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12 ROBIN SLUSHER and BENNY SLUSHER

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 KAYLEIGH SLUSHER, Deceased, THROUGH HER)
16 SUCCESSOR IN INTEREST JASON SLUSHER;)
17 JASON SLUSHER, Individually; ROBIN SLUSHER,)
18 Individually; and BENNY SLUSHER, Individually,)
19 Plaintiffs,)

20 vs.)

21 CITY OF NAPA, a public entity; NAPA POLICE)
22 OFFICER GARRETT WADE, Individually; NAPA)
23 POLICE OFFICER DEGUILIO, Individually; NAPA)
24 CHIEF OF POLICE RICHARD MELTON,)
25 Individually and in his Official Capacity; COUNTY OF)
26 NAPA, a public entity; NAPA COUNTY CHILD)
27 WELFARE SERVICES SOCIAL WORKER NANCY)
28 LEFLER, Individually; NAPA COUNTY CHILD)
WELFARE SERVICES WORKER ROCIO DIAZ-)
LARA, Individually; and DOES 1-50, Jointly and)
Severally)

Defendants.)

No:

Hon.

**COMPLAINT FOR
DAMAGES, DECLARATORY,
AND INJUNCTIVE RELIEF,
AND DEMAND FOR JURY
TRIAL**

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Plaintiffs, by and through their attorneys, HADDAD & SHERWIN LLP, for their Complaint against Defendants, state as follows:

JURISDICTION AND INTRADISTRICT ASSIGNMENT TO SAN JOSE

1. This is a civil rights action arising from Defendants’ violation of mandatory duties to investigate and/or report child abuse and/or neglect, and to refrain from creating danger and increasing Plaintiffs’ risk of harm, which resulted in the death of Plaintiff KAYLEIGH SLUSHER, Deceased, on or about January 30, 2014, in the City of Napa, Napa County, California. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988; and the First and Fourteenth Amendments to the United States Constitution, as well as the laws and Constitution of the State of California. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions. Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. §1367 to hear and decide claims arising under state law.

INTRADISTRICT ASSIGNMENT

2. A substantial part of the events and/or omissions complained of herein occurred in the City of Napa, Napa County, California, and this action is properly assigned to the San Francisco or Oakland Divisions of the United States District Court for the Northern District of California, pursuant to Civil Local Rule 3-2(e).

PARTIES AND PROCEDURE

3. Plaintiff JASON SLUSHER is the father of decedent, KAYLEIGH SLUSHER. Plaintiff JASON SLUSHER brings these claims individually and as a Successor in Interest for his daughter and only child, Kayleigh Slusher, Deceased, pursuant to California Code of Civil Procedure sections 377.20 et seq. and 377.60 et seq. which provide for survival and wrongful death actions. These claims are also brought individually and on behalf of Kayleigh Slusher, Deceased,

1 on the basis of the 42 USC §§ 1983 and 1988, the United States Constitution, and federal and state
2 civil rights law. JASON SLUSHER is a resident of the State of California. At all times, Plaintiff
3 JASON SLUSHER adored his daughter KAYLEIGH and had a close and loving relationship with
4 her.

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6 4. Plaintiff ROBIN SLUSHER is the grandmother of Decedent KAYLEIGH
7 SLUSHER and a resident of the State of California. Plaintiff ROBIN SLUSHER brings these
8 claims individually. Plaintiff ROBIN SLUSHER had the closest possible healthy relationship with
9 her granddaughter, KAYLEIGH SLUSHER, that a grandmother could have. For substantial periods
10 of KAYLEIGH SLUSHER'S life, ROBIN and BENNY SLUSHER provided for KAYLEIGH'S
11 financial, emotional, and physical support, including while KAYLEIGH lived in ROBIN and
12 BENNY SLUSHER'S home, and afterward. ROBIN and BENNY SLUSHER had a long-standing
13 custodial relationship with KAYLEIGH SLUSHER such that they constituted a family unit.
14 Besides Plaintiffs JASON SLUSHER, ROBIN SLUSHER, and BENNY SLUSHER, no other
15 person had a closer, more intimate, healthy, familial relationship with KAYLEIGH SLUSHER.
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17 5. Plaintiff BENNY SLUSHER is the grandfather of Decedent KAYLEIGH SLUSHER
18 and a resident of the State of California. Plaintiff BENNY SLUSHER brings these claims
19 individually. Plaintiff BENNY SLUSHER had the closest possible healthy relationship with his
20 granddaughter, KAYLEIGH SLUSHER, that a grandfather could have. For substantial periods of
21 KAYLEIGH SLUSHER'S life, ROBIN and BENNY SLUSHER provided for KAYLEIGH'S
22 financial, emotional, and physical support, including while KAYLEIGH lived in ROBIN and
23 BENNY SLUSHER'S home, and afterward. ROBIN and BENNY SLUSHER had a long-standing
24 custodial relationship with KAYLEIGH SLUSHER such that they constituted a family unit. Besides
25 Plaintiffs JASON SLUSHER, ROBIN SLUSHER, and BENNY SLUSHER, no other person had a
26 closer, more intimate, healthy, familial relationship with KAYLEIGH SLUSHER.
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1 6. Defendant CITY OF NAPA is a public entity established by the laws and
2 Constitution of the State of California, and owns, operates, manages, directs, and controls the Napa
3 Police Department (“NPD”) which employs other defendants in this action.

4 7. Defendant NAPA POLICE OFFICER GARRETT WADE (“WADE”) at all material
5 times was employed as a law enforcement officer by NPD, and was acting within the course and
6 scope of that employment. Defendant WADE is being sued in his individual capacity.

7 8. Defendant NAPA POLICE OFFICER DEGUILIO (“DEGUILIO”) at all material
8 times was employed as a law enforcement officer by NPD, and was acting within the course and
9 scope of that employment. Defendant DEGUILIO is being sued in his individual capacity
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11 9. Defendant DOE Police Officers (“Doe Police Officers”) at all material times were
12 employed as a law enforcement officers by Defendant City of Napa, and were acting within the
13 course and scope of that employment. Defendant Doe Police Officers are being sued in their
14 individual capacities.
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16 10. Defendant Chief of Police RICHARD MELTON (“Melton”) at all material times
17 was employed as Chief of Police by Defendant City of Napa, and was acting within the course and
18 scope of that employment. As Chief of Police, Defendant Melton was a policy-making official for
19 the City of Napa with the power to make official and final policy for the Napa Police Department.
20 Defendant Melton is being sued in his individual and official capacities.
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22 11. Defendant COUNTY OF NAPA is a public entity established by the laws and
23 Constitution of the State of California, and owns, operates, manages, directs, and controls Napa
24 County Child Welfare Services (“CWS”) which employs other defendants in this action.

25 12. Defendant CWS worker NANCY LEFLER-PANELA at all material times was
26 employed as a child welfare services social worker by CWS and was acting within the course and
27 scope of that employment. Defendant LEFNER is being sued in her individual capacity.
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1 13. Defendant CWS worker ROCIO DIAZ-LARA at all material times was employed
2 as a child welfare services social worker by CWS and was acting within the course and scope of
3 that employment. Defendant DIAZ-LARA is being sued in her individual capacity.

4 14. Defendant DOE CWS Workers ("Doe CWS Workers") at all material times were
5 employed as Child Welfare Services workers by Defendant County of Napa, and were acting within
6 the course and scope of that employment. Doe Defendant CWS Workers are being sued in their
7 individual capacities.

8 15. The true names and capacities of other Defendants sued as DOES 1–50 ("DOE
9 DEFENDANTS"), including Doe Police Officers and Doe CWS Workers, are unknown to
10 Plaintiffs, who therefore sue these Defendants by such fictitious names, and Plaintiffs will seek
11 leave to amend this complaint to show their true names and capacities when the same are
12 ascertained. Each DOE DEFENDANT was an employee/agent of either the CITY OF NAPA or the
13 COUNTY OF NAPA, and at all material times acted within the course and scope of that
14 relationship. Plaintiffs are informed and believe and thereon allege that each of the Defendants
15 sued herein was negligently, wrongfully, and otherwise responsible in some manner for the events
16 and happenings as hereinafter described, and proximately caused injuries and damages to Plaintiffs.
17 Further, one or more DOE DEFENDANTS was at all material times responsible for the hiring,
18 training, supervision, and discipline of other defendants, including DOE DEFENDANTS.

19 16. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants
20 was at all material times an agent, servant, employee, partner, joint venturer, co-conspirator, and/or
21 alter ego of the remaining Defendants, and in doing the things herein alleged, was acting within the
22 course and scope of that relationship. Plaintiffs are further informed and believe, and thereon
23 allege, that each of the Defendants herein gave consent, aid, and assistance to each of the remaining
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1 Defendants, and ratified and/or authorized the acts or omissions of each Defendant as alleged
2 herein, except as may be hereinafter otherwise specifically alleged.

3 17. At all material times, each Defendant was jointly engaged in tortious activity, and an
4 integral participant in the conduct described herein, including the violation of mandatory duties to
5 investigate and/or report child abuse and/or neglect, and the increase of Plaintiffs' risk, resulting in
6 the deprivation of Plaintiffs' constitutional rights and other harm.

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8 18. At all material times, each Defendant acted under color of the laws, statutes,
9 ordinances, and regulations of the State of California and also of the CITY OF NAPA, and/or
10 COUNTY OF NAPA.

11 19. The acts and omissions of all Defendants as set forth herein were at all material times
12 pursuant to the actual customs, policies, practices and procedures of the Defendants CITY OF
13 NAPA and/or COUNTY OF NAPA.

14 20. Plaintiffs bring these claims as Private Attorneys General, to vindicate not only their
15 own rights but others' civil rights of great importance.

16 21. This complaint may be pled in the alternative pursuant to Federal Rule of Civil
17 Procedure 8(d).

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19 **GENERAL ALLEGATIONS**

20 22. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth
21 here.

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23 23. On or about January 30, 2014, KAYLEIGH SLUSHER was murdered in her home,
24 on information and belief, by her mother's boyfriend Ryan Scott Warner and/or her mother, Sara
25 Krueger, at 2060 Wilkins Avenue, Apt. 7, in the City of Napa, County of Napa, California.
26 KAYLEIGH was three years old. At this time, Plaintiffs are unaware of details concerning the
27 exact circumstances and manner of Kayleigh Slusher's homicide, because the Napa Police
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1 Department has not provided such information in response to Plaintiffs' lawful requests for such
2 information.

3 24. At all relevant times herein, Decedent KAYLEIGH SLUSHER was a minor and was
4 a resident of the County of Napa and the City of Napa. On information and belief, KAYLEIGH
5 SLUSHER had been a client of County of Napa CWS from approximately October 2010 until
6 approximately April 2012.
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8 25. Prior to Kayleigh's death, PLAINTIFF ROBIN SLUSHER and others informed
9 Defendant WADE and/or DOE NPD Officers on multiple occasions that Kayleigh was suffering
10 abuse, neglect and was in immediate physical danger in her home due to the conduct, crimes, and
11 activities of Mr. Warner and Ms. Kreuger, including but not limited to abuse of unlawful controlled
12 substances.
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14 26. KAYLEIGH SLUSHER was born on May 3, 2010, Plaintiff ROBIN SLUSHER'S
15 birthday.
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17 27. KAYLEIGH SLUSHER and her mother Sara Krueger, lived with KAYLEIGH'S
18 grandparents, Plaintiffs ROBIN and BENNY SLUSHER, for over a year. In addition, when
19 KAYLEIGH moved from ROBIN and BENNY SLUSHER'S home into an apartment with her
20 mother, Sara Krueger, Plaintiffs ROBIN and BENNY SLUSHER paid for Ms. Krueger's rent and
21 telephone expenses for several months so that KAYLEIGH could have a safe place to live and
22 contact with her family.

23 28. In addition, throughout KAYLEIGH'S life, Plaintiffs ROBIN and BENNY
24 SLUSHER, in addition to JASON SLUSHER, paid for Kayleigh's clothing, toys, material needs,
25 medicine, and bought food for the household in which KAYLEIGH lived, including when
26 KAYLEIGH and Ms. Krueger lived separately from ROBIN and BENNY SLUSHER.
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1 29. In addition, ROBIN and BENNY SLUSHER frequently had custody of KAYLEIGH
2 for overnight and weekend visits, and frequently had her with them during the day, even when
3 KAYLEIGH did not live full-time in the SLUSHERS' house. The parties lived near each other, in
4 the City of Napa, and ROBIN and BENNY SLUSHER saw KAYLEIGH regularly.

5 30. In or around October 2013, Ms. Krueger began denying ROBIN and BENNY
6 SLUSHER their usual access to, and contacts with, their granddaughter KAYLEIGH. During this
7 time, Plaintiff JASON SLUSHER was in prison for a crime unrelated to his relationship with
8 KAYLEIGH SLUSHER, and he was not able to protect his daughter.

9 31. During this time, Plaintiffs are informed and believe and thereon allege that Ms.
10 Krueger was using illegal drugs and had moved Ryan Warner, who was also using illegal drugs and
11 had a criminal history and a warrant for his arrest, into her home, thereby endangering the life and
12 safety of KAYLEIGH SLUSHER. Despite repeated attempts by Plaintiff ROBIN SLUSHER to see
13 her granddaughter, Ms. Krueger repeatedly refused ROBIN access to KAYLEIGH for a matter of
14 months.

15 32. On or about January 23, 2014, Plaintiff ROBIN SLUSHER contacted NPD to
16 request a welfare check on KAYLEIGH. ROBIN SLUSHER called Defendant NPD to inform the
17 police that KAYLEIGH may be suffering severe abuse, neglect, was in immediate physical danger,
18 and to request police intervention to save KAYLEIGH. MS. SLUSHER called anonymously
19 because she did not want Ms. Krueger to learn she had called the police and preclude her from
20 seeing KAYLEIGH.

21 33. MS. SLUSHER informed Defendant NPD that KAYLEIGH was living in a
22 dangerous household with "Ryan," whose last name she did not know, but who had a warrant for
23 his arrest. MS. SLUSHER informed Defendant NPD that Mr. Warner and Ms. Krueger were using
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1 illegal drugs such as “crank” (methamphetamine) in KAYLEIGH’S home, and she was worried
2 about whether or not KAYLEIGH was being given enough food and for KAYLEIGH’S safety.

3 34. On or about January 23, 2015, around 6:10 p.m., Defendant WADE was dispatched
4 to go to 2060 Wilkins Avenue, Apt. 7, for a warrant arrest. On information and belief, Defendant
5 WADE was advised that a man who lived there (Mr. Warner), had an outstanding warrant for his
6 arrest. On information and belief, Defendant WADE was also advised that a small child of three or
7 four years old, Kayleigh, was in immediate physical danger due to Mr. Warner's and Ms. Kreuger's
8 illicit drug use in the home at 2060 Wilkins Avenue, Apt. 7, due to Mr. Warner's and Ms. Kreuger's
9 failure to provide food to Kayleigh, due to drug users coming in and out of the home at all hours,
10 and due to possible physical violence against Kayleigh. On information and belief, Defendant
11 WADE was also advised that Mr. Warner stays inside the home with Kayleigh all the time, smokes
12 all the time, uses “Crank,” and he might be armed.

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15 35. Rather than perform a welfare check or any investigation into Kayleigh's safety and
16 wellbeing, Plaintiffs are informed and believe and thereon allege that Defendant WADE decided
17 not to go to the house where Kayleigh lived, not to investigate further, not to report suspected child
18 abuse or neglect, not to seek further advice, assistance, or backup, not to serve any warrant there,
19 and not to arrest any fugitive who may be living with Kayleigh and using drugs around her, and
20 instead Defendant WADE cleared the call. On information and belief, Defendant WADE chose not
21 to investigate the report of child abuse and/or neglect in Kayleigh’s home, because he determined
22 that the environment in which Kayleigh lived was not safe for him or his partner to go there.

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24 36. At all relevant times, Defendant WADE was a Mandated Reporter under the
25 California Child Abuse and Neglect Reporting Act ("CANRA"), including California Penal Code
26 §11165.7. Despite the fact that Defendant WADE knew, had reason to know and/or reasonably
27 suspected that Kayleigh was suffering child abuse and/or neglect, Defendant WADE failed to
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1 investigate and/or report the abuse and neglect as required by California Penal Code §§ 11164 *et*
2 *seq.*, 11165.9, and 11166. Defendant WADE never made any report of child abuse and/or neglect in
3 relation to Kayleigh to Napa County CWS or any other authority.

4 37. On or about January 27, 2014, Plaintiff ROBIN SLUSHER contacted Napa County
5 CWS by phone on more than one occasion and reported to Defendant CWS Workers DIAZ-LARA
6 and LEFLER-PANELA that there had been a CWS case open for KAYLEIGH at some previous
7 time, and that Ms. Krueger and her boyfriend were using drugs, which Ms. Slusher believed to be
8 crank or crack, in the home. ROBIN SLUSHER further informed Defendants DIAZ-LARA and
9 LEFLER-PANELA that the drugs were accessible to KAYLEIGH, that Ms. Krueger and her
10 boyfriend were intentionally depriving KAYLEIGH of food, that KAYLEIGH had lost weight,
11 there was a lot of traffic in and out of the home, and there was a warrant for the arrest of Ms.
12 Krueger's boyfriend.
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15 38. Shortly thereafter, Defendant LEFLER-PANELA called ROBIN SLUSHER back
16 and said there was nothing CWS could do, and told Ms. Slusher she could call the police instead.

17 39. At all relevant times Defendants LEFLER-PANELA and DIAZ-LARA were
18 mandated reporters, including under California Penal Code § 11165.7.

19 40. Defendants LEFLER-PANELA and DIAZ-LARA had the mandatory duties to
20 respond, investigate and/or report the abuse and/or severe neglect under California law, including
21 California Penal Code §§ 11165.9 and 11166, California Welfare and Institutions Code §§ 328,
22 10553, 10554, 16501, 16504, and California Department of Social Services Child Welfare Services
23 Regulations §§ 31-100, 31-101, 31-105, 31-110, 31-115, 31-120, 31-125, 31-130, and 31-501.

24 These mandatory duties include, but are not limited to:

- 25
26 a) The duty to report suspected child abuse or neglect to the police or sheriff's
27 department (P.C. §§ 11165.9 and 11166(j); DSS Regulations Ch. 31-501);
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- b) The duty to immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction, if the agency that takes a report lacks jurisdiction (P.C. §11165.9);
- c) The duty to make "an initial report by telephone to the police or sheriff's department as soon as is practicably possible," and to "prepare and send, fax, or electronically transmit a written follow-up report within 36 hours of receiving the information" concerning the abuse and/or neglect (P.C. §11166(a));
- d) The duty to "immediately make any investigation he or she deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced" (W&I §328);
- e) The duty to "respond to any report of imminent danger to a child immediately" (W&I §16501(f));
- f) The duty to make "an immediate in-person response" in "emergency situations" (W&I §16504(a));
- g) The duty to "respond to all referrals for service which allege that a child is endangered by abuse, neglect, or exploitation" (DSS Regulations Ch. 31-101.1);
- h) The duty to "immediately initiate and complete the Emergency Response Protocol process" and to "record all available and appropriate information on the Emergency Response Protocol Form" (DSS Regulations Ch. 31-105);
- i) The duty to conduct an in-person immediate investigation when the "emergency response protocol indicates the existence of a situation in which imminent danger to a child, such as physical pain, injury, disability, severe emotional harm or death, is likely" (DSS Regulations Ch. 31-115);
- j) The duty to request law enforcement assistance where "the physical safety of family members. . .is endangered" (DSS Regulations Ch. 31-130).

41. Despite the fact that Defendants LEFLER-PANELA and/or DIAZ-LARA knew, had reason to know and/or reasonably suspected that Kayleigh was suffering child abuse and/or severe neglect, and an emergency situation, with deliberate indifference to the rights and safety of KAYLEIGH SLUSHER, they violated their mandatory duties to respond, investigate and/or report the abuse and/or neglect as required by law, including California Penal Code §§ 11165.9 and 11166, by California Welfare and Institutions Code §§ 328, 10553, 10554, 16501, 16504 and by California

1 Department of Social Services Child Welfare Services Regulations §§ 31-100, 31-101, 31-105, 31-
2 110, 31-115, 31-120, 31-125, 31-130, and 31-501.

3 42. Further, Defendants LEFLER-PANELA and/or DIAZ-LARA, with deliberate
4 indifference to the rights and safety of KAYLEIGH SLUSHER, failed to accept reports of
5 suspected child abuse and/or severe neglect without legal justification and did not properly maintain
6 a record of all reports received as mandated by Penal Code § 11165.9.

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8 43. Defendants LEFLER-PANELA and/or DIAZ-LARA, with deliberate indifference to
9 the rights and safety of KAYLEIGH SLUSHER, wrongfully delivered child protective services by
10 failing to conduct an assessment and develop a case plan as mandated by DSS Regulations §§ 31-
11 201, 31-205, 31-206 and/or Welfare and Institutions Code §16501.1.

12 44. Even though Defendants LEFLER-PANELA, DIAZ-LARA and/or DOE CWS
13 Workers received various reports of abuse and/or severe neglect, with deliberate indifference to the
14 rights and safety of KAYLEIGH SLUSHER, they violated their mandatory duties by choosing not
15 to conduct a basic evaluation of risks to determine whether an emergency situation existed as
16 mandated by Welfare and Institutions Code § § 16504 and/or DSS Regulations § § 31-101, 31-105,
17 31-110, 31-115, 31-120 and/or 31-128.

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19 45. Even though Defendants LEFLER-PANELA, DIAZ-LARA and/or DOE CWS
20 Workers received various reports of abuse and/or severe neglect, with deliberate indifference to the
21 rights and safety of KAYLEIGH SLUSHER, they violated their mandatory duties by choosing not
22 to control the conduct of Ryan Warner and/or Sara Kreuger, and/or otherwise protect Kayleigh as
23 mandated by Welfare and Institutions Code § § 16501 and 16504.

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25 46. With deliberate indifference to the rights and safety of KAYLEIGH SLUSHER,
26 Defendants LEFLER-PANELA and/or DIAZ-LARA violated their duties as mandated reporters to
27 report suspected child abuse and/or severe neglect to appropriate authorities and to make initial
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1 reports or follow up reports within 36 hours of receiving said reports of abuse and/or severe neglect
2 as mandated by Penal Code § § 11165.9 and 11166(a). Rather, Defendants told Plaintiff ROBIN
3 SLUSHER she could call the police instead.

4 47. On or around January 29, 2014, Plaintiff ROBIN SLUSHER again contacted NPD to
5 inform them that her granddaughter was in grave danger, and requesting assistance. The NPD again
6 dispatched Defendant WADE, this time to do a welfare check for Kayleigh's benefit at 2060
7 Wilkins Avenue, Apt. 7. Defendant WADE spoke with Plaintiff ROBIN SLUSHER on the
8 telephone, who told Defendant WADE that Kayleigh was in immediate physical danger due to Mr.
9 Warner's and Ms. Krueger's illegal drug use in the home, their failure to provide food and care to
10 Kayleigh, and possible physical violence against Kayleigh. Plaintiff ROBIN SLUSHER told
11 Defendant WADE that she had not been allowed to talk with her granddaughter, Kayleigh since
12 approximately Thanksgiving; that she believed Kayleigh's mother, Ms. Krueger, was using drugs
13 and allowing others to use drugs in Kayleigh's home, possibly crack cocaine; that Kayleigh was not
14 being fed; and that when she has attempted to check on or see her granddaughter, Ms. Krueger has
15 refused and told her that Kayleigh has been sick since Thanksgiving.

16 48. On information and belief, Defendants WADE and NPD Officer DEGUILIO visited
17 Kayleigh's residence later on January 29, 2014. On information and belief, the following facts in
18 this paragraph occurred at that time. Ms. Krueger refused Defendants permission to enter the home
19 to perform a welfare check on Kayleigh, and Defendants were aware that Ms. Krueger actively tried
20 to conceal the inside of her home from the officers by closing the front door against her body and
21 peeking her head out to talk to them. During that visit, Ms. Krueger brought Kayleigh to the front
22 door and Defendants WADE and DEGUILIO observed bruises on Kayleigh's face. Defendants
23 could not see the rest of Kayleigh's body, including her arms and legs, which were covered by her
24 clothes. Defendants were able to observe a man walk out of a back bedroom and look very
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1 surprised to see the officers there. Defendants saw that that man appeared to be very malnourished,
2 with sunken cheekbones, and appeared to be a drug user. That man told Defendants his name was
3 Ryan Howard, and that he did not have, and he could not find, any identification. Defendants ran a
4 records check on “Ryan Howard,” and dispatch was unable to locate any match. That man who
5 claimed to be “Ryan Howard” was actually “Ryan Warner.” When Defendants first encountered
6 Ryan Howard (Warner) at Kayleigh’s home, Defendants determined that he was under the influence
7 of a controlled substance, based on their training and experience due to his appearance and obvious
8 symptoms of drug intoxication. Ryan Howard (Warner) admitted to Defendants that he had used
9 marijuana and Ms. Krueger’s prescription pain medication that day, without a prescription for it.
10 Defendants entered the residence. Defendants did not search the residence, nor did Defendants
11 observe every room, or whether or not there were weapons or illegal drugs, or whether there was
12 sufficient food for Kayleigh. While Defendants were there, another man walked out of a back
13 bedroom, whom officers recognized from past contacts as someone currently on probation. That
14 second man attempted to quickly leave the residence, and Defendants detained him for a probation
15 search. While Kayleigh was sitting on Ms. Krueger’s lap on a couch, Defendants saw Kayleigh
16 vomit. Ms. Krueger stated that Kayleigh had the flu, and immediately took Kayleigh into the
17 bathroom, away from the officers. Defendants WADE and DEGUILIO also observed that Kayleigh
18 appeared gaunt, sick, malnourished, and distressed. Defendants did not attempt to speak with
19 Kayleigh. Ms. Krueger asked Defendants to leave, and Defendants left. Defendant WADE later
20 determined that the man claiming to be “Ryan Howard” had lied to them about his identity, and that
21 he was actually Ryan Warner. On information and belief, Defendants WADE and DEGUILIO also
22 confirmed that there was an active arrest warrant for Ryan Warner and/or legal cause for his
23 immediate arrest. Defendants made no effort to obtain a warrant to re-enter Kayleigh’s home,
24 search Kayleigh’s home, or arrest anyone in Kayleigh’s home. Defendant WADE then called
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1 Plaintiff ROBIN SLUSHER, and told her that everything appeared normal at Kayleigh's home, and
2 that Kayleigh had food. Defendant WADE also promised and reassured Plaintiff ROBIN
3 SLUSHER that he would "keep an eye on the apartment."

4 49. Plaintiffs are informed and believe and thereon allege that Defendant WADE
5 violated his promise and never went back to the apartment before Kayleigh was murdered. On
6 information and belief, Defendant WADE also did not ask any other member of the NPD to monitor
7 the apartment.
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9 50. At all relevant times, Defendants WADE and DEGUILIO were Mandated Reporters
10 under the California Child Abuse and Neglect Reporting Act ("CANRA"). On information and
11 belief, Defendants WADE and DEGUILIO violated their mandatory duties to investigate and/or
12 report the abuse and neglect as required by California Penal Code § § 11164 *et seq*, 11165.9, and
13 11166, despite knowing, having reason to know and/or reasonably suspecting that Kayleigh was
14 suffering child abuse/neglect. Neither Defendants WADE nor DEGUILIO ever made any report of
15 suspected child abuse and/or neglect in relation to Kayleigh to Napa County CWS or any other
16 agency or authority.
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18 51. Plaintiffs relied on the representations of Defendants WADE and DEGUILIO that
19 everything appeared normal with Kayleigh and at Kayleigh's home, that there was food for
20 Kayleigh in the home, and that they would "keep an eye on the apartment." Those representations
21 were false. Had Plaintiffs known the truth about what transpired during Defendants' welfare check
22 on Kayleigh, Plaintiffs would have taken immediate action to protect Kayleigh, including making
23 further efforts to seek protection for Kayleigh from the NPD and the Napa County CWS, contacting
24 other authorities or child advocates for assistance, personally going to Kayleigh's home, or
25 engaging in other self-help to try to protect Kayleigh. Instead, Plaintiffs relied to their (and
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1 Kayleigh's) detriment on Defendants' false representations that everything appeared normal at
2 Kayleigh's home, and that the NPD would monitor the apartment to protect Kayleigh.

3 52. Through their volitional, intentional, and deliberately indifferent acts, omissions, and
4 misrepresentations, Defendants WADE and DEGUILIO affirmatively placed Kayleigh Slusher in
5 danger, exposing her to a danger which she would not have otherwise faced, and leaving her in a
6 situation that was more dangerous than the one in which they found her.
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8 53. On or about February 1, 2014, NPD Officers responded to a call to do another
9 welfare check at Kayleigh's home. When NPD Officers arrived there, they discovered Kayleigh
10 Slusher in her bed, deceased, with evidence of having suffered severe physical abuse.

11 54. Defendants' failure to investigate and/or report the abuse and/or neglect was without
12 legal justification, caused great pain and suffering to Plaintiffs, and caused Kayleigh Slusher's
13 death. These injuries, including but not limited to physical abuse, neglect and death, were of the
14 type the California Legislature intended to prevent in enacting the Child Abuse and Neglect
15 Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553, 10554,
16 and 10651. Additionally, Defendants' affirmative acts and omissions, including failure to
17 investigate, report, intervene and/or protect Kayleigh Slusher from known and foreseeable harms,
18 including physical and sexual abuse and death, created danger and increased the risk of harm to
19 Kayleigh. Defendants further created danger and increased the risk of harm to Kayleigh, through
20 their affirmative acts and omissions, by creating a false sense of security and safety as to Plaintiffs
21 and others who wished to protect Kayleigh from harm, and by encouraging and/or preventing
22 Plaintiffs and others from seeking other assistance and from protecting Kayleigh themselves.
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25 55. Under the Fourteenth Amendment, Plaintiff KAYLEIGH SLUSHER had a due
26 process right to life and a liberty interest in bodily integrity and security, including a protected
27 liberty interest to the non-discretionary investigation, reporting, and protection mandated for her
28

1 benefit by California law. Plaintiffs JASON SLUSHER, ROBIN SLUSHER and BENNY
2 SLUSHER had the right to familial relationships with Kayleigh. Among other sources, these rights
3 under the First and Fourteenth Amendments derive from statutory mandates as created by California
4 law. Investigation and/or reporting of child abuse and/or neglect is mandatory under the California
5 Child Abuse and Neglect Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code
6 §§ 10550, 10553, 10554, and 10651, and is intended by law for the benefit and protection of
7 children such as Kayleigh Slusher. Such investigation and/or reporting is mandatory, ministerial,
8 and is not discretionary under the CANRA. Defendants unreasonably and unjustifiably violated
9 their mandatory duties to investigate and/or report the abuse and/or neglect suffered by Kayleigh
10 Slusher, despite Plaintiffs' statutory and constitutional entitlement to investigation and/or reporting
11 under California law. Defendants violated Plaintiffs' rights under the First and Fourteenth
12 Amendments by failing to respond to, investigate and/or report child abuse and neglect as mandated
13 by the CANRA. As a direct result of Defendants' conduct, including conduct that increased the risk
14 of harm to Kayleigh Slusher, and Defendants' failure to investigate and/or report child abuse and/or
15 neglect as required by the United States Constitution and California law, Plaintiff Kayleigh Slusher
16 suffered loss of life and liberty, and Plaintiffs JASON SLUSHER, ROBIN SLUSHER and BENNY
17 SLUSHER suffered loss of their familial relationships with their daughter/granddaughter, including
18 loss of love, companionship, comfort, affection, society, services, solace, and moral support.

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22 56. At all material times, and alternatively, the actions and omissions of each Defendant
23 were intentional, wanton and/or willful, conscience shocking, reckless, malicious, deliberately
24 indifferent to Plaintiffs' rights, done with actual malice, grossly negligent, negligent, and
25 objectively unreasonable.

26 57. As a direct and proximate result of each Defendant's acts and/or omissions as set
27 forth above, Plaintiffs sustained the following injuries and damages, past and future, among others:
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- a. Wrongful death of Kayleigh Slusher (by JASON SLUSHER, pursuant to CCP 377.60 and federal civil rights law);
- b. Hospital and medical expenses (by JASON SLUSHER, pursuant to CCP 377.20 and federal civil rights law);
- c. Coroner's fees, funeral and burial expenses (by JASON SLUSHER, pursuant to CCP 377.20 and federal civil rights law);
- d. Loss of familial relationships, including loss of love, companionship, comfort, affection, society, services, solace, and moral support (by all Plaintiffs, pursuant to CCP 377.60 and/or federal civil rights law);
- e. Pain and suffering and emotional distress (by all Plaintiffs, pursuant to federal civil rights law);
- f. Violation of constitutional rights (by all Plaintiffs, pursuant to federal civil rights law);
- g. Kayleigh Slusher's loss of life (by JASON SLUSHER pursuant to federal civil rights law);
- h. Kayleigh Slusher's conscious pain and suffering (by JASON SLUSHER pursuant to federal civil rights law);
- i. All damages and penalties recoverable under 42 U.S.C. §§ 1983, 1988, California Civil Code §§ 52 and 52.1, California Code of Civil Procedure §1021.5, and as otherwise allowed under California and United States statutes, codes, and common law.

58. Plaintiff JASON SLUSHER, and the Estate of Kayleigh Slusher, Deceased, who bring state law claims herein, timely and properly filed tort claims pursuant to Cal. Gov. Code § 910 et seq., and for all Plaintiffs this action is timely filed within all applicable statutes of limitation.

COUNT ONE
-- 42 U.S.C. §1983 --
ALL PLAINTIFFS AGAINST DEFENDANTS WADE, DEGUILIO, LEFLER-PANELA,
DIAZ-LARA and DOES 1-50

59. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

1 60. By the actions and omissions described above, Defendants violated 42 U.S.C. §1983,
2 depriving Plaintiffs of the following clearly established and well-settled constitutional rights
3 protected by the United States Constitution:

- 4 a. The right to be free from deprivation of life and liberty, and interference with
5 bodily integrity and security, as protected by the Due Process Clause of the
6 Fourteenth Amendment;
- 7 b. The right to bodily integrity and security with the liberty interests created for
8 Plaintiffs' benefit and protection by state law, including mandatory duties to
9 report, investigate, and protect children from child abuse and/or neglect, to which
10 entitlement was created statutorily by the Child Abuse and Neglect Reporting
11 Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553,
12 10554, and 10651, and other mandatory authority cited herein, as protected by
13 the Due Process Clause of the Fourteenth Amendment;
- 14 c. The right to be free from wrongful governmental interference with familial
15 relationships as secured by the First and Fourteenth Amendments and California
16 Code of Civil Procedure § § 377.20 *et seq.* and 377.60 *et seq.*

17 61. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs of
18 rights described herein, knowingly, maliciously, and with conscious and reckless disregard for
19 whether the rights and safety of Plaintiffs would be violated by their acts and/or omissions.

20 62. As a direct and proximate result of Defendants' acts and/or omissions as set forth
21 above, Plaintiffs sustained injuries and damages as set forth at ¶ 57, above.

22 63. The conduct of Defendants entitles Plaintiffs to punitive damages and penalties
23 allowable under 42 U.S.C. §1983 and California law. Plaintiffs do not seek punitive damages
24 against Defendant public entities.

25 64. Plaintiffs are also entitled to reasonable costs and attorneys' fees under 42 U.S.C.
26 §1988 and applicable California codes and laws.

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COUNT TWO
- 42 U.S.C. §1983 (Monell)–
ALL PLAINTIFFS AGAINST DEFENDANTS CITY OF NAPA, CHIEF OF POLICE
RICHARD MELTON and COUNTY OF NAPA

65. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

66. On information and belief, the unconstitutional actions and/or omissions of Defendants, were pursuant to the following customs, policies, practices, and/or procedures of the CITY OF NAPA and the COUNTY OF NAPA, which were directed, encouraged, allowed, and/or ratified by policy making officers for the CITY OF NAPA, the NAPA POLICE DEPARTMENT, the COUNTY OF NAPA, and/or NAPA CHILD WELFARE SERVICES:

- a. To tolerate and permit the violation of mandatory duties to report and/or investigate and/or take other mandatory action in response to reports of child abuse and/or neglect;
- b. To fail to use and require appropriate and generally accepted law enforcement and/or child welfare services policies, procedures, and training in handling child abuse and/or neglect reports and investigations;
- c. To cover-up violations of constitutional rights by any or all of the following:
 - i. by failing to properly investigate and/or evaluate complaints or incidents of failure to report and/or investigate reports of child abuse and/or neglect;
 - ii. by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police and/or child welfare services activity; and
 - iii. by allowing, tolerating, and/or encouraging police officers and CWS workers to: fail to file complete and accurate police and/or CWS reports; file false reports; make false statements; intimidate, bias and/or “coach” witnesses to give false information and/or to attempt to bolster officers’ and/or CWS employees’ stories; and/or obstruct or interfere with investigations of unconstitutional or unlawful conduct, by withholding and/or concealing material information;
- d. To allow, tolerate, and/or encourage a “code of silence” among law enforcement officers and police department personnel, whereby an officer or

1 member of the department does not provide adverse information against a
2 fellow officer or member of the department; and,

- 3 e. To fail to institute, require, and enforce necessary, appropriate and lawful
4 policies, procedures, and training programs to prevent or correct the
5 unconstitutional conduct, customs, and practices and procedures described in
6 this Complaint and in paragraphs (a) through (e), with deliberate indifference
7 to the rights and safety of Plaintiffs and the public, and in the face of an
8 obvious need for such policies, procedures, and training programs; and
- 9 f. To use or tolerate inadequate, deficient, and improper procedures for
10 handling, investigating, and reviewing complaints of officer and/or employee
11 misconduct made under California Government Code § 910 et seq.

12 67. Defendants CITY OF NAPA, CHIEF OF POLICE RICHARD MELTON, COUNTY
13 OF NAPA, and DOES 1–50 failed to properly hire, train, instruct, monitor, supervise, evaluate,
14 investigate, and discipline Defendants, with deliberate indifference to Plaintiffs’ constitutional
15 rights, which were thereby violated as described above.

16 68. The unconstitutional actions and/or omissions of Defendants, as described above,
17 were approved, tolerated and/or ratified by policy-making officers for the NAPA POLICE
18 DEPARTMENT and COUNTY OF NAPA CHILD WELFARE SERVICES. Plaintiffs are
19 informed and believe, and thereupon allege, that the details of this incident have been revealed to
20 the authorized policy makers within the CITY OF NAPA and the COUNTY OF NAPA, including
21 CHIEF OF POLICE RICHARD MELTON and DOES 1–50, and Plaintiffs are further informed and
22 believe, and thereupon allege, that such policy makers have direct knowledge of the facts of this
23 incident. Notwithstanding this knowledge, the authorized policy makers within the CITY OF
24 NAPA and the COUNTY OF NAPA have approved of the conduct of Defendants, and have made a
25 deliberate choice to endorse the decisions of those defendant officers and the basis for those
26 decisions. By doing so, the authorized policy makers of the CITY OF NAPA and the COUNTY OF
27 NAPA have shown affirmative agreement with each individual Defendant officer’s actions, and
28 have ratified the unconstitutional acts of the individual Defendants.

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- a. The right to be free from deprivation of life and liberty, and interference with bodily integrity and security, as protected by the Due Process Clauses of the Fourteenth Amendment of the United States Constitution and Art. 1, Sec. 7 of the California Constitution;
- b. The right to bodily integrity and security with the liberty interest created for Plaintiffs’ benefit and protection by state law, including mandatory duties to report, investigate, and protect children from child abuse and/or neglect, to which entitlement was created statutorily by the Child Abuse and Neglect Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553, 10554, and 10651, and other mandatory authority cited herein, as protected by the Due Process Clauses of the Fourteenth Amendment of the United States Constitution and Art. 1, Sec. 7 of the California Constitution;
- c. The right to be free from wrongful governmental interference with familial relationships as secured by the First and Fourteenth Amendments of the United States Constitution, Art. 1, Secs. 1 and 7 of the California Constitution, and California Code of Civil Procedure § § 377.20 *et seq.* and 377.60 *et seq.*;
- d. The right to enjoy and defend life and liberty, acquire, possess and protect property, and pursue and obtain safety, happiness and privacy, as secured by the California Constitution, Article 1, Section 1;
- e. The right to protection from bodily restraint, harm, or personal insult, as secured by Cal. Civil Code § 43.

74. Separate from, and above and beyond, Defendants’ attempted interference, interference with, and violation of Plaintiffs’ rights, Defendants violated Plaintiffs’ rights by the following conduct constituting threat, intimidation, or coercion:

- a. Intentionally, or with deliberate indifference, and without legal justification, violating mandatory duties to investigate and/or report child abuse and/or neglect as required by California Child Abuse and Neglect Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553, 10554, and 10651.
- b. Intentionally, or with deliberate indifference, and without legal justification, depriving Kayleigh Slusher of necessary, life-saving measures mandated by law for her protection;
- c. Intentionally, or with deliberate indifference, and without legal justification, affirmatively placing Kayleigh Slusher at danger, exposing her to a danger

1 which she would not have otherwise faced, and leaving her in a situation that
2 was more dangerous than the one in which they found her;

- 3 d. By going to Kayleigh Slusher's home, then violating their mandatory duties
4 described herein, affirmatively increasing her risk of harm, through their
5 conduct and misrepresentations preventing others from coming to her aid and
6 rescue;
- 7 e. Intentionally, or with deliberate indifference, and without legal justification,
8 causing Kayleigh Slusher to remain in an abusive and deadly household,
9 including known drug abuse, criminal activity, physical abuse and injury,
10 starvation, and cruelty, while foreclosing other, more caring, sources of hope
11 and rescue.

12 75. As a direct and proximate result of Defendants' violation of California Civil Code
13 §52.1 and of Plaintiffs' rights under the United States and California Constitutions, Plaintiffs
14 sustained injuries and damages, and against each and every Defendant are entitled to relief as set
15 forth above at ¶¶ 61-64, including all damages allowed by California Civil Code §§ 52, 52.1, and
16 California law, not limited to three times actual damages, costs, attorneys' fees, and civil penalties.
17 For this claim, the Defendants City of Napa and County of Napa are vicariously liable for the
18 conduct of their employees and agents pursuant to Cal. Gov. Code § 815.2.

19 **COUNT FOUR**
20 **-- NEGLIGENCE AND NEGLIGENCE PER SE; PERSONAL INJURIES --**
21 **PLAINTIFF JASON SLUSHER AGAINST ALL DEFENDANTS**

22 76. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth
23 here.

24 77. At all times, each Defendant owed Plaintiffs KAYLEIGH SLUSHER, Deceased, and
25 JASON SLUSHER the duty to act with due care in the execution and enforcement of any right, law,
26 or legal obligation.

27 78. At all times, each Defendant owed Plaintiffs the duty to act with reasonable care.
28 Furthermore, Defendants owed the mandatory duties to respond, investigate and/or report child

1 abuse and/or neglect as required by law, including the California Child Abuse and Neglect
2 Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553, 10554,
3 and 10651 California Penal Code §§ 11165.9 and 11166, and by California Department of Social
4 Services Child Welfare Services Regulations §§ 31-100, 31-105, 31-110, 31-115, 31-120, 31-125,
5 31-130, and 31-501.

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7 79. The injuries suffered by Plaintiffs, including but not limited to physical abuse,
8 neglect, death, loss of familial relationships and emotional distress were of the type the California
9 Legislature intended to prevent in enacting the Child Abuse and Neglect Reporting Act, Penal Code
10 § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553, 10554, and 10651, and were of the
11 type the California Department of Social Services Child Welfare Services intended to prevent in
12 enacting Regulations §§ 31-100, 31-105, 31-110, 31-115, 31-120, 31-125, 31-130, and 31-501.

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14 80. Additionally, the general duties of reasonable care and due care owed to Plaintiffs by
15 Defendants CITY OF NAPA, CHIEF OF POLICE RICHARD MELTON and COUNTY OF
16 NAPA, through their employees and agents, include but are not limited to the following specific
17 obligations:

- 18 a. to properly and adequately hire, investigate, train, supervise, monitor,
19 evaluate, and discipline their employees, agents, and/or law enforcement
20 officers to ensure that those employees/agents/officers act at all times in the
21 public interest and in conformance with law;
22 b. to make, enforce, and at all times act in conformance with policies and
23 customs that are lawful and protective of individual rights, including
24 Plaintiffs’;
25 c. to refrain from making, enforcing, and/or tolerating the wrongful policies and
26 customs set forth at ¶ 66, above.

27
28 81. All Defendants, through their acts and omissions, breached each and every one of the
aforementioned duties owed to Plaintiffs.

1 82. Defendants' breaches of law, standards, and mandatory duties set forth herein also
2 constitute negligence per se.

3 83. Defendants CITY OF NAPA and COUNTY OF NAPA are vicariously liable for the
4 conduct of their employees and agents pursuant to Cal. Gov. Code § 815.2, and for their employees'
5 breach of mandatory duties under Cal. Gov. Code § 815.6.
6

7 84. As a direct and proximate result of Defendants' negligence, Plaintiffs sustained
8 injuries and damages, and against each and every Defendant are entitled to relief as set forth above
9 at ¶¶ 61-64, including punitive damages against all Defendant law enforcement officers and
10 Defendant CWS workers under California law.
11

12 WHEREFORE, Plaintiffs respectfully request the following relief against each and every
13 Defendant herein, jointly and severally:
14

- 15 a. compensatory and exemplary damages in an amount according to proof and
16 which is fair, just and reasonable;
- 17 b. punitive damages under 42 U.S.C. §1983 and California law in an amount
18 according to proof and which is fair, just, and reasonable (punitive damages
19 are not sought against the City of Napa or the County of Napa);
- 20 c. all other damages, penalties, costs, interest, and attorneys' fees as allowed by
21 42 U.S.C. §§ 1983, 1988; Cal. Code Civ. Proc. § 1021.5, Cal. Civil Code §§
22 52 et seq., 52.1, and as otherwise may be allowed by California and/or federal
23 law;
- 24 d. Injunctive relief, including but not limited to the following:
 - 25 i. an order requiring Defendants to institute and enforce
26 appropriate and lawful policies and procedures for
27 complying with mandatory duties for handling reports and
28 investigations of child abuse and/or neglect;
 - ii. an order prohibiting Defendants and their law
 enforcement officers from engaging in the "code of
 silence" as may be supported by the evidence in this case;

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iii. an order requiring Defendants to train their law enforcement officers concerning generally accepted and proper tactics and procedures for handling reports and investigations of child abuse and/or neglect and this Court’s orders concerning the issues raised in injunctive relief requests i-ii, above;

e. such other and further relief as this Court may deem appropriate.

DATED: May 29, 2015

HADDAD & SHERWIN LLP

/s/ Michael J. Haddad
MICHAEL J. HADDAD
Attorneys for Plaintiffs

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JURY DEMAND

Plaintiffs hereby request a trial by jury.

DATED: May 29, 2015

HADDAD & SHERWIN LLP

/s/ Michael J. Haddad
MICHAEL J. HADDAD
Attorneys for Plaintiffs