

**SAYRE & LEVITT, LLP**  
Federico Castelan Sayre, Esq. (SBN 067420)  
*sayreesq@sayrelevitt.com*  
Adam L. Salamoff, Esq. (SBN 193686)  
*asalamoff@sayrelevitt.com*  
333 Civic Center Drive West  
Santa Ana, CA 92701-3452  
(714) 550-9117 Telephone / (714) 716-8445 Facsimile

Attorneys for Plaintiff DAVID TOVAR

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

2013 APR 22 PM 3:57  
CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
SANTA ANA  
BY \_\_\_\_\_

FILED

DAVID TOVAR, an individual,  
Plaintiff,

vs.

CITY OF FULLERTON,  
FULLERTON POLICE  
DEPARTMENT, DOE OFFICERS  
OF THE FULLERTON POLICE  
DEPARTMENT and DOES 1 through  
10, inclusive,  
Defendants.

CASE NO. SACV 13-00453 DOC  
(ANx)

FIRST AMENDED COMPLAINT FOR  
DAMAGES

1. VIOLATION OF CIVIL RIGHTS UNDER COLOR OF LAW (42 USC § 1983, 1985, 1986 and 1988)
2. VIOLATION OF CIVIL CODE § 51.7, (Ralph Civil Rights Act)
3. VIOLATION OF CIVIL CODE § 52.1, (Bane Civil Rights Act)
4. ASSAULT
5. BATTERY
6. NEGLIGENCE

Complaint Filed: March 19, 2013

COMES NOW PLAINTIFF DAVID TOVAR, who alleges and complains  
as follows:

**INTRODUCTION**

1  
2 1. This is an action for money damages brought pursuant to 42 U.S.C.  
3 §§ 1983, 1985, 1986, 1988, and the Fourth and Fourteenth Amendments of the  
4 United States Constitution against Defendants, CITY OF FULLERTON,  
5 FULLERTON POLICE DEPARTMENT (“FULLERTON P.D.”), DOE  
6 OFFICERS OF THE FULLERTON POLICE DEPARTMENT, and DOES 1-10.

7 2. It is herein alleged that Defendants DOE OFFICERS OF THE  
8 FULLERTON POLICE DEPARTMENT and/or other individuals employed by  
9 Defendants CITY OF FULLERTON and FULLERTON POLICE  
10 DEPARTMENT, used their police vehicle to impact Plaintiff DAVID TOVAR,  
11 who was riding a bicycle, without legal cause or excuse, made an unreasonable  
12 seizure of plaintiff’s person, violating his rights under the Fourth and Fourteenth  
13 Amendments to the United States Constitution.

**JURISDICTION**

14  
15 3. Plaintiff DAVID TOVAR, an individual, claims for relief arising  
16 under, and for violations of, the following laws:

- 17 a. Federal Civil Rights Act under 42 USC §§ 1983, 1985, 1986,  
18 and 1988;
- 19 b. *Monell v. Department of Social Services*;
- 20 c. The Fourth Amendment of the United States Constitution; and
- 21 d. Equal Protection Clause and Due Process Clause of the  
22 Fourteenth Amendment of the United States Constitution.

23 4. The jurisdiction of this court, is therefore, founded on Federal  
24 Question Jurisdiction pursuant to 28 USC § 1331.

25 5. This court has supplemental jurisdiction over Plaintiff’s state law  
26 claims under 28 USC § 1367(a).

1 VENUE

2 6. Venus is proper in the Central District of Court of California in that  
3 one or more defendants reside in the County of Orange, State of California, as  
4 more fully set forth herein. Defendants are properly before this Court because “a  
5 substantial part of the events upon which this action is based occurred in this  
6 district.” 28 USC § 1891(a)(2) and § 1343. The motor vehicle v. bicycle incident  
7 took place near Harbor Blvd. and Ash Ave., City of Fullerton, County of Orange,  
8 California.

9 PARTIES

10 7. Plaintiff, DAVID TOVAR (hereinafter “TOVAR”), was a resident of  
11 the City of Fullerton, Orange County, California during all times relevant hereto.

12 8. At all times mentioned herein, Defendant CITY OF FULLERTON  
13 (hereinafter “CITY”) is and was a public entity, duly organized and existing under  
14 and by virtue of the laws of the State of California.

15 9. At all times mentioned herein, Defendant FULLERTON POLICE  
16 DEPARTMENT (hereinafter “FPD”) is and was a public entity, duly organized  
17 and existing under and by virtue of the laws of the State of California.

18 10. At all times mentioned herein, Defendant DOE OFFICERS OF THE  
19 FULLERTON POLICE DEPARTMENT, individuals, (hereinafter “DOE  
20 OFFICERS”), were acting within the course and scope of their employment as  
21 officers, deputies, sergeants, captains, commanders, and/or civil employees of the  
22 FPD, and were authorized by the CITY and/or FPD to perform the duties and  
23 responsibilities of sworn police officers of and for the CITY, and all acts  
24 hereinafter complained of were performed by him within the course and scope of  
25 their duties as police officers and officials.

26 11. At all times relevant hereto, all DOE Defendants, and each of them,  
27 were acting within the course and scope of their employment as officers, deputies,  
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1 sergeants, captains, commanders, and/or civilian employees of CITY or FPD, a  
2 department and/or a subdivision of defendant CITY and at all times were acting  
3 with permission and consent fo their co-defendants. Said defendants, and each of  
4 them, were specifically authorized by defendant CITY and/or FPD to perform the  
5 duties and responsibilities of sworn police office of and for the CITY, and all acts  
6 hereinafter complained of were performed by them within the course and scope of  
7 their duties as police officer and officials for said defendant, and its police  
8 department, and are herein sued in their individual capacities and in their official  
9 capacities as police officers, sergeants, captains, commanders, supervisors, policy  
10 makers and/or as other employees of the FPD. Said defendants, and each of them,  
11 at all times relevant hereto, were acting under color of law, to wit, under the color  
12 of the statutes, ordinances, regulations, policies, customs, practices and usages of  
13 defendant CITY, and/or its police department.

14 12. Defendant CITY and/or FPD encouraged, assisted, ratified and/or  
15 with deliberate indifference failed to prevent all of the herein acts and omissions  
16 of defendants, and each of them.

17 13. TOVAR is ignorant of the true names and capacities of defendants  
18 sued herein as DOE OFFICERS and/or DOES 1-10, inclusive, and therefore sues  
19 these defendants by such fictitious names. TOVAR will amend this complaint to  
20 allege said defendants' true names and capacities when such are ascertained.  
21 RUIZ is informed and believes and thereon alleges that each of the fictitiously  
22 name defendants are responsible in some manner for the occurrences herein  
23 alleged, and that TOVAR's damages as herein alleged were proximately caused by  
24 the acts and/or omissions of said fictitiously name defendants.

25 14. At all times relevant herein, Defendant DOES 1 through 10 were  
26 supervisors, employees and/or policy makers for defendant CITY and/or FPD,  
27 which employed unlawful, organized and illegal customs and practices of  
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1 excessive force, false arrest which lacked probable cause. Said misconduct was  
2 encouraged, tolerated and condoned by defendants, and each of them.

3 15. At all times relevant to the present complaint, Defendant DOES 1-10,  
4 inclusive, were acting within their capacity as employees, agents, representatives  
5 and servants of defendants CITY and/or FPD which are liable under the doctrine  
6 of *respondeat superior*, pursuant to § 815.2 of the California Government code, *et*  
7 *al.*

8 **FACTUAL ALLEGATIONS**

9 16. On or about August 11, 2012, at approximately 11:45 p.m., Plaintiff  
10 TOVAR was riding his bicycle on Valencia Ave., near Harbor Blvd., in Fullerton,  
11 CA, when an unidentified truck drove up behind him.

12 17. TOVAR, fearing for his safety, rode his bicycle off the main road, in  
13 an attempt to get away from the unidentified truck. The unidentified truck  
14 continued to follow TOVAR down an alleyway off of Harbor Blvd., near Ash.

15 18. As TOVAR sped down the alleyway, the unidentified truck sped up\  
16 behind TOVAR impacting the rear of TOVAR's bicycle, sending him flying off  
17 the bicycle, resulting in TOVAR's head, face and body impacting with the curb  
18 and pavement and TOVAR losing consciousness.

19 19. When TOVAR regained consciousness, he was able to confirm that  
20 the previously unidentified truck was an unmarked police vehicle owned by the  
21 CITY and operated by a DOE OFFICER OF THE FPD, at the time of the impact.

22 20. No-one inside the CITY vehicle, operated by a DOE OFFICER OF  
23 THE FPD identified his or herself to plaintiff TOVAR as an officer of the FPD, at  
24 any time during the pursuit, from the time TOVAR was being followed, while on  
25 Valencia Blvd., until the time of the impact from the unmarked CITY vehicle.

26 21. TOVAR was not acting in the commission of any crime when he was  
27 being pursued by the unmarked CITY vehicle.

1           22. The DOE OFFICER OF THE FPD was in the course and scope of his  
2 employment with the CITY and FPD, when he/she drove the unmarked vehicle in  
3 pursuit of TOVAR and impacted TOVAR's bicycle.

4           23. As a result of being thrown from his bicycle by the impact from  
5 the FPD vehicle, TOVAR sustained a deep laceration above his right eye,  
6 necessitating sutures, a swollen shut right eye, loss of consciousness, numerous  
7 lacerations to his face, head, arms, hands and legs, vision damage and emotional  
8 distress.

9           24. At no point in time on August 11, 2012, was TOVAR carrying a  
10 weapon of any kind. TOVAR was completely unarmed and was not posing a  
11 threat of bodily harm to either himself, or anyone else.

12           25. Based upon information and belief, TOVAR alleges that on August  
13 11, 2012, DOE OFFICERS OF THE FPD and DOES 1-10, while acting within the  
14 course and scope of their employment and under color of State law approached  
15 TOVAR, and without reasonable suspicion of wrongdoing, physically assaulted  
16 him with their vehicle. Additionally, a DOE OFFICER OF THE FPD ultimately  
17 used his CITY and/or FPD unmarked vehicle as a weapon, running down and  
18 impacting TOVAR, without reasonable suspicion of wrongdoing and without any  
19 further probable cause. DOE OFFICERS OF THE FPD and DOES 1-10, while  
20 acting within the course and scope of their employment with defendants CITY and  
21 FPD, detained, and arrested TOVAR, which was a violation of his Fourth  
22 Amendment rights to be free from unreasonable search and seizure as he had  
23 committed no crimes and there was no reason for him to not be able to be free  
24 from being detained. In addition, TOVAR was subjected to an excessive amount  
25 of force, where he was not resisting arrest or carrying a weapon.

26           26. In the evening of August 11, 2012, DOE OFFICERS OF THE FPD  
27 and DOES 1-10, inclusive, while acting within the course and scope of their  
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1 employment with the CITY and FPD, and under color of law proceeded to chase  
2 down and impact TOVAR with their vehicle and seriously injure TOVAR without  
3 probable cause, justification, or excuse. At the time that the aforementioned  
4 Defendants chased TOVAR in their unmarked police vehicle and knocked him off  
5 of his bicycle, with their vehicle, to an objective, reasonable police officer,  
6 TOVAR did not represent a threat to their lives or to the lives of others.

7 27. Defendants, and each of them, had no probable cause for his  
8 detention or arrest and not legal cause or excuse to seize the person of TOVAR.  
9 TOVAR constituted no threat to the offices or to others, and although there was no  
10 legal cause or excuse to seize the person of TOVAR, he was pursued and battered  
11 by a motor vehicle owned by the CITY and/or FPD, while operated by defendant  
12 DOE OFFICER OF THE FPD, resulting in serious injuries to TOVAR.

13 28. TOVAR was engaged in lawful activity. TOVAR was approached by  
14 DOE OFFICER OF THE FPD and/or DOES 1-10 without reason, cause or  
15 justification. Defendants thereafter proceeded to chase down TOVAR with their  
16 police vehicle and ultimately knocked him off of his bicycle by impacting him  
17 with their vehicle.

18 29. Defendant DOE OFFICER OF THE FPD chased down TOVAR  
19 negligently, recklessly, intentionally, tortiously and/or with the intent to kill and/or  
20 commit serious bodily injury upon TOVAR and to violate Plaintiff's civil rights.

21 30. The use of a motor vehicle to perpetrate a battery upon TOVAR, who  
22 was riding a bicycle and not acting in the commission of any crime, constituted  
23 further unconstitutional violations of TOVAR's civil rights, in that they were  
24 excessive force in violation of the Fourth Amendment of the United States  
25 Constitution and TOVAR's state civil rights afforded pursuant to California Civil  
26 Code §§51, 51.7, 52 and 52.1.

1           31. The actions of Defendants, and each of them, were in violation of the  
2 Fourth and Fourteenth Amendments of the United States Constitution and the  
3 actions undertaken by Defendants constituted cruel and unusual punishment of  
4 TOVAR, an unjustified seizure of his person, deprivation of his liberty interest,  
5 excessive force and were in violation of his civil rights under color of law under  
6 42 U.S.C. § 1983 and other sections of the United States Code as more fully set  
7 forth herein, as well as his

8           32. TOVAR is informed and believes, and thereon alleges, that  
9 Defendants CITY, FPD and DOES 1-10 and their decision makers, with deliberate  
10 indifference, gross negligence, and reckless disregard to the safety, security, and  
11 constitutional and statutory rights of TOVAR and all persons similarly situated,  
12 maintained, enforced, tolerated, permitted, acquiesced in, and applied policies,  
13 practices, or customs and usages of, among other things: subjecting people to  
14 unreasonable uses of force against their persons;

- 15           a. selecting, retaining and assigning employees with demonstrable  
16           propensities for excessive force, violence, and other  
17           misconduct;
- 18           b. failing to adequately train, supervise, and control employees in  
19           the dangers of motor vehicle pursuit upon a person riding a  
20           bicycle, including, without limitation, the use of potentially  
21           lethal tactics, on individuals who may have pre-existing  
22           medical conditions which make such tactics unreasonably  
23           dangerous;
- 24           c. failing to adequately discipline officers engaged in misconduct;
- 25           d. Condoning and encouraging officers in the belief that they can  
26           violate the rights of persons such as the decedent in this action  
27           with impunity, and that such conduct will not adversely affect  
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1                   their opportunities for promotion and other employment  
2                   benefits.

3           33. Plaintiff is informed and believes and thereon alleges that Defendants  
4 CITY, FPD and DOES 1-10 have a longstanding custom, policy and practice of  
5 violating civil rights, including excessive use of force and other similar actions,  
6 and ordered, authorized, acquiesced in, tolerated, permitted or maintained custom  
7 and usages permitting the other defendants herein to engage in the unlawful and  
8 unconstitutional actions, policies, practices, and customs or usages set forth in the  
9 foregoing paragraph. Defendants' conduct as alleged herein constitutes a pattern  
10 of constitutional violations based either on a deliberate plan by defendants or on  
11 defendants' deliberate indifference, gross negligence, or reckless disregard to the  
12 safety, security, and rights of plaintiff and their decedent.

13           34. TOVAR alleges that Defendants acted in violation of the United  
14 States Constitution and that his constitutional rights were violated. Defendants,  
15 and each of them, acted in violation of TOVAR's constitutional rights under the  
16 Fourth and Fourteenth Amendments to the United States constitution, as well as  
17 his civil rights afforded pursuant to California Civil Code §§51, 51.7, 52 and 52.1.  
18 TOVAR was subjected to an excessive amount of force where he had committed  
19 no criminal act, engaged in no suspicious criminal activity, and was seized without  
20 probable cause by Defendants while acting under color of law, pursuant to their  
21 actual and apparent authority.

22           35. TOVAR is informed, believes and thereupon alleges that he suffered  
23 great pain and anguish after he was knocked off his bicycle by an unmarked  
24 vehicle causing his head and body to impact with the curb and the road, and  
25 TOVAR will continue to suffer pain, anguish, and other debilitating and  
26 permanent effects from his wounds.

1           36. As a direct and proximate result of the aforementioned acts of  
2 defendants, and each of them, TOVAR suffered the following injuries, including,  
3 but not limited to:

- 4           a. Violation of his constitutional rights under the Fourth and  
5                Fourteenth Amendment to the United States Constitution to be  
6                free from unreasonable search and seizure of his person and  
7                summary, cruel and unusual punishment;
- 8           b. Conscious physical pain, suffering and emotional trauma;
- 9           c. medical expenses;
- 10           d. damages to clothing and other personal effects;
- 11           e. Loss of income and lost earning capacity; and
- 12           f. punitive damages.

13           37. On or about August 29, 2012, plaintiff filed a governmental claim  
14 with the CITY OF FULLERTON, pursuant to the requirements of California  
15 Government Code Section 800 et seq. It was received by the City on or about  
16 September 4, 2012. A true and correct copy of this claim is attached hereto, and  
17 incorporated by this reference, as **EXHIBIT "A."** This claim names unknown  
18 officers of the FULLERTON POLICE DEPARTMENT, the FULLERTON  
19 POLICE DEPARTMENT and the CITY OF FULLERTON, as responsible parties.  
20 No written rejection of the claim having been received, the claim was deemed  
21 rejected by operation of law on, or about October 14, 2012. Plaintiff then filed his  
22 timely Complaint on March 19, 2013.

23                               **FIRST CAUSE OF ACTION**

24           **VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983**

25           **(By Plaintiff Against Doe Officers of the FPD and Does 1-10, inclusive)**

26           38. TOVAR incorporates each and every preceding paragraph as though  
27 fully set forth herein.

1           39. This cause of action is to redress a deprivation, under color of  
2 authority, statute, ordinance, regulation, policy, custom, practice or usage of a  
3 right, privilege and immunity secured to Plaintiff by the Fourth and Fourteenth  
4 Amendments to the United States Constitution and the Constitution and laws of  
5 the State of California.

6           40. A public entity is liable for injury proximately caused by an act or  
7 mission of an employee of the public entity within the scope of his employment if  
8 the act or omission would, apart from this section, have given rise to a cause of  
9 action against that employee or his personal representative under Government  
10 Code § 815.2.

11           41. At the time of the incident, Defendants DOE OFFICERS OF THE  
12 FPD were acting within the course and scope of their employment with their  
13 employers CITY and FPD. Defendants owed a duty of ordinary care to avoid  
14 harm to TOVAR.

15           42. TOVAR contends and herein alleges that defendant DOE OFFICERS  
16 OF THE FPD and DOES 1-10, and each of them breached these aforementioned  
17 duties, either negligently or intentionally in relation to all their interactions with  
18 TOVAR, on August 11, 2012, including, but not limited to, their use of excessive  
19 force, including use of their unmarked police vehicle as a deadly weapon upon  
20 TOVAR, while he was unarmed.

21           43. TOVAR contends and herein alleges that the aforementioned  
22 negligent/intentional breach of their duties by defendant DOE OFFICERS OF  
23 THE FPD and DOES 1-10, constituted violations of the civil rights of TOVAR, in  
24 contravention of 42 U.S.C. §1983 of the Fourth and Fourteenth Amendments of  
25 the Constitution of the United States and the laws of the State of California.  
26 TOVAR further contends and alleges that defendant DOE OFFICERS OF THE  
27 FPD and DOES 1-10's disregard of his aforementioned civil rights was done by  
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1 either actual malice or deliberate indifference to TOVAR's civil rights.

2 44. TOVAR contends and herein alleges that defendant DOE OFFICERS  
3 OF THE FPD and DOES 1-10's negligent/intentional use of their unmarked police  
4 vehicle, as a deadly weapon, upon him was the legal cause of his injuries.

5 45. On or about August 11, 2012, defendant DOE OFFICERS OF THE  
6 FPD and DOES 1-10, and each of them, violated TOVAR's civil rights under the  
7 Fourth and Fourteenth Amendments of the United States Constitution prohibiting  
8 unlawful search and seizure, cruel and unusual punishment and violation of due  
9 process of law. The violation was under color of state law. Defendant DOE  
10 OFFICERS OF THE FPD and DOES 1-10, and each of them, acted in violation of  
11 the Fourth Amendment of the United States Constitution when TOVAR was  
12 subjected to excessive force when TOVAR was pursued by defendant DOE  
13 OFFICERS OF THE FPD and DOES 1-10, with their police vehicle and ultimately  
14 knocked off of his bicycle by being impacted by the unmarked police vehicle.

15 46. The actions of defendant DOE OFFICERS OF THE FPD and DOES  
16 1-10, as aforesaid, violated the Fourth and Fourteenth Amendments of the United  
17 States Constitution and violated 42 U.S.C. § 1983. The violation of TOVAR's civil  
18 rights directly and proximately caused the injuries and damages to him.

19 47. The false and illegal seizure and use of excessive force of TOVAR  
20 was in violation of his civil rights to be free from the unreasonable search and  
21 seizure of his person, to be free from the loss of his physical liberty interest, and  
22 for him to be free from cruel and unusual punishment and denial of substantive  
23 due process under the Fourth and Fourteenth Amendments of the United States  
24 Constitution. In addition, in taking the aforesaid action, defendant DOE  
25 OFFICERS OF THE FPD and DOES 1-10, and each of them, violated TOVAR's  
26 Civil Rights by being deliberately indifferent to his physical security as set forth in  
27 *Wood v. Ostrander*, 879 F.2d 583.

1 48. Defendant DOE OFFICERS OF THE FPD and DOES 1-10, and each  
2 of theirs, actions as aforesaid directly and proximately caused injuries and  
3 damages to Plaintiff TOVAR.

4 49. On or about August 11, 2012, defendant DOE OFFICERS OF THE  
5 FPD and DOES 1-10 violated TOVAR's Civil Rights by using a degree of  
6 physical coercion which was not objectively reasonable under the circumstances.  
7 TOVAR posed no threat and had committed no crime. Defendant DOE  
8 OFFICERS OF THE FPD and DOES 1-10's use of excessive force was  
9 unreasonable and in violation of TOVAR'S Civil Rights under the Fourth and  
10 Fourteenth Amendments of the United States Constitution to be free from an  
11 unreasonable seizure of his person and to be free from a loss of physical liberty.  
12 Defendant DOE OFFICERS OF THE FPD and DOES 1-10's use of excessive  
13 force was in violation of TOVAR's Fourth and Fourteenth Amendment Rights.

14 50. As a direct and proximate result of the conduct of defendant DOE  
15 OFFICERS OF THE FPD and DOES 1-10, and each of them, TOVAR suffered  
16 the following injuries and damages for which he may recover:

- 17 a. Violation of his constitutional rights under the Fourth and  
18 Fourteenth Amendment to the United States Constitution to be  
19 free from unreasonable search and seizure of his person and  
20 summary, cruel and unusual punishment;
- 21 b. Conscious physical pain, suffering and emotional trauma;
- 22 c. medical expenses;
- 23 d. damages to clothing and other personal effects;
- 24 e. Loss of income and lost earning capacity; and
- 25 f. punitive damages.

26 51. The conduct of defendant DOE OFFICERS OF THE FPD and DOES  
27 1-10, was reckless and acted with callous indifference to the federally protected  
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1 rights of TOVAR. Defendant DOE OFFICERS OF THE FPD and DOES 1-10,  
2 and each of them, engaged in despicable conduct by using excessive force and was  
3 malicious and in reckless and conscious disregard for the rights and individual  
4 safety of TOVAR and TOVAR is entitled to punitive damages in accord with  
5 constitutionally permitted limits to punish and make an example of the individual  
6 defendant DOE OFFICERS OF THE FPD and DOES 1-10.

7 52. TOVAR is entitled to an award of attorneys' fees, costs and expenses  
8 under 42 U.S.C. Section 1988 due to defendant DOE OFFICERS OF THE FPD  
9 and DOES 1-10's violations of TOVAR's Civil Rights.

10 **SECOND CAUSE OF ACTION**

11 **HARASSMENT AND DISCRIMINATION BY INTIMIDATION OR**  
12 **THREAT OF FORCE OR VIOLENCE BASED ON RACE/ANCESTRY,**

13 **Civil Code §§ 51.7, 52 (RALPH CIVIL RIGHTS ACT)**

14 **(By Plaintiff Against Defendant Doe Officers of the FPD**

15 **and Does 1-10, inclusive)**

16 53. Plaintiff TOVAR hereby incorporates each and every of the preceding  
17 paragraphs, as though set forth fully herein.

18 54. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10,  
19 committed violence, or intimidation by threat of violence, against Plaintiff TOVAR  
20 because of TOVAR's race, in violation of Civil Code § 51.7.

21 55. Plaintiff TOVAR claims that Defendant DOE OFFICERS OF THE FPD  
22 and/or DOES 1-10, subjected him to violence or threat of violence based on his  
23 race/color. Plaintiff is of Latin American descent.

24 56. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10  
25 threatened and/or committed violent acts against plaintiff TOVAR, when they  
26 pursued him in their unmarked police vehicle and then physically injured him when  
27 Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 impacted plaintiff  
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1 TOVAR, who was riding his bicycle, with the defendants' unmarked police vehicle,  
2 on August 11, 2012. Plaintiff was not acting in the commission of any crime at the  
3 time that defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, began to  
4 pursue him. They intimidated him by slowly pursuing him and not identifying  
5 themselves as police officers, to plaintiff. Then, defendant DOE OFFICERS OF THE  
6 FPD and/or DOES 1-10 increased the intensity of their pursuit and ultimately  
7 committed a violent act upon plaintiff, by impacting plaintiff, on his bicycle, with the  
8 defendants' police vehicle, sending plaintiff flying off of his bicycle, causing  
9 plaintiff's head and body to impact with a concrete curb and pavement.

10 57. A motivating reason for Defendant DOE OFFICERS OF THE FPD  
11 and/or DOES 1-10's conduct was their perception of plaintiff's race/color (Latin  
12 American).

13 58. Plaintiff TOVAR was harmed by the conduct of Defendant DOE  
14 OFFICERS OF THE FPD and/or DOES 1-10; sustaining a deep laceration above his  
15 right eye, necessitating sutures, a swollen shut right eye, loss of consciousness,  
16 numerous lacerations to his face, head, arms, hands and legs, vision damage and  
17 emotional distress.

18 59. The conduct of Defendant DOE OFFICERS OF THE FPD and/or DOES  
19 1-10 was a substantial factor in causing plaintiff's harm.

20 60. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, aided,  
21 incited and conspired in the denial of Plaintiff's rights under Civil Code § 51.7, while  
22 acting as employees of CITY and FPD.

23 61. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, were  
24 acting in part within the course and scope of their employment by CITY and/or FPD  
25 and were, at least in part, serving a purpose of their own in carrying out the above  
26 misconduct against Plaintiff TOVAR. Defendant DOE OFFICERS OF THE FPD  
27 and/or DOES 1-10, were motivated, at least in part, by malice and ill will toward  
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1 Plaintiff TOVAR.

2 62. As the proximate result of Defendant DOE OFFICERS OF THE FPD  
3 and/or DOES 1-10's misconduct, Plaintiff TOVAR is entitled, pursuant to Civil Code  
4 §52, to an award of actual general and special damages (including but not limited to  
5 physical and mental injuries and disabilities; pain and suffering, emotional distress),  
6 exemplary and punitive damages, a civil penalty of twenty-five thousand dollars  
7 (\$25,000) for each violation of §51.7 by each Defendant, and reasonable attorney's  
8 fees as may be determined by the Court. Plaintiff TOVAR has retained the legal  
9 services of attorney Federico C. Sayre, of Sayre & Levitt, LLP and incurred an  
10 obligation for fees.

11 **THIRD CAUSE OF ACTION**  
12 **ATTEMPTED INTERFERENCE WITH LEGAL RIGHTS BY**  
13 **INTIMIDATION OR THREAT OF VIOLENCE, CIVIL CODE § 52.1 (BANE**  
14 **CIVIL RIGHTS ACT)**

15 **(By Plaintiff Against Defendant Doe Officers of the FPD**  
16 **and Does 1-10, inclusive)**

17 63. Plaintiff TOVAR hereby incorporates each and every of the preceding  
18 paragraphs, as though set forth fully herein.

19 64. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10  
20 intentionally interfered with plaintiff TOVAR's civil rights by threatening or  
21 committing violent acts against him, while he was lawfully riding his bicycle, on  
22 August 11, 2012.

23 65. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 interfered  
24 with plaintiff TOVAR's right to be free from deprivation of his personal liberty, by  
25 threatening and/or committing violent acts against him.

26 66. Plaintiff TOVAR reasonably believed that if he exercised his right to be  
27 free from deprivation of his personal liberty, Defendant DOE OFFICERS OF THE  
28



1 FPD and/or DOES 1-10, would commit violence against him, which they ultimately  
2 did, on August 11, 2012. Defendant DOE OFFICERS OF THE FPD and/or DOES  
3 1-10, intimidated and/or threatened plaintiff, by slowly pursuing him and not  
4 identifying themselves as police officers, to plaintiff. Then, defendant DOE  
5 OFFICERS OF THE FPD and/or DOES 1-10 increased the intensity of their pursuit  
6 and ultimately committed a violent act upon plaintiff, by impacting plaintiff, on his  
7 bicycle, with the defendants' police vehicle, sending plaintiff flying off of his bicycle,  
8 causing plaintiff's head and body to impact with a concrete curb and pavement.

9 67. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, injured  
10 plaintiff TOVAR, preventing him from exercising his right to be free from  
11 deprivation of his personal liberty. Plaintiff was not acting in the commission of any  
12 criminal act, during the entire time he was being pursued by defendant DOE  
13 OFFICERS OF THE FPD and/or DOES 1-10.

14 68. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, caused  
15 plaintiff to sustain a deep laceration above his right eye, necessitating sutures, a  
16 swollen shut right eye, loss of consciousness, numerous lacerations to his face, head,  
17 arms, hands and legs, vision damage and emotional distress, among other injuries,  
18 when they impacted TOVAR with their unmarked police vehicle, knocking him to the  
19 ground, on August 11, 2012.

20 69. The conduct of Defendant DOE OFFICERS OF THE FPD and/or DOES  
21 1-10, was a substantial factor in causing plaintiff TOVAR's harm.

22 70. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 interfered  
23 and/or attempted to interfere, by intimidation, coercion, and/or credible threats of  
24 violence, with the exercise or enjoyment by Plaintiff TOVAR of rights secured by the  
25 Constitution or laws of the United States, or of the rights secured by the Constitution  
26 or laws of the State of California. Plaintiff's rights include but are not limited to; Civil  
27 Code §§ 51.7, 52, 52.1 (race discrimination).



1 existence, which states in pertinent part as follows:

2 "(a) Except as otherwise provided by statute (including Section 820.02), a  
3 public employee is liable for injury caused by his act or omission to the same extent  
4 as a private person.

5 (b) The liability of a public employee established by this part (commencing  
6 with Section 814) is subject to any defense that would be available to the public  
7 employee if he were a private person."

8 76. At all times herein mentioned, Government Code Section 815.2 was in  
9 existence, which states in pertinent part as follows:

10 "(a) A public entity is liable for injury proximately caused by an act or  
11 omission of an employee of the public entity within the scope of his employment if  
12 the act or omission would, apart from this section, have given rise to a cause of action  
13 against that employee or his personal representative.

14 (b) Except as otherwise provided by statute, a public entity is not liable for an  
15 injury resulting from an act or omission of an employee of the public entity where the  
16 employee is immune from liability.

17 77. At all times herein mentioned, Civil Code Section 1714 (a) was in  
18 existence which states in pertinent part as follows:

19 "Everyone is responsible, not only for the result of his or her willful acts, but  
20 also for an injury occasioned to another by his or her want of ordinary care or skill in  
21 the management of his or her property or person. . . ."

22 78. At all times herein mentioned, TOVAR had a civil right, pursuant to the  
23 above-referenced Government codes and to California Civil Code §43, to be free  
24 from an unlawful and unprivileged apprehension of a harmful contact with his person  
25 by a public entity and/or public employee. California Civil Code §§ 52 and  
26 52.1(a)(b), protects TOVAR from an interference and violation of state civil right to  
27 be free from an unlawful and unprivileged harmful contact with their person.

1           79. On or about August 11, 2012, TOVAR was riding his bicycle on  
2 Valencia Ave., near Harbor Blvd., in Fullerton, CA, when an unidentified truck (later  
3 determined to be an unmarked police vehicle of the CITY and FPD), drove up behind  
4 him. TOVAR, fearing for his safety, rode his bicycle off the main road, in an attempt  
5 to get away from the unidentified truck. The unmarked police vehicle, operated by  
6 defendant DOE OFFICER OF THE FPD and/or DOES 1-10 continued to follow  
7 TOVAR down an alleyway off of Harbor Blvd., near Ash. As TOVAR sped down  
8 the alleyway, the unmarked police vehicle sped up behind TOVAR impacting the rear  
9 of TOVAR's bicycle, sending TOVAR flying off the bicycle, resulting in TOVAR's  
10 head, face and body impacting with the curb and pavement and TOVAR losing  
11 consciousness.

12           80. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, while  
13 working within the course and scope of their employment with defendants CITY and  
14 FPD, intended to cause, and did, cause Plaintiff to suffer apprehension of an  
15 immediate harmful contact.

16           81. As a direct and proximate result of said tortious acts, and omissions or  
17 conduct of the Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, and  
18 each of them, Plaintiff TOVAR has sustained and incurred, and is certain in the future  
19 to sustain and incur, losses, injuries and damages which are itemized as follows:

- 20           a. Serious and severe personal injuries;
- 21           b. Expenses for medical procedures, medical care and treatment;
- 22           c. Loss of present earnings, future earnings and earnings' potential;
- 23           d. General damages for pain, suffering, anguish, discomfort, severe  
24 emotional distress, anxiety, worry and mental suffering, loss of enjoyment of life, and  
25 loss of ability to engage in normal and customary life activities;
- 26           e. Expenses for future medical care, treatment and healing; and
- 27           f. Other and further damages not specifically enumerated but for which  
28

1 Plaintiffs will seek leave of court to amend according to proof at the time of trial.

2 82. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 engaged  
3 in malicious, willful, oppressive and despicable conduct as herein alleged and acted  
4 with a conscious disregard of Plaintiff's rights and with an intent to vex, injure or  
5 annoy Plaintiff such as to constitute oppression, fraud or malice in violation of Civil  
6 Code Section 3294. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10  
7 engaged in a conscious disregard of Plaintiff's safety and thereby directly caused  
8 injury and damage to Plaintiff. Plaintiff TOVAR is entitled to punitive damages  
9 against Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 to punish and  
10 make an example of them.

11 **FIFTH CAUSE OF ACTION**

12 **BATTERY**

13 **(California Government Code Sections 814, et. seq.)**

14 **[By Plaintiff Against All Defendants]**

15 83. Plaintiff TOVAR hereby incorporates each and every of the preceding  
16 paragraphs, as though set forth fully herein.

17 84. At all times mentioned in this complaint, Government Code Section 820  
18 was in existence, which states in pertinent part as follows:

19 "(a) Except as otherwise provided by statute (including Section 820.02), a  
20 public employee is liable for injury caused by his act or omission to the same extent  
21 as a private person.

22 (b) The liability of a public employee established by this part (commencing  
23 with Section 814) is subject to any defense that would be available to the public  
24 employee if he were a private person."

25 85. At all times mentioned in this complaint, Government Code Section  
26 815.2 was in existence, which states in pertinent part as follows:

27 "(a) A public entity is liable for injury proximately caused by an act or  
28

1 omission of an employee of the public entity within the scope of his employment if  
2 the act or omission would, apart from this section, have given rise to a cause of action  
3 against that employee or his personal representative.

4 (b) Except as otherwise provided by statute, a public entity is not liable for an  
5 injury resulting from an act or omission of an employee of the public entity where the  
6 employee is immune from liability.

7 86. At all times herein mentioned, Civil Code Section 1714 (a) was in  
8 existence which states in pertinent part as follows:

9 "Everyone is responsible, not only for the result of his or her willful acts, but  
10 also for an injury occasioned to another by his or her want of ordinary care or skill in  
11 the management of his or her property or person. . . ."

12 87. At all times herein mentioned, TOVAR had a civil right, pursuant to the  
13 California Government codes listed above and to California Civil Code §43, to be  
14 free from an unlawful and unprivileged harmful contact with his person by a  
15 government entity and/or public employee. California Civil Code §§ 52 and  
16 52.1(a)(b), protects TOVAR from an interference and violation of state civil right to  
17 be free from an unlawful and unprivileged harmful contact with their person.

18 88. On or about August 11, 2012, TOVAR, was undergoing the JAIL's  
19 processing procedure. TOVAR was riding his bicycle on Valencia Ave., near Harbor  
20 Blvd., in Fullerton, CA, when an unidentified truck (later determined to be an  
21 unmarked police vehicle of the CITY and FPD), drove up behind him. TOVAR,  
22 fearing for his safety, rode his bicycle off the main road, in an attempt to get away  
23 from the unidentified truck. The unmarked police vehicle, operated by defendant  
24 DOE OFFICER OF THE FPD and/or DOES 1-10 continued to follow TOVAR down  
25 an alleyway off of Harbor Blvd., near Ash. As TOVAR sped down the alleyway, the  
26 unmarked police vehicle sped up behind TOVAR impacting the rear of TOVAR's  
27 bicycle, sending TOVAR flying off the bicycle, resulting in TOVAR's head, face and  
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1 body impacting with the curb and pavement and TOVAR losing consciousness.

2 89. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 inclusive,  
3 were acting in the course and scope of their employment with the CITY and/or FPD,  
4 when they actually physically attacked TOVAR.

5 90. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10 did not  
6 have any probable cause or reason to pursue, chase down and/or physically assault  
7 Plaintiff TOVAR, with their unmarked police vehicle, on August 11, 2012.

8 91. The actions of Defendant DOE OFFICERS OF THE FPD and/or DOES  
9 1-10, constituted an intentional, unlawful, harmful and offensive contact with  
10 TOVAR's person. By reason of the wrongful and malicious acts of Defendant DOE  
11 OFFICERS OF THE FPD and/or DOES 1-10, TOVAR was injured in health,  
12 strength, and activity and has suffered extreme mental anguish and physical pain.

13 92. As a direct and proximate result of said tortious acts, and omissions or  
14 conduct of the Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, and  
15 each of them, Plaintiff TOVAR has sustained and incurred, and are certain in the  
16 future to sustain and incur, losses, injuries and damages which are itemized as  
17 follows:

- 18 a. Serious and severe personal injuries;
- 19 b. Expenses for medical procedures, medical care and treatment;
- 20 c. Loss of future earnings and earnings' potential;
- 21 d. General damages for pain, suffering, anguish, discomfort, severe  
22 emotional distress, anxiety, worry and mental suffering, loss of enjoyment of life, and  
23 loss of ability to engage in normal and customary life activities;
- 24 e. Expenses for future medical care, treatment and healing;
- 25 f. Other and further damages not specifically enumerated but for which  
26 Plaintiff will seek leave of court to amend according to proof at the time of trial; and

27 93. The aforementioned acts of Defendant DOE OFFICERS OF THE FPD  
28

1 and/or DOES 1-10, and each of them, were willful, malicious and oppressive, without  
2 legal justification or legal authority and thereby justify the awarding of punitive  
3 damages in a sum according to proof.

4 **SIXTH CAUSE OF ACTION**

5 **NEGLIGENCE**

6 **[By Plaintiff Against Defendant Doe Officers of the FPD**

7 **And/or Does 1-10 ]**

8 94. Plaintiff TOVAR hereby incorporates each and every of the preceding  
9 paragraphs, as though set forth fully herein.

10 95. At all times herein mentioned, Defendant DOE OFFICERS OF THE  
11 FPD and/or DOES 1-10 , and each of them, had a duty to refrain from engaging in  
12 actions in which there was a lack of due care as to Plaintiff TOVAR's safety and  
13 physical security.

14 96. At all times herein mentioned, Defendant DOE OFFICERS OF THE  
15 FPD and/or DOES 1-10 inclusive, while working within the course and scope of their  
16 employment with defendants CITY and FPD, failed to exercise due care and breached  
17 their duty of due care by allowing TOVAR to be assaulted and battered as aforesaid,  
18 when they pursued TOVAR on his bicycle and impacted him with their unmarked  
19 police vehicle, on August 11, 2012.

20 97. On August 11, 2012, Plaintiff TOVAR is informed and believes, and  
21 thereon alleges that Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10  
22 inclusive, and each of them, negligently breached their duty of due care to Plaintiff  
23 TOVAR by pursuing and chasing down TOVAR and/or physically assaulting Plaintiff  
24 TOVAR, with their unmarked police vehicle, on August 11, 2012. and causing  
25 Plaintiff TOVAR to be seriously injured.

26 98. In doing the aforementioned acts, Defendant DOE OFFICERS OF THE  
27 FPD and/or DOES 1-10 inclusive, and each of them, conduct was outrageous,  
28



1 malicious, and done with reckless disregard of the probability that Plaintiff TOVAR  
2 would suffer extreme physical pain, emotional and mental distress, fear, anxiety, and  
3 mental anguish.

4 99. As a direct and proximate result of said tortious acts, and omissions or  
5 conduct of the Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, and  
6 each of them, Plaintiff TOVAR has sustained and incurred, and is certain in the future  
7 to sustain and incur, losses, injuries and damages which are itemized as follows:

- 8 a. Serious and severe personal injuries;
- 9 b. Expenses for medical procedures, medical care and treatment;
- 10 c. Loss of future earnings and earnings capacity;
- 11 d. General damages for pain, suffering, anguish, discomfort, severe  
12 emotional distress, anxiety, worry and mental suffering, loss of enjoyment of life, and  
13 loss of ability to engage in normal and customary life activities;
- 14 e. Expenses for future medical care, treatment and healing; and
- 15 f. Other and further damages not specifically enumerated but for  
16 which Plaintiff will seek leave of court to amend according to proof at the time of  
17 trial.

18 100. Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10, engaged  
19 in malicious, willful, oppressive and despicable conduct as herein alleged and acted  
20 with a conscious disregard of Plaintiff's rights and with an intent to vex, injure or  
21 annoy Plaintiff TOVAR such as to constitute oppression, fraud or malice in violation  
22 of Civil Code Section 3294. Defendant DOE OFFICERS OF THE FPD and/or DOES  
23 1-10, engaged in a conscious disregard of Plaintiff's safety and thereby directly  
24 caused injuries and damages to Plaintiff. Defendant DOE OFFICERS OF THE FPD  
25 and/or DOES 1-10, are liable for punitive damages in amount sufficient to punish and  
26 make an example of Defendant DOE OFFICERS OF THE FPD and/or DOES 1-10,  
27 as a result of his malicious, willful, oppressive and despicable conduct as herein  
28

1 alleged.

2 **PRAYER**

3 WHEREFORE, TOVAR prays for judgment against Defendants, and each of  
4 them, for each cause of action, as follows:

5 1. For all special damages including, but not limited to, lost wages and  
6 future earning capacity;

7 2. For all general damages including, but not limited to, damages for pain,  
8 suffering, anguish, discomfort, severe emotional distress, disgust, terror, fright, anger,  
9 anxiety, worry, nervousness, shock, anguish and mental suffering, loss of enjoyment  
10 of life, loss of ability to engage in normal and customary activities, loss of comfort,  
11 society, care and companionship;

12 3. For other and further special damages in a sum according to proof at the  
13 time of trial;

14 4. For other and further general damages in a sum according to proof at the  
15 time of trial;

16 5. For prejudgment interest according to proof;

17 6. For punitive damages against Defendant DOE OFFICERS OF THE FPD  
18 and/or DOES 1-10, in an amount according to proof at the time of trial;


19 7. For costs of suit incurred herein;

20 8. For other and further relief as this court may deem just and proper; and

21 9. For legal fees, expenses and costs incurred in prosecution in the present  
22 action for violation of Civil Rights pursuant to 42 U.S.C. section 1988.

23 10. For reasonable Attorneys' Fees and Costs to Plaintiff, pursuant to  
24 Civil Code §52;

25  
26 Dated: April 19, 2013

27 By:   
SAYRE & LEVITT, LLP  
Federico C. Sayre, Esq.  
Adam L. Salamoff, Esq.

# **EXHIBIT "A"**

# **EXHIBIT "A"**



FILE COMPLETED FORM BY MAIL OR IN PERSON AT:

CITY OF FULLERTON  
 City Clerk's Office  
 303 W. Commonwealth Avenue  
 Fullerton, CA 92832

OFFICE USE ONLY  
 RESERVE FOR FILING STAMP

**CLAIM FOR DAMAGES**  
 TO PERSON OR PROPERTY

CLAIM NO. \_\_\_\_\_

**INSTRUCTIONS**

1. Claim for death, injury to person or to personal property must be filed no later than six months after the occurrence (Gov. Code Sec. 911.2).
2. Claims for damages to real property must be filed no later than 1 year after the occurrence (Gov. Code Sec. 911.2).
3. Read entire claim form before filing.
4. See page 2 for diagram upon which to depict location of accident.
5. **THIS CLAIM FORM MUST BE SIGNED AND DATED ON PAGE 2 AT BOTTOM.**
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.

TO: CITY OF FULLERTON	Date of Birth of Claimant 4/7/75
Name of Claimant David Tovar	Occupation of Claimant Unemployed
Home Address of Claimant 400 W. Orangethorpe Ave., Apt. 201A Fullerton, CA 92832	Home Telephone Number ( )
Business Address of Claimant	Business Telephone Number ( )
If different from above state name, address and telephone number to which you desire notices or communications to be sent regarding this claim: Federico C. Sayre, Esq., Sayre & Levitt, LLP, 333 Civic Ctr. Dr. West, Santa Ana, CA 92701 (714) 550-9117	Cellular Telephone Number (714) 615-5875

When did DAMAGE or INJURY occur? Date 8/11/12 Time 11:45 A.M. or P.M.	Names of any city employees involved in INJURY or DAMAGE Unknown Officers of the City of Fullerton Police Department
If claim is for Equitable Indemnity, give date claimant served with the complaint: Date	

Where did DAMAGE or INJURY occur? Describe fully, and depict on diagram on reverse side of this sheet. Where appropriate, give street names and address and distances from landmarks:  
 The incident occurred on S. Harbor Blvd., between Ash Ave., and Rosslyn Ave., in Fullerton, CA

Describe in detail how the DAMAGE or INJURY occurred:  
 Mr. Tovar was riding his bicycle, when he was pursued, for no apparent reason, by an unmarked Fullerton Police Vehicle. The Fullerton Police Vehicle did not identify itself to Mr. Tovar, who attempted to flee in fear for his life. The Fullerton Police Vehicle accelerated its pursuit of Mr. Tovar, ultimately impacting Mr. Tovar and/or his bicycle, sending Mr. Tovar flying off of his bicycle, resulting in Mr. Tovar's head impacting the concrete curb, losing consciousness and sustaining other bodily injuries.

Why do you claim the City is responsible?  
 Mr. Tovar was riding his bicycle when he began to be pursued by an unmarked and unidentified Fullerton Police Vehicle. Mr. Tovar fled in fear, until the Fullerton Police Vehicle impacted him and/or his bicycle, knocking Mr. Tovar off of his bicycle and causing his body to impact the curb and the ground.

Describe in detail each INJURY or DAMAGE:  
 The full extent of Mr. Tovar's injuries and unknown at this time. Mr. Tovar sustained a deep laceration above his right eye, necessitating sutures, along with sustaining a swollen shut right eye, loss of consciousness, numerous lacerations to his face, arms, hands and legs, vision damage to his right eye and emotional distress.

**THIS CLAIM MUST BE SIGNED ON REVERSE SIDE**

CC to Claimant \_\_\_\_\_

The amount claimed, as of the date of presentation of this claim, is computed as follows:

Damages Incurred to date (exact):

Damage to property .....\$ 400.00  
 Expenses for medical/hospital care.....\$ TBD  
 Loss of earnings .....\$ TBD

Estimated prospective damages as far as known:

Future expenses for medical/hospital care...\$ TBD  
 Future loss of earnings .....\$ TBD  
 Other prospective damages (detail) .....\$ TBD

Total damages incurred to date.....\$ TBD

Total estimated prospective damages.....\$ TBD

**TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF THIS CLAIM ...\$ 1,000,000**

Was damage and/or injury investigated by police? YES If so, what city? FULLERTON Case No. \_\_\_\_\_

Were paramedics or an ambulance called? YES If so, name city or ambulance UNKNOWN

If injured, state date, time, name and address of doctor for your first visit:  
 St. Jude Medical Center, 101 East Valencia Mesa Dr., Fullerton (8/11/12 - 8/12/12), Doctor - unknown

**WITNESSES to DAMAGE or INJURY.** List all persons and addresses of persons known to have information.

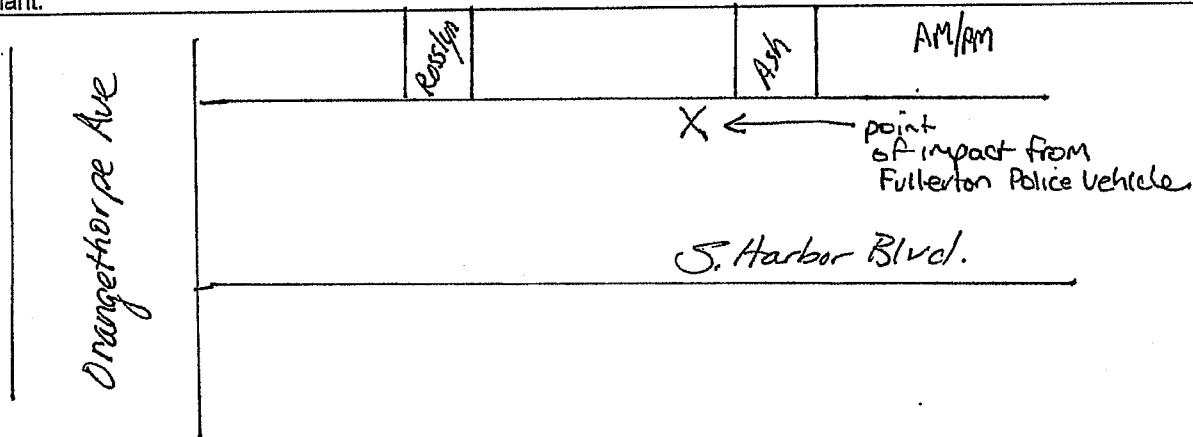
Name Unknown at this time Address \_\_\_\_\_ Phone ( ) \_\_\_\_\_  
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**DOCTORS and HOSPITAL:**

Hospital St. Jude Medical Center Address 101 E. Valencia Mesa Dr., Fullerton, CA Date Hospitalized 8/11/12-8/12/12  
 Doctor Western Medical Center Address Anaheim, CA Date of Treatment 8/13/12  
 Doctor \_\_\_\_\_ Address \_\_\_\_\_ Date of Treatment \_\_\_\_\_

**READ CAREFULLY**

For all accident claims place on the following diagram names of streets, including North, South, East and West. Indicate place of accident by "X" and by showing house numbers or distances to street corners. If city vehicle was involved, designate by letter "A" location of City vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw City vehicle. Indicate place of City vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X". NOTE - if the diagram below does not fit the situation, attach a proper diagram signed by claimant.



Signature of Claimant or person filing on behalf of Claimant (give relationship to Claimant): <i>Federico C. Sayre</i>	Type or Print Name: Federico C. Sayre, Esq.	Date: 8/29/12
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NOTE: CLAIMS MUST BE FILED IN THE CITY CLERK'S OFFICE (Gov. Code Sec. 915.A) PRESENTATION OF A FALSE CLAIM IS A FELONY (Pen. Code Sec. 72).

CC to Claimant \_\_\_\_\_

7008 2810 0001 8279 1233

U.S. Postal Service <b>CERTIFIED MAIL RECEIPT</b> (Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$ _____ Certified Fee _____ Return Receipt Fee (Endorsement Required) _____ Restricted Delivery Fee (Endorsement Required) _____ Total Postage \$ _____	Postmark Here
Sent To _____ Street, Apt. No., or PO Box No. _____ City, State, ZIP+4 _____	<b>CITY OF FULLERTON</b> City Clerk's Office 303 W. Commonwealth Avenue Fullerton, California 92832
PS Form 3811, August 2004 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature x <i>R. Richards</i> <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>
1. Article Addressed to:   <p style="text-align: center;"><b>CITY OF FULLERTON</b>                  City Clerk's Office                  303 W. Commonwealth Avenue                  Fullerton, California 92832</p>	B. Received by (Printed Name) _____ C. Date of Delivery 9-4-12
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
	<b>SEP. 4 2012</b>
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
2. Article Number (Transfer from service label)	7008 2810 0001 8279 1233

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to this action. My business address is 333 Civic Center Drive West, Santa Ana, California 92701.

On April 22, 2013, I served the foregoing documents entitled: **FIRST AMENDED COMPLAINT**, on all interested parties to this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California, in the ordinary court of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**BY ELECTRONIC MAIL:** I transmitted the document(s) listed above electronically to the e-mail addresses listed above. I am readily familiar with the firm's Microsoft Outlook e-mail system, and the transmission was reported as complete, without error.

**BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

**BY FEDERAL EXPRESS:** I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery. Under that practice it would be deposited with the express service carrier on that same day, in an envelope or package designated by the express service carrier with delivery fees provided for, at Santa Ana, California, in the ordinary course of business.

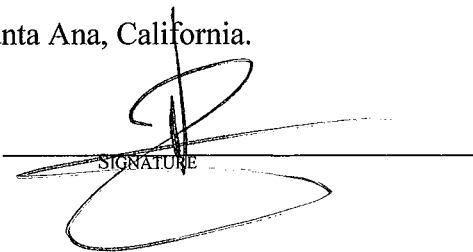
**BY FAX:** I transmitted the foregoing document by facsimile transmission from (714) 716-8445 to the facsimile numbers indicated on the attached mailing list. The transmission was reported as complete and without error on the transmission report, which was properly issued by the transmitting facsimile machine. (Exhibits not faxed, are overnighted)

**FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

**STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on April 22 2013, in Santa Ana, California.

Elsa V. Rivera  
TYPE OR PRINT NAME

  
SIGNATURE

**SERVICE LIST**

Denise L. Rocawich, Esq. Jim Touchstone, Esq. Jones & Mayer 3777 North Harbor Boulevard Fullerton, CA 92835 T: (714) 446-1400 F: (714) 446-1448	<u>Attorney for Defendant</u> <b>CITY OF FULLERTON</b>
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