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9 **MARK EDWIN WALKER**

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

10/17/2012 at 08:00:00 AM
Clerk of the Superior Court
By Sonya Wilson, Deputy Clerk

10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

12 MARK EDWIN WALKER, an individual,) Case No.: 30-2012-00569087-CU-CR-CJC
13) [Assigned for all purposes to the Hon. Jamoa
14 Plaintiff,) A. Moberly, Dept. C-12]
15 vs.)
16) **MARK EDWIN WALKER'S FIRST**
17 CITY OF FULLERTON, a governmental) **AMENDED COMPLAINT FOR:**
18 entity; FULLERTON POLICE) 1. Violation of California Civil Code §52.1(b)
19 DEPARTMENT, a governmental entity;) 2. Assault
20 MANUEL RAMOS, an individual, and DOES) 3. Battery
21 1 – 50, inclusive,) 4. Negligent Hiring
22) 5. Negligent Supervision
23) 6. Intentional Infliction Emotional Distress
24) 7. Negligent Infliction Emotional Distress
25) 8. False Arrest
26) 9. False Imprisonment
27) 10. Negligence
28) 11. Conversion
) 12. Injunctive Relief
)
) Complaint Filed: 05/14/12
) Trial Date: None
)
)
)

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff, MARK EDWIN WALKER, is an individual residing in Chino Hills, California, and
3 who was patronizing the Albertson's market, located at 4100 N. Harbor Boulevard, Fullerton,
4 California on June 21, 2011.

5 2. Plaintiff is informed and believes and thereon alleges that CITY OF FULLERTON ("CITY"),
6 is a municipality established under the laws of the State of California, and whose jurisdiction
7 where the incident arose, and whose department was responsible for the incident.

8 3. Plaintiff is informed and believes and thereon alleges that FULLERTON POLICE
9 DEPARTMENT ("FPD"), is a department within the CITY, and whose police officer was
10 responsible for the incident.

11 4. Plaintiff is informed and believes and thereon alleges that MANUEL RAMOS ("RAMOS"), at
12 the time of the incident, was an officer within FPD, and whose badge number was 1235, and who
13 committed the offenses described herein.

14 **VENUE**

15 5. The incident described herein and which forms the basis of this Complaint, occurred within
16 the CITY, specifically at 4100 N. Harbor Boulevard, Fullerton, California, and continued to the
17 FPD station, located at 237 W. Commonwealth, Fullerton, California. Thus, the Orange County
18 Superior Court, Central Justice Center, is the proper venue for this matter.

19 **NATURE OF THE CASE**

20 6. This matter involves the excessive use of force under color of authority by RAMOS while on
21 duty for FPD the night of June 21, 2011. Plaintiff alleges violation of his rights under California
22 Constitution. Plaintiff also alleges he was wrongfully detained and without cause was slammed
23 to the ground by RAMOS which caused physical injuries and loss of personal property.

24 **PREVIOUS LAWSUITS & ADMINISTRATIVE RELIEF**

25 7. Plaintiff alleges that he has no previous lawsuit relating to the facts alleged herein. Prior to
26 filing the instant Complaint, Plaintiff served a Notice of Claim pursuant to Government Code
27 §910 et seq. On or about December 2, 2011, CITY responded solely with an acknowledgement
28

1 of the Claim. Plaintiff is informed and believes and herein alleges that CITY failed to respond.
2 As such, CITY denied the claim, and the filing of the Complaint is proper and timely.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of California Civil Code §52.1(b) against all Defendants and**
5 **DOES 1 - 50)**

6 8. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
7 every allegation contained in Paragraphs 1 through 7, inclusive, of Plaintiff's Complaint herein.

8 9. Plaintiff is a citizen of the United States residing in the State of California. As such, Plaintiff
9 enjoys rights secured by the California Constitution. California Civil Code §52.1(b) states: "(b)
10 Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the
11 United States, or of rights secured by the Constitution or laws of this state, has been interfered
12 with, or attempted to be interfered with, as described in subdivision (a), may institute and
13 prosecute in his or her own name and on his or her own behalf a civil action for damages,
14 including, but not limited to, damages under Section 52, injunctive relief, and other appropriate
15 equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured."

16 10. Plaintiff alleges that on the night of June 21, 2011, at approximately 8:00 p.m., Plaintiff, a
17 then 58 year old man, nine days shy of his 59th birthday, and fully disabled, drove his vehicle
18 into the Albertsons market, located at 4100 N. Harbor Blvd., Fullerton, California. His purpose
19 was to obtain doctor prescribed medication. He pulled into one of the parking slots in the market
20 parking.

21 11. Plaintiff pulled into the designated parking slot within the Albertsons store parking lot. He
22 then proceeded into the Albertson's store to obtain the prescription medication.

23 12. After obtaining the doctor prescribed medication, Plaintiff thereafter returned to his vehicle.
24 As plaintiff was walking toward his vehicle, he observed RAMOS and another FPD officer
25 Martinez get out of their patrol vehicle and started to approach Plaintiff. RAMOS made contact
26 with Plaintiff and asked him what he was doing. Plaintiff responded that he was getting
27 prescription medication.
28

1 13. RAMOS, after a lengthy discussion with Plaintiff related to why he was at the store, what he
2 had been doing during the evening, initially offered to assist Plaintiff to return home. Finally
3 after Plaintiff agreed to get assistance to return home. Without any warning, RAMOS began
4 escalating his tone and became increasingly agitated with Plaintiff. At that point, Plaintiff is
5 informed and believes that FPD Officer Martinez had left the scene.

6 14. During the escalating confrontation, Plaintiff repeatedly asked RAMOS why he was being
7 stopped. RAMOS then completely abandoned his offer to assist Plaintiff home via a cab.
8 Eventually, Plaintiff asked RAMOS why was he (RAMOS), much larger in stature than Plaintiff,
9 was increasingly physical towards him.

10 15. Rather than converse with Plaintiff as he had initially, RAMOS, in his agitated state, without
11 any provocation from Plaintiff, picked up Plaintiff and slammed him on the ground and also
12 stomped on his left hand. RAMOS physically placed Plaintiff under arrest and then proceeded to
13 go to the FPD jail.

14 16. During the trip to the FPD jail, Plaintiff advised RAMOS that his wedding band was lost
15 during the arrest. Rather than note the comment, RAMOS simply said to Plaintiff, "Fucking shut
16 up." Plaintiff was booked and was charged with violation of Penal Code §647. While at the
17 FPD jail, the jail personnel assisted Plaintiff in cleaning the scrapes, lacerations and blood that
18 resulted from RAMOS' slamming him to the ground.

19 17. Plaintiff was issued a Citation No. FL908884 and released late in the evening of June 21,
20 2011 or early in the morning of June 22, 2011. Despite the early morning hours of his release,
21 FPD, without any concern for his safety, forced the fully disabled Plaintiff to walk nearly four
22 miles back to his vehicle.

23 18. A criminal case was prosecuted against Plaintiff, Case No. 11NM14042. That matter was
24 summarily dismissed.

25 19. As a result of the use of excessive force by RAMOS, Plaintiff sustained personal injuries on
26 his body and face. The blood from the scrapes and lacerations were cleaned up by the jail
27 personnel from FPD. In addition, it was later determined that Plaintiff sustained a fracture to the
28 4th metacarpal bone on his left hand as a result of being stomped by RAMOS.

1 20. RAMOS violated the rights of Plaintiff pursuant to Civil Code §52.1(b) under both the
2 United States and California Constitutions with his unlawful stop under color of authority and
3 subsequent use of excessive force upon Plaintiff.

4 21. CITY and FPD are also in violation of Civil Code §52.1(b) in that as the employers of
5 RAMOS, they are responsible for the hiring, training and supervision of RAMOS, and the
6 unlawful and violative conduct of RAMOS is imputed on CITY and FPD under the doctrine of
7 *respondeat superior*.

8 22. As a result of the violation, Plaintiff has been damaged and entitled to his damages and cost
9 incurred, including compensatory, economic, non-economic, and attorney's fees.

10 23. As a result of the deliberate and intentional acts of RAMOS, which are outrageous and with
11 wanton disregard, and the subsequent ratification of those acts by CITY and FPD, Plaintiff is
12 also entitled to exemplary damages as a means to discourage the type of conduct described
13 herein.

14 **SECOND CAUSE OF ACTION**

15 **(Assault against all Defendants and
16 DOES 1 - 50)**

17 24. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
18 every allegation contained in Paragraphs 1 through 23, inclusive, of Plaintiff's Complaint herein.

19 25. Under the California Tort Claims Act, all claims against a governmental entity such as
20 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
21 public entity is liable for the tortious acts of an employee if the act by the employee apart from
22 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
23 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
24 person.

25 26. When Plaintiff observed RAMOS approaching him, he reasonably believed that RAMOS
26 would touch him in a harmful or offensive manner as he was a police officer and was under the
27 color of authority. Plaintiff was detained and RAMOS did indeed under color of authority
28 threaten to touch Plaintiff through the pat down.

1 27. Plaintiff did not consent to the touching as he was complying with RAMOS' commands in
2 his capacity as a FPD officer. Non-compliance was not an option. Plaintiff was harmed in that
3 he was physically assaulted and then was slammed to the ground by RAMOS.

4 28. By escalating the confrontation with Plaintiff, without any provocation by Plaintiff, RAMOS
5 had the intent to inflict a harmful touching upon Plaintiff. Under Government Code Section,
6 820(a) a cause of action for assault is proper in that a private person would have been liable for
7 the same conduct.

8 29. Under Government Code Section 814.2(a), CITY and FPD are also liable for assault in that
9 as the employers of RAMOS. They are responsible for the hiring, training and supervision of
10 RAMOS, and the unlawful and violative conduct of RAMOS is imputed on CITY and FPD
11 under the doctrine of *respondeat superior* and Section 814.2(a).

12 30. As a result of RAMOS' excessive force, Plaintiff sustained personal injuries on his body and
13 face. The blood from the scrapes and lacerations were cleaned up by the jail personnel from
14 FPD. In addition, it was later determined that Plaintiff sustained a fracture to the 4th metacarpal
15 bone on his left hand as a result of being stomped by RAMOS. Plaintiff has been damaged and
16 entitled to his damages and cost incurred, including compensatory, economic, and non-
17 economic.

18 31. As a result of the deliberate and intentional acts of RAMOS, which were outrageous and with
19 wanton disregard, and the ratification of those acts by CITY and FPD, Plaintiff is also entitled to
20 exemplary damages as a means to discourage the type of conduct described herein.

21 **THIRD CAUSE OF ACTION**

22 **(Battery against all Defendants and**
23 **DOES 1 - 50)**

24 32. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
25 every allegation contained in Paragraphs 1 through 31, inclusive, of Plaintiff's Complaint herein.

26 33. Under the California Tort Claims Act, all claims against a governmental entity such as
27 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
28 public entity is liable for the tortious acts of an employee if the act by the employee apart from
the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)

1 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
2 person.

3 34. Plaintiff did not consent to the touching as he was complying with RAMOS in his capacity as
4 a FPD officer. Non-compliance was not an option. Plaintiff was harmed in that he was made to
5 be in the police prone position on the car and then was slammed to the ground by RAMOS.

6 35. By escalating the confrontation with Plaintiff, without any provocation by Plaintiff, RAMOS
7 did indeed inflict a harmful touching upon Plaintiff. Under Government Code Section, 820(a) a
8 cause of action for assault is proper in that a private person would have been liable for the same
9 conduct.

10 36. Under Government Code Section 814.2(a), CITY and FPD are also liable for assault in that
11 as the employers of RAMOS, they are responsible for the hiring, training and supervision of
12 RAMOS, and the unlawful and violative conduct of RAMOS is imputed on CITY and FPD
13 under the doctrine of *respondeat superior* and Section 814.2(a).

14 37. As a result of RAMOS' use of excessive force, Plaintiff sustained personal injuries on his
15 body and face. The blood from the scrapes and lacerations were cleaned up by the jail personnel
16 from FPD. In addition, it was later determined that Plaintiff sustained a fracture to the 4th
17 metacarpal bone on his left hand as a result of being stomped by RAMOS. Plaintiff has been
18 damaged and entitled to his damages and cost incurred, including compensatory, economic, and
19 non-economic.

20 38. As a result of the deliberate and intentional acts of RAMOS, which were outrageous and with
21 wanton disregard, and the ratification of those acts by CITY and FPD, Plaintiff is also entitled to
22 exemplary damages as a means to discourage the type of conduct described herein.

23 **FOURTH CAUSE OF ACTION**

24 **(Negligent Hiring against CITY,
25 FPD and DOES 1 - 50)**

26 39. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
27 every allegation contained in Paragraphs 1 through 38, inclusive, of Plaintiff's Complaint herein.

28 40. RAMOS had a preceding custom and practice to harass citizens and use excessive force.
CIYY and FPD had knowledge or should have had knowledge of such conduct by RAMOS in

1 another law enforcement agency prior to hiring RAMOS to FPD if they conducted a proper
2 background check and psychological evaluation. This failure by CITY and FPD caused an unfit
3 officer to patrol the streets of Fullerton.

4 41. As a result, RAMOS was allowed to be on duty on the night of June 21, 2011, wherein he
5 caused harm to Plaintiff through his unlawful conduct. By hiring RAMOS, CITY and FPD's
6 negligence in hiring RAMOS was a substantial factor in the damages sustained by Plaintiff.

7 42. As a result of hiring an unfit officer, Plaintiff sustained personal injuries on his body and
8 face. The blood from the scrapes and lacerations were cleaned up by the jail personnel from
9 FPD. In addition, it was later determined that Plaintiff sustained a fracture to the 4th metacarpal
10 bone on his left hand as a result of being stomped by RAMOS. Plaintiff has been damaged and
11 entitled to his damages and cost incurred, including compensatory, economic, and non-
12 economic.

13 **FIFTH CAUSE OF ACTION**

14 **(Negligent Supervision against CITY, 15 FPD and DOES 1 - 50)**

16 43. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
17 every allegation contained in Paragraphs 1 through 45, inclusive, of Plaintiff's Complaint herein.

18 44. RAMOS had a custom and practice to harass citizens and use excessive force. CITY and
19 FPD had knowledge or should have had knowledge of such conduct prior to hiring RAMOS to
20 FPD. CITY and FPD had a duty to properly train its officers in the use of force upon citizens
21 when contact is made. They also had a duty to properly train its officers in dealing with the
22 public, knowledge of the rights of citizens, proper arrest technique. This failure by CITY and
23 FPD caused an unfit and improperly trained officer to patrol the streets of Fullerton.

24 45. As a result, RAMOS was allowed to be on duty on the night of June 21, 2011, wherein he
25 caused harm to Plaintiff through his unlawful conduct. By failing to properly supervise
26 RAMOS, CITY and FPD's negligence in their supervision of RAMOS was a substantial factor in
27 the damages sustained by Plaintiff.

28 46. As a result of allowing an improperly supervised officer to patrol the streets, Plaintiff
sustained personal injuries on his body and face. The blood from the scrapes and lacerations

1 were cleaned up by the jail personnel from FPD. In addition, it was later determined that
2 Plaintiff sustained a fracture to the 4th metacarpal bone on his left hand as a result of being
3 stomped by RAMOS. Plaintiff has been damaged and entitled to his damages and cost incurred,
4 including compensatory, economic, and non-economic.

5 **SIXTH CAUSE OF ACTION**

6 **(Intentional Infliction of Emotional Distress against**
7 **all Defendants and DOES 1 - 50)**

8 47. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
9 every allegation contained in Paragraphs 1 through 46, inclusive, of Plaintiff's Complaint herein.

10 48. Under the California Tort Claims Act, all claims against a governmental entity such as
11 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
12 public entity is liable for the tortious acts of an employee if the act by the employee apart from
13 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
14 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
15 person. Here the causes of action, absent the Tort Claims Act, would be proper as the conduct of
16 RAMOS would give rise to the cause of action if he were a private citizen.

17 49. The conduct of RAMOS, under the color of authority, in escalating the confrontation without
18 any provocation by Plaintiff, by grabbing Plaintiff and slamming him to the ground and
19 stomping on his hand was outrageous, reckless and in wanton disregard, and does not conform to
20 the standard of conduct by police officers and the public in general.

21 50. By having the other officer not involved in the physical confrontation and not assisting
22 RAMOS in any arrest, RAMOS intent was to accost and harass Plaintiff which was his pattern of
23 approaching what he deemed unworthy citizens. RAMOS intent was to inflict harm upon
24 Plaintiff. RAMOS knew that his harassment and physical violence toward Plaintiff would cause
25 severe emotional distress. Ramos' conduct was outrageous and done with the reckless disregard
26 to the well-being of Plaintiff.

27 51. In addition to his physical injuries, Plaintiff has suffered severe emotional trauma. Instead
28 of simply driving to Albertson's and picking up doctor prescribed medication and then leaving,

1 he was accosted, harassed, slammed to the ground, stomped on the hand, arrested, booked and
2 forced to walk nearly four miles back to his vehicle.

3 52. RAMOS' outrageous and reckless conduct was a substantial factor in the damages sustained
4 by Plaintiff.

5 53. Under Government Code Section 814.2(a), CITY and FPD are also liable for intentional
6 infliction of emotional distress in that as the employers of RAMOS, they are responsible for the
7 hiring, training and supervision of RAMOS, and the unlawful and violative conduct of RAMOS
8 is imputed on CITY and FPD under the doctrine of *respondeat superior* and Section 814.2(a).

9 54. As a result of RAMOS' outrageous and reckless conduct, Plaintiff sustained personal injuries
10 on his body and face. The blood from the scrapes and lacerations were cleaned up by the jail
11 personnel from FPD. In addition, it was later determined that Plaintiff sustained a fracture to the
12 4th metacarpal bone on his left hand as a result of being stomped by RAMOS. Plaintiff has been
13 damaged and entitled to his damages and cost incurred, including compensatory, economic, and
14 non-economic.

15 55. As a result of the deliberate and intentional acts of RAMOS, and the ratification of those acts
16 by CITY and FPD, Plaintiff is also entitled to exemplary damages as a means to discourage the
17 type of conduct described herein.

18 **SEVENTH CAUSE OF ACTION**

19 **(Negligent Infliction of Emotional Distress against**
20 **all Defendants and DOES 1 - 50)**

21 56. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
22 every allegation contained in Paragraphs 1 through 55, inclusive, of Plaintiff's Complaint herein.

23 57. Under the California Tort Claims Act, all claims against a governmental entity such as
24 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
25 public entity is liable for the tortious acts of an employee if the act by the employee apart from
26 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
27 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
28 person. Here the causes of action, absent the Tort Claims Act, would be proper as the conduct of
RAMOS would give rise to the cause of action if he were a private citizen.

1 58. The conduct of RAMOS, under the color of authority, and without any provocation by a 58
2 year old man, in physically Plaintiff and slamming him to the ground and stomping on his hand
3 was at a minimum negligent and does not conform to the standard of conduct by police officers
4 and the public in general.

5 59. RAMOS' intent was to inflict harm upon Plaintiff. RAMOS knew or should have known
6 that his harassment and physical violence toward Plaintiff would cause severe emotional distress.
7 Ramos' conduct was at a minimum negligent in disregard to the well-being of Plaintiff.

8 60. In addition to his physical injuries, Plaintiff has suffered severe emotional trauma. Instead
9 of simply driving to Albertson's and picking up doctor prescribed medication and then leaving,
10 he was accosted, harassed, slammed to the ground, and stomped on the hand.

11 61. RAMOS' negligent conduct was a substantial factor in the damages sustained by Plaintiff.

12 62. Under Government Code Section 814.2(a), CITY and FPD are also liable for negligent
13 infliction of emotional distress in that as the employers of RAMOS, they are responsible for the
14 hiring, training and supervision of RAMOS, and the unlawful and violative conduct of RAMOS
15 is imputed on CITY and FPD under the doctrine of *respondeat superior* and Section 814.2(a).

16 63. As a result of RAMOS' negligent conduct, in addition to severe emotional distress,
17 Plaintiff sustained personal injuries on his body and face. The blood from the scrapes and
18 lacerations were cleaned up by the jail personnel from FPD. In addition, it was later determined
19 that Plaintiff sustained a fracture to the 4th metacarpal bone on his left hand as a result of being
20 stomped by RAMOS. Plaintiff has been damaged and entitled to his damages and cost incurred,
21 including compensatory, economic, and non-economic.

22 **EIGHTH CAUSE OF ACTION**

23 **(False Arrest against all Defendants and**
24 **DOES 1 - 50)**

25 64. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
26 every allegation contained in Paragraphs 1 through 63, inclusive, of Plaintiff's Complaint herein.

27 65. Under the California Tort Claims Act, all claims against a governmental entity such as
28 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
public entity is liable for the tortious acts of an employee if the act by the employee apart from

1 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
2 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
3 person. Here the causes of action, absent the Tort Claims Act, would be proper as the conduct of
4 RAMOS would give rise to the cause of action if he were a private citizen.

5 66. Plaintiff was unlawfully arrested by RAMOS subsequent to the beat down by RAMOS.
6 Plaintiff was charged with violation of Penal Code §647.

7 67. The entire conduct by RAMOS was not reasonable. RAMOS observed Plaintiff and
8 approached him when returning to his vehicle. The other FPD officer was either not in the area
9 where the conduct was made or had left the scene prior to the escalation of the confrontation.
10 RAMOS simply saw a "mark" that he could harass and intimidate. Upon answering his inquiry
11 as to what he was doing, i.e., purchasing doctor prescribed medication, RAMOS offered to assist
12 plaintiff home by calling a cab. After Plaintiff had accepted the offer, RAMOS without
13 provocation, became increasingly agitated and abruptly refused to assist Plaintiff as he offered.
14 After many requests by Plaintiff to accept the offer, RAMOS escalated the physicality of the
15 confrontation which ultimately led to RAMOS, a large man, aggressively grabbing a 58 disabled
16 man and slamming him to the ground and stomped on his left hand..

17 68. In addition, RAMOS had no probable cause to believe a violation Penal Code §647 occurred.
18 The charge was summarily dismissed by the criminal court. Plaintiff was unreasonably held at
19 the Albertson's parking lot and after unreasonably harassing Plaintiff, RAMOS sought cover and
20 arrested Plaintiff on a violation that could not pass the initial criminal court appearance.

21 69. RAMOS' intent was to inflict harm upon Plaintiff. RAMOS did want another officer to view
22 his unlawful conduct. He had no reasonable suspicion or probable cause to detain Plaintiff.

23 70. As a result of RAMOS' violation of Plaintiff's constitutional rights, Plaintiff sustained
24 personal injuries on his body and face. The blood from the scrapes and lacerations were cleaned
25 up by the jail personnel from FPD. In addition, it was later determined that Plaintiff sustained a
26 fracture to the 4th metacarpal bone on his left hand as a result of being stomped by RAMOS.

27 Plaintiff has been damaged and entitled to his damages and cost incurred, including
28 compensatory, economic, and non-economic.

1 71. The unlawful conduct and arrest by RAMOS was a substantial factor in the damages
2 sustained by Plaintiff.

3 72. Under Government Code Section 814.2(a), CITY and FPD are also liable for false arrest in
4 that as the employers of RAMOS, they are responsible for the hiring, training and supervision of
5 RAMOS, and the unlawful and violative conduct of RAMOS is imputed on CITY and FPD
6 under the doctrine of *respondeat superior* and Section 814.2(a).

7 73. As a result of the deliberate and intentional acts of RAMOS, and the ratification of those acts
8 by CITY and FPD, Plaintiff is also entitled to exemplary damages as a means to discourage the
9 type of conduct described herein.

10 **NINTH CAUSE OF ACTION**

11 **(False Imprisonment against all Defendants and**
12 **DOES 1 - 50)**

13 74. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
14 every allegation contained in Paragraphs 1 through 73, inclusive, of Plaintiff's Complaint herein.

15 75. Under the California Tort Claims Act, all claims against a governmental entity such as
16 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
17 public entity is liable for the tortious acts of an employee if the act by the employee apart from
18 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
19 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
20 citizen.

21 76. Plaintiff was placed in the back of RAMOS' patrol vehicle after his arrest. Plaintiff was
22 falsely imprisoned since all the conduct of RAMOS that lead up to the arrest was unreasonable
23 and without probable cause. It was manufactured in ordered to justify the stop and beat down.

24 77. Plaintiff was taken to FPD jail and processed and was not release until the early morning
25 hours the following day.

26 78. FPD delayed in processing Plaintiff by failing to advise him of the nature of the charges
27 against him. FPD unreasonably held Plaintiff in its jail facility. Plaintiff did not consent to the
28 delay. However, after receiving a beat down by FPD, prior to being brought to FPD jail facility,
Plaintiff did not want speak up and his silence was not a waiver of consent.

1 79. RAMOS and FPD delay in processing Plaintiff was the substantial factor in Plaintiff's
2 damages.

3 80. As a result of the conduct of RAMOS and delay of FPD, Plaintiff has suffered severe anxiety
4 and emotional distress. RFP forced a 58 year old man, fully disabled, to walk nearly four miles
5 in the early morning hours back to his care with FPD having no concern for his safety.

6 81. Under Government Code Section 814.2(a), CITY and FPD are also liable for false
7 imprisonment in that as the employers of RAMOS, they are responsible for the hiring, training
8 and supervision of RAMOS, and the unlawful and violative conduct of RAMOS is imputed on
9 CITY and FPD under the doctrine of *respondeat superior* and Section 814.2(a). In addition, it
10 was in CITY and FPD's facility.

11 **TENTH CAUSE OF ACTION**

12 **(Negligence against all Defendants and**
13 **DOES 1 - 50)**

14 82. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
15 every allegation contained in Paragraphs 1 through 81, inclusive, of Plaintiff's Complaint herein.

16 83. Under the California Tort Claims Act, all claims against a governmental entity such as
17 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
18 public entity is liable for the tortious acts of an employee if the act by the employee apart from
19 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
20 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
21 citizen.

22 84. As a police officer, RAMOS has duty to protect and serve the public at large of which
23 Plaintiff is a member. Moreover, CITY and FPD have a duty to hire competent officers, and
24 train them properly so they can protect and serve the general public.

25 85. RAMOS breached that duty to Plaintiff by unlawfully, without reasonable suspicion or
26 probable cause, made contact with Plaintiff, detained him, physically and aggressively grab him
27 and slammed Plaintiff to the ground and stomping on his left hand.

28 86. CITY and FPD breached their duty in that they knowingly hired a violent officer, failed to
train him properly and allowed him to patrol the streets.

1 87. As a result of Defendants' negligence, Plaintiff sustained personal injuries on his body and
2 face. The blood from the scrapes and lacerations were cleaned up by the jail personnel from
3 FPD. In addition, it was later determined that Plaintiff sustained a fracture to the 4th metacarpal
4 bone on his left hand as a result of being stomped by RAMOS. Plaintiff has been damaged and
5 entitled to his damages and cost incurred, including compensatory, economic, and non-
6 economic.

7 **ELEVENTH CAUSE OF ACTION**

8 **(Conversion against all Defendants and**
9 **DOES 1 - 50)**

10 88. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
11 every allegation contained in Paragraphs 1 through 87, inclusive, of Plaintiff's Complaint herein.

12 89. Under the California Tort Claims Act, all claims against a governmental entity such as
13 Defendants CITY and FPD arise from statute. Government Code Section 814.2 (a) states that a
14 public entity is liable for the tortious acts of an employee if the act by the employee apart from
15 the Tort Claims Act, would give rise to a cause of action. Government Code Section 820(a)
16 states that a public employee such as RAMOS is liable for his acts to the same extent as a private
17 citizen.

18 90. On the night of June 21, 2011, Plaintiff was wearing his wedding band, which not only had a
19 high sentimental value, but a high monetary value as well. During the violent arrest, his wedding
20 band came off. Plaintiff attempted to advise RAMOS of this fact, but RAMOS yelled a profanity
21 at Plaintiff.

22 91. RAMOS and other jail personnel stated that Plaintiff did not have the ring in their personal
23 belonging inventory. Plaintiff could not locate the ring upon his return to his vehicle.

24 92. RAMOS' unlawful conduct in violently arresting a 58 year old fully disabled man was the
25 substantial factor in the loss of the wedding band.

26 93. Under Government Code Section 814.2(a), CITY and FPD are also liable for false
27 imprisonment in that as the employers of RAMOS, they are responsible for the tortious acts of its
28 employee, and the unlawful and violative conduct of RAMOS is imputed on CITY and FPD
under the doctrine of *respondeat superior* and Section 814.2(a).

1 **TWELFTH CAUSE OF ACTION**

2 **(Injunctive Relief against CITY,**
3 **FPD and DOES 1 - 50)**

4 94. Plaintiff incorporates by reference and realleges the same as if fully set forth herein, each and
5 every allegation contained in Paragraphs 1 through 93, inclusive, of Plaintiff's Complaint herein.

6 95. RAMOS' conduct is part of a pattern within the FPD that not only is condoned but
7 encouraged. Further, CITY and FPD hiring, training and supervision of its officers is not within
8 any reasonable law enforcement agency's standards or policies.

9 96. Plaintiff seeks injunctive relief to prohibit FPD officers from the use of excessive force and
10 to direct CITY and FPD to revise and improve its hiring, training and supervision practices.

11 **PRAYER FOR RELIEF**

12 **On the First Cause of Action**

- 13 1. For economic damages in the sum according to proof;
14 2. For non-economic damages
15 3. For exemplary damages;
16 4. For attorney's fees as permitted by statute and/or law;

17 **On the Second Cause of Action**

- 18 1. For economic damages in the sum according to proof;
19 2. For non-economic damages
20 3. For exemplary damages;

21 **On the Third Cause of Action**

- 22 1. For economic damages in the sum according to proof;
23 2. For non-economic damages
24 3. For exemplary damages;

25 **On the Fourth Cause of Action**

- 26 1. For economic damages in the sum according to proof;
27 2. For non-economic damages

28 **On the Fifth Cause of Action**

1. For economic damages in the sum according to proof;

1 2. For non-economic damages

2 **On the Sixth Cause of Action**

3 1. For economic damages in the sum according to proof;

4 2. For non-economic damages

5 3. For exemplary damages;

6 **On the Seventh Cause of Action**

7 1. For economic damages in the sum according to proof;

8 2. For non-economic damages

9 **On the Eighth Cause of Action**

10 1. For economic damages in the sum according to proof;

11 2. For non-economic damages

12 **On the Ninth Cause of Action**

13 1. For economic damages in the sum according to proof;

14 2. For non-economic damages

15 3. For exemplary damages;

16 **On the Tenth Cause of Action**

17 1. For economic damages in the sum according to proof;

18 2. For non-economic damages

19 **On the Eleventh Cause of Action**

20 1. For economic damages in the sum according to proof;

21 2. For non-economic damages

22 **On the Twelfth Cause of Action**

23 1. For injunctive relief request

24 2. For attorney's fees as permitted by statute and/or law;

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On All Causes of Action

1. For costs of suit; and
2. For such other and further relief as the Court deems just and proper.

DATED: October 16, 2012

LAW OFFICES OF RUSSELL R. ARENS



BY:

RUSSELL R. ARENS
RICHARD E. NUSBAUM
Counsel for Plaintiff
MARK EDWIN WALKER

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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 years and not a party to the within action; my business address is 3020 Old Ranch Parkway, Suite 300, Seal Beach, California 90740.

On October 16, 2012, I served the foregoing document described as: **MARK EDWIN WALKER'S FIRST AMENDED COMPLAINT**. This document was served on the interested party or parties in this action by placing a true copy thereof in sealed envelopes, and addressed as noted on the attached mailing list.

BY MAIL: I am familiar with our firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Moreno Valley, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one working day after the date of deposit for mailing in this declaration.

VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the facsimile number as noted in the attached mailing list. This document was transmitted by facsimile and transmission reported complete without error.

BY PERSONAL DELIVERY: I caused to be delivered such envelope by hand to the offices of the addressees noted in the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 16, 2012, at Moreno Valley, California.



RICHARD E. NUSBAUM

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Mark Edwin Walker v. City of Fullerton, et al.
Orange County Superior Court – Central Justice Center
Case No. 30-2012-00569087-CU-CR-CJC

SERVICE LIST

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