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7
8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 JANE DOE, an individual,

11 Plaintiff,

12 v.

13 RICHARD FISCHER, an individual,
COUNTY OF SAN DIEGO, a
14 municipal corporation, and DOES 1-10,
inclusive,

15 Defendants.
16
17

Case No.: '19CV1633 BEN NLS

COMPLAINT FOR:

1. Unreasonable Seizure and
Intrusion on Bodily Integrity
42 U.S.C. § 1983
2. *Monell* Liability
42 U.S.C. § 1983

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1 COMES NOW, Plaintiff JANE DOE, an individual, by and through her
2 attorneys of record, THE GILLILAND FIRM, by Douglas S. Gilliland, Esq., and
3 alleges as follows:

4 **I.**

5 **JURISDICTION AND VENUE**

6 1. The United States District Court, in and for the Southern District of
7 California, has original jurisdiction over the civil rights causes of action pled
8 herein under 42 U.S.C. section 1983, and pursuant to 28 U.S.C. section 1343(a)(3),
9 and by the federal questions raised therein pursuant to 28 U.S.C. section 1331.
10 Venue of this controversy is proper in the Southern District of California pursuant
11 to 28 U.S.C. 1391(b)(2) because a substantial part of the events, acts and/or
12 omissions giving rise to the claims herein occurred in the Southern District of
13 California.

14 **II.**

15 **GENERAL ALLEGATIONS**

16 2. At all times relevant to this Complaint, Plaintiff JANE DOE, was an
17 individual residing in San Diego County, California.

18 3. At all times relevant to this Complaint, Defendant RICHARD
19 FISCHER was an individual residing in San Diego County, California and working
20 in the course and scope of his employment as a deputy sheriff with the San Diego
21 Sheriff’s Department.

22 4. At all times relevant to this complaint, Defendant COUNTY OF SAN
23 DIEGO was a municipal corporation, incorporated in 1850, by authority of the
24 California Constitution and laws of the state of California, and is responsible for
25 the operation of the San Diego Sheriff’s Department and the conduct of its officers.

26 5. Plaintiff is ignorant of the true names, identities, and capacities of
27 DOES 1 through 10, inclusive. Therefore, plaintiff sues these defendants under the
28 fictitious designations of DOE 1 through 10. Plaintiff will amend this Complaint

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1 once their identities and facts giving rise to their liability have been ascertained.

2 **III.**

3 **INTRODUCTION**

4 6. JANE DOE is one of 21 victims of San Diego sheriff deputy
5 RICHARD FISCHER. Defendant FISCHER is alleged to have sexually assaulted
6 these 21 women between November 24, 2015 and October 6, 2017. The San
7 Diego District Attorney’s Office filed felony charges against Defendant FISCHER
8 on February 22, 2018, and a second set of charges on August 16, 2018. Deputy
9 FISCHER is currently on bond awaiting his September 9, 2019 trial.

10 **IV.**

11 **FACTS**

12 7. On September 9, 2017, at approximately 2:30 a.m., Plaintiff JANE
13 DOE finished her shift as a cocktail waitress in north county, San Diego. She had
14 a few alcoholic drinks and then decided to drive home. On her way home, JANE
15 DOE lost control of her car in a commercial area and crashed into two parked cars.
16 There were no other people involved in the accident as the parked cars were empty.

17 8. JANE DOE got scared because she had been drinking and crashed
18 into two parked cars. She also did not have a valid driver’s license and she knew
19 there was an outstanding warrant for her arrest. She left the scene of the accident
20 on foot. JANE DOE then called a male friend to come get her. The friend came
21 and drove JANE DOE toward her residence in Escondido. The friend had another
22 male friend in the front passenger seat, so JANE DOE rode in the back seat.

23 9. As they approached JANE DOE’s residence, they saw a few black and
24 white Escondido police cars parked outside. JANE DOE and her friend passed the
25 police cars and kept driving. The Escondido police cars pulled out, followed
26 JANE DOE and her friend and pulled them over.

27 10. An Escondido police officer asked JANE DOE if she was driving the
28 car that struck two parked cars. JANE DOE said that she was. The officer asked

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1 why she crashed her car. JANE DOE responded that she was “drunk.”

2 11. The Escondido police officer handcuffed JANE DOE and put her in
3 the back of his patrol car. He then told JANE DOE they had to wait for San Diego
4 sheriff personnel to arrive.

5 12. After about 15 minutes, JANE DOE saw a San Diego sheriff deputy,
6 who would turn out to be Defendant FISCHER, arrive in his full San Diego sheriff
7 uniform, driving a fully marked San Diego sheriff patrol car. By this time,
8 Defendant FISCHER had sexually assaulted approximately 19 other women while
9 on duty as a San Diego sheriff deputy. The first documented assault occurred on
10 November 24, 2015. The first complaint to the COUNTY OF SAN DIEGO was
11 made on May 4, 2016 (16 months before this encounter between JANE DOE and
12 Deputy FISCHER).

13 13. Deputy FISCHER transferred JANE DOE in handcuffs to the back
14 seat of Defendant FISCHER’s patrol vehicle. Defendant FISCHER buckled JANE
15 DOE’s seatbelt. Defendant FISCHER then told JANE DOE that he was going to
16 drive her back the scene of the accident. JANE DOES was 24 years old, five feet
17 tall, and weighed 95 pounds.

18 14. Defendant FISCHER asked JANE DOE if she had been drinking. She
19 admitted that she had. As he drove JANE DOE back to the accident scene, he
20 asked JANE DOE if either of the two males in the car with her were her boyfriend.
21 JANE DOE answered that they were not. Defendant FISCHER then responded,
22 “Good, because you could do much better than them” or words to that effect.

23 15. When Defendant FISCHER and JANE DOE got to the accident scene,
24 she saw other marked San Diego sheriff cars already parked there. JANE DOE
25 was taken out of Defendant FISCHER’s patrol car and was able to see her car
26 which was a total loss. The damage to the other cars was significant too.

27 16. Another San Diego sheriff deputy approached JANE DOE and
28 Deputy FISCHER. He asked JANE DOE for her driver’s license and proof of

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1 insurance. JANE DOE provided her proof of insurance. She told the officer that
2 she did not have a valid driver’s license. That deputy asked JANE DOE if she had
3 been drinking. Again, JANE DOE admitted that she had been drinking. JANE
4 DOE also told the San Diego sheriff deputies that there was an outstanding warrant
5 for her arrest.

6 17. After approximately 20 minutes at the scene, Defendant FISCHER
7 asked JANE DOE if she wanted a ride home. JANE DOE was confused when
8 Defendant FISCHER offered her a ride home because she told the officers she had
9 been drinking and driving, she crashed into two parked cars, fled the scene of the
10 accident, did not have a valid driver’s license, her friend that picked her up got
11 arrested, and there was an outstanding warrant for her arrest. JANE DOE assumed
12 she was going to jail.

13 18. JANE DOE accepted Deputy FISCHER’s offer for ride home. She
14 got into the back of Deputy FISCHER’s patrol car with her hands cuffed behind
15 her back. Deputy FISCHER buckled her seatbelt. As they drove toward JANE
16 DOE’s residence, Defendant FISCHER asked JANE DOE how old she was.
17 JANE DOE responded that she had just turned 24 years old. Deputy FISCHER
18 asked if she had gotten a birthday kiss. JANE DOE responded, “What?” Then
19 Deputy FISCHER asked JANE DOE if she wanted a birthday kiss. JANE DOE
20 did not respond. JANE DOE became more confused. JANE DOE thought to
21 herself, “What the he** is going on?”

22 19. Deputy FISCHER parked at JANE DOE’s residence. He got out of
23 the patrol car and opened the rear door where JANE DOE was sitting. He then
24 said, “Here comes your favorite part,” or words to that effect. He leaned across her
25 to unbuckle her seatbelt. Deputy FISCHER then started rubbing JANE DOE’s legs
26 as she sat handcuffed in the back of Deputy FISCHER’s patrol car. JANE DOE
27 was wearing very short denim shorts. Therefore, Deputy FISCHER was able to
28 rub the skin of JANE DOE’s upper thighs on both legs. As Deputy FISCHER

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1 rubbed JANE DOE’s thighs, he looked at her and said, “Your legs are really soft”
2 or words to that effect. JANE DOE was still handcuffed and could not stop
3 Deputy FISCHER’s advances.

4 20. Deputy FISCHER then leaned into his patrol car and put his face so
5 close to JANE DOE’s that she could feel his breath on her face. He then told
6 JANE DOE that she could kiss him if she wanted to. She pulled her face as far
7 back from Deputy FISCHER’s as she could because she did not want to kiss or be
8 kissed by Deputy FISCHER.

9 21. Deputy FISCHER then moved back and helped JANE DOE out of his
10 patrol car. Deputy FISCHER then stood behind JANE DOE as if he was going to
11 remove her handcuffs. However, instead of taking them off, Deputy FISCHER
12 started rubbing JANE DOE’s butt.

13 22. As the handcuffs were still on, Deputy FISCHER then reached
14 between JANE DOE’s legs and rubbed her genital area. As Deputy FISCHER
15 touched her genital area, she moved forward in an effort to get him to stop.

16 23. Deputy FISCHER then took the handcuffs off. He asked if anyone
17 was home. Terrified, JANE DOE responded that her parents were waiting up for
18 her and started walking quickly toward her residence. Deputy FISCHER said,
19 “Next time we meet, I hope it is under better circumstances.”

20 **V.**

21 **FIRST CAUSE OF ACTION**

22 **Unreasonable Seizure and Intrusion on Bodily Integrity – 42 U.S.C. § 1983**
23 **[Against RICHARD FISCHER]**

24 Plaintiff JANE DOE incorporates by reference all prior allegations pled in
25 this complaint.

26 24. Defendant FISCHER, acting under color of state law, deprived JANE
27 DOE of her clearly established federal constitutional right under the Fourth
28 Amendment to the Constitution of the United States of America to be free from

1 unreasonable seizure and intrusion on her bodily integrity caused by engaging in
2 the sexual misconduct, including making sexually charged comments such as
3 “doing better” than the two males that she was riding with, inquiring about a
4 “birthday kiss,” offering a birthday kiss, offering to allow JANE DOE to kiss him,
5 stating this is your favorite part, commenting on the softness of JANE DOE’s legs,
6 coupled with the physical acts of Deputy FISCHER putting his face so close to
7 JANE DOE’s face that she could feel him breathing, rubbing JANE DOE’s legs,
8 touching her butt, rubbing between her legs, and touching her genital area, for
9 which there is no countervailing governmental interest. This conduct by
10 Defendant FISCHER toward JANE DOE is also an abuse of governmental power
11 and authority that shocks the conscience in violation of the substantive due process
12 clause of the Fourteenth Amendment to the Constitution of the United States.

13 25. Defendant FISCHER’s unreasonable seizure and intrusion on JANE
14 DOE’s bodily integrity in violation of the Fourth Amendment, which was also an
15 abuse of governmental authority that shocks the conscience in violation of the
16 Fourteenth Amendment, was the moving force that caused the ultimate injury to
17 JANE DOE including past and future mental and emotional pain and suffering, and
18 emotional distress.

19 26. The conduct of Deputy FISCHER constituting unreasonable seizure
20 and intrusion on JANE DOE’s bodily integrity which was an abuse of
21 governmental authority that shocks the conscience in violation of the Fourth and
22 Fourteenth Amendment justifies the imposition of punitive damages against
23 Deputy FISCHER, to punish him for his conduct, and to deter him from engaging
24 in similar conduct in the future, because the conduct was malicious, oppressive
25 and/or in reckless disregard of JANE DOE’s rights. The conduct was malicious
26 because it was accompanied by ill will, spite and/or for the purpose of injuring
27 JANE DOE. The conduct was oppressive because it caused injury and/or damage
28 to JANE DOE and violated JANE DOE’s constitutional rights with unnecessary

1 harshness and/or severity, and it was a misuse and abuse of authority or power by
2 the Deputy FISCHER. The conduct was with a conscious disregard of JANE
3 DOE’s rights because, under the circumstances, it reflected a complete indifference
4 to JANE DOE’s safety and/or constitutional rights.

5 **VI.**

6 **SECOND CAUSE OF ACTION**

7 ***Monell Liability – 42 U.S.C. § 1983***

8 **[Against the COUNTY OF SAN DIEGO, and DOES 1-10]**

9 Plaintiff JANE DOE incorporates by reference all prior allegations pled in
10 this complaint.

11 27. As set forth in greater factual detail below, the COUNTY OF SAN
12 DIEGO had a policy/custom between 2014 and 2018, inclusive, that was
13 intentionally inadequate and implemented to shield the COUNTY from liability for
14 peace officer misconduct, by ignoring and refusing to investigate and respond to
15 citizen complaints. Under this policy/custom, the COUNTY knowingly failed to
16 investigate claims of peace officer misconduct, failed to adequately supervise and
17 discipline peace officers, failed to timely and adequately perform unbiased
18 investigations, and covered up peace officer misconduct.

19 28. This policy/custom is demonstrated, in part, by a woman referred to as
20 K.P. because she is a victim of sexual assault. On May 4, 2016, K.P. sent a written
21 complaint to the San Diego Sheriff Department’s Internal Affairs Unit. In her
22 complaint, she wrote about the circumstances of her traffic stop by Defendant
23 RICHARD FISCHER. She wrote that the traffic stop occurred on November 24,
24 2015. In part, K.P. wrote,

25 “During this incident, Deputy Fischer violated my rights in many
26 ways. He started my arrest by violating my Fourth Amendment right
27 with both illegal search and seizure which led to him confining me in
28 handcuffs and then taking advantage of me by touching and rubbing

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1 me sexually and inappropriately. . . . Although I haven't filed
2 anything through the court, I do think something should be done. I
3 have no idea how this process works, but I am hoping mostly to find
4 some peace of mind, and attention brought on to the disrespectful,
5 unlawful and sexually demeaning things Officer FISCHER
6 shamelessly put me through."

7 K.P. concluded her complaint by writing, "Please contact me for more details, it is
8 not fair to be taken advantage of and *he is a predator, not an officer.*"

9 29. K.P. provided two contact phone numbers and an email where she
10 could be reached about her accusation that Deputy FISCHER was a predator.
11 However, the COUNTY did not contact K.P. nor did it start any Internal Affairs
12 investigation at that time.

13 30. K.P.'s complaint to San Diego Sheriff's Internal Affairs Unit was
14 made 16 months before Defendant FISCHER sexually assaulted JANE DOE. And
15 her incident with Defendant FISCHER occurred approximately 22 months before
16 Defendant FISCHER sexually assaulted JANE DOE.

17 31. The policy/custom is further shown by an investigation by KPBS. On
18 June 22, 2018, KPBS reporter Claire Trageser was investigating multiple victims'
19 claims that they reported Deputy FISCHER's sexual misconduct to the San Diego
20 Sheriff but never received a response.¹ Some of these women never received a
21 response, while others said they waited for months for a response. Ms. Trageser
22 made a public records act request to the COUNTY OF SAN DIEGO for "[t]he
23 dates all complaints were filed from 2011 through 2018" and "[t]he dates the
24 sheriff's department initially responded to each complaint." On July 2, 2018, a
25 legal advisor in the Sheriff's office denied the request.

26 _____
27 ¹ The San Diego District Attorney's Office reported that half of Deputy
28 FISCHER's victims had called the sheriff's department after they were victimized
by Deputy FISCHER.

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1 32. Ms. Trageser made the same request to the San Diego Police
2 Department. The San Diego Police Department offered to provide KPBS with a
3 representative sampling from each year. KPBS agreed and the San Diego Police
4 Department provided those records.

5 33. KPBS then asked the COUNTY OF SAN DIEGO if they would
6 produce a sampling of the records like the San Diego Police Department had done.
7 The COUNTY OF SAN DIEGO refused. Therefore, on January 22, 2019, KPBS
8 filed a lawsuit against the COUNTY OF SAN DIEGO for release of all the
9 records. As a result, the COUNTY OF SAN DIEGO produced all records from
10 2014 to 2018 (the COUNTY represented that records are only held for five years,
11 so nothing existed prior to 2014). The COUNTY also paid KPBS’s attorney fees
12 of \$18,000.

13 34. The records showed that, out of 425 complaints involving officers,
14 more than 1 in 6 never received a response. KPBS reported that K.P.’s complaint
15 was possibly one of these complaints that never received a response.

16 35. Dave Myers, a 35 year veteran of the San Diego Sheriff’s Department
17 stated that the COUNTY OF SAN DIEGO does not have a consistent system for
18 handling these complaints. Deputy Myers stated that the COUNTY’s policy is to
19 “handle the matter at the lowest level possible” which means that a counter clerk
20 could address these complaints. In 2019, Deputy Myers stated the current
21 complaint process is “ripe for abuse.”

22 36. Robert Faigin, the chief attorney for the San Diego Sheriff’s
23 Department said the sheriff’s department enters the date a complaint against one of
24 its officers is received, but their system did not track or log when the complaint
25 received a response, if any. Mr. Faigin stated that the sheriff’s department
26 switched to a new computer system in 2017 so they could begin logging response
27 dates into the computer. Mr. Faigin did not state what month in 2017 that new
28 computer system went into effect.

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1 37. This policy/custom by the COUNTY OF SAN DIEGO is deficient
2 because, as the COUNTY intended, it allows very serious complaints to be handled
3 at the lowest possible level, even by counter clerks, and there is no way to track
4 when a response, if any, was made to a complaint. It allows very serious
5 complaints to go unanswered, not even reaching the Internal Affairs Unit. Without
6 a uniform system of reviewing and investigating complaints, there was no way to
7 ensure that serious constitutional violations by sheriff deputies, such as those of
8 Deputy FISCHER, are being reviewed to that appropriate supervision and
9 discipline is meted. That is exactly what happened in this case.

10 38. This policy/custom of the COUNTY OF SAN DIEGO caused harm to
11 JANE DOE because a proper system of complaint reporting would have resulted in
12 an Internal Affairs investigation into the complaints, arguably as early as May 4,
13 2016. Deputy FISCHER would have either been terminated then, or placed on
14 administrative leave, as he is currently on, which would have saved JANE DOE
15 and other situationally vulnerable women from his abuse of power as a San Diego
16 sheriff deputy.

17 39. JANE DOE was sexually assaulted by Deputy FISCHER on
18 September 9, 2017. He was placed on paid administrative leave in October 2017
19 when the first accusation went public. This makes JANE DOE one of his last
20 victims in a time spanning from at least November 24, 2015 to October 6, 2017.²
21 Sheriff Gore said Deputy FISCHER was placed on unpaid administrative leave
22 after the first of two criminal cases were filed against him on February 22, 2018.

23 40. The COUNTY OF SAN DIEGO’s policy/custom demonstrates it was
24 deliberately indifferent to the rights of the victims because the deficiency in its
25 system was obvious and the constitutional injury was likely to occur. In fact, it
26 was not only likely to occur, it actually did occur to at least 21 victims who were

27 _____
28 ² N.G. appears to be the last known victim according to criminal court records. She
was sexually assaulted between October 5, 2017 and October 6, 2017.

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1 injured over a two year period. The COUNTY OF SAN DIEGO did nothing to
2 investigate half of the victim’s phone calls reporting Deputy FISCHER’s conduct
3 over a two year period. The COUNTY only took action after the claims came to
4 into the public light. In fact, the San Diego County District Attorney’s Office
5 conducted an investigation and found enough evidence to file criminal charges
6 against Defendant FISCHER before the sheriff’s department came to any
7 conclusions about the multiple complaints from his victims received by the San
8 Diego Sheriff Department months before the district attorney’s involvement.

9 41. As a result of the COUNTY OF SAN DIEGO’s policy/custom of
10 knowingly refusing to investigate, and refusing to even respond to more than one
11 out of six complaints of officer misconduct, refusing to take action on K.P.’s May
12 4, 2016 complaint, refusing to take any action on its own regarding half of Deputy
13 FISCHER’s victims’ reports to the COUNTY, JANE DOE has been harmed in an
14 amount according to proof at the time of trial, including past and future mental and
15 emotional pain and suffering, and emotional distress.

16
17 WHEREFORE plaintiff JANE DOE, prays for relief as follows:

- 18 1. General damages according to proof at the time of trial,
- 19 2. Special damages according to proof at the time of trial,
- 20 3. Attorney fees pursuant to 42 U.S.C. § 1988,
- 21 4. Punitive damages against RICHARD FISCHER,
- 22 5. Costs of suit incurred herein and interest, and
- 23 6. Any further relief that this Court deems just and appropriate.

24
25 DATED: August 29, 2019

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26
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