

1 **Thomas E. Beck, Esq.** (SBN 81557)
THE BECK LAW FIRM
2 10377 Los Alamitos Boulevard
Los Alamitos, California 90720
3 Telephone No. (562) 795-5835
Facsimile No. (562) 795-5821
4 Email: becklaw@earthlink.net

5 Attorneys for Plaintiff ANTONIO ORTIZ

6 **David Haas, Esq.** (SBN 165,349)
LAW OFFICES OF DAVID HAAS
7 6285 E. Spring St. Suite 210
Long Beach, California 90808
8 Telephone: (714) 491-3720
9 Fax: (714) 491-3721
Email: davidhaas@earthlink.net

10 Attorneys for Plaintiff LUIZ ORTIZ

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 ANTONIO ORTIZ, LUIZ ORTIZ,)
16 Plaintiffs,)
17 v.)

CV 16-01499 DOC(DFMx).

18 **1st AMENDED COMPLAINT**
FOR DAMAGES

19 CITY OF FULLERTON, BRYAN)
BYBEE# 1398, individually and as a peace)
officer, MATTHEW MARTINEZ #1348,)
20 individually and as a peace officer,)
EMMANUEL PULIDO #1327, individually)
21 and as a peace officer, BILLY PHU)
#1332, individually and as a peace officer,)
22 DOES 1-10, inclusive.)

- 1. Violation of Civil Rights (42 U.S.C. §1983)
- 2. Monell Claim (42 U.S.C. §1983)

23 Defendants.)
24

DEMAND FOR JURY TRIAL

25 **JURISDICTION**

26 1. Jurisdiction of this court is invoked under 28 U.S.C. §§ 1343, (1), (2),
27 (3) and (4). This action at law for money damages arises under Title 42 U.S.C.
28 Section 1983 and the United States Constitution, the laws of the State of California

1 and common law principles to redress a deprivation under color of state law of rights,
2 privileges and immunities secured to Plaintiffs by said statutes, and by the First,
3 Fourth, and Fourteenth Amendments of the United States Constitution.

4
5 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 2. At all times herein mentioned, Plaintiffs were residents of the County
7 of Orange, State of California.

8
9 3. At all times herein mentioned, Defendants BRYAN BYBEE# 1398,
10 MATTHEW MARTINEZ #1348, EMMANUEL PULIDO #1327, BILLY PHU
11 #1332, and DOES 1-10, inclusive were and are employees of the FULLERTON
12 POLICE DEPARTMENT.

13
14 4. Defendant CITY OF FULLERTON (hereinafter referred to as "CITY")
15 is and at all times herein mentioned has been a public entity and an incorporated
16 county duly authorized and existing as such in and under the laws of the State of
17 California; and at all times herein mentioned, Defendant CITY has possessed the
18 power and authority to adopt policies and prescribe rules, regulations and practices
19 affecting the operation of the FULLERTON POLICE DEPARTMENT, and
20 particularly said Department's Patrol, Internal Investigations and Training and
21 Personnel Divisions and other operations and subdivisions presently unidentified to
22 Plaintiffs, and their tactics, methods, practices, customs and usages.

23
24 5. Plaintiffs are informed and believe and thereon alleges that each of the
25 Defendants designated as a DOE is intentionally and otherwise responsible in some
26 manner for the events and happenings herein referred to, and thereby proximately
27 caused injuries and damages as herein alleged. The true names and capacities of
28 DOES 1 through 10, inclusive, and each of them, are not now known to Plaintiffs

1 who therefore sues said Defendants by such fictitious names. Plaintiff will amend
2 this Complaint in accordance with FRCP 15 and California Code of Civil Procedure
3 Section 474 to show their true names and capacities when same have been
4 ascertained.

5
6 6. Defendants, and each of them, did the acts and omissions hereinafter
7 alleged in willful bad faith and with knowledge that their conduct violated well
8 established law.

9
10 7. The incidents complained of began in the City of Fullerton July 4, 2011.
11 On said date, plaintiff Antonio Ortiz, together with his brothers Michael and plaintiff
12 Luiz and Michael's girlfriend Marissa Benavidez entered Bourbon Street, a
13 restaurant and bar, at about 10:30pm. A disturbance broke out inside at
14 approximately 12:45 AM. Patron Michael Wimberly grabbed and shoved Plaintiff
15 Antonio Ortiz outdoors through a back patio door where Antonio spotted Luiz,
16 Michael and Marissa. Michael ran southbound across Santa Fe Street, leaving
17 Antonio, Luiz and Marissa behind. As these three walked eastbound toward Pomona
18 Street on the north sidewalk of E. Santa Fe Street, a police car driven by defendant
19 officer Bryan Bybee raced toward them speaking on his public address system stating
20 "Guy in white shirt, stop." Luiz was wearing a white shirt and complied. Defendant
21 Bybee parked his car on Santa Fe nearby Luiz. Officer Bybee quickly exited his
22 vehicle with a baton in hand, rushed past Luiz toward Antonio from behind, and
23 without saying a word, intentionally struck Antonio with his baton without cause or
24 legal justification, hitting Antonio's head/face. This blow caused Antonio to collapse
25 to the ground and caused injuries and bleeding. Bybee continued to strike Antonio
26 with his baton while Antonio cried out to stop while defenseless on the ground. Luiz
27 and Marissa protested, yelling at Bybee to stop. Luiz attempted to shield Antonio
28 from Bybee's blows by extending his arms above Antonio's body without touching

1 Bybee. Bybee lowered to a knee to get around Luiz's defenses, continuing to assault
2 Antonio and refused to stop.

3 Defendant Officers Pulido, Martinez and Phu approached Bybee, Antonio and
4 Luiz, where they witnessed Bybee hitting Antonio and heard Luiz and Marissa
5 pleading/protesting against Bybee to stop his assault. Pulido, Martinez and Phu did
6 nothing to intercede, verbally or physically although they could. Instead Pulido,
7 Martinez and Phu began striking Luiz using their sticks for no lawful reason. Luiz
8 pleaded with these defendants to stop and assumed a "surrender" position to
9 communicate to the defendants Luiz posed them no threat. As this was occurring,
10 Luiz was tackled to the ground from behind by an unidentified officer. Martinez
11 turned away from Luiz and intentionally struck Antonio with his baton while
12 Antonio was lying helplessly on the ground. While down, Antonio felt baton blows
13 to his legs, thighs and ribs.

14 Witnessing these assaults from across Santa Fe Street, Michael Ortiz
15 approached shouting/protesting at the officers to stop what they were doing.
16 Defendant Officer Phu and Martinez turned away from Luiz and Antonio and began
17 striking Michael with their batons, brought Michael to his knees and handcuffed him.

18 Once Antonio, Luiz and Michael were handcuffed all three were put into radio
19 cars and driven to the Fullerton PD without being told they were under arrest or why,
20 in violation of Penal Code section 841.

21 At the Fullerton police station Antonio complained to anyone who could hear
22 that he's hurt and wanted medical attention. The blows to his legs made it difficult
23 to walk without pain and the bleeding from his facial wounds continued. An FPD
24 Sergeant (Rowe) came to his cell an hour and a half later to talk to Antonio. Antonio
25 told Sgt. Rowe what happened. Sgt Rowe immediately showed his bias and took his
26 subordinates side arguing with Antonio that "that's not what happened."

27 Unbeknown at the time to Plaintiffs, and consistent with a deeply entrenched
28 code of silence a long standing custom and practice of the Fullerton Police

1 Department to falsely accuse victims of police abuse and brutality with crimes of
2 assault, resistance and battery upon officers, the defendant officers reached a meeting
3 of minds and conspired to cover up and justify their force and impact weapon uses
4 against Plaintiffs. They commiserated at the scene to come up with a plausible story
5 justifying plaintiffs' injuries and baton blows and had communicated their false self-
6 serving accounts to Sgt. Rowe prior to Rowe's interviews with Plaintiffs. In
7 furtherance of their conspiracy to conceal their wrongdoing and deprivation of
8 Plaintiffs constitutional rights, defendants falsely claimed Bybee never had a baton
9 or struck Antonio with one. Defendants falsely claimed they witnessed Bybee being
10 aggressed by Antonio after Bybee stepped from his patrol car and that Antonio was
11 shoved to the ground by Bybee using only his hands. Defendants falsely claimed
12 Luiz grabbed onto and held Bybee warranting baton blows to break Luiz' hold on
13 Bybee. Defendants falsely claimed Michael rushed across Santa Fe Street and tackled
14 Bybee to the ground, thereby warranting the batons blows inflicted on Michael as
15 well as Michael's arrest. Defendants falsely claimed Bybee laid on top of Antonio
16 on the ground, falsely claiming Antonio was throwing punches at Bybee from below.
17 These knowingly false representations were committed by them to their arrest and
18 crime reports, use of force reports, use of force interviews, probable cause
19 declarations, preliminary hearing testimony and trial testimony, all in furtherance of
20 their conspiracy.

21 Defendants materially false reports omitting what defendants knew were true
22 and exculpatory facts pertaining to Antonio, Luiz and Michael were presented to the
23 Orange County District Attorney. Defendants written reports were taken at face value
24 as true and correct by a filing deputy resulting in the filing of felony complaint No.
25 12NF2149 in the Orange County Superior Court accusing Plaintiffs of using force
26 and violence and threats of force and violence against defendants in violation of
27 Penal Code section 69. Plaintiffs attended court as required on August 11th 2011 and
28 were initially told no charges had been filed. However, on July 20, 2012, Antonio

1 and Luiz received letters from the District Attorney advising them there had indeed
2 been a felony filing and directing them to appear at their felony arraignments.
3 Plaintiffs demanded a jury trial which ultimately resulted in complete exoneration by
4 acquittal of Luiz on March 15, 2016 and dismissal of charges against Antonio by the
5 District Attorney July 1, 2016 following an 11-1 not guilty mistrial.

6 Plaintiff Antonio Ortiz had filed a personnel complaint with the Fullerton
7 Police Department's Chief of Police detailing the wrongful conduct to himself and
8 family members at the hands of Fullerton PD officers. Although required by
9 California Penal Code section 832.5 and FPD policy, no actual internal
10 administrative complaint investigation was undertaken in response to Antonio's
11 complaint. As a result, no defendant and culpable FPD employee has suffered the
12 just consequences of his violent and corrupt misconduct, thereby shielding said
13 defendants from accountability for their felonious wrongdoing all in accordance with
14 FPD custom, policy and practice.

15
16 8. By reason of the filing of the criminal prosecution aforesaid, the
17 applicable statutes of limitations were tolled between July 4, 2011 and July 1, 2016
18 by operation of California Government Code section 945.3.

19
20 **FIRST CAUSE OF ACTION**

21 **(VIOLATION OF FEDERAL CIVIL RIGHTS -UNREASONABLE**
22 **SEARCH & SEIZURES, EXCESSIVE FORCE, FALSE ARREST,**
23 **JUDICIAL DECEPTION, MALICIOUS PROSECUTION, DUE**
24 **PROCESS, EQUAL PROTECTION AND CONSPIRACY - 42**
25 **U.S.C. § 1983)**

26 **(By Plaintiffs Against All Individual Defendants)**

27 9. Plaintiffs refer to and replead each and every allegation contained in
28 paragraphs 1 through 8 of this complaint, and by this reference incorporates the same

1 herein and makes each a part hereof.
2

3 10. This action at law for money damages arises under Title 42 U.S.C. §
4 1983 and the United States Constitution, the laws of the State of California and
5 common law principles to redress a deprivation under color of state law of rights,
6 privileges and immunities secured to Plaintiffs by said statutes, and by the Fourth,
7 and Fourteenth Amendments of the United States Constitution.
8

9 11. Commencing at or about the aforementioned date and place, without
10 lawful cause or justification, and acting under color of law, Defendants BRYAN
11 BYBEE# 1398, MATTHEW MARTINEZ #1348, EMMANUEL PULIDO #1327,
12 BILLY PHU #1332, and DOES 1-10 and each of them, intentionally and maliciously
13 deprived Plaintiffs of rights secured to them against unreasonable searches and
14 seizures, retaliatory police action and unjustified force by the Fourth, and Fourteenth
15 Amendments to the United States Constitution.
16

17 12. Defendants, and each of them, entered into a meeting of minds to falsely
18 accuse plaintiffs of crimes known by defendants not to have been committed by
19 plaintiffs, to wit, violation of Penal Code section 69, carried out and perpetrated the
20 mutually supportive unlawful conspiracy to deprive Plaintiffs their rights against
21 unreasonable searches and seizures, due process, a fair trial and freedom from
22 groundless criminal prosecutions by participating in a mutually supportive, corrupt
23 effort to fraudulently convict plaintiffs on false charges manufactured and supported
24 by defendants. Defendants, and each of them, engaged in multiple acts in furtherance
25 of said conspiracy by preparing materially false crime and arrest reports, probable
26 cause declarations, booking records, use of force interviews, use of force reports,
27 false and misleading statements to supervisors, deputy district attorneys, judicial
28 officers and trial jurors.

1 13. As a proximate result of the aforesaid acts and omissions of Defendants,
2 and each of them, Plaintiffs sustained great physical and mental pain, disfigurement
3 together with shock to their nervous systems, great fear, anxiety, torment,
4 degradation and emotional distress.

5
6 14. By reason of the aforementioned acts and omissions of Defendants, and
7 each of them, Plaintiff incurred medical, therapeutic, legal, investigative and other
8 expenses in an amount as proved.

9
10 15. In addition, by reason of the aforementioned acts and omissions of
11 Defendants, and each of them, Plaintiffs were kept from attending to their usual
12 occupations, and have suffered loss and impairment of earnings and employment
13 opportunities all to their damage in an amount as proved.

14
15 16. By reason of the aforementioned acts of Defendants, and each of them,
16 Plaintiff was compelled to secure the services of an attorney at law to redress the
17 wrongs hereinbefore mentioned and by virtue thereof, Plaintiff is indebted and liable
18 for attorneys fees.

19
20 17. The aforementioned acts and omissions of Defendants were committed
21 by each of them knowingly, wilfully and maliciously, with the intent to harm, injure,
22 vex, harass and oppress Plaintiffs with conscious disregard of Plaintiffs
23 constitutional rights and by reason thereof, Plaintiffs seeks punitive and exemplary
24 damages from Defendants, and each of them, (except Defendant CITY) in an amount
25 as proved.

26 **SECOND CAUSE OF ACTION**

27 **(UNLAWFUL CUSTOM AND PRACTICE UNDER SECTION 1983)**

28 **(By Plaintiffs Against Defendant City)**

1 18. Plaintiffs refer to and replead each and every allegation contained in
2 paragraphs 1 through 17 of this complaint, and by this reference incorporates the
3 same herein and makes each a part hereof.
4

5 19. Defendant CITY is and at all times herein mentioned has been a public
6 entity and an incorporated municipality duly authorized and existing as such in and
7 under the laws of the State of California; and at all times herein mentioned,
8 Defendant CITY, possessed the power and authority to adopt policies and prescribe
9 rules, regulations and practices affecting the operation of the FULLERTON POLICE
10 DEPARTMENT and its tactics, methods, practices, customs and usages related to
11 internal investigations, personnel supervision and records maintenance, and the
12 proper uses of force by its rank and file, generally.
13

14 20. At all times herein mentioned, defendants BRYAN BYBEE# 1398,
15 MATTHEW MARTINEZ #1348, EMMANUEL PULIDO #1327, BILLY PHU
16 #1332, and DOES 1-10, were employees acting under the CITY'S direction and
17 control, who knowingly and intentionally promulgated, maintained, applied, enforced
18 and suffered the continuation of policies, customs, practices and usages in violation
19 of the First, Fourth, and Fourteenth Amendments respectively to the United States
20 Constitution, which customs, policies, practices and usages at all times herein
21 mentioned deployed, retained and assigned persons as peace officers who have
22 repeatedly demonstrated their propensities for brutality, dishonesty including false
23 accusations of crime, bigotry, and numerous other serious abuses of their duties as
24 peace officers in the employment of the CITY.
25

26 21. Defendant CITY knowingly maintains and permits official *sub-rosa*
27 policies or customs of permitting the occurrence of the kinds of wrongs set forth
28 above, by deliberate indifference to widespread police abuses, including but not

1 limited to unlawfully arresting and booking citizens for allegedly violating Penal
2 Code Sections 148, 243, 69, among others, intentionally failing and refusing to fairly
3 and impartially investigate, discipline or prosecute peace officers who commit acts
4 of felonious dishonesty and crimes of violence, each ratified and approved by
5 Defendant CITY and its various Chiefs of Police prior to and since July 4, 2011 as
6 was revealed by OIR Group and Michael Gennaco following the death of Kelly
7 Thomas at the hands of Fullerton Police Department employees July 5, 2011. OIR
8 and Gennaco published a 56 page Systemic Report, followed by a published interim
9 report and a third confidential administrative report condemning FPD's pervasive
10 refusal to enforce its own rules and regulations and California law relating to officer
11 misconduct, particularly with respect to excessive force, false reports, fabricated
12 probable cause, together with FPD's historical turning of blind eyes to officer
13 misconduct and the systemic refusal to discipline any officers engaged in unlawful
14 conduct.

15
16 22. The unconstitutional policies, practices or customs promulgated,
17 sanctioned or tolerated by defendant CITY include, but are not limited to:

18 (1) Defendant CITY had knowledge, prior to and since this
19 incident, of repeated allegations of abuse and assaultive misconduct
20 toward detainees and arrestees; Specifically, CITY knew Defendants
21 BRYAN BYBEE# 1398, MATTHEW MARTINEZ #1348,
22 EMMANUEL PULIDO #1327, BILLY PHU #1332, and DOES 1-10,
23 had prior to and since July 4, 2011 committed similar acts of
24 dishonesty, violence, corruption and abuses while purporting to act
25 under the authority of their offices; CITY knew Defendant Bybee had
26 unlawfully assaulted, injured, falsely accused and arrested Francisco
27 Chavez and David Tovar among others; Bybee appeared for duty
28 intoxicated and allowed Bybee to go on patrol; offered employment to

1 Bybee with knowledge of his unfitness as demonstrated by employment
2 by the County of Los Angeles Sheriffs Department and background
3 investigations of Defendants BRYAN BYBEE# 1398, MATTHEW
4 MARTINEZ #1348, EMMANUEL PULIDO #1327, BILLY PHU
5 #1332, and DOES 1-10 which among other things, revealed admitted
6 dishonesty, the commission of crimes of moral turpitude, acts of
7 violence, false responses to background questionnaires, skipped
8 polygraphs, and other indicia of moral and ethical unfitness to
9 employment as peace officers.

10 (2) Defendant CITY had knowledge, prior to and since this
11 incident, of similar allegations of abuse and dishonesty by Defendants,
12 and refused to enforce established administrative procedures to insure
13 the safety of detainees and arrestees as reported by OIS and Gennaco;

14 (3) Defendant CITY refused to adequately discipline
15 individual officers and employees found to have committed acts of
16 abuse and misconduct as reported by OIS and Gennaco;

17 (4) Defendant CITY refused to competently and impartially
18 investigate allegations of abuse and misconduct alleged to have been
19 committed by FULLERTON POLICE DEPARTMENT officers and
20 employees as reported by OIS and Gennaco;

21 (5) Defendant CITY reprimanded, threatened, intimidated,
22 demoted and fired officers who reported acts of wrongdoing and abuses
23 by other officers, including, but not limited to Benjamin Lira;

24 (6) Defendants CITY covered up acts of misconduct, criminal
25 violations and abuses by FULLERTON POLICE DEPARTMENT
26 officers and sanctioned a code of silence by and among officers as
27 reported by OIS and Gennaco and conceded by department officials
28 during OIS and Gennaco's investigations;

1 (7) Defendant CITY knew of and sanctioned the custom and
2 practice of falsely arresting, booking and charging victims of officer
3 abuse with violations of California Penal Code Sections 69, 148, 243,
4 415, 647(f), among others.

5 (8) Defendant CITY failed to adequately train and educate
6 officers in the principals of reasonable cause to take a person's freedom,
7 the use of reasonable and proper uses of force and failed to enforce the
8 department's written regulations with respect to uses of force and
9 lawless arrests as disclosed by OIS and Gennaco's reports;

10 (9) Defendant CITY failed to adequately supervise the actions
11 of officers under FPD's control as revealed by OIS and Gennaco;

12 (10) Defendant CITY, condoned and participated in the practice
13 of prosecuting groundless criminal charges for the purpose of insulating
14 FULLERTON POLICE DEPARTMENT and its officers from civil
15 liability and reducing or dismissing criminal charges against individuals
16 in return for releasing them from civil liability;

17 (11) Defendant CITY condones and encourages a conspiracy of
18 silence among its employees for the purpose of concealing and
19 furthering wrongful and illegal conduct by its police department
20 employees;

21 (12) Defendant CITY engage in the custom and practice of
22 refusing to provide public prosecutors and criminal defendants
23 exculpatory and impeaching evidence as required by law, including but
24 not limited, to City surveillance video recordings and evidence obtained
25 from third parties unfavorable to FPD officers.

26 (13) Defendant CITY fostered and encouraged an atmosphere
27 of lawlessness, abuse and misconduct, which before, on and after July
28 4, 2011 represented the unconstitutional policies, practices and customs

1 of the CITY and FULLERTON POLICE DEPARTMENT.
2

3 23. By reason of the aforesaid policies, customs, practices and usages,
4 plaintiffs rights under the First, Fourth, and Fourteenth Amendments to the United
5 States Constitution were invaded and deprived.

6 **PRAYER**

7 WHEREFORE, Plaintiffs pray judgment against Defendants and
8 each of them, as follows:

9 AS TO EACH CAUSE OF ACTION AS APPLICABLE

- 10 1. For General damages according to proof;
- 11 2. For Special damages according to proof;
- 12 3. For Punitive damages as provided by law, in an amount to be proved
13 against each individual Defendant;
- 14 4. For attorney's fees pursuant to 42 U.S.C § 1988;
- 15 5. For Costs of suit;
- 16 6. For such other and further relief as the Court may deem proper.

17
18 DATED: September 16, 2016

**THE BECK LAW FIRM
LAW OFFICES OF DAVID HAAS**

19
20
21 By /s/Thomas E. Beck
22 Thomas E. Beck
23 Attorneys for Plaintiff
ANTONIO ORTIZ

24 **LAW OFFICES OF DAVID HAAS**

25
26 By /s/David J. Haas
27 David J. Haas, Esq.
28 Attorneys for Plaintiff
LUIZ ORTIZ

PLAINTIFFS' JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: September 16, 2016

THE BECK LAW FIRM

By /s/Thomas E. Beck
Thomas E. Beck
Attorneys for Plaintiff
ANTONIO ORTIZ

LAW OFFICES OF DAVID HAAS

By /s/David J. Haas
David J. Haas, Esq.
Attorneys for Plaintiff
LUIZ ORTIZ