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15 Attorneys for Plaintiffs:
16 Luis Jesus Lobaton, Hedy Julca,
17 Diego Steven Lobaton, and
18 B.C.

19 **UNITED STATES DISTRICT COURT**
20 **IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

21 LUIS JESUS LOBATON, an individual;)
22 HEDY JULCA, an individual; DIEGO)
23 STEVEN LOBATON, an individual;)
24 and "B.C.", a minor, by and through his)
25 mother and guardian ad litem, Hedy)
26 Julca,)
27)
28 Plaintiffs,)
vs.)
CITY OF SAN DIEGO, a municipal)
corporation; NATHAN PARGA, an)
individual; KELVIN LUJAN, an)
individual; SAM EULER, an individual;)

Case No: 15-cv-01416-GPC-RBB

FIRST AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

- 1) **UNLAWFUL SEIZURE/FORCE (42 U.S.C. SEC. 1983)**
- 2) **CONSTITUTIONAL VIOLATIONS (42. U.S.C. SEC. 1983)**
- 3) **CONSTITUTIONAL VIOLATIONS (42 U.S.C. SEC. 1983)**
- 4) **ASSAULT AND BATTERY**

1	ALI BAKHSHI, an individual, and)	5) VIOLATION OF RIGHTS (CAL.
2	DOES 1 through 200, inclusive,)	CIV. CODE SEC. 52.1)
3)	6) FALSE ARREST/IMPRISONMENT
4	Defendants.)	7) NEGLIGENT INFLICTION OF
5)	EMOTIONAL DISTRESS
6)	8) INVASION OF PRIVACY
7)	9) NEGLIGENCE
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Ctrm.: 2D (2d Floor – Schwartz)
 Judge: The Hon. Gonzalo P. Curiel

I.

SUMMARY OF THE CASE

1. On July 29, 2014, Plaintiffs Luis Jesus Lobaton (then twenty years old, hereinafter referred to as “Luis”) and Hedy Julca (hereinafter referred to as “Hedy”) owned and operated that certain business known as Legacy Mobile, aka Lucky Star Mobile (hereinafter referred to as “the Store”), located at 4619 University Avenue, San Diego, CA 92015, in the “City Heights” district. At that time, Luis, Hedy, Diego Steven Lobaton (then nineteen years old, hereinafter “Diego), and B.C. (then three years old, hereinafter “BC”) were living in the Store. Luis, Diego, and BC are Hedy’s children. Plaintiffs are Hispanic.

1 2. At approximately 10:30 p.m. that night, after the Store was closed for
2 business, without warrants, probable cause, or reasonable belief, six San Diego Police
3 Officers, acting under color of law, within the course and scope of their employment ,
4 and while exercising their authority as police officers, illegally assaulted, detained, and
5 arrested Diego outside the Store and then, without warrants, probable cause,
6 reasonable belief, permission, or privilege, burst into the Store and, in the presence of
7 little BC, illegally assaulted, battered, and arrested Luis and Hedy in violation of their
8 rights according to the Fourth and Fourteenth Amendments of the United States
9 Constitution. Diego, Luis, Hedy, and B.C. were injured and now seek damages for
10 their injuries.
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16 **I.**

17 **GENERAL ALLEGATIONS**

18 **A. JURISDICTION**

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20 3. This is lawsuit for monetary damages for personal injuries brought pursuant
21 to Title 42 U.S.C. sec. 1983 and the Fourth and Fourteenth Amendments of the United
22 States Constitution for the violation of Plaintiffs' constitutional rights by the City of
23 San Diego and several of its police officers. Jurisdiction rests on Title 28 U.S.C. secs.
24 1331, 1343, and the described statutory and constitutional provisions. The Court also
25 has supplemental jurisdiction over the state law claims pursuant to Title 28 U.S.C. sec.
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1 1367(a). Plaintiffs' state law claims include assault, battery, state civil rights
2 violations (Cal. Civ. Code sec. 52.1), negligent infliction of emotional distress,
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4 invasion of privacy, false arrest/imprisonment, and negligence. Exclusive of interest
5 and costs, the matter in controversy exceeds the sum or value of seventy-five thousand
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7 dollars (\$75,000.00).

8
9 **B. VENUE**

10 4. The incident occurred in the City of San Diego, California, in and about the
11 Store. At all times mentioned herein, Plaintiffs resided in the City of San Diego. The
12 named and fictitious entity and individual Defendants do business in, work in, and/or
13 live in the City or the County of San Diego, California.
14
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16 **C. THE PARTIES**

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18 5. Hedy was born in Peru. Her sons, Luis, Diego, and BC, were born in the
19 United States of America. At the time of the incident, Plaintiffs lived in the Store.
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21 6. The true names or capacities, whether individual, corporate, associate, or
22 otherwise, of Defendants Does 1 through 200, inclusive, are presently unknown to
23 Plaintiffs. Therefore, such Defendants are sued by fictitious names. Plaintiffs will
24 seek leave of Court to amend this Complaint to reflect their true names and capacities
25 when ascertained. Plaintiffs are informed and believe, and thereon allege, that the acts
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1 or omissions of such fictitiously named entity and individual Defendants directly,
2 proximately, and substantially caused Plaintiffs' injuries.
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4 7. Plaintiffs are informed and believe, and thereon allege, that Defendant City
5 of San Diego is a municipal corporation that operates the San Diego Police Department
6 (hereinafter referred to as "the Department" or "Department"). Plaintiffs are further
7 informed and believe, and thereon allege, that Defendants Nathan Parga, Kelvin Lujan,
8 Sam Euler, Ali Bakhshi, and Does 1 through 200, inclusive, are all sworn police
9 officers employed by the City of San Diego. Plaintiffs are informed and believe, and
10 thereon allege, that at all times mentioned in this Complaint such Defendants were
11 acting within the course and scope of their employment as San Diego police officers,
12 were exercising their authority as San Diego police officers, and were acting under the
13 color of law, including not by way of limitation, various statutes, ordinances, and
14 regulations, and written and unwritten official policies, procedures, practices, customs,
15 habits, and usages of the City of San Diego and/or the Department. The individual
16 Defendants are sued individually and in their capacities as employees of the City of
17 San Diego. Plaintiffs are informed and believe, and thereon allege, that the acts or
18 omissions of all named and unnamed Defendants directly, proximately, and
19 substantially caused Plaintiffs' injuries.
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26 8. Plaintiffs are informed and believe, and thereon allege, that each named and
27 unnamed Defendant police officer had a duty of care to Plaintiffs specifically, and to
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1 the members of the public generally, to enforce the laws reasonably in accordance with
2 constitutional requisites, and to prevent, deter, and stop acts of illegal arrest and
3 excessive force occurring in their presence.
4

5 9. In perpetrating the acts or omissions complained of herein, Plaintiffs are
6 informed and believe, and thereon allege, that Defendants City of San Diego, Nathan
7 Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through 200, inclusive, were
8 the agents, servants, and/or employees of each other, and that the acts or omissions
9 complained of herein occurred within the course and scope of such agency, servitude,
10 and/or employment with the permission, consent, authority, and/or ratification of each
11 of them.
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15 II.

16 THE FACTS

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18 10. At approximately 10:30 p.m., on July 29, 2014, Luis, Hedy, and BC were
19 inside the Store, which was closed for business. As Diego was attempting to enter the
20 store by using his key to unlock the front door, several San Diego police officers (later
21 identified as Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and two
22 unknown members of the Department), while acting under color of law without search
23 or arrest warrants, probable cause, or reasonable belief detained and/or arrested Diego
24 outside the Store and then, without warrants, probable cause, reasonable belief,
25 permission or privilege, forced their way into the Store and, in the presence of BC,
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1 assaulted and battered Luis and Hedy. They then illegally detained and arrested Luis
2 and Hedy and transported them to jail, where they were incarcerated.
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4 11. Plaintiffs are informed and believe, and thereon allege, that Defendants then
5 conspired with each other and/or with other members of the Department to compose,
6 review, authorize, file, and/or ratify falsified official reports of the incident.
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9 12. As a result of the incident, Luis was charged with a single count of violating
10 Cal. Pen. Code sec. 148(a) (obstructing a peace officer in the performance of his or her
11 duty). The charge was dismissed on October 14, 23014. No charges were ever
12 brought against Hedy.
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15 13. At the time of the incident, the Store had a functioning CCTV surveillance
16 system. Several cameras located both inside and outside the Store captured video
17 images of the incident. A comparison of certain official reports of the incident with
18 the video images revealed that the official reports contained *material misstatements of*
19 *fact* that directly contradicted the video images. Further, from a comparison of the
20 video images with the official reports, Plaintiffs have determined that Defendants
21 Nathan Parga, Kelvin Lujan, Sam Euler, and Ali Bakhshi initially confronted Diego,
22 Luis, and Hedy. Plaintiffs are informed and believe, ands thereon allege, that Officers
23 Lujan and Euler detained Diego outside the Store. Then Officer Lujan, followed by
24 Officer Bakhshi, burst into the store and repeatedly struck Luis with his fists. Inside
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1 the Store, both Officers Lujan and Bakhshi engaged in a physical confrontation with
2 Luis. While that was occurring, Officer Parga then entered the Store and grabbed
3 Hedy by the neck, head, arm, and torso and wrestled her to the ground. Plaintiffs are
4 informed and believe, and thereon allege, that Officer Euler also entered the store and
5 assisted the other officers in their physical confrontations with Luis and/or Hedy.
6
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8 14. The video records also reveal that while Luis and Hedy were being
9 assaulted and beaten by the offending San Diego police officers inside the Store, little
10 BC was watching from a few feet away. He saw everything, including the officers
11 forcibly removing his brother and mother from the Store.
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14 15. The video images reveal that during the confrontation inside the Store, two
15 other officers also entered to assist Officers Nathan Parga, Kelvin Lujan, Sam Euler,
16 and Ali Bakhshi. One officer was in uniform, and the other wore plain clothes with a
17 police badge hanging from a string around his neck. The names of these two police
18 officers were not mentioned in the official reports. If appropriate, when Plaintiffs
19 discover their names, they will avail themselves of the provisions of F.R.Cv.P.Rule 15
20 to include them as named defendants herein.
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24 16. In recent years the Department has been roiled by police misconduct
25 involving constitutional deprivations and excessive force. The Office of Community
26 Oriented Policing Services of the United States Department of Justice, in conjunction
27 with the Police Executive Research Forum, undertook a study of the Department. The
28

1 results of the study were reported on March 17, 2015, in a report entitled: “Critical
2 Response Technical Assessment Review: Police Accountability – Findings and
3 National Implications of the San Diego Police Department (hereinafter referred to as
4 “the Report” or “Report”).” The Report is found at:
5 [http://www.cops.usdoj.gov/outside.asp?http://ric-zai-
7 inc.com/ric.php?page=detail&id=COPS-W0756](http://www.cops.usdoj.gov/outside.asp?http://ric-zai-
6 inc.com/ric.php?page=detail&id=COPS-W0756). The Report identified weaknesses
8 that “may have contributed to allowing misconduct . . . to go undetected.” (Report, p.
9 vii.)

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12 17. The Report studied seventeen police misconduct cases, three of which
13 involved internal Department cover-ups of criminal misconduct by sworn police
14 officers. (Report, p. 14.) The study identified “gaps” the Department’s policies and
15 procedures and especially noted the lack of consistent supervision at the first-line
16 sergeant level. The study proposed forty recommendations to improve the functioning
17 of the Department. (Report, pp. 4-7.)

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21 18. The Report was deficient in addressing the documented shortcomings of the
22 Department’s investigation of citizen complaints. The Internal Affairs Division has a
23 history of “whitewashing” police misconduct. The Citizen’s Review Board
24 (hereinafter “CRB”) is supposed to be an independent board charged with investigating
25 complaints about the Department. However the CRB is ineffective. It relies on the
26 Department’s own Internal Affairs Division to conduct its investigations. And the
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1 CRB itself has been under fire because it has no staff, no power to compel testimony,
2 and no power to obtain documents. Since 2009, only two percent of citizen-initiated
3 complaints of police misconduct have resulted in officer discipline. Of these 162
4 allegations, *eighty percent have alleged the use of excessive force*. A 2012 San Diego
5 grand jury report about the CRB raised several red flags: the CRB allows member of
6 the Internal Affairs Division to sit in on its executive sessions, possibly stifling the
7 Board's independence; Internal Affairs personnel have been overheard telling CRB
8 members that they never want any dissenting votes reaching the mayor or the chief of
9 police; an atmosphere of fear and intimidation has been perpetuated by some board
10 members; and board leadership is weak. (Doug Porter, "Policing the Police: San
11 Diego's Problems," **San Diego Free Press**, January 13, 2015.)

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17 19. The Report also falls short in addressing the historic "code of silence" and
18 culture of "cover-up" that have afflicted the Department for many years. The Report
19 passingly mentions the Department's adoption on April 29, 2014, of a new policy
20 requiring police officers to report misconduct by their peers. (Report, p. 49.) However,
21 it says nothing about whether the policy has led to improvement. If anything,
22 reporting officers still need protection from reprisals by other officers. (R. Stickney
23 and Liberty Zabala, "SDPD Sgt. Claims Retaliation After Complaining About
24 Offensive Cartoon, **NBC7.com**, January 22, 2015.")
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1 20. The instant case is another example of the failure of the reporting policy.
2 Exactly three months *after* the Department’s adoption of the policy, Defendants
3
4 illegally deprived Plaintiffs of their constitutional rights, inflicted injuries on them, and
5 then conspired with each other and/or with other members of the Department to cover
6
7 up their misconduct by filing false official reports of the incident.

8 21. One of the major catalysts for the Report was the arrest of San Diego Police
9
10 Sergeant Anthony Arevalos on March 11, 2011, for the sexual assault of a female
11 detainee. (Report, p. 10.) Arevalos was a veteran San Diego police officer and sexual
12 predator who for many years had been preying on female detainees while he was on
13
14 duty. Though his deviant behavior was well known throughout the Department by
15 2010, the “code of silence” protected him from punishment. He even came to be
16
17 known as the “Teflon cop” because time and again he had escaped punishment. Only
18 after video surveillance captured his misconduct was he arrested. Ultimately he was
19
20 convicted of multiple felonies and now sits in prison. (Liam Dillon, “‘Teflon’ Cop
21 Avoided Serious Investigation for Years,” **Voice of San Diego**, February 27, 2014.)

22 22. Arevalos’s misconduct resulted in the filing of lawsuits by several women
23
24 victimized by him. One such lawsuit, **Jane Doe v. the City of San Diego, et. al.**, Case
25 No. 12-cv-00689-MMA, documented that the “code of silence” was so ingrained in the
26
27 Department that it became a widespread, unwritten, official policy. A two-tiered
28 system of justice existed in the Department: one for the police officers themselves and

1 another one for everybody else. The officers knew that they could engage in
2 misconduct without fear of serious discipline.
3

4 23. On November 12, 2014, Shelley Zimmerman, Chief of the Department, who
5 is appointed by the Mayor of the City of San Diego to administer the Department on
6 behalf of the City, and who is the highest, official, policymaker and decision-maker in
7 the Department, was shown the Plaintiffs' video images of the incident. The images
8 clearly depicted criminal misconduct by the six police officers who invaded Plaintiffs'
9 business and abode on July 29, 2014. And the filing of obviously falsified official
10 reports of the incident also raised the specter of further criminal violations by the
11 police officers. Yet, Plaintiffs are informed and believe, and thereon allege, that
12 neither Chief Zimmerman nor the City of San Diego ever initiated any formal
13 investigations or judicial proceedings by which to discipline the offending officers
14 and/or bring them to justice.
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19 24. The Department also has a problem with racial stereotyping. At this
20 writing, it is evaluating itself to determine whether its officers are guilty of racial
21 profiling in traffic stops. Recent data indicate that in 2014, of 144,164 traffic stops,
22 Hispanic drivers represented 30.2% and African Americans 11.2%; whereas they
23 comprise 27% and 5.5%, respectively, of the City's adult population. (Tony Perry,
24 "Police study racial bias allegations," **Los Angeles Times**, March 4, 2015, page B6.)
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1 25. Plaintiffs are Hispanic, and Luis has been repeatedly harassed by known
2 and unknown members of the Department, potentially because of his ethnicity. San
3 Diego police officers stopped, detained, and/or handcuffed him on July 28, 2014, at his
4 uncle's tire store in City Heights, not far from the Store; on July 29, 2014 (the
5 incident), and on December 24, 2014, again inside the Store, *after* Chief Zimmerman
6 had seen the video images of the incident. On July 28th and December 24th, the
7 offending officers released Luis without any explanation their reasons for having
8 detained him.
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12 26. The incident itself and the harassment directed at Luis appear to be all too
13 common in the City Heights district, if not in the City as a whole. City Heights is a
14 heavily-Hispanic community whose members have long been the victims of the use of
15 excessive force and unreasonable conduct by San Diego police officers, especially at
16 night. In City Heights, the Department's internal, two-tier system of justice finds
17 expression in its streets: the "good guys and good girls" are the San Diego police
18 officers, and the "bad guys and bad girls" are everybody else.
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22 27. In 2014, there were 16,238 incidents in which San Diego police officers
23 used force. The Department had nearly twice as many officer-involved shootings than
24 any other city among the four mid-sized cities surveyed. The twenty-five officer-
25 involved shootings in San Diego for 2012, 2013, and 2014, involved at least twelve
26 fatalities. On January 12, 2015, the City Heights community protested the fatal
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1 shooting of Victor Ortega, who was allegedly shot by Department officers on June 4,
2 2012, as he lay face down on the ground while handcuffed. On January 19, 2015, the
3
4 Coalition Against Police Violence conducted a four-mile March from the City Heights
5 Library to increase awareness about racial profiling and police brutality in that
6
7 community. (Doug Porter, "Policing the Police: San Diego's Problems, **San Diego**
8 **Free Press**, January 13, 2015.)

9
10 28. In order to avail themselves of their rights under the federal Civil Rights
11 Act, 42 U.S.C. sec. 1983, et. seq., and the applicable state constitutional, statutory, and
12 common law, Plaintiffs were constrained to retain attorneys to represent them in this
13
14 matter. As part of their damages, Plaintiffs will seek reimbursement of their attorneys'
15 fees as provided by Title 42 U.S.C. sec. 1988 and Cal. Civ. Code sec. 52(a).

16
17 29. Plaintiffs are informed and believe, and thereon allege, that Defendant City
18 of San Diego is vicariously liable for all damages on the state law claims that may be
19 assessed against the individual Defendants herein pursuant to California Government
20
21 Code section 815.2.

22
23 30. In conformity with the requisites of the Government Claims Act (Cal. Gov.
24 Code sec. section 910), Plaintiffs filed Claims for Damages with the City of San Diego
25 on January 14, 2015.

26
27 31. By letter dated March 2, 2015, the City of San Diego denied Plaintiffs'
28 claims.

III.

FEDERAL CLAIMS

FIRST CAUSE OF ACTION:

**(42 U.S.C. sec. 1983 Constitutional Violations –
Unlawful Search and Seizure, and Excessive Force)**

BY PLAINTIFFS DIEGO, LUIS, AND HEDY

AGAINST DEFENDANTS

NATHAN PARGA, KELVIN LUJAN,

SAM EULER, ALI BAKSHI,

AND DOES 1 THROUGH 10, INCLUSIVE

32. Plaintiffs repeat and re-plead as though fully set forth in this paragraph 32 above paragraphs 1 through 31, inclusive.

33. Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through 10, inclusive, in and about the Store on the night of July 29, 2014, while acting under color of law, did intentionally and unlawfully seize, detain, arrest, and imprison Diego, Luis, and Hedy in violation of their rights as guaranteed by the Fourth Amendment to the United States Constitution. As a direct, proximate, and substantial result of the acts or omissions of such Defendants, Plaintiffs are entitled to damages pursuant to Title 42 U.S.C. sec. 1983, et. seq., in an amount to be proved at trial.

1 34. Defendants Nathan Parga, Kelvin Lujan, Ali Bakhshi, and Does 1 through
2 10, inclusive, in and about the Store on the night of July 29, 2014, while acting under
3
4 color of law, did intentionally and unlawfully use unreasonable, unjustified, and
5 excessive force on Luis and Hedy. The unreasonable and excessive uses of force
6 against such Plaintiffs constituted unlawful seizures in violation of their rights as
7 guaranteed by the Fourth Amendment to the United States Constitution. As a direct,
8 proximate, and substantial result of the acts or omissions by such Defendants,
9
10 Plaintiffs are entitled to damages pursuant to Title 42 U.S.C. sec. 1983, et. seq., in an
11 amount to be proved at trial.
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14 35. As a further result of the acts or omissions of Defendants Nathan Parga,
15 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through 10, inclusive, by
16 unlawfully entering Plaintiffs' closed Store without a search warrant or any lawful
17 justification, and/or by failing to intervene and/or prevent the Constitutional violations
18 being committed in their presence by other officers, Plaintiffs Diego, Luis, and Hedy
19 suffered unlawful searches and seizures of their persons in their home and business ,
20 in violation of their constitutional rights as guaranteed by the Fourth Amendment to
21 the United States Constitution. As a direct, proximate, and substantial result of the acts
22 or omissions of such Defendants, Plaintiffs are entitled to damages pursuant to Title 42
23 U.S.C. sec. 1983, et. seq., in an amount to be proved at trial.
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1 36. Defendants then conspired with each other and/or with other members of
2 the Department to cover up their illegal behavior by composing, filing, reviewing,
3 approving, and/or ratifying falsified official reports of the incident that intentionally
4 and knowingly contained *material misstatements of fact* regarding the circumstances
5 surrounding the detentions and/or arrests of Diego, Luis, and Hedy.
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8 37. Plaintiffs Diego, Luis, and Hedy are informed and believe, and thereon
9 allege, that supervisors presently unknown to Plaintiffs participated in, directed, set in
10 motion, facilitated, and/or knew of and failed to prevent the constitutional violations
11 alleged herein, and therefore are liable in their capacities as the supervisors of the
12 officers who committed the acts or omissions described herein. Had such supervisorial
13 Defendants been acting reasonably, each would have known or should have known
14 that his or her own acts or omissions and/or those of Defendants Nathan Parga, Kelvin
15 Lujan, Sam Euler, Ali Bakhshi, and Does 1 through 10, inclusive, were illegal.
16
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18 38. As a direct, proximate, and substantial result of the acts or omissions of
19 Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through
20 10, inclusive, Plaintiffs Diego, Luis, and Hedy suffered emotional distress and/or
21 physical injury.
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25 39. As a direct, proximate, and substantial result of the acts or omissions of
26 Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through
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1 10, inclusive, Plaintiffs suffered humiliation, shock, trauma, pain, suffering, nervous
2 anxiety, and injury to their health and strength, including not by way of limitation:
3
4 lacerations; bruises; muscle strains; headaches; double vision; exacerbation of pre-
5 existing conditions; arm, shoulder, back, and neck pain and injury; and hand injuries.
6
7 Plaintiffs' injuries are of a continuing nature and cannot be finally quantified at this
8 time. They will do so by the time of trial. Plaintiffs' damages are in excess of the
9
10 Court's jurisdictional monetary minimum.

11 40. As a direct, proximate, and substantial result of the acts or omissions of
12 Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through
13
14 10, inclusive, Plaintiffs Luis and Hedy have incurred costs for medical treatment for
15 their injuries. Because their injuries are of a continuing nature, they cannot finally
16
17 quantify them at this time. They will do so at the time of trial.

18 41. As a direct, proximate, and substantial result of the acts or omissions of
19 Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 1 through
20
21 10, inclusive, Plaintiffs Luis and Hedy have suffered continuing injuries that resulted
22
23 in lost earnings. These losses cannot be finally quantified at this time. Plaintiffs will
24
do so at the time of trial.

25 42. The acts or omissions of Defendants Nathan Parga, Kelvin Lujan, Sam
26
27 Euler, Ali Bakhshi, and Does 1 through 10, inclusive, demonstrated evil and/or
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1 malicious intent and/or callous and/or reckless disregard for Plaintiffs’ rights, entitling
2 Plaintiffs to the award of punitive damages as provided by federal law.
3

4 **SECOND CAUSE OF ACTION:**

5 **(42 U.S.C. sec. 1983 – Constitutional Violations –**
6 **Unlawful Policies, Customs, or Habits)**
7

8 **BY PLAINTIFFS**

9 **DIEGO, LUIS, AND HEDY AGAINST**

10 **DEFENDANT CITY OF SAN DIEGO**
11

12 43. Plaintiffs repeat and re-plead above paragraphs 1 through 41, inclusive, as
13 though fully set forth in this paragraph 43. The damages allegations of above
14 paragraphs 39, 40, and 41 shall apply to the named and unnamed Defendants identified
15 in this Second Cause of Action.
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18 44. Plaintiffs are informed and believe, and thereon allege, that Defendants City
19 of San Diego and Does 11 through 20, inclusive, through the Department, have
20 unlawful written and unwritten official policies, procedures, practices, customs, habits
21 and usages with the force of law that have resulted in improper and inadequate hiring,
22 training, retention, discipline, and supervision of their police officers that directly,
23 proximately, and substantially caused the constitutional deprivations, injuries, and
24 damages alleged in the First Cause of Action. Plaintiffs are further informed and
25 believe, and thereon allege, that other citizens have been treated unlawfully and abused
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1 by City of San Diego police officers; but that the City, through its Department, has an
2 official, written and unwritten policy, procedure, practice, custom, habit or usage with
3 the force of law of failing to properly investigate citizen complaints and/or of failing
4 to take corrective or disciplinary action against officers who act improperly, resulting
5 in the constitutional violations against Plaintiffs described above, and others similarly
6 situated. As a direct, proximate, substantial result of the acts or omissions of such
7 Defendants, Plaintiffs are entitled to damages pursuant to Title 42 U.S.C. sec. 1983, in
8 an amount to be proved at trial.

12 45. Plaintiffs are further informed and believe, and thereon allege, that
13 Defendants City of San Diego and Does 11 through 21, inclusive, through the
14 Department, have an unlawful official, written and unwritten policy, practice,
15 procedure, custom, habit, or usage with the force of law of permitting or condoning
16 unlawful searches and seizures and the unnecessary, unjustified, and unnecessary use
17 of force by police officers, and of permitting, condoning, and failing to take action
18 against officers who commit acts of excessive force or unlawful search and seizure.
19 Furthermore, Defendants City of San Diego and Does 11 through 20, inclusive, have
20 an unlawful written and unwritten official policy, procedure, practice, custom, habit, or
21 usage with the force of law of inadequately training, supervising, and disciplining
22 offending officers who act improperly. Such inadequate training and improper policy,
23 procedure, practice, custom, habit, or usage include training and policies related to
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1 excessive force, unlawful searches and seizures, and the detentions and/or arrests of
2 citizens who are exercising their constitutional rights.
3

4 46. Such official, written and unwritten policies, procedures, practices, customs,
5 habits, usages and failures constituted additional ratification of, and acquiescence in,
6 acts of excessive force, false arrest, unlawful search and seizure, and other
7 constitutional improprieties by San Diego police officers. The described policies,
8 procedures, practices, customs, habits, usages, and failures were the moving force
9 behind the injuries suffered by Plaintiffs, constituted ratification by Defendants City of
10 San Diego and Does 11 through 21, inclusive, and also constituted deliberate
11 indifference to the rights and safety of Plaintiffs and other members of the public.
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14
15 47. As a direct, proximate, and substantial result of the acts or omissions of
16 Defendants City of San Diego and Does 11 through 20, inclusive, Plaintiffs suffered
17 the constitutional violations, injuries, and damages complained of and are thus entitled
18 to general and compensatory damages against such Defendants in an amount to be
19 proved at trial.
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THIRD CAUSE OF ACTION:

(42 U.S.C. sec. 1983 – Constitutional Violations –

Unlawful Policies, Customs, or Habits)

BY PLAINTIFF LUIS AGAINST

DEFENDANT CITY OF SAN DIEGO

48. Plaintiffs repeat and re-plead above paragraphs 1 through 41, inclusive, and 44 through 47, inclusive, as though fully set forth in this paragraph 48. The damages allegations of above paragraphs 39, 40, and 41 shall apply to the named and unnamed Defendants identified in this Third Cause of Action.

49. Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 21 through 30, inclusive, and other unknown officers of the Department, while acting under color of law, have knowingly, repeatedly, and illegally stopped, detained, arrested, handcuffed, and questioned Luis without warrant, probable cause, or reasonable suspicion, privilege, or permission, on July 28, 2014, July 29, 2014 (the incident), and December 24, 2014. After lengthy detentions on July 28, 2014, and December 24, 2014, during which Luis was detained and/or handcuffed and/or placed in the back seat of a patrol car while handcuffed, Luis was released from custody without further explanation. By such acts or omissions, such Defendants engaged in an illegal, unconstitutional pattern and practice of illegal seizure resulting in the

1 repeated violations of Luis’s constitutional rights as expressed in the Fourth
2 Amendment of the United States Constitution
3

4 50. Such a pattern and practice of intentional, illegal seizure aimed at Luis by
5 Department officers comprised a series of events set in motion by the acts or omissions
6 of Defendant City of San Diego, which knew or should have known that its police
7 officers were violating Luis’s constitutional rights.
8

9 51. Plaintiffs are informed and believe, and thereon allege, that since November
10 12, 2014, the City of San Diego, through its agent and employee Chief Zimmerman,
11 has had direct knowledge of the contents of the video surveillance images of the
12 incident and access to the falsified official reports. Its failure to initiate any formal
13 criminal investigations or judicial proceedings by which to bring the offending officers
14 to justice manifests its deliberate and/or callous indifference to and/or its tacit approval
15 and/or ratification of the deprivation of Luis’s constitutional rights and its continuing
16 failure to prevent such violations generally, including not by way of limitation, the
17 December 24, 2014, detention of Luis.
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22 52. Luis’s mistreatment was a direct, proximate, and substantial result of, and
23 affirmatively linked to, the acts or omissions of Defendant City of San Diego that
24 spawned the Department’s “code of silence, the two-tier system of justice within the
25 Department, the lackadaisical approach to discipline, and the racial profiling of
26 minorities. The City of San Diego, through the Department, knew or should have
27
28

1 known that its deliberate indifference to and callous disregard of Luis's constitutional
2 rights, and those of others similarly situated, would result in its subordinates' repeated
3 harassment of Luis and others. Instead of deterring or disciplining such misconduct, it
4 did nothing at all. Its tolerance of police misconduct generally, and/or the harassment
5 of Luis specifically, amounted to a policy of repudiation of Luis's constitutional rights
6 and was the foreseeable, moving force behind its subordinates' deprivation of Luis's
7 constitutional rights.
8
9

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11 53. Defendant City of San Diego, as the final policymaker, and final decision-
12 maker of the Department, also had notice of, consented to, and/or ratified the acts and
13 omissions of Defendants Nathan Parga, Kelvin Lujan, Sam Euler, Ali Bakhshi, and
14 Does 21 through 30, inclusive, and by such notice, consent, and/or ratification
15 demonstrated its deliberate indifference to and/or conscious disregard of Luis's
16 constitutional rights.
17
18

19 54. As a direct, proximate, and substantial result of the acts or omissions of
20 Defendants City of San Diego, and Does 21 through 30 inclusive, Luis suffered the
21 constitutional violations, injuries, and damages complained of and is thus entitled to
22 general and compensatory damages against such Defendants, in an amount to be
23 proved at trial.
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IV.

STATE LAW CLAIMS

FOURTH CAUSE OF ACTION: ASSAULT AND BATTERY –

BY PLAINTIFFS DIEGO, LUIS, AND HEDY AGAINST DEFENDANTS

CITY OF SAN DIEGO, NATHAN PARGA,

KELVIN LUJAN, ALI BAKHSHI,

AND DOES 31 THROUGH 40, INCLUSIVE

55. Plaintiffs repeat and re-plead as though fully set forth in this paragraph 55 above paragraphs 1 through 31, inclusive, and the damages allegations of above paragraphs 39, 40, and 41, inclusive, which allegations shall apply to the named and unnamed Defendants identified in this Fourth Cause of Action.

56. On the night of July 29, 2014, Defendants City of San Diego, Nathan Parga, Kelvin Lujan, Ali Bakhshi, and Does 31 through 40, inclusive, while acting under color of law, without search or arrest warrants, probable cause, or reasonable belief, in and about the Store did intentionally and unlawfully detain, arrest, imprison, assault, batter, beat and/or injure Plaintiffs Diego, Luis, and Hedy by the use of unreasonable, offensive, unprivileged, and nonconsensual, physical force.

57. The acts or omissions of Defendants City of San Diego, Nathan Parga, Kelvin Lujan, Ali Bakhshi, and Does 31 through 40, inclusive, directly, proximately,

1 and substantially caused Plaintiffs Diego, Luis, and Hedy to suffer emotional distress
2 and/or physical injuries.
3

4 58. The acts or omissions of Defendants Nathan Parga, Kelvin Lujan, Ali
5 Bakhshi, and Does 31 through 40, inclusive, constituted oppression, fraud, and malice
6 within the meaning of California Civil Code section 3294, et. seq., and punitive
7 damages should be assessed against them.
8

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10 **FIFTH CAUSE OF ACTION: CALIFORNIA CONSTITUTIONAL**
11 **RIGHTS VIOLATION (CAL. CIV. CODE SEC. 52.1) – BY**
12 **PLAINTIFFS DIEGO, HEDY, AND LUIS AGAINST**
13 **DEFENDANTS CITY OF SAN DIGO,**
14 **NATHAN PARGA, KELVIN LUJAN, SAM EULER,**
15 **ALI BAKHSHI, AND DOES 41 THROUGH 50, INCLUSIVE**
16
17

18 59. Plaintiffs repeat and re-plead as though fully set forth in this paragraph 59
19 above paragraphs 1 through 31, inclusive, and the damages allegations of above
20 paragraphs 39, 40, 41, and 58, inclusive, which allegations shall apply to the named
21 and unnamed Defendants identified in this Fifth Cause of Action.
22

23
24 60. Plaintiffs have a firmly established right to be free from the use of illegal
25 detention, false arrest, and excessive force by police offices according to the Fourth
26 Amendment of the United States Constitution and Article 1, section 13, of the
27 California Constitution.
28

1 61. The California Legislature has declared that a person violates California's
2 civil rights laws by interfering with another's exercise or enjoyment of his or her rights
3 secured by the United States Constitution, the California Constitution, and federal and
4 state statutory and common law. Such interference by the use of intimidation,
5 coercion, threats of violence, and/or violence is actionable under California Civil Code
6 section 52.1(a).
7

8
9 62. On the night of July 29, 2014, Defendants City of San Diego, Nathan Parga,
10 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 41 through 50, inclusive, while acting
11 under color of law, without search or arrest warrants, probable cause, or reasonable
12 suspicion , in and about the Store deprived Plaintiffs Diego, Luis, and Hedy of their
13 rights to be free from illegal detention, illegal arrest, unlawful search and seizure,
14 summary imprisonment, and/or the use of unreasonable, excessive, and injurious
15 physical force against their persons according to the Fourth Amendment of the United
16 States Constitution and Article 1, section 13, of the California Constitution.
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21 63. Plaintiffs are informed and believe, and thereon allege, that Defendants then
22 conspired with each other and/or with other members of the Department to cover up
23 the true facts surrounding the incident by composing, filing, reviewing, approving,
24 and/or ratifying falsified official reports of the incident.
25

26 64. The acts or omissions of Defendants City of San Diego, Nathan Parga,
27 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 41 through 50, inclusive, also
28

1 violated Cal. Civ. Code section 52.1(b). That provision entitles Plaintiffs to bring a
2 lawsuit against such Defendants seeking civil damages, statutory penalties, and
3 attorneys' fees for such violations.
4

5 65. The acts or omissions of Defendants Nathan Parga, Kelvin Lujan, Sam
6 Euler, Ali Bakhshi, and Does 41 through 50, inclusive, directly, proximately, and
7 substantially caused Plaintiffs Diego, Luis, and Hedy to suffer emotional distress
8 and/or physical injuries.
9
10

11 **SIXTH CAUSE OF ACTION: FALSE ARREST/ IMPRISONMENT**

12 **BY PLAINTIFFS DIEGO, LUIS, AND HEDY AGAINST**

13 **DEFENDANTS CITY OF SAN DIEGO,**

14 **NATHAN PARGA, KELVIN LUJAN, SAM EULER,**

15 **ALI BAKHSHI, AND DOES 51 THROUGH 60, INCLUSIVE**
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17

18 66. Plaintiffs repeat and re-plead as though fully set forth in this paragraph 66
19 above paragraphs 1 through 31, inclusive, and the damages allegations of above
20 paragraphs 39, 40, 41, and 58, inclusive, which allegations shall apply to the named
21 and unnamed Defendants identified in this Sixth Cause of Action.
22
23

24 67. On the night of July 29, 2014, Defendants City of San Diego, Nathan Parga,
25 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 51 through 60, inclusive, while acting
26 under color of law, without search or arrest warrants, probable cause, or reasonable
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1 belief, in and about the Store falsely arrested and/or imprisoned Plaintiffs Diego, Luis,
2 and Hedy, entitling them to damages under California law.
3

4 68. Plaintiffs are informed and believe, and thereon allege, that Defendants then
5 conspired with each other and/or with other members of the Department to cover up
6 the true facts surrounding the incident by composing, filing, reviewing, approving,
7 and/or ratifying falsified official reports of the incident.
8

9 69. The acts or omissions of Defendants City of San Diego, Nathan Parga,
10 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 51 through 60, inclusive, directly,
11 proximately, and substantially caused Plaintiffs Diego, Luis, and Hedy to suffer
12 emotional distress and/or physical injuries.
13
14

15 **SEVENTH CAUSE OF ACTION: NEGLIGENT INFLICTION**
16 **OF EMOTIONAL DISTRESS BY PLAINTIFFS**
17 **HEDY AND BC AGAINST DEFENDANTS CITY OF SAN DIEGO,**
18 **NATHAN PARGA, KELVIN LUJAN, ALI BAKHSHI,**
19 **AND DOES 61 THROUGH 70, INCLUSIVE**
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21

22 70. Plaintiffs repeat and re-plead as though fully set forth in this paragraph 70
23 above paragraphs 1 through 31, inclusive. The injury allegations of above paragraphs
24 39, 40, and 41, inclusive, are re-pled on behalf of Plaintiff Hedy only as through set
25 forth in this paragraph 70, and such allegations shall apply to the named and unnamed
26 Defendants identified in this Fifth Cause of Action.
27
28

1 71. On the night of July 29, 2014, Defendants City of San Diego, Nathan Parga,
2 Kelvin Lujan, Ali Bakhshi, and Does 61 through 70, inclusive, while acting under
3 color of law, without search or arrest warrants, probable cause, or reasonable belief,
4 intentionally, unlawfully, without permission, and without privilege entered the Store
5 and, in the presence of Plaintiff BC, then age three years, intentionally, unlawfully,
6 outrageously, and maliciously assaulted, beat, and battered Luis and Hedy.
7

8 72. Standing in the zone of danger inside the Store approximately three feet
9 away from the physical confrontation between Defendants City of San Diego, Nathan
10 Parga, Kelvin Lujan, Ali Bakhshi, and Does 61 through 70, inclusive, and Luis and
11 Hedy, Plaintiff BC saw the latter violently assaulted, beaten, handcuffed and forcibly
12 taken away. Plaintiff Hedy was also in the zone of danger and before being assaulted
13 and saw the beating of her son Luis by Officers Lujan, Bakhshi, and other unknown
14 officers. Such Defendants owed Plaintiffs a duty of care to not cause them injury or
15 emotional distress according to the provisions of Cal. Civ. Code secs. 1708 and
16 1714(a).
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22 73. As revealed by the video images, Defendants City of San Diego, Nathan
23 Parga, Kelvin Lujan, Ali Bakhshi, and Does 61 through 70, inclusive knew of or
24 should have known of Plaintiff BC's presence inside the Store and/or or recklessly
25 disregarded his presence while perpetrating their attacks on Luis and Hedy. As part of
26
27
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1 the cover-up of the true facts surrounding the incident by such Defendants, BC's
2 presence was never mentioned in the falsified official reports of the incident.
3

4 74. As a direct, proximate, and substantial result of the acts or omissions of
5 Defendants City of San Diego, Nathan Parga, Kelvin Lujan, Ali Bakhshi, and Does 61
6 through 70, inclusive, Plaintiff BC suffered serious emotional distress, shock, trauma,
7 pain, suffering, nervous anxiety, and injury to his health and strength, including not by
8 way of limitation, nightmares, continuing abject fear of the police, acting out the
9 violence of the incident, and bedwetting. Plaintiff Hedy also suffered severe emotional
10 distress attendant to her previously described injuries. Plaintiffs' respective injuries
11 are of a continuing nature and cannot be finally quantified at this time. Plaintiffs will
12 do so by the time of trial. Plaintiffs' damages are in excess of the Court's
13 jurisdictional monetary minimum.
14
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18 75. As a direct, proximate, and substantial result of the acts or omissions of
19 Defendants City of San Diego, Nathan Parga, Kelvin Lujan, Ali Bakhshi, and Does 61
20 through 70, inclusive, Plaintiff BC has incurred costs for medical treatment for his
21 injuries. Because his injuries are of a continuing nature, they cannot be finally
22 quantified at this time. Plaintiff will do so at trial.
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1 **EIGHTH CAUSE OF ACTION: INVASION OF PRIVACY**
2 **BY PLAINTIFFS DIEGO, LUIS, AND HEDY AGAINST DEFENDANTS**
3
4 **CITY OF SAN DIEGO, NATHAN PARGA,**
5 **KELVIN LUJAN, SAM EULER, ALI BAKHSHI,**
6 **AND DOES 71 THROUGH 80, INCLUSIVE**
7

8 76. Plaintiffs repeat and re-plead as though fully set forth in this paragraph 76
9 above paragraphs 1 through 31, inclusive, and the damages allegations of above
10 paragraphs 39, 40, 41, and 58, inclusive, which allegations shall apply to the named
11 and unnamed Defendants identified in this Eighth Cause of Action.
12

13
14 77. On the night of July 29, 2014, Defendants City of San Diego, Nathan Parga,
15 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 71 through 80, inclusive, while acting
16 under color of law, without search or arrest warrants, probable cause, or reasonable
17 belief, did intentionally, unlawfully, without permission, and without privilege enter
18 the Store to detain, arrest, imprison, assault, and beat Plaintiffs Luis and Hedy, causing
19 them harm by unreasonable, offensive, nonconsensual, injurious physical force that
20 directly, proximately, and substantially caused each of them emotional distress and/or
21 physical injuries.
22

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24
25 78. At the time Defendants City of San Diego, Nathan Parga, Kelvin Lujan,
26 Sam Euler, Ali Bakhshi, and Does 71 through 80, inclusive, entered the Store,
27 Plaintiffs Diego, Luis, and Hedy were living in the Store; the Store was closed to the
28

1 general public; and Plaintiffs had an expectation of privacy as guaranteed by federal
2 decisional law and Article 1, Section 1, of the California Constitution. The acts and
3 omissions of such Defendants constituted an illegal invasion of and deprivation of such
4 Plaintiffs' expectations of privacy, directly, proximately, and substantially causing
5 each of them emotional distress and/or physical injuries.
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8 **NINTH CAUSE OF ACTION: NEGLIGENCE –**
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10 **BY PLAINTIFFS DIEGO, LUIS, AND HEDY AGAINST**
11 **DEFENDANTS CITY OF SAN DIEGO,**
12 **NATHAN PARGA, KELVIN LUJAN, SAM EULER,**
13 **ALI BAKHSHI AND DOES 81 THROUGH 90, INCLUSIVE**

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15 79. Plaintiffs repeat and re-plead as though fully set forth in this paragraph
16 79 above paragraphs 1 through 31, inclusive, and the damages allegations of above
17 paragraphs 39, 40, and 41, inclusive, which allegations shall apply to the named and
18 unnamed Defendants identified in this Tenth Cause of Action.
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21 80. On the night of July 29, 2014, Defendants City of San Diego, Nathan Parga,
22 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 81 through 90, inclusive, owed a duty
23 of care toward Plaintiffs to refrain from causing injury to the latter as provided by Cal.
24 Civ. Code secs. 1708 and 1714(a). In and about the Store on July 29, 2014, while
25 acting under color of law, without search or arrest warrants, probable cause, or
26 reasonable belief, such Defendants breached their duty of care by negligently and
27
28

1 unlawfully detaining, arresting, imprisoning, assaulting, beating, and battering
2 Plaintiffs Diego, Luis, and Hedy.
3

4 81. The acts or omissions of Defendants City of San Diego, Nathan Parga,
5 Kelvin Lujan, Sam Euler, Ali Bakhshi, and Does 81 through 90, inclusive, directly,
6 proximately, and substantially caused Plaintiffs emotional distress and/or physical
7 injuries.
8

9
10 **V.**

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs Luis Jesus Lobaton, Hedy Julca, Diego Steven
13 Lobaton, and BC pray for judgment against Defendants as follows:
14

- 15 1. For exemplary and punitive damages against only the individually named
16 Defendants in an amount to be proved at trial;
- 17 2. For general and compensatory damages against Defendants in an amount to
18 be proved at trial;
- 19 3. For statutory damages and penalties against Defendants as provided by law
20 in an amount to be proved at trial;
- 21 4. For reasonable attorneys' fees as provided by statute;
- 22 5. For costs of suit herein; and
- 23 6. For such other and further relief as the Court may deem proper.
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1 Dated: August 17, 2015

2 /s/ Randall B. Hamud

3 Attorney for Plaintiffs

4 Email: hamudlawyer@gmail.com

5 Plaintiffs hereby request a jury trial in this action.

6 Dated: August 17, 2015

7 /s/ Randall B. Hamud

8 Attorney for Plaintiffs

9 Email: hamudlawyer@gmail.com

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