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City of San Diego
Risk Management Department
1200 Third Avenue, Suite 1000
San Diego, CA 92101

RE: The Arrest and Incarceration of Will Walters,

To Whom It May Concern:

Please take note that this office has been retained by Will X. Walters in relation to his illegal and unlawful arrest during the 2011 San Diego Gay Pride event. As outlined herein, Mr. Walters was inexplicably arrested for "public nudity" while wearing a gladiator type kilt over black underwear. Under any definition, he was not nude as his buttocks and genitalia were fully covered. Nonetheless, he was ushered out of the event, humiliated, arrested, and incarcerated. Mr. Walters files this claim, first and foremost, to enjoin the San Diego Police Department from selectively enforcing San Diego Municipal Code Section 56.53, "Nudity on Public Lands" in violation of the Fourteenth Amendment. Under this policy of selective enforcement, the San Diego Police Department allows women to wear G-strings and thong bathing suits at police monitored events on public land like the San Diego Over-The-Line Tournament, but does not allow gay men at the once a year San Diego Pride Festival to do the same. This is patently unfair and in violation of Equal Protection Clause of the Fourteenth Amendment. Mr. Walters also files this claim to hold those responsible for his illegal arrest and incarceration accountable under the law.

Will X. Walters is a 30 year old, Hispanic, gay, male, who is recovering from a physical disability due to a serious injury sustained when he was hit by a car as a pedestrian. He purchased a \$20 ticket and attended the San Diego LGBT Pride Festival (Festival) at Balboa Park, City of San Diego on the afternoon of July 16, 2011. He was dressed in leather gear consisting of boots, black leather gladiator kilt, black underwear, and a black leather harness with chrome rings. His genitals, pubic hair, buttocks, perineum, anus or anal region were fully covered by opaque material as required by San Diego Municipal Code Section 56.53(c). Mr. Walters had invested a significant sum of money in his leather gear and took special care to insure that he was compliant with the rules for the event.

The festival is viewed by Mr. Walters and his fellow community members as an important annual event in expressing the gay identity, reflecting on the ongoing struggle for Lesbian, Gay, Bisexual and Transgender (LGBT) civil rights. It is a celebration of pride for the gay community where gay and straight friends can honor the sacrifices and efforts of those civil leaders and activists that have worked throughout history to bring equality to all people. The events of that day only serve to demonstrate that although some progress had been made, there still is a long way to go. Intolerance is alive well, both inside and outside of the San Diego Police Department.

The festival is run by San Diego LGBT Pride (Pride) which is a 501(c)(3) non-profit organization whose stated mission is "fostering pride in and respect for all lesbian, gay, bisexual and transgender communities, locally and globally." Pride puts on the annual San Diego Pride Parade and Festival. As required by the City of San Diego, Pride pays the San Diego Police Department a significant sum to provide security at its annual events.

On presenting his admission ticket to Pride personnel, Mr. Walters was allowed into the chain link enclosed Festival grounds. He proceeded to the "Beer Garden," a separate enclosure within the Festival, where he presented his California Driver's License to verify his age and was admitted to the "Beer Garden" by Pride personnel. Mr. Walters was then approached by a professional photographer, who asked to take some pictures of Mr. Walters. After the photo session Mr. Walters and the photographer were having a private conversation concerning Mr. Walters' leather gear. Police Lieutenant Dave Nisleit eavesdropped on the Walters/photographer conversation and intruded to say that in his opinion Mr. Walters' leather gear was legally "borderline." Mr. Walters responded that he knew his uniform was legal and unless Lieutenant Nisleit was going to cite him, he was not interested in continuing the conversation and that he had no interest in the Lieutenant's personal opinion. The Lieutenant responded that "I am the authority and my opinion is the only one that matters." Lieutenant Nisleit then left Mr. Walters' immediate vicinity. Lieutenant Nisleit left Mr. Walters as he had found him, in the beer garden and free to leave, and with no reason to believe that he was in violation of any laws.

It should be noted that Mr. Walters had had a similar encounter during the 2010 Pride Festival when a female Police Officer approached him while he was wearing the same leather gear. She had said that, while his outfit was legal, it offended her personally and she felt that it was inappropriate for children to see it. Mr. Walters told her that unless she was going to cite him, he was uninterested in her personal opinion. The female Police Officer then departed.

After the encounter with Lieutenant Nisleit, Mr. Walters, still in the "beer garden," got into the ticket line to purchase a beverage ticket. Within minutes Mr. Walters became aware of a female Police Officer (Badge Number 3229) standing in close proximity. He was then almost immediately engaged by Police Sergeant Gary Mondesir who asked Mr. Walters to accompany him "outside."

When Mr. Walters asked why he had to leave, he received no response. Mr. Walters told Sergeant Mondesir that he had no interest in accompanying him anywhere unless he was under arrest or he was told why he was being detained. Mr. Walters was then physically seized by the

arm by Officer 3229 and forcibly taken outside the "beer garden" and then outside the festival to Juniper Street where he was surrounded by Sergeant Mondesir, Lieutenant Nisleit, Officer Ramirez, and Officer Gardner. Mr. Walters notified Sargent Mondesir that he would be recording the incident with his camera phone. The officers were joined by six private pride security personnel, including an individual by the name of Shawn Chamberlain, who identified himself as "Head of Pride Security." In full view of the SDPD Officers on the scene, Mr. Chamberlain knocked the camera from Mr. Walters' hands as he attempted to record the incident. SDPD ratified Mr. Chamberlain's conduct by continuing to forcibly detain Mr. Walters while taking no action against Mr. Chamberlain.

Sergeant Mondesir officially placed Mr. Walters under arrest by stating "You are under arrest" and Officer Gardner wrote Mr. Walters a citation for a violation of Municipal Code Section 56.53(c) "Nudity on Public Lands." Mr. Walters repeatedly asked what specifically about his person/uniform was in violation. He received no response. Sergeant Mondesir waved the citation in front of Mr. Walters, and while denying Mr. Walters the right to read the citation, demanded that he sign it in order to be released or Mr. Walters would be taken to jail. When Mr. Walters protested that since he was being cited for nudity, the Police would undoubtedly immediately re-arrest him the minute he walked away, Sergeant Mondesir assured him that he had a "grace period" during which he could go home to change clothing. As Mr. Walters was on foot, lives in Point Loma (a good two hour walk away), and would be fully visible to the public the whole way home, such a "grace period" seemed unrealistic given the charge. He did not trust Sergeant Mondesir to be telling him the truth, especially as Sergeant Mondesir would not allow Mr. Walters to read the citation. In fact, not only did Sargent Mondesir refuse to allow Mr. Walters to read the citation, he refused to explain how it was that Mr. Walters was in violation of the Municipal Code's prohibition on "public nudity." When Mr. Walters declined to sign the citation he was handcuffed and arrested. The handcuffs were put on so tightly that his wrists bled. At Chamberlain's command to "Get him out of here" Mr. Walters was placed in a police car and driven to Police Headquarters by Officer E. Ramirez and Officer S. Gardner.

Lieutenant Nisleit and Sergeant Mondesir are self-professed "experts" on Municipal Code 56.53(c) which prohibits the showing of "buttocks." They were engaged by Pride to teach the classes to Pride's major float participants and Pride personnel about public nudity. Lieutenant Nisleit and Sergeant Mondesir knew or had reason to know the true definition of "buttocks;" which Webster's Dictionary defines as 1. either of the rounded parts at the back of the hips; either of the rumps. 2. either rounded half of the lower part of the back together forming the part on which a person sits; the seat of the body. 3. The back of a hip that forms one of the fleshy parts on which a person sits. Mr. Walters' outfit showed no "buttocks" as defined by Webster's and as commonly understand by the public at large. Lieutenant Nisleit acknowledged as much when he opined that in his personal view Mr. Walters' leather gear was simply "borderline."

At the Police Headquarters Mr. Walters was relieved of his leather harness and personal possessions. He was then driven, wearing only his kilt, underwear and boots to San Diego County Jail by Officers Ramirez and Gardner. On the way, the Police Officers spotted a homeless man in the street. The officers left to attend the homeless man, leaving Mr. Walters in

the Police car with the windows rolled up, the air conditioner off and the engine running. It was the peak of the afternoon on a hot summer day. Mr. Walters was soon perspiring profusely, his head started to hurt and he was dry heaving which are all classic symptoms of heat exhaustion. In desperation, Mr. Walters pounded on the window and door of the police car to get the officers' attention. On returning to the car, Officer Ramirez said "I would call you a 'drama queen,' but I would get in trouble with my superiors if I did." Neither officer offered Mr. Walters any water. Instead, Mr. Walters was taken on to jail.

At the jail Mr. Walters was placed in a single cell visible to all inmates being checked-in. San Diego County sheriff's deputies encouraged the incoming inmates to ridicule Mr. Walters who was wearing only his kilt and underwear, and the deputies joined in the verbal harassment. In going from the hot environment of an overheated car to the air conditioned jail, Mr. Walters was chilled. The deputies refused Mr. Walters any additional clothing or a blanket. However, upon his release from jail, Mr. Walters was ordered to change into clothing provided by the jail. Mr. Walters was released from the jail at approximately 2:15 am, Sunday, July 17, 2011, after posting \$190 bond. He had been given nothing to eat or drink since his arrest, some twelve hours prior.

The San Diego City Attorney subsequently declined to file any charges against Mr. Walters.

Pride is a revenue generating organization. The revenues from Pride, beyond what is necessary to stage the following year's Parade and Festival, go to support LGBT charitable organizations. The focus of the Pride Board and Staff, beyond putting on events, is annually to increase revenues. As the largest Parade and Festival in San Diego County, a great deal of money is also generated for the City of San Diego through sales taxes and hotel room taxes, and the Police are paid generously for their services. To increase revenues and reach out beyond the LGBT population, Pride realized several years ago that they could attract straight people to its events who were LGBT curious or friendly. The problem was that some straight people were put off by the degree of undress at the Parade and Festival. There was a fair amount of toplessness amongst the "Dykes on Bikes" whose contingent led off the Parade. This toplessness had been allowed to persist while the Parade onlookers were mostly LGBT. During this time, other Parade participants and Festival goers were allowed to wear nothing more than a jockstrap or G-string. Without notifying the LGBT Community, Pride and the San Diego Police agreed to increase the enforcement of San Diego Municipal Code Section 56.53(c), by adopting a stricter standard, so as to reduce any offense that might be given to its largest growing market sector of non-LGBT attendees. At the same time Pride continued to advertise with pictures showing maximum allowable male and female undress to attract worldwide LGBT visitors to the festival. Pride, in conjunction with the SDPD, was saying different things to different audiences. To the LGBT Community Pride promoted itself as wild, sexy and gay friendly as ever. To the straight community it was saying the Festival is straight family friendly and the gayness has been watered down to straight community acceptability.

This newly instituted "crack-down" on scantily clad attendees flies in the face of the outright lack of any such enforcement by the San Diego Police Department at events, like the

annual OMBAC Over-The-Line Tournament and the annual Mardi-Gras celebration; events that are held on public park land and in public places. Attached as Exhibit 1 are photos found by simply doing an internet search for "OMBAC OTL Tournament" that depict the level of dress, or undress, that is allowed at this event. By contrast, attached as Exhibit 2 are photos of Mr. Walters dressed as he was on the day he was arrested. By virtue of this selective enforcement, the San Diego Police enforces one set of rules at "straight" events, and yet another, more stringent set of rules, at gay events. In so doing, the San Diego Police Department is violating the Fourteenth Amendment's Equal Protection Clause, a clause that guarantees that groups and individuals will be treated equally regardless of sexual orientation.

In addition, Mr. Walters' civil rights under the 4th Amendment were violated because, as per Lieutenant Nisleit's initial judgment, there was no justifiable reason for Mr. Walters' detention when he was forcibly led out of the "beer garden," detained on Juniper Street, and then arrested and taken to jail.

Mr. Walters is filing this claim to give the San Diego Police Department ample opportunity to investigate this matter and take the steps necessary to rectify the policies and procedures that resulted in the events underlying this claim. Absent clear and tangible changes in the enforcement policies for violations of San Diego Municipal Code 56.53(c), the full exoneration of, and a monetary damage award to, Mr. Walters, Mr. Walters will initiate a federal civil rights case in order to insure that this does not happen to another innocent, peaceful, and compliant Pride attendee.

Thank you for your attention to this matter. Please let me know if there is any further information you need.

Very truly yours,



Christopher S. Morris, Esq.

EXHIBIT 1









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(640 x 425)

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(1024 x 680)



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EXHIBIT 2





