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FILED

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

6 Attorney for PLAINTIFF
7 RORY KALIN

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF HUMBOLDT**

11 RORY KALIN, an individual,
12
13 Plaintiff,

14 v.

15
16 GREGORY J. ELVINE-KREIS, an individual,
17 and DOES 1 through 10, inclusive,
18 Defendants.

)
) Case No.: CV 2000357

)
) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES;**

-)
) **1. BATTERY;**
) **2. ASSAULT;**
) **3. RALPH CIVIL RIGHTS ACT**
) **(VIOLATION OF CAL. CIV. CODE**
) **SECTION 51.7);**
) **4. INTERFERENCE WITH**
) **EXERCISE OF CIVIL RIGHTS**
) **(CAL. CIV. CODE SECTION 52.1);**
) **5. INTENTIONAL INFLICTION OF**
) **EMOTIONAL DISTRESS;**
) **6. NEGLIGENT INFLICTION OF**
) **EMOTIONAL DISTRESS; and**
) **7. NEGLIGENCE.**

) **JURY TRIAL DEMANDED**
)

1 Complaint reference is made to "Defendants", such allegation shall be deemed to mean the acts
2 of Defendants acting individually, jointly, and/or severally.

3 **VENUE**

4 4. Venue properly lies in this County in that both the Plaintiff and the Defendant(s)
5 all reside in this County.

6 **GENERAL ALLEGATIONS AS TO ALL CAUSES OF ACTION**

7 5. Plaintiff has been employed by the County of Humboldt as a Deputy Public
8 Defender ("Deputy PD") since October of 2017. As a Deputy PD, Plaintiff has provided legal
9 defense services to the indigent of Humboldt County when they have been charged with a crime.

10 6. Plaintiff suffered a traumatic brain injury in April of 2019 when he was struck on
11 the head by a golf ball hit by a third party. He was examined in the emergency room and released,
12 but unfortunately the extent of his injuries (from the golf ball and the shove into Lake Shasta) did
13 not manifest until June of 2019 when he was hospitalized for nine (9) days, began suffering from
14 seizures, increased anxiety and panic attacks. Plaintiff was subsequently placed on medical leave
15 by his doctors.

16 7. On May 25, 2019, at Antlers RV Park and Campground in Shasta County,
17 California, Plaintiff was attacked physically and verbally by Defendant Gregory J. Elvine-Kreis.
18 A group had gathered at Antlers RV Park for the Memorial Day weekend.

19 8. The verbal and physical attacks occurred while Plaintiff was on a boat that had
20 been rented from the Antlers RV Park. The boat held approximately 25 people.

21 9. Plaintiff observed Defendant drinking large quantities of alcohol and becoming
22 belligerent and intoxicated. During this time, Plaintiff also observed the Defendant acting
23 inappropriately with women, making inappropriate remarks about women, and flirting with
24 other men's wives.

25 10. About 30 minutes into the boat ride, Defendant began calling Plaintiff a "Jew
26 Boy" and making fun of his Jewish heritage loudly, in a demeaning and unwelcome manner. He
27

1 laughed loudly while making these statements. Defendant also referred to Plaintiff as "Jew-
2 boy" while speaking in front of Plaintiff's wife.

3 11. Defendant then took his attack on Plaintiff a step further by shoving him into Lake
4 Shasta off the stern side of the boat. This was an intentional shove and Plaintiff had no time to
5 react. This physical contact was offensive, unwelcome, and without warning.

6 12. Plaintiff was fully clothed when he was shoved into the lake by Defendant -
7 wearing full length pants, a long sleeve shirt, and shoes. Prior to being shoved off the boat into
8 the lake, Defendant made fun of Plaintiff's clothing telling him that he was "dressed like an old
9 man."

10 13. Plaintiff was understandably shocked and embarrassed at what had just happened.
11 When the boat arrived back at shore, Plaintiff went to his tent where he remained until after
12 Defendant had left the next morning. Defendant's departure was before the weekend get together
13 was to end and presumably in response to the actions he took against Plaintiff.

14 14. While in the tent Plaintiff experienced a severe anxiety and panic attack as a result
15 of Defendant's actions. Such anxiety and panic attacks continued after Defendant's actions and
16 are ongoing.

17 15. Plaintiff's wife was also shocked at what had just happened and began to cry.
18 Defendant then began to harass Plaintiff's wife - telling her that he wanted to see Plaintiff, but
19 she asked him to leave Plaintiff alone as he was very upset.

20 16. Several hours later, after returning to shore, Defendant asked Plaintiff's wife,
21 "where is your girlfriend?" referring to Plaintiff as "girlfriend," when he was looking for Plaintiff
22 at a gathering later that day.

23 17. Plaintiff had personal belongings in his pockets when Defendant shoved him into
24 the lake. Plaintiff's cell phone was ruined and he had to purchase a replacement iPhone and lost
25 a lot of important information. This was also a phone Plaintiff used for work.

26 18. Plaintiff was without the ability to use his phone for office communications until
27 he could purchase a new phone. Additionally, Plaintiff's car keys, wallet and prescription
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1 medication were also in his pants pocket when he was attacked and those items went into the
2 lake as well.

3 19. In addition, just weeks after Defendant threw Plaintiff off the boat, the impacts
4 from being hit in the head with a golf ball, exacerbated by the shove off of the boat, manifested
5 into seizures and increased anxiety and panic attacks while Plaintiff was hospitalized for nine (9)
6 days and continue through the present.

7 20. Plaintiff remains on medical leave from his position as a Deputy Public Defender
8 at the County of Humboldt.

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10 **FIRST CAUSE OF ACTION – BATTERY**

11 21. Plaintiff realleges and incorporates the allegations contained within paragraphs 1
12 through 20 herein.

13 22. As alleged herein, the Defendant, in performing the acts described, acted with the
14 intent to make a harmful and offensive contact with Plaintiff's person.

15 23. At all relevant times, Plaintiff found the contact by Defendant to be offensive to
16 his person and dignity. At no time did Plaintiff consent to any of the acts by Defendant.

17 24. As a result of Defendant's acts as herein described, Plaintiff was physically
18 harmed and/or experienced offensive contact with his person.

19 25. As a direct and proximate result of Defendant's unlawful conduct as alleged
20 herein, Plaintiff has suffered physical injury, exacerbation of his underlying medical condition,
21 severe emotional distress, panic and anxiety attacks, humiliation, embarrassment, mental and
22 emotional distress, economic harm and other consequential damages, all in an amount according
23 to proof at trial.

24 26. The aforementioned conduct by Defendant was willful, wanton, and malicious. At
25 all relevant times, Defendant acted with conscious disregard of the Plaintiff's rights and feelings.
26 Defendant also acted with the knowledge of, or with reckless disregard for, the fact that their
27 conduct was certain to cause injury and/or humiliation to the Plaintiff. Plaintiff is further

1 informed and believes that Defendant intended to cause fear, physical injury and/or pain and
2 suffering to the Plaintiff. By virtue of the foregoing, the Plaintiff is entitled to recover punitive
3 and exemplary damages from Defendant according to proof at trial.

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5 **SECOND CAUSE OF ACTION – ASSAULT**

6 27. Plaintiff realleges and incorporates the allegations contained within paragraphs 1
7 through 26 herein.

8 28. As a result of Defendant's acts, Plaintiff was in fact, placed in great apprehension
9 of imminent harmful and offensive contact with his person.

10 29. In performing the acts alleged herein, Defendant acted with the intent of making
11 contact with Plaintiff's person.

12 30. At no time did Plaintiff consent to any of the acts by Defendant as alleged herein.

13 31. Defendant's conduct as described herein, caused Plaintiff to be apprehensive that
14 Defendant would subject him to further intentional acts that were offensive and harmful contact
15 and demonstrated that at all times material herein, Defendant had a present ability to subject
16 Plaintiff to an intentional and harmful touching.

17 32. As a direct and proximate result of Defendant's unlawful conduct as alleged
18 herein, Plaintiff has suffered physical injury, exacerbation of his underlying medical condition,
19 severe emotional distress, humiliation, embarrassment, anxiety and panic attacks, mental and
20 emotional distress and anxiety, and economic harm, all in an amount according to proof at trial.

21 33. The aforementioned conduct by Defendant was willful, wanton, and malicious. At
22 all relevant times, Defendant acted with conscious disregard of Plaintiff's right and feelings.
23 Defendant also acted with the knowledge of, or with reckless disregard for, the fact that his
24 conduct was certain to cause injury and/or humiliation to the Plaintiff. Plaintiff is informed and
25 believes that Defendant intended to cause fear, physical injury and/or pain and suffering to the
26 Plaintiff. By virtue of the foregoing, Plaintiff is entitled to recover punitive and exemplary
27 damages from Defendant according to proof at trial.

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2 **THIRD CAUSE OF ACTION – RALPH CIVIL RIGHTS ACT (VIOLATION OF CAL.**
3 **CIV. CODE SECTION 51.7)**

4 34. Plaintiff realleges and incorporates the allegations contained within paragraphs 1
5 through 33 herein.

6 35. California Civil Code Section 51.7(a) states “all persons within the jurisdiction of
7 this state have the right to be free from any violence, or intimidation by threat of violence,
8 committed against their persons or property because of political affiliation, or on account of any
9 characteristic listed or defined in subdivision (b) or (e) of Section 51...or because another person
10 perceives them to have one or more of those characteristics.”

11 36. At all times mentioned herein, Plaintiff had the right to be free from any violence,
12 or intimidation by threat of violence, committed against his person on account of his religion.

13 37. As alleged herein, Defendant subjected Plaintiff to violence, and/or intimidation
14 by threats of violence, against his person on account of his religion and denied Plaintiff his right
15 to be free from any violence, or intimidation by threat of violence, committed against his person on
16 account of his religion.

17 38. In doing so, Defendant violated the civil rights of Plaintiff, as set forth in the Ralph
18 Civil Rights Act, which is codified at California Civil Code Section 51.7.

19 39. As a direct and proximate result of Defendant’s unlawful conduct as alleged
20 herein, Plaintiff has suffered physical injury, exacerbation of his underlying medical condition,
21 severe emotional distress, humiliation, embarrassment, panic and anxiety attacks, mental and
22 emotional distress and anxiety, all in an amount according to proof at trial.

23 40. As a direct and proximate result of Defendant’s unlawful conduct as alleged
24 herein, Plaintiff has suffered economic harm and other consequential damages, all in an amount
25 according to proof at trial.

26 41. The aforementioned conduct by Defendant was willful, wanton, and malicious. At
27 all relevant times, Defendant acted with conscious disregard of Plaintiff’s rights and feelings.

1 Defendant also acted with the knowledge of, or with reckless disregard for, the fact that his
2 conduct was certain to cause injury and/or humiliation to the Plaintiff. By virtue of the foregoing,
3 Plaintiff is entitled to recover punitive and exemplary damages from Defendant according to proof
4 at trial.

5 42. In addition to and/or in lieu of Plaintiff's election, Plaintiff is entitled to receive
6 and hereby seeks statutory damages pursuant to California Civil Code Section 52(b), including
7 actual and exemplary damages.

8 43. Pursuant to California Civil Code Section 52(b)(3), Plaintiff has incurred, and will
9 continue to incur, attorney's fees in the prosecution of this action and therefore demands such
10 reasonable attorneys' fees and costs as set by the Court.

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12 **FOURTH CAUSE OF ACTION - INTERFERENCE WITH EXERCISE OF**
13 **CIVIL RIGHTS (CAL. CIV. CODE SECTION 52.1)**

14 44. Plaintiff realleges and incorporates the allegations contained within paragraphs 1
15 through 43 herein.

16 45. California Civil Code Section 52.1, the Bane Act, provides that it is unlawful to
17 interfere with the exercise or enjoyment of any rights under the Constitution and the laws of this
18 state and the United States by use or attempted use of threats, intimidation or coercion.

19 46. Section 51.7 of the Civil Code guarantees the rights to persons in California to be
20 free from assault, battery, and/or violence or threats of violence based on his or her religion.

21 47. Section 43 of the California Civil Code guarantees the right of every person the
22 right of protection from bodily restraint or harm, personal insult, from defamation, and from
23 injury to his personal relations.

24 48. As alleged herein, Defendant intentionally interfered with or attempted to interfere
25 with Plaintiff's clearly established rights guaranteed under the United States and California laws,
26 including but not limited to Plaintiff's right of protection from battery, assault, and religious
27 violence by threats, intimidation, and coercion.

1 56. Defendant intended to cause Plaintiff emotional distress or did so with reckless
2 disregard of the probability that Plaintiff would suffer emotional distress as a result of the
3 unlawful conduct.

4 57. Plaintiff did in fact suffer severe emotional distress as set forth herein.

5 58. As a direct and proximate result of Defendant's unlawful conduct as alleged
6 herein, Plaintiff has suffered physical injury, exacerbation of his underlying medical condition,
7 severe emotional distress, humiliation, embarrassment, panic and anxiety attacks, mental and
8 emotional distress and anxiety, all in an amount according to proof at trial.

9 59. As a direct and proximate result of Defendant's unlawful conduct as alleged
10 herein, Plaintiff has suffered economic harm and other consequential damages, all in an amount
11 according to proof at trial.

12 60. The aforementioned conduct by Defendant was willful, wanton, and malicious. At
13 all relevant times, Defendant acted with conscious disregard of Plaintiff's rights and feelings.
14 Defendant also acted with the knowledge of, or with reckless disregard for, the fact that his
15 conduct was certain to cause injury and/or humiliation to the Plaintiff. By virtue of the foregoing,
16 Plaintiff
17 is entitled to recover punitive and exemplary damages from Defendant according to proof at trial.
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21 **SIXTH CAUSE OF ACTION – NEGLIGENT INFLICTION OF EMOTIONAL**
22 **DISTRESS**

23 61. Plaintiff realleges and incorporates the allegations contained within paragraphs 1
24 through 60 herein.

25 62. Defendant owed a duty of care to Plaintiff to act in compliance with the law as
26 alleged herein.

27 63. Defendant breached his duty of care to Plaintiff as set forth herein.
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1 64. As set forth above, Defendant's actions were at least negligent toward Plaintiff.

2 65. Plaintiff did in fact suffer severe emotional distress as set forth herein.

3 66. As a direct and proximate result of Defendant's unlawful conduct as alleged
4 herein, Plaintiff has suffered physical injury, exacerbation of his underlying medical condition,
5 severe emotional distress, humiliation, embarrassment, panic and anxiety attacks, mental and
6 emotional distress and anxiety, all in an amount according to proof at trial.

7 67. As a direct and proximate result of Defendant's unlawful conduct as alleged
8 herein, Plaintiff has suffered economic harm and other consequential damages, all in an amount
9 according to proof at trial.

10 68. The aforementioned conduct by Defendant was willful, wanton, and malicious. At
11 all relevant times, Defendant acted with conscious disregard of Plaintiff's rights and feelings.
12 Defendant also acted with the knowledge of, or with reckless disregard for, the fact that his
13 conduct was certain to cause injury and/or humiliation to the Plaintiff. By virtue of the foregoing,
14 Plaintiff
15 is entitled to recover punitive and exemplary damages from Defendant according to proof at trial.

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17 **SEVENTH CAUSE OF ACTION – NEGLIGENCE**

18 69. Plaintiff realleges and incorporates the allegations contained within paragraphs 1
19 through 68 herein.

20 70. Defendant owed a duty of care to Plaintiff to act in compliance with the law as
21 alleged herein.

22 71. Defendant breached his duty of care to Plaintiff as set forth herein.

23 72. As set forth above, Defendant's actions were at least negligent toward Plaintiff.

24 73. Plaintiff did in fact suffer severe emotional distress and his condition (traumatic
25 brain injury) was exacerbated by Defendant's actions causing additional damage to Plaintiff
26 including economic and physical injury.

1 **AS TO THE THIRD CAUSE OF ACTION:**

- 2 1. For general and special damages according to proof;
- 3 2. For punitive and exemplary damages according to proof;
- 4 3. For attorneys' fees and costs of suit incurred herein;
- 5 4. For additional statutory civil penalty in the sum of \$25,000.00 pursuant to Civ. Code
- 6 Section 52(b);
- 7 5. For injunctive relief;
- 8 6. For such other and further relief as the Court may deem just and proper.

9 **AS TO THE FOURTH CAUSE OF ACTION:**

- 10 1. For general and special damages according to proof;
- 11 2. For punitive and exemplary damages according to proof;
- 12 3. For attorneys' fees and costs of suit incurred herein;
- 13 4. For additional statutory civil penalty in the sum of \$25,000.00 pursuant to Civ. Code
- 14 Section 52(b);
- 15 5. For injunctive relief;
- 16 6. For such other and further relief as the Court may deem just and proper.

17 **AS TO THE FIFTH CAUSE OF ACTION:**

- 18 1. For general and special damages according to proof;
- 19 2. For punitive and exemplary damages according to proof;
- 20 3. For costs of suit incurred herein;
- 21 4. For such other and further relief as the Court may deems just and proper.

22 **AS TO THE SIXTH CAUSE OF ACTION:**

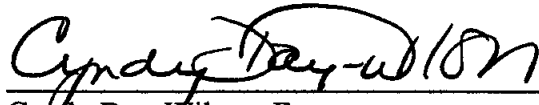
- 23 1. For general and special damages according to proof;
- 24 2. For punitive and exemplary damages according to proof;
- 25 3. For costs of suit incurred herein;
- 26 4. For such other and further relief as the Court may deems just and proper.

1 **AS TO THE SEVENTH CAUSE OF ACTION:**

- 2 1. For general and special damages according to proof;
- 3 2. For punitive and exemplary damages according to proof;
- 4 3. For costs of suit incurred herein;
- 5 4. For such other and further relief as the Court may deems just and proper.
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8 Dated: April 27, 2020

LAW OFFICE OF CYNDY DAY-WILSON

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Cyndy Day-Wilson, Esq.

11 Attorney for PLAINTIFF RORY KALIN

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