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NASSER BAKER

**UNITED STATES DISTRICT COURT
GENERAL DISTRICT OF CALIFORNIA**

NASSER BAKER,

Plaintiff,

vs.

COUNTY OF LOS ANGELES,
SHERIFF ALEX VILLANUEVA, an
individual, JOHN DOE No. 1, and DOES
2-20 inclusive,

Defendants.

CASE NO:

**COMPLAINT FOR DAMAGES
AND OTHER RELIEF**

1. First Amendment Violation (42 U.S.C. 1983)
2. Fourth Amendment Violation (42 U.S.C. § 1983) Excessive Force
3. Fourteenth Amendment Violation (42 U.S.C. § 1983)
4. Assault and Battery
5. Negligence
6. Violation of Bane Civil Rights Act (Civil Code § 52.1)
7. Intentional Infliction of Emotional Distress
8. Negligent Infliction of Emotional Distress
9. Municipal Liability (Monell) Inadequate Training, Ratification, Unconstitutional Custom and Practice

DEMAND FOR JURY TRIAL

INTRODUCTION

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1. This is a civil rights and state tort action that seeks compensatory damages from the Defendants generally and punitive damages from Defendant Deputy “John Does” for violating various rights under the United States Constitution and state law in connection with the unjustified assault and use of excessive force, paired with both intimidating and threatening verbal and physical abuse of Naser Baker on September 13, 2020.

2. Plaintiff Nasser “Nash” Baker, up to and including the date of the unwarranted attack, was and is a photojournalist and contributor to ONSCENE.TV. He also provides video footage for use by major news media in connection with newsworthy incidents and events. Plaintiff devotes his time to capturing and highlighting injustice, working some of Los Angeles’s toughest areas day and night. Plaintiff aimed to use his profession in a positive manner, effectively acting as the eyes and ears of the public and to objectively provide snapshots and footage of reality through his camera lenses and in public media. While exercising his First Amendment right to freedom of speech and the press, Plaintiff was subjected to unwarranted physical and verbal abuse which has resulted in continued and prolonged fear, emotional and psychological distress.

3. Defendants’ assault and excessive use of force arose as Plaintiff sought to cover and videorecord a protest occurring outside of Saint Francis Hospital, where most participants were protesting peacefully. This protest occurred within the context of larger demonstrations and protests which were occurring throughout Los Angeles, with principled individuals exercising their First Amendment Right to assemble, to seek redress for grievances and to express support for the Black Lives Matter movement.

4. The Los Angeles County Sheriff’s Department (“LACSD”) has engaged in a pattern and practice of showing hostility to members of the public and even the

1 press in creating a video-recordings of interactions between the LACSD and the
2 public which casts the LACSD in a bad light, or otherwise exposes acts of excessive
3 use of force by the LACSD.

4 **JURISDICTION AND VENUE**

5 5. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
6 (federal question) and 1343(a)(3)-(4) [civil rights jurisdiction], because the
7 Plaintiff asserts claims arising under the laws of the United States including 42
8 U.S.C. § 1983 and 1988, and the First, Fourth and Fourteenth Amendments of the
9 United States Constitution. This Court has jurisdiction to issue declaratory or
10 injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of
11 Civil Procedure 57.

12 6. This Court has supplemental jurisdiction over Plaintiff’s claims arising
13 under state law pursuant to 28 U.S.C. §§1331,1343, and 1367(a), because those claims
14 are so related to the federal claims that they form part of the same case or controversy
15 under Article III of the United States Constitution.

16 7. Venue is proper in this Court under 28 U.S.C. § 1391(b), because
17 Defendants are believed to reside in this district and all incidents, events, and
18 occurrences giving rise to this action occurred in this district.

19 **PARTIES**

20 8. **Plaintiff:** Plaintiff NASSER “NASH” BAKER (“PLAINTIFF”) is a 46-
21 year-old male, who at all relevant times mentioned in this Complaint resides in the
22 City of Los Angeles, California. The Plaintiff seeks both general and punitive
23 damages under federal and state law.

24 9. **Public Entity Defendant:** At all relevant times, Defendant COUNTY
25 OF LOS ANGELES (“COUNTY”) was and is a municipal corporation existing under
26 the Constitution and laws of the State of California. COUNTY is a governmental
27 subdivision of the State of California with the capacity to be sued. The LOS
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1 ANGELES COUNTY SHERIFF’S DEPARTMENT (“LACSD”) is a local
2 government entity and an agency of the COUNTY, and all actions of the LACSD are
3 the legal responsibility of the COUNTY.

4 10. COUNTY is responsible for the actions, omissions, policies, procedures,
5 practices, and customs of its various agents and employees. At all relevant times,
6 Defendant COUNTY was responsible for assuring the actions, omissions, policies,
7 procedures, practices and customs of its employees and agents complied with the laws
8 of the United States and of the State of California. At all relevant times, COUNTY
9 was the employer of Defendant Deputy JOHN DOE.

10 11. **Individual Defendants:** At all relevant times, Defendant ALEX
11 VILLANUEVA, was acting under color of law within the course and scope of his
12 duties as Sheriff of the Los Angeles County Sheriff’s Department, and a
13 policymaker for his department. VILLANUEVA was charged with a legal duty
14 to oversee and supervise the hiring, conduct and employment of deputies under
15 his command. Defendant VILLANUEVA is sued in both his individual and
16 official capacities.

17 12. At all relevant times, Defendant Deputy JOHN DOE No. 1 (“DOE”) was
18 and is a law enforcement deputy of the Sheriff’s Department of the COUNTY. DOE
19 No. 1 was acting under color of law within the course and scope of his duties as a
20 Sheriff’s deputy of the COUNTY. DOE was acting with complete authority
21 and ratification of his principal, Defendant COUNTY.

22 13. At all times mentioned herein, Defendant COUNTY had a legal duty to
23 oversee and supervise the hiring, conduct and employment of Defendant DOE.

24 14. All of the acts complained of herein by the PLAINTIFF against
25 Defendants were done and performed by said Defendants by and through their
26 authorized agents and employees, namely DOE, whom at all relevant times herein was
27 acting within the course, purpose, and scope of said service and/or employment

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1 capacity. Moreover, Defendant COUNTY ratified DOE and all of the acts complained
2 of herein.

3 15. Defendant DOE is sued both in his individual and personal capacity, as
4 well as in his official capacity as a deputy of COUNTY's Sheriff's Department.

5 16. The PLAINTIFF is informed and believes, and based thereon alleges,
6 that each of the Defendants DOES 1-20, were engaged in law enforcement as
7 deputies, deputy sergeants, captains, lieutenants, and/or civilian employees, agents and
8 representatives of Defendant COUNTY, duly employed as a police officer or sheriff's
9 deputy by the COUNTY OF LOS ANGELES Sheriff's Department ("LACSD who
10 were acting in the course and scope of his/her employment at all times relevant to the
11 acts and omissions herein alleged. Each Defendant acted in all respects pertinent to
12 this action as the agent of the other Defendants, carried out a joint scheme, business
13 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
14 attributable to the other Defendants. Each defendant, including DOES 1-20 inclusive
15 are collectively referred to as "DEFENDANTS."

16 17. The PLAINTIFF is ignorant of the true names and capacities of
17 DEFENDANTS sued herein as DOES 1-20, inclusive, and therefore sue these
18 DEFENDANTS by such fictitious names. The PLAINTIFF will amend this
19 Complaint to allege their true names and capacities when ascertained. As such, the
20 individual DOE DEFENDANTS are sued in both their individual and official
21 capacities.

22 18. In doing the acts and failing and omitting to act as hereinafter
23 described, DEFENDANTS DOES 1-20 were acting on the implied and actual
24 permission and consent of COUNTY OF LOS ANGELES Sheriff's Department.

25 19. All DEFENDANTS who are natural persons, including Defendant
26 DOE and DOES 1-20 are sued individually and/or in his/her official capacity as
27 officers, sergeants, captains, commanders, supervisors, and/or civilian employees,
28 agents, policy makers, and representatives for the COUNTY.

1 20. DEFENDANTS are liable for the PLAINTIFF's injuries under
2 California law and under the doctrine of *respondeat superior*. Liability under
3 California law for public entities and public employees is based upon California
4 Government Code §§ 815.2 and 820.

5 21. At all times mentioned herein, each and every DEFENDANT was the
6 agent of each and every other DEFENDANT and had the legal duty to oversee
7 and supervise the hiring, conduct and employment of each and every
8 DEFENDANT herein.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 22. On January 26, 2021 Plaintiff filed a timely tort claim for damages with
11 COUNTY in substantial compliance with California Government Code §910.

12 23. As a result of the COUNTY's failure to respond or to otherwise send a
13 notice of rejection of Plaintiff's timely filed notice of tort claim, on or about March
14 12, 2021 and by operation of law, Plaintiff's claim was deemed rejected.

15 **FACTUAL ALLEGATIONS**

16 24. PLAINTIFF repeats, re-alleges, and incorporates by reference the
17 allegations contained in all previous paragraphs as though fully set forth at length
18 herein.

19 25. On May 25, 2020, Minneapolis Police Officer Derek Chauvin, along
20 with two other officers, held George Floyd on the ground, handcuffed behind his
21 back, and ignored pleas to get off his neck, back and legs and let him breathe. Office
22 Chauvin kept his knee on Floyd's neck for 9 minutes, twentynine seconds. As a
23 result, Mr. Floyd died on the street in Minneapolis.

24 26. Both the Minneapolis law enforcement and prosecutors as well as the
25 public, concluded that George Floyd was the latest person to die at the hands of
26 police because of deliberate and unlawful tactics of law enforcement largely because
27 of extensive video by onlookers, security cameras, including police body cameras.

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1 27. In Los Angeles, tens of thousands of people participated in lawful and
2 peaceful protest as part of an extraordinary reaction of protests across the country and
3 around the world. Protesters expressed their views in various different forms. As a
4 member of the press, during this general timeframe, Plaintiff was performing work as
5 a photojournalist, creating a videotape record of peaceful protests and other events.

6 28. On September 2021, in vicinity of St Francis Hospital located at 3630 E
7 Imperial Highway, Lynwood, CA 90262, Plaintiff was present, performing press
8 functions as a photojournalist, videotaping a gathering of mostly peaceful protests
9 occurring in the Los Angeles area, capturing and recording events of social and
10 public interest, including the Black Lives Matters movement.

11 29. While covering events in the vicinity of St Francis Hospital, Plaintiff
12 began video-recording the actions of protesters and sheriff deputies, and the
13 interactions between the two. The interactions recorded included, but were not
14 limited to, deputies: advancing toward retreating, unarmed protesters; threatening
15 deadly force against unarmed civilians who posed no threat; unholstering their
16 weapons and raising their hand-guns and pointing them at protesters, as the protesters
17 retreated; gang-tackling, detaining and arresting a single protester who had been
18 separated and isolated from other protesters; gang-tackling, detaining and arresting a
19 reporter, Josie Huang, and ignoring attestations of her being a member of the press,
20 among other things.

21 30. At approximately 10:30pm, while Plaintiff was videotaping exchanges
22 between sheriff deputies and protesters, DOE No. 1 rushed toward Plaintiff,
23 physically pushed, struck and threatened Plaintiff. DOE No. 1 can be heard using
24 obscene and hostile language and threatening physical harm to the Plaintiff
25 personally and Plaintiff's equipment, stating, "Get out of here or I'll break your F-
26 king camera."

27 31. The attack on the Plaintiff was unprovoked and occurred while Plaintiff
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1 Baker was exercising his protected First Amendment right to freedom of speech and
2 the press, while acting on behalf of himself and the general public, in attempting to
3 capture an objective record of events, including interactions between the Sheriff's
4 Department and citizens of Los Angeles.

5 32. DEFENDANTS' engaged in these actions with the objective of stifling
6 press coverage, including videotape and photographic recordings of any kind,
7 including press coverage and citizen photography, to suppress and chill free speech,
8 to prevent accurate dissemination of news reports regarding the LACSD' treatment of
9 citizens engaged in a constitutionally protected, non-violent protest, and to prevent
10 evidence of DEFENDANTS' excessive use of force.

11 33. California Penal Code § 409, which defines an unlawful assembly,
12 has been repeatedly construed to require a showing of imminent violence that so
13 permeates a lawful expressive activity that law enforcement may justifiably curtail
14 the rights of all. In this instance, no such facts exist.

15 34. COUNTY, through acts and inactions of The Los Angeles County
16 Sheriff's Department, ALEX VILLANUEVA, and Defendants DOES 1-20, have
17 failed to train its officers, in the constitutional response to peaceful demonstrations as
18 revealed by the above-described allegations. The DEFENDANTS have a custom of
19 using excessive force against peaceful protestors, kettling lawful assemblies, and
20 suppressing and preventing efforts by the press and the general public to record
21 DEFENDANT's actions.

22 35. The COUNTY have/has been aware of deficiencies in its training since at
23 least 2000 followed by settlement agreements in June 2005 and June 2009 to revise
24 policies and training. Yet the unlawful crowd control, excessive use of force, inter alia
25 DEFENDANTS' currently employed tactics, fail constitutional requirements.

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FIRST CLAIM

Freedom of Speech – First Amendment

42 U.S.C § 1983

(Against All Defendants)

36. PLAINTIFF repeats, realleges, and incorporates by reference the allegations contained in all previous paragraphs as though fully set forth at length herein.

37. DEFENDANTS conduct, described above, violated PLAINTIFF’s rights to freedom of speech and the press, assembly, and association under the First Amendment to the United States Constitution.

38. When the Plaintiff gathered with others within the vicinity of St. Francis Hospital, COUNTY officers failed to order disbandment, instead launching into widespread force against the Plaintiff and others gathered in peaceful protest. DEFENDANTS and specifically DOE No. 1, in the absence of reasonable suspicion and imminent threat, unlawfully used excessive force and subjected Plaintiff to retaliatory and punitive conditions in response to Plaintiff’s exercise of First Amendment rights.

39. The DEFENDANTS’ employed the above-mentioned tactics under egotistical and scaremongering circumstances, activity deemed completely rogue and baseless aside from standard police protocol.

SECOND CLAIM

Excessive Force-Fourth Amendment

42 U.S.C. § 1983

(Against All Defendants)

40. PLAINTIFF repeats, realleges, and incorporates by reference the allegations contained in all previous paragraphs as though fully set forth at length herein.

1 41. DEFENDANTS’ conduct, as described above, violated the Plaintiff’s
2 rights to be free from excessive or arbitrary force without reasonable or probable
3 cause under the Fourth Amendment to the United States Constitution. DOE No. 1
4 physically pushed, struck, and threatened the PLAINTIFF and PLAINTIFF’s
5 equipment in a completely unjustifiable and malicious manner.

6 42. The use of force was excessive and unreasonable, as Plaintiff Baker
7 posed no immediate threat of serious injury to DOE NO. 1 nor to any other individual
8 at the time of the attack, was in no way interfering with the actions of the LACSD, as
9 Plaintiff was unarmed and operating within the parameters of his First Amendment
10 Constitutional Right. Further, Defendant DOE NO.1’s use of excessive force, and
11 threats of excessive force, violated not only training received by him, but that of
12 standard police officer training.

13 43. As a direct and legal result of the acts and omissions of
14 DEFENDANTS, and specifically DOE No. 1, PLAINTIFF has been caused and
15 continues to suffer emotional distress, humiliation, fright, discomfort, anxiety, and
16 psychological harm. The exact nature and extent of said injuries is presently
17 unknown to the PLAINTIFF. The PLAINTIFF does not know at this time the exact
18 duration or permanence of said injuries but is informed and believes and thereon
19 alleges that some if not all the injuries are reasonably certain to be permanent in
20 character.

21 44. PLAINTIFF seeks general and punitive damages for the violation of his
22 rights.

23 45. PLAINTIFF is informed and believes and thereon alleges that
24 DEFENDANTS, and each of them by engaging in the aforementioned acts and/or in
25 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
26 oppressive and despicable conduct, and acted with a conscious disregard for the
27 rights of the PLAINTIFF, entitling Plaintiff Baker to an award of exemplary and
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1 punitive damages against all non-government entity defendants, including Defendants
2 VILLANUEVA and DOE No. 1, in an amount to be determined at the time of trial.

3 46. As a direct and proximate result of Defendants conduct, as alleged
4 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
5 reasonable attorney's fees and costs of suit.

6 **THIRD CLAIM**

7 **Substantive Due Process – Fourteenth Amendment**

8 **42 U.S.C. § 1983**

9 **(Against All Defendants)**

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11 47. PLAINTIFF repeats, realleges, and incorporates by reference the
12 allegations contained in all previous paragraphs as though fully set forth at length
13 herein.

14 48. DEFENDANTS’ conduct, described above, deprived the PLAINTIFF of
15 liberty without due process under the Fourteenth Amendment to the United States
16 Constitution.

17 49. The aforementioned actions of DEFENDANTS, and specifically DOE
18 No. 1, shock the conscience, in that DEFENDANTS acted with deliberate
19 indifference to the constitutional rights of PLAINTIFF, and with purpose to harm
20 unrelated to any legitimate law enforcement objective.

21 50. As a direct and legal result of the acts and omissions of
22 DEFENDANTS, and specifically DOE No. 1, PLAINTIFF has been caused and
23 continues to suffer emotional distress, humiliation, fright, discomfort, anxiety, and
24 psychological harm. The exact nature and extent of said injuries is presently
25 unknown to the PLAINTIFF. The PLAINTIFF does not know at this time the exact
26 duration or permanence of said injuries but is informed and believes and thereon
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1 alleges that some if not all the injuries are reasonably certain to be permanent in
2 character.

3 51. PLAINTIFF seeks general and punitive damages for the violation of his
4 rights.

5 52. PLAINTIFF is informed and believes and thereon alleges that
6 DEFENDANTS, and each of them by engaging in the aforementioned acts and/or in
7 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
8 oppressive and despicable conduct, and acted with a conscious disregard for the
9 rights of the PLAINTIFF, entitling Plaintiff Baker to an award of exemplary and
10 punitive damages against all non-government entity defendants, including Defendants
11 VILLANUEVA and DOE No. 1 only, in an amount to be determined at the time of
12 trial.

13 53. As a direct and proximate result of Defendants conduct, as alleged
14 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
15 reasonable attorney's fees and costs of suit.

16 **FOURTH CLAIM**

17 **Assault and Battery**

18 **Gov. Code § 820 and California Common Law**

19 **(Against all Defendants)**

20 54. The PLAINTIFF repeats, realleges, and incorporates by reference the
21 allegations contained in all previous paragraphs as though fully set forth at length
22 herein.

23 55. Defendant DOE No. 1, while working as a deputy sheriff for the LACSD
24 and acting within the course and scope of his duties, intentionally pushed, struck,
25 verbally and physically threatened PLAINTIFF, without reasonable suspicion and
26 probable cause. As a result of the actions of DEFENDANTS, and specifically DOE
27 No. 1, PLAINTIFF sustained immediate physical injury and longstanding emotional
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1 distress. Defendant DOE No. 1 had no legal justification for using force against the
2 PLAINTIFF, and the use of force exercised while carrying out his duties as a sheriff
3 officer was unreasonable and non-privileged.

4 56. COUNTY is vicariously liable for the wrongful acts of Defendant DOE
5 No. 1 and pursuant to section 815.2(a) of the California Government Code, which
6 provides that a public entity is liable for the injuries caused by its employees within
7 the scope of the employment if the employee's act would subject him or her to
8 liability.

9 57. PLAINTIFF is informed and believes and thereon alleges that the
10 conduct of Defendant DOE No. 1 was malicious, wanton, oppressive, and
11 accomplished with a conscious disregard for the rights of the PLAINTIFF, entitling
12 Plaintiff Baker to an award of exemplary and punitive damages in an amount to be
13 determined at the time of trial.

14 58. As a result of their conduct, DEFENDANTS are liable for the
15 PLAINTIFF's injuries, either because they failed to intervene to prevent these
16 violations, or under the doctrine of *respondeat superior*.

17 59. As a direct and legal result of the acts and omissions of
18 DEFENDANTS, and specifically DOE No. 1, PLAINTIFF has been caused and
19 continues to suffer emotional distress, humiliation, fright, discomfort, anxiety, and
20 psychological harm. The exact nature and extent of said injuries is presently
21 unknown to the PLAINTIFF. The PLAINTIFF does not know at this time the exact
22 duration or permanence of said injuries but is informed and believes and thereon
23 alleges that some if not all the injuries are reasonably certain to be permanent in
24 character.

25 60. PLAINTIFF seeks general and punitive damages for the violation of his
26 rights.

27 61. PLAINTIFF is informed and believes and thereon alleges that
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1 DEFENDANTS, and each of them by engaging in the aforementioned acts and/or in
2 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
3 oppressive and despicable conduct, and acted with a conscious disregard for the
4 rights of the PLAINTIFF, entitling Plaintiff Baker to an award of exemplary and
5 punitive damages against all non-government entity defendants, including Defendants
6 VILLANUEVA and DOE No. 1 only, in an amount to be determined at the time of
7 trial.

8 62. As a direct and proximate result of Defendants conduct, as alleged
9 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
10 reasonable attorney's fees and costs of suit.

11 **FIFTH CLAIM**

12 **Negligence**

13 **Gov. Code § 820 and California Common Law**

14 **(Against All Defendants)**

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16 63. PLAINTIFF repeats, realleges, and incorporates by reference the
17 allegations contained in all previous paragraphs as though fully set forth at length
18 herein.

19 64. Sheriff officers, including DOE No. 1 and DOES 2-20, have a duty to
20 use reasonable care to prevent harm or injury to others. This duty includes using
21 appropriate tactics, giving appropriate commands, giving warnings, and avoiding use
22 of any force unless necessary.

23 65. Defendant DOE breached this duty of care. Upon information and belief,
24 the actions and inactions of Defendant DOE were negligent and reckless, including
25 but not limited to:

26 (a) failure to properly and adequately assess the need to use force
27 against the PLAINTIFF;

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- 1 (b) failure to monitor and record any use of force by DOE No. 1, the
- 2 COUNTY and DEFENDANT DOES 2-20;
- 3 (c) negligent tactics and handling of the situation with PLAINTIFF;
- 4 (d) negligent use of excessive force against PLAINTIFF;
- 5 (e) failure to properly train and supervise employees, both
- 6 professional and non-professional, including DOE No. 1; and
- 7 (f) negligent handling of evidence and witnesses.

8 66. As a direct and proximate result of Defendants' conduct as alleged
9 above, and other undiscovered negligent conduct, PLAINTIFF was caused and
10 continues to suffer severe pain and suffering, both physically and emotionally.

11 67. COUNTY is vicariously liable for the wrongful acts of DEFENDANTS,
12 and specifically DOE No. 1, pursuant to section 815.2(a) of the California
13 Government Code, which provides that a public entity is liable for the injuries caused
14 by its employees within the scope of the employment if the employee's act would
15 subject him or her to liability.

16 68. The aforementioned acts and omissions of DEFENDANTS, and
17 specifically DOE No. 1, were committed knowingly, willfully and maliciously, with
18 the intent to harm, injure, vex, harass and oppress the PLAINTIFF, with conscious
19 disregard to his known rights and deliberate indifference to the risk of injury to
20 PLAINTIFF. By reason thereof, PLAINTIFF seeks punitive and exemplary damages
21 from the DEFENDANTS in an amount approved.

22 69. COUNTY knew or reasonably should have known that Defendant DOE
23 would engage in such a violent misconduct against the PLAINTIFF, during the
24 course and scope of their employment, and that, as a direct and proximate result of
25 those violations, the PLAINTIFF would suffer injuries as alleged herein.

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1 70. COUNTY had the authority to supervise, prohibit, control, and/or
2 regulate DEFENDANTS, and specifically DOE No. 1, so as to prevent the acts and
3 omissions as alleged herein from occurring.

4 71. COUNTY failed to exercise due care by hiring, retaining, and failing to
5 supervise, prohibit, control or regulate DEFENDANTS, and specifically DOE No. 1,
6 and DEFENDANT DOES 2 -20. As a direct and proximate result of COUNTY's
7 negligent hiring, retention and supervision, control and regulating of DEFENDANTS,
8 and specifically DOE No. 1, PLAINTIFF has and continues to suffer injuries entitling
9 him to damages in the amounts to be proven at trial.

10 72. As a direct and legal result of the acts and omissions of
11 DEFENDANTS, and specifically DOE No. 1, PLAINTIFF has been caused and
12 continues to suffer emotional distress, humiliation, fright, discomfort, anxiety, and
13 psychological harm. The exact nature and extent of said injuries is presently
14 unknown to the PLAINTIFF. The PLAINTIFF does not know at this time the exact
15 duration or permanence of said injuries but is informed and believes and thereon
16 alleges that some if not all the injuries are reasonably certain to be permanent in
17 character.

18 73. As a result of their conduct DEFENDANTS' are liable for the
19 PLAINTIFF's injuries either because they were integral participants in the use of
20 excessive force, assault and battery, or because they failed to prevent these violations
21 under the doctrine of *respondeat superior*.

22 74. As a direct and proximate result of Defendants conduct, as alleged
23 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
24 reasonable attorney's fees and costs of suit.

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SIXTH CLAIM

Violation of the Bane Act

Cal. Civil Code § 52.1

(Against All Defendants)

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5 75. The PLAINTIFF repeats, realleges, and incorporates by reference the
6 allegations contained in all previous paragraphs as though fully set forth at length
7 herein.

8 76. California Civil Code, Section 52.1 (the Bane Act), prohibits any person
9 from using or threatening to commit violent acts in retaliation against another person
10 for exercising that person's constitutional rights.

11 77. As alleged herein, Defendant DOE No. 1, COUNTY and DOES 2-20,
12 through their acts and omissions, interfered with PLAINTIFF's rights under state and
13 federal laws and under the state and federal Constitution including, without
14 limitation, the right to be free from excessive force, the right to due process and
15 protection from bodily harm, including his rights under Civil Code §43, Penal Code
16 §§ 149, 240, and 242, and his rights under the First, Fourth and Fourteenth
17 Amendments to the United States Constitution and his rights under Article 1,
18 Sections 1, 7 and/or 13 of the United States Constitution and his rights under Article
19 1, Sections 1, 7 and/or 13 of the California Constitution.

20 78. As alleged herein, DEFENDANTS, and specifically DOE No. 1, while
21 working for COUNTY and acting within the course and scope of his duties,
22 intentionally committed and attempted to commit acts of violence against the
23 PLAINTIFF or acted in reckless disregards of the PLAINTIFF's civil rights in
24 initiating an unprovoked attack in the absence of reasonable suspicion or probable
25 cause, by making the erroneous determination that excessive force was warranted
26 under the circumstances; by pushing, striking and threatening the PLAINTIFF.

1 79. PLAINTIFF reasonably believes and understands that the violent acts
2 committed by DEFENDANTS, and specifically DOE No. 1, were intended to
3 discourage PLAINTIFF from exercising the above civil rights, to retaliate against
4 PLAINTIFF for engaging in protected conduct, or invoking such rights, or to prevent
5 PLAINTIFF from exercising such rights.

6 80. DEFENDANTS, and specifically DOE No. 1, successfully interfered
7 with the above civil rights of PLAINTIFF.

8 81. The conduct of DEFENDANTS, and specifically DOE No. 1, was a
9 substantial factor in causing PLAINTIFF's harm, injuries, and damages.

10 82. COUNTY is vicariously liable for the wrongful acts of Defendant DOE
11 No. 1, pursuant to section 815.2(a) of the California Government Code, which
12 provides that a public entity is liable for the injuries caused by its employees within
13 the scope of the employment if the employee's act would subject him or her to
14 liability.

15 83. As a result of their conduct the DEFENDANTS' are liable for the
16 PLAINTIFF's injuries either because they were integral participants in the use of
17 excessive force, assault and battery, or because they failed to prevent these violations
18 under the doctrine of *respondeat superior*.

19 84. As a direct and legal result of the DEFENDANTS' acts and omissions,
20 the PLAINTIFF has and will continue to suffer damages, including, without
21 limitation, pain and suffering, physical injuries and sickness, emotional distress,
22 psychological injury, attorneys' fees, and costs of suit.

23 85. PLAINTIFF is informed and believes and thereon alleges that
24 DEFENDANTS, and each of them by engaging in the aforementioned acts and/or in
25 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
26 oppressive and despicable conduct, and acted with a conscious disregard for the
27 rights of the PLAINTIFF, entitling Plaintiff Baker to an award of exemplary and
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1 punitive damages against all non-government entity defendants, including Defendants
2 VILLANUEVA and DOE No. 1 only, in an amount to be determined at the time of
3 trial.

4 86. As a direct and proximate result of Defendants conduct, as alleged
5 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
6 reasonable attorney's fees and costs of suit.

7 **SEVENTH CLAIM**

8 **Intentional Infliction of Emotional Distress**

9 **(Against All Defendants)**

10 87. PLAINTIFF repeats, realleges, and incorporates by reference the
11 allegations contained in all previous paragraphs as though fully set forth at length
12 herein.

13 88. DEFENDANTS were deputy officers who were acting in the course and
14 scope of their employment and on behalf of Defendant COUNTY with all requisite
15 authority conferred upon them by Defendant COUNTY.

16 89. COUNTY is vicariously liable for the wrongful acts of Defendant DOE,
17 pursuant to section 815.2(a) of the California Government Code, which provides that
18 a public entity is liable for the injuries caused by its employees within the scope of
19 the employment if the employee's act would subject him or her to liability.

20 90. By virtue of Defendants' positions and employment, Defendant
21 COUNTY knew of or reasonably should have known of, authorized, adopted,
22 approved and/or ratified Defendants' wrongful, unlawful, and unconstitutional
23 conduct before, during and/or after it occurred.

24 91. DEFENDANTS knew or should have known that severe emotional
25 distress would result from their conduct; or Defendants gave little or no thought to the
26 probable effects of their conduct.

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105. The failure of Defendant COUNTY to provide adequate training, including training with regards to use of force caused the deprivation of the PLAINTIFF's rights by Defendant DOE; that is, Defendants' failure to train is so closely related to the deprivation of the PLAINTIFF's rights as to be the moving force that caused the ultimate injury.

106. On information and belief, with respect to Deputy DOE, Defendant COUNTY failed to properly and adequately discipline, reprimand, retrain, suspend, or otherwise penalize conduct and actions in connection with the unprovoked attack on the PLAINTIFF.

107. Defendant COUNTY and Deputy DOE together with other COUNTY policy makers and supervisors, maintained, inter alia, engaged in the following unconstitutional customs, practices, and policies:

- (a) Use of excessive force.
- (b) Providing inadequate training regarding the use of excessive force;
- (c) Employing and retaining as law enforcement officers' individuals, such as Defendant DOE No. 1, who Defendant COUNTY at all times material herein knew or reasonably should have known had dangerous propensities for abusing their authority and for using excessive force;
- (d) Inadequately supervising, training, controlling, assigning, and disciplining COUNTY officers, and other personnel, including Defendant DOE, who Defendant COUNTY knew or in the exercise of reasonable care should have known had the aforementioned propensities and character traits.

- 1 (e) Maintaining grossly inadequate procedures for reporting,
- 2 supervising, investigating, reviewing, disciplining, and controlling
- 3 misconduct by COUNTY officers, namely Defendant DOE.
- 4 (f) Failing to adequately discipline Defendant DOE regarding the
- 5 magnitude of the misconduct, and other inadequate discipline that
- 6 is tantamount to encouraging misconduct.
- 7 (j) Failing to professionally train police officers to use nonlethal force
- 8 and to maintain their equipment concerning nonlethal force.

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10 108. By reason of the aforementioned acts and omissions, PLAINTIFF has
11 and continues to suffer both physical and emotional turmoil at the hands of the
12 DEFENDANTS.

13 109. All Defendants, DOE No. 1, COUNTY and DOES 2-20, together with
14 various officials whether named or unnamed, had either actual or constructive
15 knowledge of the deficient policies, practices and customs alleged in the paragraphs
16 above.

17 110. By information and belief, and despite having knowledge as stated
18 above, Defendants condoned, tolerated and through actions and inactions thereby
19 ratified such policies. Said Defendants acted with deliberate indifference to the
20 foreseeable effects and consequences of these actions and policies with respect to the
21 constitutional rights of the PLAINTIFF and other individuals similarly situated.

22 111. By perpetrating, sanctioning, tolerating, and ratifying the outrageous
23 conduct and other wrongful acts, Defendant DOE acted with intentional, reckless, and
24 callous disregard for the PLAINTIFF's constitutional rights. Furthermore, the
25 policies, practices, and customs implemented, maintained, and still tolerated by all
26 the DEFENDANTS, DOE, COUNTY and DOES 1-20 were affirmatively linked to

1 and were a significantly influential force behind the PLAINTIFF's injuries, including
2 but not limited to Defendant DOE's use of excessive force against the PLAINTIFF.

3 112. PLAINTIFF is informed and believes and thereon alleges that the
4 DEFENDANTS, and each of them by engaging in the aforementioned acts and/or in
5 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
6 oppressive and despicable conduct, and acted with a conscious disregard for the
7 rights of the PLAINTIFF, entitling Plaintiff Baker to an award of exemplary and
8 punitive damages against DEFENDANT DOE NO. 1 and Defendant VILLANUEVA
9 only, in an amount to be determined at the time of trial.

10 113. As a result of their conduct, DEFENDANTS are liable for the
11 PLAINTIFF's injuries, either because they failed to intervene to prevent these
12 violations, or under the doctrine of *respondeat superior*.

13 114. The PLAINTIFF seeks both general and punitive damages, including
14 pre-attack physical pain and suffering, together with emotional distress for the
15 violation of his rights. The Plaintiff also seeks attorney's fees under this claim.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, PLAINTIFF requests entry of judgement in his favor and
18 against the DEFENDANTS DOE, COUNTY, VILLANUEVA and DOES 1-20, as
19 follows:

- 20 1. For general economic and non-economic damages according to
21 proof;
- 22 2. For special damages according to proof;
- 23 3. For punitive damages where allowed by law;
- 24 4. For equitable relief;
- 25 5. For prejudgment interest;
- 26 6. For costs of suit incurred herein;
- 27 7. For attorney's fees as allowed by law;

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 31, 2021

Respectfully submitted,
ALEXANDER MORRISON + FEHR LLP
TONI JARAMILLA, A Professional Law Corp.

By: s/ J. Bernard Alexander, III
J. Bernard Alexander, III
Toni J. Jaramilla

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