

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Patton State Hospital, Department of Mental Health, Stephen Mayberg,
in his official and individual capacity, Octovio C. Luna, an individual in
his official capacity, Ramon Crespo, Lynne Ho, Hewan George, Laurretta
Marshal, Fay Owens, Mody Giese, and Dais 1 through
YOU ARE BEING SUED BY PLAINTIFF: *100 inclusive.*

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Felicia McCarty, Individually and as successor in interest of Steven
Jenkins (Decedent).

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Bernardino,
San Bernardino Courthouse
351 N. Arrowhead Ave., San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso): CIVSS702002

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Offices of David Feldman, 233 Wilshire Blvd., Suite 400, Santa Monica, CA 90401
310-578-7171

DATE: _____ Clerk, by _____, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of *(specify)*:
 - on behalf of *(specify)*:
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify)*:
 - by personal delivery on *(date)*:

1 **LAW OFFICES OF DAVID M. FELDMAN**

2 **DAVID M. FELDMAN** (SBN 179679)

3 233 Wilshire Blvd., Suite 400

4 Santa Monica, CA 90401

5 Telephone: (310) 578-7171

6 Facsimile: (310) 578-7731

7 Attorney for Plaintiff

8 **FELICIA McCARTY**

9 as successor in interest of her son

10 **STEVEN JENKINS** (Decedent)

COPY

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 25 2007

By *Olivia Woffe* Deputy

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN BERNARDINO**

13 **FELICIA McCARTY,**
14 Individually and as successor in interest of
15 **STEVEN JENKINS** (Decedent),

16 Plaintiff,

17 **PATTON STATE HOSPITAL, DEPARTMENT**
18 **OF MENTAL HEALTH, STEPHEN**
19 **MAYBERG, in his official and individual**
20 **capacity, OCTAVIO C. LUNA, an individual in**
21 **his official and individual capacity, RAMON**
22 **CRESPO, LYNNE HO, HEWAN GEORGE,**
23 **LAURETTA MARSHAL, FAY OWENS, MARY**
24 **GIESE, and DOES 1 through 100, inclusive.**

25 Defendants.

CASE NO: CIVSS 702002

PLAINTIFF'S FIRST COMPLAINT

1. NEGLIGENCE;
2. FAILURE TO PROVIDE ADEQUATE EQUIPMENT AND PERSONNEL;
3. ABUSE OF DEPENDENT ADULT;
4. NEGLECT AND ABUSE OF A MENTALLY DISABLED ADULT;
5. WRONGFUL DEATH;
6. VIOLATION OF 42 U.S.C. §1983;
7. FAILURE TO SUMMON MEDICAL CARE 42 U.S.C. §1983;
8. FAILURE TO PROVIDE MEDICAL CARE;
9. FAILURE TO DISCHARGE MANDATORY DUTY;
10. FRAUD (MISREPRESENTATION);
11. UNFAIR BUSINESS PRACTICE.

26 1. Plaintiff, FELICIA McCARTY, individually and as successor-in-interest of STEVEN
27 JENKINS, hereby demands a trial by jury, and complains and alleges as follows based upon
28 information and belief:

1. The claims alleged herein arose at PATTON STATE HOSPITAL, California, which
is located at in the County of San Bernardino, State of California.

1

2

PRELIMINARY ALLEGATIONS

3 3. Plaintiff FELICIA McCARTY is presently a resident of the County of San
4 Bernardino, State of California.

5 4. Plaintiff is the successor in interest of Decedent STEVEN JENKINS and succeeds to
6 these causes of action because there is no personal representative of the Estate of STEVEN
7 JENKINS. Plaintiff brings this complaint in the capacity of successor in interest. Plaintiff has
8 executed and filed the affidavit required by Code of Civil Procedure Section 377.32.

9 5. Plaintiff FELICIA McCARTY is the sole heir of STEVEN JENKINS, Decedent. Her
10 relationship to Decedent is as follows: FELICIA McCARTY is the mother of Decedent.

11 6. This is an action by the successor in interest of STEVEN JENKINS (hereinafter
12 referred to as "Decedent") against the mental hospital charged with the care of decedent, the
13 California Department of Mental Health (DMH), charged with the supervision and control of
14 PATTON STATE HOSPITAL (PSH) and their employed staff for neglect, abuse of a dependent
15 adult in violation of a mandatory duty, dangerous condition of public property, negligence, failure
16 to provide adequate equipment and personnel, wrongful death, violations of 42 U.S.C. §1983,
17 failure to summon medical care, failure to discharge a mandatory duty, fraud (misrepresentation),
18 and unfair business practice, which were the proximate causes of Decedent's death.

19 7. Decedent suffered from mental disease, which restricted Decedent's ability to carry
20 out normal activities to protect his rights.

21 8. Decedent STEVEN JENKINS, a fifty (50) year old male suffering from mental
22 limitations, was being cared for at PATTON STATE HOSPITAL, a state psychiatric facility charged
23 with the care of Decedent. At all relevant times herein, Decedent STEVEN JENKINS was a
24 "dependent adult" as defined by Welfare & Institutions Code § 15701.15. At all times relevant to
25 this action, Defendants had the care and custody of Decedent STEVEN JENKINS in that Decedent
26 STEVEN JENKINS was a ward of PATTON STATE HOSPITAL, an inpatient psychiatric facility.

27 9. Plaintiff is informed and believes and thereby alleges Defendant PATTON STATE
28 HOSPITAL is a psychiatric facility, a hospital operated by the DEPARTMENT OF MENTAL

1 HEALTH, a public agency, qualified and doing business in and headquartered in the State of
2 California in the County of Sacramento.

3 10. Defendant Stephen Mayberg is the Director of the California Department of Mental
4 Health, which has responsibility for overseeing the operations of PSH. He is an officer of the State
5 of California and is being sued in his official and personal capacity.

6 11. Defendant OCTAVIO C. LUNA was at all times relevant hereto the Executive Director
7 of PATTON STATE HOSPITAL acting in his official and individual capacity.

8 12. Defendants RAMON CRESPO, LAURETTA MARSHAL, HEWAN GEORGE, LYNNIE
9 HO, FAY OWENS and MARY GIESE are healthcare staff employed by their co-defendants
10 PATTON STATE HOSPITAL and THE DEPARTMENT OF MENTAL HEALTH, and provided
11 medical professional services to their co-defendant PATTON STATE HOSPITAL.

12 13. Defendant DEPARTMENT OF MENTAL HEALTH is a public entity, with its principal
13 office and headquarters in Sacramento, Sacramento County.

14 14. The true names and capacities of the defendants named herein as DOES 1 through
15 100, inclusive, whether individual, corporate, associate, or otherwise, are unknown to plaintiff, who
16 therefore sue such defendants by fictitious names pursuant to Code of Civil Procedure § 473 and
17 § 474. Plaintiff is informed and believes that said DOE defendants are California residents, and
18 Plaintiff will amend this Complaint to show such true names and capacities when they have been
19 determined.

20 15. At all times mentioned herein, each and every defendant was the agent and employee
21 of each and every other defendant; and, in doing the things alleged, was acting within the course
22 and scope of such agency and employment; and, in doing the acts herein alleged, was acting with
23 the consent, permission and authorization of each of the remaining defendants. All actions of each
24 defendant herein alleged were ratified and approved by the officers or managing agents of every
25 other defendant.

26 16. Plaintiff is informed and believes, and thereby alleges, that each of the defendants
27 herein were at all times relevant hereto to the agent, managing agent, employee or representative
28 of the remaining defendants and was acting at least in part within the course and scope of such

1 relationship.

2 17. Defendants are legally responsible, in whole or in part, for the operation of PSH and
3 for the health and safety of the persons residing in PSH. PSH is an institution within the meaning
4 of 42 U.S.C. § 1997(1). PSH provides care to psychiatric patients committed civilly or in connection
5 with criminal proceedings.

6 18. Defendants are obligated to operate PSH in a manner that does not infringe upon the
7 federal rights, as protected by the Fourteenth Amendment to the Constitution of the United States
8 and by other federal law, of individuals confined to the Facilities.

9 19. Defendants are obligated to provide treatment, support, and services to individuals
10 confined to PSH consistent with the Americans with Disabilities Act and implementing regulations.
11 42 U.S.C. § 12101 et seq., 28 C.F.R. Part 35. At all relevant times, Defendants have acted or failed
12 to act, as alleged herein, under color of state law. Individuals, including STEVEN JENKINS, are
13 confined to, or reside at, PSH because they have been determined by Defendants to have
14 significant mental illness requiring extensive intervention and treatment.

15 20. PSH's supports and services substantially depart from generally accepted
16 professional standards of care, thereby exposing the individuals confined or residing there to
17 significant risk, and in some cases, to actual harm.

18 21. The PSH's supports and services substantially depart from generally accepted
19 professional standards of care in the following specific respects, among others:

- 20 a. the provision of adequate treatment planning;
21 b. the provision of adequate assessments and diagnoses;
22 c. the provision of adequate psychiatric services;
23 d. the provision of adequate psychological services;
24 e. the provision of adequate nursing services;
25 f. the provision of adequate rehabilitation therapy services;
26 g. the provision of adequate nutritional services;
27 h. the provision of adequate pharmacy services;
28 i. the provision of adequate general medical services;

1 j. the provision of adequate infection control services;

2 k. the provision of adequate dental services; and

3 l. the provision of adequate protections from harm.

4 22. Defendants have failed and continue to fail to assess individuals residing in the
5 Facilities to ascertain whether these individuals are, within the confines of any court ordered
6 confinement, receiving adequate treatment, supports, and services in the most integrated setting
7 appropriate to their individual needs; that those individuals whom professionals determine should
8 be placed in community programs are placed in such programs, when appropriate; and that these
9 individuals are served in the most integrated setting appropriate to their needs.

10 23. Decedent and Plaintiff were deprived of an interest protected by the Constitution or
11 laws of the United States, and defendants, and each of them, caused any such deprivation while
12 acting under color of state law.

13 24. Plaintiff is informed and believes and thereon alleges that all acts or omissions alleged
14 to have been engaged in by any defendant are alleged to have been engaged in with evil motive
15 and intent, and/or in callous, reckless, and wanton disregard to the rights of Plaintiff and Plaintiff's
16 Decedent.

17 25. Plaintiff is informed and believes and thereon alleges that any governmental entity
18 Defendant or supervisor has knowingly, or with deliberate indifference to the constitutional and
19 statutory rights of persons within the jurisdiction of the United States of America, maintained or
20 permitted an official policy or custom of permitting the occurrence of the types of wrongs set forth
21 herein, therefore is liable for all injuries sustained by Plaintiff as set forth herein.

22 26. Plaintiff is informed and believes and thereon alleges that supervisory officials of the
23 DEPARTMENT OF MENTAL HEALTH and PATTON STATE HOSPITAL failed to properly train,
24 hire, retain and supervise their employees who caused Plaintiff's damage, including Decedent's
25 death and failed to properly supervise the operations of their staff and therefore are responsible for
26 Plaintiff's damages. The acts, omissions, policies, practices and customs of officials of the
27 Defendants were a direct cause of Plaintiff's damages.

28 27. Plaintiff is informed and believes and thereon alleges that Defendants acting though

1 their officials and employees, maintained, fostered and condoned an official policy, practice or
2 custom of deliberate indifference to the health and safety of patients at PATTON STATE
3 HOSPITAL, including Plaintiff's Decedent, which was a direct cause of Plaintiff's damages. Plaintiff
4 is informed and believes and thereon alleges that Defendants' policy, custom and practice of
5 deliberate indifference to the rights and safety of inmates, includes, among other things: I)
6 Defendants' deliberate failure to properly supervise, hire, and train their employees regarding their
7 duty to provide adequate medical treatment and evaluation to patients, ii) Defendants'
8 discrimination against and failure to provide adequate medical treatment for patients, such as
9 plaintiff's decedent, who suffer from disabilities or medical conditions.

10 28. Plaintiff is further informed and believes and thereon allege that the above described
11 official customs, policies or practices and actions of the defendants constituted deliberate
12 indifference to the constitutional and statutory rights of persons, such as Plaintiff and Plaintiff's
13 Decedent. Plaintiff is further informed and believes and thereon alleges that this official policy,
14 practice or custom and/or defendants' actions and omissions were a direct and proximate cause
15 of Plaintiff's damages.

16 29. Plaintiff is informed and believes and thereon alleges that defendants' deliberate
17 indifference towards patients such as STEVEN JENKINS is part of a custom and practice of
18 discrimination towards persons suffering from disabilities and medical condition . As a result of
19 Defendants' policies, practices, acts and omissions, Defendants and their supervisors and
20 employees fail to provide patients such as STEVEN JENKINS with reasonable accommodations,
21 thus denying them their right to adequate medical treatment and other accommodations in violation
22 of the Americans With Disabilities Act and the California Dependant Adult Act.

23 II

24 **STATEMENT OF FACTS COMMON TO ALL CAUSES**

25 30. On October 26, 2006, at about 9:00 p.m., STEVEN JENKINS was sitting in the
26 "day room" talking with his fellow patients Linda Murdock and Rebecca Arana. All of a sudden,
27 William Nall, 24, also a patient at PATTON STATE HOSPITAL, stepped forcibly on Steven's
28

1 foot as he walked by. Nall then turned around and did it again. He then walked over to the
2 microwave oven a short distance from where Steven was sitting. Steven told Nall not to touch
3 him, Nall responded by saying that Steven should "shut up or I will kill you." Steven then said
4 to Nall that he would kill him first. Then Nall ran over to Steven and punched him in the head.
5 Steven fell down to the floor and Nall began kicking him in the arms, chest, shoulders and
6 head. Steven was bleeding from his nose and mouth.

7 31. At that point, fellow patient Roberto "Cuba" Silva pulled Nall from Steven. Three
8 staff members, defendants RAMON CRESPO, LAURETTA MARSHAL and HEWAN GEORGE
9 assigned to watch the day room watched the entire incident but did nothing. Also, defendant
10 RAMON CRESPO, a psychiatric technician, was assigned to watch Nall one-on-one,
11 apparently because of Nall's violent behavior towards other patients. Nall had assaulted
12 several other patients in the past, including Mohammed Sirati. Nall punched Sirati so hard that
13 Nall broke his own wrist.

14 32. After Cuba pulled Nall from STEVEN JENKINS defendants LAURETTA
15 MARSHAL and HEWAN GEORGE tried to pick him up from the floor. They could not lift him
16 on their own because STEVEN JENKINS was dazed and offered no help. At that point Cuba
17 helped them get him up. Defendant LYNNIE HO, treated his wounds and cleaned his blood.
18 STEVEN JENKINS said that he wanted to wait to see how he felt before going to the hospital.
19 He then went outside with patient Rebecca Arana to smoke a cigarette. He told Rebecca that
20 he probably needed to go to the hospital even though he did not want to. STEVEN JENKINS
21 went to the hospital because of pneumonia about a month before and developed a bedsore
22 while there. Needless to say, he did not want to go back.

23 33. At about 10:00 p.m. Steven went to speak with the nurse, defendant LYNNIE
24 HO, he told her that he had a splitting headache and that his ribs were hurting. He asked to be
25 taken to the emergency room. She told him that he would have to wait until the morning to be
26 treated. He was found dead in his bed at about 5:00 a.m.

27 **FIRST CAUSE OF ACTION**

28 **[Negligence Based Upon Title 22 of California Code of Regulations § 71001 et seq. and §**

1 **51200 et seq.]**

2 **(As to All Defendants)**

3 34. Plaintiff refers to and realleges paragraphs 1 through 33, inclusive as though set
4 forth fully herein.

5 35. STEVEN JENKINS had been living at PATTON STATE HOSPITAL from 1976 until
6 his death on October 27, 2006. Defendant PATTON STATE HOSPITAL, its physicians and
7 employees were charged with the care and custody of Decedent STEVEN JENKINS, a dependent
8 adult suffering from severe mental disease. Defendants rendered professional services in the
9 diagnosis, treatment and care of Decedent.

10 36. Defendants owed a duty to Decedent to insure that he receive necessary psychiatric
11 care and treatment, to protect his patient rights, as well as to insure for his health and safety.

12 37. Defendants owed a mandatory duty to insure that while a ward at the psychiatric
13 facility, Decedent receive the proper quality of care pursuant to Federal Regulations and Title 22
14 of the California Regulations § 71001 et seq. and § 51200 et seq.; that Decedent had the proper
15 physical environment as set forth in Federal Regulations and Title 22 of the California Regulations;
16 that Decedent was properly placed in the facility which could look out for his well-being as set forth
17 in Federal Regulations and Title 22 of the California Regulations; and that the psychiatric facility
18 had the proper facility staffing to insure his well-being as set forth in Federal Regulations and Title
19 22 of the California Regulations.

20 38. Plaintiff alleges that Defendants failed to exercise reasonable care in not properly
21 supervising and caring for Decedent STEVEN JENKINS, as evidenced by some of the following
22 actions:

- 23 a) knowingly permitting William Nall to assault and injure Decedent;
24 b) failing to provide reasonable supervision of Decedent and other wards to prevent
25 injury to himself and others;
26 c) failing to provide reasonable supervision of other wards to prevent to injury to
27 Decedent;
28 d) failing to provide reasonable medial and psychiatric care;

- 1 e) failure to have the requisite number of trained, qualified staff supervising the wards;
2 f) failing to follow Defendant PATTON STATE HOSPITAL's own policies and
3 procedures regarding administering medical care to its patients; and
4 g) failing to send Decedent to the emergency room following injuries from the assault
5 by William Nall.

6 The aforesaid conduct and other conduct unknown to Plaintiff at this time by Defendants
7 constitutes a breach of the duty of care, said breach of duty of care being the direct legal cause
8 of damages to Decedent and Plaintiff.

9 39. As a proximate result of the negligence of Defendants and DOES 1 through 100,
10 Decedent STEVEN JENKINS suffered physical injuries, emotional pain and suffering and death.

11 40. By virtue of the foregoing, Defendants, and each of them, have acted negligently.
12 As a legal result of the Defendants' conduct, STEVEN JENKINS and Plaintiff sustained damages
13 in a sum according to proof.

14 WHEREFORE, plaintiff prays for damages as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **[Failure to Provide Adequate Equipment and Personnel -- Government Code § 855]**

17 **(As to Defendants PATTON STATE HOSPITAL, DEPARTMENT OF MENTAL HEALTH,**

18 **STEVEN MAYBERG, OCTAVIO C. LUNA and DOES 1 - 100)**

19 41. Plaintiff refers to and realleges paragraphs 1 through 40, inclusive as though set
20 forth fully herein.

21 42. Defendants DEPARTMENT OF MENTAL HEALTH and PATTON STATE
22 HOSPITAL owned, operated, maintained, and controlled the psychiatric hospital premises
23 located in the City of PATTON in the Country of San Bernardino, State of California.

24 43. PATTON STATE HOSPITAL is a public entity operating a medical facility subject
25 to regulation by the State Department of Health Services. Health and Safety Code §§ 1275
26 and 1276 as well as the California Code of Regulations Title 22, §§ 71001 et seq. and § 51200
27 et seq. establish minimum standards for PATTON STATE HOSPITAL.

28 44. On or about October 27, 2006, Decedent, STEVEN JENKINS, was lawfully upon

1 the aforementioned premises for the purposes of psychiatric care and treatment when he was
2 assaulted by fellow patient William Nall causing him severe injuries resulting in his death due
3 to, among other reasons; failure to provide adequately trained personnel as required by
4 statute. Namely, the insufficient, unqualified personnel was such that the hospital staff failed
5 to protect STEVEN JENKINS from William Nall and failed to provide timely and adequate
6 medical care. Simply, Defendants failed to adequately supervise the wards to protect
7 STEVEN JENKINS' health and safety. The inability to adequately supervise and staff the
8 facility with properly trained personnel resulted in a preventable death. This failure resulted in
9 the death of STEVEN JENKINS.

10 45. Defendants as operators of PATTON STATE HOSPITAL owed a duty to
11 Decedent to insure that while a ward at the psychiatric facility, Decedent received the proper
12 quality of care pursuant to Title 22 section 71001 et seq. and § 51200 et seq. of the California
13 Code of Regulations; that Decedent had the proper physical environment as set forth in Title
14 22 § 71001 et seq. of the California Code of Regulations; that Decedent was properly placed in
15 the facility which could look out for his well-being as set forth in Title 22 § 71001 et seq. and §
16 51200 et seq. of the California Code of Regulations; and that the psychiatric facility had the
17 proper facility staffing to insure his well-being as set forth in Title 22 § 71001 et seq. and §
18 51200 et seq. of the California Code of Regulations.

19 46. Defendants were in violation of Government Code § 855 and the aforementioned
20 regulations, as evidenced by some of the following actions:

- 21 a) knowingly permitting William Nall to assault and injure Decedent;
- 22 b) failing to provide reasonable supervision of Decedent and other wards to prevent
23 injury to himself and others;
- 24 c) failing to provide reasonable supervision of other wards to prevent to injury to
25 Decedent;
- 26 d) failing to provide reasonable medical and psychiatric care;
- 27 e) failure to have the requisite number of trained, qualified staff supervising the
28 wards;

- 1 f) failing to follow Defendant PATTON STATE HOSPITAL's own policies and
2 procedures regarding administering medical care to its patients; and
3 g) failing to send Decedent to the emergency room following injuries from the
4 assault by William Nall.

5 47. The aforesaid conduct and other conduct unknown to Plaintiff at this time by
6 Defendants constitutes a statutory violation of Government Code Section 855 for failure to
7 provide adequate equipment or personnel, said violation being the direct legal cause of
8 damages to Decedent and Plaintiff.

9 48. As a proximate result of Defendants' and DOES 1 through 100 violation of
10 Government Code 855, Decedent STEVEN JENKINS suffered physical injuries, emotional
11 distress and pain and suffering and death.

12 49. By virtue of the foregoing, Plaintiff sustained damages in a sum according to
13 proof.

14 WHEREFORE, plaintiff prays for damages as set forth below.

15 **THIRD CAUSE OF ACTION**

16 **[Abuse of Dependent Adult – Government Code Section 815.6 and Welfare and
17 Institutions Code Sections 15600 et seq.]**

18 **(As to All Defendants)**

19 50. Plaintiff refers to and realleges paragraphs 1 through 49, inclusive as though set
20 forth fully herein.

21 51. On October 27, 2006 at about 5:00 a.m. Decedent was found dead in his bed.

22 52. In 1976 Decedent began residing at PATTON STATE HOSPITAL in San
23 Bernardino, California. Defendants PATTON STATE HOSPITAL and its employees, including
24 the individually named Defendants were entrusted with the sole custodial care of Decedent,
25 but failed to provide Decedent with adequate medical facilities, personnel, supervision and
26 attention to supervise, treat and protect Decedent's health and safety, in violation of Welfare
27 and Institutions Code Sections 15600 et seq. and Title 22 Section 71001 et seq. and § 51200
28 et seq. of the California Code of Regulations which impose a mandatory duty on the

1 Defendant's to provide adequate care to Decedent.

2 53. Plaintiff refers to and herein incorporates paragraphs 1 through 52 as though fully
3 set forth herein. Defendants and its employees had a special relationship to Decedent due to
4 their caretaker relationship and particular knowledge of patient WILLIAM NALL'S violent
5 behavior. In fact, NALL was on careful one-on-one watch due to his prior violent behavior
6 towards other patients including Decedent. At all relevant times, Defendants were entrusted
7 as Plaintiff's full-time personal caretakers.

8 54. Defendants' conduct was intentional and malicious and done for the purpose of
9 causing Plaintiff to suffer humiliation, mental anguish and emotional and physical distress.

10 55. As a proximate result of the actions of Defendants and each of them, Decedent
11 was injured in his health, strength and activity, all of which injuries caused Decedent's death.

12 56. By virtue of the foregoing, STEVEN JENKINS and Plaintiff sustained damages in
13 a sum according to proof.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15 **FORTH CAUSE OF ACTION**

16 **[Neglect and Abuse of a Mentally Disabled Adult – Government Code Section 815.6 and**
17 **Welfare and Institutions Code Sections 5000 et seq.]**

18 **(As to All Defendants)**

19 57. Plaintiff refers to and realleges paragraphs 1 through 56, inclusive as though set
20 forth fully herein.

21 58. On or about October 27, 2006, at about 5:00 a.m., at Defendant PATTON
22 STATE HOSPITAL's facility, Decedent was found dead in his bed.

23 59. In 1976 STEVEN JENKINS began living at PATTON STATE HOSPITAL in San
24 Bernardino, California. PATTON STATE HOSPITAL and its employees were entrusted with
25 the sole custodial care of Decedent, but failed to provide Decedent with adequate medical
26 facilities, personnel, supervision and attention to supervise, treat and protect Decedent's health
27 and safety, in violation of Welfare and Institutions Code § 5000 et seq. which impose a
28 mandatory duty on the Defendants to protect Decedent's patient rights and to protect

1 Decedent from criminal acts.

2 60. Plaintiff refers to and herein incorporates paragraphs 1 through 59 as though fully
3 set forth herein. Defendants and its employees had a special relationship to Decedent due to
4 their caretaker relationship and particular knowledge of William Nall's susceptibility to commit
5 violence towards other patients. At all relevant times, Defendants were entrusted as
6 Decedent's full-time personal caretaker.

7 61. Defendants' conduct was intentional and malicious and done for the purpose of
8 causing Plaintiff to suffer humiliation, mental anguish and emotional and physical distress.

9 62. As a proximate result of the actions of Defendants and each of them, Decedent
10 was injured in his health, strength and activity, all of which injuries caused Decedent's death.

11 63. By virtue of the foregoing, STEVEN JENKINS and Plaintiff sustained damages in
12 a sum according to proof.

13 WHEREFORE, Plaintiff prays for relief as set forth below.

14 **FIFTH CAUSE OF ACTION**

15 **[Wrongful Death – Code of Civil Procedure Section 377.60]**

16 **(As to All Defendants)**

17 64. Plaintiff refers to and realleges paragraphs 1 through 63, inclusive as set though set
18 forth fully herein.

19 65. As a proximate result of the negligent abuse of a dependent adult, and negligence
20 of Defendants, and each of them, Decedent died on or about October 27, 2006.

21 66. Prior to the death of Decedent, Plaintiff FELICIA MCCARTY, visited her son and
22 spoke with him on a weekly basis. In fact, she moved from Ohio to California in order to be near
23 her son. At all times prior to his death, Decedent was a faithful and dutiful son to this Plaintiff.

24 67. As a proximate result of the negligence, abuse of dependent adult, Defendants, and
25 each of them, and of the death of Decedent, Plaintiff has sustained pecuniary losses resulting
26 from the loss of society, comfort, services and support of Decedent in an amount to be determined
27 at trial.

28 68. As a further proximate result of the negligence, abuse of dependent adult, and death

1 of Decedent, Plaintiff FELICIA MCCARTY incurred funeral and burial expenses as well as general
2 damages in an amount according to proof.

3 69. By virtue of the foregoing, STEVEN JENKINS and Plaintiff sustained damages in a
4 sum according to proof.

5 **SIXTH CAUSE OF ACTION**

6 **[42 USC § 1983 – Deliberate Indifference to Rights]**

7 **(Against All Individually Named Defendants by Plaintiff in her individual capacity and in**
8 **her capacity as successor in interest of Decedent STEVEN JENKINS)**

9 70. Plaintiff incorporates by reference and realleges herein each allegation in
10 paragraphs 1 through 69 above.

11 71. This complaint sets forth a claim for deprivation of civil rights for violation of the
12 Fourteenth Amendment to the United States Constitution against Defendants and is
13 redressable pursuant to 42 U.S.C. Section 1983. In particular, defendants violated Plaintiff's
14 rights by, among other things, displaying deliberate indifference to Plaintiff's Decedent's
15 serious and urgent medical needs by failing to provide him with adequate medical attention,
16 care and treatment and by displaying deliberate indifference to Plaintiff's Decedent's safety
17 and security by not protecting him from the dangerous behavior of WILLIAM NALL.

18 72. Based upon the principles set forth in Monell v. New York City Department of
19 Social Services, (1978) 436 U.S. 658, each supervisory official defendant is liable for all
20 injuries sustained by Plaintiff and Plaintiff's Decedent as set forth herein. Said liability stems
21 from the fact that the aforementioned Defendants' unconstitutional policies and customs were
22 a direct and legal cause of Plaintiff's damages and the death and pain and suffering of
23 STEVEN JENKINS. Any and all supervisory official Defendants are liable on this theory and
24 are also liable in their individual capacities.

25 73. As a direct and proximate result of the acts and omissions of Defendants, and
26 each of them, Plaintiff and her decedent were deprived of their rights under the Fourteenth
27 Amendment of the United States Constitution and of the laws of the United States and has
28 suffered damages, including pain and suffering, as well as the death of STEVEN JENKINS,

1 which resulted in the loss of love, support and society to his mother, plaintiff FELICIA
2 McCARTY.

3 74. Plaintiff is informed and believes and thereon alleges that the aforementioned
4 acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were
5 done in willful and conscious disregard of the rights, welfare and safety of Plaintiff and
6 Decedent, thereby justifying the awarding of punitive and exemplary damages against all
7 Defendants (other than the government entity defendants).

8 75. As a result of defendants' conduct as alleged herein, plaintiff is entitled to
9 attorneys' fees pursuant to 42 U.S.C. § 1988.

10 76. By failing to properly screen, train, supervise, and/or discipline its custodial
11 personnel, Defendants violated plaintiff's rights under the United States Constitution.

12 77. By authorizing, ratifying, and/or condoning the acts and omissions of their agents
13 and employees, defendants violated plaintiff's rights under the Fourteenth Amendments of the
14 United States Constitution.

15 78. The acts and omissions complained of herein were done pursuant to customs
16 and policies authorized, condoned, ratified, and carried out by all defendants that resulted in
17 the failure to protect Decedent from NALL and resulted in delayed and denial of medical care
18 for the purposes of saving money at the risk of patients' health, and/or in furtherance of a
19 pattern and practice of neglect and abuse of patients' at PATTON STATE HOSPITAL.

20 79. WHEREFORE plaintiff prays for relief as hereinafter set forth.

21 **SEVENTH CAUSE OF ACTION**

22 **[42 USC § 1983 – Failure to Provide Medical Care]**

23 **(Against All Individually Named Defendants by Plaintiff in her individual capacity and in**
24 **her capacity as successor in interest of Decedent STEVEN JENKINS)**

25 80. Plaintiff incorporates by reference and realleges each allegation in paragraphs 1
26 through 69 above.

27 81. The Defendants, and each of them, deprived Steven Jenkins of necessary care
28 for a serious medical condition in violation of the Fourteenth Amendment to the United States

1 Constitution.

2 82. WHEREFORE, plaintiff prays for relief as is hereinafter set forth.

3 **EIGHTH CAUSE OF ACTION**

4 **[Failure to Summon Medical Care for Prisoner – California Government Code §845.6]**

5 **(Against All Defendants)**

6 83. Plaintiff incorporates by reference and realleges herein each allegation in
7 paragraphs 1 through 82 above.

8 84. Defendants, and each of them, had a mandatory duty under California
9 Government Code §845.6 to summon medical care for patients whom they knew, or had
10 reason to know, required immediate medical care.

11 85. Defendants failed to discharge their duty imposed by California Government
12 Code §845.6.

13 86. As a direct and proximate result of the defendants' acts and/or omissions,
14 hereinabove described, plaintiff suffered extreme emotional, psychological, and physical injury
15 and trauma ultimately resulting in death.

16 87. Defendants PATTON STATE HOSPITAL, DEPARTMENT OF MENTAL
17 HEALTH, STEPHEN MAYBERG, OCTAVIO C. LUNA, RAMON CRESPO, LYNNIE HO,
18 HEWAN, LAURETTA MARSHAL, FAY OWENS, MARY GIESES and DOES 1 through 100 are
19 liable for the breach of their duty to summon required immediate medical care while acting in
20 the course and scope of their employment under the doctrine of *respondeat superior*.

21 WHEREFORE, plaintiff prays for relief as set forth herein.

22 **NINTH CAUSE OF ACTION**

23 **[Failure to Discharge Mandatory Duty – California Government Code §815.6]**

24 **(Against All Defendants)**

25 89. Plaintiff incorporates by reference and realleges herein each allegation in
26 paragraphs 1 through 88 above.

27 90. California Government Code §815.6 makes a public entity liable for its failure to
28 discharge a mandatory duty imposed by an enactment designed to protect against the risk of a

1 particular kind of injury.

2 91. California Government Code §845.6 imposes such a mandatory duty. The
3 purpose of §845.6 is, in part, to ensure the safety and health of inmates and to provide
4 inmates with medical care when the need for medical care becomes apparent.

5 92. Defendants, and each of them, breached the mandatory duty owed to plaintiff
6 pursuant to Government Code § 845.6. As set forth herein, Defendants breach of said duty
7 caused the type of harm to plaintiff and Decedent that the enactment was designed to prevent.

8 **TENTH CAUSE OF ACTION**

9 **[Fraud (Misrepresentation)]**

10 **(Against All Defendants)**

11 93. Plaintiff incorporates by reference and realleges herein each allegation in
12 paragraphs 1 through 92 above.

13 94. In 1990 the Department of Justice, Civil Rights Division, investigated conditions
14 at PSH pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA) 42 U.S.C. sect.
15 1997. Their investigation resulted in a consent decree. It has been established that following
16 the dismissal of the prior consent decree in 1995¹, significant problems recurred at PSH. PSH
17 continually fails to protect patients from harm from patient on patient assault, suicide,
18 inappropriate use of seclusion, restraints and PRN ("as needed") psychotropic medications,
19 and inadequate medical nursing and psychiatric care. A new consent decree was entered on
20 May 3, 2006² following yet another Department of Justice, Civil Rights Division, investigation
21 into conditions at PSH. Their new findings mirrored the ones made during their prior
22 investigation.

23 95. PSH is licensed by the California Department of Health Services, Licensing and
24 Certification (DHS). DHS enforces care and treatment standards under applicable state and
25 federal regulations. In addition, PSH, like all state hospitals serving people with psychiatric
26

27 ¹ Consent Decree, United States v. California, No. C90-2641 (N.D. Cal. Sept. 17, 1990).

28 ² Consent Decree, United State v. California, No. (C.D. Cal. May 2, 2006).

1 disabilities in California, is voluntarily accredited by the Joint Commission on Accreditation of
2 Health Organizations.³

3 96. PSH is constitutionally required to provide patients reasonable protection from
4 harm and freedom from bodily restraint. Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982).
5 Information from multiple, credible sources indicate that PSH fails to protect patients from
6 harm and abuse. It has been determined that the harm suffered by PSH's patients is
7 multifaceted, including physical injury by assault, death by suicide due to inadequate suicide
8 precautions, excessive and inappropriate use of physical and chemical restraints and
9 seclusion, inadequate, ineffective, and counter productive treatment, and exposure to
10 unnecessary environmental hazards. A major factor in PSH's failure to protect patients from
11 harm is inadequate supervision. As DHS has reported, "[e]ven though clients in the facility can
12 be extremely unpredictable and violent, they are left unsupervised for long periods of time."
13 Family members of patients and advocates who frequently visit PSH confirm that patients are
14 left unattended, without staff observation or interaction. A number of incidents occurred when
15 medically required one-to-one staffing was cancelled, apparently not due to clinical decisions,
16 but rather staff shortages. Moreover, as a nurse at PSH reported, "there are not enough
17 people on hand to subdue [out-of-control patients].... So an alarm is set off or the hospital
18 police are called. But it takes at least five minutes, sometimes 10 or more to get there, and a
19 lot can happen during that time."

20 97. In order to obtain a license and certification from the State of California to
21 operate PSH, and in order to obtain annual renewals of said licenses and certifications,
22 Defendants DEPARTMENT OF MENTAL HEALTH, PATTON STATE HOSPITAL, STEPHEN
23 MAYBERG, OCTAVIO C. LUNA and DOES 1-100, inclusive, and each of them, promised to
24 the California Department of Health Services that it would comply with health care standards,
25 particularly those expressed in state and federal statutes and regulations.

26 98. During the years prior to and including STEVEN JENKINS's admission to PSH in
27

28 ³ The Joint Commission is a private health care monitoring agency that promotes quality of care standards and evaluates facility compliance with their standards and related performance outcomes.

1 1976, PSH, was the subject of annual survey inspections by the California Department of
2 Health Services, the purpose of which was to identify deficiencies in Defendants' compliance
3 with state and federal health law setting care standards in their state facilities' operations.
4 During these surveys, Defendants PSH and DOES 1-100, inclusive, and each of them were
5 cited as deficient for failing to develop, update or implement patient care plans, for protect
6 patient's rights to be free from harm, for failure to protect patients from assaultive behaviors of
7 a peer, for improper administration of medication, and for failure to have sufficient staff or
8 sufficiently trained staff to meet the needs of the patients. In response to such notices of
9 deficiencies, said Defendants represented and promised in writing, through Plans of Correction
10 to the Department of Health Services that they would make the necessary corrections in the
11 operation of said facilities to ensure that such deficiencies would not recur, and that the
12 corrections would be in compliance with state and federal regulations for which deficiencies
13 were earlier noted. And PSH officials certified under oath that the Plans of Correction were
14 implemented and followed.

15 99. Each of the aforesaid promises made to the Department of Health Services were
16 false when made and intended to trick and deceive the California Department of Health
17 Services issuing licenses, and renewing the license to operate the said facilities and to trick
18 and deceive the California Department of Health Services to certify to the Health Care
19 Financing Administration that PSH, was in sufficient compliance with federal and state statutes
20 and regulations to continue to participate in the Federal Medicare and Medicaid programs.
21 Each of the aforesaid promises made were false when made and intended to trick, deceive
22 and induce the admittance of patients, including STEVEN JENKINS.

23 100. The California Department of Health Services was and is required by law to rely
24 on such promises and representations by said Defendants and did in fact rely on them. As a
25 result, licenses were issued to defendants and annual renewals of said licenses were also
26 issued, and said Defendants were certified as meeting federal standards for continued
27 participation in the Medicare and Medicaid programs. Further, the State of California relied
28 upon the foregoing promises and representations made to it, and as a result was, in fact,

1 induced to admit STEVEN JENKINS and other patients to PSH.

2 101. As a direct, proximate and foreseeable result of the foregoing fraudulent
3 misrepresentations and promises to the Department of Health Services, Defendants PSH and
4 DOES 1-100, inclusive, and each of them, remained in the business of operating its state
5 facility and providing custodial and related medical care to residents, including STEVEN
6 JENKINS. As a direct and proximate result of the foregoing misrepresentations STEVEN
7 JENKINS was admitted as a patient at PSH. STEVEN JENKINS was in a class of persons
8 who were foreseeably to be injured by said Defendants misrepresentations as aforesaid.
9 STEVEN JENKINS sustained physical injuries resulting in death, as alleged above and such
10 injuries were within a class of injuries which were foreseeably the result of said
11 misrepresentations and promises.

12 102. By virtue of the foregoing, Defendants DEPARTMENT OF MENTAL HEALTH,
13 PATTON STATE HOSPITAL, STEPHEN MAYBERG, OCTAVIO C. LUNA and DOES 1-100,
14 inclusive, and each of them, acted fraudulently, and an assessment of general damages and
15 punitive damages in a sum according to proof at trial is justified, warranted and appropriate.

16 **ELEVENTH CAUSE OF ACTION**

17 **[Unfair Business Practice]**

18 **(Against Department of Mental Health and Patton State Hospital)**

19 103. Plaintiff refers to and realleges paragraphs 1 through 92, inclusive as though set
20 forth fully herein.

21 104. Defendants' conduct, as alleged, is part of a general business practice at the
22 DEPARTMENT OF MENTAL HEALTH and PATTON STATE HOSPITAL. This practice exists
23 in part because Defendants expect that few adverse consequences will follow from their
24 mistreatment of their mentally disabled and vulnerable clientele and make a considered
25 decision to promote profit at the expense of their legal obligations to the patients.

26 105. This practice constitutes an unfair and fraudulent business practice within the
27 meaning of Bus & P C sect. 17200.

28 106. Plaintiff is entitled to restitution of all funds paid to Defendants by or on behalf of

1 her.

2 107. Plaintiff is also entitled to an injunction prohibiting Defendants and each of them
3 from emerging in any act or omission the effect of which is to cause, directly or indirectly,
4 DEPARTMENT OF MENTAL HEALTH and PATTON STATE HOSPITAL from violating any
5 provision of federal or state law setting standards for the care of their patients, and for the
6 financing and administration of said mental hospital.

7 108. Plaintiff is entitled to attorney fees under CCP sect. 1021.5 and Welf & I C sect.
8 15657.5.


9 WHEREFORE, Plaintiff prays for the following relief:

10 PRAYER

- 11 1. For special damages according to proof;
- 12 2. For general damages according to proof;
- 13 3. For costs of suit and attorneys' fees herein incurred pursuant to Welfare and
14 Institutions Code §§ 15657 et seq.;
- 15 4. For pre-judgment and post-judgment interests, if any, incurred;
- 16 5. For punitive damages, including treble punitive damages per Civil Code § 3345,
17 according to proof as to all non-public entity Defendants; and
- 18 6. For such other and further relief as the court may deem proper.

19 Dated: May 21, 2007

LAW OFFICES OF DAVID FELDMAN

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21
22 
23 David Feldman
24 Attorney for Plaintiff
25 FELICIA McCARTY
26
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Case No. CIVSS 702002

Felicia McLarty

vs.

Patton State Hospital, et al,

CERTIFICATE OF ASSIGNMENT

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the _____ District of the Superior Court under Rule 404 of this court for the checked reason:

General Collection

- | Nature of Action | Ground |
|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 Adoption | Petitioner resides within the district. |
| <input type="checkbox"/> 2 Conservator | Petitioner or conservatee resides within the district. |
| <input type="checkbox"/> 3 Contract | Performance in the district is expressly provided for. |
| <input type="checkbox"/> 4 Equity | The cause of action arose within the district. |
| <input type="checkbox"/> 5 Eminent Domain | The property is located within the district. |
| <input type="checkbox"/> 6 Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 7 Guardianship | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8 Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 9 Mandate | The defendant functions wholly within the district. |
| <input type="checkbox"/> 10 Name Change | The petitioner resides within the district. |
| <input checked="" type="checkbox"/> 11 Personal Injury | The injury occurred within the district. |
| <input type="checkbox"/> 12 Personal Property | The property is located within the district. |
| <input type="checkbox"/> 13 Probate | Decedent resided or resides within the district or had property within the district. |
| <input type="checkbox"/> 14 Prohibition | The defendant functions wholly within the district. |
| <input type="checkbox"/> 15 Review | The defendant functions wholly within the district. |
| <input type="checkbox"/> 16 Title to Real Property | The property is located within the district. |
| <input type="checkbox"/> 17 Transferred Action | The lower court is located within the district. |
| <input type="checkbox"/> 18 Unlawful Detainer | The property is located within the district. |
| <input type="checkbox"/> 19 Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| <input type="checkbox"/> 20 Other _____ | |
| <input type="checkbox"/> 21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. | |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

Patton State Hospital 3102 E. Highland Ave.
(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR) ADDRESS

Patton CA 92369
(CITY) (STATE) (ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

May 21, 2007 at Santa Monica, California

[Signature]
Signature of Attorney/Party

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Law Offices of David Feldman SBN.: 179679 233 Wilshire Blvd., Suite 400 Santa Monica, CA 90401 TELEPHONE NO.: 310-578-7171 FAX NO.: 310-578-7731 ATTORNEY FOR (Name): Felicia McCarty | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 351 N. Arrowhead Ave., San Bernardino MAILING ADDRESS: 351 N. Arrowhead Ave., San Bernardino CITY AND ZIP CODE: San Bernardino 92415 BRANCH NAME: San Bernardino | |
| CASE NAME: McCarty v. Patton State Hospital, et al. | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |
| | CASE NUMBER: CIVSS 702002 JUDGE: DEPT: |

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: May 21, 2007
 David Feldman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.