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11 K.C., by and through his Guardian ad Litem,
12 MYISCHA THOMPSON, and D.B., by and
13 through his Guardian ad Litem, LIBRA WHITE

14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 K.C., by and through his Guardian ad Litem,
17 MYISCHA THOMPSON; D.B., by and through
18 his Guardian ad Litem, LIBRA WHITE,

19 Plaintiffs,

20 vs.

21 TOWN OF ATHERTON, a municipal
22 corporation; DAVID METZGER, individually
23 and in his official capacity as a police sergeant
24 for the TOWN OF ATHERTON; DIEGO
25 ROMERO, individually and in his official
capacity as a police officer for the TOWN OF
ATHERTON; IGOR DAVIDOWICH,
individually and in his official capacity as a
police officer for the TOWN OF ATHERTON;
JOSHUA GATTO, individually and in his
official capacity as a police officer for the
TOWN OF ATHERTON; DIMITRI
ANDRUHA, individually and in his official
capacity as a police officer for the TOWN OF
ATHERTON; STEPHEN EMMI, individually
and in his official capacity and DOES 1-100,
inclusive, individually, jointly, and severally,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 1. This case arose after the Town of Atherton police officers used unwarranted and
3 excessive force against minor K.C. and unreasonably seized minor D.B., two 16-year-old Black
4 boys attending Menlo-Atherton High School. On April 28, 2023, Menlo-Atherton High School
5 administrators called the police on minor K.C., who suffers from an emotional disturbance
6 impairment. On this particular day, minor K.C. was experiencing a mental health episode when
7 administrators refused to return his water toy. As a requirement, school staff is encouraged to
8 call on-site counselors to de-escalate situations of this nature. However, police were called
9 instead of an on-site counselor who possessed the skills and experience to assist minor K.C.
10 Thus, calling the authorities was a violation of minor K.C.'s Individualized Education Plan. As
11 an effort to defuse the situation, minor K.C. left the office and went to the bus stop to go home.
12 However, while outside, minor K.C. was confronted by Atherton police officers who physically
13 slammed him into the ground, shoved a knee into his back, and dragged him into a police car.
14 The officers also detained and handcuffed minor D.B. because he did not want to leave minor
15 K.C. alone with the officers. The officers knew or should have known that minor K.C. had a
16 mental impairment because they were informed over dispatch that he had a mental disability.
17 Nevertheless, both minors, who were unarmed and no threat were aggressively detained.

18 2. A few days after the incident, a school resource officer employed by the Town of
19 Atherton acquired minor K.C.'s FERPA-protected confidential school behavior report without a
20 subpoena, a lawful search warrant, or the consent of minor K.C. and his guardians.

21 3. This civil rights and state torts action seeks compensatory and punitive damages
22 from Defendants for violating Plaintiffs' rights under the United States Constitution and state
23 law in connection with the excessive and unreasonable force used during minor K.C.'s arrest,
24 minor D.B.'s unjustified seizure, and the unlawful search and seizure of minor K.C.'s
25 confidential school records a few days after his arrest.

JURISDICTION AND VENUE

4. This action arises under Title 42 of the United States Code, § 1983. Title 28 of

1 the United States Code, §§ 1331 and 1343 confers jurisdiction upon this Court. The unlawful
2 acts and practices alleged herein occurred in the County of San Mateo, California, which is
3 within the judicial district of this Court. This Court also has supplemental jurisdiction over
4 Plaintiffs' state law causes of action under 28 U.S.C. § 1367. Supplemental jurisdiction of this
5 Court is invoked pursuant to 28 U.S.C. § 1367 over the state law claims which are so related to
6 federal claims in this matter that they form part of the same case or controversy under Article III
7 of the United States Constitution.

8 5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants are
9 believed to reside in this district and all incidents, events, and occurrences giving rise to this
10 action occurred in this district.

11 **PARTIES**

12 6. Plaintiff K.C., at all times herein mentioned is a United States citizen. He
13 appears by and through his Guardian ad Litem, MYISCHA THOMPSON, a competent adult
14 and United States citizen in this action.

15 7. Plaintiff D.B., at all times herein mentioned is a United States citizen. He
16 appears by and through his Guardian ad Litem, LIBRA WHITE, a competent adult and United
17 States citizen in this action.

18 8. Defendant TOWN OF ATHERTON (hereinafter "TOWN") is an incorporated
19 public entity duly authorized and existing as such in and under the laws of the State of
20 California; at all times herein mentioned, Defendant TOWN has possessed the power and
21 authority to adopt policies and prescribe rules, regulations and practices affecting the operation
22 of the TOWN OF ATHERTON Police Department and its tactics, methods, practices, customs
23 and usage. At all relevant times, Defendant TOWN was the employer of Defendants DAVID
24 METZGER, DIEGO ROMERO, IGOR DAVIDOVICH, GATTO, DIMITRI ANDRUHA, and
25 DOES-100 Defendants, individually and as peace officers.

1 Tort Claims Act on June 28, 2023. The claim was rejected on August 10, 2023. Plaintiffs have
2 exhausted all administrative remedies pursuant to California law.

3 **FACTUAL ALLEGATIONS**

4 17. Plaintiff K.C. is a 16-year-old Black male student at Menlo-Atherton High
5 School ("MAHS") who experiences pervasive feelings of anxiety and depression and has
6 deficits in auditory processing, short term memory, executive functioning, visual motor
7 integration skills, and social language. Minor K.C.'s impairment, at times, can cause him to
8 exhibit signs of frustration and being overwhelmed, which requires positive behavior
9 intervention strategies. In these instances, trauma-informed de-escalation strategies are often at
10 times necessary in order to ensure the safety of minor K.C. As such, minor K.C. requires
11 consistent proactive positive behavior interventions, effective coping skills, and informed de-
12 escalation strategies, which are strongly recommended in his Individualized Education Program
13 ("IEP").

14 18. Minor K.C.'s IEP places him in MAHS's Successful Transition Achieved with
15 Responsive Support ("STARS") program. Minor K.C. attended one period per school day in the
16 STARS classroom where he received academic, behavioral, and social/emotional special
17 education support. All students in the STARS program have mental health needs and at times
18 require the direct support of mental health professionals and/or special education teachers who
19 have been trained in trauma-informed de-escalation strategies. Accordingly, MAHS's policy
20 provides that when a STARS student is agitated and unresponsive to adult directives,
21 encourages staff to immediately contact a STARS teacher for that particular student for
22 assistance. To carry this policy out, all administrators at MAHS have been given the cell phone
23 number for each STARS teacher so they may be immediately contacted when a student is
24 dysregulated. Under minor K.C.'s IEP, school staff is not supposed to contact the police in
25 response to an emotional disturbance episode.

19. On April 28, 2023, at approximately 3:21 pm near Menlo-Atherton High School
("MAHS") in Atherton, CA, minor K.C. was waiting at a bus stop with minor D.B. and some of

1 their friends after school. MAHS is part of a predominantly white and wealthy school district.
2 That week, students at MAHS played a game called “Senior Assassin” using pool noodle-like
3 water “guns,” which the school confiscated. While at the bus stop, minor K.C. learned from his
4 friends that their water toys were returned to them. Minor K.C., excitedly wanted to retrieve his
5 water toy as well so he returned to the school’s office to pick it up.

6 20. While in the Principal’s office, minor K.C. politely asked the school secretary for
7 his water toy, which was located behind the secretary. The secretary was about to hand the
8 water toy to minor K.C. when Defendant STEPHEN EMMI suddenly came out of his office and
9 instructed the secretary not to give minor K.C. his water toy. Defendant EMMI began speaking
10 to minor K.C. in a demeaning and confrontational manner, repeatedly telling him that he was
11 not going to get his toy. Minor K.C. asked Defendant EMMI for his toy back several times, but
12 Defendant EMMI loudly stated, “Who is the adult here?” When minor K.C. tried to reach to
13 retrieve his property, Defendant EMMI forcibly grabbed the toy and physically pushed into
14 minor K.C.’s body. Minor K.C. became frustrated by the fact that he was not allowed to have
15 his water toy even though his friends had been given theirs; as a result, minor K.C. became
16 emotionally distressed and began to shout at Defendant EMMI. At no point did minor K.C.
17 touch or spit at Defendant EMMI or anyone else in the office.

18 21. Vice Principal Nick Muys soon intervened and stepped in between minor K.C.
19 and Defendant EMMI. While crying, minor K.C. asked both adults if they could go somewhere
20 and talk about the situation, but Vice Principal Muys said, “No.” Minor K.C. then turned
21 around, walked out of the office, and headed back towards the bus stop. At some point while
22 minor K.C. was in the office, one of the school administrators called the police. During the 911
23 call, the caller informed the operator that minor K.C. was a “mental health student” who was
24 “easily triggered.”

25 22. While at the bus stop, minor K.C. was waiting for the bus with minor D.B. and
other friends when TOWN OF ATHERTON police officer, approached them. Upon information
and belief, these dispatched officers were aware that minor K.C. suffered from a mental

1 impairment since this information was provided to the 911 operator during the 911 call.
2 Defendant METZGER asked to speak to minor K.C., but minor K.C. informed Defendant
3 METZGER that he was a minor and could not talk to him. Subsequently, Defendant METZGER
4 stepped in front of minor K.C. and informed minor D.B. and their friends to leave. Minor K.C.
5 was fearful and confused and did not understand why he was being singled out. Minor K.C.
6 told his friends, including minor D.B., to stay next to him. Minor D.B. loudly reminded Plaintiff
7 K.C., in front of Defendant METZGER, that he was a minor and that “no officer can legally talk
8 to him.” Defendant METZGER then commanded minor D.B. to “start walking right now.” At
9 this point, minor K.C. told Defendant METZGER, “That’s my brother,” referring to minor D.B.
10 Defendant METZGER then instructed Defendant ROMERO to “book this guy [minor D.B.]
11 up.”

12 23. Defendant ROMERO toughly grabbed minor D.B.’s wrist and arm, shoved him
13 face forward into a wooden fence that was behind the boys, handcuffed him, and forced him to
14 sit down on the ground. As minor K.C. watched, more officers came up behind him. Defendant
15 METZGER then grabbed minor K.C.’s shoulder from behind. This scared minor K.C. since he
16 does not like to be touched, so he stated, “Please don’t touch me,” while putting his hands up
17 and backing away out of fear. Defendant METZGER then suddenly slammed minor K.C. onto
18 the ground. Minor K.C. had recently had surgery on a hernia, so he was in immense pain when
19 he hit the ground. Although minor K.C.’s friends shouted to the officers that minor K.C. had
20 just had surgery, Defendant METZGER rolled minor K.C. onto his stomach and shoved a knee
21 into his back while handcuffing him with Defendant ROMERO’s assistance. At this point,
22 minor K.C. was in extreme pain, so he began to cry and begged Defendant METZGER to stop
23 hurting him. Minor K.C. then shouted out his mother’s phone number to his friends, telling
24 them to contact her.

25 24. After a bit, one of the officers pulled minor K.C.’s arm to lift him up, further
injuring minor K.C. Defendant Officer IGOR DAVIDOVICH joined officers in detaining
minor K.C., who was not resisting. Officers dragged minor K.C. to a police car. The officers

1 then picked up minor K.C. putting him in a horizontal-style position and put him into the police
2 patrol car face forward. Throughout this entire encounter, minor K.C. asked the officers why
3 they were arresting him, but the officers did not answer him.

4 25. The officers took minor K.C. to the Atherton police station and called his
5 grandmother. The officers kept minor K.C. in handcuffs while he waited, even though he was
6 cooperating. The officers only took off the handcuffs to take minor K.C.'s picture. Finally, the
7 officers read minor K.C. his *Miranda* rights and released him when his grandmother arrived
8 approximately 15 minutes later.

9 26. While minor K.C. was taken to the police station, minor D.B. remained
10 handcuffed and seated on the ground at the bus stop. When minor D.B. asked Defendant
11 ROMERO why he had been detained, Defendant ROMERO falsely stated that minor D.B. was
12 "in the way" when Defendant METZGER wanted to speak to minor K.C., even though minor
13 D.B. was simply standing next to minor K.C. without obstructing the officer's interaction with
14 minor K.C. Minor D.B. asked for his handcuffs to be removed, but Defendants METZGER and
15 ROMERO insisted that minor D.B. had to have a conversation with them before they would
16 consider removing the handcuffs. Defendant METZGER also asked another officer if they
17 could put minor D.B. in the back of his police car. When minor D.B. and his friend protested,
18 Defendant METZGER told minor D.B. that this was his last chance to have a conversation with
19 him. Minor D.B. was forced into fearful acquiescence. Only after Defendant METZGER
20 explained that minor D.B. was handcuffed for not listening to his instruction to leave minor
21 K.C., Defendant METZGER removed minor D.B.'s handcuffs. Defendant METZGER and the
22 other officers then asked minor D.B. for his identification, address, and mother's phone number.
23 After calling minor D.B.'s mother, Defendant METZGER informed Plaintiff D.B. that he was
24 free to leave.

25 27. As a result of this incident, which was solely caused by the officers' inability to
properly communicate and interact with minor K.C., MAHS retaliated against minor K.C. by
suspending minor K.C. from school for 5 days.

1 28. Several MAHS students recorded the TOWN OF ATHERTON police officers'
2 unlawful restraint, assault, and arrest of minor K.C. and minor D.B. on their cell phones and
3 published the videos online. Major news outlets picked up the story, bringing national attention
4 to Plaintiffs and MAHS.

5 29. On May 8, 2023, Sequoia Union High School District (“SUHSD”) convened a
6 Manifestation Determination meeting with minor K.C.’s IEP team to determine if the conduct
7 on April 28, 2023, was caused by or had a direct and substantial relationship to Plaintiff K.C.’s
8 disabilities, and if the conduct on April 28, 2023 was the direct result of MAHS’s failure to
9 implement minor K.C.’s IEP. After the meeting concluded, Plaintiff K.C.’s legal representatives
10 received minor K.C.’s police report from the Atherton Police Department. Included in the police
11 report were signed and dated witness statements from various school administrators, including
12 Defendant EMMI and Vice Principal Nick Muys. Each statement is dated May 2, 2023, except
13 for Defendant EMMI’s, which is dated May 3, 2023. The police report also included a Person
14 Summary Report that contained minor K.C.’s personal identifying information, including his
15 student ID and contact information. Additionally, the police report included a Behavior Detail
16 Report that details minor K.C.’s behaviors exhibited at MAHS since 9th grade. Both the Person
17 Summary Report and the Behavior Detail Report are records protected by the Family
18 Educational Rights and Privacy Act (“FERPA”) and must not be disclosed without parental
19 consent or a court order. Minor K.C.’s mother, MYISCHA THOMPSON, never provided
20 consent for SUHSD to release minor K.C.’s educational records to the Atherton Police
21 Department, and no court order has been issued compelling such release.

22 30. Defendant Officer DIMITRI ANDRUHA reported that he received the signed
23 and dated witness statements on May 2, 2023, six days prior to minor K.C.’s Manifestation
24 Determination meeting. Defendant ANDRUHA also reported that he received the Behavior
25 Detail Report from the “school administration” on May 2, 2023, and that “the report shows a
pattern of violent behavior dating back to 9/1/2021.” Additionally, the police report indicated
that a cell phone video of minor K.C., captured by Defendant EMMI, was taken as evidence by

1 the Atherton Police Department. Plaintiffs' counsel has not received access to this video
2 evidence.

3 **DAMAGES**

4 31. As a consequence of Defendants' violation of Plaintiffs' federal civil rights
5 under 42 U.S.C. § 1983 and the Fourth Amendment, Plaintiffs were physically, mentally,
6 emotionally, and financially injured and damaged as a proximate result of Defendants' wrongful
7 conduct.

8 32. Plaintiffs found it necessary to engage the services of private counsel to vindicate
9 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees and/or
10 costs pursuant to statute(s) in the event that they are the prevailing parties in this action under
11 42 U.S.C. §§ 1983 and 1988. Plaintiffs are also entitled to punitive damages under 42 U.S.C. §§
12 1983 and 1988.

13 **FIRST CAUSE OF ACTION**
(42 U.S.C. § 1983 - Excessive Force)

14 **(Plaintiffs against Defendants METZGER, ROMERO, DAVIDOVICH, GATTO,
15 and DOES 1-100)**

16 33. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 32 of this
17 Complaint.

18 34. 42 U.S.C. § 1983 provides in part, "Every person who, under color of any
19 statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of
20 Columbia, subjects, or causes to be subjected, any citizen of the United States or other person
21 within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured
22 by the Constitution and laws, shall be liable to the party injured in an action at law, suit at
23 equity, or other proper proceeding for redress."

24 35. Plaintiffs had a firmly established right under the Fourth Amendment to be free
25 from official infliction of physical abuse, assault, battery, and intentional infliction of emotional
distress, unreasonable search and seizure, and to be free from excessive force being used against
him.

1 36. Defendants interfered with Plaintiff K.C.'s right to be free from the use of
2 excessive force when Defendant METZGER slammed Plaintiff K.C. onto the ground and
3 shoved his knee in Plaintiff K.C.'s back while handcuffing him with Defendant ROMERO's
4 assistance. Plaintiff K.C.'s rights were further infringed upon when Defendants METZGER,
5 DAVIDOVICH, ROMERO, and GATTO roughly pulled Plaintiff K.C. off the ground by his
6 arms and dragged him to a police car.

7 37. Defendants interfered with Plaintiff D.B.'s right to be free from the use of
8 excessive force when Defendant ROMERO grabbed Plaintiff D.B.'s wrist and arm, shoved him
9 against a wooden fence that was behind him, handcuffed him, and forced him to sit down on the
10 ground.

11 38. Defendants METZGER, ROMERO, DAVIDOVICH, and GATTO's actions
12 demonstrated a conscious disregard to Plaintiffs' rights, who were two terrified, unarmed
13 children who did not pose any threat of harm to anyone on the scene.

14 39. As a result of their misconduct, Defendants are liable for Plaintiffs' physical,
15 mental, and emotional injuries, either because they were integral participants in the excessive
16 force, or because they failed to intervene to prevent these violations.

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

18 **SECOND CAUSE OF ACTION**
19 **(42 U.S.C. § 1983 – Unlawful Search and Seizure)**
20 **(Plaintiff K.C. against Defendant ANDRUHA and DOES 1-100)**

21 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 of this
22 Complaint.

23 41. Under the United States Constitution, citizens have the constitutionally protected
24 right to be free from unreasonable searches and seizures.

25 42. Defendant ANDRUHA effectuated an unreasonable search and seizure when he
took Plaintiff K.C.'s behavior detail report, containing FERPA-protected confidential

1 information about Plaintiff K.C., from school administrators without a subpoena, a lawful
2 search warrant, or the consent of Plaintiff K.C. and his guardians.

3 43. As a result, Defendants are liable for conducting an unreasonable search and
4 seizure of Plaintiff K.C.'s confidential school records and invading his privacy.

5 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

6 **THIRD CAUSE OF ACTION**

7 *(Monell – 42 U.S.C. § 1983)*

8 **(Plaintiffs against Defendants TOWN and DOES 1-100)**

9 44. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 43 of this
10 Complaint.

11 45. Plaintiffs are informed and believe and thereon allege that high-ranking TOWN
12 OF ATHERTON officials, including DOES 1-100, and/or each of them, knew and/or
13 reasonably should have known that their police officers, including Defendants METZGER,
14 ROMERO, DAVIDOVICH, and GATTO, were either untrained or improperly trained in the
15 following areas:

- 16 a. Utilizing reasonable opportunities to de-escalate a situation involving a
17 minor subject with a mental impairment, including the use of effective
18 communication that is not confrontational, escalating, or demanding;
19 reasonably creating time and distance to help de-escalate and to allow the use
20 of effective communication before employing excessive physical force.
21 b. That the failure of a minor subject, especially one who is known or appears
22 to be suffering from a mental impairment, to comply with orders while not
23 presenting an imminent threat of serious injury or harm, does not justify the
24 use of excessive physical force.

25 46. These policy, practice, and training failures were a substantial factor and moving
force in the violation of Plaintiffs' rights.

1 47. Despite having such notice, Plaintiffs are informed and believe and thereon
2 allege that Defendants TOWN OF ATHERTON and DOES 1-100, and/or each of them,
3 approved, ratified, condoned, encouraged and/or tacitly authorized the continuing pattern and
4 practice of misconduct and/or civil rights violations by TOWN OF ATHERTON Police
5 Department officers.

6 48. Plaintiffs are further informed and believe and thereon allege that as a result of
7 the deliberate indifference, reckless and/or conscious disregard of the misconduct by
8 Defendants METZGER, ROMERO, DAVIDOVICH, GATTO, and DOES 1-100, and/or each
9 of them, and the policy, practice, and training deficiencies identified herein, Defendants TOWN
10 OF ATHERTON, DOES 1-100, and/or each of them, encouraged these Defendant officers to
11 continue their course of misconduct, resulting in the violation of Plaintiffs' rights as alleged
12 herein.

13 49. The aforementioned acts and/or omissions and/or deliberate indifference by high
14 ranking TOWN OF ATHERTON officials, including Defendants DOES 1-100, and each of
15 them, resulted in the deprivation of Plaintiffs' constitutional rights, including but not limited to,
16 the right to be free from the use of excessive force, as guaranteed by the Fourth Amendment to
17 the United States Constitution.

18 50. As against Defendant TOWN OF ATHERTON and Defendants METZGER,
19 ROMERO, DAVIDOVICH, GATTO, and/or DOES 1-100 in their capacity as police officer(s)
20 for TOWN OF ATHERTON, Plaintiffs further allege that the acts and/or omissions alleged in
21 the Complaint herein are indicative and representative of a repeated course of conduct by
22 members of the TOWN OF ATHERTON Police Department tantamount to a custom, policy, or
23 repeated practice of condoning and tacitly encouraging the abuse of police authority, and a
24 inherent disregard for the constitutional rights of citizens. Plaintiffs further allege that these acts
25 and/or omissions illustrate that officers of the TOWN OF ATHERTON Police Department are
improperly trained in responding to mental health crises.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Negligence)

(Plaintiff K.C. against Defendants TOWN, METZGER, ROMERO, DAVIDOVICH, GATTO, EMMI, and DOES 1-100)

(Plaintiff D.B. against Defendants METZGER, ROMERO, and DOES 1-100)

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51. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 50 of this Complaint.

52. An individual is liable for injuries caused by failure to exercise reasonable care in the circumstances. A cause of action for negligence arises when there is a legal duty to use due care, there is a breach of the legal duty, and the breach is the proximate or legal cause of the resulting injury.

53. At all times, Defendants METZGER, ROMERO, DAVIDOVICH, and GATTO were subject to a duty of care to avoid causing unnecessary physical harm and distress to persons through their use of force and making of arrests and detentions. Defendant EMMI was also subject to a duty of care to avoid causing unnecessary physical harm and distress when interacting with a minor student with mental disabilities. Defendants had notice of Plaintiff K.C.'s mental impairment as well as Plaintiff K.C.'s and Plaintiff D.B.'s status as minors, but without due care when interacting with Plaintiffs, Defendants injured Plaintiffs. The wrongful conduct of Defendants, as set for herein, did not comply with the standard of care to be exercised by reasonable persons, proximately causing Plaintiffs to suffer injuries and damages as set forth herein.

54. Pursuant to California Government Code Section 815.2(a), Defendant TOWN OF ATHERTON is vicariously liable to Plaintiff K.C. for his injuries and damages suffered as alleged herein, incurred as a proximate result of the aforementioned wrongful conduct of Defendants METZGER, ROMERO, DAVIDOVICH, and GATTO.

55. As a direct and proximate result of Defendants' negligent conduct, Plaintiffs suffered, and continues to suffer, damages including, but not limited to severe physical injury, severe emotional and mental distress, and Plaintiffs' emotional tranquility.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

(Assault/Battery)

**(Plaintiff K.C. against Defendants TOWN, METZGER, ROMERO, DAVIDOVICH,
GATTO, EMMI, and DOES 1-100)**

(Plaintiff D.B. against Defendants METZGER, ROMERO, and DOES 1-100)

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56. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 55 of this Complaint.

57. Defendants METZGER, ROMERO, DAVIDOVICH, GATTO, and EMMI acted with intent to cause harmful or offensive contact or threatened to touch Plaintiff K.C. in a harmful or offensive manner. Plaintiff K.C. reasonably believed he was about to be touched in a harmful or offensive manner. It reasonably appeared to Plaintiff K.C. that Defendants were about to carry out the threat. Plaintiff K.C. did not consent to Defendants' harmful contact. Battery occurred when Defendants METZGER, ROMERO, DAVIDOVICH, and GATTO made contact with and harmed Plaintiff K.C. by slamming him onto the ground, shoving a knee into his back while handcuffing him, roughly pulling him up to his feet, and dragging him to a police car. Battery also occurred when Defendant EMMI pushed into Plaintiff K.C. while Plaintiff K.C. tried to reach to retrieve his water toy from the school secretary. Plaintiff K.C. sustained bodily injuries as a result of Defendants' assault and battery. Defendants' conduct was a substantial factor in causing Plaintiff K.C.'s harm.

58. Defendants METZGER and ROMERO acted with intent to cause harmful or offensive contact or threatened to touch Plaintiff D.B. in a harmful or offensive manner. Plaintiff D.B. reasonably believed he was about to be touched in a harmful or offensive manner. Moreover, it reasonably appeared to Plaintiff D.B. that Defendants were about to carry out the threat. Plaintiff D.B. did not consent to Defendants' harmful contact. Battery occurred when Defendant ROMERO made contact with and harmed Plaintiff D.B. by roughly grabbing Plaintiff D.B.'s wrist and arm, shoving him against a wooden fence that was behind him, handcuffing him, and forcing him to sit down on the ground. Assault occurred when Defendant METZGER threatened to put Plaintiff D.B. in the back of a police car by asking an officer, in front of Plaintiff D.B., if he could put Plaintiff D.B. in the back of his car. Plaintiff D.B.

1 sustained bodily injuries as a result of Defendants' assault and battery. Defendants' conduct was
2 a substantial factor in causing Plaintiff D.B.'s harm.

3 59. Pursuant to California Government Code Section 815.2(a), Defendant TOWN
4 OF ATHERTON is vicariously liable to Plaintiff K.C. for injuries and damages suffered as
5 alleged herein, incurred as a proximate result of the aforementioned wrongful conduct of
6 Defendants METZGER, ROMERO, DAVIDOVICH, and GATTO.

7 60. As a result, Defendants are liable for assault and battery.

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

9 **SIXTH CAUSE OF ACTION**

10 **(Intentional Infliction of Emotional Distress)**

11 **(Plaintiff K.C. against Defendants TOWN, METZGER, ROMERO, DAVIDOVICH,
12 GATTO, EMMI, and DOES 1-100)**

13 **(Plaintiff D.B. against Defendants METZGER, ROMERO, and DOES 1-100)**

14 61. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 60
15 of this Complaint.

16 62. Defendants METZGER, ROMERO, DAVIDOVICH, and GATTO's above-
17 described conduct in brutally throwing down, handcuffing, and dragging Plaintiff K.C., a
18 terrified, unarmed child with a mental impairment, to a police car was extreme, unreasonable,
19 and outrageous.

20 63. Defendant EMMI's above-described conduct in confronting, demeaning, and
21 physically pushing into Plaintiff K.C., despite being aware of Plaintiff K.C.'s disabilities, after
22 Plaintiff K.C. asked to retrieve his property, was extreme, unreasonable, and outrageous.

23 64. Defendants METZGER and ROMERO's conduct in causing Plaintiff D.B., a
24 terrified and unarmed child, to be roughly grabbed by the wrist and arm, shoved face forward
25 into a wooden fence, handcuffed, and forced to sit on the ground was extreme, unreasonable,
and outrageous. Moreover, Defendant METZGER's conduct in threatening to put Plaintiff D.B.
in the back of a police car for the sole purpose of scaring him was extreme, unreasonable, and
outrageous.

1 roughly pulling him up to his feet, and dragging him to a police car, all accomplished through
2 force, threats, intimidation, and coercion.

3 71. Defendant EMMI interfered with and demonstrated a reckless disregard for
4 Plaintiff K.C.'s right to be protected from bodily restraint, harm, or personal insult by physically
5 blocking and pushing into Plaintiff K.C. when Plaintiff K.C. tried to reach to retrieve his water
6 toy from the school secretary.

7 72. Under California Government Code Section 815.2(a), Defendant TOWN OF
8 ATHERTON is vicariously liable to Plaintiff K.C. for injuries and damages suffered as alleged
9 herein, incurred as a proximate result of the aforementioned wrongful conduct of Defendants
10 METZGER, ROMERO, DAVIDOVICH, and GATTO.

11 73. As a direct and proximate result of Defendants' violation of Civil Code Section
12 52.1, Plaintiff K.C. suffered violation of his constitutional, state, and statutory rights, and
13 suffered damages as set forth herein.

14 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

15 **EIGHTH CAUSE OF ACTION**
16 **(Violation of Ralph Civil Rights Act – California Civil Code § 51.7)**
17 **(Plaintiff K.C. against Defendant EMMI)**

18 74. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 73
19 of this Complaint.

20 75. Civil Code Section 51.7 authorizes suit against anyone who commits any
21 violence, or intimidation by threat of violence, against a person on account of statutorily
22 protected characteristics, including disability. For each violation of Civil Code Section 51.7,
23 Civil Code Section 52(b) (2) provides for actual damages, punitive damages, reasonable
24 attorney's fees, and an additional \$25,000.

25 76. Plaintiff K.C. is informed and believes and thereon alleges that the conduct of
Defendant EMMI was motivated by prejudice against Plaintiff K.C. because of his mental
impairment. Defendant EMMI was aware that Plaintiff K.C. exhibited behaviors associated with

1 his disabilities when frustrated or overwhelmed and requires positive behavior interventions
2 such as, effective coping skills, and informed de-escalation strategies. Instead, when Plaintiff
3 K.C. expressed an emotional response associated with his disabilities, Defendant EMMI
4 escalated the situation and became physically aggressive towards Plaintiff K.C. by pushing into
5 Plaintiff K.C. when Plaintiff K.C. tried to reach to retrieve his water toy from the school
6 secretary. In engaging in such conduct, Defendant EMMI violated Plaintiff K.C.'s rights under
7 California Civil Code Section 51.7 to be free from violence, or intimidation by threat of
8 violence, committed against him because of his disability.

9 77. As a result, Defendant EMMI is liable for a violation of California Civil Code
10 Section 51.7.

11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12 **NINTH CAUSE OF ACTION**

13 **(False Imprisonment)**

14 **(Plaintiff D.B. against Defendants METZGER, ROMERO, and DOES 1-100)**

15 78. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 77
16 of this Complaint.

17 79. An individual is liable for false imprisonment when they intentionally confine a
18 person without consent or lawful authority for an appreciable length of time, however short.

19 80. Defendants METZGER and ROMERO caused Plaintiff D.B. to be detained and
20 handcuffed solely because he stood next to Plaintiff K.C. while Defendant METZGER tried to
21 speak to Plaintiff K.C., even though Plaintiff D.B. was not obstructing the officers' performance
22 of their law enforcement duties. Plaintiff D.B. did not consent to be detained or handcuffed, and
23 Defendants METZGER and ROMERO forced him to remain in handcuffs for over 10 minutes.
24 Defendants METZGER and ROMERO's conduct was a substantial factor in causing harm to
25 Plaintiff D.B.

81. As a result, Defendants are liable for false imprisonment.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

JURY DEMAND

Plaintiffs hereby demand a jury trial in this action.

PRAYER

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For general damages according to proof;
2. For special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses and other special damages in a sum to be determined according to proof;
3. For punitive damages and exemplary damages in amounts to be determined according to proof as to defendants TOWN, METZGER, ROMERO, DAVIDOVICH, GATTO, ANDRUHA, EMMI, and DOES 1-100 and/or each of them;
4. Any and all permissible statutory damages;
5. For reasonable attorney’s fees pursuant to California Code of Civil Procedure § 1021.5;
6. For cost of suit herein incurred; and
7. For such other and further relief as the Court deems just and proper.

Dated: January 26, 2024

BURRIS NISENBAUM CURRY & LACY, LLP

/s/ John L. Burris

John L. Burris
 Christopher A. Dean
 Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

K.C, by and through his Guardian Ad Litem, MYISHCA THOMPSON, et al

(b) County of Residence of First Listed Plaintiff SAN MATEO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John L. Burris, Burris Nisenbaum Curry & Lacy 5108395200
7677 Oakport St.Ste 1120, Oakland CA 94621

DEFENDANTS

TOWN OF ATHERTON, et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	880 Defend Trade Secrets Act of 2016	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	SOCIAL SECURITY	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	IMMIGRATION	861 HIA (1395ff)	485 Telephone Consumer Protection Act
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	862 Black Lung (923)	490 Cable/Sat TV
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
REAL PROPERTY	X 440 Other Civil Rights		864 SSID Title XVI	890 Other Statutory Actions
210 Land Condemnation	441 Voting		865 RSI (405(g))	891 Agricultural Acts
220 Foreclosure	442 Employment		FEDERAL TAX SUITS	893 Environmental Matters
230 Rent Lease & Ejectment	443 Housing/Accommodations		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
240 Torts to Land	445 Amer. w/Disabilities—Employment		871 IRS—Third Party 26 USC § 7609	896 Arbitration
245 Tort Product Liability	446 Amer. w/Disabilities—Other			899 Administrative Procedure Act/Review or Appeal of Agency Decision
290 All Other Real Property	448 Education	PRISONER PETITIONS		950 Constitutionality of State Statutes
		HABEAS CORPUS		
		463 Alien Detainee		
		510 Motions to Vacate Sentence		
		530 General		
		535 Death Penalty		
		OTHER		
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation—Transfer
- 8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause:

Excessive Force

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/26/2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ John L. Burris