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FRESNO COUNTY SUPERIOR COURT

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6 Litem, Sophia Elliott, and Sophia Elliott, Individually

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

9 CIVIL DIVISION

10 * * * * *

11 DOMINIC ELLIOTT, a minor, by and
12 through his Guardian Ad Litem,
13 SOPHIA ELLIOTT, and SOPHIA
ELLIOTT, Individually,

14 Plaintiffs,

15 vs.

16
17 DEPUTY ANDRES SOLIS; FRESNO
COUNTY SHERIFF'S
18 DEPARTMENT; COUNTY OF
FRESNO; RICHARD ROSS; PATRICK
19 J. McCOMB, dba DRIVE AMERICA;
20 and DOES 1 through 50, Inclusive,

21 Defendants.

Case No.: 17CECG01525

COMPLAINT FOR DAMAGES

- 1. Excessive Force (42 U.S.C. §1983)
- 2. Excessive Force as to Custom, Policy Or Practice (*Monell* Claim)
- 3. Failure to Train, Supervise and Discipline (*Monell* Claim)
- 4. Civil Code §52.1 Violations (Bane Act)
- 5. Assault & Battery
- 6. Negligence
- 7. Intentional & Negligent Infliction of Emotional Distress
- 8. False Imprisonment and False Arrest

22
23 COMES NOW, Plaintiff, DOMINIC ELLIOTT, a minor, by and through his
24 Guardian Ad Litem, SOPHIA ELLIOTT, and SOPHIA ELLIOTT, Individually:

25 INTRODUCTION

26 This is a civil rights action, which arose as a result of the actions and inactions of
27 DEPUTY ANDRES SOLIS of the FRESNO COUNTY SHERIFF'S DEPARTMENT and
28 the COUNTY OF FRESNO (hereinafter "COUNTY"). DEPUTY ANDRES SOLIS

1 unlawfully and under the color of law, assaulted, battered, falsely imprisoned and falsely
2 arrested the Minor Plaintiff, DOMINIC ELLIOTT, a sixteen year-old boy, violating his
3 State and Federal Constitutional and Statutory rights. On April 21, 2016, DEPUTY
4 ANDRES SOLIS forcefully detained, grabbed, pulled, and manhandled the Minor
5 Plaintiff by his right arm, handcuffed him, and forcefully pushed him down to a sitting
6 position, all while the Minor Plaintiff was parked on a city street. The Minor Plaintiff
7 suffered emotional distress, and was caused certain and severe injuries to his right upper
8 extremity, including Complex Pain Syndrome Type 2, which plaintiff has been advised by
9 his physicians, may be a life-long debilitating injury, along with other injuries, pain,
10 contusions, and Post Traumatic Stress Disorder.

13 **JURY DEMAND**

14 Plaintiff hereby demands a trial by jury on any and all issues triable by jury.

16 **GENERAL ALLEGATIONS**

- 17 1. Plaintiff currently resides in Fresno County.
- 18 2. Plaintiff is ignorant of the true names and capacities of all of the
19 defendants sued herein as DOES 1 through 50, inclusive, and therefore sue said
20 defendants by such fictitious names. Plaintiff will seek leave of court to amend this
21 Complaint to insert their true names and capacities when the same is ascertained.
22 Plaintiff is informed and believes, and thereon alleges, that each of the defendants named
23 fictitiously as DOE is intentionally and negligently responsible for the acts hereinafter
24 described and alleged and for the injuries and damages suffered by the plaintiff as
25 hereinafter described and alleged.
- 26 3. That Defendant DEPUTY ANDRES SOLIS is an individual, and at all
27 times herein mentioned was a resident of the County of Fresno, State of California.
- 28 4. That the defendants named in Paragraph 3 were the agents, servants, and
employees within the course and scope of employment on behalf of Defendants,

1 FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF FRESNO, and each of
2 them, and that said agency and employment, was known to all defendants named herein.

3 5. That defendants, FRESNO COUNTY SHERIFF'S DEPARTMENT and
4 COUNTY OF FRESNO are public entities that are licensed to conduct business under
5 and by virtue of the laws of the State of California.

6 6. That plaintiff has complied with the applicable claims statute, and on
7 September 16, 2016, plaintiff presented and filed his Written Claim for Damages against
8 the defendants as named in Paragraphs 3, 4 and 5 herein; that the aforesaid Written Claim
9 for Damages was denied on November 1, 2016 and Notice of Rejection of Claim was
10 served on plaintiffs on November 4, 2016.

11 7. That on or about April 21, 2016, at approximately 8:40 p.m., the
12 Defendants, DEPUTY ANDRES SOLIS while employed by defendants, FRESNO
13 COUNTY SHERIFF'S DEPARTMENT and COUNTY OF FRESNO in his capacity as a
14 sheriff's deputy, was driving a patrol car owned by FRESNO COUNTY SHERIFF'S
15 DEPARTMENT and COUNTY OF FRESNO during the course and scope of his
16 employment with FRESNO COUNTY SHERIFF'S DEPARTMENT and COUNTY OF
17 FRESNO, while northbound on Blackstone Avenue, and while following a vehicle,
18 designated as a Driver's Training Vehicle, owned by defendants, PATRICK J.
19 McCOMB, dba, DRIVE AMERICA.

20 8. That while so engaged, DEPUTY ANDRES SOLIS observed the aforesaid
21 driver's training vehicle, driven by the Minor Plaintiff, who was a sixteen year-old
22 driver's training student, northbound on Blackstone Avenue near its intersection with
23 Shields Avenue, and that at such approximate location, DEPUTY ANDRES SOLIS
24 began to follow the aforesaid driver's training vehicle.

25 9. That both vehicles continued northbound on Blackstone Avenue until they
26 reached the intersection of Bullard Avenue; and that Defendant, RICHARD ROSS, a
27 driving instructor, who was in the course and scope of his employment with Defendants,
28 PATRICK J. McCOMB, dba DRIVE AMERICA, instructed his student driver, the Minor

1 Plaintiff to make a lane change into the left-hand turn lane on northbound Blackstone and
2 Bullard Avenue, whereby he would eventually practice making a legal U-turn at the
3 aforesaid intersection.

4 10. That the Minor Plaintiff made a legal lane change into the left-hand turn
5 lane, and stopped the driver's training vehicle, while waiting for his signal to change to
6 allow him to begin his U-turn.

7 11. That after witnessing said lane change, Defendant, DEPUTY ANDRES
8 SOLIS followed the driver's training vehicle into the same left-hand turn lane, and waited
9 behind the driver's training vehicle, being operated by the Minor Plaintiff.

10 12. That when the signal changed to green for vehicles in the left-hand turn
11 lane, the Minor Plaintiff proceeded into the intersection of Blackstone and Bullard and
12 begin actuating his U-Turn,

13 13. That while the Minor Plaintiff was attempting to make a U-turn,
14 Defendant, DEPUTY ANDRES SOLIS activated his emergency lights and began to
15 make a traffic stop, involving the driver's training vehicle.

16 14. That other unknown officers of the Fresno County Sheriff's Department,
17 along with DEPUTY ANDRES SOLIS performed a "high-risk" felony traffic stop on the
18 subject driver's training vehicle due to allegedly the vehicle displayed a license plate that
19 had been lost or stolen, or reflected the vehicle had been stolen.

20 15. That DEPUTY ANDRES SOLIS and other officers of the FRESNO
21 COUNTY SHERIFF'S DEPARTMENT approached the driver's training vehicle,
22 occupied by RICHARD ROSS, the driving instructor, who was seated in the passenger
23 seat, and the Minor Plaintiff, who was positioned in the driver's seat.

24 16. That DEPUTY ANDRES SOLIS and other officers of the FRESNO
25 COUNTY SHERIFF'S DEPARTMENT had their firearms drawn, without asking for
26 identification or listening to RICHARD ROSS, the driving instructor, who repeatedly
27 told DEPUTY ANDRES SOLIS and other officers of the FRESNO COUNTY
28 SHERIFF'S DEPARTMENT that he was a Driver's Training Instructor, and that the

1 Minor Plaintiff was his student.

2 17. That DEPUTY ANDRES SOLIS and other officers of the FRESNO
3 COUNTY SHERIFF'S DEPARTMENT disregarded and ignored the repeated pleas of
4 the driving instructor and had direct knowledge that the subject vehicle was a driver's
5 training car.

6 18. That DEPUTY ANDRES SOLIS and other officers of the FRESNO
7 COUNTY SHERIFF'S DEPARTMENT ordered the Minor Plaintiff to exit the driver's
8 training vehicle, and he was arrested without probable cause.

9 19. That DEPUTY ANDRES SOLIS grabbed the Minor Plaintiff's right
10 arm and handcuffed, causing certain and severe injuries to said right upper extremity,
11 including Complex Pain Syndrome Type 2, which plaintiff has been advised by his
12 physicians, may be a life-long debilitating injury, along with other injuries, pain,
13 contusions, and Post Traumatic Stress Disorder.

14 20. That as a direct and proximate result of the physical and emotional trauma
15 resulting from the excessive force used in the April 21, 2016 incident, an unreasonable
16 and arbitrary abuse of power, the failure to provide medical care, and based not on a
17 legitimate law enforcement objective, but intended to threaten, frighten, intimidate,
18 harass, and/ or punish, Plaintiff suffered emotional distress, and a serious right upper
19 extremity injury, along with other injuries, pain and contusions.

20 JURISDICTION AND VENUE

21 This court has jurisdiction over the present matter because, as delineated in this
22 Complaint, the events or omissions giving rise to Plaintiff's claims occurred within the
23 County of Fresno.
24

25 PARTIES

26 21. The Minor Plaintiff, DOMINIC ELLIOTT, was at all times relevant
27 hereto, a resident of Fresno County and is a direct victim of Defendants' actions.
28

1 26. Defendant, DEPUTY ANDRES SOLIS, violated the Minor Plaintiff's
2 Constitutional right to be free from unreasonable searches and seizures when he
3 approached the Minor Plaintiff and physically assaulted him by grabbing the Minor
4 Plaintiff's right arm and handcuffed, causing certain and severe injuries to said right
5 upper extremity, despite the absence of exigent or dangerous circumstances, while
6 inappropriately threatening, intimidating, coercing, and instilling fear.
7

8 27. Since DEPUTY ANDRES SOLIS was not aware of any exigent or
9 dangerous circumstances, there was no justification for the constitutionally violative
10 force that was inflicted upon the Minor Plaintiff, resulting in emotional and physical
11 injuries in addition to trauma.
12

13 28. In violating the Minor Plaintiff's rights as set forth above and other rights
14 that will be proven at trial, DEPUTY ANDRES SOLIS acted under the color of law and
15 conducted an excessive and violative search and seizure of the Minor Plaintiff and his
16 property. The illegal and invalid detention, and deliberate indifference to the Minor
17 Plaintiff, set into motion the chain of events that led to the emotional distress of the
18 Minor Plaintiff, and eventually led to the emotional and physical injuries, in violation of
19 the Minor Plaintiff's rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments
20 to the Constitution of the United States.
21
22

23 29. This violation of the Minor Plaintiff's Fourth, Fifth, Eighth and Fourteenth
24 Amendment rights occurred as a result of a widespread and settled custom, usage,
25 practice and/ or policy in the FRESNO COUNTY SHERIFF'S DEPARTMENT;
26 COUNTY OF FRESNO to use excessive force when arresting and detaining individuals
27 who pose no threat. The actions of DEPUTY ANDRES SOLIS and DOES 1 through 25,
28

1 the FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF FRESNO, and the
2 failure of those entities to take corrective action against the exertion of excessive force
3 meets the standards for liability set forth in *Monell v. Department* (1978) 436 U.S. 658.
4

5 30. As a direct and proximate result of the violation of his Constitutional
6 rights by Defendants, as named in Paragraph 23 above, the Minor Plaintiff suffered
7 general and special damages, including, but not limited to, the loss of Plaintiff's liberty,
8 as alleged in this Complaint, and is entitled to relief pursuant to 42 U.S.C. § 1983.
9

10 31. All acts or omissions alleged to have been engaged in by any Defendants,
11 as named in Paragraph 23 hereinabove, are alleged to have been engaged in with evil
12 motive and intent, and/ or in callous, reckless, and wanton disregard to the Minor
13 Plaintiff's rights. The acts of said Defendants, and each of them, were willful, wanton,
14 malicious, and oppressive, thereby justifying the awarding of exemplary and punitive
15 damages as to each of the individual Defendants in an amount commensurate with the
16 wrongful acts alleged herein.
17

18 32. All acts or omissions alleged to have been engaged in by any Defendants,
19 as named in Paragraph 23 above, are alleged to have been engaged in with deliberate
20 indifference and callous disregard. This deliberate indifference and callous disregard
21 resulted in the conscious decision to not immediately, or even within a reasonable time,
22 call for an ambulance or provide appropriate medical care despite the Minor Plaintiff, a
23 sixteen year old boy, wailing and crying in pain and agony after grabbing the Minor
24 Plaintiff's right arm and handcuffed, causing certain and severe injuries to said right
25 upper extremity. DEPUTY ANDRES SOLIS further perpetuated this deliberate
26 indifference and callous disregard when he reasoned that he did not call for an ambulance
27
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1 because he had called for backup based on his belief that the Minor Plaintiff, in a battered
2 state, was “dangerous.”

3 33. Defendant, FRESNO COUNTY SHERIFF’S DEPARTMENT; COUNTY
4 OF FRESNO, is are vicariously liable for injuries proximately caused by the act or
5 omission of its employees or agents within the scope of their employment under
6 Government Code § 815.2, where the employee or agent is not immune from liability.
7 At all times relevant hereto, DEPUTY ANDRES SOLIS and DOES 1 through 25, were
8 employees and agents of the FRESNO COUNTY SHERIFF’S DEPARTMENT;
9 COUNTY OF FRESNO.
10
11

12 **SECOND CAUSE OF ACTION**

13 **[Excessive Force as Custom, Policy, Or Practice [42 U.S.C. § 1983; Monell]]**

14 **[As To Defendants FRESNO COUNTY SHERIFF’S DEPARTMENT; COUNTY**
15 **OF FRESNO and DOES 1-25]**

16
17 34. Plaintiff alleges and incorporates herein by reference, each and every
18 allegation contained in Paragraphs 1 through 33 of this Complaint as though fully set
19 forth.

20 35. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth
21 Amendment of the Constitution of the United States.
22

23 36. At the time of these Constitutional violations by said Defendant FRESNO
24 COUNTY SHERIFF’S DEPARTMENT; COUNTY OF FRESNO and DOES 1 through
25 25, and unknown policymakers had in place, and had ratified policies, procedures,
26 customs, and practices, which permitted and encouraged their agents and officers to
27 unjustifiably, unreasonably, and in violation of the Fourth and Fourteenth Amendments,
28

1 assault and batter the Minor Plaintiff while grabbing the Minor Plaintiff's right arm and
2 handcuffed, causing certain and severe injuries to said right upper extremity, despite the
3 absence of exigent or dangerous circumstances, while inappropriately threatening,
4 intimidating, coercing, and instilling fear. These policies, customs, practices, also called
5 for or permitted unreasonable and/ or excessive use of force against members of the local
6 public.

8 37. Said policies, procedures, customs, and practices also called for FRESNO
9 COUNTY SHERIFF'S DEPARTMENT; COUNTY OF FRESNO and DOES 1 through
10 25 to not discipline, prosecute, or objectively and/ or independently investigate or in any
11 way deal with or respond to known incidents, complaints of excessive force, the
12 preparation of false reports to justify such wrongful conduct by the FRESNO COUNTY
13 SHERIFF'S DEPARTMENT; COUNTY OF FRESNO, DEPUTY ANDRES SOLIS, and
14 DOES 1 through 25. FRESNO COUNTY SHERIFF'S DEPARTMEN; COUNTY OF
15 FRESNO and DOES 1 through 25 also failed to objectively and/ or independently
16 investigate, or in any way deal with or respond to claims and lawsuits made as a result of
17 such conduct.

20 38. Said policies, procedures, customs, and practices called for said
21 Defendants, and each of them, by means of inaction and cover-up, to encourage an
22 atmosphere of lawlessness within FRESNO COUNTY SHERIFF'S DEPARTMENT;
23 COUNTY OF FRESNO; to encourage their officers and agents to believe that excessive
24 force against suspects was permissible; and to believe that unlawful acts of excessive
25 and unnecessary force would be overlooked without discipline or other official
26 ramifications.

1 39. Said policies, procedures, customs, and practices evidenced a deliberate
2 indifference to the violations of the Constitutional rights of the present Plaintiffs.

3 40. This indifference was manifested by the failure to change, correct, revoke
4 or rescind said policies, procedures, customs, and practices in light of prior knowledge by
5 said Defendants of similar incidents, including but not limited to:
6

- 7 a. Deliberate indifference to the civil rights victims of FRESNO COUNTY
8 SHERIFF'S DEPARTMENT; COUNTY OF FRESNO'S excessive
9 force was evidenced by the failure to identify and investigate instances of
10 excessive force against suspects, and by said Defendants' failure to
11 adequately train and more closely supervise or re-train agents and/ or
12 discipline or recommend prosecution of those agents who in fact
13 improperly used excessive force against suspects;
14
- 15 b. Other systematic deficiencies of said Defendants which indicated, and
16 continue to indicate, a deliberate indifference to the violations of the civil
17 rights by the officers of FRESNO COUNTY SHERIFF'S
18 DEPARTMENT; COUNTY OF FRESNO;
19
- 20 c. Deliberate indifference to the civil rights of suspects and other victims of
21 FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF
22 FRESNO'S excessive force was also evidenced by said Defendants'
23 failure to implement an agent discipline system which would conduct
24 meaningful and independent investigations of citizen complaints of
25 falsified evidence, evidence tampering, authoring and filing of false and
26 misleading reports and the presentations of false testimony.
27
28

1 41. The foregoing acts, omissions, and systematic deficiencies are the policies
2 and customs of Defendant FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
3 OF FRESNO, and caused the other Defendant DEPUTY ANDRES SOLIS to be unaware
4 of, or intentionally overlook and ignore, the rules and laws governing the permissible use
5 of force, including the use of force against suspects.
6

7 42. The foregoing acts, omissions, and systematic deficiencies are policies and
8 customs of said Defendants to believe that their use of police force against suspects is
9 entirely within the discretion of the agents and that improper and unlawful use of force,
10 would not objectively, thoroughly, and/ or properly investigated, all with the foreseeable
11 result that Defendants' agents would use excessive force in situations where such force is
12 not necessary, reasonable or legal, and thereby violate the civil rights of the citizens of
13 this state with whom said officers or agents would come into contact with.
14

15 43. As a direct and legal result of the aforementioned acts of said Defendants,
16 as named in Paragraph 35 hereinabove, and each of them, Plaintiff suffered physical
17 injury in addition to emotional distress, humiliation and embarrassment.
18

19 **THIRD CAUSE OF ACTION**

20 **[Failure To Train, Supervise and Discipline; [42 U.S.C. § 1983; Monell Claim]]**

21 **[As To Defendants Fresno County Sheriff's Department; County of Fresno, and**

22 **DOES 1-25]**

23
24 44. Plaintiff alleges and incorporates herein by reference, each and every
25 allegation contained in Paragraphs 1 through 43 of this Complaint as though fully set
26 forth.
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1 45. As a direct and proximate result of the aforementioned conduct of
2 Defendants, the Minor Plaintiff was deprived of his Constitutional right under the Fourth
3 Amendment to be free from unreasonable searches and seizures by the use of excessive
4 force.
5

6 46. Defendants FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
7 OF FRESNO and DOES 1-25 failed to maintain adequate and proper training for its
8 agents and other law enforcement personnel in the FRESNO COUNTY SHERIFF'S
9 DEPARTMENT; COUNTY OF FRESNO necessary to educate the agents to prevent the
10 consistent and systematic use of excessive and unnecessary force by arresting agents, and
11 to prevent the use of excessive force against potential arrestees and suspects by officers,
12 deputies, and agents.
13

14 47. FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF
15 FRESNO and DOES 1 through 25 also failed to promulgate and enforce adequate
16 policies and procedures related to alternatives to the use of excessive force in executing
17 arrest and search warrants, and disregarded a duty to protect the public and persons with
18 whom its agents are likely to come into contact with, from official misconduct.
19

20 48. FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF
21 FRESNO, and DOES 1 through 25 failed to provide adequate supervision and discipline
22 to officers deputies, and agents and other law enforcement personnel that hold the power,
23 authority, insignia, equipment, and arms entrusted to them.
24

25 49. Said custom, practice, and/ or policy included a failure to adequately
26 investigate, supervise, and discipline officers and agents and other law enforcement
27 personnel using unreasonable excessive force, which fostered the customs, policies, and
28

1 procedures within the FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF
2 FRESNO that resulted in the injuries to Plaintiff.

3 50. Therefore, these Defendants, with deliberate indifference, disregarded a
4 duty to protect the public from official misconduct.

5
6 51. This deliberate indifference resulted in the injuries to the Minor Plaintiff.

7 52. This deliberate indifference and callous disregard resulted in the Minor
8 Plaintiff being handcuffed, causing certain and severe injuries to said right upper
9 extremity.

10 53. Plaintiffs are entitled to recover reasonable costs and attorney's fees under
11 42 U.S.C. § 1988.

12
13 **FOURTH CAUSE OF ACTION**

14 **[Civil Code § 52.1 (Bane Act)]**

15 **[As To All Defendants Named in Paragraph 23 hereinabove]**

16 54. Plaintiff alleges and incorporates herein by reference, each and every
17 allegation contained in Paragraphs 1 through 53 of this Complaint as though fully set
18 forth.

19
20 55. Defendants, as named in Paragraph 23 hereinabove, interfered or
21 attempted to interfere by threats, intimidation, or coercion with the exercise or
22 enjoyment by Plaintiff of rights secured by the Constitution and laws of the United
23 States and by the Constitution and laws of the State of California. The interference or
24 attempted interference was caused when Defendant DEPUTY ANDRES SOLIS
25 assaulted and battered the Minor Plaintiff, despite the absence of exigent or dangerous
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1 circumstances, while inappropriately threatening, intimidating, coercing, and instilling
2 fear.

3 56. The conduct that interfered or attempted to interfere with the Minor
4 Plaintiff's rights was done deliberately or spitefully.

6 57. The conduct that interfered or attempted to interfere with the Minor
7 Plaintiff's rights was more egregious than negligent.

8 58. The interference, or attempted interference, caused the Minor Plaintiff to
9 suffer injuries, damages, loss and harm.

10 59. As a result of Defendants' interference, or attempted interference, the
11 Minor Plaintiff suffered extensive injuries to his right arm and handcuffed, causing
12 certain and severe injuries to said right upper extremity, and will continue to suffer from
13 those injuries in the future, from the same cause.

14 60. As a result of Defendants' interference, or attempted interference, the
15 Minor Plaintiff has suffered fears, anxiety, and other emotional distress, and will suffer
16 similar fears, anxiety, and other emotional distress in the future, from the same cause.

17 61. Defendant, FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
18 OF FRESNO, is vicariously liable for injuries proximately caused by the acts or
19 omissions of its employees or agents within the scope of their employment under
20 Government Code § 815.2, where the employee or agent is not immune from liability. At
21 all times relevant hereto, DEPUTY ANDRES SOLIS and DOES 1 through 25, were
22 employees and agents of the FRESNO COUNTY SHERIFF'S DEPARTMENT;
23 COUNTY OF FRESNO.
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1 62. Plaintiff is entitled by California Civil Code § 52 to be compensated for all
2 injuries, damages and harms caused by the unlawful actions of Defendants, including
3 Attorneys Fees.
4

5 **FIFTH CAUSE OF ACTION**

6 **[Assault]**

7 **[As To All Defendants, DEPUTY ANDRES SOLIS, FRESNO COUNTY**
8 **SHERIFF'S DEPARTMENT; COUNTY OF FRESNO]**
9

10 63. Plaintiff alleges and incorporates herein by reference, each and every
11 allegation contained in Paragraphs 1 through 62 of this Complaint, and makes them a part
12 of this, his Sixth Cause of Action, as though fully set forth herein.

13 64. That in doing the acts as alleged above, Defendants DEPUTY ANDRES
14 SOLIS and other officers of the FRESNO COUNTY SHERIFF'S DEPARTMENT
15 intended to cause or to place the Minor Plaintiff in apprehension of a harmful contact
16 with Minor Plaintiff's person by being handcuffed, arrested, and manhandled in the
17 manner to which he was, and to the extent that such actions caused severe harm and
18 physical injury to the Minor Plaintiff.
19

20 65. That as a result of Defendants DEPUTY ANDRES SOLIS and other
21 officers of the FRESNO COUNTY SHERIFF'S DEPARTMENT, and of their acts as
22 alleged above, the Minor Plaintiff, in fact, was placed in great apprehension of a
23 harmful contact with the Minor Plaintiff's person by being handcuffed, arrested, and
24 manhandled in the manner to which he was, despite being subsequently released from
25 custody, once it was determined that the Minor Plaintiff had not committed any crime
26 and/or was a "high-risk" felon.
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SIXTH CAUSE OF ACTION

[Intentional Tort – Battery]

66. That Plaintiff herein incorporates by reference all allegations contained in Paragraphs 1 through 81, and make them a part of this, his Sixth Cause of Action as though fully set forth herein.

67. That Defendant DEPUTY ANDRES SOLIS grabbed the Minor Plaintiff’s right arm and handcuffed, causing certain and severe injuries to said right upper extremity, and that in doing the aforesaid acts, defendant acted with the intent to make contact with plaintiff’s person.

SEVENTH CAUSE OF ACTION

[Respondeat Superior]

68. That Plaintiff herein incorporates by reference all allegations contained in Paragraphs 1 through 67 and make them a part of this, his Seventh Cause of Action, as though fully set forth herein.

69. That Plaintiff is informed and believes and hereby alleges that at all times herein mentioned, Defendant DEPUTY ANDRES SOLIS was the employee and agent of and acting at the behest of, or in concert with Defendants FRESNO COUNTY SHERIFF’S DEPARTMENT; COUNTY OF FRESNO, and in doing the things alleged, was acting within the course and scope of that agency.

70. That Plaintiff is informed and believes, and thereon alleges, that Defendant DEPUTY ANDRES SOLIS was unfit and Defendants, FRESNO COUNTY SHERIFF’S DEPARTMENT and COUNTY OF FRESNO were reckless in employing him.

EIGHTH CAUSE OF ACTION

[Negligence]

[As To Defendants, DEPUTY ANDRES SOLIS; FRESNO COUNTY SHERIFF’S DEPARTMENT; COUNTY OF FRESNO]

71. That Plaintiff herein incorporates by reference all allegations contained

1 in Paragraphs 1 through 70 and make them a part of this, his Seventh Cause of Action,
2 as though fully set forth herein.

3
4 72. Said Defendants had a duty to avoid using excessive and unnecessary
5 force when arresting and detaining Plaintiff.

6 73. Defendant, DEPUTY ANDRES SOLIS, negligently assaulted and battered
7 the Minor Plaintiff while he was attempting to complete a driver's training lesson, despite
8 the absence of exigent or dangerous circumstances, for the purpose of inappropriately
9 threatening, intimidating, coercing, and instilling fear onto the Minor Plaintiff.
10

11 74. Defendants' acts and omissions were a substantial factor in causing
12 injuries, damages and harms to Plaintiff.

13 75. Alternatively, Defendant violated Plaintiff's rights to be free from
14 unreasonable searches and seizures of Article I, section 13 of the California
15 Constitution.
16

17 76. The violations were a substantial factor which caused injuries, damages,
18 and harms to Plaintiff in an amount to be shown at the time of trial.
19

20 77. The injuries to Plaintiff resulted from an occurrence of the nature which
21 the Constitution, statute, ordinance or regulation was designed to prevent.

22 78. Plaintiff, the person who suffered the injuries, is of the class of persons for
23 whose protection the Constitution, statute, ordinance, or regulation was designed to
24 prevent.
25

26 79. Plaintiff suffered injuries, damages, and harms as a result of Defendants'
27 conduct.
28

1 80. Defendant, FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
2 OF FRESNO, is vicariously liable for injuries proximately caused by the act or omission
3 of its employees or agents within the scope of their employment under Government
4 Code § 815.2, where the employee or agent is not immune from liability. At all times
5 relevant hereto, DEPUTY ANDRES SOLIS and DOES 1 through 25, were employees
6 and agents of FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF
7 FRESNO.
8

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10 **NINTH CAUSE OF ACTION**

11 **[Intentional Infliction of Emotional Distress]**

12 **[As To Defendants, FRESNO COUNTY SHERIFF'S DEPARTMENT;**
13 **COUNTY OF FRESNO]**

14 81. Plaintiff alleges and incorporates herein by reference, each and every
15 allegation contained in Paragraphs 1 through 80 of this Complaint as though fully set
16 forth.
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18 82. The conduct of Defendants when they assaulted and battered Plaintiff
19 while grabbing the Minor Plaintiff's right arm and handcuffed, causing certain and severe
20 injuries to said right upper extremity, despite the absence of exigent or dangerous
21 circumstances, for the purpose of inappropriately threatening, intimidating, coercing, and
22 instilling fear on Plaintiff, was outrageous.
23

24 83. The conduct of Defendants was so extreme that it went beyond all possible
25 bounds of decency. A reasonable person would regard the conduct as intolerable in a
26 civilized community.
27
28

1 84. Defendants intended to cause Plaintiff to suffer extreme emotional
2 distress, using their position of authority and law enforcement to affect the Plaintiff.

3 85. Defendants acted with reckless disregard of the probability that Plaintiff
4 would suffer emotional distress, knowing that Plaintiff was present when the conduct
5 occurred.

6 86. Defendants intended to cause Plaintiff to suffer emotional distress.

7 87. Plaintiff suffered, among other things, extreme emotional distress.

8 88. Defendants' conduct was a substantial factor in causing Plaintiff extreme
9 emotional distress.

10 89. Defendant, FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
11 OF FRESNO, is vicariously liable for injuries proximately caused by the act or omission
12 of its employees or agents within the scope of their employment under Government Code
13 § 815.2, where the employee or agent is not immune from liability. At all times relevant
14 hereto, DEPUTY ANDRES SOLIS and DOES 1 through 25, were employees and agents
15 of FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF FRESNO.

16
17
18 **TENTH CAUSE OF ACTION**

19 **[False Imprisonment and False Arrest]**

20 **[As To Defendants Named in Paragraph 23 Hereinabove]**

21 90. Plaintiff alleges and incorporates herein by reference, each and every
22 allegation contained in Paragraphs 1 through 89 of this Complaint as though fully set
23 forth.

24 91. Said Defendants willfully, intentionally and unlawfully exercised force,
25 menace, and extreme duress to restrain, detain, and confine the Minor Plaintiff when
26
27
28

1 Defendants injured the Minor Plaintiff while he was attempting to complete a driver's
2 training lesson.

3 92. The restraint, detention, and confinement compelled Plaintiff to be
4 detained for some appreciable time.
5

6 93. Plaintiff did not consent to the restraint, detention and confinement.

7 94. Plaintiff was unlawfully detained and taken into custody.

8 95. The restraint, detention, or confinement caused Plaintiff to suffer injuries,
9 damages, losses and harm.
10

11 96. Defendant, FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
12 OF FRESNO, is liable under the doctrine of respondeat superior. (Gov. Code § 815.2)

13 97. Defendant, FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY
14 OF FRESNO, is vicariously liable for injuries proximately caused by the act or omission
15 of its employees or agents within the scope of their employment under Government
16 Code § 815.2, where the employee or agent is not immune from liability. At all times
17 relevant hereto, DEPUTY ANDRES SOLIS and DOES 1 through 25, were employees
18 and agents of FRESNO COUNTY SHERIFF'S DEPARTMENT; COUNTY OF
19 FRESNO.
20

21 **ELEVENTH CAUSE OF ACTION**

22 **Negligent Infliction of Emotional Distress**

23 98. That Plaintiff herein incorporates by reference all allegations contained in
24 Paragraphs 1 through 97 and make them a part of this, his Fourteenth Cause of Action as
25 though fully set forth herein.
26

27 99. That Plaintiff is informed and believes and hereby alleges that at all times
28 herein mentioned, Defendant DEPUTY ANDRES SOLIS was the employee and agent
of and acting at the behest of, or in concert with Defendants FRESNO COUNTY

1 SHERIFF'S DEPARTMENT; COUNTY OF FRESNO, and the remaining defendants,
2 and in doing the things alleged, was acting within the course and scope of that agency.

3 100. That Defendant DEPUTY ANDRES SOLIS knew, or should have known,
4 that his failure to exercise due care in the performance of duty as a law enforcement
5 officer would cause plaintiffs severe emotional distress.

6 **TWELFTH CAUSE OF ACTION**

7 **Negligence – Only As to Defendants, RICHARD ROSS and PATRICK J.**

8 **McCOMB, dba DRIVE AMERICA**

9 101. That Plaintiff herein incorporates herein by reference all allegations
10 contained in Paragraphs 1 through 100 and make them a part of this, his Twelfth Cause
11 of Action as though fully set forth herein.

12 102. That Plaintiff is informed and believes and hereby allege that at all times
13 herein mentioned, Defendant, RICHARD ROSS was the employee and agent of and
14 acting at the behest of, or in concert with Defendants, PATRICK J. McCOMB, dba
15 DRIVE AMERICA and the remaining defendants, and in doing the things alleged, was
16 acting within the course and scope of that agency.

17 103. That on or about April 21, 2016, Defendants PATRICK J. McCOMB, dba
18 DRIVE AMERICA entrusted their driver's training vehicle to Defendant RICHARD
19 ROSS, that said driver's training vehicle had a registration on other identity information
20 that indicates to law enforcement the vehicle was stolen. Defendants failed to properly
21 register or report said vehicle was properly licensed, so as to cause the Minor Plaintiff to
22 become assaulted and battered by Defendants DEPUTY ANDRES SOLIS, FRESNO
23 COUNTY SHERIFF'S DEPARTMENT; COUNTY OF FRESNO, and to directly and
24 legally cause the injuries and damages described herein.

25 104. That as a further result of the acts, conduct, and omissions of the aforesaid
26 defendants, named specifically in this Cause of Action, and each of them, Defendant
27 RICHARD ROSS failed to inform, communicate, or advise Plaintiff, SOPHIA
28 ELLIOTT and/or her husband, Shane Elliott at their residence of the facts and

1 circumstances that had just occurred with DEPUTY ANDRES SOLIS, THE FRESNO
2 COUNTY SHERIFF'S DEPARTMENT; COUNTY OF FRESNO, before the
3 conclusion of the driving lesson, and that instead of taking the time to advise and explain
4 the aforementioned to the Minor Plaintiff's parents; the Defendant, RICHARD ROSS
5 instead dropped off the Minor Plaintiff, who was still suffering injuries sustained earlier
6 that night, in front of his home, and departed to return to his place of employment,
7 DRIVE AMERICA.

8 **THIRTEENTH CAUSE OF ACTION**

9 **Negligent Infliction of Emotional Distress – Only as to Defendants. RICHARD**
10 **ROSS, and PATRICK J. McCOMB, dba DRIVE AMERICA**

11 105. That Plaintiff herein incorporates by reference all allegations contained in
12 Paragraphs 1 through 104 and make them a part of this, his Thirteenth Cause of Action
13 as though fully set forth herein.

14 106. That Plaintiff is informed and believes and hereby alleges that at all times
15 herein mentioned, Defendant RICHARD ROSS was the employee and agent of and
16 acting at the behest of, or in concert with Defendants PATRICK J. McCOMB, dba
17 DRIVE AMERICA, and the remaining defendants, and in doing the things alleged, was
18 acting within the course and scope of that agency.

19 107. That Defendant RICHARD ROSS knew, or should have known, that his
20 failure to exercise due care in communicating with the Minor Plaintiff's parents about
21 the events and circumstances, and the injuries sustained by their son during his driving
22 lesson, would cause plaintiff, SOPHIA ELLIOTT and her husband, Shane Elliott severe
23 emotional distress.

24 **FIRST THROUGH THIRTEENTH CAUSES OF ACTION**

25 **(Continued)**

26 108. At no time did plaintiff consent to any of the acts of Defendants alleged
27 in the first and second causes of action, above.

28 109. As a proximate result of the acts of Defendants as alleged in the first

1 through thirteen causes of action, the Minor Plaintiff received and sustained certain
2 and severe injuries, including, but not limited to injuries to his upper extremities,
3 shoulders, arms, hands, all which required medical treatment.

4 110. That as a proximate result of the acts of Defendants as alleged in the
5 first through thirteen causes of action, the Minor Plaintiff was hurt and injured in his
6 health, strength, and activity, sustaining injury to his nervous system and person, all
7 of which have caused, and continue to cause, the Minor Plaintiff great mental,
8 physical, and nervous pain and suffering.

9 111. That Plaintiff is informed and believes and thereon alleges that these
10 injuries will result in some permanent disability to the Minor Plaintiff. As a result of
11 these injuries, plaintiff has suffered general damages.

12 112. That as a further proximate result of the injuries received and sustained,
13 plaintiff was required to seek medical treatment, and were required to employ
14 physicians, nurses, and therapists to care, and provide treatment to the Minor Plaintiff
15 for his injuries sustained, as a result of the defendants' acts, conduct, and omissions, and
16 each of them, and that the Minor Plaintiff has and will continue to incur such treatment
17 in an amount not yet now known, and plaintiff will set forth such amount, once such
18 become known to him.

19 113. That as a proximate result of the injuries received and sustained, the Minor
20 Plaintiff was prevented from pursuing his usual activities, and that the Minor Plaintiff
21 has and will continue to be prevented from pursuing his usual activities, and has suffered
22 such losses in an amount not yet now known, and plaintiff will set forth such amount,
23 once such become known to him. As a further proximate result of the acts of
24 Defendants, the Minor Plaintiff's future earning capacity has been greatly impaired.

25 114. The aforementioned conduct of Defendants DEPUTY ANDRES
26 SOLIS, and the other unknown officers of the FRESNO COUNTY SHERIFF'S
27 DEPARTMENT; COUNTY OF FRESNO was willful and malicious and was
28 intended to oppress and cause injury to plaintiffs. Plaintiffs therefore are entitled to an

1 award of punitive damages.

2 115. As the proximate result of the acts alleged above, plaintiffs suffered
3 humiliation, mental anguish, and emotional and physical distress, and have been
4 injured in mind and body as set forth herein.


5 WHEREFORE, plaintiff prays judgment on all causes of action against
6 defendant(s) as follows:

- 7 1. For general damages according to proof;
- 8 2. For medical and related expenses according to proof;
- 9 3. For future loss of earning capacity, according to proof;
- 10 4. For treble damages under Civil Code sections 51 through 53;
- 11 5. For civil penalties pursuant to Civil Code sections 51 through 53;
- 12 6. For punitive damages;
- 13 7. For pre-judgment interest as allowed by law;
- 14 8. For costs of suit herein incurred;
- 15 9. For Attorney's Fees Pursuant to 42 U.S.C. § 1983; *Monell* Claim and
16 Bane Act; and
- 17 10. For such other and further relief as the court may deem proper.

18 Dated: May 3, 2017.

19
20 Respectfully submitted,

21 NUTTALL & COLEMAN

22 
23 By _____
24 Mark W. Coleman
25 Attorneys for Plaintiffs, DOMINIC
26 ELLIOTT, a minor, by and through his
27 G.A.L. SOPHIA ELLIOTT, and
28