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7
8 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

9 PATRICK L. GROM, a single
10 person,

11 Plaintiff,

12 vs.

13 CITY OF COEUR D'ALENE, ,
14 CHIEF OF POLICE LEE WHITE,
15 SERGEANT JEFF WALTHER, and
16 OFFICER JOSEPH SCHOLTEN,
17 individually and in his official
18 capacity as a police officer for the
19 City of Coeur d'Alene,

20 Defendants.

21 Case No. _____

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**COMPLAINT FOR CIVIL
RIGHTS VIOLATIONS UNDER
42 U.S.C. § 1983**

27 COMES NOW the Plaintiff, PATRICK L. GROM, by and through his
28 attorney, DOUGLAS D. PHELPS of PHELPS & ASSOCIATES, P.S., and for a
cause of action against the Defendants above-named alleges as follows:

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I. INTRODUCTION

31 1.1 This is a civil action seeking compensatory and punitive damages
32 against the Defendants for police brutality and excessive force, and for

1 committing acts under color of law, depriving the Plaintiff of rights secured by the
2 United States Constitution and the laws of the United States. Defendant Joseph
3 Scholten, while acting in his capacity as an employee of the City of Coeur
4 d'Alene, acted to and did in fact deprive the Plaintiff of his constitutional rights.
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6 1.2 Additionally, the acts of the City of Coeur d'Alene, Police Chief Lee
7 White and Sergeant Jeff Walthen violated the Plaintiff's rights pursuant to the
8 United States Constitution, 42 U.S.C. Section 1983 and 1988, under the Civil
9 Rights Act of 1971 and the common law.
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12 1.3 The Plaintiff suffered injury after he was aggressively and without
13 authority of law assaulted by Joseph Scholten and then repeatedly struck in the
14 face with a closed fist while Plaintiff was unconscious on the ground and not
15 physically resisting.
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II. JURISDICTION AND PARTIES

19 2.1 This action is brought pursuant to 42 USC Section 1983 and 1988,
20 under the Civil Rights Act of 1971, alleging that the Defendants acted under the
21 color of law, depriving the Plaintiff of his rights, privileges, and immunities as
22 guaranteed by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the
23 United States Constitution.
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26 2.2 This Court has jurisdiction of this cause under 28 U.S.C. Sections
27 1331 and 1343 and 42 U.S.C. Section 1983.
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1 2.3 All acts and omissions complained of occurred in the District of
2 Idaho.

3 2.4 Plaintiff Patrick Grom was at all times relevant hereto a resident of
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5 Kootenai County, Washington.

6 2.5 Defendant City of Coeur d'Alene is a governmental entity organized
7
8 under the Idaho Code and located in Coeur d'Alene, Kootenai County, Idaho.

9 2.6 Defendant Police Chief Lee White, at the time of the incidents
10 alleged in this complaint, was the Chief of Police for the Coeur d'Alene Police
11 Department, Idaho.

12 2.7 Defendant Sergeant Jeff Walthen, at the time of the incidents alleged
13 in this complaint, was working as a supervisory police officer for the Coeur
14 d'Alene Police Department, Idaho.

15 2.8 Defendant Joseph Scholten, individually and in his official capacity,
16 based upon information and belief is believed to be a resident of Kootenai County,
17 Idaho, and was a law enforcement officer employed by the City of Coeur d'Alene
18 at all times relevant to this action.

19 2.9 All defendants are believed to reside in Kootenai County, Idaho.

20 2.10 The venue is proper in the District of Idaho under 28 U.S.C. Section
21 1391 in that the Defendants and Plaintiff resided in, and the cause of action arises
22 in, the District of Idaho.

III. FACTUAL HISTORY

3.1 On or about October 26, 2016 at approximately 2152 hours Pacific Standard Time, PATRICK GROM was contacted by Officer JOSEPH SCHOLTEN and Sergeant JEFF WALTHER of the Coeur d'Alene Police Department.

3.2 JOSEPH SCHOLTEN was working in his capacity as a sworn law enforcement officer employed by the Police Department in the City of Coeur d'Alene.

3.3 JOSEPH SCHOLTEN was wearing a department issued police uniform, including a badge, firearm, handcuffs and other police equipment.

3.4 The contact between PATRICK GROM and JOSEPH SCHOLTEN occurred at an apartment complex in the 100 block of Hattie Avenue in the City of Coeur d'Alene, State of Idaho.

3.5 JOSEPH SCHOLTEN was operating marked police vehicle and was being supervised by Sergeant JEFF WALTHER at the time of the contact.

3.6 JOSEPH SCHOLTEN initiated a traffic stop of the vehicle being driven by PATRICK GROM for a minor traffic violation (i.e., failure to use a turn signal).

3.7 After being signaled to pull over by the police emergency lights, PATRICK GROM navigated his vehicle into a covered parking stall at the

1 apartment complex he had driven into and exited his vehicle, walking towards the
2 police vehicle.

3 3.8 JOSEPH SCHOLTEN and JEFF WALTHER made contact with
4 PATRICK GROM at the front of the police vehicle.

5 3.9 JOSEPH SCHOLTEN conducted a weapons search of PATRICK
6 GROM, finding no weapons.

7 3.10 However, JOSEPH SCHOLTEN later noted in his report that he
8 could smell the odor of alcoholic beverages coming from PATRICK GROM's
9 person and noticed PATRICK GROM was slurring his words.

10 3.11 PATRICK GROM complied with all the requests of the officers and
11 answered their questions truthfully. At no time was PATRICK GROM advised he
12 was under arrest or not free to leave.

13 3.12 JOSEPH SCHOLTEN walked away from PATRICK GROM and
14 began speaking with other officers who had arrived at the scene.

15 3.13 PATRICK GROM then ran from the scene, crossing the street and
16 running through a car dealership's parking lot.

17 3.14 Officers pursued PATRICK GROM.

18 3.15 Upon reaching a large fence, PATRICK GROM surrendered to
19 police, indicating his desire to comply by facing towards the officers and raising
20 his hands in the air in a nonthreatening, submissive manner.

1 3.16 JOSEPH SCHOLTEN, who had been pursuing PATRICK GROM,
2 then used the full weight of his body to tackle PATRICK GROM, taking them
3 both to the ground.
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5 3.17 PATRICK GROM was knocked unconscious as a result of the force
6 of JOSEPH SCHOLTEN running into, tackling him and striking him.
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8 3.18 JOSEPH SCHOLTEN landed on top of PATRICK GROM,
9 straddling PATRICK GROM with PATRICK GROM's back on the grass.
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11 3.19 PATRICK GROM, dazed and confused having suffered a concussion
12 from being struck and knocked down, made no attempts to resist and instead
13 intended to comply with the officers' orders.
14

15 3.20 Without warning and due to JOSEPH SCHOLTEN's apparent
16 frustration and anger at having to chase PATRICK GROM, JOSEPH SCHOLTEN
17 began to strike PATRICK GROM in the face several times with a closed fist,
18 causing serious facial injuries.
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20 3.21 JOSEPH SCHOLTEN's closed fist strikes to PATRICK GROM's
21 face were unnecessary and excessive due to PATRICK GROM being
22 unconscious, in a position of unfair advantage and submitting to police
23 commands.
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25 3.22 Sergeant JEFF WALTHEN, upon arriving moments after JOSEPH
26 SCHOLTEN tackled PATRICK GROM, observed JOSEPH SCHOLTEN strike
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1 PATRICK GROM in the face several times with a closed fist but did not stop or
2 warn his fellow officer to stop striking PATRICK GROM.

3 3.23 JEFF WALTHEN's failure to act and/or intercede contributed to the
4 excessive force used against PATRICK GROM by JOSEPH SCHOLTEN.

5 3.24 PATRICK GROM was injured as a result of JOSEPH SCHOLTEN's
6 negligence, violation of his constitutional rights under the 4th Amendment to the
7 U.S. Constitution, and lack of knowledge, training and supervision relating to
8 basic police procedure, including use of force and restraining a non-violent
9 suspect.

10 3.25 The CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
11 Sergeant JEFF WALTHEN have failed to provide sufficient training to their
12 police officers.

13 3.26 The CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
14 Sergeant JEFF WALTHEN have engaged in a policy, practice or custom of
15 encouraging and training their police officers to use physical force as a
16 punishment to persons suspected of crimes who flee or otherwise obstruct law
17 enforcement.

18 3.27 The defendants, including those individually named, intended to
19 deprive PATRICK GROM of his constitutional rights by their pattern and practice

1 of failing to train and/or training officers to use physical force on non-violent
2 suspects such as PATRICK GROM.

3 3.28 The actions by JOSEPH SCHOLTEN caused severe and excruciating
4 pain to PATRICK GROM.

5 3.29 Plaintiff PATRICK GROM has suffered, and continues to suffer,
6 from ongoing physical and emotional pain due to the injuries he sustained in this
7 incident where JOSEPH SCHOLTEN used unnecessary and excessive force.

8 3.30 The CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
9 Sergeant JEFF WALTHEN have failed to have proper procedures or protections
10 in place to adequately document or investigate injuries to arrestees.

11 3.31 The CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
12 Sergeant JEFF WALTHEN failed to have proper procedures in place to assure
13 that other officers would take steps to protect citizens from assaultive behavior by
14 fellow officers.

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20 **IV. CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S**
21 **CONSTITUTIONAL RIGHTS UNDER COLOR OF LAW PURSUANT**
22 **TO 42 USC 1983 (THE CIVIL RIGHTS ACT), THE U.S. CONSTITUTION**
23 **AND THE IDAHO STATE CONSTITUTION, AND FOR EXCESSIVE**
24 **FORCE, ASSAULT AND BATTERY**

25 Plaintiff PATRICK GROM re-alleges and incorporates paragraphs 3.1 to
26 3.31 as paragraphs 4.1 to 4.31.
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1 4.32 The Defendants caused or failed to prevent injury to PATRICK
2 GROM in violation of his rights under 42 USC 1983.

3 4.33 That the Defendants CITY OF COEUR D'ALENE, Police Chief
4 LEE WHITE and Sergeant JEFF WALTHEN by custom, policy, or practice
5 caused the injury to PATRICK GROM by failing to train or supervise their police
6 officers relating to the proper use of force when confronting a citizen who is
7 suspected of violating state law.

8 4.34 As a result of the deprivations and violations to PATRICK GROM's
9 rights, he has suffered and continues to suffer injury as a result, including but not
10 limited to physical, psychological, and emotional injuries.

11 4.35 PATRICK GROM was subjected to unlawful, excessive and
12 unreasonable force by JOSEPH SCHOLTEN. There was no substantial
13 government interest in using such significant force to effect PATRICK GROM's
14 arrest for misdemeanor violations that are nonviolent and minor in nature.

15 4.36 JOSEPH SCHOLTEN used excessive force in his arrest and
16 detention of PATRICK GROM in violation of the Fourth Amendment to the
17 United States Constitution.

18 4.37 JOSEPH SCHOLTEN's knocking PATRICK GROM unconscious
19 and the use of closed fist strikes to the head and face of PATRICK GROM was
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1 unlawful, unreasonable, excessive and without provocation in violation of
2 PATRICK GROM's Fourth Amendment rights.

3 4.38 JOSEPH SCHOLTEN's knocking PATRICK GROM unconscious
4 and the use of closed first strikes to the face and head of PATRICK GROM was
5 unlawful, unreasonable, excessive and without provocation and constituted assault
6 and battery upon PATRICK GROM.

7 4.39 As a result of the actions or inactions of CITY OF COEUR
8 D'ALENE, Police Chief LEE WHITE and Sergeant JEFF WALTHEN, Plaintiff
9 PATRICK GROM suffered and continues to suffer injury, including but not
10 limited to, injuries that are physical, psychological, and emotional.

11 4.40 The Defendants acted with reckless and callous indifference to
12 PATRICK GROM's rights and failed to prevent injury to PATRICK GROM
13 which was a violation of his rights pursuant to the Fourth and Fourteenth
14 Amendments to the Constitution of the United States.

15 4.41 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
16 Sergeant JEFF WALTHEN by custom, policy, or practice caused the deprivation
17 of the rights of PATRICK GROM by allowing police officers to continually use
18 force beyond that which is necessary to subdue non-violent suspects, and such
19 action is sanctioned by superiors within the Department and the City of Coeur
20 d'Alene and is the moving force depriving the Plaintiff of his constitutional rights.

1 4.42 That as a result of the violations to PATRICK GROM's
2 constitutional rights, he has suffered and continues to suffer injury as a result of
3 his detainment and injuries.
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5 **V. CAUSE OF ACTION FOR NEGLIGENT TRAINING,
6 RETENTION AND SUPERVISION**

7 Plaintiff PATRICK GROM re-alleges and incorporates paragraphs 3.1 to
8 3.31 as paragraphs 5.1 to 5.31.
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10 5.32 That JOSEPH SCHOLTEN failed to make efforts to de-escalate the
11 contact prior to physically assaulting PATRICK GROM.
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13 5.33 That JOSEPH SCHOLTEN, after PATRICK GROM was knocked to
14 the ground and unconscious, continued to inflict physical and emotional injury by
15 striking PATRICK GROM in the face and head with closed fist strikes.
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17 5.34 That the acts of JOSEPH SCHOLTEN were done with deliberate and
18 reckless disregard of the injury to the Plaintiff, PATRICK GROM.
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20 5.35 That the CITY OF COEUR D'ALENE, Police Chief LEE WHITE
21 and Sergeant JEFF WALTHEN by custom, policy, or practice caused the
22 deprivation of the rights of CALEB V. DORMAIER when they failed to train,
23 supervise and retain JOSEPH SCHOLTEN relating to use of force on non-violent
24 persons suspected of violating minor misdemeanor laws.
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1 5.36 That the Plaintiff, PATRICK GROM, was not actively resisting
2 arrest in any way to justify the actions and the level of force used by JOSEPH
3 SCHOLTEN.
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5 5.37 That the actions of JOSEPH SCHOLTEN were outside the scope of
6 necessary and reasonable force that should have been used to detain a citizen on a
7 misdemeanor law violation and caused injury to PATRICK GROM.
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9 5.38 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
10 Sergeant JEFF WALTHEN are liable for the actions of their officers when using
11 unnecessary and unreasonable force as they by policy, custom, and practice
12 supported the actions of their officers by failing to implement, attempt or use de-
13 escalation practices when using physical force to subdue non-violent individuals
14 suspected or believed by police to be involved in minor law violations.
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16 5.39 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
17 Sergeant JEFF WALTHEN and the police officers employed by the CITY OF
18 COEUR D'ALENE, including the individually named defendant, engage in a
19 pattern or practice and have failed to act and/or follow and implement a
20 continuum of force policy to prevent the unnecessary escalation of force when
21 dealing with PATRICK GROM and other members of the public, which is the
22 moving force depriving PATRICK GROM of the aforementioned constitutional
23 rights violations.
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1 5.40 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
2 Sergeant JEFF WALTHEN and the police officers employed by the CITY OF
3 COEUR D'ALENE, including the individually named defendant, engage in a
4 pattern or practice of the use of excessive force on subjects who are already taken
5 into custody, handcuffed or otherwise restrained. These uses of force are
6 unjustified based on the diminished threat posed by the restrained suspects and the
7 force inflicted significant injuries upon the Plaintiff.
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10 5.41 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
11 Sergeant JEFF WALTHEN and the police officers employed by the CITY OF
12 COEUR D'ALENE, including the individually named defendants, engage in a
13 pattern or practice of using unnecessary or excessive force in the course of
14 arresting individuals for minor offenses in violation of the constitutional rights of
15 the individuals.
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18 5.42 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
19 Sergeant JEFF WALTHEN and the police officers employed by the CITY OF
20 COEUR D'ALENE, including the individually named defendants, engage in a
21 pattern or practice of not properly training their police officers to the police
22 industry standard and by failing to properly train officers, unnecessarily risk injury
23 to the public and persons with whom said officers interact.
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1 5.43 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
2 Sergeant JEFF WALTHEN are liable for violating the constitutional rights of
3 PATRICK GROM when, on the City's behalf by custom, policy, or practice
4 encouraged the acts of their employees.

5 5.44 That as a result of the actions or inactions of the Defendants,
6 PATRICK GROM suffered and continues to suffer injury as a result of the
7 excessive use of force used to detain him and injuries, including but not limited to
8 physical, psychological, and emotional.

9 5.45 That the Defendants CITY OF COEUR D'ALENE, Police Chief
10 LEE WHITE and Sergeant JEFF WALTHEN are liable for the actions of their
11 employees where they encouraged the acts by custom, policy, or practice which
12 resulted in the causation of and failure to prevent injury to PATRICK GROM.

13 5.46 That Defendants CITY OF COEUR D'ALENE, Police Chief LEE
14 WHITE and Sergeant JEFF WALTHEN, are liable for the actions of their
15 employees for failing to train said employees in procedures involving the use of
16 closed fist strikes, police searches, interactions with citizens, and training to
17 prevent the use of excessive force which resulted in the injury to PATRICK
18 GROM.

1 5.47 That as a result of the actions or inactions of the employees of CITY
2 OF COEUR D'ALENE, Police Chief LEE WHITE and Sergeant JEFF
3 WALTHEN, Plaintiff PATRICK GROM suffered and continues to suffer injury.
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5 5.48 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
6 Sergeant JEFF WALTHEN failed to adequately and fully train law enforcement
7 officers on when to use intermediate levels of force, resulting in the injury of
8 PATRICK GROM.
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10 5.49 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
11 Sergeant JEFF WALTHEN intentionally, willfully, recklessly and/or negligently
12 created no training programs for police officers employed by the CITY OF
13 COEUR D'ALENE, and in so doing created a situation where police officers were
14 patrolling the streets, responding to criminal acts and interacting with citizens
15 when the police officers had inadequate, little or no training in how to properly
16 deal with the situations they were confronting.
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19 5.50 That as a result of the negligent training, PATRICK GROM suffered
20 and continues to suffer injury.
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22 5.51 That Defendants CITY OF COEUR D'ALENE, Police Chief LEE
23 WHITE and Sergeant JEFF WALTHEN are liable for the actions of their
24 employees for failing to supervise said employees in procedures involving use of
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1 force, arrest procedures, police searches and interactions with citizens, which
2 resulted in the injury to PATRICK GROM.

3 5.52 That as a result of the actions or inactions of the employees of CITY
4 OF COEUR D'ALENE, Police Chief LEE WHITE and Sergeant JEFF
5 WALTHEN, PATRICK GROM suffered and continues to suffer injury.

6 5.53 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
7 Sergeant JEFF WALTHEN failed to adequately and fully supervise law
8 enforcement officers, resulting in the injury of PATRICK GROM.

9 5.54 That as a result of the negligent supervision, PATRICK GROM
10 suffered and continues to suffer injury.

11 5.55 That Defendants CITY OF COEUR D'ALENE, Police Chief LEE
12 WHITE and Sergeant JEFF WALTHEN are liable for the actions of their
13 employees for failing to discharge PATRICK GROM, who was not properly
14 trained as a police officer, was known to have been involved in improper action or
15 criminal activity against citizens (both suspected of crimes and improperly and
16 unlawfully suspected of crimes), which resulted in the injury to PATRICK
17 GROM.

18 5.56 That CITY OF COEUR D'ALENE, Police Chief LEE WHITE and
19 Sergeant JEFF WALTHEN encouraged such actions by custom, policy, and
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1 practice of not removing officers who were unnecessarily violent and/or
2 improperly trained, such as JOSEPH SCHOLTEN.

3 5.57 That as a result of the actions or inactions of CITY OF COEUR
4 D'ALENE, Police Chief LEE WHITE and Sergeant JEFF WALTHEN,
5 PATRICK GROM suffered and continues to suffer injury.

6 5.58 That as a result of the negligent retention, PATRICK GROM
7 suffered and continues to suffer injury.

8 5.59 Plaintiff demands a jury on all issues so triable.

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10 **VI. RELIEF SOUGHT**

11 WHEREFORE, the Plaintiff prays for judgment against the Defendants,
12 jointly and severally, in an amount that will fairly compensate the Plaintiff for all
13 damages sustained, costs, and reasonable attorneys' fees and costs, interest
14 calculated at the maximum amount allowable by the law, and any other relief the
15 Court deems just, including but not limited to:

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17 a. Past and future medical expenses.
18 b. Past and future emotional and psychological counseling costs.
19 c. Past and future loss of earnings.
20 d. Permanent and partial impairment of earnings and earning capacity.
21 e. Pain and suffering.
22 f. Past and future permanent and partial disability.
23 g. Loss of enjoyment of life.
24 h. Past and future special damages.
25 i. Interest calculated at the maximum amount allowable by law,
26 including prejudgment interest.
27 j. Injunctive relief to prevent future actions to protect others similarly
28 situated.

- 1 k. Injunctive relief including but not limited to training or retraining
officers of the City of Coeur d'Alene Police Department
- 2 l. Punitive damages.
- 3 m. Actual or compensatory damages.
- 4 n. Nominal damages.
- 5 o. Attorneys' fees and cost.
- 6 p. Cost and disbursements herein in an amount to be proven at the time
of trial.
- 7 q. Such other relief as the Court believes is equitable and just.

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9 DATED this 22nd day of October, 2018.

10
11 PHELPS & ASSOCIATES, P.S.
12 Attorneys for Plaintiff

13
14 /s/ Douglas D. Phelps
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1 STATE OF IDAHO)
2) ss.

3 COUNTY OF KOOTENAI)

5 I, PATRICK GROM, after being first duly sworn upon oath, depose and state as
6 follows: that I am the plaintiff herein, that I have read the foregoing Complaint,
7 know the contents thereof and believe them to be true and correct.

Patrick L. Grom

PATRICK L. GROM

SUBSCRIBED AND SWORN to before me this 24th day of October, 2018.

15 day of October
Meagan Falk
NOTARY PUBLIC

