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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

11 ALIITASI T. ALAPATI,

12 Ms. Alapati,

13 vs.

14 CITY AND COUNTY OF SAN
15 FRANCISCO, NURSE GIDAY BESHUE,
16 individually and in his capacity as a nurse
17 employed by City and County of San
18 Francisco, DR. LISA PRATT, individually
19 and in her capacity as a doctor employed by
20 City and County of San Francisco, DR. SONA
21 AGGARWAL, individually and in her
22 capacity as a doctor employed by City and
23 County of San Francisco, NURSE CHRISTA
24 GALLAGHER, individually and in her
25 capacity as a nurse employed by City and
26 County of San Francisco, NURSE NICOLE
27 UNA, individually and in her capacity as a
28 nurse employed by City and County of San
29 Francisco, NURSE TAYLOR-WOODBURY,
30 individually and in his capacity as a nurse
31 employed by City and County of San
32 Francisco, NURSE NICOLE JOE, individually
33 and in her capacity as a nurse employed by
34 City and County of San Francisco, NURSE
35 JESSICA JIMENEZ, individually and in her
36 capacity as a nurse employed by City and
37 County of San Francisco, NURSE EVELYN
38 MENDOZA, individually and in her capacity
39 as a nurse employed by City and County of

Case No.: 21-CV-4144

(Hon. Judge Susan Illston, Presiding)

THIRD AMENDED COMPLAINT FOR DAMAGES:

1. Violation of U.S. Constitution, 14th Amendment (42 U.S.C. § 1983), Right to Reasonable Safety and to be Free from Cruel and Unusual Punishment;
2. Violation of U.S. Constitution (42 U.S.C. § 1983), Right to Bodily Integrity;
3. Violation of U.S. Constitution, 14th Amendment (42 U.S.C. § 1983), Right to Medical Care;
4. Violation of U.S. Constitution, 14th Amendment (42 U.S.C. § 1983), Bystander Liability;
5. Negligence;
6. Negligent Infliction of Emotional Distress;
7. Assault & Battery;
8. Violation of Bane Act (Civil Code § 52.1);
9. ADA Violations;
10. Violation of the California Disabled Persons Act – Cal. Civ. § 54 - 54.8

DEMAND FOR JURY TRIAL

1 San Francisco, NURSE RAPHROGER
2 GONZAGA, individually and in his capacity
3 as a nurse employed by City and County of
4 San Francisco, NURSE THU TRAN,
5 individually and in her capacity as a nurse
6 employed by City and County of San
7 Francisco, NURSE KARINA SHANNON,
8 individually and in her capacity as a nurse
9 employed by City and County of San
10 Francisco, NURSE ROCIO BABILONIA,
11 individually and in her capacity as a nurse
12 employed by City and County of San
13 Francisco, and DOES 16 THROUGH 50,
14 individually and in their capacities as
15 employees or agents of City and County of
16 San Francisco,

Defendants.

17
18 COMES NOW, Plaintiff ALIITASI T. ALAPATI, alleging as follows:

19
20 **PARTIES AND JURISDICTION**

- 21 1. Plaintiff ALIITASI T. ALAPATI is, and at all times described herein, was, a resident of
22 the City and County of San Francisco, State of California.
- 23 2. Defendant CITY AND COUNTY OF SAN FRANCISCO (“City and County”) is a
24 municipal body and county of the State of California, with the capacity to sue and be
25 sued. At all times described herein, City and County was responsible for assuring that its
26 own actions, omissions, policies, procedures, practices, and customs and those of its
27 employees, contractors, agents departments, divisions and agencies complied with all
28 applicable laws and duties. The San Francisco Sheriff’s Department and the City and

1 County of San Francisco Jail Health Services are separate City and County Departments,
2 which are under the control of City and County.

3 3. Defendants NURSE GIDAY BESHUE (“BESHUE”), DR. LISA PRATT (“PRATT”),
4 DR. SONA AGGARWAL (“AGGARWAL”), NURSE CHRISTA GALLAGHER
5 (“GALLAGHER”), NURSE NICOLE UNA (“UNA”), NURSE TAYLOR-
6 WOODBURY (“TAYLOR-WOODBURY”), NURSE NICOLE JOE (“JOE”), NURSE
7 JESSICA JIMENEZ (“JIMENEZ”), NURSE EVELYN MENDOZA (“MENDOZA”),
8 NURSE RAPHROGER GONZAGA (“GONZAGA”), NURSE THU TRAN (“TRAN”),
9 NURSE KARINA SHANNON (“SHANNON”), NURSE ROCIO BABILONIA
10 (“BABILONIA”), NURSE JOSEPH WILLIAMSON (“WILLIAMSON”), NURSE
11 HAJA DUMBAYA (“DUMBAYA”), and DOES 16 – 25, inclusive, (collectively, “CJ2
12 Medical Staff”) were employees, agents, representatives, managers and/or supervisors of
13 City and County working at the medical pod of City and County of San Francisco County
14 Jail 2 (“CJ2”). At all times relevant hereto, said Defendants were acting within the
15 course and scope of their employment as employees, agents, representatives, managers,
16 supervisors and/or policy makers of City and County. At all times relevant herein, said
17 Defendants were acting under color of statutes, ordinances, regulations policies, customs,
18 practices and usages of City and County, its Jail Department, and/or the State of
19 California. DOE Defendants 26 – 50, inclusive, were other individuals whose identity is
20 unknown to Ms. Alapati at this time.

21 4. At all times relevant herein, said DOE Defendants 16 – 50 were acting under color of the
22 statutes, ordinances, regulations policies, customs, practices and usages of Defendant
23 CITY AND COUNTY, its Jail Department, and/or the State of California. Ms. Alapati is
24 informed and believes, and thus alleges, that DOES 26 – 50, includes deputies, overseers,
25 policymakers, supervisors and managers of CITY AND COUNTY. As overseers,
26 policymakers, supervisors and managers, these defendants were aware of customs and
27 practices of unlawful actions by their subordinates such as the aforementioned CJ2
28 Medical Staff and deputies, and failed to take action to stop such unlawful and

1 inappropriate activity. These unlawful customs and practices include violations of
2 constitutional and statutory rights such as failure to provide to Ms. Alapati reasonable and
3 appropriate medical care and sanitary work and living conditions while detained at CJ2.

4 5. Ms. Alapati is ignorant of the true names and capacities of defendants sued herein as
5 DOES 16-50, inclusive, and therefore sues these defendants by such fictitious names.
6 Ms. Alapati will amend this complaint to allege their true names and capacities when
7 ascertained. Ms. Alapati is informed and believes, and therefore alleges that such
8 factiously named Defendants are responsible in some manner for the occurrences herein
9 alleged, and thus responsible, at least in part, for Ms. Alapati's injuries as alleged herein.
10 All the individual Defendants, and each of them, are sued both in their individual and
11 official capacities.

12 6. Venue is proper in the City and County of San Francisco. The injury occurred in the City
13 and County of San Francisco.

14 7. Ms. Alapati exhausted her administrative remedies by filing a Claim for Damages with
15 the City and County of San Francisco on September 3, 2019, which was denied on
16 September 10, 2019.

17 **FACTUAL ALLEGATIONS**

18 8. Ms. Alapati hereby incorporates by reference all foregoing allegations as if set forth fully
19 herein.

20 9. Ms. Alapati became a pre-trial inmate of CJ2 on September 9, 2018. At that time, she
21 was under medication for heart, asthma, and allergy conditions. The heart condition
22 regarded an aortic valve replacement ("AVR") which occurred in 2010. Prior to
23 incarceration, Ms. Alapati had regular appointments with her cardiologist to ensure her
24 mechanical aortic valve device, commonly known as a St. Jude valve, functioned
25 properly. Upon intake at CJ2, Ms. Alapati informed medical staff about her AVR
26 because she was highly sensitive to the critical attention and care required for her St. Jude
27 valve to function properly and allow her to live.

28 10. At all times during her incarceration at CJ2, Ms. Alapati was under the complete

1 care and control of, and in the custody of, CITY AND COUNTY.

2 11. Further, Ms. Alapati's medical care was administered by or at the behest of CJ2 Medical
3 Staff without alternative.

4 12. On or about February 23, 2019, Ms. Alapati began working as an inmate utility worker.
5 In that position, she worked in the kitchen and the laundry department of CJ2. In the
6 laundry department, she saw items contaminated with feces, vomit, urine, blood and lice
7 indiscriminately laundered with clothing, towels, and sheets to be issued to inmates for
8 their daily use. The contaminated items were not pre-rinsed or otherwise sanitized before
9 being commingled with other items to be laundered. The bio-hazardous condition of the
10 contaminated items required Ms. Alapati to wear a protective body suit, gloves and boots
11 while working. However, that protective gear did not guarantee Ms. Alapati's safety
12 because the suit and gloves were thin and tore easily and thus exposed Ms. Alapati to the
13 bio-hazardous condition of the laundry department.

14 13. CJ2 had a policy of keeping bio-hazardous items and threatened utility workers with
15 discipline if such items were discarded.

16 14. On or about March 4, 2019, Ms. Alapati experienced swelling at the hands and knees.
17 She reported said symptoms to WILLIAMSON who noted in Ms. Alapati's CJ2 Medical
18 Chart (the "Chart") that she had acute pain.

19 15. On or about March 6, 2019, Ms. Alapati began to feel body aches, her complexion turned
20 from a healthy pale brown color to yellow, and her energy had noticeably decreased.
21 Upon reporting said symptoms to GALLAGHER and objectively exhibiting low blood
22 pressure, GALLAGHER prescribed Tylenol to alleviate Ms. Alapati's symptoms. Ms.
23 Alapati was not taken to the medical pod for observation, and her symptoms worsened.

24 16. On or about March 7, 2019, Ms. Alapati's mobility became severely impaired. She was
25 unable to get into her bunk bed due to excruciating pain to her entire body and overall
26 weakness throughout her body. Deputies and/or inmates assisted Ms. Alapati with
27 moving her mattress to the floor and, they also summoned medical staff to check on Ms.
28 Alapati. At least three members of the CJ2 Medical Staff, which included Defendant

1 Beshue, DOE 16 and DOE 17, reported to Ms. Alapati's cell. Before assessing her
2 condition, Defendant Beshue grabbed her at or about the wrist with extreme force and
3 yanked Ms. Alapati up from the ground and exclaimed that she was faking her extreme
4 symptoms. None of the CJ2 Medical Staff present intervened to stop Defendant Beshue.

5 17. Ms. Alapati lost her ability to walk, stand up, climb, she was no longer able to shower
6 since the restroom in her area was not designed to accommodate someone with physical
7 limitations, she was no longer able to make phone calls to her family since the phone
8 booth at CJ2 was located about four feet from the floor, and she slept on a mattress on the
9 floor since no low bunk bed was available.

10 18. Further, Defendants Beshue, DOE 16 and DOE 17 failed to record this encounter,
11 including any symptoms or complaints that Plaintiff might have had at that time in the
12 Chart.

13 19. Furthermore, at least two Deputies were present when Defendant Beshue yanked at Ms.
14 Alapati and accused her of faking her symptoms.

15 20. On or about March 8, 2019, Ms. Alapati encountered the CJ2 Medical Staff because her
16 pain symptoms, including dizziness, body aches and body fatigue, continued to increase
17 in severity. MENDOZA took Ms. Alapati's blood pressure and noted that it was
18 abnormal. Yet, the only remedy provided to Ms. Alapati was Tylenol, a remedy which
19 she had emphatically reported failed to alleviate her severe pain and discomfort.

20 21. On or about March 9, 2019, Ms. Alapati received a visit from her sister, Freda Alapati¹.
21 When Freda saw Ms. Alapati's disheveled hair, pale skin and slow movement, she
22 became immediately concerned about Ms. Alapati's well-being. Ms. Alapati and Freda
23 stopped the visit after less than ten minutes to allow Ms. Alapati to return to her cell for
24 medical attention. AGGARWAL, TRAN, GONZAGA and SHANNON were in charge
25 of Ms. Alapati's care. Despite Ms. Alapati's abnormal blood pressure readings, pale
26 appearance, complaints of dizziness, weakness, nausea, hand swelling, foot pain,
27

28 ¹ Given Aliitasi Alapati and Freda Alapati share the same last name, the latter will be referred to as Freda
to avoid confusion.

1 migraine, and chest pain, and medical history of AVR, Ms. Alapati was again prescribed
2 Tylenol.

3 22. On or about March 10, 2019, Freda returned to CJ2 to visit Ms. Alapati. However, Ms.
4 Alapati's physical pain and discomfort was so severe that she became immobile and thus
5 unable to visit with her sister. Ms. Alapati continued to complain of body aches,
6 headaches and overall body pain to the CJ2 Medical Staff, including BABILONIA,
7 DUMBUYA and JIMENEZ. Despite noting said complaints, in addition to Ms. Alapati's
8 abnormal temperature readings and that Ms. Alapati was lying on the mattress on the
9 floor, BABILONIA, DUMBUYA and JIMENEZ only provided Ms. Alapati with
10 Tylenol, a water pitcher, and ice chips for relief.

11 23. On or about March 10, 2019 until on or about March 13, 2019, Freda contacted Ms.
12 Alapati's defense attorney, Sylvia Nguyen, and pleaded for her to visit Ms. Alapati and
13 determine the status of her medical condition. Freda also called CJ2 numerous times and
14 attempted to contact CJ2 Medical Staff and DOES 26 - 50 through the CJ2 website to
15 determine Ms. Alapati's health status to no avail.

16 24. Meanwhile, at CJ2, Ms. Alapati continued to complain to SHANNON and
17 GALLAGHER of unresolved body aches and nausea, in addition to feeling chills,
18 experiencing sudden nose bleeds, abdominal cramps and painful urination. Again, Ms.
19 Alapati was only provided Tylenol for pain relief.

20 25. On or about March 12, 2019, Ms. Alapati was transferred from general population to C-
21 Pod, CJ2's medical pod. Lab results showed her international normalized ratio (INR)
22 was 10.1. Ms. Alapati's target INR was 2 – 3. Unaware of the dangerously elevated
23 INR, Ms. Alapati continued to beg the medical staff, including JOE, UNA, SHANNON,
24 WILLIAMSON, TRAN and BESHUE, to send her to the hospital because her pain
25 symptoms had only worsened since she first reported her failing health condition to them
26 on or about March 6th. Ms. Alapati stressed that Tylenol was not alleviating her pain.

27 26. Despite Ms. Alapati's visible, apparent, and obvious failing health condition, in addition
28 to her pre-existing heart condition, the CJ2 Medical Staff did not recommend or request

1 transfer to a hospital, emergency room, or other medical facility; did not seek the opinion
2 of or consult with medical professionals with more training in diagnosing Ms. Alapati's
3 persistent and progressive pain symptoms; and did not otherwise provide the care and
4 treatment expected of a medical professional who has been informed that no measure of
5 relief has been obtained since the onset of pain.

6 27. Indeed, CJ2 Medical Staff failed to properly examine Ms. Alapati and the Chart to rule
7 out alternative causes or remedies for the pain and discomfort she exhibited and
8 continued to treat her with Tylenol. Ms. Alapati repeatedly informed CJ2 Medical Staff
9 that the Tylenol was ineffective and continually begged to be taken to the hospital.

10 28. CJ2 Medical Staff also caused an undue delay in the testing Ms. Alapati's blood sample
11 due to the lack of or improper labeling of the sample container.

12 29. On March 13, 2019, Ms. Nguyen visited Ms. Alapati. A deputy had to transport Ms.
13 Alapati in a wheelchair to the visitation. Ms. Alapati's complexion was severely
14 discolored, and she was bleeding from her nose. Ms. Nguyen immediately demanded the
15 medical staff to transfer Ms. Alapati to the hospital. As with Ms. Alapati, Defendant
16 BESHUE refused Ms. Nguyen's request. BESHUE, GONZAGA, JIMENEZ, UNA,
17 TAYLOR-WOODBURY and PRATT were still inexcusably ignorant or neglectful of the
18 fact that Ms. Alapati's failing health was due to, among other things, her AVR being
19 compromised.

20 30. At approximately 9:10PM, On March 13, 2019, Ms. Alapati was admitted to Zuckerberg
21 San Francisco General Hospital ("General Hospital"). She was transported in the back
22 seat of a sheriff's vehicle, while handcuffed.

23 31. Upon physical and diagnostic examination by General Hospital's medical staff, Ms.
24 Alapati was diagnosed with e-coli and sepsis infections and a compromised heart valve
25 due to untreated infections. She was informed that any further delay in treating the
26 infections would have been fatal. She was admitted to General Hospital and remained
27 hospitalized for observation and treatment of infection from March 13, 2019 to March 22,
28 2019. All the while she was handcuffed to her hospital bed.

1 32. On March 22, 2019, Ms. Alapati was transferred from General Hospital to California
2 Pacific Medical Center (“Medical Center”) to undergo heart surgery. The delayed
3 treatment of infections caused her St. Jude valve to become compromised. Ms. Alapati’s
4 new aortic valve replacement was biological which carries a life span that is about ten
5 years shorter than the St. Jude valve. Ms. Alapati remained hospitalized at Medical
6 Center until she was discharged on April 5, 2019.

7 33. Since Ms. Alapati did not enter CJ2 with e-coli and was symptom free of e-coli infection
8 until approximately one week of working at the laundry department, it was clear to Ms.
9 Alapati that the e-coli infection she contracted was the result of the unsanitary practices
10 in and about CJ2, including the policy and practice of indiscriminate commingling and
11 laundering of bio-hazardous items with other items to be redistributed for use by inmates
12 and of keeping bio-hazardous items rather than discarding them.

13 34. It was clear to Ms. Alapati that CJ2 Medical Staff undertaking her medical care and
14 treatment lacked the knowledge, care, and experience to identify symptoms resulting
15 from life-threatening internal infections like sepsis and thereby the grave effect of sepsis
16 to her as an AVR patient.

17 35. The doctors at General Hospital told her that the symptoms she experienced at
18 CJ2 beginning on March 4th were the result of her organs shutting down and that
19 she had only two or three days to live.

20 36. The unnecessary pain and suffering that Ms. Alapati endured while begging the CJ2
21 Medical Staff to transfer her to the hospital has caused, and will continue to cause, her
22 great emotional and psychological harm. She was overcome with thoughts of dying in
23 jail without ever again seeing her daughter, who is blind and developmentally disabled.

24 37. Additionally, she suffered, and will continue to suffer, from anxiety and fear over the
25 stability and durability of the new biological aortic valve due to its shorter life
26 expectancy.

27 38. Ms. Alapati constantly agonized over how her family, particularly her disabled
28 daughter, would handle her untimely and senseless death. Such emotional

1 distress revived the anxiety and depression she had brought under control with
2 therapy and medication compliance. As a result, Ms. Alapati has undergone
3 further therapeutic treatment to address her mental health issues exacerbated by
4 the traumatic events suffered at CJ2 as alleged herein.

5 39. Ms. Alapati alleges that each of the entities and individuals named above, and each of
6 them, are the agents, servants and/or employees of each other entity and individual
7 named above, and at all relevant times were acting within the course and scope of said
8 agency, service, and/or employment.

9 40. Ms. Alapati has sustained serious and permanent bodily injury and will continue to
10 sustain severe physical, mental, and emotional injuries, pain, distress, suffering, anguish,
11 nervousness, grief, anxiety, worry, and mental suffering, as well as other unpleasant
12 physical, mental, and emotional reactions, and other non-economic damages.

13 41. Ms. Alapati was required, and will in the future be required, to engage the services of
14 health care providers, and incurred expenses for medicines, health care appliances,
15 modalities, and other related expenses in a sum to be ascertained according to proof.

16 42. Ms. Alapati has timely filed government claim within six months of the injury, damage,
17 loss, and or harm caused by the acts, omissions, and other misconduct of CITY AND
18 COUNTY and employees, agents, representatives, managers, supervisors and/or policy
19 makers.

20 **FIRST CAUSE OF ACTION**

21 (Violation of U.S. Constitution, 14th Amendment

22 (42 U.S.C. § 1983) Right to Reasonable Safety and

23 To be Free from Cruel and Unusual Punishment)

24 **As to Defendants CITY AND COUNTY and DOES 26-50**

25 43. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
26 fully set forth herein.

27 44. At all times pertinent hereto, Defendants CITY AND COUNTY and DOES 26 – 50, and
28 each of them knew or should have known that the incarceration of Ms. Alapati at CJ2

1 was an affirmative act restraining Ms. Alapati’s freedom to act on her own behalf, which
2 constituted a “deprivation of liberty” sufficient to trigger the due process protections
3 guaranteed to Ms. Alapati by the Fourteenth Amendment to the United States
4 Constitution.

5 45. Defendants CITY AND COUNTY and DOES 26 – 50, and each of them, knew or should
6 have known that unsafe and unsanitary practices, such as keeping bio-hazardous items
7 rather than discarding them and then failing to pre-wash or separate the bio-hazardous
8 items, including those contaminated with feces, urine, blood, vomit and/or lice, created a
9 substantial and unreasonable risk of infection to inmates, including Ms. Alapati, and
10 created conditions of confinement that involve the unnecessary infliction of pain, or that
11 involve a risk of bodily harm grossly disproportionate to the severity of the crime
12 warranting punishment.

13 46. Permitting and/or inviting inmates, including Ms. Alapati, to engage in work in the
14 laundry department under the conditions and circumstances set forth above demonstrates
15 a deliberate indifference to Ms. Alapati’s right of reasonable safety during detention
16 arising under the due process clause of the Fourteenth Amendment to the United States
17 Constitution.

18 47. Defendants CITY AND COUNTY and DOES 26 – 50, and each of them, were
19 deliberately indifferent to the safety of Ms. Alapati while she lived and worked at CJ2 in
20 that said Defendants created and then failed to remedy the conditions of confinement
21 involving the unnecessary infliction of pain or the risk of bodily harm grossly
22 disproportionate to the severity of the crime warranting punishment.

23 48. As a result of the deliberate indifference of Defendants CITY AND COUNTY and DOES
24 26 – 50, and each of them, they actually and proximately caused Ms. Alapati’s physical
25 injury, and mental pain and suffering and damages in an amount to be determined
26 according to proof.

27 **SECOND CAUSE OF ACTION**

28 (Violation of U.S. Constitution, 14th Amendment)

(42 U.S.C. § 1983), Right to Bodily Integrity)

As to Defendants CITY AND COUNTY, CJ2 Medical Staff and DOES 26 - 50

49. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if fully set forth herein.

50. At all times pertinent hereto, it was clearly established federal law that Ms. Alapati had a liberty interest in her bodily integrity protected by the Fourteenth Amendment to the Constitution of the United States. This constitutionally guaranteed right to bodily integrity includes the right to be free from endangerment, degradation and humiliation to Ms. Alapati's person caused by the deliberate indifference of persons acting under the color of state law.

51. At all times pertinent hereto, Defendants CITY AND COUNTY, CJ2 Medical Staff and DOES 16 - 50, knew or should have known, of the aforementioned constitutional rights clearly established under federal law.

52. Defendants CITY AND COUNTY and DOES 26 - 25, knew or should have known that unsafe and unsanitary practices, such as keeping bio-hazardous items rather than discarding them and then failing to pre-wash or separate the previously described bio-hazardous items created a substantial and unreasonable risk of infection to inmates, including Ms. Alapati.

53. Permitting and/or inviting inmates, including Ms. Alapati, to engage in work in the laundry department under the conditions and circumstances set forth above demonstrates deliberate indifference to Ms. Alapati's right of bodily integrity during detention in that the protective gear she was provided failed to adequately protect her against contracting the bacterial infection which eventually compromised her St. Jude valve and caused her to undergo the open-heart surgery and endure pain and suffering.

54. Defendants CITY AND COUNTY and CJ2 Medical Staff, knew or should have known that policy and procedures must be in place to adequately and reasonably accommodate inmates with life threatening medical conditions; and if such procedures were in place, they knew or should have known that failure to comply with said policy and procedures

1 would constitute violations of the Fourteenth Amendment to the United States
2 Constitution.

3 55. Defendants CITY AND COUNTY and CJ2 Medical Staff, knew or should have known
4 that the inexistence of health and safety policy and procedures for inmates with known
5 life threatening medical conditions, whether expressed or implied, and/or permitting
6 medical staff to ignore such health and safety procedures for inmates who have disclosed
7 their life-threatening medical condition under the circumstances set forth above
8 constitutes a violation of Ms. Alapati's right to bodily integrity.

9 56. The deliberate indifference of Defendants City and County, CJ2 Medical Staff and DOES
10 26 – 50 to Ms. Alapati's right to bodily integrity actually and proximately caused Ms.
11 Alapati's physical injury, mental pain and suffering and damages in an amount to be
12 determined according to proof.

13 **THIRD CAUSE OF ACTION**

14 (Violation of U.S. Constitution, 14th Amendment
15 (42 U.S.C. § 1983), Right to Medical Care)

16 **As to Defendant CJ2 Medical Staff**

17 57. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
18 fully set forth herein.

19 58. At all times pertinent hereto, it was clearly established federal law that the due process
20 protections provided to inmates, including Ms. Alapati, by the Fourteenth Amendment to
21 the United States Constitution included the right to reasonable medical treatment for
22 serious medical needs, and the right to be free from deliberate indifference of jail
23 personnel to serious medical needs.

24 59. At all times pertinent hereto, Defendant CJ2 Medical Staff, knew or should have known,
25 of the aforementioned constitutional rights clearly established under federal law.

26 60. Ms. Alapati contracted e-coli at CJ2 which developed into sepsis and compromised her
27 St. Jude valve to the extent that she had to undergo open-heart surgery to replace the
28 valve to survive.

1 61. A compromised St. Jude valve and sepsis, a life- threatening infection, were serious
2 medical conditions giving rise to the need for immediate and appropriate medical
3 treatment. The failure to immediately and appropriately treat said medical conditions
4 posed a serious risk of harm to Ms. Alapati.

5 62. Defendant CJ2 Medical Staff were actually aware of the risk of harm posed to Ms.
6 Alapati due to the subjective and objective symptoms she exhibited from March 4, 2019
7 to March 13, 2019.

8 63. Despite knowledge of Ms. Alapati's subjective and objective symptoms clearly indicating
9 her failing health, Defendant CJ2 Medical Staff did not provide and/or delayed
10 performing or ordering a physical or radiological examination, recommending or
11 ordering transfer to a hospital, emergency room, or other medical facility, and/or seeking
12 and consulting with medical professionals with more training in diagnosing Ms. Alapati's
13 persistent and progressive pain symptoms in light of being an AVR patient.

14 64. Defendant CJ2 Medical Staff consciously disregarded the risk of harm to Ms. Alapati
15 posed by sepsis and her compromised St. Jude valve which were precipitated by the
16 unsanitary and unsafe living and work conditions at CJ2.

17 65. Defendant CJ2 Medical Staff failed to provide reasonable treatment for Ms. Alapati's
18 serious medical needs and were deliberately indifferent to her dire medical need in that
19 she was not transferred to the hospital prior to March 13, 2019, her lab samples were not
20 properly labeled or expedited and the Chart did not accurately reflect her medical
21 complaints and conditions.

22 66. Defendant CJ2 Medical Staff's deliberate indifference to Ms. Alapati's serious medical
23 needs actually and proximately caused Ms. Alapati's physical injury, mental pain and
24 suffering and damages in an amount to be determined according to proof.

25 **FOURTH CAUSE OF ACTION**

26 (Violation of U.S. Constitution, 14th Amendment

27 (42 U.S.C. § 1983), Bystander Liability)

28 **As to Defendants DOE 16 and DOE 17**

1 67. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
2 fully set forth herein.

3 68. At all times pertinent hereto there existed a clearly established federal law that jail
4 personnel had a duty to intervene to protect the constitutional rights of citizens, including
5 inmates, when jail personnel has knowledge that a fellow officer or jail personnel,
6 including medical staff, is violating an inmate's constitutional rights, has a reasonable
7 opportunity to prevent the harm, and chooses not to act. Failure to act in such
8 circumstances constitutes a violation of Ms. Alapati's Fourteenth Amendment rights.

9 69. At all times pertinent hereto, Defendants DOE 16 and DOE 17, two unidentified female
10 medical staff members who reported to Ms. Alapati's cell with Defendant Beshue when
11 he grabbed and yanked Ms. Alapati, knew or should have known, of the aforementioned
12 constitutional rights clearly established under federal law.

13 70. As detailed above, Defendants DOE 16 and DOE 17, went to Ms. Alapati's cell to
14 administer medical care but instead witnessed Defendant Beshue grab Ms. Alapati by her
15 wrist to yank her up from the floor and accuse her of faking her symptoms. Defendants
16 DOE 16 and DOE 17 condoned Defendant Beshue's conduct as evidenced by their
17 individual and collective failure to intervene and provide the medical care required.

18 71. Defendants DOE 16 and DOE 17 were objectively and deliberately indifferent in their
19 failure to intervene and thus actually and proximately caused physical injury, and mental
20 pain and suffering to Ms. Alapati.

21 72. The foregoing actions of Defendants DOE 16 and DOE 17 were actual and proximate
22 causes of Ms. Alapati's damages in an amount to be determined according to proof.

23 **FIFTH CAUSE OF ACTION**

24 (Negligence / Gross Negligence / Recklessness)

25 **As to Defendant CJ2 Medical Staff**

26 73. Plaintiff repeats and hereby incorporates by reference all foregoing allegations as if fully
27 set forth herein.

28 74. At all times pertinent hereto, Defendant CJ2 Medical Staff owed inmates, including

1 Ms. Alapati, a duty to exercise reasonable care in the operation of CJ2. This duty of care,
2 included, but was not limited to: the duty to provide Ms. Alapati a reasonably safe and
3 sanitary environment; the duty to not create conditions or allow activities that pose an
4 unreasonable risk of harm to Ms. Alapati; the duty to supervise its deputies so as to
5 reasonably assure the safety of inmates; the duty to reasonably safeguard the
6 constitutional rights afforded inmates; the duty to provide reasonable medical care; the
7 duty to not unreasonably delay medical treatment; the duty to intervene in and prevent
8 constitutional violations by other employee; and the duty to refrain from negligent,
9 grossly negligent, or reckless conduct that may pose an unreasonable risk of harm to
10 inmates, including Ms. Alapati.

11 75. The conduct of Defendant CJ2 Medical Staff, as set forth herein, posed an unreasonable
12 risk of harm to Ms. Alapati.

13 76. Defendant CJ2 Medical Staff engaged in the conduct set forth herein and were negligent,
14 grossly negligent and reckless in that conduct.

15 77. Defendant CJ2 Medical Staff's negligence, gross negligence and recklessness were a
16 significant cause of the serious and permanent injuries and losses of Ms. Alapati as set
17 forth herein and in an amount to be determined according to proof.

18 **SIXTH CAUSE OF ACTION**

19 (Negligent Infliction of Emotional Distress)

20 **As to Defendants CJ2 Medical Staff**

21 78. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
22 fully set forth herein.

23 79. Defendant CJ2 Medical Staff owed Ms. Alapati a duty of care not to engage in conduct
24 they knew or should have known would likely cause her serious emotional distress.

25 80. Defendant CJ2 Medical Staff breached that duty of care when they failed to provide
26 and/or delayed adequate, appropriate, and immediate medical services for her visible,
27 apparent, and obvious dire medical condition, assaulted and battered her, failed to report
28 said tortious conduct in the Chart or elsewhere, and failed to accurately record her

1 symptoms and requests for transfer to the hospital in the Chart.

2 81. It was reasonably foreseeable that said Defendants' breach of duty of care would cause
3 Ms. Alapati physical and emotional harm. Indeed, Ms. Alapati has been required to
4 undergo mental health therapy to address her mental pain and suffering directly and
5 proximately caused by the aforesaid conduct of Defendant CJ2 Medical Staff.

6 82. Defendant CJ2 Medical Staff were acting under the color of law and in the course and
7 scope of their employment with City and County when they perpetrated the wrongful
8 conduct described herein.

9 83. The foregoing actions of Defendant CJ2 Medical Staff were the actual and proximate
10 cause of Ms. Alapati's damages in an amount to be determined according to proof.

11 **SEVENTH CAUSE OF ACTION**

12 (Assault & Battery)

13 **As to Defendant Beshue**

14 84. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
15 fully set forth herein.

16 85. On or about March 7, 2020, Defendant Beshue, intentionally touched and made contact to
17 Ms. Alapati's person in a harmful and offensive manner without the consent of Ms.
18 Alapati when he grabbed and yanked her wrist.

19 86. As a direct result of the intentional, unwanted physical contact by Defendant Beshue
20 against Ms. Alapati, she suffered great humiliation, and physical, emotional and
21 psychological harm and violation of her personal dignity, and continues to do so, causing
22 damages, in an amount to be determined according to proof.

23 87. Said acts of Defendant Beshue were willful, wanton, malicious, and oppressive, and
24 thereby justifies the awarding of exemplary and punitive damages in addition to general,
25 compensatory and economic damages.

26 **EIGHTH CAUSE OF ACTION**

27 (Violation of Bane Act (Civil Code § 52.1(b))

28 As to Defendant Beshue and DOES 26-50

1 88. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
2 fully set forth herein.

3 89. Section 52.1(b) of California Civil Code provides: “Any individual whose exercise or
4 enjoyment of rights secured by the Constitution or laws of the Unites States or of rights
5 secured by the Constitution or laws of this state, has been interfered with, or attempted to
6 be interfered with, as described in subdivision (a) may institute and prosecute in his or
7 her own name and on his or her own behalf a civil action for damages, including, but not
8 limited to, damages under Section 52, injunctive relief, and other appropriate equitable
9 relief to protect the peaceable exercise or enjoyment of the right or rights secured,
10 including appropriate equitable and declaratory relief to eliminate a pattern or practice of
11 conduct as described in subdivision (a).”

12 90. Defendants Beshue and DOES 26-50 violated Ms. Alapati’s rights to due process with
13 deliberate indifference and thereby violated the Bane Act. Alternatively, said
14 Defendants, and each of them, attempted to interfere or did interfere with Ms. Alapati’s
15 constitutional and statutory rights by engaging in conduct constituting threat, intimidation
16 or coercion upon (a) intentionally and with deliberate indifference exposing Ms. Alapati
17 to unsanitary and bio-hazardous living conditions, (b) intentionally and with deliberate
18 indifference imposing inadequate and improper medical care to Ms. Alapati who was
19 suffering from severe internal infection, and (c) intentionally and with deliberate
20 indifference depriving or preventing Ms. Alapati from receiving immediate and necessary
21 medical care and treatment for conditions relating to her AVR. Said acts of threat,
22 intimidation, and coercion were not necessary or inherent to any legitimate and lawful
23 law enforcement activity.

24 91. Defendants Beshue and DOES 26-50 specifically and purposefully violated Ms. Alapati’s
25 rights to deprive her of right to enjoy those rights and the interest protected by those
26 rights.
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1 92. The foregoing Bane Act violations committed by Defendants Beshue and DOES 26-50,
2 were a actual and proximate cause of Ms. Alapati’s serious and permanent injuries and
3 harm to which Ms. Alapati is entitled to damages, penalties, costs and attorney fees.

4 **NINTH CAUSE OF ACTION**

5 (Violation of the American with Disabilities Act and Rehabilitation Act)

6 As to Defendant City and County

7 93. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
8 fully set forth herein.

9 94. Title II of the American with Disabilities Act (the “ADA”) states that “No qualified
10 individual with a disability shall, by reason of such disability, be excluded from
11 participation in or be denied the benefits of the services, programs, or activities of a
12 public entity, or be subjected to discrimination by any such entity.

13 95. Section 504 of the Rehabilitation Act (the “RA”) states that “no otherwise qualified
14 individual with a disability in the United States...shall, solely by reason of her or his
15 disability, be excluded from the participation in, be denied the benefits of, or be subjected
16 to discrimination under any program or activity receiving Federal financial assistance...”

17 96. Under the ADA, disability is defined as a “physical or mental impairment that
18 substantially limits one or more major life activities”. 42 U.S.C. § 12102(1)(A).

19 97. The ADA defines a “qualified individual with a disability” as an individual with a
20 disability who, with or without reasonable modifications to rules, policies, or practices, or
21 the provision of auxiliary aids and services, meets the essential eligibility requirements
22 for the receipt of services or the participation in programs or activities provided by a
23 public entity.

24 98. Ms. Alapati’s heart condition, especially upon being exacerbated by the internal
25 infections, limited her ability to walk on her own, stand up, and move around without
26 assistance.

1 99. Ms. Alapati’s exacerbated heart condition qualified her as an individual with physical
2 disability under the ADA and thus made her eligible for State and County programs to
3 provide access to medical health care services for patient-inmates in CJ2.

4 100. As Ms. Alapati became severely ill, although the causes were unknown at the time, she
5 was unable to walk to the bathroom, to the food area, to the line where medication was
6 dispensed, and to the phone located outside of her cell. Ms. Alapati’s lack of mobility
7 was not recorded in the medical chart by Defendant CJ2 Medical Staff.

8 101. Defendants CJ2 Medical Staff and DOES 26 - 50 failed to provide her with a wheelchair
9 to access these services.

10 102. Ms. Alapati was excluded from receipt of these programs and services due to her lack of
11 mobility which was known or should have been known by Defendant City and County.

12 103. CJ2, inclusive of its laundry room and medical department, are places of public
13 accommodation and are covered entities for purposes of enforcement of the ADA, 42
14 U.S.C. § 12181 (7)(F), and the Rehabilitation Act, 29 U.S.C. § 794, as detailed by the
15 regulations promulgated under each said law. Further, Ms. Alapati is informed and
16 believes, Defendant City and County received, and continues to receive, federal
17 assistance and funds for CJ2.

18 104. CJ2, as a department or agency of Defendant City and County, a local government, falls
19 within the definition of “program or activity” covered by the Rehabilitation Act, 29
20 U.S.C. Section 794(b) and as such was within the mandate of the RA that no person with
21 a disability may be “excluded from the participation in, be denied the benefits of, or be
22 subjected to discrimination under any program or activity receiving
23 Federal financial assistance...” 29 U.S.C. § 794.

24 105. The ADA also provides that: “[i]t shall be discriminatory to provide an individual or class
25 of individuals, on the basis of a disability or disabilities of such individual or class,
26 directly, or through contractual, licensing, or other arrangements with a good, service,
27 facility, privilege, advantage, or accommodation that is different or separate from that
28 provided to other individuals.” 42 U.S.C. § 12182(b)(1)(A)(iii).

- 1 106. Defendant City and County violated the ADA and the RA and discriminated against Ms.
2 Alapati, violating her ADA, RA and state protected rights by (a) failing to provide Ms.
3 Alapati with reasonable accommodations for living and working in the unsanitary and
4 hazardous conditions at CJ2, (b) failing to provide Ms. Alapati with reasonable
5 accommodations for access to adequate and proper medical care for an individual with a
6 pre-existing heart condition suffering from severe internal infection, and (c) failing to
7 provide Ms. Alapati with reasonable accommodations to effectively classify her as an
8 inmate with disability requiring necessary and specialized medical care and treatment for
9 a compromised heart condition.
- 10 107. Further, Defendant City and County denied Ms. Alapati the opportunity to participate in
11 or benefit from the aid, benefits, and services that are equal to those afforded to other,
12 non-disabled inmates e.g. access to food area, shower area, telephone, pill call, and
13 medical pod, and thus, said Defendant violated 28 C.F.R. § 35.130(b)(1)(ii).
- 14 108. Furthermore, Defendant City and County's denial, refusal and obstruction of Ms.
15 Alapati's transfer to a hospital that was qualified and equipped to perform tests to
16 diagnose and treat her disability limited Ms. Alapati's enjoyment of rights, privileges,
17 advantages or opportunities enjoyed by other inmates, and thus, said Defendant violated
18 28 C.F.R. § 35.130(b)(1)(vii).
- 19 109. Ms. Alapati was denied the benefits of the services, programs and activities of Defendant
20 City and County, and was denied accommodation for her disability, which deprived her
21 of the safety, necessary care and medical health services for receiving proper treatment,
22 follow-up and supervision. The denial of accommodation, programs and services was the
23 result of her disability in that she was discriminated against because she was a heart
24 patient at risk of, and ultimately suffering from, life-threatening health issues triggered by
25 unsanitary and bio-hazardous work and living conditions at CJ2.
- 26 110. Due to aforesaid acts and misconduct of Defendant City and County, Ms. Alapati had an
27 agonizing near-death experience spanning several days before undergoing life-saving
28

1 heart surgery and therein suffered, and continues to suffer, and will continue to suffer
2 damages and injuries as alleged herein.

3 111. Given Ms. Alapati's sustained and permanent injuries, she is entitled to damages,
4 penalties, costs, and attorneys' fees.

5 **TENTH CAUSE OF ACTION**

6 (Violation of the California Disabled Persons Act – Cal. Civ. § 54-54.8)

7 As to Defendant City and County of San Francisco

8 112. Ms. Alapati repeats and hereby incorporates by reference all foregoing allegations as if
9 fully set forth herein.

10 113. As Ms. Alapati lost her ability to walk, stand up, climb, she was no longer able to shower
11 since the restroom in her area was not designed to accommodate someone with physical
12 limitations, to obtain her medication at pill call, to make phone calls to her family since
13 the phone was placed at least four feet above the floor, and to sleep on a bed since no low
14 bunk bed was available. She was forced to lay on a mattress on the floor of her cell. By
15 not providing Ms. Alapati with the physical access to public spaces Defendant City and
16 County violated the California Disabled Persons Act and are thus liable for Ms. Alapati's
17 damages. Civ. Code §§ 54.1(d), 54.3(a).

18 114. Defendant City and County's violation of the California Disabled Persons Act caused
19 Ms. Alapati to suffer pain, discomfort and embarrassment. Accordingly, said Defendant
20 is responsible for statutory damages. Civ. Code § 55.56(a)-(c).

21 **WHEREFORE**, Ms. Alapati ALIITASI T. ALAPATI prays judgment against
22 Defendants, and each of them, as follows:

- 23 A. To enter judgment in favor of Ms. Alapati on all causes of action as requested and
24 alleged in the Third Amended Complaint;
- 25 B. To award Ms. Alapati compensatory, exemplary and punitive damages for the
26 injuries suffered in violation of federal law and state law in an amount to be
27 ascertained at trial;
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- C. To award Ms. Alapati general damages in such sums and nature as shall be ascertained at trial;
- D. To award Ms. Alapati economic damages in such sums and nature as shall be ascertained at trial;
- E. To award costs and expenses of suit incurred herein;
- F. To award attorney’s fees; and
- G. To grant such other and further relief as the court may deem proper.

Dated: April 29, 2022

LEGAL ALLIES P.C.

By: *Faustine U. Filimona*
 Mariliz Romero de Aquino, Esq.
 Faustine U. Filimona, Esq.
 Attorneys for Aliitasi T. Alapati

**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

ALAPATI vs. CITY AND COUNTY OF SAN FRANCISCO et al.

Case No.: 21-cv-4144

1
2 I, the undersigned, certify and declare that I am over the age of 18 years, and not a party
3 the above-entitled action. My business address is 201 N. Brand Blvd. Suite 200, Glendale,
4 California 91203.

5 On April 29, 2022, I served a true and correct copy of the document entitled: **THIRD**
6 **AMENDED COMPLAINT FOR DAMAGES** on the following addressee, as follows:

7 Dennis J. Herrera, City Attorney
8 Meredith B. Osborn, Chief Trial Deputy
9 James F. Hannawalt, Deputy City Attorney
10 james.hannawalt@sfcityatty.org
11 Rebecca Louie, Deputy City Attorney
12 rebecca.louie@sfcityatty.org
13 1390 Market Street, Sixth Floor
14 San Francisco, CA 94102-5408
15 Tel.: (415)554-3913
16 Fax: (415)554-3837

Attorneys for Defendants City and County of San Francisco and Nurse Giday Beshue

17 /XXX/ (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by
18 electronic transmission, I caused the documents to be sent to the persons at the electronic notification address(es)
19 listed above.

20 // (BY OVERNIGHT DELIVERY) I caused such envelope to be deposited at a station designated for collection and
21 processing of envelopes and packages for overnight delivery service by **FEDERAL EXPRESS**. Such envelope, in
22 the ordinary course of business, is that same day deposited in a box or other facility regularly maintained by
23 **FEDERAL EXPRESS** to receive document(s) in an envelope or package with delivery fees paid.

24 /XXX/ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true
25 and correct.

26 Executed on April 29, 2022, at Los Angeles, California.

27 /s/ Faustine U. Filimona

28 FAUSTINE U. FILIMONA