1 2 3 4 5 6 7	Michael Millen Attorney at Law (#151731) 119 Calle Marguerita Ste. 100 Los Gatos, CA 95032 Telephone: (408) 871-0777 Fax: (408) 866-7480 mikemillen@aol.com Attorney for Plaintiff		
8	UNITED STATES DISTRICT COURT		
9	NORTHERN DISTRICT OF CALIFORNIA		
10	GINO EMMERICH,	NO.: 15-cv-02914	
11	Plaintiff,	COMPLAINT FOR CIVIL	
12	V.	RIGHTS VIOLATION; DEMAND FOR JURY TRIAL	
13	CITY AND COUNTY OF SAN FRANCISCO, OFFICER DOE #1,	1. 42 U.S.C. § 1983 2. False Arrest/Imprisonment	
14	FRANCISCO, OFFICER DOE #1, OFFICER DOE #2, OFFICER DOE #3, and OFFICER DOE #4,	 False Arrest/Imprisonment California Civil Code §52.1 California Civil Code §51.7 	
15	Defendants.	5. Battery	
16	DI : .: CC 11		
17	Plaintiff alleges as follows:		
18	1. Plaintiff GINO EMMERICH is a r	•	
19	moral and religious beliefs, plaintiff has regula		
20	banner stating the biblical religious reference "John 3:16". This is a reference to the		
21	central tenet of the Christian religion, namely, that God so loved the world that He		
22	sent His son Jesus Christ so that all who believed upon Jesus would have eternal		
23	life.		
24	2. Defendant CITY AND COUNTY OF	F SAN FRANCISCO is and at all	
25	times mentioned herein was a municipal corporation created and existing under the		
26	laws of the State of California which has, as one of its constituent parts, a		
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department commonly known as the "San Francisco Police Department" ("SFPD") through which defendant's peace officers exercise their duties.

- 2.2 Plaintiff is informed and believes and thereon alleges that Defendants Officer Doe #1, Officer Doe #2, Officer Doe #3, and Officer Doe #4 were, in July 2014 and at all times relevant to this complaint, sworn peace officers employed by the SFPD. They are being sued in both their individual and their official capacities. Their identities are currently unknown to plaintiff but plaintiff will seek to amend this complaint when he determines their true names.
- 3. **JURISDICTION:** This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§1331 and 1343(3) in that the controversy arises under the United States Constitution and under Title 42 U.S.C. §1983 and Title 28 U.S.C. §2201. This Court has authority to award attorneys fees pursuant to Title 42 U.S.C. §1988. Plaintiffs further invoke the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to hear and adjudicate state law claims.
- 4. **INTRADISTRICT ASSIGNMENT:** Venue is proper in this district's San Francisco division under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claims in this action occurred in this district and division.
- 4.5 In the City of San Francisco there exists an area commonly known as "Willie Mays Plaza" located at the east corner of King and 3rd Street. This area is open to the public 24 hours per day, serves as a public thoroughfare, and in all respects functions as part of the network of public sidewalks and walk ways.
- 5. On July 27, 2014, plaintiff arrived at the Willie Mays Plaza on the day of a baseball game. Many people were in the plaza and some of them were displaying signs and otherwise communicating messages. Also in the plaza was a makeshift television broadcasting booth at which sports commentators were discussing the baseball game while being filmed by live television broadcasting equipment for the ESPN Sports Center show.

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- 6. As plaintiff approached the general area containing the broadcasting booth, he was approached by the producer of the ESPN show along with four uniformed SFPD officers. The producer told plaintiff that plaintiff would be arrested if plaintiff showed a sign based upon the fact that plaintiff was known to the producer as one who displayed religious signage.
- 7. After this, the producer walked away. Plaintiff then stationed himself behind the broadcasting booth and held up a John 3:16 sign such that it was visible in the view of the television camera (stationed in front of the booth) as being behind the commentators.
- 8. While so holding the sign, one of the SFPD officers (herein called Officer Doe #1) approached plaintiff from behind and grabbed plaintiff's neck and shirt and pulled plaintiff out of the viewing area visible to the camera. Plaintiff is informed and believes and thereon alleges that the officer did this so as to stop plaintiff from communicating the biblical message on his sign.
- 9. At this point plaintiff was now surrounded by four police officers (herein called Officer Doe #1, Officer Doe #2, Officer Doe #3, and Officer Doe #4). One of the officers then told plaintiff words to the effect of "I thought we told you couldn't hold up your sign or you would be arrested." Plaintiff pointed out that it was the ESPN producer, and not an SFPD officer, who made such a statement. The officer then stated words to the effect of, "I'm telling you now that if you hold up that sign you will be arrested."
- 10. Plaintiff then asked, "If I go over there and hold up this sign again, you are going to take me to jail?" In response, the officer stated, "If you go over there and hold that sign again, we will arrest you and the sergeant will come over here and decide where we are going to take you."
- 11. At this point, plaintiff left the scene so as to avoid the possibility of arrest.

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- 12. At all of the above times plaintiff's activity was peaceful, caused no disturbance or disruption in the orderly operation of Willie Mays Plaza, the baseball stadium commonly known as "AT&T Park", or any other business or agency, and was in no way criminal.
- 13. No defendant had lawful cause or probable cause to arrest, detain, or seize plaintiff, and the treatment of plaintiff as described above was unlawful. Plaintiff has not been convicted of any crime on account of the incident.
- 14. On or about Dec. 31, 2014, plaintiff presented a claim to the City and County of San Francisco concerning the actions of defendant and its police officers as described above. Plaintiff's counsel received by mail a letter from an agent representing the City and County of San Francisco dated April 22, 2015, stating that plaintiff's claim was denied.

FIRST CAUSE OF ACTION (VIOLATION OF 42 U.S.C. § 1983)

- 15. Plaintiff incorporates paragraphs 1-14 as if fully set forth herein.
- 16. The acts of defendants deprived plaintiff of his free speech rights under the First and Fourteenth Amendments of the Constitution of the United States and further deprived plaintiff of his right to be secure in his person against unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution. Defendants knew or should have known that their actions were unlawful.
- 17. All of the acts of defendants were done under color and pretense of the statutes, ordinances, regulations, customs, official policies, official procedures, and usages of the City and County of San Francisco and the State of California.

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- 18. Each defendant participated in the affirmative acts of the other, with the result that plaintiff was seized and deprived of his freedom of movement as set forth above.
- 19. On information and belief, plaintiff alleges that the City and County of San Francisco has an inadequate policy of supervising police officers and has not adequately trained its police officers so as to prevent unlawful arrests such as that described above.
- 20. As a direct and proximate result of defendants' actions, plaintiff suffered humiliation, embarrassment, discomfort, mental anguish, fear, anxiety, loss of reputation, emotional distress, and loss of his liberty and freedom.
- 21. The conduct of the police officers was reckless and performed with malice, oppression, and a conscious disregard of plaintiff's rights so as to justify an award of exemplary damages against them on an individual basis.
- 22. Unless enjoined by this Court, defendants will continue to infringe plaintiff's constitutionally protected rights and thereby cause irreparable injury, as damages alone cannot fully compensate plaintiff from the ensuing harm. This threat of injury from continuing violations requires injunctive relief.

SECOND CAUSE OF ACTION (FALSE ARREST/IMPRISONMENT)

- 23. Plaintiff incorporates paragraphs 1-14 as if fully set forth herein.
- 24. Plaintiff was falsely imprisoned.
- 25. Defendants acted without reasonable cause and without due care in holding plaintiff and also depriving him of his freedom of movement. As a direct and proximate result of defendants' actions, plaintiff suffered humiliation, embarrassment, discomfort, mental anguish, anxiety, loss of reputation and emotional distress.

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26. The conduct of the police officers was performed with malice and oppression and a conscious disregard of plaintiff's rights, so as to justify an award of exemplary damages against them on an individual basis.

THIRD CAUSE OF ACTION (VIOLATION OF CALIFORNIA CIVIL CODE § 52.1)

- 27. Plaintiff incorporates paragraphs 1-14 as if fully set forth herein.
- 28. Defendants, because of plaintiffs' religious beliefs and political beliefs and the peaceful expression of those beliefs, intentionally intimidated plaintiff and interfered with his exercise of the right to free speech and to assembly guaranteed by the First Amendment of the United States Constitution and Article I, §2 of the California Constitution, and to his right to be free from unlawful search and seizure guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §13 of the California Constitution. This conduct was a violation of California Civil Code §52.1.
- 29. Unless enjoined by this Court, defendant will continue to infringe plaintiffs' constitutionally protected rights and thereby cause irreparable injury, as damages alone cannot fully compensate plaintiffs for the ensuing harm. This threat of injury from continuing violations requires injunctive relief.
- 30. The conduct of the police officers was reckless and performed with malice, oppression, and a conscious disregard of plaintiff's rights so as to justify an award of exemplary damages against them on an individual basis.

FOURTH CAUSE OF ACTION (VIOLATION OF CALIFORNIA CIVIL CODE § 51.7)

31. Plaintiff incorporates paragraphs 1-14 as if fully set forth herein.

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1	5. A declaration that plaintiff's conduct as described in this complaint is		
2	protected by the First Amendment of the United States Constitution.		
3	6. Costs, interest and attorneys' fees to plaintiffs pursuant to California Civil		
4	Code §52, §52.1 and other pertinent California law; and		
5	7. Such other and further relief as the court deems just and proper.		
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7	ON THE FOURTH CAUSE OF ACTION:		
8	1. General damages in the amount of \$50,000;		
9	2. Special damages and exemplary damages according to proof;		
10	3. Award statutory penalties to each plaintiff pursuant to California Civil		
11	Code §52, et seq.		
12	4. Enter preliminary and permanent injunctions enjoining defendants and		
13	those persons in active concert with them from interfering with plaintiff's lawful		
14	speech or arresting him under similar circumstances;		
15	5. A declaration that plaintiff's conduct as described in this complaint is		
16	protected by the First Amendment of the United States Constitution.		
17	6. Costs, interest and attorneys' fees to plaintiffs pursuant to California Civil		
18	Code §52, §52.1 and other pertinent California law; and		
19	7. Such other and further relief as the court deems just and proper.		
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21	ON THE FIFTH CAUSE OF ACTION:		
22	1. General damages in the amount of \$50,000;		
23	2. Special damages and exemplary damages according to proof;		
24	3. Enter preliminary and permanent injunctions enjoining defendants and		
25	those persons in active concert with them from interfering with plaintiff's lawful		
26	speech or arresting him under similar circumstances;		
27	4. Such other and further relief as the court deems just and proper.		

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3	Dated: June 19, 2015	his hutter
4		MICHAEL MILLEN, ESQ.
5		ATTORNEY FOR PLAINTIFF
6		Participating Attorney for The
7		Rutherford Institute
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COMPLAINT

JURY DEMAND Plaintiffs hereby requests a jury trial in this matter. Dated: June 19, 2015 MICHAEL MILLEN, ESQ. ATTORNEY FOR PLAINTIFF Participating Attorney for The Rutherford Institute

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