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

Plaintiff, by and through her attorneys, HADDAD & SHERWIN, for her Complaint against Defendants, state as follows:

JURISDICTION

1. This is a civil rights action arising from Defendant Sheriff Deputy Hector Luna's violation of Plaintiff's rights and his sexual assault of Plaintiff on or about August 25, 2002, in the City of Gilroy, Santa Clara County, California. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the First, Fourth, Ninth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 USC §§ 1331 and 1333(a)(3) and (4), and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the supplemental jurisdiction of this Court pursuant to 28 USC §1337 to hear and decide claims arising under state law. The amount in controversy herein, excluding interest and costs, exceeds the minimum jurisdictional limit of this Court.

INTRADISTRICT ASSIGNMENT

2. A substantial part of the events and/or omissions complained of herein occurred in Santa Clara County, California, and this action is properly assigned to the San Jose Division of the United States District Court for the Northern District of California.

PARTIES AND PROCEDURE

3. Plaintiff Andrea Wood is a resident of the State of California.
4. Defendant Santa Clara County is a municipal corporation established by the laws and Constitution of the State of California, and owns, operates, manages, directs, and controls the Santa Clara County Sheriff's Department which employs other defendants in this action.

5. Defendant Hector Luna was at all material times employed as a law enforcement officer by Defendant Santa Clara County, and was acting within the course and scope of that employment.

6. The true names and capacities of Defendants sued herein as Does 1-20 ("Doe defendants") are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names, and Plaintiff will seek leave to amend this complaint to show their true names and capacities when the same are ascertained. At all material times, each Doe defendant was an employee/agent of Defendant Santa Clara County acting within the course and scope of that relationship.

7. Plaintiff is informed and believes and thereon alleges that each of the Defendants sued herein was negligently, wrongfully, and otherwise responsible in some manner for the events and happenings as hereinafter described, and proximately caused injuries and damages to Plaintiff. Further, one or more Doe defendants were at all material times responsible for the hiring, training, supervision, and discipline of other defendants, and/or directly responsible for violation of Plaintiff's rights.

8. Each individual defendant (meaning non-municipal defendants) is sued in his/her individual and official capacities.

9. Plaintiff is informed and believes, and thereon alleges, that each of the defendants was at all material times an agent, servant, employee, partner, joint venturer, co-conspirator, and/or alter ego of the remaining defendants, and in doing the things herein alleged, was acting within the course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the defendants herein gave consent, aid, and assistance to each of the remaining

defendants, and ratified and/or authorized the acts or omissions of each defendant as alleged herein, except as may be hereinafter otherwise specifically alleged.

10. At all material times, each defendant was jointly engaged in tortious activity, resulting in the deprivation of Plaintiff's Constitutional rights and other harm.

11. At all material times, each defendant acted under color of the laws, statutes, ordinances, and regulations of the State of California.

12. At all material times, Defendants Hector Luna and Does 1-20 acted pursuant to the actual customs, policies, practices and procedures of the Santa Clara County Sheriff's Department and Defendant Santa Clara County.

13. This complaint may be pled in the alternative pursuant to FRCivP 8(e)(2).

GENERAL ALLEGATIONS

14. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

15. In the early morning of August 25, 2002, Plaintiff Andrea Wood called the Santa Clara County Sheriff's Department seeking assistance to enforce a restraining order she had against her husband.

16. Two Santa Clara County Sheriff's Deputies arrived at Plaintiff's home at approximately 3:00 am. One of those deputies was Defendant Hector Luna, wearing his Santa Clara Sheriff's Department uniform. Defendant Luna later wrote an official Sheriff report concerning this call.

17. Defendant Luna arranged to speak privately with Plaintiff in her bedroom, and encouraged her to call him later that morning directly on his cell phone.

18. Defendant Luna knew or should have known that Plaintiff was a victim of domestic abuse with attendant emotional problems.

19. Defendant Luna used his law enforcement training and authority to gain Plaintiff's trust, and he told her to meet him at a restaurant several hours later so that he could advise and assist her concerning her domestic violence situation.

20. Plaintiff met Defendant Luna several hours later in the morning in the parking lot of a restaurant in the City of Gilroy, whereupon, Defendant Luna used his law enforcement authority to compel Plaintiff to enter his car and drive with him.

21. Defendant Luna threatened her that she should not try to call for help, because he was a law enforcement officer.

22. Defendant Luna physically and sexually assaulted and battered Plaintiff in his car and in a motel room to which he took her.

23. Plaintiff sustained the trauma of sexual assault/battery, rape, as well as bruises, scrapes, and bites from Defendant Luna.

24. Plaintiff later reported these events to the Gilroy Police Department and she was examined at Santa Clara Valley Medical Center.

25. Before Defendant Luna was hired as a Santa Clara County Sheriff's Deputy, he had worked for Santa Clara County as a corrections officer. Deputy Luna had previously been fired by Santa Clara County from his job as a corrections officer due to sexual misconduct. Despite actual knowledge of Defendant Luna's history of misconduct, Defendant Santa Clara County hired Defendant Luna as a deputy sheriff, with more authority and autonomy than he had had as a corrections officer.

26. In the course of an investigation into Plaintiff's allegations herein, Defendant Luna reportedly resigned from the Santa Clara County Sheriff's Department.

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

28. As a direct and proximate result of each Defendant's conduct as set forth above, Plaintiff sustained the following injuries and damages, past and future, among others:

- a. Physical and sexual assault and battery, including rape, contusions, scrapes, bites, and other injuries;
- b. mental suffering and emotional distress;
- c. physical pain and suffering;
- d. economic losses, including lost wages and medical expenses;
- e. interference with and violation of constitutional rights;
- f. impairment of the normal enjoyment of life;
- g. all damages and penalties recoverable under 42 USC §§ 1983 and 1988, Cal. Civ. Code §§ 51.7 et seq., 51.9 et seq., 52 et seq., 52.1 et seq., and 52.4 et seq., and as otherwise allowed under California and United States statutes, codes, and common law.

29. Defendants injured and deprived Plaintiff of rights knowingly, maliciously, and with conscious and reckless disregard for whether the rights and safety of Plaintiff and others would be violated by their acts and/or omissions, entitling Plaintiff to punitive damages allowable under California law.

**COUNT ONE
-- 42 USC §1983 --**

DEFENDANT HECTOR LUNA AND AND DOES 1-20

30. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

31. By the actions and omissions described above, Defendants Hector Luna and Does 1-20 violated 42 USC §1983, depriving Plaintiff of the following clearly-established and well-settled constitutional rights protected by the First, Fourth, Ninth and Fourteenth Amendments to U.S. Constitution:

- a. The right to be free from excessive or unreasonable force as secured by the Fourth Amendment;
- b. The right to be free from unreasonable searches and seizures as secured by the Fourth Amendment;
- c. The right to be free from wrongful arrest, detention, and imprisonment as secured by the Fourth Amendment;
- d. The right to be free from the deprivation of liberty and from the use of unjustifiable force or physical contact as secured by the Fourteenth Amendment;
- e. The right to equal protection of the law as secured by the Fourteenth Amendment to the United States Constitution;
- f. The right to privacy and bodily integrity as secured by the Fourth, Ninth, and Fourteenth Amendments to the United States Constitution;

32. Defendants subjected Plaintiff to Defendants' wrongful conduct, depriving Plaintiff of rights described herein, knowingly, maliciously, and with conscious and reckless disregard for whether the rights and safety of Plaintiff and others would be violated by their acts and/or omissions.

33. As a direct and proximate result of Defendants' acts and/or omissions as set forth above, Plaintiff sustained injuries and damages as set forth at paragraph 28, above.

34. The conduct of Defendants Hector Luna and Does 1-20 entitles Plaintiff to punitive damages and penalties allowable under 42 USC §1983.

35. Plaintiff also claims reasonable costs and attorneys' fees under 42 USC §1988 and as allowed by law.

**COUNT TWO
- 42 USC §1983 -
DEFENDANTS SANTA CLARA COUNTY AND DOES 1-20**

36. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

37. The unconstitutional actions and/or omissions of Defendants Hector Luna, and Does 1-20, as well as other officers employed by or acting on behalf of Defendant Santa Clara County were pursuant to the following customs, policies, practices, and/or procedures of Defendant Santa Clara County, stated in the alternative, which were directed, encouraged, allowed, and/or ratified by policy making officers for the Santa Clara County Sheriff Department, upon Plaintiff's information and belief:

- a. to cover-up Sheriff misconduct and violations of constitutional rights by allowing, tolerating, and/or encouraging Sheriff officers to file false Sheriff reports, make false statements, falsely charge individuals with crimes or wrongs, obstruct and/or interfere with investigations of unconstitutional, unlawful, or improper Sheriff conduct; by withholding and/or concealing material information; and by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional, unlawful, or wrongful Sheriff activity;
- b. to allow, tolerate, and/or encourage the "Code of Silence" protecting Sheriff officers from responsibility for their misconduct,

including the suppression and/or fabrication of evidence and cover-up of Sheriff misconduct;

- c. to fail to properly and adequately investigate sheriff's deputies, including Hector Luna, and/or to ignore negative information, thereby hiring and equipping deputies like Hector Luna with a propensity for misconduct;

38. Defendants Santa Clara County and Does 1-20 failed to properly train, instruct, monitor, supervise, and discipline Defendants and other Sheriff Department personnel, with deliberate indifference to Plaintiffs' constitutional rights, which were thereby violated as described above.

39. The unconstitutional actions and/or omissions of Defendants and other Sheriff Department personnel, as described above, were ordered, approved, tolerated and/or ratified by policy making officers for the Santa Clara County Sheriff Department.

40. The aforementioned customs, policies, practices, and procedures, as well as the failures to properly and adequately train, instruct, monitor, supervise and discipline of Defendants Santa Clara County and Does 1-20 were a moving force and/or a proximate cause of the deprivations of Plaintiff's clearly-established and well-settled constitutional rights in violation of 42 USC §1983, as more fully set forth in Paragraph 30, above.

41. As a direct and proximate result of the unconstitutional actions, omissions, customs, policies, practices and procedures of Defendants Santa Clara County and Does 1-20, as described above, Plaintiff sustained serious and permanent injuries and is entitled to damages, penalties, costs and attorneys' fees as set forth in paragraph 28, above.

COUNT THREE
-- VIOLATION OF CIVIL CODE §52.1 --
ALL DEFENDANTS

42. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

43. The acts, omissions, customs, and policies of Defendants, as described above, violated Plaintiff's rights under California Civil Code §52.1, and the following clearly-established rights under the United States Constitution and the California Constitution:

- a. The right to be free from excessive or unreasonable force as secured by the Fourth Amendment;
- b. The right to be free from unreasonable searches and seizures as secured by the Fourth Amendment;
- c. The right to be free from wrongful arrest, detention, and imprisonment as secured by the Fourth Amendment;
- d. The right to be free from the deprivation of liberty and from the use of unjustifiable force or physical contact as secured by the Fourteenth Amendment;
- e. The right to equal protection of the law as secured by the Fourteenth Amendment to the United States Constitution;
- f. The right to privacy and bodily integrity as secured by the Fourth, Ninth, and Fourteenth Amendments to the United States Constitution;
- g. 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;
- h. The right to life, liberty and property and not to be deprived of those without due process of law as secured by the California Constitution, Article 1, Section 7;
- i. The right to be free from unreasonable searches and seizures as secured by the California Constitution, Article 1, section 13;

j. The right to equal protection of the laws as secured by the California Constitution, Article 1, section 7.

44. As a direct and proximate result of Defendants' violation of California Civil Code §52.1 and of Plaintiff's rights under the United States and California Constitutions, Plaintiff sustained injuries and damages as set forth above at Paragraph 28 above. Further, Plaintiff is entitled to all damages allowed by law, including California Civil Code §§52 and 52.1, and not limited to costs, attorneys fees, treble damages, and civil penalties.

COUNT FOUR
-- VIOLATION OF CALIFORNIA CIVIL CODE §51.7 --
ALL DEFENDANTS

45. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

46. By their actions, omissions, customs, and policies, as described above, Defendants violated Plaintiff Andrea Wood's rights to be free from any violence, or intimidation by threat of violence, committed against her person because of her gender, as secured by California Civil Code §51.7.

47. As a direct and proximate result of the violation of California Civil Code §51.7 Plaintiff sustained injuries and damages as set forth above at Paragraph 28, above, and is further entitled to attorney fees, costs, treble damages, civil penalties, and exemplary damages as allowed by California Civil Code §§ 51.7, 52, and as otherwise allowed under California law.

COUNT FIVE
-- VIOLATION OF CALIFORNIA CIVIL CODE §51.9 --
ALL DEFENDANTS

48. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

49. By their actions, omissions, customs, and policies, as described above, Defendants violated Plaintiff Andrea Wood's rights to be free from sexual harassment in a business, service, or professional relationship that Plaintiff could not easily terminate – that relationship being between Plaintiff and the Santa Clara County Sheriff's Department – as secured by California Civil Code §51.9.

50. As a direct and proximate result of the violation of California Civil Code §51.9 Plaintiff sustained injuries and damages as set forth above at Paragraph 28, above, and is further entitled to attorney fees, costs, treble damages, civil penalties, and exemplary damages as allowed by California Civil Code §§ 51.9, 52, and as otherwise allowed under California law.

COUNT SIX
-- VIOLATION OF CALIFORNIA CIVIL CODE §52.4 --
ALL DEFENDANTS

51. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

52. By their actions, omissions, customs, and policies, as described above, Defendants violated Plaintiff Andrea Wood's rights to be free from any gender violence, as secured by California Civil Code §52.4.

53. As a direct and proximate result of the violation of California Civil Code §52.4 Plaintiff sustained injuries and damages as set forth above at Paragraph 28,

above, and is further entitled to attorney fees, costs, treble damages, civil penalties, and exemplary damages as allowed by California Civil Code §§ 52.4, and as otherwise allowed under California law.

COUNT SEVEN
-- VIOLATION OF CIVIL CODE §1708.5: SEXUAL BATTERY --
ALL DEFENDANTS

54. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

55. By their actions, omissions, customs, and policies, as described above, Defendants violated Plaintiff's rights to be free from sexual battery as secured by California Civil Code §1708.5.

56. As a direct and proximate result of Defendants' violation of California Civil Code §1708.5, Plaintiff sustained injuries and damages as set forth above at Paragraph 28, and Plaintiff is further entitled to attorney fees, costs, treble damages, civil penalties, and exemplary damages as allowed by California Civil Code §1708.5, and as otherwise allowed under California law.

COUNT EIGHT
-- ASSAULT AND BATTERY --
ALL DEFENDANTS

57. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

58. The actions and omissions of Defendants, as set forth above, constitute assault and battery against Plaintiff.

59. As a direct and proximate result of Defendants' assault and battery, Plaintiff sustained injuries and damages as set forth in Paragraph 28, above.

COUNT NINE
-- INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS --
ALL DEFENDANTS

60. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

61. The actions and omissions of Defendants, as described above, were intentional and/or reckless, extreme and outrageous, and a proximate cause of Plaintiff's severe emotional distress.

62. As a direct and proximate result of the intentional infliction of emotional distress by Defendants, Plaintiff sustained injuries and damages as set forth at paragraph 28, above.

COUNT TEN
-- NEGLIGENCE: PERSONAL INJURIES AND CIVIL RIGHTS VIOLATIONS --
ALL DEFENDANTS

63. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

64. At all times, each Defendant owed Plaintiff the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

65. At all times, each Defendant owed Plaintiff the duty to act with reasonable care.

66. These general duties of reasonable care and due care owed to Plaintiff by all Defendants include but are not limited to the following specific obligations:

- a. To refrain from using, allowing a law enforcement officer to use, law enforcement authority to seize, wrongfully detain, and sexually and physically assault and batter Plaintiff;
- b. To refrain from taking advantage of Plaintiff's emotional problems and position of need;
- c. To refrain from exploiting Defendants' position of authority and power over Plaintiff, given her emotional problems and legal needs;
- d. To refrain from abusing their rights and/or authority granted them by law;
- e. To refrain from violating the rights of Plaintiff guaranteed to her by the United States and California Constitutions and law, as more fully set forth herein;
- f. To refrain from violating lawful policies and procedures of the Santa Clara County Sheriff's Department and Santa Clara County.

67. Additionally, these general duties of reasonable care and due care owed to Plaintiffs by Defendants Santa Clara County and Does 1-20 include but are not limited to the following specific obligations:

- a. To use reasonable care in the hiring and deployment of sheriff's deputies, including Hector Luna;
- b. To properly and adequately investigate, train, supervise, monitor and discipline sheriff deputies, including Hector Luna, to ensure that deputies act at all times in the public interest and in conformance with law;
- c. To make, enforce, and at all times act in conformance with policies and customs that are protective of Plaintiff's rights.

68. Defendants, through their acts, omissions, customs and/or policies breached each and every one of the aforementioned duties owed to Plaintiff.

69. As a direct and proximate result of Defendants' acts and/or omissions as set forth above, Plaintiff sustained injuries and damages as set forth at paragraph 28, above.

WHEREFORE, Plaintiff respectfully request the following relief against each and every Defendant herein, jointly and severally:

- a. compensatory and exemplary damages in an amount according to proof and which is fair, just and reasonable;
- b. punitive damages under 42 USC §1983 and under California law in an amount according to proof and which is fair, just, and reasonable;
- c. all other damages, penalties, costs, interest, and attorneys' fees as allowed by 42 USC §§ 1983 and 1988, Cal. Civ. Code §§ 51.7 et seq., 51.9 et seq., 52 et seq., 52.1 et seq., and 52.4 et seq., and as otherwise allowed under California and United States statutes, codes, and common law.
- d. such other and further relief, including injunctive relief, as this Court may deem appropriate.

DATED: August 21, 2003

HADDAD & SHERWIN

MICHAEL J. HADDAD
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby requests a trial by jury.

DATED: August 21, 2003

HADDAD & SHERWIN

MICHAEL J. HADDAD
Attorneys for Plaintiff