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9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **EASTERN DISTRICT OF CALIFORNIA**

12
13 PABLO SIMENTAL, JR., an
14 individual,

15 *Plaintiff,*

16 v.

17 RUBEN OZUNA, in his individual
18 capacity; MICHAEL STRAND, in his
19 individual capacity; GUADALUPE
20 CONTRERAS, in her individual
capacity; and CITY of DELANO,

21 *Defendants.*

CASE NO:

COMPLAINT FOR DAMAGES

JURY TRIAL REQUESTED

1 1. This case arises from the Delano Police Department’s (“DPD”)
2 unlawful arrest and use of excessive force against then-high school student Pablo
3 Simental, Jr.

4 2. After school, on April 11, 2019, Pablo and three high school friends
5 were walking in a residential neighborhood towards the Wonderful College Prep
6 Academy to get prom passes when DPD officers approached them in a patrol car
7 and began questioning them. Shortly after the students invoked the right to
8 remain silent, the officers veered the patrol car around towards the students,
9 almost striking them, then detained the students, purportedly for jaywalking.
10 After two of the students began filming the officers with their cell phones, Pablo
11 watched one of the officers slap the phone out of his friend’s hand, grab him, and
12 force him to the ground to be handcuffed, while the other officer grabbed the
13 other student filming to get at his phone. As Pablo stood to the side and asked the
14 officers why they were doing this, responding Officer Ruben Ozuna charged at
15 Pablo from roughly 20 feet away, body slamming him to the ground without
16 warning. Officer Ozuna remained on top of Pablo as he yanked the youth’s arms
17 back to handcuff him, causing severe pain.

18 3. Officer Ozuna forced Pablo into the back of a patrol car and
19 transported him to the Delano Police Station where he and the other students
20 remained handcuffed behind their backs for several hours. The officers kept
21 Pablo isolated in a room by himself during this time.

22 4. DPD then transported Pablo to the Kern County Juvenile Hall where
23 he remained jailed for several additional hours, handcuffed behind his back for
24 some time, before his release on or around midnight.

25 5. Ultimately, no criminal charges were filed against Pablo. But DPD
26 officers wrongfully caused this teenager to be arrested, handcuffed, and jailed –
27 for roughly 8 hours, after subjecting him to a painful and plainly excessive use of
28 force.

JURISDICTION AND VENUE

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2 13. The Court has subject matter jurisdiction over Plaintiff’s claims under
3 the U.S. Constitution, 42 U.S.C. § 1983, 28 U.S.C. § 1331 (federal question), and
4 28 U.S.C. § 1343 (civil rights). The Court has supplemental jurisdiction over
5 Plaintiff’s state law claims under 28 U.S.C. § 1367.

6 14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2)
7 because the acts and omissions at issue in this lawsuit occurred within the
8 District.

9 15. Intradistrict venue is proper because this action arises out of Kern
10 County. E.D. Cal. R. 120(d).

11 16. On October 11, 2019, Plaintiff timely filed an administrative tort
12 claim with the City of Delano. The City issued a notice rejecting his claims on
13 November 19, 2020. Plaintiff has exhausted all available administrative
14 remedies. Cal. Gov’t. Code §§ 913, 945.6(a)(1).

STATEMENT OF FACTS

15
16 17. On April 11, 2019, after school, around 4:00 p.m., Pablo Simental Jr.
17 and three other high school students parked near a friend’s house and walked
18 together towards the Wonderful College Prep Academy to obtain permission slips
19 for Pablo and another Delano High student to attend WCPA’s prom.

20 18. As the students were walking down the sidewalk through the nearby
21 residential neighborhood, Delano Police Department (“DPD”) Officers Michael
22 Strand and Guadalupe Contreras drove up next to them in a patrol car. Officer
23 Strand was driving.

24 19. Officers Strand and Contreras did not instruct the students to stop.
25 Instead, they drove alongside the students, matching the students’ walking pace,
26 and asked them several questions—including whether they had ever given CPR
27 to a girl with half her skull missing. One of the students began responding, and
28 the other students told him that he didn’t need to talk to the officers, because they

1 weren't doing anything wrong.

2 20. Officer Strand asked the students, among other things, where they
3 were headed. When the students remained silent and did not answer, Officer
4 Strand asked whether they were just going to ignore him.

5 21. As the students neared the intersection, Officer Strand stated, "Have a
6 good day. See you guys soon," and drove off, initiating what appeared to be a left
7 turn away from the students onto the cross street.

8 22. The students continued on their path, stepping off the corner curb to
9 cross to the other corner curb (in an unmarked crosswalk). As the students
10 crossed the street, the patrol vehicle suddenly veered around, making a rapid U-
11 turn back towards the students, rolling over the sidewalk and coming to a stop
12 just short of where the students were walking, almost hitting them.

13 23. The officers exited their car and approached the students as the
14 students finished crossing the street to the other sidewalk. One of the students
15 asked Officer Contreras whether they were detained, to which she replied, "No."

16 24. One of the students told another to take out his phone and record the
17 encounter because they were not doing anything wrong. Subsequently, both
18 students began filming the officers with their cell phones.

19 25. Pablo stood peacefully on the curb corner for most of the ensuing
20 encounter. He observed Officer Contreras proceed to grab the arm of one student
21 to grab the phone from his hand. Pablo also observed Officer Strand lunge
22 towards another student who was filming the incident, slap the phone out of his
23 hand, and pull him to the ground. Subsequently, Pablo observed responding
24 Officer Rafael Chavez tackle another student to the ground.

25 26. On information and belief, Defendant Officer Strand issued a "Code-
26 3" call, negligently elevating the incident to an emergency, thus increasing the
27 risk of harm to Pablo and the other students.

28 27. As Pablo watched Officers Chavez and Strand lay on top of and

1 handcuff his two friends, he asked why they were doing that. Pablo directed this
2 question to the officers while backing away, standing with his arms to his sides
3 and his palms facing upwards. He was not armed, posing any threat nor making
4 any threatening gestures towards the officers or anyone else.

5 28. Nevertheless, at that time, responding Officer Ozuna began charging
6 towards Pablo from roughly 20 feet away. Without warning, Ozuna tackled Pablo
7 at speed, forcefully slamming his shoulder into Pablo's side, wrapping his arms
8 around Pablo's stomach, and body-slammng him to the ground. Officer Ozuna
9 did not direct any instructions to Pablo or attempt any less violent method of
10 arresting Pablo before charging and tackling him at speed.

11 29. As Pablo lay still on the ground on his back, Officer Ozuna remained
12 on top of him, jabbing his knees into Pablo's bicep area. He then forcefully
13 twisted Pablo around onto his stomach, yanked his arm back, and handcuffed
14 Pablo—in a tight, abrasive, and painful manner. Pablo was not resisting Officer
15 Ozuna when Ozuna held him to the ground and forcefully restrained him in this
16 way.

17 30. Officer Ozuna's actions inflicted physical injury on Pablo, including
18 scrapes and cuts on Pablo's forearms, markings on his wrists from the tight
19 handcuffs, headaches, and severe pain that persisted for days.

20 31. Officer Ozuna then arrested Pablo and placed him into a police car.

21 32. While standing outside of the police car, Officer Ozuna bragged about
22 "taking [Pablo] down" to another officer. Two officers stated that everything had
23 been recorded and discussed the need for them to find a way to get into the
24 students' cell phones.

25 33. Pablo remained in the police car for about 15 minutes while the
26 officers spoke to neighborhood residents that stepped out of their homes to
27 observe the incident. Subsequently, Officer Ozuna transported Pablo and another
28 student to the Delano Police Station.

1 34. Pablo asked Officer Ozuna whether he and his friends would be read
2 their *Miranda* rights, and Officer Ozuna responded “no.” On information and
3 belief, Officer Strand eventually informed the students of their *Miranda* rights at
4 the station.

5 35. For several hours, at the DPD Station, Pablo remained handcuffed
6 behind his back. The officers kept Pablo isolated in a room by himself during this
7 time. They did not provide him with any food.

8 36. At the station, Pablo asked whether the officers had called his parents,
9 and the officers replied that they had not. On information and belief, the officers
10 at no time informed the students that they could call their parents or an attorney.

11 37. Pablo’s mother called the Delano Police station to ask when and
12 where Pablo would be released, but the answering officer did not provide an
13 answer. About 15 minutes later, Officer Contreras called Pablo’s mother, stating
14 that he was detained for purportedly jaywalking, and informed her that Pablo was
15 going to be transferred to Bakersfield and that it was the probation officer’s
16 discretion whether to release Pablo.

17 38. Pablo was transferred to Kern County Juvenile Hall in Bakersfield,
18 California. Pablo remained imprisoned, handcuffed behind his back for some
19 time, for several more hours before being released at roughly midnight.

20 39. No criminal charges were filed in court against Pablo.

21 40. Officer Contreras took pictures of the students and wrote the police
22 report, which was reviewed and approved by Officer Strand—the Watch
23 Commander and Field Training Officer (FTO) for Officer Contreras.

24 41. Pablo subsequently received a letter from the DPD stating that the
25 department had conducted a formal investigation and exonerated the Defendant
26 Officers of any misconduct. On information and belief, DPD did not discipline
27 the Defendant Officers for the unlawful arrest, retaliation, or excessive force
28 against Pablo.

1 42. Defendants' actions caused Pablo emotional distress. They caused
2 him to fear for his safety and that of his friends, and to worry about whether he
3 would have time to study for his exam the next day, or graduate from high school
4 at all. For some time after the incident, Pablo experienced fear and worry when
5 he saw police officers.

6 **CAUSES OF ACTION**

7 **COUNT ONE**

8 **Fourth Amendment – Excessive Force**

9 **(42 U.S.C. § 1983)**

10 **(Against Defendant Ozuna)**

11 43. Plaintiff repeats, re-alleges, and incorporates by reference each and
12 every allegation in the preceding paragraphs as if fully set forth herein.

13 44. Defendant Ozuna's use of force against Plaintiff was not reasonable
14 under the circumstances and was excessive. The force was not proportionate to
15 the purported basis for the stop; Plaintiff posed no threat and did not actively
16 resist Defendants prior to, during, or after being tackled by Defendant Ozuna; and
17 Defendant Ozuna did not warn Plaintiff or attempt alternative methods of
18 arresting Plaintiff prior to using excessive force against him.

19 45. Defendant Ozuna violated Plaintiff's Fourth Amendment right to be
20 free from unreasonable searches and seizures by using excessive force to arrest
21 him.

22 46. As a direct result of Defendant Ozuna's use of excessive force,
23 Plaintiff sustained physical injuries and experienced severe pain.

24 47. As a direct and proximate result of Defendant Ozuna's use of
25 excessive force, Plaintiff experienced pain, suffering, trauma, worry, anxiety,
26 humiliation, and embarrassment.

COUNT TWO

Fourth Amendment – Unlawful Seizure & Arrest

(42 U.S.C. § 1983)

(Against All Defendants)

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5 48. Mr. Simental repeats, re-alleges, and incorporates by reference each
6 and every allegation in the preceding paragraphs as if fully set forth herein.

7 49. Defendants violated Plaintiff's Fourth Amendment rights by
8 subjecting him to an unreasonable seizure. They unreasonably detained and then
9 arrested Plaintiff without reasonable basis to suspect he was involved in a crime
10 and without probable cause.

11 50. Defendants violated Plaintiff's Fourth Amendment rights by arresting
12 him and causing him to be jailed without a warrant or probable cause to support
13 his arrest. Defendant's harmed Plaintiff by infringing on his constitutional rights
14 and causing the loss of his liberty.

COUNT THREE

First Amendment – Unlawful Retaliation

(42 U.S.C. § 1983)

(Against All Defendants)

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19 51. Plaintiff repeats, re-alleges, and incorporates by reference each and
20 every allegation in the preceding paragraphs as if fully set forth herein.

21 52. Defendants intentionally interfered with Plaintiff's rights under the
22 First Amendment to verbally question and challenge the police, and to observe and
23 video-record police officers engaged in their official duties.

24 53. Defendants used threats, intimidation, and coercion to chill and
25 prevent Plaintiff from exercising these rights. Defendants detained Plaintiff and
26 his friends, used excessive force against each of them, and forcibly arrested them
27 in Plaintiff's presence to discourage Plaintiff from exercising his rights, and to
28 retaliate against him and friends for doing so.

1 54. Defendants' use of force, as alleged herein, was because of Plaintiff's
2 protected activity.

3 55. Such conduct by Defendants chilled Plaintiff's exercise of his First
4 Amendment rights. Plaintiff had the opportunity to film the officers' use of force
5 but did not do so.

6 56. Defendants' conduct was the actual and proximate cause of Plaintiff's
7 injuries.

8 **COUNT FOUR**

9 **False Arrest / False Imprisonment / Violation of Cal. Const. Art I, section 13**

10 **(California Tort Claims Act, Cal. Gov't Code §§ 815.2, 820)**

11 **(Cal. Const. Art. I, section 13)**

12 **(Against All Defendants)**

13 57. Plaintiff repeats, re-alleges, and incorporates by reference each and
14 every allegation in the preceding paragraphs as if fully set forth herein.

15 58. Defendant City, through Defendant Officers Ozuna, Strand,
16 Contreras, and Chavez, inflicted personal injury on Plaintiff by subjecting him to
17 false arrest, imprisonment, and unreasonable seizure, all without a warrant and
18 without reasonable or probable cause.

19 59. Defendants deprived Plaintiff of his freedom by subjecting him to an
20 unreasonable detention, and by arresting him without a warrant and without
21 reasonable or probable cause, all without his consent.

22 60. Furthermore, Defendants transported Plaintiff to the Delano Police
23 Station, and subsequently to Kern County Juvenile Hall, where he remained
24 detained for about 7 to 8 hours until he was released.

25 61. Defendants' warrantless false arrest and imprisonment and
26 unreasonable seizure of Pablo was a substantial factor in causing Pablo severe
27 pain, suffering, headaches, trauma, worry, anxiety, humiliation, embarrassment,
28 and loss of liberty.

COUNT FIVE

Battery

(Against Defendant Ozuna and City)

62. Plaintiff repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

63. Defendant Ozuna intentionally touched Plaintiff, using unreasonable force to arrest him. Plaintiff did not consent to Defendant Ozuna's use of force.

64. Plaintiff was harmed by Defendant's Ozuna's use of force against him, which caused him to suffer injuries, including cuts, scrapes, markings on his body, and severe pain that persisted for days. As a direct and proximate cause of Defendant Ozuna's use of force, Plaintiff also experienced severe pain, suffering, trauma, worry, anxiety, humiliation, and embarrassment.

65. The city of Delano is vicariously liable for the actions of Defendant Officer Ozuna.

COUNT SIX

Bane Act (Cal Civ. Code § 52.1)

(California Tort Claims Act, Cal. Gov't Code §§ 815.2, 820)

(Against All Defendants)

66. Plaintiff repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

67. Defendant City, through Defendant Officers Ozuna, Strand, Contreras, and Chavez, interfered with Plaintiff's exercise and enjoyment of his rights under the United States and California Constitutions.

68. Defendants intentionally interfered with Plaintiff's rights under the First Amendment and Article I, Section 2 of the California Constitution to verbally question and challenge the police, and to observe and video-record police officers engaged in their official duties. Defendants used threats, intimidation, and coercion to prevent Plaintiff from exercising these rights;

1 Defendants detained Plaintiff and his friends, used excessive force against each
2 of them, and forcibly arrested each of them, in Plaintiff's presence, to discourage
3 Plaintiff and his friends from exercising these rights and to retaliate against him
4 and friends for doing so.

5 69. Defendants intentionally interfered with Plaintiff's right to remain
6 silent under the Fourth and Fifth Amendments and Article I, Section 15 of the
7 California Constitution. Defendants used threats, intimidation, and coercion to
8 prevent Plaintiff from exercising this right; Defendants detained Plaintiff and his
9 friends, used excessive force against each of them, and forcibly arrested each of
10 them, in Plaintiff's presence, to discourage Plaintiff and his friends from
11 exercising this right and to retaliate against him and friends for doing so and for
12 invoking this right.

13 70. Defendants intentionally interfered with Plaintiff's rights under the
14 Fourth Amendment and Article I, Section 13 of the California Constitution to be
15 free from warrantless arrest without probable cause. Defendants used threats,
16 intimidation, and force to effect Plaintiff's unlawful arrest, and Plaintiff
17 reasonably believed that they would commit even more violence against him if he
18 did not physically submit to the unlawful arrest.

19 71. Defendants intentionally interfered with Plaintiff's rights under the
20 Fourth Amendment and Article I, § 13 of the California Constitution to be free
21 from unreasonable, unnecessary, and excessive force by law enforcement
22 officers. Defendants used threats, intimidation, and excessive force to effect
23 Plaintiff's unlawful arrest.

24 72. The City of Delano is vicariously liable for its officers' misconduct.

25 **COUNT SEVEN**

26 **Negligence**

27 **(Against All Defendants)**

28 73. Plaintiff repeats, re-alleges, and incorporates by reference each and

1 every allegation in the preceding paragraphs as if fully set forth herein.

2 74. Police officers owe a duty of care to community members, including
3 Plaintiff, to not arrest without probable cause, use excessive force in carrying out
4 an arrest, or retaliate against the exercise of First Amendment rights.

5 75. Police officers owe a duty of care to community members, including
6 Plaintiff, to accurately and appropriately communicate information to dispatch,
7 so as to not expose them to risk of false arrest or excessive force. Delano Police
8 Department policies outline when Code-3 requests for emergency assistance are
9 appropriate, and when a Code-3 request should be terminated.

10 76. Police officers owe a duty of care to ensure that the rights of
11 community members and specifically juveniles are protected while in police
12 custody and that detention conditions are not unreasonably punitive or coercive.

13 77. The conduct of Defendants as set forth herein was tortious in that
14 Defendants breached their duties of care to Plaintiff.

15 78. The Defendant Officers' negligence caused Plaintiff harm in the form
16 of the deprivation of his privacy and liberty, physical injuries, pain, and the
17 infliction of emotional distress—manifested through, in part, humiliation,
18 embarrassment, anxiety, worry, emotional pain, suffering and trauma.

19 79. As a result of the conduct of the Defendants alleged herein, Plaintiff
20 sustained and incurred physical and emotional damages.

21 80. The City of Delano is vicariously liable for the actions of the Officer
22 Defendants.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff Pablo Simental, Jr. respectfully asks this Court to
25 grant the following relief:

26 81. Award compensatory and punitive damages against all Defendants for
27 the above violations of federal and state law;

28 82. Award compensatory damages against the City of Bakersfield under

1 the California Tort Claims Act;

2 83. Issue declaratory relief against the Defendants for the above violations
3 of federal and state law;

4 84. Award prejudgment interest on any award of damages to the extent
5 permitted by law;

6 85. Award reasonable attorneys' fees, costs and disbursements, pursuant
7 to 42 U.S.C. § 1988, Cal. Gov't Code § 52.1(h), Cal. Code of Civ. Proc. §
8 1021.5, and any other applicable law; and

9 86. Grant any and all other such other relief as the Court deems just and
10 equitable.

11 **JURY DEMAND**

12 Plaintiff demands a trial by jury on all claims and issues for which a jury
13 trial is available.

14
15 Respectfully submitted,

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17
18 DATED: May 18, 2020

By: s/Stephanie Padilla
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