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**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**12/11/2009**  
vvasquez  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2009-00066442**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SACRAMENTO**

**CAPT. CARLOS MARQUEZ,**

**Plaintiff,**

**vs.**

**STATE OF CALIFORNIA, DEPARTMENT OF  
HIGHWAY PATROL; CHIEF REGINALD J.  
CHAPPELLE, ASSISTANT CHIEF BRIAN  
HAGLER, LT. MICHAEL RICHARD, SGT.  
DAN PAXTON, SGT. JOHN PRICE, OFFICER  
GEORGE VISILIOU; CITY OF FOLSOM,  
CITY OF FOLSOM POLICE DEPARTMENT,  
AND DOES 1-50, inclusive,**

**Defendants.**

CASE NO.

**PLAINTIFF'S COMPLAINT  
FOR DAMAGES FOR:**

1. Violations of 42 U.S.C. §1983;
2. Tortious Wrongful Termination in Violation of Statute;
3. Tortious Invasion Into Privacy;
4. Defamation

**JURY DEMANDED**

Plaintiff CAPT. CARLOS MARQUEZ (Plaintiff "CAPT. MARQUEZ") states his complaint against Defendants STATE OF CALIFORNIA, DEPARTMENT OF HIGHWAY PATROL; CHIEF REGINALD J. CHAPPELLE, ASSISTANT CHIEF BRIAN HAGLER, LT. MICHAEL RICHARD, SGT. DAN PAXTON, SGT. JOHN PRICE, OFFICER GEORGE VISILIOU; CITY OF FOLSOM, CITY OF FOLSOM POLICE DEPARTMENT, as follows:

**PLAINTIFF'S COMPLAINT FOR DAMAGES**

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**I. STATEMENT OF THE FACTS**

1. Plaintiff CAPT. MARQUEZ is a resident of Folsom, County of Sacramento in the State of California and a former employee of Defendant STATE OF CALIFORNIA, DEPARTMENT OF HIGHWAY PATROL. Defendants STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF HIGHWAY PATROL, is a municipality operating a state law enforcement agency, and is doing business in the Sacramento County, State of California. Plaintiff hereinafter refers to these entities collectively, as "Defendants CALIFORNIA HIGHWAY PATROL."
2. Defendant CITY OF FOLSOM is a municipality operating a state law enforcement agency known as CITY OF FOLSOM POLICE DEPARTMENT, and is doing business in the Sacramento County, State of California.
3. At all times herein relevant, Defendants CALIFORNIA HIGHWAY PATROL, had in its employ, Defendants CHIEF R.J. CHAPPELL, ASSISTANT CHIEF BRIAN HAGLER, LT. MICHAEL RICHARD, SGT. DAN PAXTON, SGT. JOHN PRICE, OFFICER GEORGE VISILIOU.
4. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as Does 1 through 50 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names, and Plaintiff will amend this Complaint to show their true names, involvement and capacities when the same have been ascertained. Does 1 through 50 are residents of the State of California and/or have their principal place of business in the State of California. Plaintiffs are informed and believe and on that basis allege that each of the Defendants named herein as Doe was in some manner responsible for the injuries and losses suffered by Plaintiff.
5. At all times herein mentioned, each of the Defendants were the actual and apparent agents, servants and employees of each of the remaining Defendants and in doing the things herein after alleged was acting within the course and scope of their actual and apparent agency and

1 employment and with the knowledge, notification, consent and subsequent ratification of  
2 each of the other Defendants.

3 6. Plaintiff Capt. MARQUEZ, a Hispanic male began working for Defendant CALIFORNIA  
4 HIGHWAY PATROL "CHP" in about 1990 as a patrol officer. Plaintiff Capt. MARQUEZ  
5 rose up through the ranks and achieved the rank of Captain in about 2005. Around that  
6 time, Plaintiff Capt. MARQUEZ was assigned Information Management Division (IMD)  
7 located at the CHP Stillwater Building in West Sacramento. Plaintiff Capt. MARQUEZ  
8 was an exemplary officer with defendant agency possession a long and outstanding  
9 performance history in his career. Plaintiff Capt. MARQUEZ had the reasonable  
10 expectation to retire with the department and was considered by many to be on the short list  
11 for promotional opportunities.

12 7. Beginning in about 2006, Capt. MARQUEZ became romantically involved with a woman  
13 by the name of Judy Cook. Capt. MARQUEZ, who was married at the time, concealed his  
14 relationship and maintained it as a private matter. Capt. MARQUEZ' relationship with  
15 Mrs. Cook was no one's business and was maintained by Capt. MARQUEZ as a private fact  
16 and held within his zone of privacy.

17 8. In about August 2008, Mrs. Cook's husband discovered the relationship and sent a  
18 complaint letter to the Secretary of the Business, Transportation and Housing Agency.  
19 While some of the factual allegations were correct, Mr. Cook's complaint letter was filled  
20 with libelous statements which were clearly aimed at exacting revenge against Plaintiff Capt.  
21 MARQUEZ. On about August 20, 2008 Mr. Cook sent a second complaint letter addressed  
22 to CHP Commissioner Joseph A Farrow which was again filled with libelous false  
23 statements about Capt. MARQUEZ. Subsequent to receiving the Cook complaint letter,  
24 the CHP initiated an investigation into Mr. Cook's complaint letters.

25 9. On about September 3, 2008, Plaintiff Capt. MARQUEZ received notice from Chief R.J.  
26 Chappelle of Notice of Initiation of An Investigation for "alleged misuse of state time and

1 position over the past three years.” The purported notice indicated that Plaintiff’s “storage  
2 space, lockers, vehicles, desks, and/or storage spaces” would be searched on September 3,  
3 2008, at 1700 hours. Plaintiff received the notice late in the day of September 3<sup>rd</sup> which did  
4 not afford him sufficient time to arrange for a representative from the California Association  
5 of Highway Patrolmen. On September 3, 2008, at about 5:00 p.m., Chief Chappelle met  
6 Capt. MARQUEZ at the Sacramento CHP location and served him with the Notice of  
7 Initiation of Investigation. Plaintiff was then flanked by Chief Chappelle and Assistant  
8 Chief Hagler and asked to surrender his cell phone. Next, Lieutenant Richard and Sgt.  
9 Paxton took possession of Capt. MARQUEZ’ state vehicle and proceeded to search it.

10 10. Again, without representation present, Defendants continued their unlawful search of  
11 Plaintiff Capt. MARQUEZ’ property. The search next turned to Plaintiff Capt. MARQUEZ’  
12 office desk where two (2) “flash” drives (also known as “thumb drives”) were located.  
13 Defendants Lt. M. Richard, Sgt. Paxton, Sgt. Price and Officer Vasiliou were present and  
14 collectively took possession of the 2 flash drives. Defendant Officer Vasiliou of Defendant  
15 CHP’s Computer Crimes Investigation Unit physically took possession of Plaintiff Capt.  
16 MARQUEZ’ personal flash drive without consent.

17 11. No verbal or written consent to search Plaintiff Capt. MARQUEZ’s personal flash drive was  
18 provided to Defendants. Indeed, Defendant CHP has a form “CHP 202D” which its internal  
19 policies and procedures manual calls for the signature of the officer subject to the internal  
20 investigation so that a consent to search is memorialized. Plaintiff Capt. MARQUEZ’  
21 alleges on information and belief that Defendant CHP has an unwritten policy in place of  
22 refusing to provide the CHP 202D form to officers subject to investigation so that their  
23 investigators can later testify that they obtained verbal consent for an otherwise illegal  
24 search. Additionally, as of September 3, 2008, Defendants CHP were looking for electronic  
25 proof and/or evidence that Plaintiff Capt. MARQUEZ had “misused state time and/or  
26 property” only as set forth in Defendant Chief Cheppelle’s Notice of Initiation of

1 Investigation.

2 12. Having violated Plaintiff Capt. MARQUEZ Fourth and Fourteenth Amendment rights by  
3 conducting a warrant less search of his personal flash drive, Defendants next proceeded to  
4 search Plaintiff's locker. Plaintiff's locker was opened and therein was located two (2)  
5 sealed boxes, sealed with tape. Next, Defendants Chief Chappelle, Chief Hagler, Lt. Richard  
6 went with Plaintiff Capt. MARQUEZ to Plaintiff's locker. Therein, two boxes were located  
7 sealed with tape. At no time was Plaintiff Capt. MARQUEZ asked to give consent to open  
8 the sealed boxes. Defendants and each of them were looking for any and all evidence to  
9 sustain punitive action against Plaintiff Capt. MARQUEZ. The two tape sealed boxes  
10 were taken out of the locker by Defendant Sgt. Paxton. Again, Plaintiff Capt. MARQUEZ  
11 was not asked for nor did he provide consent to search the contents of the two boxes.  
12 Plaintiff was not presented with nor did he execute a CHP 202D consent to search. Capt.  
13 MARQUEZ' Fourth and Fourteenth Amendment rights were violated. Providing tacit  
14 support of violating Plaintiff's constitutional and statutory rights were Defendants Chief  
15 Chappelle, Chief Hagler and Sgt. Price.

16 13. The two tape sealed boxes were opened. The contents of the allegedly obtained flash drive  
17 and within the two boxes were subsequently used by Defendants CHP to exact punitive  
18 action against Plaintiff Capt. MARQUEZ in the form of termination of employment. On  
19 May 15, 2009 Defendants CHP terminated Capt. MARQUEZ.

20 14. As a result of the warrantless search, Plaintiff Capt. MARQUEZ' due process rights afforded  
21 under the Fourth and Fourteenth Amendment (42 U.S.C. §1983), were violated. These  
22 violations caused Plaintiff Capt. MARQUEZ to become wrongfully terminated on May 15,  
23 2009. The termination was in violation of public policy.

24 15. Within the time provided by law, Plaintiff CAPT. MARQUEZ made a timely Government  
25 Code section 810 et. seq., to the STATE OF CALIFORNIA, DEPARTMENT OF  
26 HIGHWAY PATROL, in full compliance with the 'government tort claim' prerequisite and

1 received a summarily denial of his claims prior to bring this action. Within the time  
2 provided by law, Plaintiff CAPT. MARQUEZ made a timely Government Code section 810  
3 et. seq., to the CITY OF FOLSOM, CITY OF FOLSOM POLICE DEPARTMENT,  
4 in full compliance with the 'government tort claim' prerequisite and received a summarily  
5 denial of his claims prior to bring this action.

6 **B. PLAINTIFF CAPT. MARQUEZ' RIGHTS TO PRIVACY ALLEGATIONS.**

7 16. Plaintiff incorporates by reference the allegations set forth above and below.

8 17. On December 15, 2008 Plaintiff Capt. MARQUEZ received Notice of Administrative  
9 Interrogation instructing him to report to Defendant City of Folsom Police Department  
10 scheduled for December 16, 2008. Defendants Assistant Chief Hagler and Sgt. Price would  
11 conduct the interrogation. No adverse documents were provided to Plaintiff Capt.  
12 MARQUEZ in advance of the interrogation.

13 18. Plaintiff Capt. MARQUEZ and his union representative, Sgt. Hazelwood, reported at 1400  
14 hours at Defendant Folsom Police Department. An interrogation office was utilized for the  
15 session. The office contained a table and four chairs. Plaintiff and his representative were  
16 told should they leave the room for breaks that they had to walk in a selective path closest  
17 to the near wall without looking into any adjacent rooms. However, and unbeknownst to  
18 Plaintiff CAPT. MARQUEZ, Defendants CHP had arranged for Defendant Folsom Police  
19 Department to set up video monitoring and taping of Plaintiff Capt. MARQUEZ'  
20 interrogation. Inside the interrogation room was located a video camera sending a visual  
21 and audio feed to the next room. Indeed, the next room was equipped with a monitor which  
22 depicted Plaintiff Capt. MARQUEZ. During the interrogation, live feed was sent to a room  
23 which was being monitored by both defendant Folsom Police Department and defendant  
24 CHP. What is most alarming about this surreptitious conduct on the part of both defendant  
25 entities, is that Plaintiff Capt. MARQUEZ' reasonable expectation of privacy in his private  
26 conversations with his representative was breached, recorded and/or overheard.

- 1 19. In the interrogations of December 16 & 17, Defendants CHP and Folsom Police Department  
2 violated Plaintiff Capt. MARQUEZ' right to privacy thereby committing the tort of invasion  
3 of privacy, by causing to secretly video tape and record his secret conversations and/or  
4 overhearing those private conversations between Plaintiff and his representative. Indeed,  
5 those private conversations between Plaintiff Capt. MARQUEZ and his union representative  
6 afforded under his Police Officer Bill of Rights are protected and subject to privilege. See  
7 Gov. Code §3303(i), as well as the Public Policy of the State of California. Furthermore,  
8 Plaintiff Capt. MARQUEZ alleges on information and belief that Defendants CHP conspired  
9 with Defendant City of Folsom, City of Folsom Police Department to secretly tape and  
10 record Plaintiff's secret conversations with his representative. This conduct was tortious  
11 and amounted to invasion of privacy under the California Penal Code § 632 et seq., which  
12 provides for a separate tort claim. (See *Rattray v. City of National City; City of National*  
13 *City Police Dept.*, (9<sup>th</sup> Cir. 1993) 51 F. 3d 793), Gov. Code §3303(i) and State case law.
- 14 20. After being discovered of violating Plaintiff CAPT. MARQUEZ' rights to privacy,  
15 Defendants CHP, Chief Chappelle, Assistant Chief Hagler instituted a criminal investigation  
16 by City of Folsom Police Department against Plaintiff Capt. MARQUEZ' based on false  
17 charges that he committed domestic violence upon his wife. This was defamatory and done  
18 with malice. The false charges brought on about November 2008 were made with malice  
19 on the part of said defendants. No merit was found to the false charges by the City of  
20 Folsom Police Department. Indeed, Mrs. Marquez denied the false charges had ever  
21 occurred.
- 22 21. Within the time provided by law, Plaintiff CAPT. MARQUEZ made a timely Government  
23 Code section 810 et. seq., on the STATE OF CALIFORNIA, DEPARTMENT OF  
24 HIGHWAY PATROL, in full compliance with the 'government tort claim' prerequisite and  
25 received a summarily denial of his claims prior to bring this action.
- 26 22. Within the time provided by law, Plaintiff CAPT. MARQUEZ made a timely Government

1 Code section 810 et. seq., on the CITY OF FOLSOM, CITY OF FOLSOM POLICE  
2 DEPARTMENT, in full compliance with the 'government tort claim' prerequisite and  
3 received a summarily denial of his claims prior to bring this action.

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5 **FIRST CLAIM**

6 **Civil Rights Violations Under 42 U.S.C. §1983 Denial of Due Process In Violations of**  
7 **The Fourth And Fourteenth Amendment**  
8 **(Against Defendants STATE OF CALIFORNIA, DEPARTMENT OF HIGHWAY**  
9 **PATROL; CHIEF REGINALD J. CHAPPELLE, ASSISTANT CHIEF BRIAN HAGLER,**  
10 **LT. MICHAEL RICHARD, SGT. DAN PAXTON, SGT. JOHN PRICE, OFFICER**  
11 **GEORGE VISILIOU)**

12 23. Plaintiff CAPT. MARQUEZ incorporates by reference the allegations set forth above and  
13 below.

14 24. 42 U.S.C. section 1983 prohibits unconstitutional searches and seizures by government  
15 actors under color of law. 42 U.S.C. section 1983 provides for liability against any person  
16 acting under the color of law who deprives another 'of any rights, privileges, or immunities  
17 secured by the Constitution and laws' of the United States.' The rights guaranteed by  
18 section 1983 are liberally and beneficently construed. Personal capacity suits seek to impose  
19 personal liability upon a government official for actions taken under color of state law under  
20 section 1983, caused the deprivation of a federal right. The Fourth Amendment prohibits  
21 unreasonable searches while providing a person with constitutionally protected a reasonable  
22 expectation of privacy. The Fourteenth Amendment provides for due process.

23 25. As set forth above and below, Plaintiff CAPT. MARQUEZ was subjected to  
24 unconstitutional searches and seizures by government actors under color of law. On about  
25 September 3, 2008, Defendants, as set forth in this First Claim, initiated an unlawful search  
26 of Plaintiff Capt. MARQUEZ' property. The search next turned to Plaintiff Capt.  
MARQUEZ' office desk, where two (2) "flash" drives (also known as "thumb drives")  
were located. Defendants Lt. M. Richard, Sgt. Paxton, Sgt. Price and Officer Vasiliou were  
present and collectively took possession of the 2 flash drives. Defendant Officer Vasiliou  
of Defendant CHP's Computer Crimes Investigation Unit physically took possession of

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Plaintiff Capt. MARQUEZ' personal flash drive without consent.

26. No verbal or written consent to search Plaintiff Capt. MARQUEZ's personal flash drive was provided to Defendants. Indeed, Defendant CHP has a form "CHP 202D" which its internal policies and procedures manual calls for the signature of the officer subject to the internal investigation so that a consent to search is memorialized. Form CHP 202D was never provided to Plaintiff CAPT. MARQUEZ.

27. Having violated Plaintiff Capt. MARQUEZ Fourth and Fourteenth Amendment rights by conducting a warrant less search of his personal flash drive, Defendants next proceeded to search Plaintiff's locker. Plaintiff's locker was opened and therein was located two (2) sealed boxes, sealed with tape.

28. Next, Defendants Chief Chappelle, Chief Hagler, Lt. Richard went with Plaintiff Capt. 1 MARQUEZ to Plaintiff's locker. Capt. MARQUEZ' locker was opened. Therein, two boxes were located. Both were sealed with tape. At no time was Plaintiff Capt. MARQUEZ asked to give consent to open the sealed boxes. Defendants and each of them were looking for any and all evidence to sustain punitive action against Plaintiff Capt. MARQUEZ. The two tape sealed boxes were taken out of the locker by Defendant Sgt. Paxton. Again, Plaintiff Capt. MARQUEZ was not provided the requisite CHP Form 202D for his consent to search the contents of the two boxes. Next, Sgt. Paxton and Lt. Richards determined that they would unilaterally open the sealed boxes. This conduct in effect violated Plaintiff Capt. MARQUEZ' Fourth and Fourteenth Amendment rights. Providing tacit support of violating Plaintiff's constitutional and statutory rights were Defendants Chief Chappelle, Chief Hagler and Sgt. Price. The two tape sealed boxes were opened.

29. Plaintiff Capt. MARQUEZ' alleges on information and belief that Defendant CHP has an unwritten policy in place of refusing to provide the CHP 202D form to officers subject to investigation so that their investigators can later testify that they obtained verbal consent for an otherwise illegal search. Additionally, as of September 3, 2008, Defendants CHP were

1 looking for electronic proof and/or evidence that Plaintiff Capt. MARQUEZ had “misused  
2 state time and/or property” only as set forth in Defendant Chief Cheppelle’s Notice of  
3 Initiation of Investigation. The Notice provided the scope of any search and such search was  
4 limited to electronic proof and/or evidence that Plaintiff Capt. MARQUEZ had “misused  
5 state time and/or property” . Any other search would necessarily require a search warrant  
6 or consent from Plaintiff CAPT. MARQUEZ.

7 30. The contents of the allegedly obtained flash drive and within the two boxes were  
8 subsequently used by Defendants CHP to exact punitive action against Plaintiff Capt.  
9 MARQUEZ in the form of termination of employment. On May 15, 2009 Defendants CHP  
10 terminated Capt. MARQUEZ.

11 31. As a result of the warrantless search, Plaintiff Capt. MARQUEZ’ due process rights afforded  
12 under the Fourth and Fourteenth Amendment (42 U.S.C. §1983), were violated. These  
13 violations caused Plaintiff Capt. MARQUEZ to become wrongfully terminated on May 15,  
14 2009. The termination was in violation of public policy.

15 32. As a result of Defendants’ conduct and breach of section 1983, the Fourth and Fourteenth  
16 Amendments, Plaintiff has suffered and will continue to suffer damages, the exact amount  
17 of which has not been fully ascertained but is within the jurisdiction of this Court. Plaintiff  
18 is entitled to damages, including, but not limited to lost wages, salary, benefits, and certain  
19 other incidental and consequential expenses and damages in an amount to be shown at the  
20 time of trial. In addition, Plaintiff has been forced as a result to Defendant’s breach to retain  
21 a law firm to enforce his rights, and has incurred and will continue to incur costs and  
22 reasonable attorneys’ fees in connection herewith, recovery of which Plaintiff is entitled to  
23 according to proof.

24 33 Plaintiff is informed, believes and thereon alleges that Defendants, and each of them, acted  
25 fraudulently, maliciously and oppressively with a conscious, reckless and willful disregard,  
26 and/or with callous disregard of the probable detrimental and economic consequences to

1 Plaintiff, and to the direct benefit to Defendants, knowing that Defendants' conduct was  
2 substantially certain to vex, annoy and injure plaintiff and entitle him to punitive damages  
3 under California Civil Code §3294, in an amount sufficient to punish or to make an example  
4 of Defendants.

5 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as  
6 hereinafter set forth.

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8 **SECOND CAUSE OF ACTION**  
9 **(WRONGFUL TERMINATION BREACH OF STATUTORY OBLIGATIONS OWED**  
10 **TO PLAINTIFF**  
11 **(Against Defendants CALIFORNIA DEPARTMENT OF HIGHWAY PATROL)**

12 34. Plaintiff Capt. MARQUEZ incorporates by reference the allegations set forth above and  
13 below.

14 35. Pursuant to the laws embodying the public policy of the State of California, Defendants State  
15 of California, the California Department of Highway Patrol owed Plaintiff CAPT.  
16 MARQUEZ a duty to take all reasonable action to prevent and correct violations of 42  
17 U.S.C. §1983 including the Plaintiff's constitutional rights afforded under the Fourth and  
18 Fourteenth Amendment as it related to Plaintiff's due process rights under the rights  
19 afforded by the Police Officers Bill of Rights, Gov. Code §3303 et seq., and the Fourteenth  
20 Amendment to the Constitution. Under this statutory authority, he was a member within  
21 a class entitled to due process in his employment, and his employer was statutorily and, if  
22 not, contractually obligated to provide plaintiff and other employees with a work place free  
23 constitutional abuses. At all times herein relevant, Plaintiff CAPT. MARQUEZ and  
24 Defendants CALIFORNIA HIGHWAY PATROL were in an employee – employer  
25 relationship due process rights under the rights afforded by the Police Officers Bill of Rights,  
26 Gov. Code §3303 et seq., and the Fourteenth Amendment to the Constitution; that plaintiff's  
termination was a breach of plaintiff's statutory rights.

1 36. The conduct of Defendants CALIFORNIA HIGHWAY PATROL, as set forth above,  
2 constitutes unlawful infringements into Plaintiff's rights under due process rights under the  
3 rights afforded by the Police Officers Bill of Rights, Gov. Code §3303 et seq., and the  
4 Fourteenth Amendment to the Constitution. In engaging in such conduct as set forth above  
5 and below, Defendants CALIFORNIA HIGHWAY PATROL breached their statutory  
6 obligations owed to plaintiff herein. The termination of Plaintiff CAPT. MARQUEZ on  
7 May 15, 2009 amounted to a wrongful termination in breach of those obligations.

8 37. As a direct and proximate result of the conduct of Defendants CALIFORNIA HIGHWAY  
9 PATROL, as set forth above and below, Plaintiff CAPT. MARQUEZ has suffered economic  
10 and consequential damages as set forth in the parties' contract.

11 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as  
12 hereinafter set forth.

13  
14 **THIRD CAUSE OF ACTION**  
15 **TORTIOUS INVASION INTO PRIVACY**  
16 **(Against Defendants CALIFORNIA HIGHWAY PATROL, CITY OF FOLSOM, CITY**  
17 **OF FOLSOM POLICE DEPARTMENT)**

17 38. Plaintiff Capt. MARQUEZ incorporates by reference the allegations set forth above and  
18 below.

19 39. At all times herein, relevant, California Penal Code section 632 was in full force and  
20 effect and binding upon defendants, each and everyone of them. Section 632, provides in  
21 pertinent part, that: "every person who, intentionally and without the consent of all parties  
22 to a confidential communication, by means of any electronic amplifying or recording device,  
23 eavesdrops upon or records such confidential communication . . . shall be punishable by a  
24 fine . . . or imprisonment." California Penal Code section 632(a). It is settled that this  
25 statute has been extended to provide the statutory basis for a tort claim for Intentional  
26 Invasion Into Privacy. (See *Ratray v. City of National City; City of National City Police*

1 Dept., (9<sup>th</sup> Cir. 1993) 51 F. 3d 793), Gov. Code §3303(i) and State case law.

2 40. Herein, on December 15, 2008 Plaintiff Capt. MARQUEZ received Notice of  
3 Administrative Interrogation instructing him to report to Defendant City of Folsom Police  
4 Department scheduled for December 16, 2008. Defendants Assistant Chief Hagler and Sgt.  
5 Price would conduct the interrogation. No adverse documents were provided to Plaintiff  
6 Capt. MARQUEZ in advance of the interrogation.

7 41. Plaintiff Capt. MARQUEZ and his union representative, Sgt. Hazelwood, reported at 1400  
8 hours at Defendant Folsom Police Department. An interrogation office was utilized for the  
9 session. The office contained a table and four chairs. Plaintiff and his representative were  
10 told should they leave the room for breaks that they had to walk in a selective path closest  
11 to the near wall without looking into any adjacent rooms. However, and unbeknownst to  
12 Plaintiff CAPT. MARQUEZ, Defendants CHP had arranged for Defendant Folsom Police  
13 Department to set up video monitoring and taping and/or overhearing of Plaintiff Capt.  
14 MARQUEZ' interrogation including his private and privileged communications with his  
15 representative. Inside the interrogation room was located a video camera sending a visual  
16 and audio feed to the next room. Indeed, the next room was equipped with a monitor which  
17 depicted Plaintiff Capt. MARQUEZ.

18 42. In the interrogations of December 16 & 17, 2008, Defendants CHP and Folsom Police  
19 Department violated Plaintiff Capt. MARQUEZ' right to privacy. On those dates,  
20 Defendants CHP and City of Folsom, City of Folsom Police Department committing the tort  
21 of invasion of privacy by causing to secretly video tape and record and/or surreptitiously  
22 overhear his secret, private and privileged conversations with his representative. See Gov.  
23 Code§3303(i). This conduct was so outrageous that the Public Policy of the State of  
24 California has been subverted by defendants. Plaintiff Capt. MARQUEZ alleges on  
25 information and belief that Defendants CHP conspired with Defendants City of Folsom, City  
26 of Folsom Police Department to secretly tape and record Plaintiff's secret conversations with

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his representative. This conduct was tortuous and amounted to invasion of privacy under the California Penal Code § 632 et seq., which provides for a separate tort claim. (See *Ratray v. City of National City; City of National City Police Dept.*, (9<sup>th</sup> Cir. 1994) 51 F. 3d 793); Gov. Code §3303(i) and State case law.

43. As a result of Defendants' conduct and intentional breach of California Penal Code section 632, Plaintiff has suffered and will continue to suffer damages, the exact amount of which has not been fully ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages, including non-economic, severe emotional distress, not limited to lost wages, salary, benefits, and certain other incidental and consequential expenses and damages in an amount to be shown at the time of trial. In addition, Plaintiff has been forced as a result to Defendant's breach to retain a law firm to enforce his rights, and has incurred and will continue to incur costs and reasonable attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to according to proof.

44. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them, acted fraudulently, maliciously and oppressively with a conscious, reckless and willful disregard, and/or with callous disregard of the probable detrimental and economic consequences to Plaintiff, and to the direct benefit to Defendants, knowing that Defendants' conduct was substantially certain to vex, annoy and injure plaintiff and entitle him to punitive damages under California Civil Code §3294, in an amount sufficient to punish or to make an example of Defendants.

**WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

**FOURTH CAUSE OF ACTION**  
**Defamation, Libel and Slander Per Se; Violations of California Civil Code**  
**Sections 44,45 &46**  
**(Against Defendants SGT. JOHN PRICE, CALIFORNIA HIGHWAY PATROL)**

1 45. Plaintiff Capt. MARQUEZ incorporates by reference the allegations set forth above and  
2 below.

3 46. At all times mentioned herein, California Civil Code sections 44, 45 & 46 were in effect and  
4 binding on Defendants CALIFORNIA HIGHWAY PATROL, their officers and agents.  
5 Civil Code Section 44 provides that defamation is effected either libel or slander. Civil Cod  
6 Section 44 defines libel as a false and unprivileged publication by writing, printing, effigy,  
7 or other fixed representation to the eye, which exposes any persons to hatred, contempt,  
8 ridicule, or obliquely, or which causes him to be shunned or avoided, or which has a  
9 tendency to injure him in his occupation. Civil Code section 46 defines slander as a false  
10 unprivileged publication, orally uttered which tends directly to injure him in respect to his  
11 office, profession, trade or business, either by imputing to him general disqualification in  
12 those respects with the office or other occupation peculiarly requires, or by imputing  
13 something with reference to his office, profession, trade or business that has a natural  
14 tendency to lessen his profits.

15 47. Plaintiff CAPT. MARQUEZ had a reputation as a person of good name, honesty and  
16 integrity.

17 48. In about October 23, 2008, Defendant Sgt. John Price on behalf of Defendants  
18 CALIFORNIA HIGHWAY PATROL, while acting within his scope of employment for said  
19 CHP defendant, caused to be published words and writings of and concerning Plaintiff  
20 CAPT. MARQUEZ injuring plaintiff, plaintiff's reputation, and directly to his profession  
21 as a captain in the California Highway Patrol, trade or business. Specifically, on or about  
22 October 23, 2008, Defendant Sgt. John Price acting within the course and scope of his  
23 employment with Defendants CALIFORNIA HIGHWAY PATROL, defendants defamed  
24 Plaintiff CAPT. MARQUEZ, as follows:

25 Said defendants notified the FOLSOM POLICE DEPARTMENT and stated that

26 Plaintiff CAPT. MARQUEZ battered his wife by throwing her into a wall in the year

1                   2008.

2 49. The words clearly were false in that Defendant Sgt. John Price and Defendants  
3 CALIFORNIA HIGHWAY PATROL were aware that there was no basis for the false  
4 statements. Additionally, the words clearly imply that Plaintiff was a criminal and a wife  
5 beater.

6 50. Defendants and each of them, their agents, representatives and employees, knew the  
7 statements made about Plaintiff asserted falsehoods and their falsity was known to the  
8 defendants. The deliberate publication of known false and defamatory statements was not  
9 made in good faith nor from innocent motives and thus, by bad faith and malicious  
10 publication defendant and each of them abused any potentially asserted privilege, thereby  
11 destroying the same.

12 51. Defendants, their officers, chiefs, agents/or representatives, including but not limited to  
13 Defendant Sgt. John Price, and Defendants CALIFORNIA HIGHWAY PATROL, acting  
14 within the scope of their employment, published unprivileged, statements and writings  
15 maliciously and oppressively with a conscious, reckless, and willful disregard to Plaintiff  
16 CAPT. MARQUEZ, and such was primarily motivated through ill will and hatred, contempt  
17 against Plaintiff in an effort to directly injure him.

18 52. The words and writings were made against Plaintiff, his profession, his trade or business  
19 were publications received by others whose names are known and some are unknown to  
20 plaintiff.

21 53. As a direct result of Defendants' conduct herein, through and by its officers and managing  
22 agents including but limited to Defendant Sgt. John Price, plaintiff has suffered general  
23 damage to his reputation in an amount within the jurisdiction of this Court and in the sum  
24 to proven at trial.

25 54. The above-described slanderous libelous conduct by defendants, its officers and managing  
26 agents were written and spoken by said defendants because of their feelings of hatred and

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ill will towards Plaintiff and with a desire to subject plaintiff to cruel and unjust hardship in conscious disregard to plaintiff's rights, and was despicable conduct which warrants the imposition of exemplary and punitive damages.

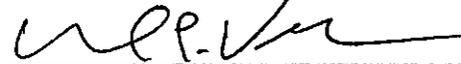
**WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

**WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as follows:

- a. For general, special and consequential damages in an amount of excess of the jurisdictional limits of this Court, according to proof;
- b. For economic and non-economic damages;
- c. for exemplary damages in an amount necessary to punish defendants and to deter such conduct in the future, according to proof;
- d. For reasonable attorney's fees under the 42 U.S.C. §1983 and under any applicable statute including Labor Code Section 218.5, costs and expenses of litigation, according to proof;
- e. For pre-judgment and post-judgment interest;
- f. For such other and further relief as the Court may deem proper.

DATED: December 10, 2009

THE VELEZ LAW FIRM



By: Mark P. Velez, Esq.  
Attorney for Plaintiff CAPT. MARQUEZ

**JURY DEMAND**

Plaintiff CAPT. MARQUEZ hereby demands trial by jury.

DATED: December 10, 2009

THE VELEZ LAW FIRM



By: Mark P. Velez, Esq.  
Attorneys for Plaintiff CAPT. MARQUEZ