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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CARLOS TORRES,

Plaintiff,

v.

CITY OF SAN BERNARDINO;
IRMAN AHMED; MARTIN
HYSEN; and DOES 1-10, inclusive,

Defendants.

CASE No.: 5:21-cv-00454

**PLAINTIFF’S COMPLAINT FOR
DAMAGES**

1. 42 U.S.C. § 1983 (Unreasonable Search and Seizure – Excessive Force)
2. 42 U.S.C. § 1983 (Municipal Liability – Unconstitutional Custom, Practice, or Policy)
3. 42 U.S.C. § 1983 (Municipal Liability – Failure to Train)
4. 42 U.S.C. § 1983 (Municipal Liability – Ratification)
5. Battery
6. Negligence
7. Violation of the Bane Act

DEMAND FOR JURY TRIAL

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COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff CARLOS TORRES for his Complaint against CITY OF SAN BERNARDINO, IRMAN AHMED, MARTIN HYSEN, and DOES 1-10, inclusive, and hereby alleges as follows:

INTRODUCTION

1. This civil rights action arises out of the use of excessive and unreasonable force against PLAINTIFF by SAN BERNARDINO Police Department (“SBPD”) Officers on March 7, 2020, at approximately 9:00 p.m., at or around 756 N. Berkeley Ave., San Bernardino, California.

2. PLAINTIFF suffered serious bodily injury as a direct and proximate result of the actions and inactions of DEFENDANTS CITY, AHMED, HYSEN, and DOES 1-10, inclusive. DEFENDANTS CITY, AHMED, HYSEN, and DOES 1-10, inclusive, are directly liable for PLAINTIFF’S injuries under federal law pursuant to 42 U.S.C. § 1983. DEFENDANT CITY is also vicariously liable for the acts and omissions of DEFENDANTS AHMED, HYSEN, and DOES 1-10, inclusive, pursuant to Cal. Govt. Code §§ 820 and 815(a).

3. DEFENDANTS AHMED, HYSEN, and DOES 1-8, inclusive, caused various injuries herein directly, or by integrally participating or failing to intervene in the incident, and by engaging in other acts and/or omissions around the time of the incident. Specifically, DEFENDANTS AHMED, HYSEN, and DOES 1-8, inclusive, repeatedly struck PLAINTIFF with batons, including while PLAINTIFF was on the ground.

4. DEFENDANTS CITY OF SAN BERNARDINO and DOES 9-10, inclusive, also caused various injuries and are liable under federal law and under the principles set forth in *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

1 9. DEFENDANTS DOES 1-8, inclusive, are officers for the SBPD.
2 At all relevant times, these DEFENDANTS were acting under color of law
3 within the course and scope of their duties as CITY SBPD officers and at other
4 times they were working in their personal capacity as individuals outside the
5 scope of their employment. At all relevant times, DOES 1-8, inclusive, were
6 acting with the complete authority and ratification of their principal,
7 DEFENDANT CITY.

8 10. Defendants DOES 9-10, inclusive, are managerial, supervisory,
9 or policymaking employees of the CITY who were acting under color of law
10 within the course and scope of their duties as supervisory officers for the
11 SBPD. DOES 9-10, inclusive, were acting with the complete authority of their
12 principal, DEFENDANT CITY.

13 11. PLAINTIFF is ignorant of the true names and capacities of
14 DEFENDANTS DOES 1-10, inclusive, and therefore sues these defendants by
15 such fictitious names. PLAINTIFF will amend the complaint to allege the true
16 names and capacities of those defendants when the same has been ascertained.
17 PLAINTIFF is informed and believes, and on that basis alleges, that DOES 1-
18 10, inclusive, and each of them, are responsible in some manner for the
19 occurrences alleged herein and proximately caused PLAINTIFF'S damages.

20 12. On information and belief, DEFENDANTS AHMED; HYSEN;
21 and DOES 1-10, inclusive, were at all relevant times residents of the County
22 of San Bernardino.

23 13. PLAINTIFF is informed and believes, and on that basis alleges,
24 that DEFENDANTS acted at all times mentioned herein as the actual and/or
25 ostensible agents, employees, servants or representatives of each other and, in
26 doing the activities alleged herein, acted within the scope of their authority as
27 agents and employees, and with the permission and consent of each other.
28

1 14. PLAINTIFF is informed and believes, and on that basis alleges,
2 that at all times mentioned herein all DEFENDANTS acted under color of law,
3 statute, ordinance, regulations, customs and usages of the State of California
4 and the CITY.

5 15. All DEFENDANTS who are natural persons, including DOES 1-
6 10, inclusive, are sued individually and/or in his/her capacity as officers,
7 deputies, investigators, sergeants, captains, commanders, supervisors, and/ or
8 civilian employees, agents, policy makers, and representatives of the CITY
9 and the SBPD.

10 16. DEFENDANT CITY is liable for the nonfeasance and
11 malfeasance of DEFENDANTS AHMED, HYSEN, and DOES 1-10, inclusive,
12 for the state law claims herein pursuant to Cal. Govt. Code §§ 815.2(a), 815.6.
13 Further, DEFENDANTS AHMED, HYSEN, and DOES 1-10, inclusive, are
14 liable for their nonfeasance and malfeasance pursuant to Cal. Govt. Code §
15 820(a).

16
17 **JURISDICTION AND VENUE**

18 17. The Court has jurisdiction over PLAINTIFF'S claims pursuant to
19 28 U.S.C. §§ 1331 and 1343(a)(3)-(4) because PLAINTIFF asserts claims
20 arising under the laws of the United States including 42 U.S.C. § 1983 and the
21 Fourth Amendment of the United States Constitution.

22 18. This Court has supplemental jurisdiction over Plaintiff's claims
23 arising under state law pursuant to 28 U.S.C. § 1367(a), because those claims
24 are so related to the federal claims that they form part of the same case or
25 controversy under Article III of the United States Constitution.

26 19. Venue in this judicial district is proper pursuant to 28 U.S.C.
27 § 1391(b), because all incidents, events, and occurrences giving rise to this
28 action occurred within this district.

1 began striking PLAINTIFF with his baton, causing PLAINTIFF great pain and
2 suffering.

3 28. Two additional SBPD Officers, Castillo and Cruz, watched as
4 DEFENDANTS AHMED and HYSEN repeatedly struck PLAINTIFF with
5 their batons, while PLAINTIFF was on the ground, non-resistive, non-
6 combative, and non-threatening. All of the SBPD Officers failed to intervene
7 on the use of excessive and unreasonable force being used on PLAINTIFF and
8 were integral participants in the use of excessive and unreasonable force being
9 used on PLAINTIFF.

10 29. At the time that DEFENDANTS AHMED; HYSEN; and DOES 1-
11 8, inclusive, were striking PLAINTIFF with their batons, PLAINTIFF was on
12 the ground in a fetal position trying to shield his head and face from the
13 assault.

14 30. At the time that DEFENDANTS AHMED; HYSEN; and DOES 1-
15 8, inclusive, were striking PLAINTIFF with their batons, PLAINTIFF was not
16 fleeing the SBPD Officers, PLAINTIFF was not resisting the SBPD Officers,
17 PLAINTIFF never verbally threatened any of the SBPD Officers or anyone
18 else, and PLAINTIFF never attempted to punch or kick any of the SBPD
19 Officers or anyone else.

20 31. PLAINTIFF was commanded to roll onto his stomach by one
21 SBPD Officer, who PLAINTIFF believes to be DEFENDANT AHMED, and
22 PLAINTIFF immediately complied. Nevertheless, another SBPD Officer,
23 which PLAINTIFF believes to be DEFENDANT HYSEN, struck PLAINTIFF
24 on the leg with his baton as PLAINTIFF was complying with the Officer's
25 orders and rolling onto his stomach in a position of submission.

26 32. While PLAINTIFF was on his stomach, non-threatening, non-
27 resistive, and non-combative, in compliance with the SBPD Officers'
28 commands, DEFENDANT AHMED stepped on PLAINTIFF'S neck, putting his

1 body weight on the down PLAINTIFF. At the same time DEFENDANT HYSEN
2 stepped on PLAINTIFF'S lower back, putting his body weight on
3 PLAINTIFF.

4 33. An SBPD Officer commanded PLAINTIFF to put his hands
5 behind his back, to which PLAINTIFF immediately tried to comply, but was
6 physically unable to put his hands behind his back because of the injury caused
7 by the DEFENDANT officers' use of excessive and unreasonable baton
8 strikes. PLAINTIFF told the SBPD Officers, "I'm trying to, but my arm is
9 broken."

10 34. While PLAINTIFF was being held down and handcuffed by
11 several SBPD Officers, DEFENDANT AHMED kept his boot and body weight
12 on the back of PLAINTIFF'S neck.

13 35. After being handcuffed, PLAINTIFF informed the SPBD Officers
14 that they hurt him, and one SPBD Officer said, "You ran, you can walk." Then
15 PLAINTIFF was lifted to his feet and made to take several steps by the SBPD
16 Officers. PLAINTIFF limped with each step, screamed in pain, and told the
17 SBPD Officer that his leg was broken. Nevertheless, SPBD Officers pushed
18 PLAINTIFF approximately over 25 yards towards the patrol vehicle, forcing
19 PLAINTIFF to hop on one foot trying to avoid putting pressure on his injured
20 leg.

21 36. After DEFENDANTS clearly injured PLAINTIFF,
22 DEFENDANTS did not provide PLAINTIFF with needed medical care, did
23 not follow their training with regard to being a first responder and in providing
24 medical aid, and instead increased PLAINTIFF'S harm, pain, suffering, and
25 injury by forcing the handcuffed PLAINTIFF towards the patrol vehicle.

26 37. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
27 were not responding to a violent crime, DEFENDANTS did not have any
28 information that PLAINTIFF had ever harmed anyone, DEFENDANTS did

1 not have any information that anyone was harmed, DEFENDANTS did not
2 have any information that PLAINTIFF was armed, and PLAINTIFF was in
3 fact unarmed.

4 38. PLAINTIFF was not assaultive to any of the SBPD Officers or
5 any other person at the time the DEFENDANTS used excessive and
6 unreasonable force against him. PLAINTIFF was not a threat to the SBPD
7 Officers or any other person at the time the DEFENDANTS used excessive
8 and unreasonable force against him. PLAINTIFF was not an immediate threat
9 of death or serious bodily injury to the SBPD Officers or any other person at
10 the time the DEFENDANTS used excessive and unreasonable force against
11 him.

12 39. As a result of DEFENDANTS' use of excessive and unreasonable
13 force, PLAINTIFF experienced serious bodily injury, pain and suffering,
14 including a broken arm, a broken leg, and several lacerations on his body.

15 40. The use of force was excessive and objectively unreasonable
16 under the circumstances, especially because PLAINTIFF was not attempting
17 to evade, PLAINTIFF was not resistive, PLAINTIFF was not assaultive and
18 PLAINTIFF did not pose a threat to anyone at the time the DEFENDANTS
19 repeatedly struck PLAINTIFF with their batons, including while PLAINTIFF
20 was on the ground, stepped on PLAINTIFF'S neck, forced PLAINTIFF'S
21 broken arm into handcuffs, and forced PLAINTIFF to put pressure on his
22 broken leg.

23 41. On or around July 29, 2020, PLAINTIFF filed a comprehensive
24 and timely claim for damages with the CITY OF SAN BERNARDINO
25 pursuant to applicable sections of the California Government Code.

26 42. On October 12, 2020, the CITY served a letter of rejection of
27 PLAINTIFF'S claims.

28

1 43. PLAINTIFF seeks damages for his past and future pain and
2 suffering including: impairment, disfigurement, emotional distress related to
3 his injuries, mental anguish, embarrassment, loss of quality of life, and any
4 medical expenses under these claims. PLAINTIFF also seeks reasonable
5 attorneys' fees and costs.

6
7 **FIRST CLAIM FOR RELIEF**

8 **Unreasonable Search and Seizure – Excessive Force (42 U.S.C. § 1983)**

9 (By PLAINTIFF against AHMED; HYSEN; and DOES 1-8, inclusive)

10 44. PLAINTIFF repeats and re-alleges each and every allegation of
11 paragraphs 1 through 43, inclusive, as if fully set forth herein.

12 45. The Fourth Amendment of the United States Constitution, as
13 applied to State Actors by the Fourteenth Amendment, provides the right of
14 every person to be free from the use of excessive force by police officers.

15 46. When DEFENDANTS AHMED; HYSEN; and DOES 1-8,
16 inclusive, were taking PLAINTIFF into custody, PLAINTIFF was not
17 threatening any person at the time, and PLAINTIFF never verbally threatened
18 any person, including DEFENDANTS.

19 47. PLAINTIFF never threatened anyone, made no aggressive
20 movements toward anyone, made no furtive gestures, and made no physical
21 movements that would reasonably suggest to DEFENDANTS AHMED;
22 HYSEN; and DOES 1-8, inclusive, that PLAINTIFF was attempting, willing,
23 or intending to inflict harm to anyone. PLAINTIFF followed the commands
24 by DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, when
25 PLAINTIFF stopped, put his hands up, rolled to his stomach, and put his hands
26 behind his back. Nevertheless, DEFENDANTS AHMED; HYSEN; and DOES
27 1-8, inclusive, repeatedly struck PLAINTIFF with their batons, without
28 justification, causing PLAINTIFF to fall to the ground, and then continued to

1 repeatedly strike PLAINTIFF with their batons while PLAINTIFF was on the
2 ground and in the fetal position, and then placed their boots on PLAINTIFF'S
3 lower back and neck.

4 48. Throughout the incident, PLAINTIFF presented no immediate
5 threat to the safety of the officers or others, including not an immediate threat
6 of death or serious bodily injury to any officer or other person.

7 49. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
8 caused various injuries as mentioned herein by integrally participating or
9 failing to intervene in the incident, and by engaging in other acts and/or
10 omissions around the time of the incident. DEFENDANTS' acts and
11 omissions deprived PLAINTIFF of his right to be secure in his person against
12 unreasonable searches and seizures as guaranteed to PLAINTIFF under the
13 Fourth Amendment to the United States Constitution and applied to state
14 actors by the Fourteenth Amendment.

15 50. As a direct result of the aforesaid acts and omissions of
16 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, PLAINTIFF
17 suffered great physical and mental injury, as well as fear and emotional
18 distress related to his physical injuries, pain, and suffering.

19 51. The conduct of DEFENDANTS AHMED; HYSEN; and DOES 1-
20 8, inclusive, alleged above was willful, wanton, malicious, and done with
21 reckless disregard for the rights and safety of PLAINTIFF and warrants the
22 imposition of exemplary and punitive damages in an amount according to
23 proof.

24 52. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
25 were acting under color of state law and within the course and scope of their
26 employment as law enforcement officers for the CITY.

27 53. PLAINTIFF seeks damages for his past and future pain and
28 suffering including: impairment, disfigurement, emotional distress, mental

1 anguish, embarrassment, loss of quality of life; and any medical expenses
2 related to his injuries. PLAINTIFF also seeks reasonable attorneys' fees and
3 costs under this claim.

4 **SECOND CLAIM FOR RELIEF**

5 **Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C.
6 § 1983)**

7 (By PLAINTIFF against CITY and DOES 9-10, inclusive)

8 54. PLAINTIFF repeats and re-alleges each and every allegation of
9 paragraphs 1 through 53, inclusive, as if fully set forth herein.

10 55. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
11 inclusive, acted under color of state law.

12 56. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
13 acted pursuant to an expressly adopted or fiscal policy or longstanding practice
14 or custom of the DEFENDANT CITY, and DOES 9-10, inclusive.

15 57. On information and belief, DEFENDANTS AHMED; HYSEN;
16 and DOES 1-8, inclusive, were not disciplined, reprimanded, retrained,
17 suspended, or otherwise penalized in connection with the deprivation of
18 PLAINTIFF'S rights.

19 58. DEFENDANTS CITY, and DOES 9-10, inclusive, together with
20 other CITY policymakers and supervisors, maintained, inter alia, the
21 following unconstitutional customs, practices, and policies:

22 (a) The CITY has failed to train its officers in the constitutional
23 responses to compliant, nonviolent subjects.

24 (b) Using excessive and unreasonable force, including deadly
25 force on unarmed persons who do not pose a risk of imminent death or
26 serious bodily injury to others.

27 (c) Providing inadequate training regarding the use of force,
28 including the use of less-lethal force, and deadly force.

1 (d) Employing and retaining as police officers, individuals such
2 as DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, who
3 DEFENDANT CITY, and DOES 9-10, inclusive, at all times material
4 herein, knew or reasonably should have known had dangerous
5 propensities for abusing their authority and for using excessive force.

6 (e) Inadequately supervising, training, controlling, assigning,
7 and disciplining CITY law enforcement officers, and other personnel,
8 including DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
9 who CITY knew or in the exercise of reasonable care should have
10 known, had the aforementioned propensities or character traits.

11 (f) Maintaining grossly inadequate procedures for reporting,
12 supervising, investigating, reviewing, disciplining and controlling
13 misconduct by law enforcement officers of the CITY.

14 (g) Announcing that unjustified uses of force are “within
15 policy,” including shootings that were later determined in court to be
16 unconstitutional.

17 (h) Even where uses of force are determined in court to be
18 unconstitutional, refusing to discipline, terminate, or retrain the officers
19 involved.

20 (i) Failing to adequately discipline CITY law enforcement
21 officers for the above-mentioned categories of misconduct, including
22 inadequate discipline and “slaps on the wrist,” discipline that is so slight
23 as to be out of proportion with the magnitude of the misconduct, and
24 other inadequate discipline that is tantamount to encouraging
25 misconduct.

26 (j) Encouraging, accommodating, or facilitating a “blue code
27 of silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,” or
28 simply “code of silence,” pursuant to which officers do not report other

1 officers' errors, misconduct, or crimes. Pursuant to this code of silence,
2 if questioned about an incident of misconduct involving another officer,
3 while following the code, the officer being questioned will claim
4 ignorance of the other officer's wrongdoing.

5 59. By reason of the aforementioned acts and omissions, PLAINTIFF
6 has endured substantial pain and suffering, serious bodily injury, humiliation,
7 and disfigurement.

8 60. DEFENDANTS CITY and DOES 9-10, inclusive, together with
9 various other officials, whether named or unnamed, had either actual or
10 constructive knowledge of the deficient policies, practices and customs
11 alleged herein. Despite having knowledge as stated above, these
12 DEFENDANTS condoned, tolerated and through actions and inactions thereby
13 ratified such policies. Said DEFENDANTS also acted with deliberate
14 indifference to the foreseeable effects and consequences of these policies with
15 respect to the constitutional rights of PLAINTIFF and other individuals
16 similarly situated.

17 61. By perpetrating, sanctioning, tolerating and ratifying the
18 outrageous conduct and other wrongful acts, DEFENDANTS CITY and DOES
19 9-10, inclusive, acted with intentional, reckless, and callous disregard for the
20 PLAINTIFF'S constitutional rights. Furthermore, the policies, practices, and
21 customs implemented, maintained, and tolerated by DEFENDANTS CITY and
22 DOES 9-10, inclusive, were affirmatively linked to and were a significantly
23 influential force behind PLAINTIFF'S injuries.

24 62. The acts of each of DEFENDANTS DOES 9-10, inclusive, were
25 willful, wanton, oppressive, malicious, fraudulent, and extremely offensive
26 and unconscionable to any person of normal sensibilities, and therefore
27 warrants imposition of exemplary and punitive damages as to DOES 9-10,
28 inclusive.

1 63. Based on information and belief, the following are examples of
2 cases where the involved officers were not disciplined, reprimanded,
3 retrained, suspended, or otherwise penalized in connection with the underlying
4 acts giving rise to the below lawsuits, which indicates that the CITY routinely
5 ratifies such behavior, fails to train its officers, and maintains a practice of
6 allowing such behavior:

7 a. In *Castaneda v. City of San Bernardino*, Case No. 5:17-cv-
8 01928, plaintiffs alleged that the involved SBPD officers used excessive
9 and unreasonable force when they stopped decedent without reasonable
10 suspicion or probable cause and shot decedent when he was not an
11 immediate threat of death or serious bodily injury. Upon information and
12 belief, the involved officers were never disciplined, reprimanded, retrained,
13 suspended, or otherwise penalized in connection with use of unreasonable
14 force.

15 b. In *Wade v. City of San Bernardino*, Case No. CV-11-09831
16 GHK (SPx), plaintiff alleged that the involved SBPD officer used excessive
17 and unreasonable force when they shot the unarmed plaintiff multiple times
18 when he did not pose an immediate risk of death or serious bodily injury.
19 The involved officer also shot six individuals within a sixteen-month period
20 without any retraining or discipline. Upon information and belief, the
21 involved officer was never disciplined, reprimanded, retrained, suspended,
22 or otherwise penalized in connection with use of unreasonable force.

23 c. In *Dockery v. City of San Bernardino*, Case No. 5:20-CV-
24 1189, plaintiff alleged that the involved SBPD officers used excessive and
25 unreasonable force when they shot the unarmed plaintiff in the back, when
26 he did not pose an immediate risk of death or serious bodily injury. Upon
27 information and belief, the involved officers were never disciplined,
28

1 reprimanded, retrained, suspended, or otherwise penalized in connection
2 with use of unreasonable force.

3 d. In *Trejo v. City of San Bernardino*, Case No. 5:17-cv-01928,
4 plaintiff alleged that defendant SBPD officers used excessive and
5 unreasonable force when they shot the unarmed decedent who was not an
6 immediate threat of death or serious bodily injury. Upon information and
7 belief, the involved officers were never disciplined, reprimanded, retrained,
8 suspended, or otherwise penalized in connection with use of unreasonable
9 force.

10 e. In *Brown v. City of San Bernardino*, Case No. CIV-DS-
11 1007751, plaintiff alleged that he suffered a battery and false arrest by
12 defendant officers when they pushed him to the ground without provocation
13 and falsely detained him on a 5150 hold. A jury found in favor of plaintiff.
14 Upon information and belief, the involved officers were never disciplined,
15 reprimanded, retrained, suspended, or otherwise penalized in connection
16 with use of unreasonable force and seizure.

17 f. In *King v. City of San Bernardino*, Case No. 2:09-cv-01339-
18 DMG-PJW, plaintiff alleged that the defendant officer used excessive
19 deadly force when he shot plaintiff nine times as plaintiff ran away with
20 visibly empty hands and having committed no crime. A unanimous jury
21 found in favor of plaintiff. Upon information and belief, the involved
22 officers were never disciplined, reprimanded, retrained, suspended, or
23 otherwise penalized in connection with use of unreasonable force.

24 g. In *Nash v. City of San Bernardino*, Case No. CV-09-08671-
25 RGK (FFMx), plaintiff alleged that officers used excessive force when they
26 used a lethal chokehold, hogtie restraint, and placed hundreds of pounds on
27 decedent's back causing his death by restraint asphyxia. Defendants
28 claimed that the officers used reasonable force. A unanimous jury found

1 that the force was unreasonable. Upon information and belief, the involved
2 officers were never disciplined, reprimanded, retrained, suspended, or
3 otherwise penalized in connection with use of unreasonable force.

4 64. Accordingly, DEFENDANTS CITY and DOES 9-10, inclusive,
5 each are liable for compensatory damages under 42 U.S.C. § 1983.

6 65. PLAINTIFF seeks damages for his past and future pain and
7 suffering including: impairment, disfigurement, emotional distress, mental
8 anguish, embarrassment, loss of quality of life; and any medical expenses.
9 PLAINTIFF also seeks reasonable attorneys' fees and costs under this claim.

10

11

THIRD CLAIM FOR RELIEF

12

Municipal Liability for Failure to Train (42 U.S.C. §1983)

13

(By PLAINTIFF against CITY and DOES 9-10, inclusive)

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15 66. PLAINTIFF repeats and re-alleges each and every allegation in
16 paragraphs 1 through 65 of this Complaint with the same force and effect as
if fully set forth herein.

17

18 67. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
acted under color of law.

19

20 68. The acts of DEFENDANTS AHMED; HYSEN; and DOES 1-8,
21 inclusive, deprived PLAINTIFF of his particular rights under the United States
Constitution.

22

23 69. On information and belief, DEFENDANT CITY failed to properly
24 and adequately train DEFENDANTS DOES 1-8, inclusive, including but not
25 limited to, with regard to the constitutional response to peaceful
26 demonstrations and the use of physical force, less than lethal force, and lethal
force.

27

28 70. The training policies of DEFENDANT CITY were not adequate
to train its officers to handle the usual and recurring situations with which they

1 must deal, including de-escalation techniques, and both the use of less than
2 lethal and lethal force, and the use of their body cameras.

3 71. DEFENDANT CITY and DOES 9-10, inclusive, were deliberately
4 indifferent to the obvious consequences of its failure to train its officers
5 adequately.

6 72. The failure of DEFENDANT CITY and DOES 9-10, inclusive, to
7 provide adequate training caused the deprivation of PLAINTIFF'S rights by
8 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive; that is,
9 DEFENDANTS' failure to train is so closely related to the deprivation of
10 PLAINTIFF'S rights as to be the moving force that caused the ultimate injury.

11 73. The following are only a few examples of cases where the CITY
12 failed to train its officers, and the involved officers were not disciplined,
13 reprimanded, retrained, suspended, or otherwise penalized in connection with
14 the underlying acts giving rise to the below lawsuits, which indicates that
15 DEFENDANT CITY failed to adequately train its officers, more specifically
16 the failure to train with regard to the use of force:

17 a. In *Castaneda v. City of San Bernardino*, Case No. 5:17-cv-
18 01928, plaintiffs alleged that the involved SBPD officers used excessive and
19 unreasonable force when they stopped decedent without reasonable suspicion
20 or probable cause and shot decedent when he was not an immediate threat of
21 death or serious bodily injury. Upon information and belief, the involved
22 officers were never disciplined, reprimanded, retrained, suspended, or
23 otherwise penalized in connection with use of unreasonable force.

24 b. In *Wade v. City of San Bernardino*, Case No. CV-11-09831
25 GHK (SPx), plaintiff alleged that the involved SBPD officer used excessive
26 and unreasonable force when they shot the unarmed plaintiff multiple times,
27 when he did not pose an immediate risk of death or serious bodily injury. The
28 involved officer also shot six individuals within a sixteen-month period

1 without any retraining or discipline. Upon information and belief, the
2 involved officer was never disciplined, reprimanded, retrained, suspended, or
3 otherwise penalized in connection with use of unreasonable force.

4 c. In *Dockery v. City of San Bernardino*, Case No. 5:20-CV-1189,
5 plaintiff alleged that the involved SBPD officers used excessive and
6 unreasonable force when they shot the unarmed plaintiff in the back, when
7 he did not pose an immediate risk of death or serious bodily injury. Upon
8 information and belief, the involved officers were never disciplined,
9 reprimanded, retrained, suspended, or otherwise penalized in connection with
10 use of unreasonable force.

11 d. In *Trejo v. City of San Bernardino*, Case No. 5:17-cv-01928,
12 plaintiff alleged that defendant City officers used excessive and unreasonable
13 force when they shot the unarmed decedent who was not an immediate threat
14 of death or serious bodily injury. Upon information and belief, the involved
15 officers were never disciplined, reprimanded, retrained, suspended, or
16 otherwise penalized in connection with use of unreasonable force.

17 e. In *Brown v. City of San Bernardino*, Case No. CIV-DS-
18 1007751, plaintiff alleged that he suffered a battery and false arrest by
19 defendant officers when they pushed him to the ground without provocation
20 and falsely detained him on a 5150 hold. A jury found in favor of plaintiff.
21 Upon information and belief, the involved officers were never disciplined,
22 reprimanded, retrained, suspended, or otherwise penalized in connection with
23 use of unreasonable force and seizure.

24 f. In *King v. City of San Bernardino*, Case No. 2:09-cv-01339-
25 DMG-PJW, plaintiff alleged that defendant officer used excessive deadly
26 force when he shot plaintiff nine times as plaintiff ran away with visibly
27 empty hands and having committed no crime. A unanimous jury found in
28 favor of plaintiff. Upon information and belief, the involved officer was

1 never disciplined, reprimanded, retrained, suspended, or otherwise penalized
2 in connection with use of unreasonable force.

3 g. In *Nash v. City of San Bernardino*, Case No. CV-09-08671-
4 RGK (FFMx), plaintiff alleged that officers used excessive force when they
5 used a lethal chokehold, hogtie restraint, and placed hundreds of pounds on
6 decedent's back causing his death by restraint asphyxia. Defendants claimed
7 that the officers used reasonable force. A unanimous jury found that the force
8 was unreasonable. Upon information and belief, the involved officers were
9 never disciplined, reprimanded, retrained, suspended, or otherwise penalized
10 in connection with use of unreasonable force.

11 74. Accordingly, DEFENDANT CITY and DOES 9-10, inclusive, are
12 liable to PLAINTIFF for compensatory damages under 42 U.S.C. § 1983.

13 75. PLAINTIFF seeks damages for his past and future pain and
14 suffering including: impairment, disfigurement, emotional distress, mental
15 anguish, embarrassment, loss of quality of life; and any medical expenses.
16 PLAINTIFF also seeks reasonable attorneys' fees and costs under this claim.

17
18 **FOURTH CLAIM FOR RELIEF**

19 **Municipal Liability – Ratification (42 U.S.C. § 1983)**

20 (By PLAINTIFF against CITY and DOES 9-10, inclusive)

21 76. PLAINTIFF repeats and re-alleges each and every allegation in
22 paragraphs 1 through 75 of this Complaint with the same force and effect as
23 if fully set forth herein.

24 77. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
25 acted under color of law.

26 78. The acts of DEFENDANTS AHMED; HYSEN; and DOES 1-8,
27 inclusive, deprived PLAINTIFF of his particular rights under the United States
28 Constitution.

1 79. Upon information and belief, a final policymaker, acting under
2 color of law, has a history of ratifying the unconstitutional response to
3 peaceful protest and unreasonable uses of force, including deadly force.

4 80. Upon information and belief, a final policymaker, acting under
5 color of law, who had final policymaking authority concerning the acts of
6 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, and the bases
7 for them. Upon information and belief, the final policymaker knew of and
8 specifically approved of DEFENDANTS' acts.

9 81. On information and belief, CITY final policymakers, including
10 DOES 9-10, inclusive, knew that PLAINTIFF never presented a risk of harm
11 to an officer or anyone else and that PLAINTIFF complied with officers'
12 commands when PLAINTIFF was stopped with his hands up in submission.

13 82. On information and belief, the official policies with respect to the
14 incident are that officers are not to use deadly force against an individual
15 unless the individual poses an immediate risk of death or serious bodily injury
16 to the officers or others, or if the individual has inflicted death or serious
17 bodily injury against someone or threatened to do so, the officers may use
18 deadly force to prevent the individual's escape. The officers' actions deviated
19 from these official policies because PLAINTIFF did not pose an immediate
20 threat of death or serious bodily injury to the involved officers or anyone else.

21 83. Upon information and belief, a final policymaker has determined
22 that the acts of DOES 1-8 were "within policy."

23 84. The following are only a few examples of cases where the
24 involved officers were not disciplined, reprimanded, retrained, suspended, or
25 otherwise penalized in connection with the underlying acts giving rise to the
26 below lawsuits, which indicates that DEFENDANT CITY routinely ratifies
27 such behavior:
28

1 a. In *Castaneda v. City of San Bernardino*, Case No. 5:17-cv-
2 01928, plaintiffs alleged that the involved SBPD officers used excessive and
3 unreasonable force when they stopped decedent without reasonable suspicion
4 or probable cause and shot decedent when he was not an immediate threat of
5 death or serious bodily injury. Upon information and belief, the involved
6 officers were never disciplined, reprimanded, retrained, suspended, or
7 otherwise penalized in connection with use of unreasonable force.

8 b. In *Wade v. City of San Bernardino*, Case No. CV-11-09831
9 GHK (SPx), plaintiff alleged that the involved SBPD officer used excessive
10 and unreasonable force when they shot the unarmed plaintiff multiple times,
11 when he did not pose an immediate risk of death or serious bodily injury.
12 The involved officer also shot six individuals within a sixteen-month period
13 without any retraining or discipline. Upon information and belief, the
14 involved officers were never disciplined, reprimanded, retrained, suspended,
15 or otherwise penalized in connection with use of unreasonable force.

16 c. In *Dockery v. City of San Bernardino*, Case No. 5:20-CV-1189,
17 plaintiff alleged that the involved SBPD officers used excessive and
18 unreasonable force when they shot the unarmed plaintiff in the back, when
19 he did not pose an immediate risk of death or serious bodily injury. Upon
20 information and belief, the involved officers were never disciplined,
21 reprimanded, retrained, suspended, or otherwise penalized in connection with
22 use of unreasonable force.

23 d. In *Trejo v. City of San Bernardino*, Case No. 5:17-cv-01928,
24 plaintiff alleged that defendant City officers used excessive and unreasonable
25 force when they shot the unarmed decedent who was not an immediate threat
26 of death or serious bodily injury. Upon information and belief, the involved
27 officers were never disciplined, reprimanded, retrained, suspended, or
28 otherwise penalized in connection with use of unreasonable force.

1 e. In *Brown v. City of San Bernardino*, Case No. CIV-DS-
2 1007751, plaintiff alleged that he suffered a battery and false arrest by
3 defendant officers when they pushed him to the ground without provocation
4 and falsely detained him on a 5150 hold. A jury found in favor of plaintiff.
5 Upon information and belief, the involved officers were never disciplined,
6 reprimanded, retrained, suspended, or otherwise penalized in connection with
7 use of unreasonable force and seizure.

8 f. In *King v. City of San Bernardino*, Case No. 2:09-cv-01339-
9 DMG-PJW, plaintiff alleged that defendant officer used excessive deadly
10 force when he shot plaintiff nine times as plaintiff ran away with visibly
11 empty hands and having committed no crime. A unanimous jury found in
12 favor of plaintiff. Upon information and belief, the involved officer was
13 never disciplined, reprimanded, retrained, suspended, or otherwise penalized
14 in connection with use of unreasonable force.

15 g. In *Nash v. City of San Bernardino*, Case No. CV-09-08671-
16 RGK (FFMx), plaintiff alleged that officers used excessive force when they
17 used a lethal chokehold, hogtie restraint, and placed hundreds of pounds on
18 decedent's back causing his death by restraint asphyxia. Defendants claimed
19 that the officers used reasonable force. A unanimous jury found that the force
20 was unreasonable. Upon information and belief, the involved officers were
21 never disciplined, reprimanded, retrained, suspended, or otherwise penalized
22 in connection with use of unreasonable force.

23 85. By reason of the aforementioned acts and omissions,
24 DEFENDANTS CITY and DOES 9-10, inclusive, are liable to PLAINTIFF'S
25 for compensatory damages under 42 U.S.C. § 1983.

26 86. PLAINTIFF seeks damages for his past and future pain and
27 suffering including: impairment, disfigurement, emotional distress, mental
28 anguish, embarrassment, loss of quality of life; and any medical expenses.
PLAINTIFF also seeks reasonable attorneys' fees and costs under this claim.

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FIFTH CLAIM FOR RELIEF

Battery (Cal. Govt. Code § 820 and California Common Law)

(By PLAINTIFF against DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, directly; and CITY and DOES 9-10 vicariously)

87. PLAINTIFF repeats and realleges each and every allegation in paragraphs 1 through 86 of this Complaint with the same force and effect as if fully set forth herein.

88. At all relevant times, DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, were working as police officers for the SBPD and were acting within the course and scope of their duties as police officers for the CITY.

89. When DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, were taking PLAINTIFF into custody, PLAINTIFF was not threatening any person at the time, and PLAINTIFF never verbally threatened any person, including DEFENDANTS.

90. PLAINTIFF never threatened anyone, made no aggressive movements toward anyone, made no furtive gestures, and no physical movements that would reasonably suggest to the DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, that PLAINTIFF was attempting, willing, or intending to inflict harm to anyone. PLAINTIFF followed the commands by DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, when PLAINTIFF stopped, put his hands up, rolled to his stomach, and put his hands behind his back. Nevertheless, DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, repeatedly struck PLAINTIFF with their batons, without justification, causing PLAINTIFF to fall to the ground, and then continued to repeatedly strike PLAINTIFF with their batons while PLAINTIFF was on the ground and in the fetal position, and then placed their boots on PLAINTIFF’S lower back and neck.

1 91. Throughout the incident, PLAINTIFF presented no immediate
2 threat to the safety of the officers or others, including not an immediate threat
3 of death or serious bodily injury to any officer or other person.

4 92. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive,
5 caused various injuries as mentioned herein by integrally participating or
6 failing to intervene in the incident, and by engaging in other acts and/or
7 omissions around the time of the incident. DEFENDANTS' acts and
8 omissions resulted in harmful and offensive touching of PLAINTIFF.

9 93. As a direct result of the aforesaid acts and omissions of
10 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, PLAINTIFF
11 suffered great physical and mental injury, as well as fear and emotional
12 distress related to his physical injuries, pain and suffering.

13 94. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, are
14 directly liable for their actions and inactions pursuant to Cal. Govt. Code §
15 820(a).

16 95. The CITY is vicariously liable for the wrongful acts of
17 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, pursuant to
18 section 815.2(a) of the California Government Code, which provides that a
19 public entity is liable for the injuries caused by its employees within the scope
20 of the employment if the employee's act would subject him or her to liability.

21 96. The conduct of DEFENDANTS AHMED; HYSEN; and DOES 1-
22 8, inclusive, was malicious, wanton, oppressive, and accomplished with a
23 conscious disregard for the rights of PLAINTIFF, entitling PLAINTIFF to an
24 award of exemplary and punitive damages, which PLAINTIFF seeks under
25 this claim.

26 97. PLAINTIFF seeks compensatory damages for the violations of his
27 rights, including for his past and future pain and suffering, impairment,
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1 disfigurement, emotional distress, mental anguish, embarrassment, loss of
2 quality of life, and any medical expenses under this claim.

3
4 **SIXTH CLAIM FOR RELIEF**

5 **Negligence (Cal. Govt. Code § 820 and California Common Law)**

6 (By PLAINTIFF against DEFENDANTS AHMED; HYSEN; and DOES 1-8,
7 inclusive, directly; and CITY and DOES 9-10 vicariously)

8 98. PLAINTIFF repeats and realleges each and every allegation in
9 paragraphs 1 through 97 of this Complaint with the same force and effect as
10 if fully set forth herein.

11 99. The actions and inactions of Defendants were negligent and
12 reckless, including but not limited to:

13 a) DEFENDANTS' failure to constitutionally respond to
14 PLAINTIFF after PLAINTIFF surrendered.

15 b) DEFENDANTS' failure to properly and adequately assess the
16 need to use force against PLAINTIFF.

17 c) DEFENDANTS' negligent tactics and handling of the situation
18 with PLAINTIFF, including the failure to give PLAINTIFF a warning prior
19 to force being used.

20 d) DEFENDANTS' negligent use of force against PLAINTIFF.

21 e) DEFENDANTS' failure to provide prompt medical care to
22 PLAINTIFF.

23 f) DEFENDANTS' failure to properly train and supervise
24 employees.

25 g) DEFENDANTS' failure to ensure that adequate numbers of
26 employees with appropriate education and training were available to meet
27 the needs of and protect the rights of PLAINTIFF.
28

1 h) DEFENDANTS’ failure to properly operate their body
2 cameras.

3 i) DEFENDANTS’ failure to properly report the incident.

4 j) DEFENDANTS’ use of stepping on an individual to hold them
5 down, especially on the person’s neck.

6 k) DEFENDANTS’ forcing PLAINTIFF to walk on his broken
7 and injured legs.

8 l) DEFENDANTS’ failure to de-escalate the situation, and use
9 proper communication and commands.

10 100. As a direct and proximate result of DEFENDANTS’ conduct as
11 alleged above, and other undiscovered negligent conduct, Plaintiff suffered
12 past and future financial loss, serious and permanent physical injuries,
13 impairment, disfigurement, past and future emotional and mental distress, and
14 medical expenses.

15 101. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, are
16 directly liable for their actions and inactions pursuant to Cal. Govt. Code §
17 820(a).

18 102. The CITY is vicariously liable for the wrongful acts of
19 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, pursuant to
20 section 815.2(a) of the California Government Code, which provides that a
21 public entity is liable for the injuries caused by its employees within the scope
22 of the employment if the employee’s act would subject him or her to liability.

23 103. PLAINTIFF seeks damages for his past and future pain and
24 suffering including: impairment, disfigurement, emotional distress, mental
25 anguish, embarrassment, loss of quality of life; and any medical expenses.
26 PLAINTIFF also seeks reasonable attorneys’ fees and costs under this claim.

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SEVENTH CLAIM FOR RELIEF

Violation of the Bane Act (Cal. Civil Code § 52.1)

(By PLAINTIFF against DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, directly; and CITY and DOES 9-10 vicariously)

104. PLAINTIFF repeats and realleges each and every allegation in paragraphs 1 through 103 of this Complaint with the same force and effect as if fully set forth herein.

105. California Civil Code, Section 52.1 (the Bane Act), prohibits any person, including a police officer, from interfering with another person’s exercise or enjoyment of his constitutional rights by threats, intimidation, or coercion, including by the use of unconstitutionally excessive force. Conduct that violates the Fourth Amendment, including the use of excessive force, violates the Bane Act when performed with specific intent to deprive others of their civil rights, which can be inferred by a reckless disregard for the person’s civil rights.

106. DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, while working for the CITY and acting within the course and scope of their duties as police officers, intentionally committed, and attempted to commit acts of violence against PLAINTIFF, including by repeatedly striking PLAINTIFF with their batons.

107. When DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, repeatedly struck PLAINTIFF with their batons, they interfered with PLAINTIFF’S constitutional rights to be free from unreasonable searches and seizures, to equal protection of the laws, to timely and adequate medical care, to be free from state actions that shock the conscience, and to life, liberty, and property.

108. On information and belief, DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, intentionally and spitefully committed the above

1 acts to discourage or prevent PLAINTIFF from exercising his civil rights, or
2 from enjoying such rights, which he was and is fully entitled to enjoy.
3 DEFENDANTS AHMED; HYSEN; and DOES 1-8, inclusive, intentionally
4 interfered with the above constitutional rights of PLAINTIFF, and as alleged
5 herein, which can be demonstrated by DEFENDANTS' AHMED; HYSEN;
6 and DOES 1-8, inclusive, reckless disregard for PLAINTIFF'S constitutional
7 rights.

8 109. On information and belief, PLAINTIFF reasonably believed and
9 understood that the violent acts committed by DEFENDANTS AHMED;
10 HYSEN; and DOES 1-8, inclusive, were intended to discourage him from
11 exercising the above civil rights, to retaliate against him for invoking such
12 rights, or to prevent him from exercising such rights.

13 110. The conduct of DEFENDANTS AHMED; HYSEN; and DOES 1-
14 8, inclusive, was a substantial factor in causing PLAINTIFF'S harm, loss,
15 injury, and damages.

16 111. The CITY is vicariously liable for the wrongful acts of
17 DEFENDANT DOES 1-8 pursuant to section 815.2(a) of the California
18 Government Code, which provides that a public entity is liable for the injuries
19 caused by its employees within the scope of the employment if the employee's
20 act would subject him or her to liability.

21 112. DEFENDANT DOES 9-10 are vicariously liable under California
22 law and the doctrine of *respondeat superior*.

23 113. The conduct of DEFENDANTS AHMED; HYSEN; and DOES 1-
24 8, inclusive, was malicious, wanton, oppressive, and accomplished with a
25 conscious disregard for PLAINTIFF'S rights, justifying an award of
26 exemplary and punitive damages as to DEFENDANTS AHMED; HYSEN; and
27 DOES 1-8, inclusive.

28

1 114. PLAINTIFF seeks compensatory damages for the violations of his
2 rights, including for his past and future pain and suffering including:
3 impairment, disfigurement, emotional distress, mental anguish,
4 embarrassment, loss of quality of life; and any medical expenses. PLAINTIFF
5 also seeks punitive damages, costs, and attorney's fees under California Civil
6 Code section 52 *et seq.* as to this claim.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, CARLOS TORRES, requests entry of judgment in his favor against CITY OF SAN BERNARDINO; AHMED; HYSEN; and DOES 1-10, inclusive, as follows:

- 1. For compensatory damages, according to proof at trial, under federal and State law.
- 2. For punitive and exemplary damages against the individual defendants in an amount to be proven at trial.
- 3. For statutory damages.
- 4. For reasonable attorneys’ fees including litigation expenses.
- 5. For costs of suit and interest incurred herein.
- 6. For such other and further relief as the Court may deem just and proper.

DATED: March 15, 2021

LAW OFFICES OF DALE K. GALIPO

By: /s/ Marcel F. Sincich
Dale K. Galipo, Esq.
Marcel F. Sincich, Esq.
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

PLAINTIFF hereby submits this demand that this action be tried in front of a jury.

DATED: March 15, 2021

LAW OFFICES OF DALE K. GALIPO

By: /s/ Marcel F. Sincich
Dale K. Galipo, Esq.
Marcel F. Sincich, Esq.
Attorneys for Plaintiff