

1 Brody A. McBride (SBN 270852)
2 Trenton G. Lamere (SBN 272760)
3 SINGLETON SCHREIBER
4 McKENZIE & SCOTT, LLP
5 450 A Street, 5th Floor
6 San Diego, CA 92101
7 P: (619) 771-3473
8 F: (619) 255-1515
9 bmcbride@ssmsjustice.com
10 tlamere@ssmsjustice.com

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 KRISTINA FROST,

15 Plaintiff,

16 v.

17 COUNTY OF SAN DIEGO, WILLIAM
18 GORE, MASON CASSIDY,
19 UNKNOWN SAN DIEGO SHERIFF'S
20 DEPARTMENT PERSONNEL,

21 Defendants.

No. '21CV1903 BEN AGS

COMPLAINT

DEMAND FOR JURY TRIAL

22 **INTRODUCTION**

23 1. In November 2020, Plaintiff Kristina Frost was a book-and-release detainee
24 at the San Diego Central Jail.

25 2. At first, Ms. Frost, a transgender woman, was placed alone in a holding cell.
26 She was then moved, without any reasonable justification, and against her wishes, to a
27 minimally monitored cell with three men.

28 3. Sadly—and foreseeably—one of the men in the cell viciously attacked Ms.
Frost. His closed-fist punches to Ms. Frost's face resulted in serious bodily injuries,
including a broken jaw, so far requiring two surgeries to repair.

4. The San Diego Sheriff's Department Deputy who put Ms. Frost in that cell,
believed to be Defendant Mason Cassidy, was deliberately indifferent to Ms. Frost's safety

1 risks and needs as a pretrial detainee. And Deputy Mason’s deliberate indifference in this
2 case is part of a larger pattern of Sheriff’s Deputies failing to protect those in the County’s
3 care and custody.

4 5. Plaintiff now sues for recovery of damages pursuant to 42 U.S.C. § 1983 and
5 various state laws.

6 **JURISDICTION AND VENUE**

7 6. The Court has subject matter jurisdiction over this action pursuant to 28
8 U.S.C. §§ 1331 and 1367, as Plaintiff asserts causes of action arising under 42 U.S.C. §
9 1983 and state-law claims supplemental to the section-1983 claims.

10 7. The Court has personal jurisdiction over Defendants in this action, as each of
11 Defendants were domiciled, or were engaged in routine administration/business, in the
12 State of California at the time of the events giving rise to this action.

13 8. Plaintiff has complied with all California Government Claims Act
14 requirements for asserting state-law causes of action against public entities and employees,
15 like Defendants, including the presentation of a claim for damages to the County, which
16 the County rejected, and the timely filing of this Complaint following the rejection of
17 Plaintiff’s claim. *See* Cal. Gov’t Code §§ 900 et seq.

18 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, as the
19 events giving rise to this action occurred in the City of San Diego, California, which is
20 located within the Southern District of California.

21 **PARTIES**

22 10. Plaintiff Kristina Frost (“Ms. Frost” or “Plaintiff”) is an individual who, at
23 all times relevant to this pleading, was domiciled in California.

24 11. Defendant County of San Diego (“County”) is a municipal entity duly
25 organized under California law. The San Diego Sheriff’s Department (“Department”) is
26 the County’s primary law-enforcement agency.

27 12. Defendant William Gore (“Sheriff Gore”) is an individual who, at all times
28 relevant to this pleading, was the San Diego County Sheriff, ultimately responsible for

1 Department policies and procedures, as well as the hiring, training, supervision, and
2 disciplinary needs of the County’s law-enforcement officers, and, moreover, was also a
3 final policymaker for the County.

4 13. Defendant Mason Cassidy (“Deputy Cassidy”) is an individual who, at all
5 times relevant to this pleading, was working in the course and scope of his employment
6 by the County and the Department as a Department Deputy, and acting under color of state
7 law.

8 14. Defendants Unknown San Diego Sheriff’s Department Personnel
9 (“Unknown Department Personnel”) are individuals who, at all times relevant to this
10 pleading, were working in the course and scope of their employment by the County and
11 Department, and acting under color of state law. Plaintiff will seek leave to amend this
12 pleading if and when she learns the true identities of these defendants.

13 **FACTS**

14 **I. Violation of Plaintiff’s Fourteenth Amendment Rights**

15 15. On November 25, 2020, Ms. Frost was taken into County custody at the San
16 Diego Central Jail on a book-and-release charge.

17 16. When she arrived, Ms. Frost informed jail staff she is a trans woman. Ms.
18 Frost’s DMV records and driver’s license state her gender is female. And Ms. Frost was
19 wearing feminine clothes (including high-cut shorts and a bra) at the time of booking.
20 Despite this, deputies repeatedly misgendered Ms. Frost, both in person and in official
21 reports documenting the assault giving rise to this case.

22 17. At first, Ms. Frost was placed alone in a holding cell. Then, without any
23 reasonable justification, Unknown Department Personnel (believed to include Deputy
24 Cassidy) moved Ms. Frost into a holding cell with three men. It was clear Ms. Frost did
25 not want to go into the cell, and she was confused as to why she was being moved into the
26 cell. No reasonable deputy would have put Ms. Frost in a minimally monitored cell with
27 three men. She was forced into the cell anyway.

28 18. Ms. Frost sank onto a bench and buried her head in her shirt. As the night

1 wore on, she fell asleep.

2 19. Just after midnight, Ms. Frost was awakened by blows to her head. One of
3 the men in the cell had begun punching Ms. Frost's head with closed fists.

4 20. Deputies observed this assault, yet none of them immediately intervened.
5 Ms. Frost saw one or more deputies pausing outside the cell before entering to intervene.
6 Deputies eventually removed the assailant from the cell and put him alone in another
7 holding cell.

8 21. Even though she was there on a book-and-release charge, jail staff then made
9 Ms. Frost wait upwards of twelve hours without medical care before she was released.
10 She was in excruciating pain from her injuries the entire time she waited. And because
11 her jaw was injured, she could not eat food or even drink water while she waited.

12 22. After being released, Ms. Frost immediately went to a hospital, where she
13 was diagnosed with two jaw fractures. Her injuries have so far required two separate
14 operations to place and remove hardware from her jaw, including a long period of her
15 mouth being wired shut. Ms. Frost continues to suffer from these injuries and must now
16 wear dentures.

17 **II. Department's Pattern of Failing to Protect People in County Custody**

18 23. Defendants' failure to protect Ms. Frost was a foreseeable result of a pattern
19 among Department personnel of failing to keep people in County custody safe.

20 24. As a topline matter, for example, the mortality rate in San Diego County jails
21 is the highest among California's largest counties. At least 140 people died in County
22 custody from 2009 to 2019.

23 25. Inmate injuries and deaths are a foreseeable result of Department personnel
24 failing to protect people in the County's care and custody:

- 25 a. On June 25, 2011, Daniel Sisson died from an acute asthma attack made
26 worse by drug withdrawal. He lay dead for several hours before a fellow
27 inmate found him. Due to lack of communication between jail staff, jail staff
28 had failed to monitor him.

- 1 b. In September 2012, Bernard Victorianne suffered for five days from drug
2 overdose because the staff ignored available (yet unshared) information that
3 he had ingested methamphetamine. Mr. Victorianne was placed in
4 segregation instead of in a medical unit. He was eventually found dead in his
5 cell from acute drug intoxication.
- 6 c. In 2014, former U.S. Marine Kristopher NeSmith committed suicide. Last
7 seen alive about 10:00 p.m. one night, a guard noticed a bedsheet fashioned
8 into a rope. The deputy then failed to communicate this information to other
9 jail staff or to call for psychiatric intervention. No other jail staff took any
10 further action. Mr. NeSmith was later found dead, having hung himself.
- 11 d. In 2014, Ronnie Sandoval showed obvious symptoms of overdose, yet jail
12 staff did not summon help or treat him for overdose. Nor did jail staff pass
13 on information regarding Mr. Sandoval's condition during the shift change.
14 Mr. Sandoval died from drug intoxication.
- 15 e. In 2015, jail personal failed to input critical medical information into JIMS
16 about Ruben Nunez, leading to Mr. Nunez dying from water intoxication.
17 One of the jail staff testified she did not know how to use JIMS to add
18 "alerts," meaning the most critical information regarding an inmate. She
19 testified she was never trained to do this.
- 20 f. In 2016, Heron Moriarty committed suicide after jail staff failed to
21 communicate among themselves about the twenty-eight telephone calls his
22 wife had placed to warn jail staff of Mr. Moriarty's suicidal intentions.
- 23 g. In 2018, at least four suicides occurred in the Central Jail. Most notably, on
24 October 8, 2018, an inmate killed himself the same day he was booked into
25 Central Jail. He reportedly used food to suffocate himself while he was being
26 housed in a unit designed for suicidal inmates.
- 27
- 28

1 26. Inmate injuries and death are also a foreseeable result of Department
2 personnel failing to adequately monitor those in the County’s care and custody, including
3 the following examples:

- 4 a. In the case of Mr. Sisson’s death in 2011, jail staff failed to check on Mr.
5 Sisson for hours. Mr. Sisson died during drug withdrawal.
- 6 b. In 2012, as Mr. Victorianne lay on his cell floor, naked and unconscious, none
7 of the deputies conducted proper security check, soft counts, or hard counts.
8 One deputy was told by an inmate that Mr. Victorianne was not breathing.
9 This deputy kicked Mr. Victorianne, stated Mr. Victorianne “twitched,” and
10 left him to die in his cell.
- 11 c. In 2014, Christopher Carroll, who was severely mentally ill, was placed in
12 segregation. While unobserved, Mr. Carroll had smeared blood on the wall
13 of his cell, urinated on the floor, and threw food and feces on the ceiling
14 before hanging himself. Jail staff failed to conduct proper cell checks despite
15 knowing about Mr. Carroll’s condition.
- 16 d. In Mr. Nunez’s case, a deputy saw Mr. Nunez in his cell sitting in his own
17 vomit and urine. Despite seeing Mr. Nunez twice in this condition, this
18 deputy failed to summon help or take Mr. Nunez to medical services. The
19 deputy left Mr. Nunez in his cell to die.
- 20 e. In Mr. NeSmith’s case in 2014, a jail deputy saw Mr. NeSmith attempting
21 suicide, but took no action to stop Mr. NeSmith or to call for psychiatric
22 intervention.
- 23 f. In February of 2016, Richard Boulanger hung himself in his cell. His
24 cellmate pressed the emergency all button, but no deputy came to the cell for
25 approximately 20 minutes. A subsequent investigation revealed that one of
26 the deputies did not break stride or look into Mr. Boulanger’s cell during a
27 cell check. The investigation revealed that during cell checks, the deputy
28 peered into each cell for approximately once second in violation of policy.

1 The investigation further revealed a practice in which the deputies were
2 turning off the sound of the emergency call buttons, lowering the volume, or
3 muting the inmate intercom system so that no sound could be heard. Call
4 buttons in many of the housing units did not function, which made no sound
5 when pressed. The audio for the monitor in the jail tower did not function
6 well so that it was difficult to hear tones and sounds from the monitor even
7 when the volume was turned to the maximum level.

8 g. In March 2019, Ivan Ortiz was allowed to commit suicide, in a unit designed
9 for suicidal inmates. Mr. Ortiz suffocated himself with a plastic lunch bag
10 (which he should not have had), and jail staff failed to conduct safety checks
11 often enough to prevent Mr. Ortiz's death.

12 27. Ms. Frost's assault was a foreseeable result of Department personnel ignoring
13 critical information, failing to protect people in the County's care and custody, and failing
14 to adequately monitor individuals in the County's care and custody.

15 28. As a result of Defendants' actions, Ms. Frost suffered economic damages,
16 including medical bills, and non-economic damages, including physical pain, mental
17 suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience,
18 grief, anxiety, humiliation, and emotional distress.

19 **FIRST CAUSE OF ACTION**

20 **42 U.S.C. § 1983 – Failure to Protect/Deliberate Indifference to Safety Risks and**
21 **Needs**

22 **(Against Deputy Cassidy and Unknown Department Personnel)**

23 29. The foregoing paragraphs are incorporated herein by this reference.

24 30. By placing Plaintiff, an obviously transgender woman, in a minimally
25 monitored cell with three men, and then waiting to intervene in the foreseeable attack on
26 Plaintiff, Defendants were deliberately indifferent, and/or recklessly disregarded,
27 Plaintiff's safety risks and needs, in violation of Plaintiff's Fourteenth Amendment rights
28 as a pretrial detainee.

1 31. Plaintiff's safety risks and needs were obvious, and Defendants were actually
2 aware of the risks Plaintiff would face in a minimally monitored cell with three men.
3 Transgender women are particularly vulnerable to violence and sexual assault in male
4 correctional settings.

5 32. Defendants failed to take reasonable steps to safeguard Plaintiff, despite
6 Defendants' knowledge of a substantial risk to Plaintiff's safety.

7 33. As an actual and foreseeable result of Defendants' deliberate indifference,
8 Plaintiff suffered the injuries set forth herein. Plaintiff thus seeks compensatory damages
9 in an amount according to proof.

10 34. Defendants' conduct was, moreover, malicious and/or done in reckless
11 disregard of Plaintiff's constitutional rights; thus, Plaintiff further seeks an award of
12 punitive damages to punish Defendants' conduct and deter such conduct in the future.

13 **SECOND CAUSE OF ACTION**

14 **42 U.S.C. § 1983 – *Monell***

15 **(Against County)**

16 35. The foregoing paragraphs are incorporated by this reference.

17 36. Plaintiff's Fourteenth Amendment rights were violated as set forth herein.

18 37. Leading up to Plaintiff's injuries, the County's final policymakers in charge
19 of Department policies and procedures, including Sheriff Gore, were on notice that that
20 Department personnel responsible for overseeing the safety of those in the County's
21 custody and control were falling short of constitutional requirements. These final
22 policymakers failed, however, to take corrective action in time to prevent the harms to
23 Plaintiff alleged herein.

24 38. Plaintiff's constitutional rights were violated as an actual and proximate
25 result of a County policy, consisting of a pattern among Department personnel of failing
26 to protect people in the County's care and custody, including ignoring and failing to
27 communicate critical information and failing to adequately monitor those in the County's
28 care and custody. Jail staff ignored critical information (i.e., Plaintiff's gender) in

1 assuming care and custody of Plaintiff, foreseeably resulting in injuries to Plaintiff. Jail
2 staff, moreover, failed to monitor Plaintiff in light of her particular safety risks and needs,
3 and failed to immediately intervene in the attack on Plaintiff.

4 39. Plaintiff's rights were also violated as an actual and proximate result of a
5 County policy, consisting of deliberate indifference to the training, supervision, and
6 disciplinary needs of Department personnel working in the County jails. The consistent
7 misgendering of Plaintiff by multiple Department personnel, as well as the malice and
8 recklessness with which Plaintiff was placed in danger, make the failure to adequately
9 train and supervise Department personnel obvious. No well trained corrections staff
10 would have allowed this incident to happen.

11 40. As a result of the foregoing County policies, Plaintiff suffered the injuries set
12 forth herein. Plaintiff thus seeks compensatory damages in an amount according to proof.

13 **THIRD CAUSE OF ACTION**

14 **Cal. Civ. Code § 52.1(b) – Bane Act**

15 **(Against Deputy Cassidy, Unknown Department Personnel, County)**

16 41. The foregoing paragraphs are incorporated herein by this reference.

17 42. Defendants interfered with Plaintiff's Fourteenth Amendment rights through
18 intimidation and coercion.

19 43. Defendants intended to violate and/or recklessly disregarded Plaintiff's
20 Fourteenth Amendment right to be free from deliberate indifference to her safety risks and
21 needs.

22 44. Defendants' deprivation of Plaintiff's Fourteenth Amendment rights
23 foreseeably resulted in Plaintiff's assault by another inmate, resulting in the injuries set
24 forth herein. Plaintiff thus seeks compensatory damages in an amount according to proof.

25 45. Plaintiff is, moreover, entitled to statutory damages, including three times the
26 actual amount of her damages, with a minimum of \$4,000, pursuant to Civil Code section
27 52(a).

28 46. Because Defendants acted in the course and scope of their employment as

1 County employees, the County is vicariously liable for the harm proximately caused by
2 their conduct pursuant to California Government Code section 815.2.

3 **FOURTH CAUSE OF ACTION**

4 **Negligence**

5 **(Against Deputy Cassidy, Unknown Department Personnel, County)**

6 47. The foregoing paragraphs are incorporated herein by this reference.

7 48. On November 25, 2020, Defendants had a duty to act with ordinary care in
8 carrying out their duties as corrections officers, including reasonable care in jailing
9 individuals with heightened safety risks and needs, with regard to communicating and
10 paying attention to critical information, with regard to cell placements, with regard to
11 monitoring inmates, and with regard to intervening in inmate assaults on other inmates.

12 49. Defendants breached the foregoing duties when they placed Plaintiff in
13 substantial danger of suffering serious harm without taking reasonable measures to abate
14 the risk of harm. Defendants further failed to immediately intervene to stop another
15 inmate's assault on Plaintiff.

16 50. As a direct and proximate result of Defendants' breaching the foregoing
17 duties, Plaintiff suffered the injuries set forth herein. Plaintiff thus seeks compensatory
18 damages in an amount according to proof.

19 51. Moreover, because Defendants were acting in the course and scope of their
20 employment as Sheriff's Deputies when the foregoing conduct occurred, the County is
21 vicariously liable for the injuries Plaintiff suffered as a result of the deputies' tortious
22 conduct under California Government code section 815.2.

23 **FIFTH CAUSE OF ACTION**

24 **Negligent Training, Supervision, and Discipline**

25 **(Against Sheriff Gore, Unknown Department Personnel, County)**

26 52. The foregoing paragraphs are incorporated herein by this reference.

27 53. On November 25, 2020, Sheriff Gore and other currently unknown
28 supervisors had a duty to use reasonable efforts to ensure the County's corrections officers

1 were trained to perform their duties in a competent manner. Defendants' duty to Plaintiff
2 arose, in particular, when Department personnel took Plaintiff into the County's care and
3 custody.

4 54. As demonstrated by their decision to unnecessarily and unreasonably subject
5 Plaintiff to assault and injury, the deputies involved in this incident were incompetent to
6 perform their work as corrections officers and, in particular, incompetent to keep those in
7 County custody safe.

8 55. Defendants knew or should have known, at the time of this incident, that
9 Department personnel, including Deputy Cassidy, were incompetent to perform their work
10 as corrections officers and, in particular, incompetent to deal with an individual with
11 heightened safety risks and needs.

12 56. Defendants' negligent training and supervision was a substantial factor in
13 actually and proximately causing Plaintiff to suffer the damages alleged herein.

14 57. Because Sheriff Gore and other supervising defendants were acting in the
15 course and scope of their employment for the County as managers and/or supervisors of
16 corrections officers, the County is vicariously liable under California Government Code
17 section 815.2.

18 **PRAYER FOR RELIEF**

19 58. Based on the foregoing facts and causes of action, Plaintiff seeks the
20 following relief:

- 21 a. judgment in favor of Plaintiff and against Defendants on all causes of action
22 asserted herein;
- 23 b. compensatory damages (including economic and non-economic damages), in
24 amounts to be determined at trial;
- 25 c. punitive damages, against the individual defendants only, in an amount
26 sufficient to punish the conduct giving rise to this action and to deter such
27 conduct in the future;
- 28 d. reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988, California

1 Government Code section 52.1(h), and all other relevant statutory and case
2 law; and

3 e. any and all other relief in law or equity to which Plaintiff may be entitled and
4 which this Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 59. Plaintiff demands, under the Seventh Amendment, a trial by jury as to each
7 and every cause of action asserted herein.

8
9 Dated: November 09, 2021

SINGLETON SCHREIBER
McKENZIE & SCOTT, LLP

10
11 By: s/Trenton G. Lamere

12 Attorneys for Plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28