

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

**CITY OF CORONADO; AARON MANSKER; AND
DOES 1 THROUGH 10, INCLUSIVE**

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

STEVEN R. FOLEY

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

FILED

CIVIL BUSINESS OFFICE 5
OF JUDICIAL BRANCH 101

2007 JAN 26 P 4:28

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY

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

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

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court for the State of California, for the County of San Diego,
330 West Broadway, Post Office Box 122724, San Diego, California
92101.

CASE NUMBER: **GIC 879075**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jordan M. Cohen, Esq., 10650 Treena Street, Suite 203, San Diego, California 92131; 858/689-4736.

DATE:
(Fecha)

JAN 26 2007

Clerk, by _____
(Secretario)

E. Jensen

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

| | |
|------------------------------------------------------------------|---------------------------------------------------------|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |
4. by personal delivery on (date):

[SEAL]

1 Jordan M. Cohen (State Bar No. 167678)
2 THE COHEN LAW FIRM
3 10650 Treena Street, Suite 203
4 San Diego, California 92131
5 858/689-4736
6 858/689-9278 Facsimile

7 Harvey R. Levine (State Bar No. 61879)
8 LEVINE, STEINBERG, MILLER & HUVER
9 550 West C Street, Suite 1810
10 San Diego, California 92101
11 619/231-9449
12 619/231-8638 Facsimile

13 Attorneys for Plaintiff STEVEN R. FOLEY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN DIEGO

16 STEVEN R. FOLEY,
17 Plaintiff,

18 v.

19 CITY OF CORONADO; AARON
20 MANSKER; AND
21 DOES 1 THROUGH 10, INCLUSIVE,
22 Defendants.

) CASE NO. **GIC 879075**
)
) **CIVIL COMPLAINT FOR**
) **NEGLIGENCE**
)
) **DEMAND FOR JURY TRIAL**

23 Plaintiff Steven R. Foley ("Foley") alleges as follows:

24 **PARTIES**

25 1. The Plaintiff is and at all relevant times was a citizen of the State of Texas. Plaintiff is
26 a professional football player employed by the National Football League San Diego Chargers.
27 Plaintiff owns a home in Poway, California and resides in the home during the football season.
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SAN DIEGO COUNTY, CA

1 2. Plaintiff is informed and believes, and on that basis alleges, that Defendant City of
2 Coronado ("Coronado"), is, and at all relevant times mentioned herein has been, a municipality
3 organized and existing under the laws of the State of California. Defendant Coronado is authorized
4 by law to maintain a police department to act as its agent in the area of law enforcement and for
5 which it is ultimately responsible. Defendant Coronado assumes the risk incidental to maintaining a
6 police force and the employment of police officers as said risk attaches to the public consumers of the
7 services provided by the Coronado Police Department.
8

9 3. Plaintiff is informed and believes, and on that basis alleges, that Defendant Aaron
10 Mansker ("Mansker") is a citizen of the State of California and maintains his residence in Escondido,
11 California. Defendant Mansker is, and at all relevant times herein mention was, a police officer
12 employed with and acting within the course and scope of his employment with Defendant Coronado
13 police department. Defendant Mansker is sued in his individual and official capacity.
14

15 4. The true names and capacities, whether individual, corporate, associate, or otherwise,
16 of defendants Does 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said
17 Defendants by such fictitious business names. Plaintiff is informed and believes, and on that basis
18 alleges, that each Defendant designated herein as a Doe is legally responsible in some manner for the
19 events and happenings herein referred to, and legally caused injury and damages proximately thereby
20 to Plaintiff as alleged herein.
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22 5. At all times herein mentioned, Defendants, and each of them, were the agents and
23 employees of each of the remaining Defendants, and were at all times herein acting under color of
24 state law and within the purpose and scope of their duties and functions as agents, servants,
25 employees and officers of the Coronado Police Department and otherwise performed and engaged in
26 conduct incidental to the performance of their lawful functions in the course of their duties.
27 Defendants, and each of them, were acting for and on behalf of Defendant Coronado at all times
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1 herein mentioned and with the power and authority vested in them as officers, agents and employees
2 of the Coronado Police Department and incidental to the lawful pursuit of their duties as officers,
3 employees and agents of the Coronado Police Department. Each Defendant has ratified and approved
4 the acts of his agent.

5 **JURISDICTION AND VENUE**

6 6. Jurisdiction is proper in the Superior Court for the County of San Diego pursuant to
7 Section 410.10 of the California Code of Civil Procedure because it has general subject matter
8 jurisdiction and no statutory exceptions to jurisdiction exist.

9 7. Venue is proper in the County of San Diego pursuant to Section 394 of the California
10 Code of Civil Procedure because this is an action against a city, namely Defendant Coronado.

11 **GENERAL ALLEGATIONS**

12 8. On September 3, 2006 at approximately 3:30 a.m. Plaintiff Foley was shot multiple
13 times by Coronado police officer, Defendant Mansker, in front of Plaintiff's home on Travertine
14 Court within the City of Poway, California.

15 9. Defendant Mansker followed Claimant from downtown San Diego to Claimant's
16 Poway home, a distance of approximately twenty (20) miles. Defendant Mansker was off-duty,
17 wearing civilian clothes, driving his personal vehicle (a black Mazda) and never displayed a badge or
18 any other form of identification to the Plaintiff. There was nothing about either Defendant Mansker
19 or his vehicle that would reasonably alert a member of the public, including the Plaintiff, that he was
20 an off-duty Coronado police officer. Plaintiff Foley did not know and had no reasonable basis to
21 believe Defendant Mansker was a police officer.

22 10. In addition to not recognizing that Defendant Mansker was a police officer, Plaintiff
23 Foley was under no duty to comply with any command or order issued by Defendant Mansker.

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1 Section 2800.1(a) of the California Vehicle Code provides in pertinent part as follows:

2 (a) Any person who, while operating a motor vehicle and with the intent to
3 evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor
4 vehicle, is guilty of a misdemeanor punishable by imprisonment ... if the following
5 conditions exist:

6 (1) The peace officer's motor vehicle is exhibiting at least one lighted red
7 lamp visible from the front and the person either sees or reasonably should have seen the
8 lamp.

9 (2) The peace officer's motor vehicle is distinctly marked.

10 (3) The peace officer's motor vehicle is operated by a peace officer ... and
11 that peace officer is wearing a distinct uniform.

12 11. As set forth herein, none of the conditions expressly set forth in Section 2800.1
13 existed as the time of the incident, which serves as the basis for this action.

14 12. On January 8, 2007 Plaintiff Foley presented a Claim Against the City of
15 Coronado. That same day, January 8, 2007, Coronado rejected the Plaintiff's Claim. Plaintiff
16 has complied with all applicable claims statutes.

17 **FIRST CAUSE OF ACTION**

18 (Negligence Against All Defendants)

19 13. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 12
20 as though fully set forth herein.

21 14. Defendant Mansker improperly, negligently, wrongfully, recklessly and intentionally
22 used excessive force and/or incorrectly applied force, which resulted in severe and debilitating
23 injuries to Plaintiff Foley. Specifically, said Defendant improperly, wrongfully, negligently and
24 intentionally shot Plaintiff Foley multiple times. Said use of deadly force was a breach of defendant
25 Mansker's duty to use reasonable care in connection with his duties as a law enforcement officer and
26 was negligent.

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1 15. Moreover, Defendant Mansker knew or in the exercise of reasonable care should have
2 known that members of the general public, including the Plaintiff, were unlikely to recognize or
3 believe a person is a law enforcement officer when that person is off-duty, wearing civilian clothes,
4 driving a personal vehicle and fails to display a badge or any other verifiable form of identification.
5 The State of California recognizes that the public is unlikely to recognize off-duty officers and for
6 that reason has enacted Section 2800.1(a) of the California Vehicle Code. Defendant Mansker knew
7 or should have known of the existence of Section 2800.1(a) and that Plaintiff Foley was not violating
8 the law at the time of the incident.
9

10 16. Defendant Mansker improperly, negligently, wrongfully, recklessly and intentionally
11 failed to take adequate and reasonable precautions to properly identify himself and to ensure that
12 members of the public, including the Plaintiff, were aware that, despite being off-duty, in civilian
13 clothes and in a personal vehicle, Defendant was in fact a law enforcement officer and was acting in a
14 law enforcement capacity. Moreover, Defendant Mansker improperly, negligently, wrongfully,
15 recklessly and intentionally attempted to apprehend Plaintiff Foley and failed to abide by the
16 applicable standard of care for off-duty law enforcement officers. Defendant Mansker knew or in the
17 exercise of reasonable care should have known that if probable cause existed to detain the Plaintiff he
18 should have called for back-up, acted as a witness and waited until marked law enforcement units and
19 officers arrived. Defendant Mansker's breach of the duty to use reasonable care was negligent.
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22 17. At all times herein mentioned Defendants Coronado and Does 1 through 10, inclusive,
23 and each of them, owed a duty to members of the community, including the Plaintiff, to exercise
24 reasonable care in connection with the evaluation, hiring, employment, training, supervision and
25 retention of personnel that would be permitted to act as police officers and use force on suspects and
26 other individuals with whom they would come into contact with in the community. Moreover, said
27 Defendants knew or in the exercise of reasonable care should have known that while off-duty, the
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1 police officers it evaluates, hires, employs, trains, supervises and retains would be authorized under
2 certain circumstances to perform law enforcement activities and carry a deadly weapon.

3 18. Defendants Coronado and Does 1 through 10, inclusive, and each of them, breached
4 their duty of care owed to the Plaintiff by, among other things, failing to exercise reasonable care in
5 the evaluation, hiring, employment, training, supervision and retention of its police officers, including
6 without limitation, Defendant Mansker.

7 19. Plaintiff is informed and believes and on that basis alleges that Defendant Coronado
8 and Does 1 through 10, inclusive, and each of them, knew or in the exercise of reasonable care should
9 have known that Defendant Mansker was not an appropriate candidate for police work and/or that
10 Defendant Mansker required additional training and/or supervision in order for him to be able to
11 perform lawfully and safely as an armed police officer within the community. Said Defendants'
12 failure to properly screen Defendant Mansker and/or provide him with the appropriate training and
13 supervision is a breach of the duty of care owed to the Plaintiff and is negligent.

14 20. Plaintiff is informed and believes, and on that basis alleges, that Defendant Coronado
15 and Does 1 through 10, inclusive, and each of them, knowingly and purposely maintained policies,
16 practices and procedures that allowed for and encouraged the use of excessive force which ultimately
17 caused the severe and debilitating injuries suffered by the Plaintiff. These policies, practices and
18 procedures include without limitation Defendants' (1) training procedures and practices for Coronado
19 police officers; (2) evaluation and recruitment procedures for Coronado police officers and in
20 particular, the evaluation and recruitment of Defendant Mansker; (3) supervision of Coronado police
21 officers and in particular, the supervision of Defendant Mansker; (4) policies and practices with
22 regard to the duties, responsibilities and authority of Coronado police officers when not on duty; and
23 (5) policies and procedures with regard to the use of deadly force, weapons and firearms, including
24 without limitation the use of said tactics by Coronado police officers while not on duty.

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1 4. Prejudgment interest against Defendant Mansker pursuant to Section 3291 of the
California Code of Civil Procedure;

2 5. For such other and further relief as the court deems just and proper; and

3 6. Costs of suit incurred herein.
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5 Dated: January 25, 2007

THE COHEN LAW FIRM

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9 By: Jordan M. Cohen
Attorneys for the Plaintiff

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