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6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9

10 WILLIAM LAMBERT, an individual; )  
BEVERLY LAMBERT, an individual, )  
11 )  
Plaintiffs, )  
12 )  
v. )  
13 )  
CITY OF SANTA ROSA, a chartered city; )  
14 SANTA ROSA POLICE DEPARTMENT, )  
a police agency; et al. )  
15 )  
Defendants. )

Case No. C 05-02931 CW

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

16 \_\_\_\_\_  
17 Date: 11/4/2005  
18 Time: 10:00 a.m.  
19 Dept.: 2  
Judge: Hon. Claudia Wilken

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27 Plaintiff's Memorandum of Points and  
Authorities in Opposition to Defendants'  
28 Motion to Dismiss

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24  
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26  
27  
28

**TABLE OF CONTENTS**

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY 2-5

II. ARGUMENT

THE WELL-ESTABLISHED RULES GOVERNING MOTIONS TO DISMISS REQUIRE THE COURT TO DENY DEFENDANTS’ MOTION AS TO PLAINTIFFS’ FIRST CAUSE OF ACTION FOR VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 5-10

A. Motions To Dismiss Are Generally Disfavored, And Civil Rights Complaints Must Be Construed Liberally In Favor Of The Plaintiff 5-6

B. Defendants Incorrectly Assert That The LAMBERTS Must Meet A Heightened Pleading Requirement In Pleading A Violation Of Civil Rights 6-8

C. The LAMBERTS Are Also Not Held To A “Heightened Pleading Standard” In Pleading A Violation Of 42 U.S.C. § 1983 Against Defendant CITY OF SANTA ROSA 8-10

PLAINTIFFS’ COMPLAINT STATES A VALID CAUSE OF ACTION UNDER SECTION 1983 FOR FALSIFICATION OF DEFENDANT SANCHEZ AND JOHNSON’S ARREST REPORTS 10-11

PLAINTIFFS’ COMPLAINT STATES VALID CAUSES OF ACTION FOR ASSAULT, BATTERY, AND VIOLATION OF CALIFORNIA CIVIL CODE SECTION 52.1 - THE “BANE CIVIL RIGHTS ACT” 11-15

A. MR. LAMBERT’S Causes Of Action For Assault, Battery, And Violation Of Civil Code Section 52.1 Are Pendent State Law Claims Over Which The Court Should Exercise Supplemental Jurisdiction 11-13

B. The LAMBERTS’ Claims Under Government Code Section 945.4 Was Sufficient To Put Defendant CITY OF SANTA ROSA On Notice Of The LAMBERTS’ Claims For Assault, Battery, Violation Of Civil Code Section 52.1, And Loss Of Consortium 13-15

i.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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24  
25  
26  
27  
28

DEFENDANTS ARE NOT IMMUNE FROM LIABILITY  
FOR USING UNREASONABLE FORCE UNDER EITHER

FEDERAL OR STATE LAW 15-17

MRS. LAMBERT HAS A VALID CAUSE OF ACTION FOR  
LOSS OF CONSORTIUM 17-18

DEFENDANT JOHNSON WAS PRESENT AT THE SCENE,  
FAILED TO INTERVENE TO PREVENT DEFENDANT  
SANCHEZ'S ATTACK AGAINST MR. LAMBERT, AND  
PARTICIPATED IN ASSAULTING AND BATTERING MR.  
LAMBERT 18-19

IF THE COURT GRANTS DEFENDANTS' MOTION TO  
DISMISS, THE LAMBERTS RESPECTFULLY REQUEST  
THAT THE COURT GRANT LEAVE TO AMEND THEIR  
COMPLAINT 19-20

III. CONCLUSION 20

ii.

1 **TABLE OF AUTHORITIES**

2 **STATUTES**

3 42 U.S.C. § 1983 6

4 Cal. Civ. Code § 52.1 11-12, 16-17

5 Cal. Govt. Code § 815.2 15-17

6 Cal. Govt. Code § 945.4 13-15

7 **CASES**

8 *Ammerman v. Sween*, 54 F.3d 423 (7<sup>th</sup> Cir. 1995) 11-12

9 *Basista v. Weir*, 340 F.2d 74 (3d Cir. 1965) 7

10 *Beliveau v. Caras*, 873 F.Supp. 1393 (C.D. Cal. 1995) 17

11 *Branch v. Tunnell (Branch I)*, 937 F.2d 1382 (9<sup>th</sup> Cir. 1991) 7

12 *Branch v. Tunnell (Branch II)*, 14 F.3d 449 (9<sup>th</sup> Cir. 1994) 7

13 *Buckey v. County of Los Angeles*, 968 F.2d 791, 794 5, 6

14 *Buskirk v. Seiple*, 560 F.Supp. 247 (E.D. Pa. 1983) 15

15 *Carlson v. Wald*, 151 Cal.App.3d 598 (1984) 17

16 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9<sup>th</sup> Cir. 1994) 5

17 *Connelley v. State of California*, 3 Cal.App.3d 744 (1970) 13

18 *Crawford-El v. Britton*, 523 U.S. 574 (1998) 8

19 *Cunningham v. Gates*, 229 F.3d 1271 (9<sup>th</sup> Cir. 2000) 18

20 *Demetrius v. Marsh*, 560 F.Supp. 1157 (E.D. Pa. 1983) 7

21 *Dixon v. City of Livermore*, 127 Cal.App.4th 32 (2005) 13

22 *Donohue v. State of California*, 178 Cal.App.3d 795 (1986) 13

23 *Fall River Joint Unified School Dist. v. Superior Court*,  
24 206 Cal.App.3d 431 (1988) 13

1	<u>Fundiller v. Cooper</u> , 777 F.2d 1436 (11 <sup>th</sup> Cir. 1985)	18
2	<u>Galbraith v. County of Santa Clara</u> , 307 F.3d 1119 (9 <sup>th</sup> Cir. 2002)	8-10
3	<u>Gomez v. Toledo</u> , 446 U.S. 635, 640 (1980)	7, 15, 16
4	<u>Green v. Bransom</u> , 108 F.3d 1296 (10 <sup>th</sup> Cir. 1997)	7
5	<u>Haile v. Sag Harbor</u> , 639 F.Supp. 718 (E.D. N.Y. 1986)	10
6	<u>Kaufman &amp; Broad-South Bay v. Unisys Corp.</u> , 822 F.Supp. 1468, 1472	
7	(N.D. Cal. 1993)	6
8	<u>Leatherman v. Tarrant County Narcotics Intelligence &amp; Coord'n Unit</u> ,	
9	507 U.S. 163 (1993)	8, 9
10	<u>Ledger v. Tippitt</u> , 164 Cal.App.3d 625 (1985)	17
11	<u>Lewis v. Goodie</u> , 798 F. Supp. 382 (W.D. La. 1992)	18
12	<u>Love v. United States</u> , 915 F.2d 1242, 1254 (9 <sup>th</sup> Cir. 1990)	5
13	<u>Martinez v. California</u> , 444 U.S. 277 (1980)	15
14	<u>McQuarter v. Atlanta</u> , 572 F. Supp. 1401 (N.D. Ga. 1983)	18
15	<u>Mruz v. Caring, Inc.</u> , 991 F.Supp. 701, 707 (D.N.J. 1998)	6
16	<u>NL Industries, Inc. v. Kaplan</u> , 792 F.2d 896, 898 (9 <sup>th</sup> Cir. 1986)	6
17	<u>Oklahoma City v. Tuttle</u> , 471 U.S. 808 (1985)	8
18	<u>O'Neill v. Krzeminski</u> , 839 F.2d 9 (2 <sup>nd</sup> Cir. 1988)	18
19	<u>Owen v. City of Independence</u> , 445 U.S. 622, 636	6, 16
20	<u>Pareto v. FDIC</u> , 139 F.3d 696 (9 <sup>th</sup> Cir. 1998)	7
21	<u>Polk County v. Dodson</u> , 454 U.S. 312 (1981)	8
22	<u>Pride v. Does</u> , 997 F.2d 712 (10 <sup>th</sup> Cir. 1993)	7
23	<u>Rabkin v. Dean</u> , 856 F.Supp. 543, 552 (N.D. Cal. 1994)	12
24	<u>Robinson v. Solano County</u> , 278 F.3d 1007 (9 <sup>th</sup> Cir. 2002)	16
25	<u>Rodriguez v. Bethlehem Steel Corp.</u> , 12 Cal.3d 382 (1974)	17-18

1	<u>Scruggs v. Haynes</u> , 252 Cal.App.2d 256	16
2	<u>Smith v. County of Los Angeles</u> , 214 Cal.App.3d 266 (1989)	13
3	<u>Stevens v. Corbell</u> , 832 F.2d 884 (5 <sup>th</sup> Cir. 1987)	15
4	<u>Stockett v. Assoc'n of Calif. Water Agencies, etc.</u> , 34 Cal.4th 441 (2004)	13
5	<u>Swierkiewicz v. Sorema N.A.</u> , 534 U.S. 506 (2002)	9
6	<u>Stringer v. Dilger</u> , 313 F.2d 536, 540 (10 <sup>th</sup> Cir. 1963)	7
7	<u>Venegas v. County of Los Angeles</u> , 32 Cal.4th 820 (2004)	12
8	<u>White v. County of Orange</u> , 166 Cal.App.3d 566	17
9	<u>White v. Superior Court</u> , 225 Cal.App.3d 1505 (1990)	13-14
10	<b><u>MISCELLANEOUS</u></b>	
11	F.R.C.P. 15(a)	19
12		
13		
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16		
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v.

Plaintiff's Memorandum of Points and  
 Authorities in Opposition to Defendants'  
 Motion to Dismiss

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**I.**

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On March 22, 2004, in response to a call from Plaintiff BEVERLY LAMBERT (hereinafter MRS. LAMBERT), SANTA ROSA police officers SANCHEZ and JOHNSON arrived at the LAMBERTS' home. Defendants SANCHEZ and JOHNSON were peaceably allowed into the LAMBERTS' home. Defendants SANCHEZ and JOHNSON questioned Plaintiff WILLIAM LAMBERT (hereinafter MR. LAMBERT), MRS. LAMBERT and the LAMBERTS' adult son, Jon. The LAMBERTS explained that a minor dispute had arisen in the household between MRS. LAMBERT and Jon, which MR. LAMBERT had attempted to break up by tapping MRS. LAMBERT on the head and making her sit in a chair. MR. and MRS. LAMBERT have been married for 41 years, and up until this minor incident, their marriage had been a peaceful one. MR. LAMBERT was not under the influence of alcohol or drugs, and was not brandishing any weapons.

During the questioning, and although the parties' interaction was peaceful, Defendants SANCHEZ and JOHNSON separated MR. and MRS. LAMBERT. At first, Defendant JOHNSON accompanied MR. LAMBERT into the family room. Defendant SANCHEZ remained with MRS. LAMBERT in an adjacent area of the house. Subsequently, the Defendants switched positions, with Defendant SANCHEZ joining MR. LAMBERT in the family room. Defendant JOHNSON joined MRS. LAMBERT in the adjacent dining room.

Defendant SANCHEZ asked to see MR. LAMBERT'S driver's license. MR. LAMBERT replied peacefully that his wallet was in the dining room. When MR. LAMBERT moved to retrieve his wallet, however, Defendant SANCHEZ stepped in front of MR. LAMBERT telling MR. LAMBERT that he did not need to see MR. LAMBERT'S driver's license. When MR. LAMBERT explained to Defendant SANCHEZ that it would be no problem to retrieve his wallet, Defendant SANCHEZ ordered MR. LAMBERT to turn around and put his hands behind his back.

1 MR. LAMBERT then asked Defendant SANCHEZ if he could use a nearby bathroom before  
2 Defendant SANCHEZ handcuffed him.<sup>1</sup>

3 Without warning, Defendant SANCHEZ forcibly grabbed MR. LAMBERT, spun him  
4 around and twisted MR. LAMBERT’S left arm behind his back. When MR. LAMBERT renewed  
5 his request to use the bathroom, Defendant SANCHEZ kicked MR. LAMBERT’S right leg out  
6 from under him, causing MR. LAMBERT to fall to the ground, crushing MR. LAMBERT’S right  
7 tibia.

8 After MR. LAMBERT fell to the ground crushing his right leg, Defendant SANCHEZ  
9 began to twist MR. LAMBERT’S broken right leg behind him, causing MR. LAMBERT severe  
10 pain. MR. LAMBERT then became aware that Defendant SANCHEZ was holding what felt like  
11 a gun to MR. LAMBERT’S rib cage.

12 Although MR. LAMBERT now lay on the floor, immobilized by the severe injury he had  
13 sustained as a result of Defendant SANCHEZ’S maneuver, Defendant SANCHEZ - who was, in  
14 fact, holding a “Taser” pistol to MR. LAMBERT’S rib cage - proceeded to use the “Taser” pistol  
15 on MR. LAMBERT’S crushed right leg. Defendant SANCHEZ then cuffed MR. LAMBERT’S  
16 hands behind his back and forced him to stand on his broken right leg. Unable to stand on his  
17 own, MR. LAMBERT fell to the floor a second time, suffering additional, extreme pain and  
18 distress.

19 During these events, MRS. LAMBERT and Defendant JOHNSON were in the adjacent  
20 dining room. However, when MR. LAMBERT injured his leg and was “tasered” by Defendant  
21 SANCHEZ, MR. LAMBERT screamed in pain, attracting the attention of MRS. LAMBERT and  
22 Defendant JOHNSON. Defendant JOHNSON then entered the family room. Instead of assisting  
23 MR. LAMBERT, Defendant JOHNSON assisted Defendant SANCHEZ in lifting MR.

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25 <sup>1</sup>MR. LAMBERT is an elderly man and a former military officer. MR. LAMBERT also has a condition  
26 which requires him to frequently urinate.



1 LAMBERT'S torso off the floor and dragging his lower body - including his badly broken leg -  
2 across the floor. Both Defendants SANCHEZ and JOHNSON propped MR. LAMBERT against  
3 a couch, with his broken right leg under him, ignoring MR. LAMBERT'S pleas to help him  
4 remove his broken leg out from under him.

5 After these events, MR. LAMBERT was arrested. Both Defendants SANCHEZ and  
6 JOHNSON falsified their arrest reports, falsely accusing MR. LAMBERT of resisting arrest. The  
7 charges of false arrest against MR. LAMBERT were ultimately dismissed and, as part of a plea  
8 bargain, MR. LAMBERT pleaded nolo contendere to simple battery upon a spouse.

9 As a result of the injuries MR. LAMBERT sustained on March 22, 2004, MR. LAMBERT  
10 was forced to undergo extensive surgery on his right leg. He has been advised that he will have  
11 to undergo at least two more surgeries in the next two years to continue to use his right leg. In  
12 addition, MR. LAMBERT continues to experience swelling and discomfort due to the prosthetic  
13 hardware MR. LAMBERT now must wear inside his right leg. MR. LAMBERT also sustained  
14 severe emotional trauma, and can no longer work at the Santa Rosa Junior College where he  
15 worked as an instructor.

16 Furthermore, at the time of the incident, the LAMBERTS lived in a two-story home in  
17 Santa Rosa. Their bedroom was accessible only by stairs. Due to MR. LAMBERT'S difficulty  
18 walking, his long period of recuperation following his leg surgery, and his loss of income, the  
19 LAMBERTS were forced to sell their home in Santa Rosa and buy a smaller, single-story home in  
20 Cloverdale. Having to move households has been traumatic for the LAMBERTS, and represents  
21 a substantial decline in their quality of life.

22 Finally, MRS. LAMBERT has sustained severe emotional trauma and loss of consortium  
23 as a result of the injuries inflicted upon her husband. During MR. LAMBERT'S long  
24 recuperation, he was bed-ridden in a make-shift bedroom MRS. LAMBERT set up in their  
25 downstairs family room. On a daily basis, MRS. LAMBERT provided nursing services to her  
26

1 husband, which included helping him relieve himself and defecate. During this time, the  
2 LAMBERTS' marriage suffered under the heavy of weight of this emotional and physical burden.

3 Despite the severity of these incidents, Defendant CITY OF SANTA ROSA denied the  
4 LAMBERTS' claim for compensation, which gave rise to this suit for damages based on a  
5 violation of MR. LAMBERT'S civil rights under 42 U.S.C. § 1983, assault and battery, violation  
6 of California Civil Code section 52.1, and MRS. LAMBERT'S loss of consortium.<sup>2</sup>

7 **II.**

8 **ARGUMENT**

9 **THE WELL-ESTABLISHED RULES GOVERNING**  
10 **MOTIONS TO DISMISS REQUIRE THE COURT TO**  
11 **DENY DEFENDANTS' MOTION AS TO PLAINTIFFS'**  
**FIRST CAUSE OF ACTION FOR VIOLATION OF**  
**CIVIL RIGHTS UNDER 42 U.S.C. § 1983**

12 A. Motions To Dismiss Are Generally Disfavored, And Civil Rights  
13 Complaints Must Be Construed Liberally In Favor Of The Plaintiff

14 Under the well-established rules governing 12(b)(6) motions to dismiss, a defendant must  
15 meet a high burden to warrant dismissing the plaintiff's complaint. "A complaint should not be  
16 dismissed unless it appears *beyond doubt* the plaintiff can prove *no set of facts* in support of his  
17 claim that would entitle him to relief." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9<sup>th</sup>  
18 Cir. 1994), *cited in Buckey v. County of Los Angeles*, 968 F.2d 791, 794 (9<sup>th</sup> Cir. 1990) (Emphasis  
19 added.); *see also, Love v. United States*, 915 F.2d 1242, 1245 (9<sup>th</sup> Cir. 1990).

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21 <sup>2</sup>In an effort to narrow the issues for the Court and for trial, the LAMBERTS voluntarily agreed to dismiss  
22 Defendant Police Chief Edwin Flint from this case. In addition, the LAMBERTS voluntarily agreed to dismiss the  
23 Third, Fourth, Fifth, Sixth, Tenth and Eleventh causes of action as to all defendants. This voluntary dismissal was  
communicated to defense counsel by letter dated October 11, 2005.

24 In addition, the LAMBERTS do not intend to pursue causes of action for deliberate indifference to medical  
25 needs. Moreover, MRS. LAMBERT does not claim that she was, herself, assaulted and battered by the defendant  
26 police officers, or that she has a claim for excessive use of force under either 42 U.S.C. § 1983 or California Civil  
Code section 52.1. MRS. LAMBERT'S sole claim is based on loss of consortium as a result of the assault on MR.  
LAMBERT.

1 Generally, motions to dismiss are “regarded with disfavor and [are] rarely granted without  
2 leave to amend.” *Kaufman & Broad-South Bay v. Unisys Corp.*, 822 F.Supp. 1468, 1472 (N.D.  
3 Cal. 1993), *disapproved of on other grounds in KFC Western, Inc. v. Meghriq*, 49 F.3d 518 (9<sup>th</sup>  
4 Cir. 1995), *citing Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274, *cert den* 485 U.S. 940  
5 (1988). Moreover, as the Defendants accurately point out, the material allegations in the  
6 complaint must be taken as true and construed in the light most favorable to the plaintiff. *NL*  
7 *Industries, Inc. v. Kaplan*, 792 F.2d 896, 898 (9<sup>th</sup> Cir. 1986); *see*, Defendants’ Memorandum of  
8 Points and Authorities, page 2, lines 25-27.) “All well-pled allegations are accepted as true and  
9 all reasonable inferences are drawn in plaintiff’s favor.” *Mruz v. Caring, Inc.*, 991 F.Supp. 701,  
10 707 (D.N.J. 1998), *citing Associated Gen’l Contractors of Calif. v. California State Council of*  
11 *Carpenters*, 459 U.S. 519, 526 (1983). Finally, civil rights complaints - in particular - must be  
12 construed liberally in favor of the plaintiff. *Buckey v. County of Los Angeles*, *supra*, 968 F.2d at  
13 page 794, *citing Gobel v. Maricopa County*, 867 F.2d 1201, 1203 (9<sup>th</sup> Cir. 1989); *see also, Owen*  
14 *v. City of Independence*, 445 U.S. 622, 636 [Remedial legislation is construed broadly to achieve  
15 its primary purpose.].

16 Under these standards, Defendants’ motion to dismiss must fail as to the LAMBERTS’  
17 first cause of action for an excessive force violation of 42 U.S.C. § 1983.

18 B. Defendants Incorrectly Assert That The LAMBERTS Must Meet A Heightened  
19 Pleading Requirement In Pleading A Violation of Civil Rights

20 Disregarding the “liberal construction” rule for civil rights complaints, Defendants assert  
21 that the LAMBERTS must meet a “heightened pleading standard” to defeat the Defendants’  
22 motion to dismiss their Section 1983 cause of action. *See*, Defendants’ Memorandum of Points  
23 and Authorities, page 3, line 19 - page 4, line 8. Defendants’ mis-quote the law regarding a  
24 plaintiff’s burden when pleading a civil rights violation.

25 To state a cause of action for violation of 42 U.S.C. § 1983, a plaintiff is only required to  
26 plead and prove two elements - a deprivation of a federal right, privilege or immunity and that the

1 deprivation occurred as a result of defendant acting under color of state law. Gomez v. Toledo,  
2 446 U.S. 635, 640 (1980). Moreover, despite Defendants’ assertions, a plaintiff in a civil rights  
3 action is not required to plead “‘direct evidence’ of [the defendants’] intent to violate the  
4 plaintiff’s rights.” See, Defendants’ Memorandum of Points and Authorities, page 4, lines 2-3.  
5 As the Gomez Court emphasized, “Nothing in the language or legislative history of §  
6 1983...suggests that...a plaintiff must allege bad faith in order to state a claim for relief.” Gomez,  
7 *supra*, at page 640; Stringer v. Dilger, 313 F.2d 536, 540 (10<sup>th</sup> Cir. 1963) [A specific intent to  
8 deprive a person of his constitutional rights, while required under the criminal civil rights statutes,  
9 is not a prerequisite to liability in a civil case.]; see also, Basista v. Weir, 340 F.2d 74 (3d Cir.  
10 1965) [If a person is abused by a police officer acting under color of state law, it is immaterial in  
11 a Section 1983 action whether the police officer lacked the motive, purpose or intent to deprive  
12 the person of a federally-protected right.].

13         Based on the allegations of excessive force by Defendants SANCHEZ and JOHNSON,  
14 when viewed in the light most favorable to the Plaintiffs, the LAMBERTS have pleaded a  
15 violation of 42 U.S.C. § 1983 sufficient to survive Defendants’ motion to dismiss. The  
16 LAMBERTS have alleged conduct violating their civil rights, the use of excessive force, the time  
17 of the incident, and those persons responsible. These allegations are sufficient to withstand the  
18 Defendants’ motion to dismiss. Demetrius v. Marsh, 560 F.Supp. 1157 (E.D. Pa. 1983).

19         Moreover, with the exception of Pareto v. FDIC, 139 F.3d 696 (9<sup>th</sup> Cir. 1998), the  
20 authority upon which the Defendants principally rely for their “heightened pleading standard”  
21 argument is either inapplicable to motions to dismiss or has been *overruled* by later precedent.  
22 See, e.g., Green v. Bransom, 108 F.3d 1296 (10<sup>th</sup> Cir. 1997) [motion for summary judgment case],  
23 *cited in* Defendants’ Memorandum of Points and Authorities, page 3, lines 21-22; Pride v. Does,  
24 997 F.2d 712 (10<sup>th</sup> Cir. 1993) [motion for summary judgment case], *cited in* Defendants’  
25 Memorandum of Points and Authorities, page 3, lines 22-23; Branch v. Tunnell, 937 F.2d 1382

1 (9<sup>th</sup> Cir. 1991) (“Branch I”) and *Branch v. Tunnell*, 14 F.3d 449 (9<sup>th</sup> Cir. 1994), (“Branch II”),  
2 cited in Defendants’ Memorandum of Points and Authorities, page 4, lines 3-4, *overruled by*  
3 *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9<sup>th</sup> Cir. 2002) [*Branch I and II’s* heightened  
4 pleading requirement is disapproved in civil rights cases.]. Therefore, as to the LAMBERT’S  
5 first cause of action for violation of their civil rights under 42 U.S.C. § 1983, Defendants’ motion  
6 to dismiss must fail.

7 C. The LAMBERTS Are Also Not Held To A “Heightened Pleading Standard”  
8 In Pleading A Violation Of 42 U.S.C. § 1983 Against Defendant CITY OF  
9 SANTA ROSA

9 Defendants also argue that the LAMBERTS are required to plead “specific facts” in  
10 support of their alleged violation of 42 U.S.C. § 1983 by Defendant CITY OF SANTA ROSA.  
11 Defendants assert that the LAMBERTS must plead “more than a bald allegation that the injury  
12 resulted from a policy of the municipality.” *See*, Defendants’ Memorandum of Points and  
13 Authorities, page 4, lines 10-11 and page 5, lines 16-17. In making this assertion, Defendants  
14 rely heavily on two U.S. Supreme Court cases - *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985) and  
15 *Polk County v. Dodson*, 454 U.S. 312 (1981).

16 Unfortunately, Defendants again mis-interpret the current state of law with respect to a  
17 plaintiff’s burden when pleading a civil rights violation by a municipality. In overruling *Branch I*  
18 and *Branch II*, the 9<sup>th</sup> Circuit in *Galbraith, supra*, specifically relied on two U.S. Supreme Court  
19 cases that were decided *after Tuttle* and *Dodson*. These two cases - *Crawford-El v. Britton*, 523  
20 U.S. 574 (1998) and *Leatherman v. Tarrant County Narcotics Intelligence & Coord’n Unit*, 507  
21 U.S. 163 (1993) - control the Court’s determination of Defendants’ motion to dismiss the  
22 LAMBERTS’ Section 1983 se of action, including its determination of whether to grant the  
23 motion as to Defendant CITY OF SANTA ROSA. The *Galbraith* Court correctly determined that  
24 *Crawford-El* and *Leatherman* stand for the proposition that a plaintiff need not meet a  
25 “heightened pleading standard” when pleading a civil rights cause of action under 42 U.S.C. §

1 1983 against *either* an individual or a municipality. *Galbraith, supra*, at page 1124. In fact, as  
2 the *Galbraith* Court correctly described, the U.S. Supreme Court in *Leatherman* rejected a  
3 “heightened pleading standard” for Section 1983 causes of action against municipalities, stating,  
4 “We think that it is impossible to square the ‘heightened pleading standard’ applied by the Fifth  
5 Circuit in this case with the liberal system of ‘notice pleading’ set up by the Federal Rules.”  
6 *Leatherman, supra*, at page 1163.

7 Moreover, the *Galbraith* Court noted that “any remaining doubt on the issue was  
8 dispelled when the Supreme Court revisited heightened pleading requirements...and rejected  
9 their use as a device to weed out unmeritorious claims.” *Galbraith, supra*, at page 1125. In  
10 making this statement, the *Galbraith* Court cited *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506  
11 (2002) wherein the U.S. Supreme Court again held the Federal Rules require only “notice  
12 pleading” which “provides that a complaint must include only ‘a short and plain statement of the  
13 claim showing that the pleader is entitled to relief’.” *Swierkiewicz* at page 998. “Such a  
14 statement must simply ‘give the defendant fair notice of what the plaintiff’s claim is and the  
15 grounds upon which it rests’.” *Id.*, citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

16 Therefore, the LAMBERTS are not held to a “heightened pleading standard” even when  
17 pleading a civil rights violation against a municipality like Defendant CITY OF SANTA ROSA.  
18 The *Galbraith* Court summed up the rule of law concisely, writing:

19 “In this circuit, a claim for municipal liability under section 1983  
20 is sufficient to withstand a motion to dismiss ‘even if the claim is  
21 based on nothing more than a bare allegation that the individual  
22 officers’ conduct conformed to official policy, custom, or practice’.”

23 *Galbraith, supra*, at page 1127, citing *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621,  
24 624 (9<sup>th</sup> Cir. 1988).

25 Under the liberal pleadings rules discussed above, the LAMBERTS’ allegations against  
26 Defendant CITY OF SANTA ROSA are sufficient to withstand the Defendants’ motion to  
27 dismiss. The LAMBERTS’ allegations specifically allege that “Defendant City of Santa Rosa is

1 liable...for maintaining a policy, custom, or practice or permitting or encouraging excessive force  
2 by its officers...” See, Plaintiff’s Complaint, ¶ 38, lines 3-5. The LAMBERTS further allege that  
3 Defendant CITY OF SANTA ROSA’s liability is premised on Monell v. New York Dept. Of  
4 Social Services, 436 U.S. 658, 691 (1978). See, Plaintiff’s Complaint, ¶ 38, lines 8-9. Finally,  
5 the LAMBERTS allege that “the City’s policymaker(s) acted with actual knowledge, constructive  
6 knowledge and/or deliberate indifference to Mr. Lambert’s constitutional rights.” See,  
7 Plaintiff’s Complaint, ¶ 38, lines 9-12. These allegations are sufficient to give the Defendant  
8 CITY OF SANTA ROSA “fair notice of what the plaintiff’s claim is and the grounds upon which  
9 it rests.”

10 However, even if the allegations of liability against Defendant CITY OF SANTA ROSA  
11 could be construed as “nothing more than a bare allegation that the individual officers’ conduct  
12 conformed to official policy, custom, or practice,” the LAMBERTS’ allegations would still be  
13 sufficient to withstand the Defendants’ motion to dismiss as the 9<sup>th</sup> Circuit held in Galbraith. At  
14 the pleading stage, the plaintiff’s complaint is permitted to have fairly general allegations. Haile  
15 v. Sag Harbor, 639 F.Supp. 718 (E.D. N.Y. 1986). Therefore, the Defendants’ motion to dismiss  
16 the LAMBERTS’ first cause of action against Defendant CITY OF SANTA ROSA must be  
17 denied.

18 **PLAINTIFFS’ COMPLAINT STATES A VALID CAUSE OF**  
19 **ACTION UNDER SECTION 1983 FOR FALSIFICATION**  
20 **OF DEFENDANT SANCHEZ AND JOHNSON’S ARREST**  
21 **REPORTS**

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22 In addition to the use of excessive force, the LAMBERTS have stated a valid cause of  
23 action against Defendants under Section 1983 based on the alleged falsification of Defendant  
24 SANCHEZ and JOHNSON’s police reports. In Galbraith, supra, the plaintiff brought an action  
25 against the County of Santa Clara and the county coroner under Section 1983 as a result of the  
26 coroner falsifying an autopsy which resulted in the arrest and criminal prosecution of the plaintiff  
27 for the death of the plaintiff’s wife. In addition to rejecting the “heightened pleading standard” as

1 ///

2 set forth above, the *Galbraith* Court also concluded that the plaintiff had adequately alleged a  
3 Fourth Amendment violation under Section 1983.

4 In this case, the LAMBERTS allege that Defendant SANCHEZ and JOHNSON both  
5 falsified their arrest reports, falsely accusing MR. LAMBERT of resisting arrest. The  
6 LAMBERTS further allege that these false arrest reports resulted in charges against MR.  
7 LAMBERT of resisting arrest, which MR. LAMBERT had to defend himself against at  
8 considerable expense. The resisting arrest charge against MR. LAMBERT was, ultimately,  
9 dismissed by the Sonoma County District Attorney. *See*, Declaration of Caroline L Fowler,  
10 Exhibit B, page 5 of 6. Therefore, like the situation in *Galbraith*, the LAMBERTS have set forth  
11 a valid cause of action under Section 1983 based on the falsification of the arrest reports by  
12 Defendants SANCHEZ and JOHNSON.

13 **PLAINTIFFS' COMPLAINT STATES VALID CAUSES OF**  
14 **ACTION FOR ASSAULT, BATTERY, AND VIOLATION**  
15 **OF CALIFORNIA CIVIL CODE SECTION 52.1 - THE**  
**"BANE CIVIL RIGHTS ACT"**

16 A. MR. LAMBERTS' Causes Of Action For Assault, Battery, And  
17 Violation Of Civil Code Section 52.1 Are Pendent State Law  
18 Claims Over Which The Court Should Exercise Supplemental  
19 Jurisdiction

19 MR. LAMBERT also raises valid causes of action under California state law for assault,  
20 battery, and violation of California Civil Code Section 52.1, popularly known as "The Bane Civil  
21 Rights Act."

22 MR. LAMBERT'S causes of action for assault and battery are pendent state law claims  
23 over which this Court may exercise supplemental jurisdiction pursuant to 42 U.S.C. § 1367(a)  
24 because the LAMBERTS' causes of action for assault and battery are factually-related to the  
25 Section 1983 excessive force claim.



1 ///

2 A similar situation faced the Court in Ammerman v. Sween, 54 F.3d 423 (7<sup>th</sup> Cir. 1995). In  
3 Ammerman, a college lab instructor brought a Title VII claim against the college for failing to  
4 protect her from another instructor’s sexual harassment. She also sued the alleged harasser for  
5 assault, battery, and a variety of additional state law claims. The Court approved the exercise of  
6 supplemental jurisdiction in Ammerman because, like here, the claims were clearly related. In  
7 fact, the Court noted that “without reference to the facts surrounding the assault, there could have  
8 been no sexual harassment claim against the employer.” *Id.* at page 425. Similarly, in this case,  
9 without reference to the assaultive behavior of Defendants SANCHEZ and JOHNSON, there  
10 could be no excessive force claim. The assault and battery claims are clearly supplemental.

11 Likewise, MR. LAMBERT’S claim for violation of Civil Code section 52.1 is equally  
12 supplemental to the Section 1983 excessive force claim. In fact, although somewhat broader in  
13 scope, Civil Code section 52.1 bears striking similarity to 42 U.S.C. § 1983. Civil Code section  
14 52.1(a) permits an individual to maintain a private civil action against “a person or persons,  
15 whether or not acting under color of law” when that person “interferes by threats, intimidation, or  
16 coercion, or attempts to interfere by threats, intimidation, or coercion with the exercise or  
17 enjoyment by any individual or individuals of rights secured by the Constitution or laws of the  
18 United States, or of the rights secured by the Constitution or laws of [California]...” Like a  
19 Section 1983 excessive force claim, a violation of Civil Code section 52.1 requires an allegation  
20 of force or threat of force, which MR. LAMBERT has properly alleged against Defendants  
21 SANCHEZ and JOHNSON. Rabkin v. Dean, 856 F.Supp. 543, 552 (N.D. Cal. 1994). Moreover,  
22 under recent amendments to Civil Code section 52.1, MR. LAMBERT is no longer required to  
23 allege that the force or threat of force were motivated by an intent to discriminate based on a  
24 protected class. Cal. Civ. Code § 52.1 (2000 Note), *legislatively overruling Boccato v. City of*  
25 Hermosa Beach, 29 Cal.App.4th 1797 (1994); *see also, Venegas v. County of Los Angeles*, 32

26

1 Cal.4th 820 (2004) [claim under Bane Act did not require plaintiff to show that sheriff's  
2 department acted with discriminatory animus in conducting allegedly unreasonable search and  
3 seizure.].

4 Finally, as set forth below, the LAMBERTS have adequately notified Defendant CITY OF  
5 SANTA ROSA of their intent to pursue these state law claims under Government Code section  
6 945.4 and Defendants are not immune from liability for these claims under Government Code  
7 section 812.5.

8 B. The LAMBERTS' Claims Under Government Code Section 945.4  
9 Was Sufficient To Put Defendant CITY OF SANTA ROSA On  
10 Notice Of The LAMBERTS' Claims For Assault, Battery, Violation  
11 Of Civil Code Section 52.1, And Loss Of Consortium

12 Defendants next assert that the LAMBERTS' causes of action against Defendant CITY  
13 OF SANTA ROSA must be dismissed because the LAMBERTS' claims under Government Code  
14 section 945.4 "sets forth no facts establishing any action or inaction by the City or an independent  
15 claim against it." See, Defendant's Memorandum of Points and Authorities, page 6, lines 7-8.  
16 Defendant CITY OF SANTA ROSA mis-states the specificity required of a plaintiff's  
17 Government Code section 945.4 claim.

18 Under California law, a Government Code section 945.4 pre-lawsuit claim need not  
19 specify each act or omission later proven to cause injury. *Stockett v. Assoc'n of Calif. Water*  
20 *Agencies, etc.*, 34 Cal.4th 441 (2004); *Smith v. County of Los Angeles*, 214 Cal.App.3d 266  
21 (1989). If a plaintiff's complaint is based on the same general set of facts as set forth in the pre-  
22 lawsuit claim, the complaint will survive a challenge based on non-compliance with Government  
23 Code section 945.4. *Dixon v. City of Livermore*, 127 Cal.App.4th 32 (2005).

24 In making this argument, Defendants rely principally on *Fall River Joint Unified School*  
25 *Dist. v. Superior Court*, 206 Cal.App.3d 431 (1988), *Donohue v. State of California*, 178  
26 Cal.App.3d 795 (1986), and *Connelly v. State of California*, 3 Cal.App.3d 744 (1970). However,  
27 in a later decision involving municipal liability for the actions of police officers, the Court of

1 Appeal expressly distinguished the *Fall River*, *Donohue* and *Connelly* opinions. In *White v.*  
2 *Superior Court*, 225 Cal.App.3d 1505 (1990), *rev den* February 20, 1991, the plaintiff bus driver  
3 was asked for assistance by a fellow bus driver. She parked her bus and exited it, attempting to  
4 assist the other bus driver. The plaintiff was then approached by a police officer employed by the  
5 City and County of San Francisco who asked the plaintiff for her driver’s license. The plaintiff  
6 asked the officer what she had done wrong. Like the instant case, the police officer did not  
7 answer her. He grabbed her hands, forcing them behind her back and slammed her face into a  
8 wall. The plaintiff was then placed in handcuffs and arrested.

9         Thereafter, the plaintiff filed a claim stating that she “was falsely arrested and  
10 imprisoned...[and] also brutally beaten by the officer...” *Id.* at 1507. When the claim was  
11 rejected, the plaintiff filed suit alleging - as the LAMBERTS did in this case - claims against the  
12 City and County of San Francisco for false imprisonment; negligent hiring, training and retention;  
13 intentional failure to train, supervise and discipline; assault and battery, intentional infliction of  
14 emotion distress, and negligent infliction of emotional distress. The trial court granted summary  
15 adjudication to the City on the grounds that the plaintiff’s additional claims against the City were  
16 not “fairly reflected” in the written, pre-lawsuit claim presented by the plaintiff. *Id.* at 1508.

17         In reversing the trial court’s grant of summary judgment, the Court of Appeal ruled that  
18 “both plaintiff’s complaint and her claim were predicated on the same fundamental facts-Officer  
19 Sanford’s alleged mistreatment of plaintiff. The causes of action for negligent hiring, training,  
20 and retention and for failure to train, supervise, and discipline merely sought to show direct  
21 responsibility of San Francisco for Officer Sanford’s conduct. Plaintiff did not shift the  
22 fundamental facts about her injury.” *Id.*, at page 1511.

23         The factual circumstances of *White* are strikingly similar to this case. Likewise, the  
24 argument raised in this case by Defendant CITY OF SANTA ROSA is strikingly similar to the  
25 argument rejected in *White*. Just like *White*, the LAMBERTS’ pre-lawsuit claims under  
26

1 Government Code section 945.4 hinge upon the mistreatment and abuse perpetrated by  
2 Defendants SANCHEZ and JOHNSON.<sup>3</sup> The state law causes of action that the LAMBERTS  
3 now allege against Defendant CITY OF SANTA ROSA simply seek to hold the CITY OF  
4 SANTA ROSA directly liable for SANCHEZ and JOHNSON’s misconduct and the resulting  
5 damages. Like the causes of action in *White*, the LAMBERTS’ causes of action against  
6 Defendant CITY OF SANTA ROSA arise out of the same “fundamental facts” as those set forth  
7 in their pre-lawsuit claim. Therefore, Defendant CITY OF SANTA ROSA’S request for  
8 dismissal based on the LAMBERTS’ alleged non-compliance with Government Code section  
9 945.4 should be denied.

10 **DEFENDANTS ARE NOT IMMUNE FROM LIABILITY FOR USING**  
11 **UNREASONABLE FORCE UNDER EITHER FEDERAL OR STATE LAW**

12 Defendants argue that the LAMBERTS’ complaint should be dismissed under F.R.C.P.  
13 12(b)(6) because they are immune from Section 1983 liability as well as any liability for state law  
14 claims under California Government Code § 815.2. However, Defendants’ immunity argument  
15 does not support dismissal of the LAMBERTS’ Section 1983 cause of action.

16 As the U.S. Supreme Court has recognized, States may not immunize action that violates  
17 rights protected by 42 U.S.C. § 1983. *Martinez v. California*, 444 U.S. 277 (1980); *see also*,  
18 *Buskirk v. Seiple*, 560 F.Supp. 247 (E.D. Pa. 1983) Moreover, a police officer enjoys only  
19 “qualified” immunity in a Section 1983 case, not absolute immunity. *Stevens v. Corbell*, 832 F.2d  
20 884 (5<sup>th</sup> Cir. 1987) *reh den, en banc* 838 F.2d 1214 (5<sup>th</sup> Cir. 1988).

21 In addition, the U.S. Supreme Court has recognized that the defense of immunity is  
22 inappropriate as grounds to dismiss a plaintiff’s complaint. In *Gomez, supra*, 446 U.S. at page  
23 640, the Court wrote: “[T]his Court has never indicated that qualified immunity is relevant to the  
24 existence of the plaintiff’s cause of action...” The Court went on to state the rationale for its

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25  
26 <sup>3</sup>Both MR. LAMBERT and MRS. LAMBERT filed claims with Defendant CITY OF SANTA ROSA.

1 decision, writing:

2 “Our conclusion as to the allocation of the burden of pleading  
3 is supported by the nature of the qualified immunity defense.  
4 As our decisions make clear, whether such immunity has been  
5 established depends on facts peculiarly within the knowledge  
6 and control of the defendant. Thus we have stated that ‘[i]t is  
7 the existence of reasonable grounds for the belief formed at  
8 the time and in light of all the circumstances, coupled with  
9 good-faith belief, that affords a basis for qualified immunity...  
10 There may be no way for a plaintiff to know in advance  
11 whether the official has such a belief or, indeed, whether he  
12 will claim that he does. The existence of a subjective belief  
13 will frequently turn on factors which a plaintiff cannot  
14 reasonably be expected to know.’”

15 Id. at 640-641.

16 Finally, Defendant CITY OF SANTA ROSA cannot assert the immunity of its police  
17 officers as grounds for immunizing itself from liability. Owen v. City of Independence, MO,  
18 (1980) 445 U.S. 622.

19 Similarly, Government Code section 815.2 does not immunize either Defendant  
20 SANCHEZ or JOHNSON from liability for assaulting and battering MR. LAMBERT, violating  
21 MR. LAMBERT’S rights under Civil Code section 52.1, or from the resulting loss of consortium  
22 their actions caused MRS. LAMBERT. In Robinson v. Solano County, 278 F.3d 1007 (9<sup>th</sup> Cir.  
23 2002), for example, the Court reviewed Government Code section 815.2 and found that police  
24 officers are not immune from assault and battery under California law. Id. at page 1016, *citing*  
25 Scruggs v. Haynes, 252 Cal.App.2d 256, 264) [“California cases have consistently held that a  
26 peace officer making an arrest is liable to the person arrested for using unreasonable force.”]. The  
27 Robinson Court further held that the municipality is also not immune from liability because its  
28 liability depends upon immunity granted to its police officers under California law, and California  
29 law does not immunize police officers from using unreasonable force in discharging their duties.  
30 Id. at 1016. Moreover, the Robinson Court recognized that California has rejected the Monell  
31 doctrine in terms of a municipality’s vicarious liability for *state* law claims such as assault and

1 battery. *Id.*, citing *Scott v. County of Los Angeles*, 27 Cal.App.4th 125, 139-140 [“Under  
2 Government Code section 815.2, subdivision (a), the County is liable for acts and omissions of its  
3 employess under the doctrine of respondeat superior to the same extent as a private employer.”].

4 This same rationale applies to MR. LAMBERT’S claim for violation of Civil Code  
5 section 52.1. See, e.g., *Beliveau v. Caras*, 873 F.Supp. 1393 (C.D. Cal. 1995). In California,  
6 governmental liability is the rule; immunity is the exception. *White v. County of Orange*, 166  
7 Cal.App.3d 566, 570 (1985). Therefore, this Court should reject Defendants’ immunity argument  
8 as to the LAMBERTS’ Section 1983 cause of action, MR. LAMBERT’S causes of action for  
9 assault, battery and violation of Civil Code section 52.1, and MRS. LAMBERT’S cause of action  
10 for loss of consortium..

11 **MRS. LAMBERT HAS A VALID CAUSE OF ACTION FOR**  
12 **LOSS OF CONSORTIUM**

13 Defendants assert that MRS. LAMBERT has failed to allege sufficient facts to entitle her  
14 to a claim for loss of consortium. Under California law, “the concept of consortium includes not  
15 only the loss of support or services; it also embraces such elements as love, companionship,  
16 comfort, affection, society, sexual relations, the moral support each spouse gives the other  
17 through the triumph and despair of life, and the deprivation of a spouse’s physical assistance in  
18 operating and maintaining the family home.” *Ledger v. Tippitt*, 164 Cal.App.3d 625, 633 (1985).  
19 Loss of consortium can be complete or partial in the sense that the aggrieved spouse’s consortium  
20 was impaired. *Carlson v. Wald*, 151 Cal.App.3d 598, 602 (1984), citing *Rodriguez v. Bethlehem*  
21 *Steel Corp.*, 12 Cal.3d 382, 408 (1974).  
22

23  
24 In the complaint, MRS. LAMBERT pleads that “Defendant’s tortious actions proximately  
25 and actually caused Plaintiff Mrs. Lambert to suffer a loss of consortium with her husband, Mr.  
26 Lambert.” See, Plaintiff’s Complaint, ¶ 63, lines 10-12. The complaint also makes specific

1 reference to *Rodriguez v. Bethlehem Steel Corp.* See, Plaintiff’s Complaint, ¶ 63, line 13. Under  
2 rules of liberal pleading, these allegations are sufficient to put Defendants on notice of MRS.  
3 LAMBERT’S cause of action for loss of consortium.  
4

5           Nevertheless, Defendants assert that MRS. LAMBERT has not alleged that she has lost  
6 the “support, comfort, protection, society and pleasure as required under *Rodriguez v. Bethlehem*  
7 *Steel Corp.* (1974) 12 Cal.3d 382.” See, Defendants’ Memorandum of Points and Authorities,  
8 page 8, lines 5-6. Assuming, *arguendo*, that Defendants are correct and a plaintiff is required to  
9 allege these facts under the Federal rules allowing “notice pleading,” MRS. LAMBERT’S  
10 allegations are easily corrected by way of an amendment to the complaint. MRS. LAMBERT can  
11 easily and truthfully plead these specific facts, if need be. Therefore, if the Court finds MRS.  
12 LAMBERT’S twelfth cause of action deficient, MRS. LAMBERT requests leave to amend the  
13 complaint as set forth below.  
14

15                           **DEFENDANT JOHNSON WAS PRESENT AT THE SCENE,**  
16                           **FAILED TO INTERVENE TO PREVENT DEFENDANT**  
17                           **SANCHEZ’S ATTACK AGAINST MR. LAMBERT, AND**  
18                           **LAMBERT**

19           While it is true that the arresting officer who exercises the unreasonable force is the  
20 typical defendant in an excessive force case, the arresting officer who exercises force is not the  
21 only officer who may be liable in a Section 1983 action. When an officer is present at an arrest,  
22 and has an opportunity to intervene, other officers can be held liable under Section 1983 for  
23 failing to prevent a fellow officer from using excessive force. *Cunningham v. Gates*, 229 F.3d  
24 1271 (9<sup>th</sup> Cir. 2000); *O’Neill v. Krzeminski*, 839 F.2d 9 (2<sup>nd</sup> Cir. 1988); *Fundiller v. Cooper*, 777  
25

1 F.2d 1436 (11<sup>th</sup> Cir. 1985); *Lewis v. Goodie*, 798 F.Supp. 382 (W.D. La. 1992); *McQuarter v.*  
2 *Atlanta*, 572 F.Supp. 1401 (N.D. Ga. 1983), *app. dismissed* 724 F.2d 881 (11<sup>th</sup> Cir. 1984).

3  
4 In this case, Defendants argue that Defendant JOHNSON must be dismissed because “the  
5 complaint alleges in paragraphs 17 and 22 that Officer Johnson was in another room at the time  
6 of the specific acts that form the basis of this cause of action.” *See*, Defendants’ Memorandum of  
7 Points and Authorities, page 15, lines 6-8. In fact, beginning with paragraph 17 and ending with  
8 paragraph 22, the LAMBERTS’ complaint alleges that, Defendant JOHNSON failed to intervene  
9 even after Defendant SANCHEZ had broken MR. LAMBERT’S leg and was using his “Taser”  
10 weapon on MR. LAMBERT’S broken leg and twisting MR. LAMBERT’S broken leg.  
11 Throughout this time, MR. LAMBERT lay on the floor, screaming in pain. Nevertheless, as the  
12 complaint alleges, Defendant JOHNSON did nothing to intervene. When Defendant JOHNSON  
13 finally did intervene, she contributed to the civil rights violation against MR. LAMBERT by  
14 helping Defendant SANCHEZ drag MR. LAMBERT (in pain with a badly broken leg) across the  
15 family room floor. *See*, Plaintiff’s Complaint, ¶ 22. Therefore, the LAMBERTS’ should be  
16 permitted to assert their Section 1983 cause of action against Defendant JOHNSON as well as the  
17 state law causes of action for assault, battery and violation of Civil Code section 52.1, and loss of  
18 consortium.  
19  
20

21 **IF THE COURT GRANTS DEFENDANTS’ MOTION TO DISMISS,**  
22 **THE LAMBERTS RESPECTFULLY REQUEST THAT THE COURT**  
23 **GRANT LEAVE TO AMEND THEIR COMPLAINT**

24 In this case, the LAMBERTS’ complaint has never been amended previously. F.R.C.P.  
25 15(a) encourages Courts to look favorably upon requests to amend pleadings, stating that leave  
26



1 “shall be freely given when justice so requires.” While granting or denying a request for leave to  
2 amend rests within the sound discretion of the Court, the Court should exercise that discretion in  
3 this case in favor of the LAMBERTS, particularly considering the gravity of their allegations.  
4  
5 Therefore, should the Court find deficiencies in any of those causes of action which the  
6 LAMBERTS have not already agreed to dismiss as part of their negotiations with the Defendants,  
7 the LAMBERTS respectfully request leave to amend their complaint to address any such  
8 deficiencies noted by the Court.

9  
10 **III.**

11 **CONCLUSION**

12 For the foregoing reasons, the LAMBERTS respectfully request that the Court deny  
13 Defendants’ motion to dismiss pursuant to F.R.C.P. 12(b)(6).

14 Dated: October 13, 2005

LAW OFFICES OF ERIC G. YOUNG

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