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KAYLEIGH SLUSHER, Deceased, and
JASON SLUSHER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

KAYLEIGH SLUSHER, Deceased, THROUGH HER
SUCCESSOR IN INTEREST JASON SLUSHER;
JASON SLUSHER, Individually,

Plaintiffs,

vs.

CITY OF NAPA, a public entity; NAPA POLICE
OFFICER GARRETT WADE, Individually; NAPA
POLICE OFFICER DOMINIC DEGUILIO,
Individually; NAPA POLICE OFFICER ROBERT
CHAMBERS, Individually; NAPA POLICE OFFICER
GARRETT SMITH, Individually; COUNTY OF
NAPA, a public entity; NAPA COUNTY CHILD
WELFARE SERVICES SOCIAL WORKER
SUPERVISOR KEN ADAMS, Individually; NAPA
COUNTY CHILD WELFARE SERVICES SOCIAL
WORKER NANCY LEFLER-PANELA, Individually;
NAPA COUNTY CHILD WELFARE SERVICES
SOCIAL WORKER ROCIO DIAZ-LARA,
Individually; and DOES 2-50, Jointly and Severally

Defendants.

Case No: 16CV001186

**FIRST AMENDED
COMPLAINT FOR
DAMAGES, DECLARATORY,
AND INJUNCTIVE RELIEF,
AND DEMAND FOR JURY
TRIAL**

• Negligence/Negligence Per Se

1 Plaintiff, JASON SLUSHER, both individually and as successor in interest to KAYLEIGH
2 SLUSHER, Deceased, by and through his attorneys, HADDAD & SHERWIN LLP, for his
3 Complaint against Defendants, states as follows:

4 **JURISDICTION**

5
6 1. This is a negligence and negligence *per se* action arising from Defendants' violation
7 of mandatory duties to investigate and/or report child abuse and/or neglect, to "consider the needs
8 of the child victim and ... do whatever is necessary to prevent psychological [and physical] harm to
9 the child victim" (California Child Abuse and Neglect Reporting Act, "CANRA," Cal. Pen. Code §
10 11164(b)), including to take 3-year-old KAYLEIGH SLUSHER into protective custody and obtain
11 emergency medical treatment for her, and to refrain from creating danger and increasing Plaintiffs'
12 risk of harm, which resulted in the prolonged abuse, neglect, torture, and death of Plaintiff
13 KAYLEIGH SLUSHER, Deceased, on or about January 30, 2014, in the City of Napa, Napa
14 County, California. This action is brought pursuant to California state law, statutes, codes,
15 regulations, and related common law. "Plaintiff" and "Plaintiffs" herein refer to KAYLEIGH
16 SLUSHER, deceased, and to her father JASON SLUSHER, who brings claims on KAYLEIGH's
17 behalf as her successor in interest, and on his own behalf.

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19 2. Plaintiff herein resides in Napa, California. All Defendants herein reside or work in
20 Napa County, California. A substantial part of the events and/or omissions complained of herein
21 occurred in the City of Napa, Napa County, California, and this action is properly assigned to the
22 Superior Court of the State of California, County of Napa. The amount in controversy herein,
23 excluding interest, costs, penalties, and attorneys' fees, exceeds the minimum jurisdictional limit of
24 this Court.
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1 **PARTIES AND PROCEDURE**

2 3. Plaintiff JASON SLUSHER is the father of decedent, KAYLEIGH SLUSHER.

3 Plaintiff JASON SLUSHER brings these claims individually and as a Successor in Interest for his
4 daughter and only child, Kayleigh Slusher, Deceased, pursuant to California Code of Civil
5 Procedure sections 377.20 et seq. and 377.60 et seq. which provide for survival and wrongful death
6 actions. Plaintiff brings both survival and wrongful death claims herein. At all times, Plaintiff
7 JASON SLUSHER adored his daughter KAYLEIGH and had a close and loving relationship with
8 her.
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10 4. Defendant CITY OF NAPA is a public entity established by the laws and
11 Constitution of the State of California, and owns, operates, manages, directs, and controls the Napa
12 Police Department ("NPD") which employs other defendants in this action.
13

14 5. Defendant NAPA POLICE OFFICER GARRETT WADE ("WADE") at all material
15 times was employed as a law enforcement officer by NPD, and was acting within the course and
16 scope of that employment.

17 6. Defendant NAPA POLICE OFFICER DOMINIC DEGUILIO ("DEGUILIO") at all
18 material times was employed as a law enforcement officer by NPD, and was acting within the
19 course and scope of that employment.
20

21 7. Defendant NAPA POLICE OFFICER ROBERT CHAMBERS ("CHAMBERS") at
22 all material times was employed as a law enforcement officer by NPD, and was acting within the
23 course and scope of that employment.

24 8. Defendant NAPA POLICE OFFICER GARRETT SMITH at all material times was
25 employed as a law enforcement officer by NPD, and was acting within the course and scope of that
26 employment.
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1 9. Defendant DOE Police Officers ("Doe Police Officers") at all material times were
2 employed as law enforcement officers by Defendant City of Napa, and were acting within the
3 course and scope of that employment.

4 10. Defendant COUNTY OF NAPA is a public entity established by the laws and
5 Constitution of the State of California, and owns, operates, manages, directs, and controls Napa
6 County Child Welfare Services ("CWS") which employs other defendants in this action.

7 11. Defendant CWS worker NANCY LEFLER-PANELA at all material times was
8 employed as a child welfare services social worker by NAPA COUNTY and was acting within the
9 course and scope of that employment.

10 12. Defendant CWS worker ROCIO DIAZ-LARA at all material times was employed
11 as a child welfare services social worker by NAPA COUNTY and was acting within the course and
12 scope of that employment.

13 13. Defendant CWS Supervisor KEN ADAMS at all material times was employed as a
14 child welfare services social worker supervisor by NAPA COUNTY and was acting within the
15 course and scope of that employment. Defendant NAPA COUNTY intentionally concealed the
16 extent and nature of Defendant ADAMS's involvement in KAYLEIGH'S death. Plaintiff only
17 discovered the extent of ADAMS's involvement after deposing Defendants DIAZ-LARA and
18 LEFLER-PANELA in this matter. Defendant ADAMS is being substituted in for Defendant DOE
19 1.

20 14. Defendant DOE CWS Workers ("Doe CWS Workers") at all material times were
21 employed as Child Welfare Services workers/employees by Defendant County of Napa, and were
22 acting within the course and scope of that employment.

23 15. The true names and capacities of other Defendants sued as DOES 2-50 ("DOE
24 DEFENDANTS"), including Doe Police Officers and Doe CWS Workers/employees, are unknown
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1 to Plaintiff, who therefore sues these Defendants by such fictitious names, and Plaintiff will seek
2 leave to amend this complaint to show their true names and capacities when the same are
3 ascertained. Each DOE DEFENDANT was an employee/agent of either the CITY OF NAPA or the
4 COUNTY OF NAPA, and at all material times acted within the course and scope of that
5 relationship. Plaintiff is informed and believes and thereon alleges that each of the Defendants sued
6 herein was negligently, wrongfully, and otherwise responsible in some manner for the events and
7 happenings as hereinafter described, and proximately caused injuries and damages to KAYLEIGH
8 SLUSHER and JASON SLUSHER. Further, one or more DOE DEFENDANTS was at all material
9 times responsible for the hiring, training, supervision, and discipline of other defendants, including
10 DOE DEFENDANTS.
11

12 16. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
13 was at all material times an agent, servant, employee, partner, joint venturer, co-conspirator, and/or
14 alter ego of the remaining Defendants, and in doing the things herein alleged, was acting within the
15 course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges,
16 that each of the Defendants herein gave consent, aid, and assistance to each of the remaining
17 Defendants, and ratified and/or authorized the acts or omissions of each Defendant as alleged
18 herein, except as may be hereinafter otherwise specifically alleged.
19

20 17. At all material times, each Defendant was jointly engaged in tortious activity, and an
21 integral participant in the conduct described herein, including the violation of mandatory duties to
22 investigate and/or report child abuse and/or neglect and to take KAYLEIGH SLUSHER into
23 protective custody and obtain emergency medical treatment for her, and the increase of Plaintiffs'
24 risk, resulting in the deprivation of Plaintiffs' rights and other harm.
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18. At all material times, each Defendant acted under color of the laws, statutes, ordinances, and regulations of the State of California and also of the CITY OF NAPA, and/or COUNTY OF NAPA.

19. The acts and omissions of all Defendants as set forth herein were at all material times pursuant to the actual customs, policies, practices and procedures of the Defendants CITY OF NAPA and/or COUNTY OF NAPA.

20. Plaintiff brings these claims as a Private Attorney General, to vindicate not only his and KAYLEIGH'S own rights but others' rights of great importance.

21. This complaint may be pled in the alternative pursuant to California law.

GENERAL ALLEGATIONS

22. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

23. On or about January 30, 2014, KAYLEIGH SLUSHER died in her home due to prolonged and severe child abuse, torture and neglect committed by her mother's boyfriend Ryan Scott Warner and/or her mother, Sara Krueger, at 2060 Wilkins Avenue, Apt. 7, in the City of Napa, County of Napa, California. KAYLEIGH was three years old.

24. The public preliminary hearing in the murder cases against Mr. Warner and Ms. Krueger occurred on November 9 and 10, 2015, revealing many of the facts here. Further facts were revealed in discovery and depositions in this matter.

25. The claims herein, as well as federal constitutional claims, were pending in the United States District Court for the Northern District of California from May 29, 2015, until December 7, 2016. On December 7, 2016, United States District Judge Sandra Brown Armstrong issued an order dismissing the federal claims and declining to exercise supplemental jurisdiction over the state law claims, necessitating the filing of this matter in this Court. In her Order of

1 December 7, 2016, Judge Armstrong noted: “Pursuant to 28 U.S.C. § 1367(d), the statute of
2 limitations with respect to these claims shall be tolled during the time period that this suit has been
3 pending and for thirty (30) days following entry of this Order, unless California law provides for a
4 longer tolling period.” *Slusher v. City of Napa*, N.D. Ca. Case No. 4:15-cv-02394-SBA, Docket
5 No. 126, p. 15:23-26.
6

7 26. On April 4, 2017, this Court overruled Defendants' demurrers in this case, finding in
8 pertinent part:

- 9 a. Causation is a question of fact that cannot be resolved on demurrer;
- 10 b. Defendants' assertion that CANRA imposes no mandatory duty on Defendant
11 police officers is not well founded;
- 12 c. Plaintiffs seek injunctive relief to prevent the deaths of other children for
13 failing to comply with mandatory duties, and seek to confer a significant benefit to the public, so the
14 Court denied Defendants' motions to strike Plaintiffs' allegations of Private Attorney General status
15 and entitlement to Cal. Code Civ. Proc. § 1021.5 relief;
- 16 d. It is a question of law whether a statute creates a mandatory duty or a mere
17 obligation to perform a discretionary function, and as a matter of law mandated reporters have
18 mandatory duties which are governed by an objective standard;
- 19 e. CANRA requires mandated reporters to report suspected child abuse or
20 neglect when they know of, or reasonably suspect, child abuse or neglect;
- 21 f. The failure to make the mandated report when confronted with allegations of
22 child abuse or neglect is a breach of that mandatory duty;
- 23 g. It is clear from the statutory language and case law that CANRA imposes a
24 mandatory duty on Defendants to report abuse and neglect to other agencies [mandated reports must
25 be made to CWS, law enforcement, and the District Attorney under CANRA];
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1 h. The alleged failure to report such abuse and neglect is a dereliction of that
2 mandatory duty under CANRA;

3 i. Plaintiffs have provided a statutory basis for liability under Cal. Gov. Code §
4 815.6;

5 j. Plaintiffs' allegations establish the requisite malice and despicable conduct
6 necessary to support a claim for punitive damages, and the Court denied Defendants' motion to
7 strike Plaintiffs' punitive damages claim.
8

9 27. At all relevant times herein, Decedent KAYLEIGH SLUSHER was a minor and was
10 a resident of the County of Napa and the City of Napa. On information and belief, KAYLEIGH
11 SLUSHER had been a Dependency client of County of Napa CWS from approximately October
12 2010 until approximately April 2012. It is extremely unusual for a child welfare case to be open for
13 eighteen months, and keeping a case open longer than six months requires justification.
14

15 28. According to the Report of the National Commission to Eliminate Child Abuse and
16 Neglect Fatalities, a prior Child Protective Services ("CPS") report, regardless of the outcome, is the
17 single strongest predictor of a child's potential risk for injury death before the age of 5. ("Within
18 Our Reach: A National Strategy to Eliminate Child Abuse and Neglect Fatalities," 2016 Report of
19 the National Commission to Eliminate Child Abuse and Neglect Fatalities, pp. 25-26,
20 https://www.acf.hhs.gov/sites/default/files/cb/cecanf_final_report.pdf). Children who have a prior
21 CPS *report* are nearly six times more likely to die of death from intentional injuries. (*Id.*).
22 Kayleigh had not only a CPS report, but a case that remained open for eighteen months.

23 29. Prior to KAYLEIGH's death, her grandmother Robin Slusher and others informed all
24 Defendants, sometimes on multiple occasions, that KAYLEIGH was suffering abuse, neglect and
25 was in immediate physical danger in her home due to the conduct, crimes, and activities of Mr.
26 Warner and Ms. Krueger, including but not limited to abuse of unlawful controlled substances with
27 those substances being accessible to KAYLEIGH.
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1 30. KAYLEIGH SLUSHER was born on May 3, 2010.

2 31. KAYLEIGH SLUSHER and her mother Sara Krueger lived with KAYLEIGH'S
3 grandparents and JASON SLUSHER's parents, Robin and Benny Slusher, for over a year. In
4 addition, when KAYLEIGH moved from Robin and Benny Slusher's home into an apartment with
5 her mother, Sara Krueger, Robin and Benny Slusher paid for Ms. Krueger's rent and telephone
6 expenses for several months so that KAYLEIGH could have a safe place to live and contact with
7 her family.
8

9 32. In addition, Robin and Benny Slusher frequently had custody of KAYLEIGH for
10 overnight and weekend visits, and frequently had her with them during the day, even when
11 KAYLEIGH did not live full-time in the Slushers' house. The parties lived near each other, in the
12 City of Napa, and Robin and Benny Slusher saw KAYLEIGH regularly.
13

14 33. In or around October 2013, Ms. Krueger began denying Robin and Benny Slusher
15 their usual access to, and contacts with, their granddaughter KAYLEIGH. During this time,
16 Plaintiff JASON SLUSHER was in prison for a crime unrelated to his relationship with
17 KAYLEIGH SLUSHER, and he was not able to protect his daughter.
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19 34. During this time, Plaintiffs are informed and believe and thereon allege that Ms.
20 Krueger was using illegal drugs and had moved Ryan Warner, who was also using illegal drugs and
21 had a criminal history involving violence and a warrant for his arrest, into her home, thereby
22 endangering the life and safety of KAYLEIGH SLUSHER. Both Ms. Krueger and Mr. Warner
23 were using, among other illegal drugs, methamphetamine, marijuana, and prescription drugs
24 without a proper prescription. Despite repeated attempts by Robin Slusher to see her
25 granddaughter, Ms. Krueger repeatedly refused Robin access to KAYLEIGH for a matter of
26 months.
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1 35. On or about January 8, 2014, Defendant GARRETT WADE of the Napa Police
2 Department was dispatched to go to KAYLEIGH SLUSHER'S home on patrol. Ms. Krueger's
3 landlord called to report that a man (Ryan Warner) with a warrant for his arrest was living with Ms.
4 Krueger and KAYLEIGH. The landlord also reported that she was trying to get Ms. Krueger
5 evicted for having Mr. Warner live with her because it violated the terms and conditions of her
6 housing. Defendant WADE knew from prior contacts with JASON SLUSHER that JASON
7 SLUSHER's daughter KAYLEIGH lived at the home, and knew or should have known that the
8 reported circumstances would have been dangerous for a small child. Defendant WADE chose not
9 to go to KAYLEIGH's home despite being dispatched to do so, ignored the call, and wrote no report
10 of either the call or his refusal to go to KAYLEIGH's home.
11

12 36. On or about January 22, 2014, after multiple repeated requests by Robin Slusher to
13 see her granddaughter KAYLEIGH, Ms. Krueger finally allowed KAYLEIGH to go to a movie
14 with Mrs. Slusher. However, Ms. Krueger insisted on coming to the movie as well, and did not
15 allow KAYLEIGH any time alone with Mrs. Slusher. Mrs. Slusher saw a large bruise on
16 KAYLEIGH's face, KAYLEIGH was extremely hungry, and KAYLEIGH cried when Ms. Krueger
17 refused her request to go to Mrs. Slusher's house after the movie.
18

19 37. The following day, on or about January 23, 2014, Robin Slusher contacted NPD to
20 request a welfare check on KAYLEIGH. Robin Slusher called Defendant NPD to inform the police
21 that KAYLEIGH may be suffering severe abuse, neglect, was in immediate physical danger, and to
22 request police intervention to save KAYLEIGH. Mrs. Slusher called anonymously because she did
23 not want Ms. Krueger to learn she had called the police and preclude her from seeing KAYLEIGH.
24 It is undisputed that California law encourages people like Robin Slusher, who are not mandated
25 reporters, to make anonymous reports of suspected child abuse and neglect, for the safety of
26 children. People may make reports of child abuse anonymously because they worry if the child's
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1 caregiver knew they were making the report, it would endanger the child or the caregiver would
2 deprive them of access to the child.

3 38. During the January 23, 2014, call, Mrs. Slusher informed Defendant NPD that
4 KAYLEIGH was living in a dangerous household with "Ryan," whose last name she did not know,
5 but who had a warrant for his arrest. Mrs. Slusher informed Defendant NPD that Mr. Warner and
6 Ms. Krueger were using illegal drugs such as "crank" (methamphetamine) in KAYLEIGH'S home,
7 and she was worried about whether or not KAYLEIGH was being given enough food and for
8 KAYLEIGH's safety.

9 39. On or about January 23, 2014, around 6:10 p.m., Defendant WADE was dispatched
10 to go to KAYLEIGH SLUSHER's home at 2060 Wilkins Avenue, Apt. 7, for a warrant arrest. On
11 information and belief, Defendant WADE was advised that a man who lived there (Mr. Warner),
12 had an outstanding warrant for his arrest. In the course of his warrant duties and his dispatch to
13 execute the arrest warrant at KAYLEIGH's household, but before going to the home, Defendant
14 WADE learned new information that a small child of three or four years old, KAYLEIGH, was in
15 immediate physical danger due to Mr. Warner's and Ms. Krueger's illicit drug use in the home at
16 2060 Wilkins Avenue, Apt. 7, due to Mr. Warner's and Ms. Krueger's failure to provide food to
17 KAYLEIGH, due to drug users coming in and out of the home at all hours, and due to possible
18 physical violence against KAYLEIGH. On information and belief, Defendant WADE was also
19 advised that Mr. Warner stays inside the home with Kayleigh all the time, smokes all the time, uses
20 "Crank," and he might be armed.

21 40. Rather than perform the warrant arrest or a welfare check or any investigation into
22 KAYLEIGH 's safety and well-being, Defendant WADE decided not to go to the apartment where
23 KAYLEIGH lived, not to investigate further, not to report suspected child abuse or neglect even to
24 Child Welfare Services (CWS) and the Napa County District Attorney as he was legally mandated
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1 to do, not to seek further advice, assistance, or backup, not to serve any warrant there, and not to
2 arrest any fugitive who may be living with KAYLEIGH and using drugs around her, and instead
3 Defendant WADE cleared the call. Defendant WADE chose not to investigate the report of child
4 abuse and/or neglect in KAYLEIGH's home, because he determined that the environment in which
5 KAYLEIGH lived was not safe for him or his partner to go there: "I decided it was not safe for me
6 or my partner to go to the residence," and "cleared the call" without any action. Despite the law's
7 encouragement that people report suspected child abuse anonymously, Defendant Wade testified
8 that he believes anonymous information is "completely unreliable, and there is no way to follow up
9 with what that person said." (Wade Deposition, p. 80:14-18).

11 41. When asked, if KAYLEIGH's apartment was not safe enough for Defendant Wade
12 and his partner to go there, how was it safe enough KAYLEIGH, Defendant Wade responded, "I
13 think I would be speculating if I answered that. I don't know." (Wade Dep. p. 94:13-17). Out of
14 his fear for his own safety, Defendant Wade left 3-year-old KAYLEIGH SLUSHER in an abusive
15 and deadly environment, never asked another officer to do the warrant arrest he was afraid to do,
16 never asked his Sergeant or supervisors to assign someone else to do the warrant arrest or welfare
17 check he was afraid to do, and did not even make a note in the computer dispatch record that he
18 refused to go to KAYLEIGH's home because he was afraid, preventing other officers from
19 following up on the call.
20

22 42. Defendant Wade also chose not to write any report of the call or his refusal to go to
23 KAYLEIGH's home as he was dispatched to do.

25 43. In fact, no NPD Defendant wrote any report of their calls or contacts concerning
26 KAYLEIGH SLUSHER until after their Lieutenant ordered them to do so, after KAYLEIGH was
27 found dead.
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1 44. At all relevant times, Defendant WADE was a Mandated Reporter under the
2 California Child Abuse and Neglect Reporting Act ("CANRA"), including California Penal Code
3 §11165.7. Despite the fact that Defendant WADE knew, had reason to know and/or reasonably
4 suspected that KAYLEIGH was suffering child abuse and/or neglect, Defendant WADE failed to
5 investigate and/or report the abuse and neglect as required by California Penal Code §§ 11164 *et*
6 *seq.*, 11165.9, and 11166. Defendant WADE never made any report of child abuse and/or neglect in
7 relation to KAYLEIGH to Napa County CWS, the Napa County Sheriff's Department, the District
8 Attorney, any other Napa Police Department officer who might have a modicum of courage and
9 willingness to do the job Defendant WADE refused to do, or any other authority.
10

11 45. Defendant WADE was dispatched to do something else (serve an arrest warrant)
12 when he learned about, but did not investigate or report, evidence of Kayleigh's severe injuries,
13 abuse, and neglect. If Defendant WADE had gone to KAYLEIGH's home on January 23, 2014, as
14 he had been dispatched to arrest Ryan Warner, he would have further seen that KAYLEIGH was
15 gaunt, malnourished, had sunken eyes with dark circles under them with facial bruises that her
16 neighbors had seen, and had multiple bruises and blunt force injuries about her body, including her
17 face, head, neck, arms, legs, front torso, back torso, and buttocks. In addition, by January 23, 2014,
18 KAYLEIGH had suffered a broken left posterior 10th rib, which would have been excruciatingly
19 painful, causing extreme pain every time she took a breath or moved her torso. On autopsy, that rib
20 fracture was noted to be in a healing stage such that the fracture was at least two weeks old at the
21 time of KAYLEIGH's death on January 30, 2014.
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23 46. If Defendant WADE had gone to KAYLEIGH's home on January 23, 2014, as
24 required, he would have seen new and additional evidence of the extreme child abuse to which she
25 was subjected, and been **required**, based on generally accepted law enforcement standards and
26 training, to take her into protective custody, obtain medical treatment for her, and immediately
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1 report the suspected child abuse to Child Welfare Services, law enforcement, and the Napa County
2 District Attorney, among other things.

3 47. On or about January 24, 2014, KAYLEIGH's neighbor called 911 to report a loud
4 and physical domestic dispute at KAYLEIGH's home. Defendants made no report of that call, and
5 the only evidence of the call is from the neighbor who reported it and made a second report three
6 days later.
7

8 48. On or about the morning of January 27, 2014, according to Defendant ROBERT
9 CHAMBERS, Defendant officers ROBERT CHAMBERS and GARRETT SMITH of the Napa
10 Police Department were dispatched to KAYLEIGH's home due to the same neighbor's report of a
11 domestic disturbance that was becoming physical, with subjects inside KAYLEIGH'S apartment
12 yelling and a loud commotion. The neighbor called 911 to report this domestic dispute, and told the
13 dispatcher he had also called 911 to report a domestic dispute three days earlier, the previous
14 Friday.
15

16 49. Defendant CHAMBERS admits this was a possible domestic violence call.
17 (Chambers Dep. p. 39:12-21). Children are "absolutely" at particular risk when there is domestic
18 violence. (Chambers Dep. p. 48:3-6). In fact, cases in which there is a child exposed to domestic
19 violence present a high risk of child endangerment, must be investigated urgently, and CWS [and
20 the District Attorney] must, by law, be informed and investigate. (Chamber Dep. pp. 66:7-67:25,
21 68:1-9, Diaz-Lara Dep. p. 73:1-14).
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23 50. At all relevant times, these Defendants were Mandated Reporters under the
24 California Child Abuse and Neglect Reporting Act ("CANRA"), including California Penal Code
25 §11165.7. These Defendants knew, had reason to know and/or reasonably suspected that
26 KAYLEIGH was suffering child abuse and/or neglect, and failed to investigate and/or report the
27 abuse and neglect as required by California Penal Code §§ 11164 *et seq*, 11165.9, and 11166.
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1 Based on their mandatory duties under CANRA, and generally accepted law enforcement standards
2 and training, and based on facts and information they knew and/or must have known as described in
3 succeeding paragraphs, Defendant officers CHAMBERS and SMITH were **required** to take
4 KAYLEIGH into protective custody, obtain medical treatment for her, and immediately report the
5 suspected child abuse to Child Welfare Services and the Napa County District Attorney, among
6 other things. These Defendants never made any report of child abuse and/or neglect in relation to
7 KAYLEIGH to Napa County CWS, the District Attorney, or any other authority, never made any
8 mandated investigation, never took KAYLEIGH into protective custody, and never obtained
9 medical care for her.
10

11 51. Defendants CHAMBERS AND SMITH also never wrote any report of their contact
12 with KAYLEIGH and her mother, or of the call, until they were ordered to do so by their Lieutenant
13 after KAYLEIGH was found dead.
14

15 52. Defendants CHAMBERS and SMITH were dispatched to investigate something else
16 (a domestic disturbance) when they observed, but did not investigate or report, evidence of
17 Kayleigh's severe injuries, abuse, and neglect. By the time of Defendants CHAMBERS' and
18 SMITH's investigation at KAYLEIGH'S home on the morning of January 27, 2014, KAYLEIGH
19 was obviously suffering from severe child abuse and neglect. She was "emaciated" according to the
20 autopsy report and had a paucity of fatty tissue due to malnutrition. She was also dehydrated.
21 While KAYLEIGH's height of 41" long was in the 90th percentile for her age, her weight, 34
22 pounds, was in the 20th percentile. KAYLEIGH had dark bruising around her eyes, and her eyes
23 and cheeks were sunken in. She had a huge, 4" bruise on the front of her forehead, and another
24 large bruise on her left temple. She had multiple bruises from blunt force trauma to her face, head,
25 neck, arms, legs, back, torso and buttocks. She had 8 to 15 individual bruises and abrasions to her
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1 abdomen. All of this information was readily apparent and/or available to Defendant officers
2 CHAMBERS and SMITH.

3 53. Many of the bruises were in the healing phases, and up to a week or two old, and
4 Defendants CHAMBERS and SMITH also observed evidence that would sustain an objective
5 suspicion that different, previously unreported incidents or instances of child abuse had occurred.
6

7 54. Also by the time of Defendants CHAMBERS' and SMITH's investigation on
8 January 27, 2014, KAYLEIGH had suffered the blunt force trauma blow to her abdomen that would
9 lead to her death. Although she had multiple blunt force injuries to her abdomen, one was with so
10 much force it caused hemorrhage to the front of her lumbar spine and another was so forceful that it
11 tore a hole in her small intestine, causing stool to leak into the sterile area of her abdomen, the
12 peritoneum, and become infected.

13 55. Immediately upon suffering the abdominal trauma, KAYLEIGH would have been
14 "clearly and demonstrably ill" according to child abuse pediatrician James Crawford-Jakubiak,
15 M.D., who is the director of the child abuse pediatrics center at Oakland Children's Hospital and
16 testified in the preliminary hearing on behalf of Defendant NAPA COUNTY's District Attorney.
17

18 56. Both Joseph I. Cohen, M.D. -- the pathologist who performed the autopsy on
19 KAYLEIGH on behalf of Defendant NAPA COUNTY -- and Dr. Crawford-Jakubiak confirmed
20 that the small intestine injury to KAYLEIGH would have been immediately extremely painful.
21

22 57. Then when the infectious peritonitis developed, KAYLEIGH would have been in
23 even more, "agonizing" and "excruciating" pain.

24 58. As the infection wore on, it caused extremely painful necrosis -- death -- of twelve
25 inches of KAYLEIGH'S small intestine, and KAYLEIGH would have been "in agony."

26 59. Both physicians confirmed that the small intestine injury and infection were
27 survivable, if KAYLEIGH had received medical attention.
28

1 60. The fatal abdominal injury was present for four or more days before KAYLEIGH
2 died, and she would have survived if she had received medical attention.

3 61. Defendant Officers CHAMBERS and SMITH saw KAYLEIGH in this grave and
4 life-threatening medical condition with obvious signs of abuse over time and did not question her,
5 examine her, conduct any child abuse investigation, report the suspected abuse to anyone, take
6 KAYLEIGH into protective custody, or obtain necessary medical care for her, despite their
7 mandatory duties under law and applicable standards to do all of those. No reasonable officer
8 would have failed to examine and question KAYLEIGH, conduct a thorough child abuse
9 investigation, immediately report the suspected abuse to CWS, the District Attorney and other
10 officials, take KAYLEIGH into protective custody, or obtain emergency medical care for her.
11

12 62. During this time, even neighbors had noticed KAYLEIGH, who was normally a
13 happy and playful child who often played outside, had now become withdrawn, sullen, and had
14 developed dark circles under her eyes, had bruises on her face, and was not allowed to play outside.
15 Defendant Officers never even asked KAYLEIGH's neighbors what they had witnessed during this
16 time.
17

18 63. Instead, Defendant CHAMBERS claims he told KAYLEIGH she had "pretty blue
19 eyes." KAYLEIGH's eyes were not blue -- a fact Defendant CHAMBERS would have seen if he
20 had even looked at KAYLEIGH.
21

22 64. Also on or about January 27, 2014, Robin Slusher contacted Napa County CWS by
23 phone and reported to Defendant CWS Worker DIAZ-LARA – who spoke directly with Robin
24 Slusher and learned in the first instance – that there had been a CWS dependency case open for
25 KAYLEIGH in the past, and that Ms. Krueger and her boyfriend were using drugs together, which
26 Ms. Slusher believed to be crank or crack or cocaine, in the home. Robin Slusher further directly
27 informed Defendants through Ms. DIAZ-LARA that the drugs were accessible to KAYLEIGH, Ms.
28

1 Krueger was isolating KAYLEIGH from everybody, Ms. Krueger did not want to be seen because
2 of how she looked due to her drug usage, Robin Slusher was concerned that KAYLEIGH was not
3 getting enough food.

4 65. Furthermore, the COUNTY DEFENDANTS through Ms. DIAZ-LARA were
5 informed that KAYLEIGH had an open CWS case from October 4, 2010, to April 30, 2012, an
6 abnormally long time; the alleged perpetrator had access to the child; it is unknown whether the
7 physical condition of the home presented a health or safety hazard to the child; KAYLEIGH's
8 mother had mental health problems and may be Bipolar; the parent was not protecting the child; the
9 parent was not meeting the child's basic needs; the family had relationships with others that
10 compromised the child's health and safety; there was a history of criminal behavior and a warrant
11 arrest for the boyfriend of KAYLEIGH's mother; and KAYLEIGH was in a vulnerable population
12 due to substance abuse and young age (0 to 5 years old).
13
14

15 66. According to the sworn deposition testimony of both Defendant DIAZ-LARA, and
16 LEFLER-PANELA, Defendant ADAMS was in charge of deciding whether a call would be
17 investigated by CWS or "evaluated out" meaning closed without any investigation. Defendant
18 DIAZ-LARA filled out an Emergency Response Referral Form which contained the information
19 that Robin Slusher provided to her and gave the form to Defendant ADAMS. Knowing the facts set
20 forth in ¶¶ 64-65 above, Defendant ADAMS chose to close out the referral without any
21 investigation whatsoever.
22

23 67. Defendant ADAMS wrote on the CAT Response Determination Assessment "RP
24 [Reporting Party] can call police, No allegation on child, other than may get into/accessable. We
25 can't do a search. Call RP, they can ask for welfare check." Defendant ADAMS then directed
26 social services worker LEFLER-PANELA to call Robin Slusher and inform her that there was
27 nothing CWS could do, and Mrs. Slusher could call the police instead.
28

1 68. Defendant LEFLER-PANELA called Robin Slusher, told her there was nothing
2 CWS could do, and she could call the police. At no time did Defendant LEFLER-PANELA make
3 the mandated child abuse report, or inquire whether any other mandated reporter had made the
4 legally required report.

5 69. Defendant ADAMS is also a mandated reporter. Even though he made the
6 completely incorrect decision to “evaluate out” the call and do nothing, he was still required to
7 cross-report to the District Attorney’s office and law enforcement. Defendant ADAMS gave no
8 explanation or reason why he chose to close the call about KAYLEIGH with no investigation.

9 70. The fact that Defendant ADAMS was also a mandated reporter did not relieve
10 Defendants DIAZ-LARA and LEFLER-PANELA of their mandatory reporting duties, and they
11 knew they were required to cross report to law enforcement and the District Attorney’s office, and
12 failed to do so.

13 71. While two or more mandated reporters who have joint knowledge of a suspected
14 instance of child abuse or neglect may coordinate and agree among them that one of them will make
15 the immediate mandated telephone report followed by the required written report, Defendants
16 ADAMS, DIAZ-LARA and LEFLER-PANELA never communicated with each other to coordinate
17 which of them would make the mandated report, and they each chose not to make the mandated
18 report.

19 72. While Defendant DIAZ-LARA knew she was a mandated reporter required to report
20 suspected child abuse and neglect from Robin Slusher’s call to the DA and the police, she can’t
21 think of why she failed to make that mandated report. (Diaz-Lara Dep. pp. 139:20-140:2).
22 However, she assumed her supervisor, Defendant KEN ADAMS, was going to assign someone to
23 investigate the call about KAYLEIGH’s health and safety, which he did not do. (Diaz-Lara Dep.
24 pp. 146:4-17). At the time of the KAYLEIGH SLUSHER call, Ms. DIAZ-LARA knew the case
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1 should not have been evaluated out, but should have been investigated. (Diaz-Lara Dep. p. 157:17-
2 21).

3 73. Defendants ADAMS, LEFLER-PANELA, and DIAZ-LARA all chose not to comply
4 with their mandatory duties to report the suspected child abuse and neglect to law enforcement and
5 the Napa County District Attorney.

6 74. Defendants ADAMS, LEFLER-PANELA and DIAZ-LARA had the mandatory
7 duties to respond, investigate and/or report the abuse and/or severe neglect under California law,
8 including California Penal Code §§ 11165.9 and 11166, California Welfare and Institutions Code §§
9 328, 10553, 10554, 16501, 16504, and California Department of Social Services Child Welfare
10 Services Regulations §§ 31-100, 31-101, 31-105, 31-110, 31-115, 31-120, 31-125, 31-130, and 31-
11 501. These mandatory duties include, but are not limited to:

- 12 a) The duty to report suspected child abuse or neglect to the police or sheriff's
13 department and to the Napa County District Attorney (P.C. §§ 11165.9 and
14 11166(j)); DSS Regulations Ch. 31-501, and Mandated Report Form);
- 15 b) The duty to immediately refer the case by telephone, fax, or electronic
16 transmission to an agency with proper jurisdiction, if the agency that takes a
17 report lacks jurisdiction (P.C. §11165.9);
- 18 c) The duty to make "an initial report by telephone to the police or sheriff's
19 department as soon as is practicably possible," and to "prepare and send, fax, or
20 electronically transmit a written follow-up report within 36 hours of receiving
21 the information" concerning the abuse and/or neglect (P.C. §11166(a));
- 22 d) The duty to "immediately make any investigation he or she deems necessary to
23 determine whether child welfare services should be offered to the family and
24 whether proceedings in the juvenile court should be commenced" (W&I §328);
- 25 e) The duty to "respond to any report of imminent danger to a child immediately"
26 (W&I §16501(f));
- 27 f) The duty to make "an immediate in-person response" in "emergency situations"
28 (W&I §16504(a));
- g) The duty to "respond to all referrals for service which allege that a child is
endangered by abuse, neglect, or exploitation" (DSS Regulations Ch. 31-101.1);

- 1
- 2 h) The duty to "immediately initiate and complete the Emergency Response
- 3 Protocol process" and to "record all available and appropriate information on
- 4 the Emergency Response Protocol Form" (DSS Regulations Ch. 31-105);
- 5 i) The duty to conduct an in-person immediate investigation when the "emergency
- 6 response protocol indicates the existence of a situation in which imminent
- 7 danger to a child, such as physical pain, injury, disability, severe emotional
- 8 harm or death, is likely" (DSS Regulations Ch. 31-115);
- 9 j) The duty to request law enforcement assistance where "the physical safety of
- 10 family members. . .is endangered" (DSS Regulations Ch. 31-130);
- 11 k) Other duties as provided by law and regulations.

12 75. According to the sworn deposition testimony of Defendant DIAZ-LARA, Defendant

13 ADAMS implemented policies in direct violation of these mandatory duties by requiring immediate

14 response only for physical injury, sexual abuse, law enforcement report, or a small child found on

15 the street. Defendants ADAMS and NAPA COUNTY also did not require any mandated report or

16 immediate report for child neglect, in direct contravention of California law and regulations, and

17 even though the mandated reporting law is the "Child Abuse *and Neglect* Reporting Act."

18 (Emphasis added). It was Defendant ADAMS who chose whether a child abuse report would be

19 investigated or closed.

20 76. NAPA COUNTY does not even train its social workers about the mandatory

21 reporting law. (Diaz-Lara Dep. p. 20:10-24).

22 77. Defendant NAPA COUNTY's Child Welfare Services department has a computer

23 program that prompts the filing of a mandated cross report, but it does not include cases of child

24 neglect. Despite the fact that the mandated reporting is required by the Child Abuse and *Neglect*

25 Reporting Act, in Napa County there is no automatic cross-reporting of neglect, again in violation

26 of California law. (Diaz-Lara Dep. p. 26:7-23). If the computer does not generate the automatic

27 report, Defendant DIAZ-LARA does not make the state-mandated cross-report. (Diaz-Lara Dep. p.

28 35:6-15).

1 78. Defendants NAPA COUNTY and ADAMS do not even require an immediate
2 telephone cross-report of child neglect to law enforcement and the DA, although such a report is
3 required by California law. (Diaz-Lara Dep. pp. 8-19, 38:11-14). Defendants NAPA COUNTY
4 and ADAMS have never explained to Defendant DIAZ-LARA why they exempt child neglect from
5 the mandatory cross-reporting requirements of CANRA. (Diaz-Lara Dep. pp. 39:19-41:1).

6
7 79. The NAPA COUNTY Grand Jury has reported that the County's CWS training
8 program is inadequate, and it is difficult for Licensed Clinical Social Workers to get the necessary
9 training to meet their LCSW requirements. Defendant DIAZ-LARA agrees with this criticism, and
10 the fact that the core training and education for CWS workers in the COUNTY has been
11 insufficient. Ms. DIAZ-LARA received no child abuse hotline training before she was required to
12 answer child abuse hotline calls. (Diaz-Lara Dep. pp. 62:18-65:13).

13
14 80. In addition, NAPA COUNTY used the outmoded "Comprehensive Assessment Tool
15 (CAT)" system for evaluating emergency child abuse and neglect calls, for years after it was
16 generally accepted to be an outmoded and inadequate system. The COUNTY only began using the
17 more generally and widely accepted "Structured Decision Making (SDM)" system after California
18 law mandated that all counties use the SDM system in 2016. Defendant COUNTY has still not
19 provided its social workers any policies, procedures, or guidelines for using the SDM tools. (Diaz-
20 Lara Dep. p. 76:18-21).

21
22 81. Under the SDM system, the only reasons to "evaluate out" a call and do nothing are
23 if there is no child under age 18, the call is a duplicate referral that contains no new information,
24 there is a referral to another county, or the call is about harm occurring in a group home, residential
25 treatment facility, or other institution. (Diaz-Lara Dep. pp. 154:7-156:20). If a supervisor decides
26 to "evaluate out" a call that does not meet these criteria, he has to provide justification, and the only
27 justifications recognized are insufficient information to locate the child or family, another
28

1 community agency has jurisdiction, or the report was historical information only. (Diaz-Lara Dep.
2 p. 156:9-20). If NAPA COUNTY were using the generally accepted SDM tool instead of the
3 outdated CAT tool at the time the call came in concerning KAYLEIGH, Defendant ADAMS would
4 not have been allowed to "evaluate out" the call and do nothing.

5
6 82. In addition, NAPA COUNTY simply had newly employed social workers shadow
7 another social worker for a few days before assigning them the high-risk task of conducting child
8 abuse hotline evaluations. A responsible CWS department would spend several weeks training the
9 social worker before having her handle calls.

10 83. NAPA COUNTY views a child abuse call that a child is not being fed, the parents
11 are using drugs in the presence of the child, and the drugs are accessible to the child, as a case
12 requiring a response within 10 days. According to generally accepted CWS policies and
13 procedures, this type of case requires an immediate response and home visit.

14
15 84. When NAPA COUNTY does require a mandated report, it only requires the paper
16 report to be mailed, not faxed. (Diaz-Lara Dep. p. 160:11-17).

17 85. Like the CITY OF NAPA, NAPA COUNTY also did no internal investigation of
18 KAYLEIGH's death. And, even after KAYLEIGH's death, NAPA COUNTY still violates the law
19 and does not make child neglect a mandated reporting circumstance. (Diaz-Lara Dep. p. 166:12-
20 21). Even after KAYLEIGH's torture and death, NAPA COUNTY continues to flout the mandated
21 reporting laws that would have saved her if they had been followed.

22
23 86. The NAPA COUNTY Defendants knew or should have known that KAYLEIGH's
24 young age and the fact that she had already been the subject of a Child Welfare Services
25 dependency case put her at a heightened risk of death or serious bodily injury from abuse or neglect.

26 87. Indeed, according to the 2016 report of the National Commission to Eliminate Child
27 Abuse and Neglect Fatalities, KAYLEIGH had the following risk factors for death from child
28

1 maltreatment: social isolation, young parents (her mother was 20 when she was born), single
2 parent, and parent who struggles with mental health or substance abuse or domestic violence
3 (KAYLEIGH's mother had all three). (“Within Our Reach: A National Strategy to Eliminate Child
4 Abuse and Neglect Fatalities,” 2016 Report of the National Commission to Eliminate Child Abuse
5 and Neglect Fatalities, p. 25, https://www.acf.hhs.gov/sites/default/files/cb/cecanf_final_report.pdf).

6
7 88. A prior CPS report, regardless of the outcome, is the single strongest predictor of a
8 child's potential risk for injury death before the age of 5. (National Commission Report, p. 26).
9 Children who have a prior CPS report are nearly six times more likely to die of death from
10 intentional injuries. (*Id.*). KAYLEIGH had not only a prior CPS report, but a prior CPS case that
11 was open for eighteen months, an extremely long time.

12
13 89. Despite the fact that Defendants ADAMS, LEFLER-PANELA and/or DIAZ-LARA
14 knew, had reason to know and/or reasonably suspected that KAYLEIGH was suffering child abuse,
15 severe neglect, and an emergency situation, with deliberate indifference to the rights and safety of
16 KAYLEIGH SLUSHER, they violated their mandatory duties to respond, investigate and/or report
17 the abuse and/or neglect as required by law, including but not limited to California Penal Code §§
18 11165.9 and 11166, California Welfare and Institutions Code §§ 328, 10553, 10554, 16501, 16504,
19 and California Department of Social Services Child Welfare Services Regulations §§ 31-100, 31-
20 101, 31-105, 31-110, 31-115, 31-120, 31-125, 31-130, and 31-501.

21
22 90. Further, Defendants ADAMS, LEFLER-PANELA and/or DIAZ-LARA failed or
23 refused to accept reports of suspected child abuse and/or severe neglect without legal justification
24 and did not properly maintain a record of all reports received as mandated by Penal Code § 11165.9.

25
26 91. Defendants ADAMS, LEFLER-PANELA and/or DIAZ-LARA wrongfully delivered
27 child protective services by failing to conduct an assessment and develop a case plan as mandated
28 by DSS Regulations §§ 31-201, 31-205, 31-206 and/or Welfare and Institutions Code §16501.1.

1 92. Even though Defendants ADAMS, LEFLER-PANELA, DIAZ-LARA and/or DOE
2 CWS Workers received reports of abuse and/or severe neglect, they violated their mandatory
3 statutory and regulatory duties by choosing not to conduct a basic evaluation of risks to determine
4 whether an emergency situation existed as mandated by Welfare and Institutions Code § § 16504
5 and/or DSS Regulations § § 31-101, 31-105, 31-110, 31-115, 31-120 and/or 31-128.
6

7 93. Even though Defendants ADAMS, LEFLER-PANELA, DIAZ-LARA and/or DOE
8 CWS Workers received reports of abuse and/or severe neglect, they violated their mandatory
9 statutory and regulatory duties by choosing not to control the conduct of Ryan Warner and/or Sara
10 Krueger, and/or otherwise protect KAYLEIGH as mandated by Welfare and Institutions Code § §
11 16501 and 16504.
12

13 94. Defendants ADAMS, LEFLER-PANELA and/or DIAZ-LARA violated their duties
14 as mandated reporters to report suspected child abuse and/or severe neglect to appropriate
15 authorities including law enforcement and the District Attorney, and to make initial reports or
16 follow up reports within 36 hours of receiving said reports of abuse and/or severe neglect as
17 mandated by Penal Code § § 11165.9 and 11166(a). Rather, Defendants told Robin Slusher there
18 was nothing they could do and Robin Slusher could call the police instead.
19

20 95. The NAPA COUNTY Defendants, including ADAMS, DIAZ-LARA, LEFLER-
21 PANELA and other DOE Defendants, knew that there had been an earlier CWS case open for
22 KAYLEIGH from October 2010 until April 30, 2012. KAYLEIGH had been governed by a CWS
23 case for more than half of her short life. Defendant DIAZ-LARA admitted that when Robin Slusher
24 called CWS to report the danger KAYLEIGH was in, Defendants would have had access to
25 KAYLEIGH's entire juvenile dependency file and that nothing prevented Defendant DIAZ-LARA
26 from accessing it. These Defendants knew that KAYLEIGH's mother was not protecting
27 KAYLEIGH and was not meeting KAYLEIGH's basic needs, knew that KAYLEIGH'S mother had
28

1 relationships that compromised KAYLEIGH's health and safety, knew that there was a warrant for
2 the arrest of the boyfriend of KAYLEIGH's mother (Mr. Warner), and knew that KAYLEIGH was
3 vulnerable due to her young age and substance abuse in her home. These Defendants further knew
4 that Ms. Krueger was reported using illegal drugs in KAYLEIGH's home, the drugs were accessible
5 to KAYLEIGH, Ms. Krueger was isolating herself and KAYLEIGH from others due to the drug
6 use, and Ms. Krueger and her boyfriend (Mr. Warner) were using drugs together. Despite all of
7 these facts and the obvious risk of death or serious injury to KAYLEIGH, these NAPA COUNTY
8 Defendants, including ADAMS, DIAZ-LARA, LEFLER-PANELA and other DOE Defendants,
9 chose to "evaluate out" KAYLEIGH's case and do absolutely nothing, in blatant violation of their
10 duties as mandated reporters. Generally accepted rules and standards for the investigation of
11 allegations of child abuse and neglect required these Defendants to provide an immediate,
12 emergency response in this case, and cross-report the allegations to law enforcement and the
13 District Attorney immediately. Defendants did none of these required things, in violation of their
14 duties as mandated reporters and their duties according to generally accepted standards for the
15 investigation of child abuse and neglect.

18 96. In addition, Defendant NAPA COUNTY's policies, practices, training, and
19 procedures – created, maintained, implemented, and/or enforced by ADAMS, DIAZ-LARA,
20 LEFLER-PANELA and other DOE Defendants – for evaluating reports of suspected child abuse
21 and neglect were inadequate and negligent, including Defendants' use of outdated forms and
22 policies for evaluating reported abuse and neglect.

24 97. On or about January 29, 2014, around 5:58 p.m., Robin Slusher again contacted the
25 Napa Police Department to inform them that her granddaughter was in grave danger, and to request
26 police assistance. The NPD again dispatched Defendant WADE, this time to do a welfare check,
27 for KAYLEIGH's benefit, at KAYLEIGH's home, located at 2060 Wilkins Avenue, Apt. 7.
28

1 Defendant WADE spoke with Robin Slusher on the telephone, who told Defendant WADE that
2 KAYLEIGH was in immediate physical danger due to Mr. Warner's and Ms. Krueger's illegal drug
3 use in the home, their failure to provide food and care to KAYLEIGH, and possible physical
4 violence against KAYLEIGH. Mrs. Slusher told Defendant WADE that she had not been allowed
5 to talk with her granddaughter, KAYLEIGH, since approximately Thanksgiving; that she believed
6 KAYLEIGH's mother, Ms. Krueger, was using drugs and allowing others to use drugs in
7 KAYLEIGH's home, possibly crack cocaine or "crank" (methamphetamine); that KAYLEIGH was
8 not being fed; and that when Mrs. Slusher has attempted to check on or see her granddaughter, Ms.
9 Krueger has refused and told her that KAYLEIGH has been sick since Thanksgiving.
10

11 98. On information and belief, Defendant WADE requested Defendant NPD Officer
12 DOMINIC DEGUILIO to act as his cover officer, and the two Defendant officers visited
13 KAYLEIGH 's residence on or about January 29, 2014, around 8:47 p.m. On information and
14 belief, the following facts in this paragraph occurred at that time. Ms. Krueger refused Defendants
15 permission to enter the home to perform a welfare check on KAYLEIGH, and Defendants were
16 aware that Ms. Krueger actively tried to conceal the inside of her home from the officers by closing
17 the front door against her body and peeking her head out to talk to them. During that visit, Ms.
18 Krueger brought KAYLEIGH to the front door and Defendants WADE and DEGUILIO observed
19 the large and multiple bruises on KAYLEIGH 's face described above. Defendants could not see
20 the rest of KAYLEIGH's body, including her arms and legs, which were covered by her clothes.
21 Defendants did nothing to investigate whether KAYLEIGH had injuries that were covered by her
22 clothes. Defendants saw a man walk out of a back bedroom and look very surprised to see the
23 officers there. Defendants saw that that man appeared to be very malnourished, with sunken
24 cheekbones, and appeared to be a drug user, and was intoxicated on methamphetamine. That man
25 told Defendants his name was "Ryan Howard," and that he did not have, and he could not find, any
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1 identification. Defendants ran a records check on "Ryan Howard," and dispatch was unable to
2 locate any match. Defendants later learned that the man who claimed to be "Ryan Howard" was
3 actually "Ryan Warner." When Defendants first encountered Ryan "Howard" (Warner) at
4 KAYLEIGH's home, Defendants determined that he was under the influence of a controlled
5 substance, based on their training and experience due to his appearance and obvious symptoms of
6 drug intoxication. Ryan Warner admitted to Defendants that he had used marijuana and Ms.
7 Krueger's prescription pain medication that day, illegally, without a prescription for it. Defendants
8 entered the residence. Defendants did not search the residence, nor did Defendants observe every
9 room, or whether or not there were weapons or illegal drugs, or whether there was sufficient food
10 for KAYLEIGH. While Defendants were there, another man walked out of a back bedroom, whom
11 Defendants recognized from past contacts as Allen Epperson, a well-known methamphetamine
12 addict who was currently on probation for using and dealing drugs. Mr. Epperson attempted to
13 quickly leave the residence, and Defendants detained him for a probation search. Defendants never
14 asked Mr. Epperson any questions about KAYLEIGH or her welfare, or what was going on in the
15 home. Defendants ignored the complete mess with broken dishes in the kitchen, and did not look to
16 see whether or not KAYLEIGH had any food or liquids available to her. While KAYLEIGH was
17 sitting on Ms. Krueger's lap on a couch, Defendants saw KAYLEIGH vomit, which was caused by
18 the infectious peritonitis and necrotic small intestine that was killing her. Ms. Krueger stated that
19 KAYLEIGH had the flu, and immediately took KAYLEIGH into the bathroom, away from the
20 officers. Defendants WADE and DEGUILIO also observed that KAYLEIGH appeared gaunt, sick,
21 malnourished, and distressed, with the dark circles under her eyes that her neighbors had recently
22 noticed, and that she had huge bruises on her face and head. Physicians have testified at the
23 preliminary hearing that KAYLEIGH was "in agony" and extreme pain at this time, and would have
24 verbalized her suffering. However, Defendants made no attempt to speak with KAYLEIGH or to
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1 speak with Mr. Epperson about what was going on in KAYLEIGH's home, his observations, or
2 KAYLEIGH's welfare. Ms. Krueger told Defendants to leave, and Defendants followed her orders
3 and left. Defendant WADE later determined that the man claiming to be "Ryan Howard" had lied
4 to them about his identity, and that he was actually Ryan Warner. On information and belief,
5 Defendants WADE and DEGUILIO also confirmed that there was an active arrest warrant for Ryan
6 Warner and/or legal cause for his immediate arrest, yet made no effort to arrest Ryan Warner.
7 Defendants made no effort to obtain a warrant to re-enter KAYLEIGH's home, search
8 KAYLEIGH's home, or arrest anyone in KAYLEIGH's home. Defendants did not even go back to
9 KAYLEIGH's home and arrest Ryan Warner on the outstanding arrest warrant they knew he had.
10 Defendant WADE then called Robin Slusher and lied to her, telling her that everything appeared
11 normal at KAYLEIGH's home, and that KAYLEIGH had food. Defendant WADE also admits he
12 promised and reassured Robin Slusher that he would "keep an eye on the apartment."
13

14
15 99. At the time of their investigation on January 29, 2014, Defendants WADE and
16 DEGUILIO saw that KAYLEIGH had the above-described severe and multiple bruises, including a
17 4" bruise on her forehead and another bruise on her left temple. She would have appeared to them
18 as an "extremely sick" child, "in agony" from the infectious peritonitis and necrotic bowel.
19 Defendants WADE and DEGUILIO observed evidence that would sustain an objective suspicion
20 that different, previously unreported incidents or instances of child abuse had occurred.
21

22 100. In addition, the video recordings of police interviews of Ryan Warner and Sara
23 Krueger were played in open court during the preliminary hearing in November 2015, are in the
24 public record, and revealed that both Mr. Warner and Ms. Krueger had been intoxicated on
25 methamphetamine and awake for a couple of days at the time Defendants WADE and DEGUILIO
26 came to their apartment on January 29, 2014. After the Defendant NPD officers left without doing
27 any substantive investigation into KAYLEIGH's welfare, Ms. Krueger became hysterical and
28

1 concerned that the police may take her daughter away from her, causing her to want to flee the area
2 and not take KAYLEIGH for the emergency medical care she urgently needed. Ms. Krueger and
3 Mr. Warner told the police they stayed up with KAYLEIGH while she continued to vomit
4 repeatedly after Defendants left the apartment, until approximately 4:00 in the morning on January
5 30, 2014. They then fell asleep for approximately twelve hours and discovered KAYLEIGH
6 deceased and nude on the bathroom floor in the afternoon on January 30, 2014.
7

8 101. Even Allen Epperson, the known methamphetamine addict who was at
9 KAYLEIGH'S home at the same time as Defendant Officers WADE and DEGUILIO on January
10 29, 2014, noted and later informed police that KAYLEIGH was hollow and sick looking with
11 multiple bruises on her face at that time. If Defendants had questioned Mr. Epperson about his
12 observations, he would have confirmed that Ms. Krueger and Mr. Warner were intoxicated on
13 methamphetamine when Defendants went to KAYLEIGH's apartment; Ms. Krueger had already
14 made a mess in the apartment including by smashing dishes in the kitchen before the Defendants
15 arrived; and KAYLEIGH had obvious bruises on her face and looked sick and hollow when
16 Defendants were there.
17

18 102. According to generally accepted police practices and training, police officers are
19 trained they must interview and examine a child who is a possible abuse victim outside the presence
20 of her caregivers because children are often afraid to speak of abuse in the presence of their
21 caregivers, and officers must inspect the child's body for evidence of abuse. If Defendants had
22 followed generally accepted police practices and training, they would have interviewed and
23 examined KAYLEIGH outside the presence of her mother and Ryan Warner, and would have been
24 required immediately to take her into protective custody and obtain immediate medical treatment
25 for her, which would have saved her life.
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1 103. Defendant Officers WADE and DEGUILIO saw KAYLEIGH in this grave and life-
2 threatening medical condition with obvious signs of abuse and did not question her, examine her,
3 conduct any child abuse investigation, report the suspected abuse to anyone, take KAYLEIGH into
4 protective custody, or obtain necessary medical care for her, despite their mandatory duties under
5 law and applicable standards to do all of those things. No reasonable officer would have failed to
6 examine and question KAYLEIGH, conduct a thorough child abuse investigation, immediately
7 report the suspected abuse to CWS, the District Attorney, and other officials, take KAYLEIGH into
8 protective custody, or obtain emergency medical care for her.
9

10 104. If Defendants had followed generally accepted police practices and training,
11 Defendants would have discovered Ryan Warner had an extensive criminal history including but
12 not limited to, upon information and belief, assault and possession of drugs, and he had a restraining
13 order entered against him for threatening to kill his pregnant ex-girlfriend, including telling her for
14 example, "I hope the kid dies or is born retarded," "snitches get dealt with," "You'll get what's
15 coming to you," "I hope you and it die in the process," "I've been on the run many times," "I will
16 scalp you," "I'll bust your teeth out with a pipe like mine were," and the woman was "not worthy of
17 having" his child.
18

19 105. Plaintiffs are informed and believe and thereon allege that Defendant WADE
20 violated his promise to Robin Slusher, and never went back to the apartment before KAYLEIGH
21 died. On information and belief, Defendant WADE also did not ask any other member of the NPD
22 to monitor the apartment or report the incident to any other officer, NAPA COUNTY CWS, the
23 District Attorney, or any other party.
24

25 106. At all relevant times, Defendants WADE, DEGUILIO, CHAMBERS and SMITH
26 were Mandated Reporters under the California Child Abuse and Neglect Reporting Act
27 ("CANRA"). On information and belief, Defendants WADE, DEGUILIO, CHAMBERS and
28

1 SMITH violated their mandatory duties to investigate and/or report the abuse and neglect as
2 required by California Penal Code § § 11164 *et seq*, 11165.9, and 11166, despite knowing, having
3 reason to know and/or reasonably suspecting that KAYLEIGH was suffering severe and sustained
4 child abuse and neglect. Neither Defendants WADE, DEGUILIO, CHAMBERS nor SMITH ever
5 made any report of suspected child abuse and/or neglect in relation to KAYLEIGH to Napa County
6 CWS, District Attorney, or any other agency or authority.

8 107. No Defendant officer ever conducted the child abuse investigation required of them
9 by California law and generally accepted police training, practices, and procedures, including
10 interviewing and examining KAYLEIGH outside the presence of her mother. No Defendant officer
11 ever took KAYLEIGH into protective custody or procured emergency medical treatment for her, as
12 required by generally accepted police training, practices, and procedures and their mandatory duties.
13 No Defendant officer made an immediate report of suspected child abuse to CWS and the District
14 Attorney as required by their mandatory duties under California law. No Defendant officer even
15 spoke to KAYLEIGH's neighbors, who would have informed Defendants that KAYLEIGH used to
16 be allowed to ride her bicycle outside and was always a happy and joyful child in the past; but now
17 she was sick, gaunt, malnourished, had facial bruises and dark circles under her eyes, and her
18 mother had been keeping her locked in her house and not allowing her outside to play.

20 108. Robin Slusher relied on the representations of Defendant WADE that everything
21 appeared normal with KAYLEIGH and at KAYLEIGH's home, that there was food for
22 KAYLEIGH in the home, and that officers would "keep an eye on the apartment." Those
23 representations were false. Had Mrs. Slusher known the truth about what transpired during
24 Defendants' welfare check on KAYLEIGH, she and her husband, Benny Slusher, would have taken
25 immediate action to protect KAYLEIGH, including making further efforts to seek protection for
26 KAYLEIGH from the NPD and the Napa County CWS, contacting other authorities or child
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1 advocates for assistance, personally going to KAYLEIGH's home, or engaging in other self-help to
2 try to protect KAYLEIGH. Instead, KAYLEIGH's grandparents relied to their (and KAYLEIGH's)
3 detriment on Defendants' false representations that everything appeared normal at KAYLEIGH's
4 home, and that the NPD would monitor the apartment to protect KAYLEIGH.

5 109. The Defendant Officers' failure to take KAYLEIGH into protective custody and take
6 her to a hospital caused KAYLEIGH to die of the untreated abdominal trauma, infectious peritonitis
7 and small intestine necrosis.

8 110. The Napa Police Department does not require its officers to complete a report of
9 their contacts with citizens by the end of their shifts, contrary to generally accepted national
10 standards for law enforcement report writing. Thus, no Defendant police officer wrote any report of
11 their being dispatched to, or any contacts and observations at, KAYLEIGH's home the five times
12 they were dispatched there from January 8, 2014, before her death on January 30th. They only
13 wrote reports after their Lieutenant ordered them to, after KAYLEIGH was found dead.

14 111. The Napa Police Department has no internal affairs division (Chambers Dep. p.
15 12:9-13), and did no internal investigation of its officers' handling of the several calls to
16 KAYLEIGH's home in the days before she died, and did nothing to investigate the criminal
17 misconduct of its officers in failing to follow their mandated reporting duties, which is a
18 misdemeanor. Cal. Pen. Code § 11166(b).

19 112. It was totally within Defendant WADE's discretion not to write a report of his
20 welfare check on Kayleigh, according to the NPD and in direct contravention of generally accepted
21 national standards for report writing. (Wade Dep. p. 154:7-14). Defendant SMITH also testified he
22 was not required to file any report concerning his contact with Kayleigh on January 27, 2014.
23 (Smith Dep., p. 39:1-4).

1 113. Despite the legal requirement that the state-mandated Suspected Child Abuse Report
2 Form be sent to both CWS and the District Attorney's office, the Napa Police Department allows its
3 officers to just fax the form to CWS, and not to the DA, even after KAYLEIGH's death, again in
4 blatant violation of California law. (Wade Dep. p. 163:1-164:14).

5 114. And, again in violation of California law, the Napa Police Department only requires
6 its employees to make the legally mandated cross-report, if the officer decides, based on probable
7 cause, that child abuse has actually occurred. (Wade Dep. p. 71:4-19). The law requires the
8 mandated report be filed if there is reason to suspect child abuse or neglect.
9

10 115. Before KAYLEIGH's death, the Napa Police Department did not even require its
11 employees to cross-report suspected child abuse when the 911 call comes in. (Smith Dep. p. 18:17-
12 19:4). While Defendants say they now require a cross report, because the California Supreme Court
13 reminded them it is legally required, they still do not require the legally mandated cross-report to
14 the District Attorney.
15

16 116. Furthermore, neither the CITY OF NAPA nor NAPA COUNTY require their
17 mandated reporters to sign the legally required statement that they have knowledge of the
18 requirements of the Child Abuse and Neglect Reporting Act (CANRA) and will comply with them,
19 Cal. Pen. Code § 11166.5(a). This failure resulted in Defendant DEGUILIO not even knowing
20 what "CANRA" means, and further resulted in all Defendants' failure to understand, appreciate,
21 and comply with their mandated duties.
22

23 117. Every single Defendant in this case blatantly violated his/her duty to make the
24 mandated report, and their failures to make the mandated report constituted a misdemeanor
25 punishable by up to six months in jail, a \$1,000 fine, or both, Cal. Pen. Code § 11166(b), and also
26 subjects the Defendants to civil liability for damages. Neither the CITY OF NAPA nor NAPA
27 COUNTY, including the County's District Attorney, ever even investigated their employees'
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1 criminal failure to comply with their mandated duties. Neither the CITY OF NAPA nor NAPA
2 COUNTY questioned, investigated, disciplined, or even counseled their employees about their
3 blatant disregard for their statutory, mandatory duties that resulted in KAYLEIGH's death in this
4 case.

5
6 118. The California Legislature has determined that the purpose of the child protection
7 law "is to provide maximum safety and protection for children who are currently being physically,
8 sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety,
9 protection, and physical and emotional well-being of children who are at risk of that harm." Cal.
10 Welf. & Inst. Code § 300.2. Likewise, in enacting the CANRA, the Legislature determined that
11 "The intent and purpose of this article is to protect children from abuse and neglect." Cal. Penal
12 Code § 11164(b). "In any investigation of suspected child abuse or neglect, all persons
13 participating in the investigation of the case shall consider the needs of the child victim and shall do
14 whatever is necessary to prevent psychological harm to the child victim." *Id.*

15
16 119. In addition, the California Legislature has determined that "The provision of a home
17 environment free from the negative effects of substance abuse is a necessary condition for the
18 safety, protection and physical and emotional well-being of the child." Cal. Welf. & Inst. Code §
19 300.2.

20
21 120. All Defendants were trained that people who are using methamphetamine or other
22 controlled substances can be violent, volatile, and are unsafe for children to be around. All
23 Defendants were trained that caregivers who are using methamphetamine or other controlled
24 substances may fail to give their children necessary food, liquids, and basic necessities.

25 121. Through their volitional, intentional, and deliberately indifferent acts, omissions, and
26 misrepresentations, Defendants WADE, DEGUILIO, CHAMBERS AND SMITH affirmatively
27 placed KAYLEIGH SLUSHER in danger, exposing her to a danger which she would not have
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1 otherwise faced, and leaving her in a situation that was more dangerous than the one in which they
2 found her. These Defendants did so by going to KAYLEIGH's home, thereby tipping off Ryan
3 Warner and Sara Krueger that police were monitoring them and interested in them, while at the
4 same time violating their mandatory duties as described above, and causing Ryan Warner and Sara
5 Krueger to conceal KAYLEIGH within their apartment and to not seek medical care for
6 KAYLEIGH – including taking KAYLEIGH to a hospital – for fear that police would arrest them,
7 or would remove KAYLEIGH from them, if they (Warner and Krueger) did anything so
8 conspicuous. On information and belief, Sara Krueger decided as a result of the Defendant Napa
9 police officers' visits to KAYLEIGH's home, in which the police did no investigation and took no
10 action to protect KAYLEIGH, that too much police attention was being directed at the home and
11 Ms. Krueger decided to flee instead of taking KAYLEIGH for necessary medical care. Defendants'
12 conduct in this matter increased the danger to KAYLEIGH.
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15 122. Leaving KAYLEIGH in a highly abusive home, and denying her the necessary life-
16 saving medical care and protective custody she needed while she was a helpless three-year-old
17 toddler with obvious extensive evidence of severe child abuse, was reckless, malicious, oppressive,
18 and despicable.

19 123. If Defendants had complied with their mandatory duties, the mandatory outcomes
20 included immediately and thoroughly conducting an emergency investigation of child abuse,
21 immediately reporting the abuse to CWS, the police, sheriff, District Attorney, and other law
22 enforcement, examining and questioning KAYLEIGH outside the presence of her caregivers,
23 immediately taking KAYLEIGH into protective custody, and immediately taking KAYLEIGH to
24 the emergency room for the life-saving emergency medical treatment KAYLEIGH needed.
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1 124. Both Doctors Cohen and Crawford-Jakubiak confirmed that KAYLEIGH was likely
2 to survive the abdominal injuries, infection, and necrotic bowel if she had received medical
3 attention, including surgical repair of the small intestine and antibiotic treatment for the infection.

4 125. On or about February 1, 2014, NPD Officers including Defendant CHAMBERS
5 were informed by an anonymous caller that something had happened to KAYLEIGH, and they went
6 to her home to do a welfare check on her. When NPD Officers arrived there, they discovered
7 KAYLEIGH SLUSHER in her bed, deceased, with the extensive evidence of ongoing and severe
8 child abuse described above. Although KAYLEIGH'S body was covered up to her neck with
9 blankets, KAYLEIGH had "obvious facial injuries," and "obvious facial trauma consisting of large
10 contusions on her fore [sic] head, face, and neck" that were in "various stages of healing." Her eyes
11 were sunken in, "with dark bruising around her eyes." The CITY OF NAPA Fire Department noted
12 KAYLEIGH "was found to have multiple bruises over the entire body. She showed heavy trauma
13 around the eyes and face." Defendants CHAMBERS, SMITH, WADE, and DEGUILIO would
14 have observed these severe injuries on KAYLEIGH when they saw her shortly before her death,
15 and were required to conduct a child abuse investigation and take her into protective custody and
16 obtain life-saving medical care for her.

17 126. On February 1, 2014, KAYLEIGH's home was in a shambles, "very messy and
18 unkempt," the sink was "overflowing with dirty dishes" and there was a mess all over the floors.
19 The refrigerator was empty except for condiments and a single bottle of Pedialyte.

20 127. The NAPA COUNTY District Attorney reported that KAYLEIGH died due to
21 multiple blunt force trauma with impact injuries to her head, torso and extremities, child abuse and
22 neglect, and on or about April 8, 2015, added torture to the criminal allegations against Mr. Warner
23 and Ms. Krueger. The NAPA COUNTY Coroner's pathologist, Dr. Cohen, determined the cause of
24 KAYLEIGH'S death to be complications of mesenteric contusions and small intestine hematoma,
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1 due to multiple blunt impact injuries to head, torso, and extremities, due to fatal child abuse and
2 neglect. He determined that KAYLEIGH suffered from “fatal child abuse and neglect *over time*
3 leading to death.” (Emphasis added).

4 128. On exterior examination (just looking at the skin), much of KAYLEIGH’s abdomen
5 was green from the infection. When Dr. Cohen cut into KAYLEIGH’S abdomen, 450 milliliters –
6 about two cups – of free-flowing, bloody and infectious fluid drained out of her abdomen. It took
7 several days for this bloody fluid to build up.

9 129. While Defendants neglected their mandated reporting and investigating duties,
10 Defendant CHAMBERS and his colleague surveilled KAYLEIGH SLUSHER's funeral at the
11 direction of their Lieutenant.

12 130. Defendants' failure to investigate and/or report the abuse and/or neglect and failure to
13 take KAYLEIGH into protective custody and obtain emergency medical treatment for her and
14 blatant violation of their mandatory duties was without legal justification, caused great pain and
15 suffering to KAYLEIGH and JASON SLUSHER, and caused KAYLEIGH SLUSHER’s death.
16 These injuries, including but not limited to prolonged physical abuse, torture, neglect and death,
17 were of the type the California Legislature intended to prevent in enacting the Child Abuse and
18 Neglect Reporting Act (CANRA), Penal Code § 11164 *et seq.*, and Welfare and Institutions Code
19 §§ 300, 305 *et seq.*, 10550, 10553, 10554, and 10651. All Defendants either (1) learned facts in the
20 first instance that KAYLEIGH was suffering abuse and neglect, and/or (2) learned that KAYLEIGH
21 was suffering abuse and neglect after they were dispatched to her home for some other reason,
22 and/or (3) after arriving at KAYLEIGH’s home, observed evidence that would sustain an objective
23 suspicion that different, previously unreported incidents or instances of child abuse had occurred.
24 Additionally, Defendants' affirmative acts and omissions, including failure to investigate, report,
25 intervene and/or protect KAYLEIGH SLUSHER from known and foreseeable harms, including
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1 physical and sexual abuse, torture and death, created danger and increased the risk of harm to
2 KAYLEIGH. Defendants further created danger and increased the risk of harm to KAYLEIGH,
3 through their affirmative acts and omissions, by going to KAYLEIGH's home without taking any
4 action, and by lying to Robin Slusher about KAYLEIGH's condition and creating a false sense of
5 security and safety in KAYLEIGH's family who wished to protect KAYLEIGH from harm. In
6 addition, Defendants increased the risk of harm to KAYLEIGH by going to her apartment and
7 doing nothing, which informed Ms. Krueger and Mr. Warner that the police were informed of
8 Kayleigh's condition and caused their further avoidance of necessary medical care for KAYLEIGH,
9 including causing Ms. Krueger to decide to flee the area instead of taking KAYLEIGH for
10 emergency medical care. All Defendants acted recklessly, maliciously, fraudulently, oppressively,
11 and despicably and caused KAYLEIGH's extreme and ongoing torture, agonizing pain and
12 suffering, mental and emotional distress, and death.
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15 131. Investigation and/or reporting of child abuse and/or neglect is mandatory under the
16 California Child Abuse and Neglect Reporting Act, Penal Code § 11164 *et seq.*, Welfare and
17 Institutions Code §§ 10550, 10553, 10554, and 10651, and is intended by law for the benefit and
18 protection of children such as KAYLEIGH SLUSHER. Such investigation and/or reporting is
19 mandatory, ministerial, and is not discretionary under the CANRA, as this Court has already found.
20 Defendants unreasonably and unjustifiably violated their mandatory duties to investigate and/or
21 report the abuse and/or neglect suffered by KAYLEIGH SLUSHER, despite Plaintiffs' statutory and
22 constitutional entitlement to investigation and/or reporting under California law. Defendants
23 violated Plaintiffs' rights by failing to respond to, investigate and/or report child abuse and neglect
24 as mandated by the CANRA, and failing to remove KAYLEIGH from her obviously abusive and
25 dangerous home and seek emergency medical care for her, as required by generally accepted law
26 enforcement standards and training. As a direct result of Defendants' conduct, including conduct
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1 that increased the risk of harm to Kayleigh Slusher, and Defendants' failure to investigate and/or
2 report child abuse and/or neglect as required by California law, Plaintiff KAYLEIGH SLUSHER
3 suffered loss of life and liberty, and Plaintiff JASON SLUSHER suffered loss of his familial
4 relationship with his daughter, including loss of love, companionship, comfort, affection, society,
5 services, solace, and moral support.

6
7 132. At all material times, and alternatively, the actions and omissions of each Defendant
8 were intentional, wanton and/or willful, conscience shocking, reckless, malicious, fraudulent,
9 oppressive, deliberately indifferent to KAYLEIGH SLUSHER's and JASON SLUSHER's rights
10 and safety, done with actual malice, grossly negligent, negligent, objectively unreasonable, and
11 despicable. Defendants' wrongful acts and omissions and violations of statutory and otherwise
12 mandatory duties were substantial factors in causing Plaintiffs' injuries, damages and losses set
13 forth herein.

14
15 133. As a direct and proximate result of each Defendant's acts and/or omissions as set
16 forth above, Plaintiff sustained the following injuries and damages, past and future, among others:

- 17 a. Wrongful death of KAYLEIGH SLUSHER (pursuant to CCP 377.60);
18 b. Hospital and medical expenses (pursuant to CCP 377.20);
19 c. Coroner's fees, funeral and burial expenses (pursuant to CCP 377.20);
20 d. Loss of familial relationships, including loss of love, companionship,
21 comfort, affection, society, services, solace, and moral support (pursuant to
22 CCP 377.60);
23 e. Punitive damages against all individual defendants;
24 f. All damages, attorneys' fees, costs, and penalties recoverable under
25 California Code of Civil Procedure §1021.5, under CCP §§ 377.20 et seq.
26 and 377.60, and as otherwise allowed under California statutes, codes, and
27 common law.
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134. Plaintiff JASON SLUSHER, individually and as Successor in Interest to KAYLEIGH SLUSHER, Deceased, timely and properly filed tort claims pursuant to Cal. Gov. Code § 910 et seq., and this action is timely filed within all applicable statutes of limitation.

FIRST CAUSE OF ACTION
-- NEGLIGENCE AND NEGLIGENCE PER SE; PERSONAL INJURIES --
PLAINTIFFS KAYLEIGH SLUSHER, DECEASED, AND JASON SLUSHER AGAINST
ALL DEFENDANTS

135. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

136. At all times, each Defendant owed Plaintiffs KAYLEIGH SLUSHER, Deceased, and JASON SLUSHER the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

137. At all times, each Defendant owed Plaintiffs the duty to act with reasonable care. Furthermore, Defendants owed the mandatory duties to respond, investigate and/or report child abuse and/or neglect as required by law, including the California Child Abuse and Neglect Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 10550, 10553, 10554, and 10651 California Penal Code §§ 11165.9 and 11166, and by California Department of Social Services Child Welfare Services Regulations §§ 31-100, 31-105, 31-110, 31-115, 31-120, 31-125, 31-130, and 31-501. Pursuant to these mandatory duties, including well-established state-mandated standards, Defendants further owed Plaintiffs the duty to take KAYLEIGH into immediate protective custody and obtain emergency medical treatment for her.

138. The injuries suffered by Plaintiffs, including but not limited to sustained and severe physical abuse, torture, neglect, death by murder, loss of familial relationships and emotional distress were of the type the California Legislature intended to prevent in enacting the Child Abuse and Neglect Reporting Act, Penal Code § 11164 *et seq.*, Welfare and Institutions Code §§ 300 *et*

1 *seq.*, 305, 10550, 10553, 10554, and 10651, and were of the type the California Department of
2 Social Services Child Welfare Services intended to prevent in enacting Regulations §§ 31-100, 31-
3 105, 31-110, 31-115, 31-120, 31-125, 31-130, and 31-501.

4 139. On information and belief, the actions and/or omissions of DEFENDANTS WADE,
5 DEGUILIO, CHAMBERS, SMITH and DOES 2-25 were pursuant to the following customs,
6 policies, practices, and/or procedures of the CITY OF NAPA, which were directed, encouraged,
7 allowed, and/or ratified by policy making officers – who are currently unidentified DOE Defendants
8 – for the CITY OF NAPA, the NAPA POLICE DEPARTMENT:
9

- 10 a. To tolerate and permit the violation of mandatory duties to report and/or
11 investigate and/or take other mandatory action in response to reports of child
12 abuse and/or neglect (including those specific mandatory duties and
outcomes described herein);
- 13 b. To fail to use and require appropriate and generally accepted law
14 enforcement procedures and training in handling child abuse and/or neglect
reports and investigations;
- 15 c. To allow officers to fail to do their jobs or report their conduct in accordance
16 with generally accepted law enforcement procedures and training;
- 17 d. To fail to provide adequate training, policies and procedures concerning
18 CANRA and child abuse investigations, even instituting policies and training
that violate California law;
- 19 e. To not train its employees about the requirements of CANRA or require them
20 to sign the state-mandated CANRA acknowledgement form;
- 21 f. To fail to investigate the conduct, misconduct, and crimes of law enforcement
22 officers, including but not limited to failing to investigate officers'
23 misdemeanor failure to comply with their mandated reporting duties, and to
fail to even have an Internal Affairs division to investigate officer
misconduct;
- 24 g. To cover-up Defendants' incompetence and refusal to do their jobs by any or
25 all of the following:
 - 26 i. by failing to properly investigate and/or evaluate complaints or incidents
27 of failure to report and/or investigate reports of child abuse and/or
28 neglect;

- 1
- 2 ii. by ignoring and/or failing to properly and adequately investigate and
- 3 discipline unconstitutional or unlawful police activity; and
- 4
- 5 iii. by allowing, tolerating, and/or encouraging police officers to: fail to file
- 6 complete and accurate police reports; file false reports; make false
- 7 statements; intimidate, bias and/or “coach” witnesses to give false
- 8 information and/or to attempt to bolster officers’ stories; and/or obstruct
- 9 or interfere with investigations of unconstitutional or unlawful conduct,
- 10 by withholding and/or concealing material information;
- 11
- 12 h. To allow, tolerate, and/or encourage a “code of silence” among law
- 13 enforcement officers and police department personnel, whereby an officer or
- 14 member of the department does not provide adverse information against a
- 15 fellow officer or member of the department; and,
- 16
- 17 i. To fail to institute, require, and enforce necessary, appropriate and lawful
- 18 policies, procedures, and training programs to prevent or correct the
- 19 unconstitutional conduct, customs, and practices and procedures described in
- 20 this Complaint and in paragraphs (a) through (h), with deliberate indifference
- 21 to the rights and safety of Plaintiffs and the public, and in the face of an
- 22 obvious need for such policies, procedures, and training programs; and
- 23
- 24 j. To use or tolerate inadequate, deficient, and improper procedures for
- 25 handling, investigating, and reviewing complaints of officer and/or employee
- 26 misconduct made under California Government Code § 910 et seq.
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140. On information and belief, the actions and/or omissions of DEFENDANTS
ADAMS, LEFLER-PANELA, DIAZ-LARA and DOES 26-50 were pursuant to the following
customs, policies, practices, and/or procedures of the COUNTY OF NAPA, which were directed,
encouraged, allowed, and/or ratified by policy making officers – who are currently unidentified
DOE Defendants – for the COUNTY OF NAPA, and/or NAPA COUNTY CHILD WELFARE
SERVICES:

- 23 a. To tolerate and permit the violation of mandatory duties to report and/or
- 24 investigate and/or take other mandatory action in response to reports of child
- 25 abuse and/or neglect (including those specific mandatory duties and
- 26 outcomes described herein);
- 27
- 28 b. To fail to use and require appropriate and generally accepted child welfare
- services policies, procedures, and training in handling child abuse and/or
- neglect reports and investigations, including where removal of an abused

1 and/or neglected child and the provision of necessary, life-saving medical
2 care for the child, is required by generally accepted standards;

- 3 c. To use an outmoded and inadequate "CAT" assessment tool for years after
4 the "SDM" was generally accepted, only changing to the SDM tool when
5 California law required it, then to fail to provide any policies and training on
6 the SDM tool;
- 7 d. To not investigate or cross-report child neglect, in blatant violation of
8 California law;
- 9 e. To not train its employees about the requirements of CANRA or require them
10 to sign the state-mandated CANRA acknowledgement form;
- 11 f. To fail to provide adequate training, policies and procedures concerning
12 CANRA and child abuse investigations, even instituting policies and training
13 that violate California law;
- 14 g. To fail to institute, require, and enforce necessary, appropriate and lawful
15 policies, procedures, and training programs to prevent or correct the
16 unconstitutional conduct, customs, and practices and procedures described in
17 this Complaint and in paragraphs (a) through (f), with deliberate indifference
18 to the rights and safety of Plaintiffs and the public, and in the face of an
19 obvious need for such policies, procedures, and training programs; and
- 20 h. To use or tolerate inadequate, deficient, and improper procedures for
21 handling, investigating, and reviewing complaints of officer and/or employee
22 misconduct made under California Government Code § 910 et seq.

23 141. Defendants CITY OF NAPA and COUNTY OF NAPA – through DOES 2–50 –
24 failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline
25 Defendants, due to their programmatic failures in the face of the obvious need for appropriate
26 hiring, training, instruction, monitoring, supervision, evaluation, investigation, and discipline of
27 their employees and agents, including Defendants. Further, Defendants' violation of mandatory
28 duties, standards, and of Plaintiffs' rights, were so obvious and shocking, and the facts of this case
have received such widespread media and public attention, that DOE Defendant supervisors and
policy-makers for the CITY and COUNTY, respectively, must have known of these egregious
violations of law, standards, and training, and on information and belief decided to ratify and

1 endorse the conduct of the Defendants in this matter who are under their supervision and control.
2 On information and belief, discovery will reveal that the CITY's and COUNTY's deficient
3 programs – created, implemented, and enforced by Doe Defendants – for hiring, training,
4 instruction, monitoring, supervision, evaluation, investigation, and discipline of their employees and
5 agents, including Defendants, directly led to the egregious violations of mandatory duties,
6 standards, and Plaintiffs' rights described herein.
7

8 142. All Defendants, through their acts and omissions, breached each and every one of the
9 aforementioned duties owed to Plaintiffs.

10 143. Defendants' breaches of statutes, codes, regulations, law, standards, and mandatory
11 duties set forth herein also constitute negligence per se.

12 144. Defendants CITY OF NAPA and COUNTY OF NAPA are vicariously liable for the
13 conduct of their employees and agents pursuant to Cal. Gov. Code § 815.2, and for their employees'
14 breach of mandatory duties under Cal. Gov. Code § 815.6.
15

16 145. Plaintiffs bring this matter as Private Attorneys General, to enforce important rights
17 of great public interest, and are also entitled to reasonable attorneys' fees under Cal. Code Civ.
18 Proc. § 1021.5 and applicable California codes and laws, as well as costs.

19 146. Defendants subjected Plaintiffs to their wrongful conduct knowingly, recklessly,
20 grossly negligently, oppressively, fraudulently, maliciously, despicably, and with deliberate
21 indifference to Plaintiffs' rights and safety, and Plaintiffs are entitled to punitive damages and
22 penalties against the individual Defendants in this matter under California law. Plaintiffs do not
23 seek punitive damages against Defendant public entities.
24

25 147. As a direct and proximate result of Defendants' negligence and negligence per se,
26 Plaintiffs sustained injuries and damages, and against each and every Defendant are entitled to relief
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1 as set forth above at ¶ 133, including punitive damages against all Defendant law enforcement
2 officers and Defendant CWS workers under California law.

3 148. As a direct and proximate result of Defendants' conduct, KAYLEIGH SLUSHER
4 sustained injuries and damages, and through her survival claim against each and every Defendant is
5 entitled to relief permitted by C.C.P. § 377.10 et seq., including economic losses and punitive
6 damages described herein at ¶ 133, and including all damages allowed by California law, costs,
7 attorneys' fees, and civil penalties.

9 149. Defendants subjected KAYLEIGH SLUSHER to their wrongful conduct knowingly,
10 recklessly, grossly negligently, oppressively, fraudulently, maliciously, despicably, and with
11 deliberate indifference to Plaintiffs' rights and safety, and Plaintiffs are entitled to punitive damages
12 and penalties against the individual Defendants in this matter under California law. Plaintiffs do not
13 seek punitive damages against Defendant public entities.

14 WHEREFORE, Plaintiffs respectfully request the following relief against each and every
15 Defendant herein, jointly and severally:

- 16
- 17 a. Compensatory and exemplary damages in an amount according to proof and
18 which is fair, just and reasonable;
 - 19 b. Punitive damages under California law in an amount according to proof and
20 which is fair, just, and reasonable (punitive damages are not sought against
the City of Napa or the County of Napa);
 - 21 c. All other damages, penalties, costs, interest, and attorneys' fees as allowed by
22 Cal. Code Civ. Proc. § 1021.5 and California law;
 - 23 d. Injunctive relief, pursuant to California law, including but not limited to the
24 following:
 - 25 i. an order requiring Defendants to institute and enforce
26 appropriate and lawful policies and procedures for
27 complying with mandatory duties for handling reports and
28 investigations of child abuse and/or neglect;

- 1 ii. an order prohibiting Defendants and their law
2 enforcement officers and social workers from engaging in
3 the “code of silence” as may be supported by the evidence
4 in this case;
- 5 iii. an order requiring Defendants immediately to come into
6 compliance with CANRA’s requirement that all mandated
7 reporters immediately report reported or suspected child
8 abuse **and neglect** by telephone, and with the state-
9 mandated reporting form by fax or email, to law
10 enforcement, CWS, and the District Attorney;
- 11 iv. an order requiring Defendants to train all staff who are
12 mandated reporters regularly on the requirements of
13 CANRA, including with the California Department of
14 Social Services Child Abuse & Reporting Law
15 Handbook;
- 16 v. an order requiring Defendants to require all staff who are
17 mandated reporters to sign the legally required statement
18 that they know and will follow the requirements of
19 CANRA;
- 20 vi. an order requiring Defendants to train all staff on “Within
21 Our Reach: A National Strategy to Eliminate Child
22 Abuse and Neglect Fatalities” Report of the National
23 Commission to Eliminate Child Abuse and Neglect
24 Fatalities;
- 25 vii. an order requiring Defendants to require officers to write
26 a report of all contacts concerning allegations of child
27 abuse or neglect by the end of their shift if they are not
28 doing any further investigation, and to make the legally
 mandated cross reports;
- viii. an order requiring Defendants to revise policies,
 procedures and training to comply with CANRA;
- ix. an order requiring Defendants to train their law
 enforcement officers and social workers concerning
 generally accepted and proper tactics and procedures for
 handling reports and investigations of child abuse and/or
 neglect and this Court’s orders concerning the issues
 raised in injunctive relief requests i-viii, above;
- e. Such other and further relief as this Court may deem appropriate.

JURY DEMAND

Plaintiffs hereby request a trial by jury.

DATED: July 31, 2018

HADDAD & SHERWIN LLP



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