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 10 CITY AND COUNTY OF SAN FRANCISCO,
 SAN FRANCISCO SHERIFF'S DEPARTMENT
 11 and SAN FRANCISCO COUNTY SHERIFF MICHAEL HENNESSEY

12 UNITED STATES DISTRICT COURT
 13
 14 NORTHERN DISTRICT OF CALIFORNIA

15 MARY BULL, JONAH ZERN, LISA
 GIAMPAOLI, MARCY CORNEAU,
 16 ALEXIS BRONSON, MICKY
 MANGOSING, CHARLI JOHNSON,
 17 LEIGH FLEMING, LAURA
 TIMBROOK, and all others similarly
 18 situated,

19 Plaintiffs,

20 vs.

21 CITY AND COUNTY OF SAN
 FRANCISCO, SAN FRANCISCO
 22 SHERIFF'S DEPARTMENT, SAN
 FRANCISCO COUNTY SHERIFF
 23 MICHAEL HENNESSEY, IN HIS
 INDIVIDUAL AND OFFICIAL
 24 CAPACITY, AND SAN FRANCISCO
 COUNTY SHERIFF'S DEPUTIES DOES
 25 1 THROUGH 150,

26 Defendants.

Case No. C03-1840 CRB (EMC)

**DEFENDANTS' NOTICE OF MOTION
 AND MOTION FOR SUMMARY
 JUDGMENT AND SUPPORTING
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

Hearing Date: April 9, 2004
 Time: 10:00 a.m.

NOTICE OF MOTION AND MOTION

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Please take notice that on April 9, 2004, at 10:00 a.m., before the Honorable Charles Breyer, in Courtroom 8, on the 19th Floor, at 450 Golden Gate Avenue in San Francisco, California, or as soon thereafter as this matter can be heard, Defendants City And County Of San Francisco, San Francisco Sheriff's Department and San Francisco County Sheriff Michael Hennessey ("Defendants") will and hereby do move for summary judgment on all state- and federal-law strip-search claims brought by Plaintiffs Jonah Zern, Marcie Corneau, Alexis Bronson, Lisa Giampaoli; on all state-law strip-search claims brought by Plaintiffs Mary Bull and Laura Timbrook; and on all claims brought by Plaintiff Charli Johnson.

Defendants move for summary judgment against Plaintiffs Jonah Zern, Marcie Corneau, Alexis Bronson, and Lisa Giampaoli on their claims that they were strip-searched in violation of state and federal law. These plaintiffs were booked for crimes of violence. Therefore, any strip search conducted of any these Plaintiffs at the San Francisco County Jail was valid under state and federal law. Plaintiffs Mary Bull and Laura Timbrook were booked on felonies and are statutorily excluded from bringing claims under Penal Code § 4030. Further, all claims raised by Plaintiff Charli Johnson are time-barred.

This motion for summary judgment shall be based on this Notice Of Motion And Motion For Summary Judgment And Supporting Memorandum Of Points and Authorities, the Declaration of Ingrid M. Evans, and the Proposed Judgment, all filed or lodged herewith, as well as the file in this case, the argument of counsel at the hearing, and any such further matters as the Court deems appropriate.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 No fewer than seven of the nine individual plaintiffs in this would-be class action bring
4 strip search claims that fail as a matter of law. Four of these seven were arrested for crimes of
5 violence: causing serious bodily harm to a peace officer (Jonah Zern); spousal battery or battery
6 in a dating relationship (Marcie Corneau); battery and threats to commit a crime resulting in
7 death or great bodily injury (Alexis Bronson); and assault with a deadly weapon (Lisa
8 Giampaoli). Such crimes of violence justify a strip search under both federal and state law. Two
9 more plaintiffs were arrested for non-violent felonies—felony vandalism (Mary Bull), and
10 burglary and forgery (Laura Timbrook)—and cannot pursue their claims under Section 4030 of
11 the California Penal Code because that statute explicitly excludes felony arrestees from its reach.
12 Finally, all claims raised by the seventh plaintiff challenged here, Charli Johnson, are time-
13 barred.

14 The City therefore respectfully requests that this Court enter summary judgment against
15 Plaintiffs Zern, Corneau, Bronson and Giampaoli on Counts One, Three and Four of the Cross-
16 Complaint, in which they allege that they were strip searched in violation of the state and federal
17 constitutions and Penal Code Section 4030. The City is also entitled to summary judgment
18 against Plaintiffs Bull and Timbrook on their strip-search claims under Section 4030 of the
19 California Penal Code, and against Plaintiff Johnson on all claims.

20 **STATEMENT OF FACTS**

21 **A. Jonah Zern**

22 Plaintiff Jonah Zern was arrested in San Francisco on January 18, 2003, for violations of
23 Penal Code Sections 594(a)(1) (malicious vandalism), 594(b)(1) (felony vandalism), 148
24 (resisting arrest), and 148.10 (resisting arrest resulting in serious bodily injury to police officer).
25 *See* San Francisco Police Department ("SFPD") Incident Report and Field Arrest Card of Jonah
26 Zern ("Zern Arrest Rpt.") at 1, 10, attached as Exhibit ("Ex.") A to the Declaration of Ingrid M.
27 Evans In Support Of Defendants' Motion For Summary Judgment ("Evans Decl."). Zern was
28 participating in an anti-war protest and traveling on foot through the financial district of San

1 Francisco. *See* Zern Arrest Rpt. at 3, ¶1. Zern was part of a group that was breaking windows
2 and spray painting buildings along Sansome and Washington Streets. *Id.* at 3, ¶2.

3 Inspector Yu, Officer Lozada, and Officer Peagler observed the group of protestors stop
4 in front of the Immigration and Naturalization Services (INS) building, break the glass, and
5 vandalize the building with spray paint. *Id.* The Officers then witnessed a smaller group—
6 consisting of Zern and eight to ten others—knock over four to five San Francisco Police
7 Department motorcycles. Zern Arrest Rpt. at 3, ¶ 3. Zern and the small group then kicked and
8 pushed at the leveled motorcycles to the applause of the larger group. Zern and two others
9 continued their assault by kicking down several newspaper receptacles. *Id.*

10 The officers then moved in to arrest Zern and another unidentified male. As Officer
11 Peagler struggled with the unidentified male, Officer Lozada displayed his star and moved in to
12 arrest Zern. Zern Arrest Rpt. at 3 ¶ 4; 5, ¶ 3. Officer Lozada shouted "Police Officer. Stop.
13 You are under arrest." Zern disregarded this command and attempted to flee. *Id.* at 5, ¶ 4.
14 Officer Lozada then applied a takedown technique that brought Zern onto his back on a parked
15 vehicle, but Zern violently resisted arrest. *Id.* Officer Lozada then brought Zern to the ground
16 and attempted to handcuff him, but a group of twenty or more violent protestors physically
17 attacked Officer Lozada in an attempt to obstruct Officer Lozada's lawful custody of Zern. *Id.* at
18 5, ¶¶ 4-5.

19 Inspector Yu and Officer Peagler moved through the crowd to aid Officer Lozada in
20 regaining control of the resisting Zern. Zern Arrest Rpt. at 3, ¶ 5; 5, ¶¶ 3-6. Zern continued to
21 resist violently until Officer Peagler placed Zern in a cross face lock. Then, at the direction of
22 Lieutenant Crenshaw and with the assistance of Inspector Yu, Officers Lozada and Peagler
23 dragged Zern out of the crowd and placed Zern in handcuffs. *Id.* at 4, ¶ 5. Officer Peagler
24 placed Zern in the Sheriff's van and Inspector Yu booked him at the Southern Police Station. *Id.*
25 at 4, ¶¶ 5-7. Among other charges, Zern was arrested for violating Penal Code Section 148.10
26 (resisting arrest resulting in serious bodily injury to police officer). Evans Decl. ¶2.
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28

B. Marcie Corneau

1
2 Plaintiff Marcie Corneau was arrested in San Francisco on September 1, 2003, for an
3 outstanding warrant and a violation of Penal Code Section 243(e)(1) (battery of a spouse or in a
4 dating relationship). *See* SFPD Incident Report and Field Arrest Card of Marcie Corneau
5 ("Corneau Arrest Rpt.") at 1, 12, attached as Ex. B to Evans Decl. Corneau and Camio Scott
6 were both from southern California and new to the San Francisco Bay Area. Corneau Arrest Rpt
7 at 4, ¶ 1. They were co-habitants in a dating relationship and had a child. *Id.* at 3, ¶ 7.

8 On September 1, 2003, Corneau found Scott at a party near 500 Broadway, San
9 Francisco, and the two began to argue outside. Corneau Arrest Rpt. at 3, ¶¶ 1, 4-5. Officers
10 Choy and Byrne were walking on Broadway when they observed two people in a verbal
11 argument. *Id.* at 3, ¶ 1. The officers observed both Corneau and Scott swinging their hands at
12 each other. *Id.* Then Scott tried to walk away from Corneau, but Corneau ran at Scott from
13 behind and grabbed his shirt. *Id.* Scott then broke free and continued to walk away until
14 Corneau caught up with him again and, this time, kicked Scott in the upper leg area from behind.
15 *Id.* Scott kicked back at Corneau and Corneau stumbled. *Id.* Corneau then again ran at Scott
16 from behind and grabbed his shirt. *Id.* At that point, the officers intervened and detained
17 Corneau and Scott pending further investigation. *Id.* at 3, ¶ 2.

18 The officers determined Corneau to be the aggressor and, based on their own personal
19 observations, confirmed Scott's version of the incident. Corneau Arrest Rpt. at 3, ¶¶ 6-7. Scott
20 was released, and he subsequently filed for a citizen's arrest against Corneau. *Id.* at 8; 3, ¶ 7.
21 Officer Byrne then served Corneau with an Emergency Protective Order. *Id.* at 9; 3-4, ¶ 9. A
22 computer check revealed that Corneau had an outstanding warrant for her arrest and that the
23 couple had had numerous previous domestic disputes. *Id.* at 7; 3, ¶ 8; 4 ¶ 1. Sergeant Venderbilt
24 approved the booking of Corneau, as there was a reasonable likelihood that the safety of both
25 persons would be imminently endangered if Corneau were released. *Id.* at 4, ¶ 1. Corneau was
26 booked for a violation of Penal Code § 243(e)(1) (battery of a spouse or in a dating relationship),
27 a crime of violence. Evans Decl. ¶3.

C. Alexis Bronson

1
2 Plaintiff Alexis Bronson was arrested in San Francisco on August 5, 2002, for violations
3 of Penal Code Sections 422 (threat to commit crime resulting in death or great bodily injury to
4 another), 242 (battery), and 647(f) (public intoxication). SFPD Incident Report and Field Arrest
5 Card of Alexis Bronson ("Bronson Arrest Rpt.") at 1, 8, attached as Ex. C to Evans Decl.
6 Officers Doyle and Nelson were dispatched to 680 Mission Street to investigate a reported
7 battery. Bronson Arrest Rpt. at 3, ¶ 1. Victim Woody Wilcox met the officers and informed
8 them that he had seen Bronson enter the apartment's parking garage in his car in an unsafe
9 manner and at a high rate of speed. *Id.* at 3, ¶ 2. Wilcox reported that, when he approached
10 Bronson and questioned him about his speed, Bronson became violent and pushed Wilcox in the
11 chest. *Id.* Wilcox then told Bronson that he was going to call 911 to report the incident, and
12 Bronson responded, "If you call 911, I'll kill you." *Id.* The parking lot attendant was able to
13 identify Bronson through his vehicle license plate number and furnished the officers with
14 Bronson's apartment number. *Id.*

15 The officers then went to Bronson's apartment with Wilcox and the building manager,
16 Michelle Lee. Bronson Arrest Rpt. at 3, ¶ 3. The officers smelled alcohol on Bronson and
17 concluded that he was inebriated, evidencing red eyes and slurred speech. *Id.* Bronson admitted
18 having an argument with Wilcox, but denied the battery. *Id.* Officer Doyle informed Bronson
19 that he would be making a report and provided Bronson with a follow-up form. *Id.*

20 The officers returned to the building lobby with Lee. Bronson followed them into the
21 lobby, and angrily questioning Lee as to why she gave the police his name and apartment
22 number. Bronson Arrest Rpt. at 3, ¶ 4, Ex. C. Bronson's menacing manner frightened Lee and
23 corroborated Wilcox's earlier statements about Bronson's actions. *Id.* The officers then arrested
24 Bronson. *Id.* Bronson became belligerent during handcuffing and resisted Officer Doyle's
25 attempts to escort him out of the lobby. *Id.* Once he reached the sidewalk, Bronson lunged
26 towards Officer Nelson, and Officer Doyle had to pull him away. *Id.* at 3-4, ¶ 4.

27 Officer Miranda assisted Officer Doyle in placing Bronson—who was still violently
28 resisting and out of control—into the police transport, in which Bronson rode to County Jail

1 No. 9. Bronson Arrest Rpt. at 4, ¶ 1. Wilcox then filed a citizen's arrest form based on the
2 initial threat and battery. *Id.* at 4, ¶ 3. Bronson was booked for violations of Penal Code
3 Sections 422 (threat of death or great bodily injury to another) and 242 (battery), both crimes of
4 violence. Evans Decl. ¶ 4.

5 **D. Lisa Giampaoli**

6 Plaintiff Lisa Giampaoli was arrested in San Francisco on July 20, 2002, for a violation
7 of Penal Code Section 245(a)(1) (assault with a deadly weapon other than a firearm). *See* SFPD
8 Incident Report and Field Arrest Card of Lisa Giampaoli ("Giampaoli Arrest Rpt.") at 1, 9,
9 attached as Ex. D to Evans Decl. On that date at approximately 1:41 a.m., Officers Brothers and
10 Leung witnessed a white male with a dog, followed by a white female, running across the 5100
11 block of Geary Street. Giampaoli Arrest Rpt at 4, ¶ 1. The officers pulled over to investigate
12 and were told by Vladimir Mikshansky that he had witnessed Giampaoli urging her dog to attack
13 three Asian males. *Id.* at 4, ¶ 2. This report was corroborated by witnesses Anton Karbushev
14 and Andrew Siri. *Id.* at 4, ¶ 5; 5 ¶ 1.

15 Mikshansky described how the Asian males had run inside 5120 Geary Street in order to
16 seek protection from Giampaoli and her attacking dog, and that Mikshansky and another had
17 held the door shut to prevent Giampaoli and her dog from entering that building. *Id.* at 4, ¶ 2.
18 After Giampaoli turned to walk away from the door, Mikshansky went back outside. *Id.* But
19 once he did, Giampaoli turned the dog to face Mikshansky, shouting "It doesn't matter if you're
20 Black, Asian or White," and sicced the dog on Mikshansky. *Id.* The dog bit Mikshansky in the
21 left hand, injuring him. *Id.* Mikshansky stated that, after the dog bit him, he ran across the
22 street, pursued by Giampaoli and the dog. Around this time, the officers arrived and witnessed
23 the dog and Giampaoli running across the street. *Id.*

24 The officers verified that the wound to Mikshansky was consistent with a dog bite. *Id.*
25 Giampaoli was arrested for a violation of Penal Code § 245(a)(1) (assault with a deadly weapon
26 other than a firearm), a crime involving violence and the use of a weapon. Evans Decl. ¶ 5.
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28

E. Mary Bull

Plaintiff Mary Bull was arrested and booked on two charges of felony vandalism pursuant to Penal Code Sections 594(b)(1) and 594.2(a). Evans Decl. ¶ 7 & Ex.F.

F. Laura Timbrook

Plaintiff Laura Timbrook was taken into custody on the basis of arrest warrants from the Palo Alto and Berkeley Police Departments for violations of Penal Code Sections 459 (burglary), 470(b) (forgery), 476a (insufficient fund check) and 475(a) (forgery). Evans Decl. ¶ 8 & Ex. G. The warrant issued by the Palo Alto Police Department was a felony warrant. *Id.*

G. Charli Johnson

Plaintiff Charlie Johnson was arrested in San Francisco on August 30, 2001, on an outstanding bench warrant for a violation of Vehicle Code § 14601.1(a) (operating a vehicle on a suspended license). Evans Decl. ¶6 & Ex. E.

ARGUMENT

I. SUMMARY JUDGMENT MUST BE GRANTED WHERE, AS HERE, THE UNDISPUTED MATERIAL FACTS ENTITLE DEFENDANTS TO JUDGMENT AS A MATTER OF LAW.

A moving party is entitled to summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of production demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The party opposing the motion may not rest on conclusory allegations or mere assertions, but must come forward with probative evidence that is sufficient, taking the record as a whole, to allow a rational jury to find for the nonmoving party. *Matsushita Electric Industries Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

Here, there are no material facts in dispute: the nature of the charges against each of the plaintiffs is clearly documented and the date of Plaintiff Johnson’s arrest is similarly beyond

1 dispute. As these uncontested facts dispose of claims raised by seven of the nine individual
2 plaintiffs as a matter of law, Defendants are entitled to summary judgment.

3 **II. BECAUSE PLAINTIFFS ZERN, CORNEAU, BRONSON AND GIAMPAOLI**
4 **WERE ARRESTED FOR CRIMES OF VIOLENCE, THEIR CONSTITUTIONAL**
5 **CLAIMS FAIL AS A MATTER OF LAW.**

6 The Supreme Court of the United States has held that the Fourth Amendment of the
7 United States Constitution protects an arrestee's privacy interests and bars intrusions into the
8 body which are not justified under the circumstances. *Schmerber v. California*, 384 U.S. 757,
9 768 (1966). In determining whether a search was reasonable under the Fourth Amendment, a
10 court must balance "the need for the particular search against the invasion of personal rights that
11 the search entails." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

12 The case law could not be clearer: a strip search is reasonable and justified if the charged
13 offense is related to drugs, weapons or violence. *See Kennedy v. Los Angeles Police Dep't*, 901
14 F.2d 702, 716(9th Cir. 1990); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1447 (9th Cir.
15 1989); *Giles v. Ackerman*, 746 F.2d 614, 618 (9th Cir. 1984); *see also Masters v. Crouch*, 872
16 F.2d 1248, 1255 (6th Cir. 1989); *Dufrin v. Spreen*, 712 F.2d 1084, 1087 (6th Cir. 1983);
17 *Dobrowolskyj v. Jefferson County*, 823 F.2d 955, 958-59 (6th Cir. 1987).

18 Controlling Ninth Circuit decisions also leave no doubt that the offenses for which
19 Plaintiffs Zern, Corneau, Bronson and Giampaoli were arrested all qualify as crimes of violence.
20 For example, in *United States v. Robinson*, 967 F.2d 287, 293 (9th Cir. 1992), the Ninth Circuit
21 explained that, in the sentencing context, "crimes of violence" contain an element of use,
22 attempted use, or threatened use of physical force against another or involve conduct which
23 poses a serious risk of potential injury to another. *Id.* Plaintiff Zern's arrest for resisting arrest
24 with significant bodily injury to a peace officer easily satisfies this test, as do the arrests of
25 Plaintiffs Corneau and Bronson for battery and Plaintiff Giampaoli for assault with a deadly
26 weapon. *See id.* (battery on a police officer is a crime of violence); *United States v. Campos-*
27 *Fuerte*, 357 F.3d 956, 961 (9th Cir. 2004) (flight from police in willful and wanton disregard for
28 safety a crime of violence); *Rosales-Rosales v. Ashcroft*, 347 F.3d 714, 717 (9th Cir. 2003) (threat
to commit crime resulting in death or great bodily injury to another is crime of violence); *United*

1 *States v. Amparo*, 68 F.3d 1222, 1225 (9th Cir. 1995) (assault and battery are each crimes of
2 violence).

3 As each of these Plaintiffs was charged with one or more crimes of violence, a strip
4 search was an objectively reasonable procedure in each case. These Plaintiffs' claims of
5 constitutional violations fail as a matter of law.

6 **III. THE CLAIMS OF PLAINTIFFS BULL, ZERN, CORNEAU, BRONSON,
7 GIAMPAOLI AND TIMBROOK UNDER PENAL CODE SECTION 4030 FAIL
8 AS A MATTER OF LAW BECAUSE THEY WERE EACH ARRESTED FOR A
9 FELONY AND/OR CRIME OF VIOLENCE.**

10 All individual plaintiffs also bring claims for strip searches that allegedly violate
11 California Penal Code Section 4030. But this statute specifically excludes from its provision any
12 persons arrested for a felony. The statute states:

13 The provisions of this section shall apply only to prearrestment detainees
14 arrested for infraction or misdemeanor offenses and to any minor detained
15 prior to a detention hearing on the grounds that he or she is a person
16 alleged to have committed a misdemeanor or infraction offense. (Cal.
17 Penal Code § 4030.)

18 Section 4030 also provides that reasonable suspicion is required to strip search certain persons
19 arrested for misdemeanors and infractions “*except* those involving weapons, controlled
20 substances or violence.” Penal Code § 4030(f) (emphasis added).

21 Plaintiffs Mary Bull and Laura Timbrook were each arrested on felony charges. *See*
22 *Evans Decl.* ¶¶ 7-8. As shown above, Plaintiffs Zern, Corneau, Bronson and Giampaoli were
23 arrested for crimes of violence. *See* Section II, *supra*. Accordingly, none of these plaintiffs are
24 entitled to invoke Penal Code Section 4030, and Defendants are entitled to summary judgment
25 on those claims.¹

26 **IV. PLAINTIFF JOHNSON’S CLAIMS ARE TIME-BARRED.**

27 The instant action was filed on April 23, 2003, but Plaintiff Charli Johnson appears for
28 the first time in the First Amended Complaint, filed on January 12, 2004. Johnson's arrest and
the events of which she complains occurred on or about August 30, 2001. *See Evans Decl.* ¶6.

¹ Lisa Giampaoli's claim under Penal Code § 4030 is also barred by her failure to file a
timely government tort claim. *See* Section IV, *infra*.

1 At the time her claims arose, the statute of limitations for her federal claims was one year.
2 Federal claims under 42 U.S.C. § 1983 are governed by the applicable state statute of limitations.
3 *See Wilson v. Garcia*, 471 U.S. 261, 279-80 (1985). Before January 1, 2003, that statute of
4 limitations was one year. *See Cal. Code Civ. Pro. § 340* (West 1982 [before amendment
5 effective Jan. 1, 2003]); *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651,
6 655 & n.2 (9th Cir. 2003). Accordingly, Johnson was required to file any federal claims by
7 August 30, 2002. Her 2004 complaint is more than a year too late.

8 Plaintiff Johnson's state-law claims are likewise time-barred. "[S]ubmission of a claim
9 to a public entity is a condition precedent to tort action and the failure to present the claim bars
10 the action." *Lutz v. Tri City Hosp.*, 179 Cal. App. 3d 807, 812 (1986). California Government
11 Code section 911.2 requires that a tort claim for personal injury against a public entity be filed
12 "not later than six months after the accrual of the cause of action." *People ex rel Dept. of*
13 *Transp. v. Sup. Ct. (Isenhower)*, 105 Cal. App. 4th 39, 43 (2003). The state claim presentation
14 requirement applies to claims for monetary relief whether based on tort, contract, statute or state
15 constitutional provisions. *See Baines Pickwick Limited v. City of Los Angeles*, 72 Cal. App. 4th
16 298, 309 (1999) (contract and tort claims); *Nuremberg Actions v. County of Contra Costa*, 697 F.
17 Supp. 1111, 1113 (N.D. Cal. 1988) (state constitutional claims); *Gatto v. County of Sonoma*, 98
18 Cal. App. 4th 744, 765 (state Unruh Civil Rights Act claims). Each claimant must file a
19 government claim, and compliance is not excused on the ground that another party filed a
20 government claim based on the same facts or occurrence. *See, e.g., Nguyen v. Los Angeles*
21 *County Harbor/UCLA Med. Ctr.*, 8 Cal. App. 4th 729, 734 (1992) (granting nonsuit as to
22 parents' claim for emotional distress although daughter had filed government claim for damages
23 based on same occurrence).

24 Plaintiffs seek to rely on a class government tort claim filed by Mary Bull on February
25 10, 2003, to satisfy the claim presentation requirement of all named plaintiffs. The class action
26 procedures do not extend the statute of limitations or the time for complying with the claim
27 presentation requirements. Thus, in order to rely on the February 10, 2003, claim, each
28 plaintiff's state law claims must have arisen on or after August 10, 2002. As Plaintiff Johnson's

1 claim arose in August 2001 but she failed to file a government claim within six months, Plaintiff
2 Bull's class claim, filed a year and a half later, cannot resurrect it. Plaintiff Johnson's state law
3 claims, like her federal claims, are time-barred.

4 **CONCLUSION**

5 Defendants respectfully request that this Court enter summary judgment in their favor on
6 the claims and for the reasons specified above.

7 Dated: March 5, 2004

8 DENNIS J. HERRERA
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17 By: _____ /s/
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