist, and rapper. Among other subjects, Mr. Duncan’s music is about Lincoln Park, where he grew up.

12. While Mr. Duncan’s passion is music, it has not made him wealthy. Prior to the events described in this Complaint, Mr. Duncan primarily earned a living by laying tile. Mr. Duncan still chose to dedicate himself to making music.

13. On the morning of June 19, 2014, while Mr. Duncan was preparing to go to work, he heard voices outside his home. When he opened his door to investigate, he was confronted by a group of armed officers from the San Diego Police Department.

14. Mr. Duncan was arrested and detained in a police car outside of his home for several hours. Despite having no warrant for the search of his home, consent, or exigent circumstances, police officers searched and ransacked Mr. Duncan’s home.

15. On information and belief, Mr. Duncan’s arrest and the unlawful search of Mr. Duncan’s home were the direct and proximate result of decisions by Defendant Castro, Defendant Henderson, Does 1 through 10, and final policymakers within the City of San Diego.

16. Mr. Duncan was then brought to a San Diego Police Department station, where he was met by Defendant Castro and Defendant Henderson. Defendant Castro and Defendant Henderson informed Mr. Duncan that he had been arrested because of the content of his music lyrics. Mr. Duncan was booked into jail.

17. A complaint was filed against Mr. Duncan, Mr. Harvey, and others in San Diego County Superior Court on June 20, 2014, and Mr. Duncan was arraigned on the complaint the same day. He pleaded not guilty, and his bond was set at \$500,000, which he was unable to post. He remained in detention pending trial.

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Aaron Harvey’s Arrest

18. In July 2014, Mr. Harvey lived in Las Vegas, Nevada, where he was studying to become a realtor. On July 19, 2014, Mr. Harvey was leaving his Las Vegas apartment when he was swarmed and arrested by armed agents from the United States Marshals Service.

19. On information and belief, Mr. Duncan’s arrest was the direct and proximate result of decisions by Defendant Castro, Defendant Henderson, Does 1 through 10, and final policymakers within the City of San Diego.

20. During his arrest, the Marshals told Mr. Harvey that he was wanted for a number of murders in San Diego, California. Mr. Harvey had no idea what the Marshals were referring to and assumed that there had been a serious mistake that would quickly be resolved.

21. Mr. Harvey was taken to jail in Las Vegas, where he was kept in a holding tank for three days before being assigned a cell. Mr. Harvey spent the next three weeks in the Las Vegas jail. He still did not understand why he had been arrested and was becoming increasingly worried about what was happening to him.

22. Approximately three weeks after his arrest, Defendant Castro and Defendant Henderson picked up Mr. Harvey from the Las Vegas jail. Defendant Castro and Defendant Henderson drove Mr. Harvey from Las Vegas to San Diego in a San Diego Police Department SUV. Defendants kept Mr. Harvey handcuffed the entire time.

23. During the drive from Las Vegas to San Diego, Defendant Castro and Defendant Henderson did not explain to Mr. Harvey why he had been arrested. Mr. Harvey was transferred to San Diego jail upon his arrival.

24. Mr. Harvey was arrested on a warrant issued on June 18, 2014, by the San Diego County Superior Court based on a declaration by Defendant Castro, in which Castro recommended bail of \$1,000,000. The court approved the recommendation and set bail in the warrant at \$1,000,000.

1 several counts under section 182.5. They were arraigned on the information and
2 pleaded not guilty to all charges against them. Mr. Duncan's bail remained at
3 \$500,000 and Mr. Harvey's bail remained at \$1,100,000, and they remained in
4 detention pending trial.

5 33. At a subsequent preliminary hearing involving several other
6 individuals charged in the same case with Mr. Duncan and Mr. Harvey, the court
7 found no probable cause for section 182.5 charges against the other individuals.

8 34. After spending seven months in jail, Mr. Duncan and Mr. Harvey
9 unexpectedly had their bail lowered to amounts for which they were able to post
10 bond. Mr. Duncan was released from jail on January 19, 2015. Mr. Harvey was
11 released from jail on January 21, 2015.

12 35. Mr. Duncan and Mr. Harvey moved to set aside the charges against
13 them pursuant to Penal Code section 995 on the ground that the evidence at the
14 preliminary hearing did not establish probable cause.

15 36. On March 16, 2015, the Superior Court granted that motion and
16 dismissed all charges against Mr. Duncan and Mr. Harvey, finding that the evidence
17 at the preliminary hearing failed to establish probable cause that either had violated
18 section 182.5.

19 37. Even though Mr. Harvey has now been out of jail for over a year, he
20 continues to suffer from the emotional trauma of living in such a violent and
21 restrictive environment. Mr. Harvey still has nightmares about jail, becomes
22 nervous in crowded places, and continually worries that he could be jailed again
23 despite doing nothing wrong. Mr. Harvey also continues to face the economic
24 consequences of his jail time in the forms of debt and poverty, and now lives with
25 his parents to save money. And, of course, he spent seven months of his life
26 incarcerated and facing a life sentence for doing nothing illegal.

27 38. Mr. Duncan's experience while being incarcerated was similarly
28 horrifying. He was arrested one month after losing his father, and he lost his

1 grandfather, with whom he was very close, while in jail. He was deprived of seeing
2 his children. Mr. Duncan continues to have difficulty sleeping. He fears that
3 something like this may happen to him again for no legitimate reason. He is
4 uncomfortable being in crowded places and around police officers. He has also
5 been significantly harmed financially, still owing money to his criminal defense
6 lawyer. Seven months of his life were taken and converted into incarceration with a
7 potential life sentence for doing nothing illegal.

8 ***The Unconstitutional Basis for Brandon Duncan's Arrest***

9 39. Defendant Castro and Defendant Henderson were the lead
10 investigators on Mr. Duncan's case. Defendant Castro and Defendant Henderson
11 targeted Mr. Duncan for arrest and caused his arrest and detention and the search of
12 his home, or set in motion a series of events that they knew or reasonably should
13 have known would result in Mr. Duncan's arrest and detention and the search of his
14 home.

15 40. At the time of Mr. Duncan's arrest, Defendants Castro and Henderson
16 were detectives with the San Diego Police Department. In particular, Defendants
17 Castro and Henderson were assigned to San Diego's Lincoln Park neighborhood.
18 In the course of their duties, Defendants Castro and Henderson investigated a series
19 of shootings between May 2013 and February 2014.

20 41. No Defendant had any evidence that Mr. Duncan was involved in any
21 way in these shootings. Instead, Defendants targeted Mr. Duncan and caused his
22 arrest and incarceration because of the content or viewpoint of Mr. Duncan's music,
23 social media posts, or other speech or expressive conduct appearing in social media
24 postings or otherwise. Mr. Duncan's protected speech and conduct was a
25 substantial or motivating factor for Defendants' action.

26 42. Defendant Castro signed a declaration in support of issuing an arrest
27 warrant for Mr. Duncan under section 182.5. Despite being 14 pages long, this
28 declaration alleges only a handful of facts pertaining to Mr. Duncan:

1 (1) Mr. Duncan was friends on Facebook with others who were allegedly members
2 of the “Lincoln Park Blood” (“LPK”) gang and “posted about their LPK
3 membership;” (2) Mr. Duncan posted a message to his Facebook wall saying “Free
4 Lil Hawg and Tae Dip” following the arrests of Tevonte Stripling and Desmond
5 Crisp; and (3) Mr. Duncan was a member of a rap group called “Black Angel Music
6 Group.”

7 43. No reasonably competent officer would have believed the facts stated
8 in the declaration established probable cause to arrest Mr. Duncan. No reasonably
9 competent policymaker would have believed that the facts pertaining to Mr.
10 Duncan justified his arrest.

11 44. Mr. Duncan’s arrest was directly and proximately caused by a final
12 policymaking decision by one or more Defendants on behalf of Defendant City of
13 San Diego. The arrest of Mr. Duncan came as the result of a lengthy and extensive
14 investigation by the City of San Diego Police Department, led by Defendants
15 Castro and Henderson, in a case against dozens of other criminal defendants.
16 Moreover, Mr. Duncan was arrested under an obscure provision of the California
17 Penal Code, section 182.5. On information and belief, prior to the case against Mr.
18 Duncan, section 182.5 had never been used against any defendant in San Diego,
19 even though the law had existed for over fourteen years. On information and belief,
20 such a substantial undertaking using an untested statute could only be brought
21 pursuant to the instruction or approval of a final policymaker for Defendant City of
22 San Diego, or the deliberative indifference of a final policymaker of Defendant City
23 of San Diego to violations of Mr. Duncan’s First Amendment and Fourth
24 Amendment rights.

25 45. Mr. Duncan’s arrest under the untested and obscure law section 182.5
26 was caused by final policymakers within Defendant City of San Diego (including
27 Does 1-10) either delegating the authority to investigate and arrest Mr. Duncan to
28 Defendants Castro and Henderson, ratifying the detectives’ decision to investigate

1 and arrest Mr. Duncan, or themselves making the decision to investigate and arrest
2 Mr. Duncan. In the alternative, on information and belief, a final policymaker, or
3 his or her delegate, made the decision to employ section 182.5 to pursue alleged
4 gang members based on their speech and expressive conduct, such as public
5 statements, music lyrics, and social media posts. The specific facts pertaining to
6 this policymaking decision are peculiarly within Defendants' knowledge or control.

7 46. At time of his arrest and incarceration, Mr. Duncan had a clearly
8 established First Amendment right to freedom of speech, including but not limited
9 to writing and performing music, making photographs, posting comments and
10 photographs to social media, and engaging in expressive conduct.

11 47. Defendants could not reasonably have understood there was probable
12 cause to believe any of Mr. Duncan's music, social media postings, or other speech
13 or expressive conduct fell within any exception to the First Amendment that
14 justified his arrest and incarceration.

15 48. By causing Mr. Duncan's arrest and incarceration because of the
16 content or viewpoint of his speech or expressive conduct, Defendants violated Mr.
17 Duncan's clearly established constitutional rights under the First Amendment.

18 49. At the time of his arrest and incarceration, Mr. Duncan also had a
19 clearly established Fourth Amendment right against unreasonable seizure of his
20 person and unreasonable search of his home. That right includes the right to not be
21 arrested unless there is probable cause that he committed a crime, and the right
22 against a search of his home without a warrant, consent, or exigent circumstances.

23 50. Defendants could not have reasonably believed that there was probable
24 cause to arrest Mr. Duncan under section 182.5 or that a search of his home was
25 justified without a warrant, consent, or exigent circumstances.

26 51. By causing Mr. Duncan's arrest and incarceration despite having no
27 reasonable basis for believing probable cause existed, and causing the search of his
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1 home without a warrant, consent, or exigent circumstances, Defendants violated
2 Mr. Duncan’s Fourth Amendment rights.

3 ***The Unconstitutional Basis for Aaron Harvey’s Arrest***

4 52. Defendants Castro and Henderson were the lead investigators on
5 Mr. Harvey’s case. Defendants Castro and Henderson targeted Mr. Harvey for
6 arrest and caused his arrest and detention, or set in motion a series of events that
7 they knew, or reasonably should have known, would result in Mr. Harvey’s arrest
8 and incarceration.

9 53. At the time of Mr. Harvey’s arrest, Defendants Castro and Henderson
10 were detectives with the San Diego Police Department. In particular, Defendants
11 Castro and Henderson were assigned to San Diego’s Lincoln Park neighborhood.
12 In the course of their duties, Defendants Castro and Henderson investigated a series
13 of shootings between May 2013 and February 2014.

14 54. No Defendant had any evidence that Mr. Harvey was involved in any
15 way in these shootings. Instead, Defendants targeted Mr. Harvey and caused his
16 arrest and incarceration because of the content or viewpoint of Mr. Harvey’s social
17 media posts or other speech or expressive conduct appearing in social media
18 postings or otherwise. Mr. Harvey’s protected speech and conduct was a
19 substantial or motivating factor for Defendants’ action.

20 55. Defendant Castro signed a declaration in support of issuing an arrest
21 warrant for Mr. Harvey under section 182.5. Despite being 14 pages long, this
22 declaration alleges only a handful of facts pertaining to Mr. Harvey:

23 (1) Mr. Harvey was friends on Facebook with others who were allegedly members
24 of the LPK gang, and “posted about their LPK membership;” (2) Mr. Harvey
25 appeared in photographs posted to Facebook along with men who were allegedly
26 LPK members; and (3) Mr. Harvey was said to be “keeping gang members in
27 order.”
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1 56. No reasonably competent officer would have believed the facts stated
2 in the declaration established probable cause to arrest Mr. Harvey. No reasonably
3 competent policymaker would have believed that the facts pertaining to Mr. Harvey
4 justified his arrest.

5 57. Mr. Harvey's arrest was directly and proximately caused by a final
6 policymaking decision by one or more Defendants on behalf of Defendant City of
7 San Diego. The arrest of Mr. Harvey came as the result of a lengthy and extensive
8 investigation by the City of San Diego Police Department, led by Defendants
9 Castro and Henderson, in a case against dozens of other criminal defendants.
10 Moreover, Mr. Harvey was arrested under an obscure provision of the California
11 Penal Code, section 182.5. On information and belief, prior to the case against Mr.
12 Harvey, section 182.5 had never been used against any defendant in San Diego,
13 even though the law had existed for over fourteen years. On information and belief,
14 such a substantial undertaking using an untested statute could only be brought
15 pursuant to the instruction or approval of a final policymaker for Defendant City of
16 San Diego, or the deliberative indifference of a final policymaker of Defendant City
17 of San Diego to violations of Mr. Harvey's First Amendment and Fourth
18 Amendment rights.

19 58. Mr. Harvey's arrest under the untested and obscure law section 182.5
20 was caused by final policymakers within Defendants City of San Diego (including
21 Does 1-10) either delegating the authority to investigate and arrest Mr. Harvey to
22 Defendants Castro and Henderson, ratifying the detectives' decision to investigate
23 and arrest Mr. Harvey, or themselves making the decision to investigate and arrest
24 Mr. Harvey. In the alternative, on information and belief, a final policymaker, or
25 his or her delegate, made the decision to employ section 182.5 to pursue alleged
26 gang members based on their speech and expressive conduct, such as public
27 statements and social media posts. The specific facts pertaining to this
28 policymaking decision are peculiarly within Defendants' knowledge or control.

1 59. At the time of his arrest and incarceration, Mr. Harvey had a clearly
2 established First Amendment right to freedom of speech, including but not limited
3 to making photographs, posting materials to social media, and engaging in
4 expressive conduct.

5 60. Defendants could not reasonably have believed there was probable
6 cause to believe any of Mr. Harvey’s social media postings or other speech or
7 expressive conduct fell within any exception to the First Amendment that justified
8 his arrest and incarceration

9 61. By targeting Mr. Harvey and causing his arrest and incarceration
10 because of the content or viewpoint of his speech or expressive conduct,
11 Defendants violated Mr. Harvey’s clearly established constitutional rights under the
12 First Amendment.

13 62. At the time of his arrest and incarceration, Mr. Harvey also had a
14 clearly established Fourth Amendment right for protection from unreasonable
15 seizure of his person. That right includes the right to not be arrested unless there is
16 probable cause that he committed a crime.

17 63. Defendants could not have reasonably believed that there was probable
18 cause to arrest Mr. Harvey under section 182.5.

19 64. By causing Mr. Harvey’s arrest and incarceration despite having no
20 reasonable basis for believing probable cause existed, Defendants violated Mr.
21 Harvey’s Fourth Amendment rights.

22 **CAUSES OF ACTION**

23 **COUNT ONE**

24 **Violation of First Amendment Rights (42 U.S.C. § 1983)**

25 **(Plaintiff Duncan against Defendants Castro and Henderson as individuals)**

26 65. The foregoing allegations are incorporated as if re-alleged herein.

27 66. Mr. Duncan engaged in speech or expressive conduct protected under
28 the First Amendment.

1 67. Defendants Castro and Henderson acted under color of law in causing
2 Mr. Duncan to be arrested and incarcerated because of his protected speech or
3 expressive conduct.

4 68. Mr. Duncan’s protected speech or expressive conduct was a substantial
5 or motivating factor for Defendants’ actions.

6 69. Defendants Castro and Henderson deprived Mr. Duncan of his rights
7 under the First Amendment to the United States Constitution.

8 70. Mr. Duncan’s First Amendment right to freedom of speech was clearly
9 established, and the state of the law at the time of Defendants’ conduct gave
10 Defendants fair warning that their treatment of Mr. Duncan was unconstitutional.

11 71. As a direct and proximate result of the Defendants’ violations of
12 Mr. Duncan’s constitutional rights, Mr. Duncan has suffered severe and substantial
13 damages. These damages include lost salary, diminished earnings capacity, lost
14 career and business opportunities, litigation expenses including attorney fees and
15 costs of posting bond, loss of liberty, loss of reputation, humiliation,
16 embarrassment, inconvenience, mental emotional anguish and distress, and other
17 compensatory damages, in an amount to be determined by a jury and the Court.

18 **COUNT TWO**

19 **Violation of Fourth Amendment Rights (42 U.S.C. § 1983)**

20 **(Plaintiff Duncan against Defendants Castro and Henderson as individuals)**

21 72. The foregoing allegations are incorporated as if re-alleged herein.

22 73. Defendants Castro and Henderson acted under color of law in causing
23 the seizure of Mr. Duncan’s person by arrest and incarceration as well as the search
24 of his home.

25 74. Defendants Castro and Henderson could not have reasonably believed
26 that they had probable cause to arrest Mr. Duncan or the right to have his home
27 searched without a warrant, consent, or exigent circumstances.
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1 75. Defendants Castro and Henderson deprived Mr. Duncan of his rights
2 under the Fourth Amendment to the United States Constitution.

3 76. Mr. Duncan's Fourth Amendment rights against unreasonable search
4 and seizure were clearly established, and the state of the law at the time of
5 Defendants' conduct gave Defendants Castro and Henderson fair warning that their
6 treatment of Mr. Duncan was unconstitutional.

7 77. As a direct and proximate result of the Defendants' violations of
8 Mr. Duncan's constitutional rights, Mr. Duncan has suffered severe and substantial
9 damages. These damages include lost salary, diminished earnings capacity, lost
10 career and business opportunities, litigation expenses including attorney fees and
11 costs of posting bond, loss of liberty, loss of reputation, humiliation,
12 embarrassment, inconvenience, mental emotional anguish and distress, and other
13 compensatory damages, in an amount to be determined by a jury and the Court.

14 **COUNT THREE**

15 **Violation of First Amendment Rights (42 U.S.C. § 1983)**

16 **(Plaintiff Harvey against Defendants Castro and Henderson as individuals)**

17 78. The foregoing allegations are incorporated as if re-alleged herein.

18 79. Mr. Harvey engaged in speech or expressive conduct protected under
19 the First Amendment.

20 80. Defendants Castro and Henderson acted under color of law in causing
21 Mr. Harvey to be arrested and incarcerated because of his protected speech or
22 expressive conduct.

23 81. Mr. Harvey's protected speech or expressive conduct was a substantial
24 or motivating factor for Defendants' actions.

25 82. Defendants Castro and Henderson deprived Mr. Harvey of his rights
26 under the United States Constitution.

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1 83. Mr. Harvey's right to free speech was clearly established, and the state
2 of the law at the time of Defendants' conduct gave Defendants fair warning that
3 their treatment of Mr. Harvey was unconstitutional.

4 84. As a direct and proximate result of the Defendants' violations of
5 Mr. Harvey's constitutional rights, Mr. Harvey has suffered severe and substantial
6 damages. These damages include lost salary, diminished earnings capacity, lost
7 career and business opportunities, litigation expenses including costs of posting
8 bond, loss of liberty, loss of reputation, humiliation, embarrassment, inconvenience,
9 mental emotional anguish and distress, and other compensatory damages, in an
10 amount to be determined by a jury and the Court.

11 **COUNT FOUR**

12 **Violation of Fourth Amendment Rights (42 U.S.C. § 1983)**

13 **(Plaintiff Harvey against Defendants Castro and Henderson as individuals)**

14 85. The foregoing allegations are incorporated as if re-alleged herein.

15 86. Defendants Castro and Henderson acted under color of law in causing
16 the seizure of Mr. Harvey's person by arrest and incarceration.

17 87. Defendants Castro and Henderson could not have reasonably believed
18 that they had probable cause to arrest Mr. Harvey.

19 88. Defendants Castro and Henderson deprived Mr. Harvey of his rights
20 under the Fourth Amendment to the United States Constitution.

21 89. Mr. Harvey's Fourth Amendment right against unreasonable seizure
22 was clearly established, and the state of the law at the time of Defendants' conduct
23 gave Defendants fair warning that their treatment of Mr. Harvey was
24 unconstitutional.

25 90. As a direct and proximate result of the Defendants' violations of
26 Mr. Harvey's constitutional rights, Mr. Harvey has suffered severe and substantial
27 damages. These damages include lost salary, diminished earnings capacity, lost
28 career and business opportunities, litigation expenses including costs of posting

1 bond, loss of liberty, loss of reputation, humiliation, embarrassment, inconvenience,
2 mental emotional anguish and distress, and other compensatory damages, in an
3 amount to be determined by a jury and the Court.

4 **COUNT FIVE**

5 **Violation of First Amendment Rights (42 U.S.C. § 1983)**

6 **(Plaintiff Duncan against City of San Diego, Does 1-10 in their official**
7 **capacities, and Defendants Castro and Henderson in their official capacities)**

8 91. The foregoing allegations are incorporated as if re-alleged herein.

9 92. Mr. Duncan engaged in speech or expressive conduct protected under
10 the First Amendment.

11 93. On information and belief, a final policymaker within Defendant City
12 of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson acted
13 under color of law in directly and proximately causing Mr. Duncan's arrest because
14 of his speech or expressive conduct.

15 94. On information and belief, a final policymaker within Defendant City
16 of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson
17 deprived Mr. Duncan of his rights under the First Amendment. Alternatively, on
18 information and belief, a final policymaker within Defendant City of San Diego,
19 and/or Does 1-10 knew of and specifically approved of Defendant Castro's and
20 Defendant Henderson's acts depriving Mr. Duncan of his rights under the First
21 Amendment, or acted with deliberate indifference with regard to Mr. Duncan's First
22 Amendment rights. The specific facts of these decisions are peculiarly within
23 Defendants' knowledge or control.

24 95. A final policymaker within Defendant City of San Diego, and/or Does
25 1-10, Defendant Castro, and Defendant Henderson had final policymaking authority
26 from the City of San Diego concerning these acts.

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1 96. When a final policymaker within Defendant City of San Diego, and/or
2 Does 1-10, Defendant Castro, and Defendant Henderson engaged in these acts, he
3 or she was acting as a final policymaker for the City of San Diego.

4 97. Mr. Duncan’s First Amendment right to freedom of speech was clearly
5 established, and the state of the law at the time of Defendants’ conduct gave
6 Defendants fair warning that their treatment of Mr. Duncan was unconstitutional.

7 98. As a direct and proximate result of the Defendants’ violations of
8 Mr. Duncan’s constitutional rights, Mr. Duncan has suffered severe and substantial
9 damages. These damages include lost salary, diminished earnings capacity, lost
10 career and business opportunities, litigation expenses including attorney fees and
11 costs of posting bond, loss of liberty, loss of reputation, humiliation,
12 embarrassment, inconvenience, mental emotional anguish and distress, and other
13 compensatory damages, in an amount to be determined by a jury and the Court.

COUNT SIX

Violation of Fourth Amendment Rights (42 U.S.C. § 1983)

(Plaintiff Duncan against City of San Diego, Does 1-10 in their official capacities, and Defendants Castro and Henderson in their official capacities)

18 99. The foregoing allegations are incorporated as if re-alleged herein.

19 100. On information and belief, a final policymaker within Defendant City
20 of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson acted
21 under color of law in directly and proximately causing the seizure of Mr. Duncan’s
22 person by arrest and incarceration as well as the search of his home. Alternatively,
23 on information and belief, a final policymaker within Defendant City of San Diego
24 and/or Does 1-10 knew of and specifically approved of Defendant Castro’s and
25 Defendant Henderson’s acts causing the seizure of Mr. Duncan’s person by arrest
26 and incarceration as well as the search of his home, or acted with deliberate
27 indifference with regard to Mr. Duncan’s Fourth Amendment rights. The specific
28 facts of these decisions are peculiarly within Defendants’ knowledge or control.

1 101. A final policymaker within Defendant City of San Diego, and/or Does
2 1-10, Defendant Castro, and Defendant Henderson had final policymaking authority
3 from the City of San Diego concerning these acts.

4 102. Defendants could not have reasonably believed that they had probable
5 cause to arrest Mr. Duncan or the right to have his home searched without a
6 warrant, consent, or exigent circumstances.

7 103. Defendants deprived Mr. Duncan of his rights under the Fourth
8 Amendment to the United States Constitution.

9 104. Mr. Duncan's Fourth Amendment rights against unreasonable search
10 and seizure were clearly established, and the state of the law at the time of
11 Defendants' conduct gave Defendants fair warning that their treatment of Mr.
12 Duncan was unconstitutional.

13 105. As a direct and proximate result of the Defendants' violations of
14 Mr. Duncan's constitutional rights, Mr. Duncan has suffered severe and substantial
15 damages. These damages include lost salary, diminished earnings capacity, lost
16 career and business opportunities, litigation expenses including attorney fees and
17 costs of posting bond, loss of liberty, loss of reputation, humiliation,
18 embarrassment, inconvenience, mental emotional anguish and distress, and other
19 compensatory damages, in an amount to be determined by a jury and the Court.

20 **COUNT SEVEN**

21 **Violation of First Amendment Rights (42 U.S.C. § 1983)**

22 **(Plaintiff Harvey against City of San Diego, Does 1-10 in their official**
23 **capacities, and Defendants Castro and Henderson in their official capacities)**

24 106. The foregoing allegations are incorporated as if re-alleged herein.

25 107. Mr. Harvey engaged in speech or expressive conduct protected under
26 the First Amendment.

27 108. On information and belief, a final policymaker within Defendant City
28 of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson acted

1 under color of law in directly and proximately causing Mr. Harvey's arrest because
2 of his speech or expressive conduct.

3 109. On information and belief, a final policymaker within Defendant City
4 of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson
5 deprived Mr. Harvey of his rights under the First Amendment. Alternatively, on
6 information and belief, a final policymaker within Defendant City of San Diego
7 and/or Does 1-10 knew of and specifically approved of Defendant Castro's and
8 Defendant Henderson's acts depriving Mr. Harvey of his rights under the First
9 Amendment, or acted with deliberate indifference with regard to Mr. Harvey's First
10 Amendment rights. The specific facts of these decisions are peculiarly within
11 Defendants' knowledge or control.

12 110. A final policymaker within Defendant City of San Diego and/or Does
13 1-10, Defendant Castro, and Defendant Henderson had final policymaking authority
14 from the City of San Diego concerning these acts.

15 111. When a final policymaker within Defendant City of San Diego, and/or
16 Does 1-10, Defendant Castro, and Defendant Henderson engaged in these acts, he
17 or she was acting as a final policymaker for the City of San Diego.

18 112. Mr. Harvey's First Amendment right to freedom of speech was clearly
19 established, and the state of the law at the time of Defendants' conduct gave
20 Defendants fair warning that their treatment of Mr. Harvey was unconstitutional.

21 113. As a direct and proximate result of the Defendants' violations of
22 Mr. Harvey's constitutional rights, Mr. Harvey has suffered severe and substantial
23 damages. These damages include lost salary, diminished earnings capacity, lost
24 career and business opportunities, litigation expenses including costs of posting
25 bond, loss of liberty, loss of reputation, humiliation, embarrassment, inconvenience,
26 mental emotional anguish and distress, and other compensatory damages, in an
27 amount to be determined by a jury and the Court.
28

COUNT EIGHT

Violation of Fourth Amendment Rights (42 U.S.C. § 1983)

(Plaintiff Harvey against City of San Diego, Does 1-10 in their official capacities, and Defendants Castro and Henderson in their official capacities)

114. The foregoing allegations are incorporated as if re-alleged herein.

115. On information and belief, a final policymaker within Defendant City of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson acted under color of law in directly and proximately causing the seizure of Mr. Harvey's person by arrest and incarceration. Alternatively, on information and belief, a final policymaker within Defendant City of San Diego, and/or Does 1-10 knew of and specifically approved of Defendant Castro's and Defendant Henderson's acts causing the seizure of Mr. Harvey's person by arrest and incarceration, or acted with deliberate indifference with regard to Mr. Harvey's Fourth Amendment rights. The specific facts of these decisions are peculiarly within Defendants' knowledge or control.

116. A final policymaker within Defendant City of San Diego, and/or Does 1-10, Defendant Castro, and Defendant Henderson had final policymaking authority from the City of San Diego concerning these acts.

117. Defendants could not have reasonably believed that they had probable cause to arrest Mr. Harvey.

118. Defendants deprived Mr. Harvey of his rights under the Fourth Amendment to the United States Constitution.

119. Mr. Harvey's Fourth Amendment rights against unreasonable search and seizure were clearly established, and the state of the law at the time of Defendants' conduct gave Defendants fair warning that their treatment of Mr. Harvey was unconstitutional.

120. As a direct and proximate result of the Defendants' violations of Mr. Harvey's constitutional rights, Mr. Harvey has suffered severe and substantial

1 damages. These damages include lost salary, diminished earnings capacity, lost
2 career and business opportunities, litigation expenses including costs of posting
3 bond, loss of liberty, loss of reputation, humiliation, embarrassment, inconvenience,
4 mental emotional anguish and distress, and other compensatory damages, in an
5 amount to be determined by a jury and the Court.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs Aaron Harvey and Brandon Duncan request
8 judgment against all Defendants as follows:

- 9 1. For appropriate compensatory damages in an amount to be determined
10 at trial;
- 11 2. For appropriate equitable relief as allowed by 42 U.S.C. § 1983;
- 12 3. For appropriate punitive damages as allowed by 42 U.S.C. § 1983;
- 13 4. For appropriate declaratory relief regarding the unlawful and
14 unconstitutional acts and practices of Defendants;
- 15 5. For an award of reasonable attorneys' fees, costs, and other expenses
16 as permitted by 42 U.S.C. § 1988, the Federal Rules of Civil Procedure, and other
17 applicable law; and
- 18 6. For such other and further relief to which Plaintiffs may show
19 themselves justly entitled.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs request a trial by jury on all issues so triable.
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1 Respectfully submitted,

2 Dated: January 10, 2017

MORRISON & FOERSTER LLP

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By: /s/ Mark C. Zebrowski
Mark C. Zebrowski
MZebrowski@mof.com

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Attorneys for Plaintiffs
Brandon Duncan and Aaron Harvey

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