

1 J. PATRICK HERON, Esq.  
(State Bar No. 45331)  
2 LAW OFFICES OF J. PATRICK HERON  
1330 Lincoln Avenue, Suite 308  
3 San Rafael, CA 94901

4 Telephone Number: (415) 459-4983  
Facsimile Number: (415) 485-5338  
5 E-Mail: heronlaw@sbcglobal.net

6 Attorney for Plaintiff  
LYDIA PACHECO-CESENA  
7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 LYDIA PACHECO-CESENA,

12 Plaintiff,

13 v.

14 JASON FLETCHER, ANTHONY  
MORGAN, SAN LEANDRO POLICE  
15 DEPARTMENT, CITY OF SAN  
LEANDRO, a Municipal Corporation, and  
16 DOES 1 through 100, inclusive,

17 Defendants.  
18  
19

Case No. C 07 2974 EMC

**COMPLAINT FOR VIOLATION OF  
FEDERAL AND CALIFORNIA CIVIL  
RIGHTS**

**(42 U.S.C. § 1983)  
(Calif. Const., art. I, §§ 13;  
Calif. Civil Code §§ 43, 1708)**

20 Plaintiff alleges:

21 **Jurisdiction**

22 1. This is an action brought under 42 U.S.C. § 1983 as well as the Fourth and  
23 Fourteenth Amendments of the United States Constitution.

24 2. The jurisdiction of this Court is predicated on 28 U.S.C. §§ 1331 and 1343 (3) and  
25 (4).

26 **Venue**

27 3. A substantial part of the events giving rise to this action occurred in San Leandro,  
28

**Complaint for Violation of Civil Rights**

**Pacheco-Cesena vs. City of San Leandro, et al.,  
United States District Court  
Northern District of California**

1 California. Venue is therefore proper under 28 U.S.C. § 1391(b) .

2 4. Defendants, are, and at all times mentioned in this complaint, were, residents of the  
3 County of Alameda, State of California. Venue is also proper under 28 U.S.C. § 1391(b).

4 **The Parties**

5 5. Plaintiff, LYDIA PACHECO-CESENA is, and at all times mentioned in this  
6 complaint, was a citizen of the United States, and a resident of Alameda County, California.

7 6. Defendant JASON FLETCHER is, and at all times mentioned in this complaint, was  
8 a duly sworn peace officer employed by Defendants SAN LEANDRO POLICE DEPARTMENT and  
9 CITY OF SAN LEANDRO as a police officer. This Defendant was, at all times mentioned in this  
10 complaint, acting in the course and scope of his employment with the SAN LEANDRO POLICE  
11 DEPARTMENT and CITY OF SAN LEANDRO. This Defendant was, at all times mentioned in this  
12 complaint, acting under color of state law. This Defendant is sued in his individual capacity as well  
13 as his official capacity.

14 7. Defendant ANTHONY MORGAN is, and at all times mentioned in this complaint,  
15 was a duly sworn peace officer employed by Defendants SAN LEANDRO POLICE DEPARTMENT  
16 and CITY OF SAN LEANDRO as a police officer. This Defendant was, at all times mentioned in  
17 this complaint, acting in the course and scope of his employment with the SAN LEANDRO POLICE  
18 DEPARTMENT and CITY OF SAN LEANDRO. This Defendant was, at all times mentioned in this  
19 complaint, acting under color of state law. This Defendant is sued in his individual capacity as well  
20 as his official capacity.

21 8. Defendant SAN LEANDRO POLICE DEPARTMENT is, and at all times  
22 mentioned in this complaint, was a duly constituted law enforcement agency that was created by and  
23 functions under the control of the defendant CITY OF SAN LEANDRO.

24 9. Defendant CITY OF SAN LEANDRO is a political subdivision of the State of  
25 California and exists under and by virtue of the laws of the State of California, and, at all relevant  
26 times herein mentioned, employed Defendants JASON FLETCHER, ANTHONY MORGAN and  
27 DOES 1 through 100, inclusive.



**FIRST CLAIM FOR RELIEF**  
**(Violation of Civil Rights—42 U.S.C. § 1983)**

15. The allegations set forth in Paragraphs 1 through 14 are realleged and are incorporated herein by reference as though expressly set forth.

16. The hereinabove described actions and omissions, engaged in under color of law and state authority by the Defendants, and each of them, including Defendants SAN LEANDRO POLICE DEPARTMENT and CITY OF SAN LEANDRO which are responsible because of their authorization, condonation, and ratification thereof for the acts of its agents, deprived Plaintiff of rights secured to her by the Constitution of the United States, including but not limited to her Fourth Amendment right to be free from unreasonable searches and seizures by reason of Plaintiff's arrest without reasonable or probable cause.

17. Defendants, and each of them, further violated Plaintiff's right to be free from unreasonable searches and seizures by their use and application of unreasonable force in securing Plaintiff's arrest.

18. Defendants SAN LEANDRO POLICE DEPARTMENT and CITY OF SAN LEANDRO failed to supervise and/or properly train Defendants JASON FLETCHER and ANTHONY MORGAN and DOES 1 through 100, inclusive, and each of them, and through their lack of proper supervision and training, permitted these individuals to commit some or all of the acts complained of in the preceding Paragraphs.

19. The SAN LEANDRO POLICE DEPARTMENT is an agency of the CITY OF SAN LEANDRO and functions under the auspices, authority and imprimatur of the government of the CITY OF SAN LEANDRO. It is alleged that the acts and policies of the SAN LEANDRO POLICE DEPARTMENT are, in effect, the acts and policies of the CITY OF SAN LEANDRO.

20. As a direct and proximate result of actions of the defendants, and each of them, as described in this complaint, Plaintiff has suffered injury, loss, and/or damage in that she sustained contusions and bruises to her person at the time of her arrest. As a further direct and proximate result of the actions of the defendants, and each of them, Plaintiff was required to and did employ

1 physicians, therapists and health care providers for the treatment of her injuries and did incur medical  
2 expenses in an amount which is unknown to Plaintiff at this time. Plaintiff prays leave of the court  
3 to amend this complaint when the exact amount of these expenses becomes known to her.

4 21. As a further direct and proximate result of the actions of the defendants, and each of  
5 them, Plaintiff suffered extreme physical pain and discomfort, and mental and emotional suffering as  
6 a result of the injuries she sustained. Plaintiff further experienced anxiety and mental suffering as a  
7 result of being arrested for an offense she did not commit and at the prospect of the loss of her liberty  
8 if she were convicted and imprisoned on these false charges and accusations.

9 22. As a further direct and proximate result of the actions of the defendants, and each of  
10 them, Plaintiff was required to employ and hire attorneys, private investigators, and others. Plaintiff  
11 is presently unaware of the exact amount of these expenses at the present time, but prays leave of the  
12 court to amend this complaint when the exact amount of these expenses becomes known to her.

13 23. As a further direct and proximate result of the actions of the defendants, and each of  
14 them, Plaintiff suffered the loss of economic opportunity and loss of income in an amount which is  
15 unknown to Plaintiff at this time. Plaintiff prays leave of the court to amend this complaint when the  
16 exact amount of these losses becomes known to her.

17 24. In acting and conducting themselves, as is alleged in this complaint, Defendants  
18 JASON FLETCHER and ANTHONY MORGAN and DOES 1 through 100, inclusive, and each of  
19 them, and each of them, acted knowingly, willfully, and maliciously, and with reckless and callous  
20 disregard for plaintiff's federally protected rights. Plaintiff is therefore entitled to punitive or  
21 exemplary damages against these individual defendants according to proof.

22  
23 **SECOND CLAIM FOR RELIEF**  
24 **(Violation of State Civil and Statutory Rights–**  
**Calif. Const. Art. I § 13, Civ. Code §§ 43, 1708)**

25 25. The allegations set forth in Paragraphs 1 through 14 are realleged and are  
26 incorporated herein by reference as though expressly set forth.

27 26. This Court has supplemental jurisdiction over this state claim and cause of action

1 herein alleged pursuant to 28 U.S.C. § 1367(a).

2 27. On February 11, 2007, Defendants JASON FLETCHER and ANTHONY MORGAN  
3 and DOES 1 through 100, inclusive, and each of them, arrested Plaintiff without probable cause and  
4 used unreasonable and excessive force in arresting Plaintiff, and in securing Plaintiff's custody. In  
5 so doing, defendants, and each of them, violated of the rights guaranteed to plaintiff under Article I,  
6 Section 13 of the California Constitution and in violation of plaintiff's civil rights under Sections 43  
7 and 1708 of the California Civil Code.

8 28. As a further direct and proximate result of the actions of the defendants, and each of  
9 them, plaintiff sustained injury and suffered damages as hereinabove alleged.

10 29. In acting as is alleged in this complaint, defendant individually named police  
11 officers, acted knowingly, willfully, and maliciously, and with reckless and callous disregard for  
12 plaintiff's rights as guaranteed by California law. Plaintiff is therefore entitled to punitive or  
13 exemplary damages according to proof against these individually named police officers.

14 30. On or about May 18, 2007, Plaintiff presented a claim to the City of San Leandro by  
15 presenting said claim to the Clerk of the City of San Leandro for the injuries, disability, losses and  
16 damages suffered and incurred by her by reason of the above-described occurrence and occurrences,  
17 all in compliance with the requirements of California Government Code, Section 905. A copy of the  
18 claim is attached hereto as Exhibit "A" and made a part hereof.

19 31. On or about May 21, 2007, the City of San Leandro rejected the Plaintiff's claim. A  
20 copy of said rejection is attached hereto as Exhibit "B" and made a part hereof.

21 WHEREFORE, plaintiff prays judgment against all defendants, and each of them, as follows:

- 22 1. For compensatory damages, in an amount to be determined according to proof at  
23 trial;
- 24 2. For punitive damages against the individually named police officers in an amount to  
25 be determined according to proof at trial;
- 26 3. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988 and California Civil  
27 Code, Section 50;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4. For costs of suit incurred in this action; and
- 5. For such other and further relief as the Court deems proper.

Dated: May 25, 2007.

Respectfully submitted,  
  
*/s/ J. Patrick Heron*  
\_\_\_\_\_  
J. PATRICK HERON  
Attorney for Plaintiff  
LYDIA PACHECO-CESENA

**DEMAND FOR JURY TRIAL**

Plaintiff LYDIA PACHECO-CESENA hereby demands a jury trial.

Dated: May 25, 2007.

Respectfully submitted,  
  
*/s/ J. Patrick Heron*  
\_\_\_\_\_  
J. PATRICK HERON  
Attorney for Plaintiff  
LYDIA PACHECO-CESENA