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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

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11 TYLER HARNEY,) Case No. 5:14-CV-3415 LHK
12 Plaintiff,)
13 v.) JOINT FURTHER CASE
MANAGEMENT STATEMENT AND
RULE 26(f) REPORT
14 CITY OF PALO ALTO POLICE DEPARTMENT,)
PALO ALTO POLICE CHIEF DENNIS BURNS,) Date: June 24, 2015
15 SANTA CLARA COUNTY, SANTA CLARA) Time: 2:00 p.m.
COUNTY SHERIFF’S DEPARTMENT, SANTA) Courtroom: Courtroom 8, 4th Floor
16 CLARA COUNTY SHERIFF LAURIE SMITH, and) San Jose Courthouse
DOES 1-70, Jointly and Severally,)
17 Defendants.) The Honorable Judge Lucy H. Koh
18

19 The parties hereby submit this Joint Case Management Statement.

20 1. Jurisdiction and Service: The Court has federal jurisdiction of this matter pursuant to 42
21 USC Section 1983. Service of process has been effected on all defendants.

22 The County defendants and plaintiff have agreed to dismissal with each side to bear their
23 own costs and fees.

24
25 2. Facts/Description of Case and Defenses:

26 A. Plaintiff

27 At about noon on August 3, 2013, an unidentified Palo Alto police officer initiated a traffic
28 stop of a car in which Plaintiff was a passenger. Plaintiff was identified as being the subject of a

1 warrant, due to his recent failure to appear at a hearing to confirm completion of probation on a
2 felony conviction for possession of less than an ounce of marijuana with intent to sell. He was not
3 under the influence of drugs or alcohol. The officer was joined by other Palo Alto police officers at
4 some point during the course of the traffic stop. Plaintiff did not resist arrest.

5
6 Plaintiff began convulsing uncontrollably as a result of a seizure disorder. Rather than
7 immediately provide assistance to Plaintiff, he was thrown to the ground by the officers. An officer
8 put his knee or other body part forcefully against Plaintiff's back and neck. As two independent
9 witnesses have recently testified at deposition, one officer pulled back on Plaintiff's left arm, and
10 continued to do so, saying, "I'm going to break your arm." The officer then did in fact severely
11 break Plaintiff's arm and shoulder in the area of the humerus bone. Plaintiff was then taken by the
12 officers to Stanford University Hospital, where he was kept shackled and in custody for several days
13 both before and after doctors operated on his injured arm and shoulder on August 5, 2013. Plaintiff
14 was unreasonably kept shackled by Defendant Santa Clara County Sheriff's Department during his
15 time at Stanford University Hospital, and those shackles were kept unnecessarily tight on Plaintiff's
16 ankles, despite his requests to Santa Clara County Sheriff Department Deputies, identified herein as
17 Doe Defendants 11-15, that the shackles be loosened, which unnecessarily tight shackles caused
18 Plaintiff additional unreasonable and unnecessary pain.

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21 Plaintiff was discharged to the Santa Clara County Jail on August 7, 2013, where he was
22 incarcerated before being released on or about August 8, 2013, during which time the Sheriff's
23 Department exhibited deliberate indifference to the medical needs of Plaintiff, and/or care that was
24 not objectively reasonable, in failing to provide proper medication for his pain and in failing to
25 ensure that the recently operated upon shoulder was kept properly immobilized, raised, and
26 otherwise protected and treated in accordance with reasonable medical standards.

1 Plaintiff's broken shoulder has now undergone four separate surgeries over the last two years
2 involving bone grafts and replacement of surgical pins to assist the bone graft healing. Plaintiff's
3 bones are not healing, and there is suspected necrosis of some of the involved bone material.
4 Another surgery will be initiated in September to place antibiotic beads to attempt to heal the
5 necrotic tissue. Six weeks after that, a further bone graft can be attempted. If the next bone graft
6 operation is unsuccessful, then plaintiff will need to have a shoulder joint replacement.
7

8 B. Defendants

9 *i. City of Palo Alto*

10 Plaintiff Harney was the subject of a lawful vehicle stop on August 3, 2013 at approximately
11 2:00pm in the vicinity of Greer Rd. & Elsinore Drive in Palo Alto, California. At the time of the
12 vehicle stop, Harney had an open felony no bail bench warrant pending relating to a prior felony
13 conviction for narcotics, and was on probation, and consequently, Palo Alto Police officers
14 attempted to place Harney under arrest. Harney, then under the influence of drugs and alcohol, did
15 not comply with officers' orders, and instead resisted arrest while officers attempted to place him in
16 handcuffs. Harney contends that he suffered a medical seizure during the course of the arrest. At
17 some point during this process, Harney alleges that his arm was broken by the officers. The officers
18 eventually arrested Harney, secured him in handcuffs, and brought him to Stanford Hospital for
19 medical evaluation and treatment. The City Defendants maintain that the vehicle stop was lawful,
20 Harney's arrest on the open warrant was lawful, and the force used to effect the arrest was
21 reasonable.
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23

24 *ii. Santa Clara County*

25 Plaintiff fractured his humerus bone (the long bone in the upper arm) during his altercation
26 with City of Palo Alto Police Department. Plaintiff was taken to Stanford for medical treatment.
27 The County denies that officers improperly shackled him while he was hospitalized at Stanford
28

1 University Hospital and the County further maintains that it complied with discharges instructions
2 for his care while he was in custody at the jail for one day.

3 3. Legal Issues:

4 i. Plaintiff's and County's Statement of Legal Issues

5 1. Whether defendant police officers had reasonable suspicion to detain and/or probable
6 cause to arrest plaintiff;

7 2. Whether defendant police officers are entitled to qualified immunity under the facts
8 and circumstances of this case;

9 3. Whether defendant police officers were entitled to use reasonable force to effect the
10 arrest of plaintiff;

11 4. Whether defendant police officers used excessive force to effectuate the arrest;

12 5. Whether defendant police officers and/or sheriff deputies used excessive force after
13 the arrest was accomplished;

14 6. Whether defendant CITY, with deliberate indifference, failed to take necessary,
15 proper, or adequate measures in order to prevent the violation of plaintiff's rights, pursuant to
16 *Monell v. Dept. of Social Services* and its progeny;

17 7. Whether defendant CITY breached their duty of care to plaintiff, in that it failed to
18 adequately hire, retain, supervise, discipline, and train police officers, including defendant police
19 officers, in the proper use of force and/or in the proper means of assessing emergency medical
20 conditions, pursuant to *Monell v. Dept. of Social Services* and its progeny;

21 8. Whether said defendant's alleged lack of adequate supervisory training demonstrates
22 the existence of an informal custom or policy of promoting, tolerating, and/or ratifying the
23 continuing use of excessive force by police officers employed by defendant CITY, pursuant to
24 *Monell v. Dept. of Social Services* and its progeny;

1 9. Whether said defendant's alleged lack of adequate supervisory training
2 demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying
3 deliberate indifference to the emergency medical conditions of citizens, pursuant to *Monell v. Dept.*
4 *of Social Services* and its progeny;

5 10. Whether any of defendant police officers' alleged misconduct towards plaintiff
6 proximately caused injuries and damages to plaintiff;

7 11. Whether any of defendant police officers' alleged misconduct towards plaintiff was
8 malicious and intentional, justifying an award of punitive damages;

9 12. Whether the City is vicariously liable under the doctrine of *respondeat superior* for
10 the negligent acts of defendant police officers;

11 13. Whether the City negligently supervised the defendant police officers;

12 14. Whether the police officers are immune from liability under Government Code
13 §820.6;

14 15. Whether the police officers are immune from liability under Penal Code §847(b);

15 16. Whether the police officers conduct was privileged under Penal Code 835a;

16 17. Whether police officers had probable cause to arrest Plaintiff for violation of Penal
17 Code §148;

18 18. Whether police officers had probable cause to arrest Plaintiff for violation of Penal
19 Code §647;

20 19. Whether plaintiff assumed the risk of injury by failing to obey lawful commands of
21 the police;

22 20. Whether plaintiff had a serious medical need;

23 21. Whether the City violated the Americans with Disabilities Act;

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1 22. Whether County employees were deliberately indifferent to plaintiff's medical need,
2 that is, the defendant knew of it and disregarded it by failing to take reasonable measures to address
3 it;

4 23. Whether County's actors conduct caused Plaintiff's harm;

5 24. Whether defendant COUNTY was deliberately indifferent to the medical needs of
6 plaintiff or acted objectively unreasonably towards Plaintiff given his medical condition;

7 25. Whether defendant COUNTY breached its duty of care to plaintiff, in that it failed to
8 adequately hire, retain, supervise, discipline, and train sheriff deputies, including defendant police
9 officers, in the proper use of force and/or in the proper means of assessing medical conditions,
10 pursuant to *Monell v. Dept. of Social Services* and its progeny;

11 26. Whether any of defendant SHERIFF DEPARTMENT's alleged misconduct towards
12 plaintiff proximately caused or contributed to injuries and damages to plaintiff;

13 27. Whether defendant COUNTY, with deliberate indifference, failed to take necessary,
14 proper, or adequate measures in order to prevent the violation of plaintiff's rights, pursuant to
15 *Monell v. Dept. of Social Services* and its progeny;

16 28. Whether defendant COUNTY breached its duty of care to plaintiff, in that each
17 defendant failed to adequately hire, retain, supervise, discipline, and train sheriff deputies and/or
18 Sheriff Department medical personnel in the proper means of assessing and providing adequate
19 minimal care for post-surgical medical conditions, pursuant to *Monell v. Dept. of Social Services* and
20 its progeny;

21 29. Whether said defendant COUNTY's alleged lack of adequate supervisory training
22 demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying
23 the continuing use of excessive force by sheriff deputies employed by defendant COUNTY, pursuant
24 to *Monell v. Dept. of Social Services* and its progeny;

1 30. Whether said defendant COUNTY's alleged lack of adequate supervisorial training
2 demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying
3 deliberate indifference to the post-operative medical conditions of its detainees, pursuant to *Monell*
4 *v. Dept. of Social Services* and its progeny.

5 31. Whether the County violated the Americans With Disabilities Act.

6 *i. City of Palo Alto's Statement of Legal Issues*

- 7 1. Whether defendant police officers' stop of Harney's vehicle was lawful;
- 8 2. Whether plaintiff had probable cause to arrest Harney on the open felony no
9 bail warrant relating to a prior conviction for narcotics;
- 10 3. Whether police officers had probable cause to arrest Plaintiff for violation of
11 Penal Code §148;
- 12 4. Whether police officers had probable cause to arrest Plaintiff for violation of
13 Penal Code § 647;
- 14 5. Whether police officers had probable cause to arrest Plaintiff for violation of
15 any federal, state or local law;
- 16 6. Whether defendant police officers' belief that Harney had committed an
17 arrestable offense was reasonable and are therefore entitled to qualified immunity as a result;
- 18 7. Whether defendant police officers' belief that Harney was resisting arrest was
19 reasonable and are entitled to qualified immunity as a result;
- 20 8. Whether defendant police officers used excessive force to effect Harney's
21 arrest;
- 22 9. Whether the police officers are immune from liability under Government
23 Code §820.6 or any other section of the Government Code;
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1 10. Whether the police officers are immune from liability under Penal Code
2 §847(b);

3 11. Whether the police officers' conduct was privileged under Penal Code 835a;

4 12. Whether Harney's claimed injury was proximately caused by police officers;
5 and
6

7 13. Whether Harney's claimed injury was caused by his own actions.

8 4. Motions: No Motions are pending. The parties reserve the right to bring Motions for
9 Summary Judgment or Partial Summary Judgment.

10 5. Amendment of Pleadings: Defendant City is contemplating seeking leave to add Stanford
11 Hospital as a Cross-Defendant, given some evidence that Plaintiff fell from a gurney while at the
12 Emergency Room. Defendant City anticipates making a final decision on this in the next 30 days.

13 6. Evidence Preservation: All parties agreed to preserve and maintain any and all evidence
14 in this case.
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16 **Plaintiff's Statement Regarding Evidence Preservation**

17 Plaintiff demanded that any and all recordings be preserved within a few weeks of the arrest.
18 However, within the last several weeks, the City defendants now claim that the arresting officer's
19 squad car "dashcam" video camera – which was focused on the area of the arrest – supposedly
20 malfunctioned and failed to record either video or audio of the arrest; and, in addition, the second
21 arresting officer's squad car dashcam, which was not focused on the arrest location but was close
22 enough that it should have picked up the audio, for some reason does not include any audio
23 recording. Plaintiff has since early February been "meeting and conferring" with the city in an effort
24 to obtain relevant materials regarding the dashcam mobile audio and video ("MAV") units and
25 recordings, to no avail. On the eve of an in-person meet and confer with the city prefatory to a
26 motion to Compel, the City substituted new counsel on May 13, 2015, and to date new counsel has
27 28

1 not been able to meet with plaintiff's counsel, seriously delaying discovery here. City counsel and
2 plaintiff counsel are now scheduled to meet on June 25, 2015.

3 **City Defendants' Statement Regarding Evidence Preservation**

4 City Defendants have made every effort to preserve evidence in this case. An investigation
5 undertaken by the police department in or around the date of incident, August 3, 2013, revealed that
6 the Mobile Audio Visual (MAV) Device recording on one officer's vehicle malfunctioned on the
7 date of incident. Similarly, upon information and belief, the audio portion of another officer's MAV
8 equipment malfunctioned on the date of incident.
9

10 7. Disclosures: The parties timely provided FRCP 26 initial disclosures.

11 8. Discovery: The parties have responded to initial written discovery demands and
12 responses, and Plaintiff has recently served an additional round of written discovery to the City
13 defendants. The Federal Rules of Civil Procedure shall govern all discovery and supplementations.
14

15 Plaintiff has attempted for more than three months now to obtain various materials
16 improperly withheld by the City defendants. On the eve of an in-person meet and confer with the
17 city prefatory to a motion to Compel, the City substituted new counsel on May 13, 2015, and to
18 date new counsel has not been able to meet with plaintiff's counsel, seriously delaying discovery
19 here. City counsel and plaintiff counsel are now scheduled to meet on June 25, 2015.
20

21 According to Defendant City, the recent substitution of new counsel was not an attempt to
22 obstruct or delay Plaintiff's attempts at discovery. The City's new counsel has needed some time to
23 get up to speed on this voluminous file and will meet and confer with Plaintiff's counsel in good
24 faith.

25 9. Class Actions: Not applicable.

26 10. Related Cases: There are no related cases.
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1 11. Relief:

2 *i. Plaintiff's Request.*

3 Plaintiff sustained multiple fractures to his left humerus bone, requiring four surgeries to
4 date, as well as a sprained left wrist, pain in his ankles due to unnecessarily tight shackles, nerve
5 damage to the left arm and hand, bruises to his face, neck and back, and pain and suffering. He has
6 suffered medical expenses, loss of income, loss of physical liberty, and the deprivation of his rights
7 under the First, Fourth, Fifth, Sixth and 14th Amendments to the U.S. Constitution and under the
8 California State Unruh Act, Bane Act, and California common law were violated. Plaintiff suffered
9 emotional distress, humiliation, loss of personal reputation, and embarrassment following the
10 incident. Plaintiff has incurred and will continue to incur medical expenses and attorney's fees to
11 vindicate his rights, and is entitled to reasonable attorneys' fees and costs according to proof.

12 *ii. City of Palo Alto's Request.*

13 The City Defendants seek the following relief: that judgment be entered in their favor on all
14 counts.

15 12. Settlement and ADR: The parties are amenable to a settlement conference or mediation
16 at a mutually appropriate time, following depositions of the primary parties and witnesses.

17 13. Consent to Magistrate Judge For All Purposes: Plaintiff will consent to have Magistrate
18 Judge Grewal conduct proceedings.

19 14. Other References: The parties do not believe an Other Reference is appropriate here.

20 15. Narrowing of Issues: Depending upon the development of the facts through discovery,
21 the parties may be amenable to stipulating as to some factual issues.

22 16. Expedited Schedule: This is not the type of case that can be addressed by expedited
23 procedures.

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1 17. Scheduling:

2 **As a result of recent developments with plaintiff's medical status and the substitution of**
3 **counsel for the City defendants, the parties are seeking a modification to the current Case**
4 **Management Schedule.**

5 Plaintiff's counsel has recently been advised by plaintiff's orthopedic surgeon that plaintiff
6 may need a complete shoulder joint replacement – a radically different circumstance than a
7 surgically grafted and healed bone for a 23-year old athletic man to live with for the rest of his life.
8 The surgeon stated last week he cannot know until “about a year from now” whether a joint
9 replacement will be necessary, because the earliest next available time to attempt another bone graft
10 surgery is late September or October 2015, and the surgeon will then need several months before he
11 can know if that surgery is successful, or if a joint replacement must be done instead.
12

13 Accordingly, plaintiff must request an adjustment to the schedule to provide for trial in July
14 2016 or later, so that his medical status will have been sufficiently clarified to be able to present to
15 the jury an accurate case regarding his medical condition and related damages. To have to live the
16 rest of his young life with an artificial shoulder would support additional future medical damages,
17 since he very likely would have to have the artificial joint replaced later in his life because they wear
18 out, and he is very young to have such a joint replacement. To have to live the rest of his life with a
19 shoulder joint replacement would also warrant additional pain and suffering damages.
20

21 Plaintiff only gets one trial and one opportunity to ask a jury to make him whole. The
22 medical facts are such, according to his orthopedic surgeon, that plaintiff's medical condition will
23 not have sufficiently resolved until at least June 2016 before plaintiff will know the true extent of his
24 injuries and damages.
25

26 Trial is currently set for March 7, 2016 and is expected to last 7 days. The Final PreTrial
27 Conference is currently set for February 26, 2016.
28

1 Fact Discovery Cut-Off is currently September 30, 2015. Expert Reports are due October 14,
 2 2015, and Rebuttal Reports on October 28, 2015. Close of Expert Discovery is currently November
 3 4, 2015. Dispositive motions currently shall be filed by November 19, 2015, for hearing not later
 4 than December 17, 2015. Plaintiff is limited to one dispositive motion. The City defendants are
 5 limited to one joint dispositive motion. The County defendants are limited to one dispositive
 6 motion.
 7

8 Due to the recent entry into the case by new counsel and the time it has taken for new
 9 counsel to get up to speed on the case, the City has offered to Plaintiff to have the Scheduling Order
 10 adjusted to accommodate some additional time for fact discovery. The City is not taking a position
 11 on whether the trial date should be continued to accommodate Plaintiff's concerns about future
 12 surgery, but will defer to the Court on whether its own schedule makes this continuance appropriate.
 13

14 19. Disclosure of Non-Party Interested Entities or Persons: There are no non-Party
 15 Interested Entities or Persons in this matter, and those Disclosures have not formally been made.

16 20. Other Matters: None.

17 Dated: June 17, 2015

HELBRAUN LAW FIRM

18 By:

/s/

19 _____
 DAVID M. HELBRAUN
 Attorneys for Plaintiff
 TYLER HARNEY

20 Dated: June 17, 2015

RANKIN STOCK HEABERLIN

21 By: /s/

22 _____
 JON A. HEABERLIN
 Attorneys for Defendants
 CITY OF PALO ALTO
 CITY OF PALO ALTO POLICE
 DEPARTMENT, PALO ALTO POLICE
 CHIEF DENNIS BURNS

1 Dated: June 17, 2015

SANTA CLARA COUNTY'S
COUNSEL'S OFFICE

2
3 By: /s/

4 ARYN PAIGE HARRIS
5 Attorneys for Defendants
6 SANTA CLARA COUNTY, SANTA
7 CLARA COUNTY SHERIFF'S
8 DEPARTMENT, SANTA CLARA
9 COUNTY SHERIFF LAURIE SMITH
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