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5 Attorney for Plaintiffs
FELIPE HERNANDEZ, and ELIJAH
6 HERNANDEZ

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 FELIPE HERNANDEZ, and ELIJAH
HERNANDEZ,

11 Plaintiff,

12
13 v.

14 COUNTY OF SAN BERNARDINO; J.
HOLMES; I. JARAMILLO; JOHN DOE;
15 J. SMITH; KOREY OBERLIES; C.
CAMACHO; DOES 2-20, Individually,
16 and in their capacity as Probation Officers
for the County of San Bernardino,
17 California,

18 Defendants.
19
20
21
22

Case No.: 17-CV-1398

**PLAINTIFF'S COMPLAINT FOR DAMAGES
BASED ON:**

- 1) **VIOLATION OF FOURTH
AMENDMENT – 42 U.S.C. § 1983
(Seizure)**
- 2) **VIOLATION OF FIRST AMENDMENT
– 42 U.S.C. § 1983 (Free Speech)**
- 3) **BATTERY**
- 4) **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**
- 5) **VIOLATION OF CIVIL RIGHTS –
MONELL CLAIM**
- 6) **VIOLATION OF Cal. Civ. Code § 52.1 –
BANE ACT**

JURY TRIAL DEMANDED

23
24
25
26 Now comes Plaintiffs FELIPE HERNANDEZ, and ELIJAH HERNANDEZ, by and
27 through Counsel, and moves the Court for entry of judgement in their favor against defendants
28 and in support of such Complaint states the following:

1 6. Plaintiff ELIJAH HERNANDEZ (hereinafter “Elijah” and/or “plaintiff”) is a natural
2 person, who, at all times complained of in this action, is a resident of San Bernardino County,
3 State of California.

4 7. Defendant, SAN BERNARDINO COUNTY (hereinafter “COUNTY”), is a California
5 municipal corporation, organized and existing under the laws of the State of California.
6

7 8. Defendant Probation Officer J. HOLMES (hereinafter, “HOLMES”), is, and at all times
8 complained of herein, was a Probation Officer for the Defendant COUNTY, acting as an
9 individual person under the color of state law, in his individual capacity and was acting in the
10 course of and within the scope of his employment with defendant COUNTY.
11

12 9. Defendant Probation Officer I. JARAMILLO (hereinafter, “JARAMILLO”), is, and at
13 all times complained of herein, was a Probation Officer for the Defendant COUNTY, acting as
14 an individual person under the color of state law, in his individual capacity and was acting in the
15 course of and within the scope of his employment with defendant COUNTY.
16

17 10. Defendant Probation Officer JOHN DOE (hereinafter, “DOE”), is, and at all times
18 complained of herein, was a Probation Officer for the Defendant COUNTY, acting as an
19 individual person under the color of state law, in his individual capacity and was acting in the
20 course of and within the scope of his employment with defendant COUNTY. DOE is sued
21 under a fictitious name and the identity of DOE shall be inserted into the complaint via
22 amendment as his true identity becomes known to the Plaintiffs.
23

24 11. Defendant Probation Officer J. SMITH (hereinafter, “SMITH”), is, and at all times
25 complained of herein, was a Probation Officer for the Defendant COUNTY, acting as an
26 individual person under the color of state law, in his individual capacity and was acting in the
27 course of and within the scope of his employment with defendant COUNTY.
28

1 12. Defendants DOES 2-10 are persons whose identities are unknown but who is, and at all
2 times complained of herein, was Probation Officers for the Defendant COUNTY, acting as an
3 individual person under the color of state law, in his individual capacity and was acting in the
4 course of and within the scope of his employment with defendant COUNTY. DOES 2-10 are
5 sued under a fictitious name and the true identities of DOES 2-10 shall be inserted into the
6 complaint via amendment as their identities become known to Plaintiffs.
7

8 13. Defendant Probation Officer KOREY OBERLIES (hereinafter, "OBERLIES"), is, and
9 at all times complained of herein, was a Probation Officer, and Division Director for the
10 Defendant COUNTY, acting as an individual person under the color of state law, in his
11 individual capacity and was acting in the course of and within the scope of his employment with
12 defendant COUNTY.
13

14 14. Defendant Probation Officer C. CAMACHO (hereinafter, "CAMACHO"), is, and at all
15 times complained of herein, was a Probation Officer for the Defendant COUNTY, acting as an
16 individual person under the color of state law, in his individual capacity and was acting in the
17 course of and within the scope of his employment with defendant COUNTY.
18

19 15. Defendants DOES 11-20 are persons whose identities are unknown but who is, and at all
20 times complained of herein, was Probation Officers for the Defendant COUNTY, acting as an
21 individual person under the color of state law, in his individual capacity and was acting in the
22 course of and within the scope of his employment with defendant COUNTY. DOES 11-20 are
23 sued under a fictitious name and the true identities of DOES 11-20 shall be inserted into the
24 complaint via amendment as their identities become known to Plaintiffs.
25

26 ///

27 ///

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FACTUAL ALLEGATIONS

1
2 16. Plaintiff Felipe Hernandez is the biological and legal father of Elijah Hernandez.

3
4 17. At all times complained of herein Elijah Hernandez was 16 years old, and under
5 California law a minor.

6 18. Plaintiffs Mr. Hernandez and Elijah are citizen journalists. Plaintiffs along with other
7 members of their family run and generate content for a YouTube channel titled: High Desert
8 Community Watch News Network.

9
10 19. This channel contains videos taken by Mr. Hernandez and his family of the public
11 activities of police, and other government officials for the public’s viewing. The purpose of this
12 channel is to promote accountability among government officials and to expose misconduct and
13 unlawful behavior.

14
15 20. There is a clearly established First Amendment right to photograph, or make an audio or
16 video recording of public officials in public places, while performing their official duties.

17
18 21. Plaintiffs would regularly conduct First Amendment Audits where they would
19 photograph or video record public officials and or buildings, and then observe/document the
20 response by public employees.

21 22. California legislators have expressly exempted a person who is only taking photographs
22 or making an audio or video recording of a public/peace officer from being liable under PC 148.
23 *See* Cal. Penal Code § 148(g).

24 23. Videoing, photographing or otherwise recording public buildings is not of itself a crime.

25
26 24. On or about May 17, 2016, Plaintiffs conducted a First Amendment Audit at the San
27 Bernardino County Government Center, at 385 N. Arrowhead Ave, San Bernardino, CA 92415.
28

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1 25. Mr. Hernandez was dressed in jeans and a t-shirt, while Elijah was dressed in pants and
2 a button-down shirt. Both were equipped with a camera that was recording, and a cell phone.
3 Elijah also wore a camera bag.

4
5 26. Plaintiffs were not violating any laws and were not acting in a suspicious manner.

6 27. Plaintiffs were not armed.

7 28. Plaintiffs were not interfering with any activities of the police or with traffic.

8
9 29. Plaintiffs were not threatening anyone, by neither word nor action, and was not
10 endangering anyone in any manner.

11 30. Plaintiffs began filming at 106 W. 5th Street. Plaintiff's then walked west on 5th Street
12 and entered the Government Center from the north parking lot.

13
14 31. Plaintiffs filmed as they walked from the north parking lot to front of the government
15 center on N. Arrowhead Ave. They filmed the parking lot, probation officers in the parking lot,
16 and the walkway from the parking lot to the front of the building.

17 32. One of the probation officers Plaintiff's filmed in the parking lot was Officer DOE.

18
19 33. Plaintiffs walked, and filmed from the north parking lot, through the walkway to the
20 front of the government center located at 385 N. Arrowhead Ave, San Bernardino, CA 92415.
21 Plaintiffs then filmed the front of the San Bernardino County building.

22 34. While filming the front of the building probation officers HOLMES, JARAMILLO,
23 DOE, and SMITH began to approach from the north.

24 35. Officer JARAMILLO, called out to plaintiffs saying "hey, come here."

25 36. Plaintiffs said nothing and continued to travel south on the walkway that runs alongside
26 the building, they then turned right and went west towards the sidewalk on Arrowhead Ave.
27
28

1 37. Officers HOLMES, JARAMILLO, DOE, and SMITH continued to pursue the plaintiffs.

2 38. Officer HOLMES speaks to Mr. Hernandez and asks “how are you doing sir, can you
3 hold up for a minute.
4

5 39. Plaintiffs say nothing and continue to walk away. At this time officer HOLMES grabs
6 Mr. Hernandez by his pants to prevent him for walking away.

7 40. Officer HOLMES and DOE detain Mr. Hernandez, while Officers JARAMILLO, and
8 SMITH question Elijah.
9

10 41. Officer HOLMES asks Mr. Hernandez for his ID. Mr. Hernandez replies that he
11 doesn’t have ID on him and that he isn’t committing a crime and doesn’t need one. HOLMES
12 replies that he is “in public”
13

14 42. Mr. Hernandez tells HOLMES that “he is not his property” and advised HOLMES “to
15 let go of me.” To which HOLMES merely replies, “you are in public”
16

17 43. Mr. Hernandez advises HOLMES again to let go and not to touch him. Again,
18 HOLMES merely states that Mr. Hernandez is in public and that he had asked him to stop.

19 44. Mr. Hernandez repeatedly asked HOLMES to let go of him, repeatedly told HOLMES
20 that he had not committed a crime, that they don’t suspect him of committing a crime, and that
21 he has no articulable suspicion of a crime.
22

23 45. HOLMES replies “I asked you to stop and you didn’t follow my direction”

24 46. Mr. Hernandez states that it was not a legal direction because he has no suspected crime.

25 47. Mr. Hernandez repeatedly asks that HOLMES let go of his person.
26

27 48. About two minutes after the detainment began, HOLMES finally advises Mr. Hernandez
28 that he is detained, however, HOLMES did not articulate a reason for the detainment.

1 49. For five minutes HOLMES holds onto Mr. Hernandez pants. Mr. Hernandez repeatedly
2 asks to be let go, and repeatedly tells HOLMES that he has no reason to detain him.

3 50. Eventually HOLMES, performs a take down, slams Mr. Hernandez to the ground, and
4 uses his knee to subdue and handcuff him.

5 51. Immediately after the take down, Officer DOE picks up Mr. Hernandez's camera, which
6 was still recording and removes it from the area so that it can no longer record the interaction
7

8 52. Officers DOE and JARAMILLO then act to push Elijah out of the area where his father
9 is. Blocking him from recording, or even seeing what they were doing to his father.

10 53. At this time about 10-20 other probation officers had made their way to the area. DOES
11 2-10 formed a perimeter around Mr. Hernandez and used intimidation to push Elijah away from
12 the scene so that he was unable to film or record the interactions between his father and various
13 probation officers.
14

15 54. Mr. Hernandez was on the ground for over a minute before being helped off the ground
16 and onto a nearby bench.
17

18 55. DOES 2-10 were standing around observing, talking, laughing and joking at the expense
19 of Plaintiffs
20

21 56. Mr. Hernandez was kept in handcuffs and detained on the park bench for over twenty
22 minutes while various probation officers question him and "stand guard"
23

24 57. After about thirty minutes a San Bernardino City Police Officer arrives on scene. The
25 police officer speaks with the probation officer for a few minutes, then speaks to Mr.
26 Hernandez. After a brief conversation with Mr. Hernandez the San Bernardino Police Officer
27 orders a probation officer to remove the handcuffs.
28

1 58. The total incident lasted over an hour and involved at least 20 probations officers.

2 59. For over thirty minutes the defendant officers effectively illegally detained Mr.
3 Hernandez by grabbing him at first, then violently slamming him to the ground and handcuffing
4 him, although Mr. Hernandez had never shown any sign of aggression, never shown signs of
5 criminal behavior or activity, was not on probation or parole, was not armed and in no way
6 threatened by word or action the probation officers.
7

8 60. At all times relevant to the acts alleged in this complaint, Defendants were acting under
9 the color of the statutes, ordinances, regulations, customs, and usages of San Bernardino County
10 and the State of California and under the authority of their respective offices as probation
11 officers.
12

13 61. Prior to and after Mr. Hernandez was informed that he was detained, he had made no
14 threats, had taken no aggressive actions, had not verbally threatened harm or exhibited any
15 actions to cause anyone to believe that they were in any danger.
16

17 62. Mr. Hernandez had to suffer the humiliation of being handcuffed in public view for
18 everyone to see and was held in custody by multiple probation officers as if he were a common
19 criminal.
20

21 63. Mr. Hernandez suffered the loss of his freedom for an unreasonable amount of time in
22 light of the circumstances.

23 64. No actions of Mr. Hernandez or Elijah would have provided a reasonable officer with
24 reason to believe that the officer had reasonable suspicion to detain Plaintiff and probable cause
25 to arrest/detain Mr. Hernandez by placing him in handcuffs.
26

27 65. None of the Defendants had information in the form of objective articulable facts that
28 would have allowed a reasonable officer to initially detain Mr. Hernandez.

1 80. None of Mr. Hernandez's activities were being conducted in an unreasonable time, place
2 or manner.

3 81. By stopping, detaining and harassing the Plaintiffs, the defendants sought to chill Mr.
4 Hernandez and Elijah's free speech rights.
5

6 82. This act was also in retaliation against the Plaintiffs for freely exercising their first
7 amendment right by recording public officials including Defendant DOE.

8 83. Defendants acting under the color of law deprived the Plaintiffs of certain
9 constitutionally protected right by preventing the Plaintiffs from freely exercising their First
10 Amendment right to record public officials while in public places.
11

12 84. Defendants acted willfully, deliberately, maliciously, or with reckless disregard for
13 Plaintiff clearly established rights protected by the First Amendment, and Fourteenth
14 Amendment to the U.S. Constitution.
15

16 85. As a direct and proximate result of the acts described above, Mr. Hernandez has suffered
17 grievously enduring: 1) the loss of his liberty and freedom, 2) mental and emotional injury,
18 distress, pain and suffering, 3) attorney's fees, and 4) any other special and general damages and
19 expenses, in an amount to be proven at trial.
20

21 86. The actions by said defendants were committed maliciously, oppressively and in
22 reckless disregard of plaintiff's constitutional rights, sufficient for an award of punitive /
23 exemplary damages against all defendants and each of them, in an amount to be proven at trial.
24

25 **THIRD CAUSE OF ACTION**

26 **BATTERY**

27 **(Plaintiff Mr. Hernandez, as to Defendant HOLMES)**

28 87. Plaintiffs hereby realleged and incorporate by reference the allegations set forth in
paragraphs 1 through 86, inclusive, above, as though set forth in full herein.

1 88. Through the actions described herein on or about May 17, 2016, Defendant HOLMES
2 intentionally and unlawfully touch Mr. Hernandez by grabbing his pants, and then subsequently
3 used unreasonable force to slam Mr. Hernandez to the ground and handcuff him to prevent his
4 escape and overcome any potential resistance.

5
6 89. Defendant HOLMES had no lawful purpose for touching Mr. Hernandez, let alone
7 thrown him to the ground.

8
9 90. Mr. Hernandez did not consent to the touching or the use of force, and asked many times
10 to be let go.

11 91. Defendant's use of unreasonable force, and unlawfully and unwanted touch was a
12 substantial factor in causing physical and emotional harm to Mr. Hernandez.

13
14 92. As a direct and proximate result of the acts described above, Mr. Hernandez has suffered
15 grievously enduring: 1) the loss of his liberty and freedom, 2) mental and emotional injury,
16 distress, pain and suffering, 3) attorney's fees, and 4) any other special and general damages and
17 expenses, in an amount to be proven at trial.

18
19 93. The actions by said defendants were committed maliciously, oppressively and in
20 reckless disregard of plaintiff's constitutional rights, sufficient for an award of punitive /
21 exemplary damages against all defendants and each of them, in an amount to be proven at trial.

22 **FOURTH CAUSE OF ACTION**

23 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

24 **(Plaintiff Elijah as to Defendants DOES 2-10, OBERLIES, and CAMACHO)**

25 94. Plaintiffs hereby realleged and incorporate by reference the allegations set forth in
26 paragraphs 1 through 93, inclusive, above, as though set forth in full herein.

27 95. After Mr. Hernandez was violently thrown to the ground, but during the time he was
28 handcuffed and being detained, Defendant's DOES 2-10, OBERLIES, and CAMACHO who

1 were also on scene; mocked, laughed at, and intimidated Elijah as he attempted to document the
2 detainment of his father, while still dealing with the trauma of watching him being illegally
3 detained and slammed to the ground.

4
5 96. Elijah was scared for his safety as well as the safety and well-being of his father.

6 97. When Elijah vocalized his fears, DOES 2-10 laughed at Elijah, and made jokes at his
7 expense.

8
9 98. Defendant CAMACHO, attempted to intimidate, and mock Elijah by taking out his
10 personal cell phone and began to record Elijah.

11 99. Defendant OBERLIES attempted to intimate Elijah by approaching him, and then
12 mocking him when he states he is afraid.

13
14 100. Through the action described herein on May 17, 2016, Defendants DOES 2-10,
15 OBERLIES, and CAMACHO engaged in, instigated, and directed a course of extreme and
16 outrageous conduct with the intention of causing Elijah emotional distress

17
18 101. The conduct of Defendants DOES 2-10, OBERLIES, and CAMACHO was
19 extreme and outrageous especially in light of their official position as public employees, and
20 uniformed probation officers.

21 102. As a direct and proximate result of the acts described above, Elijah suffered
22 grievously enduring severe or extreme emotional distress, and any other special and general
23 damages and expenses, in an amount to be proven at trial.

24
25 103. The actions by said defendants were committed maliciously, oppressively and in
26 reckless disregard of plaintiff, sufficient for an award of punitive / exemplary damages against
27 all defendants and each of them, in an amount to be proven at trial.

28

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF CIVIL RIGHTS – MONELL CLAIM**

3 **(Plaintiffs as to Defendant COUNTY)**

4 104. Plaintiffs hereby realleged and incorporate by reference the allegations set forth
5 in paragraphs 1 through 103, inclusive, above, as though set forth in full herein.

6 105. Defendant COUNTY knowingly, deliberately, and with gross negligence, and in
7 deliberate indifference to the Constitutional rights of citizens, maintains and permits an official
8 policy and custom of permitting the unlawful violation for First and Fourth Amendment as
9 described hereinabove, and hereafter.

10 106. These policies and customs include, but are not limited to, the deliberately
11 indifference to properly train law enforcement officers in recognizing First Amendment
12 protected activities, and how to appropriately respond to citizens exercising those protected
13 rights.
14

15 107. Plaintiffs are informed and believe, and thereon allege, that the customs and
16 policies were the moving force behind the violations of Plaintiff’s civil rights. Based upon the
17 principles set forth in *Monell v. New York City Dep’t of Social Services*, Defendant COUNTY is
18 liable for all of the injuries sustained by Plaintiffs as set forth above.
19

20 108. As a direct and proximate result of the acts described above, the Plaintiffs have
21 suffered grievously enduring: 1) the loss of his liberty and freedom, 2) mental and emotional
22 injury, distress, pain and suffering, 3) attorney’s fees, and 4) any other special and general
23 damages and expenses, in an amount to be proven at trial.
24

25 109. The actions by said defendants were committed maliciously, oppressively and in
26 reckless disregard of plaintiff’s constitutional rights, sufficient for an award of punitive /
27 exemplary damages against all defendants and each of them, in an amount to be proven at trial.
28

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2 **SIXTH CAUSE OF ACTION**

3 **VIOLATION OF Cal. Civ. Code § 52.1 – BANE ACT**

4 **(Plaintiff Mr. Hernandez, as to ALL Defendants)**

5 110. Plaintiffs hereby realleged and incorporate by reference the allegations set forth
6 in paragraphs 1 through 109, inclusive, above, as though set forth in full herein.

7 111. Defendants, acting within the scope of their duties as San Bernardino County
8 Probations Officers did unlawfully detain Mr. Hernandez in an attempt to interfere with the
9 exercise of his First Amendment free speech rights, and Fourth Amendment right to be free
10 from unreasonable seizure.
11

12 112. Defendant COUNTY is liable for the acts, omissions and conduct of their
13 employees, including the Officer Defendants herein, whose conduct was the cause of Mr.
14 Hernandez’s deprivation of rights.
15

16 113. Mr. Hernandez filed a timely claim pursuant to Cal. Govt. Code § 910, et seq. As
17 that claim has been rejected in the past six months, this action is timely.

18 114. The conduct of the Defendants constituted interference by threats, intimidations,
19 or coercion, or attempted interference with the exercise or enjoyment by Mr. Hernandez to
20 rights that are secured by the Constitution and law of the United States, or by the Constitution
21 and laws of the State of California, including the right to be free from unreasonable seizure, and
22 the right to exercise free speech.
23

24 115. As a direct and proximate result of the acts described above, the Plaintiff’s rights
25 pursuant to Cal. Civ. Code § 52.1 were violated causing Mr. Hernandez to have suffered
26 grievously enduring: 1) the loss of his liberty and freedom, 2) mental and emotional injury,
27
28

1 distress, pain and suffering, 3) attorney's fees, and 4) any other special and general damages and
2 expenses, in an amount to be proven at trial.

3
4 116. The actions by said defendants were committed maliciously, oppressively and in
5 reckless disregard of plaintiff's constitutional rights, sufficient for an award of punitive /
6 exemplary damages against all defendants and each of them, in an amount to be proven at trial.

7
8 **JURY DEMAND**

9 117. Plaintiff hereby demands a trial by jury for all issues that are so triable.

10 **DAMAGES AND ATTORNEY'S FEES**

11 118. Plaintiffs hereby realleged and incorporate by reference the allegations set forth
12 in paragraphs 1 through 117, inclusive, above, as though set forth in full herein.

13
14 119. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs
15 suffered deprivations of their constitutional rights guaranteed by the First, Fourth and
16 Fourteenth Amendments to the U. S. Constitution.

17
18 120. Plaintiff's incurred damages for loss of reputation, shame, embarrassment,
19 humiliation, mental anguish, and such other compensatory and consequential damages as the
20 law entitles them to recover.

21 121. Alternatively, Plaintiff's seek nominal damages for the violations of their
22 Constitutional rights.

23
24 122. Plaintiffs seek punitive damages against the individual Defendant Officers for
25 their intentional, willful and wanton acts violating "clearly established statutory and
26 constitutional rights of which a reasonable officer would have known."
27
28

