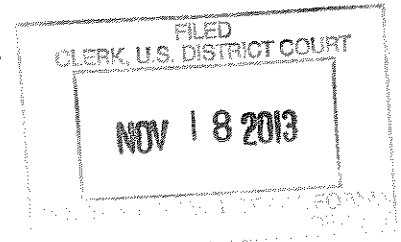


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8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 GABRIEL MOSES CARRILLO,

12 Plaintiff,

13 v.

14 DEPUTY PANTAMITR
 15 ZUNGGEEMOGE, DEPUTY SUSSIE
 16 AYALA, DEPUTY FERNANDO
 17 LUVIANO, DEPUTY NOEL
 18 WOMACK, DEPUTY ANTHONY
 19 REED, SERGEANT ERIC
 20 GONZALEZ, CAPTAIN DANIEL
 21 CRUZ, CAPTAIN DUANE HARRIS,
 22 COUNTY OF LOS ANGELES and
 23 DOES 1 through 10, inclusive,

24 Defendants.

CASE NO. CV 12-02609-DSF(PJWx)

**FIRST AMENDED
 COMPLAINT FOR DAMAGES**

- 1) Violation of Civil Rights, 42 U.S.C. § 1983;
- 2) Violation of Civil Rights, 42 U.S.C. § 1983, Supervisory Liability.
- 3) Violation of California Civil Code § 52.1;
- 4) Assault and Battery;
- 5) Supervisory Negligence;
- 6) Violation of Civil Rights, 42, U.S.C. § 1983, *Monell* Violations.

[DEMAND FOR JURY TRIAL]

JURISDICTION

1. The Court has jurisdiction over the federal law claims action pursuant to Title 28 U.S.C. §§1331 and 1343. The Court also has supplemental jurisdiction over the state claims and over all Defendants. Plaintiff brings this action pursuant to

1 Title 42 U.S.C. §§ 1983, 1988 and the state law claims for relief are within the
2 supplemental jurisdiction of the Court, pursuant to Title 28 U.S.C. § 1367.

3 VENUE

4 2. Venue over Plaintiff's claims is proper in the Central District of California as
5 Plaintiff's claims herein arises out of incidents involving deputies of the Los
6 Angeles County Sheriff's Department, and the events giving rise to the claim
7 occurred in the Los Angeles County Men's Central Jail in Los Angeles, California,
8 within the Central District of California. Title 28 U.S.C. §1391(a)(1) and (b)(2).

9 3. Plaintiff filed a Claim in accord with California Government Code §§ 910 *et*
10 *seq.*, with the State of California on August 4, 2011. Plaintiff's Claim was rejected
11 on October 5, 2011, and this action is timely filed.

12 PARTIES

13 4. Plaintiff Gabriel Moses Carrillo is, and was at all times relevant hereto, a
14 resident of the County of Los Angeles, and an adult competent to bring this suit in
15 this Court.

16 5. Defendant Deputy Pantamitr Zunggeemoge was a Los Angeles County
17 Sheriff's Department Deputy stationed at the Los Angeles County Men's Central Jail
18 on February 26, 2011. The acts of this Defendant, which are the subject of this
19 lawsuit, were undertaken in the regular course of his employment for the Los
20 Angeles County Sheriff's Department. He is sued in his individual capacity. Upon
21 information and belief aforesaid Defendant is a resident of the County of Los
22 Angeles.

23 6. Defendant Deputy Sussie Ayala was a Los Angeles County Sheriff's
24 Department Deputy stationed at the Los Angeles County Men's Central Jail on
25 February 26, 2011. The acts of this Defendant, which are the subject of this lawsuit,
26 were undertaken in the regular course of her employment for the Los Angeles
27 County Sheriff's Department. She is sued in her individual capacity. Upon
28 information and belief aforesaid Defendant is a resident of the County of Los

1 Angeles.

2 7. Defendant Deputy Fernando Luviano was a Los Angeles County Sheriff's
3 Department Deputy stationed at the Los Angeles County Men's Central Jail on
4 February 26, 2011. The acts of this Defendant, which are the subject of this lawsuit,
5 were undertaken in the regular course of his employment for the Los Angeles
6 County Sheriff's Department. He is sued in his individual capacity. Upon
7 information and belief aforesaid Defendant is a resident of the County of Los
8 Angeles.

9 8. Defendant Deputy Noel Womack was a Los Angeles County Sheriff's
10 Department Deputy stationed at the Los Angeles County Men's Central Jail on
11 February 26, 2011. The acts of this Defendant, which are the subject of this lawsuit,
12 were undertaken in the regular course of his employment for the Los Angeles
13 County Sheriff's Department. He is sued in his individual capacity. Upon
14 information and belief aforesaid Defendant is a resident of the County of Los
15 Angeles.

16 9. Defendant Deputy Anthony Reed was a Los Angeles County Sheriff's
17 Department Deputy stationed at the Los Angeles County Men's Central Jail on
18 February 26, 2011. The acts of this Defendant, which are the subject of this lawsuit,
19 were undertaken in the regular course of his employment for the Los Angeles
20 County Sheriff's Department. He is sued in his individual capacity. Upon
21 information and belief aforesaid Defendant is a resident of the County of Los
22 Angeles.

23 10. Defendant Sergeant Eric Gonzalez was a Sergeant stationed at the Los
24 Angeles County Men's Central jail on February 26, 2011, and employed by the Los
25 Angeles County Sheriff's Department. The acts of this Defendant, which are the
26 subject of this lawsuit, were undertaken in the regular course of his employment for
27 the Los Angeles County Sheriff's Department. He is sued both in his individual and
28 official capacity. Upon information and belief aforesaid Defendant is a resident of

1 the County of Los Angeles.

2 11. Defendant Captain Daniel Cruz was a Captain stationed at the Los Angeles
3 County Men's Central jail employed for the Los Angeles County Sheriff's
4 Department. The acts of this Defendant, which are the subject of this lawsuit, were
5 undertaken in the regular course of his employment for the Los Angeles County
6 Sheriff's Department. He is sued in both in his individual and official capacity.
7 Upon information and belief aforesaid Defendant is a resident of the County of Los
8 Angeles.

9 12. Defendant Captain Duane Harris was a Captain stationed at the Los Angeles
10 County Men's Central jail employed by the Los Angeles County Sheriff's
11 Department. The acts of this Defendant, which are the subject of this lawsuit, were
12 undertaken in the regular course of his employment for the Los Angeles County
13 Sheriff's Department. He is sued in both in his individual and official capacity.
14 Upon information and belief aforesaid Defendant is a resident of the County of Los
15 Angeles.

16 13. Defendant County of Los Angeles is, and at all times alleged herein was, a
17 public entity, organized and existing under the laws of the State of California.

18 14. Plaintiff is informed and believes and thereon alleges that Defendants sued
19 herein as DOES 1 through 10, inclusive, are other employees of the Los Angeles
20 County Sheriff's Department and were at all relevant times acting in the course and
21 scope of their employment and agency. Each Defendant is the agent of the other.
22 Plaintiff alleges that each of the Defendants named as a "DOE" was in some manner
23 responsible for the acts and omissions alleged herein, and Plaintiff will ask leave of
24 this Court to amend the Complaint to allege such names and responsibility when that
25 information is ascertained.

26 PRELIMINARY ALLEGATIONS

27 15. This action is brought under Title 42 U.S.C. § 1983 and on the Fourth, Fifth
28 and Fourteenth Amendments of the United States Constitution, and pursuant to the

1 general laws of the United States and of the State of California. Plaintiff also alleges
 2 that the conduct of each Defendant deprived Plaintiff of his constitutional right to
 3 due process under the law, and caused Plaintiff to suffer grievous pain, suffering,
 4 anxiety, depression, harm and injury based on his false arrest, wrongful
 5 imprisonment, and the excessive force applied against him.

6 16. Each of the Defendants and Doe Defendants caused and is responsible for the
 7 unlawful conduct and resulting injury by, *inter alia*, personally participating in the
 8 conduct, or acting jointly and in concert with others who did so by authorizing,
 9 acquiescing in or failing to take action to prevent the unlawful conduct by
 10 intervention, or promulgating policies and procedures or practices pursuant to which
 11 the unlawful conduct occurred; by failing and refusing to initiate and maintain
 12 adequate training, supervision, policies, procedures and protocols; by failing to
 13 implement and ensure compliance with policies and procedures to ensure the safety
 14 and reasonable security of individuals, such as Plaintiff; and by ratifying the
 15 unlawful conduct performed by agents, employees, counselors, staff, deputies and
 16 officers under their direction and control.

17 17. Whenever and wherever reference is made in this Complaint to any act by a
 18 Defendant, such allegation and reference will also be deemed to mean the acts and
 19 failures to act of each Defendant individually, jointly or severally.

20 **FACTUAL ALLEGATIONS**

21 **A. INCIDENT ALLEGATIONS**

22 **Background**

23 18. On February 26, 2011, Mr. Carrillo was visiting his brother Robert Carrillo
 24 who was in custody at the Men's Central Jail in the County of Los Angeles. Robert
 25 Carrillo had recently been arrested by Sheriff's deputies in East Los Angeles, and
 26 had been hospitalized for his injuries before being transported to Men's Central Jail.
 27 Mr. Carrillo entered the visiting lobby of the Men's Central Jail with his girlfriend,
 28 Griselda Torres, and his grandmother, Delores Mejia.

1 19. When other visitors who were in line in front of Mr. Carrillo were checking in
2 at the front reception desk, deputies would look at the visitor's identification, and
3 quickly return it. When examining Mr. Carrillo's identification, however, several
4 deputies gathered together and whispered to each other. At the time Mr. Carrillo had
5 several visible tattoos located on his neck.

6 20. While waiting in the visiting lobby, Ms. Torres dropped a cellular phone on
7 the floor. Within Men's Central Jail and in the outside patio, signs were posted
8 prohibiting the possession of cellular telephones on Jail property. The signs made
9 no reference to possession of a cellular telephone being a criminal offense.

10 21. In response to Ms. Torres dropping the cellular telephone, a Sheriff's deputy
11 escorted Ms. Torres to a small "break" room behind the Sheriff's reception desk in
12 the inmate visiting lobby. The break room was approximately 10 feet by 8 feet, with
13 several chairs and desks, bookshelves, a refrigerator, and a sink. Shortly after
14 arriving in the break room, Ms. Torres was handcuffed behind her back.

15 22. While in the break room, deputies questioned Ms. Torres about whether she
16 was visiting the Jail with anyone else. Ms. Torres responded her boyfriend, Mr.
17 Carrillo, and his grandmother, Ms. Mejia. When asked whether her boyfriend had a
18 cellular phone, Ms. Torres stated that he might have one.

19 23. After learning this information about Mr. Carrillo, Defendant Zunggeemoge
20 and another deputy approached Mr. Carrillo who was waiting in the visiting lobby
21 and asked him to stand up. Mr. Carrillo complied and one of the deputies handcuffed
22 Mr. Carrillo behind his back. The deputies then escorted Mr. Carrillo to the back
23 break room. At no time did Mr. Carrillo fail to follow the deputies instructions. At
24 no time did he resist the deputies.

25 24. As Mr. Carrillo entered the break room with his hands cuffed behind him,
26 Defendant Zunggeemoge shoved him face first into a small refrigerator. In response,
27 Mr. Carrillo asked something to the effect: "what was that for?" to which Defendant
28 Zunggeemoge twisted Mr. Carrillo's hands behind his back and said "shut the fuck

1 up.” Defendant Zunggeemoge then searched Mr. Carrillo and discovered a cellular
2 telephone. During these events, Ms. Torres was seated with her hands cuffed behind
3 her back in the small room.

4 25. Shortly after discovering Mr. Carrillo’s cellular telephone, several of the
5 deputies left the break room leaving Defendant Deputy Ayala alone with Mr.
6 Carrillo and Ms. Torres. Ms. Torres asked Defendant Ayala whether she and Mr.
7 Carrillo could go to jail for this offense, to which Defendant Ayala said “yes.” After
8 hearing Defendant Ayala’s response, Mr. Carrillo told Ms. Torres to not speak to the
9 any of the deputies, and told her that if he was not in handcuffs, things would be
10 different.

11 26. Upon hearing this, Defendant Ayala confronted Mr. Carrillo, ordered him to
12 stand up, and yelled in his face: “what did you say?” She then radioed a code and, as
13 a result, Defendant Zunggeemoge, Defendant Luviano and several other deputies
14 entered the break room. As they arrived, Defendant Ayala stated something to the
15 effect: “You know what this home boy said? If he wasn’t in handcuffs he would take
16 flight on us.” Take flight is street vernacular for fight. Mr. Carrillo denied saying
17 this, and in response, Defendant Luviano said something to the effect: “shut the fuck
18 up.” Defendant Luviano then added something to the effect: “Let’s see what this
19 guy’s about. Let’s take his handcuffs off and see how tough he is. Get his fucking
20 girlfriend out of here.”

21 The Beating of Mr. Carrillo

22 27. Once Ms. Torres was taken out of the room, the deputies threw Mr. Carrillo to
23 the floor and began punching and kicking his body and face. Mr. Carrillo’s hands
24 were still handcuffed behind his back while he was beaten on the floor. At times he
25 was pulled by his handcuffed hands in order to move his body.

26 28. As Mr. Carrillo squirmed to try to avoid the blows, one of the deputies
27 kneeled down placing his knee on Mr. Carrillo’s back, stopping him from moving.
28 For most of the beating, one deputy was at Mr. Carrillo’s feet, holding them with one

1 hand and punching his thighs with the other. Another deputy kept his knee pressed
2 against Mr. Carrillo's back and was punching his ribs. A third deputy punched his
3 head and face. Deputies were cursing at him while they kicked and punched him.

4 29. Several times during the beating, the door to the break room opened. As soon
5 as the door was opened, the deputies stopped the beating. When the door was shut,
6 however, the beating resumed.

7 30. Mr. Carrillo never resisted throughout the beating. Multiple times throughout
8 the beating, deputies yelled at Mr. Carrillo to stop resisting. On at least one
9 occasion, Mr. Carrillo responded "I'm not resisting." Mr. Carrillo blacked out from
10 the Deputies' beating.

11 31. Defendant Luviano, and other deputies of the Los Angeles Sheriff's
12 Department stationed at the Men's Central Jail, had a practice during this time period
13 of audibly making statements to the effect of "stop resisting" while they engaged in
14 acts of excessive force against inmates in custody, regardless of the fact that the
15 inmates were not resisting the deputies in any manner. On information and belief,
16 deputies at the Men's Central Jail employed this tactic so that witnesses – whether it
17 be percipient witnesses or video / audio recordings – would hear the fabricated
18 justification for the use of force.

19 32. At some point during the beating, Defendant Luviano sprayed Mr. Carrillo's
20 face with a 3-5 second burst of Freeze + P – also known as Pepper Spray, which
21 interfered with his ability to breathe. As Mr. Carrillo gasped for breath, he
22 complained to the deputies that he could not breathe. In response, Defendant
23 Luviano said something to the effect of: "if you can talk, you can breathe . . . I
24 don't give a fuck if you choke, if you die." Then Defendant Luviano said: "fuck
25 your gang." The spray which contacted the open wounds on Mr. Carrillo's face
26 caused him great pain.

27 33. Defendant Luviano, and other deputies of the Los Angeles Sheriff's
28 Department, had a practice during this time period of unnecessarily spraying Freeze

1 + P – also known as Pepper Spray, in the face and eyes of inmates who had been
2 beaten by the deputies, and were immobilized. On information and belief,
3 Defendant Luviano, and other deputies of the Los Angeles Sheriff's Department,
4 engaged in such spraying to create the appearance of resistance by inmates, and also,
5 to inflict additional pain and suffering on inmates, particularly those with open
6 wounds on their faces.

7 34. Shortly after Defendant Luviano sprayed Pepper Spray into the face, but while
8 Mr. Carrillo lay coughing and gagging on the floor, with the deputy's knee on his
9 back, a deputy came into the break room with towels to clean the floor of Mr.
10 Carrillo's blood.

11 35. Shortly thereafter, the paramedics came and provided treatment to Mr.
12 Carrillo, and then he was taken into an interview room where he was videotaped.

13 36. Mr. Carrillo was handcuffed during the whole beating – his hands were never
14 free and remained cuffed together behind his back throughout. At no point did the
15 deputies ever take the cuffs off Mr. Carrillo's hands.

16 37. After the beating, Mr. Carrillo was taken by ambulance to the jail ward at the
17 County Hospital. Eventually, he was taken to the Inmate Reception Center, where
18 he was placed for hours in a holding tank. During this time he suffered from
19 substantial pain.

20 The Cover-Up

21 38. After being escorted out of the break room by a Sheriff's deputy, Ms. Torres
22 was taken to the main lobby of the Men's Central Jail. For several hours she was
23 guarded by Sheriff's deputies, the majority of the time with her hands cuffed behind
24 her back. While she was in custody, she observed multiple deputies run through the
25 hallway, and watched an ambulance arrive on the scene. Mr. Torres believed that
26 the deputies had beaten, or perhaps had killed, Mr. Carrillo.

27 39. As deputies left the break room after the beating, a witness observed the
28 deputies, in particular Defendant Ayala, laughing and discussing how they would

1 create a story to characterize the beating as a response to Mr. Carrillo's resistance.
2 Specifically, Defendant Ayala was heard saying something to the effect: "should I
3 say that my jaw hurts . . . that my ribs hurt."

4 40. Ultimately, the deputy guarding Ms. Torres emphasized that she needed to
5 make a statement against Mr. Carrillo before she could be released. The deputy
6 emphasized that Ms. Torres had a job, and a young daughter, and that she should not
7 lose it all for Mr. Carrillo. At first she refused to lie and say something against Mr.
8 Carrillo. Later, Ms. Torres agreed to write out a statement, and repeat her statement
9 on video tape in order to be released and return to her daughter.

10 41. In the video taped interview Ms. Torres specifically stated that Mr. Carrillo
11 did not come to Men's Central Jail making any aggressive statements against the
12 Sheriff's Department; that he only came to see his brother.

13 42. On information and belief, after placing Mr. Carrillo into custody, Defendants
14 Zunggeemoge, Ayala, Luviano, Womack, Reed, Gonzalez and Does 1 through 10,
15 met and discussed how they would respond to the beating of Mr. Carrillo. On
16 information and belief, corresponding to an already existing custom by Sheriff's
17 deputies at the Men's Central Jail, the group agreed to characterize the beating of
18 Mr. Carrillo by stating that Mr. Carrillo initiated the confrontation with the deputies.
19 In particular, the Defendants conspired to create a fictitious story that Defendant
20 Zunggeemoge had uncuffed Mr. Carrillo's right hand in order to fingerprint him, and
21 while uncuffed, Mr. Carrillo first attempted to escape from the break room, and
22 when stopped, attacked multiple deputies. Further, the deputies falsely alleged that
23 Mr. Carrillo deliberately spit on Defendant Luviano.

24 43. In truth and fact, Mr. Carrillo's hands were cuffed throughout the beating in
25 the break room; no effort was taken to finger print him; he never spat at Defendant
26 Luviano; and he never resisted the deputies.

27 44. After creating this false and fabricated story, Defendants Zunggeemoge,
28 Ayala, Luviano, Womack and Reed wrote false and fabricated Supplemental Reports

1 in support of Mr. Carrillo's wrongful arrest, accusing him of Resisting a Police
2 Officer, a violation of California Penal Code § 69.

3 45. After reviewing the reports of these defendants, and knowing that these
4 reports were false and fabricated, Defendant Sergeant Gonzalez nonetheless
5 approved the reports, which set in motion Mr. Carrillo's wrongful prosecution.

6 **The Filing of Criminal Charges**

7 46. After Mr. Carrillo was arrested, Defendant Zunggeemoge drafted the
8 Probable Cause Determination (Declaration) for the prosecution under Penal Code
9 Section 69, Resisting Arrest. In that document, Defendant Zunggeemoge falsely
10 described the incident which occurred in the break room, misrepresenting the facts
11 by describing Mr. Carrillo as the initiator and aggressor of the incident. On
12 information and belief, at 2:30 p.m. on February 26, 2011, Defendant Zunggeemoge
13 signed the Probable Cause Determination (Declaration) under the penalty of perjury.
14 Defendant Zunggeemoge's false description of events which occurred in the break
15 room was perjurious.

16 47. After returning from the hospital, and before being placed in custody at
17 Men's Central Jail, Mr. Carrillo was booked in the Inmate Reception Center on
18 February 26, 2011, approximately 1000 feet from the break room where he was
19 beaten.

20 48. Based on Defendant Zunggeemoge's false description of the facts leading up
21 to Mr. Carrillo's arrest, on February 27, 2011 at 11:34 a.m., Superior Court Judge
22 Teresa A. Beaudet found that there was probable cause that Mr. Carrillo committed
23 the crime of Resisting an Executive Officer.

24 49. With false and fabricated charges set against him, Mr. Carrillo retained a bail
25 bondsman and was released on \$50,000.00 bail on March 1, 2011.

26 50. Based on the false and fabricated reports provided by Defendants
27 Zunggeemoge, Ayala, Luviano, Womack, and Reed and the knowing approval of
28 these false reports by Defendant Sergeant Gonzalez, on March 2, 2011, the Los

1 Angeles County District Attorney's Office filed a Criminal Complaint with the
2 California Superior Court against Mr. Carrillo, charging him with: (a) Resisting an
3 Executive Officer, a violation of Penal Code Section 69 - a felony; (b) Escape from
4 Arrest by force and violence, a violation of Penal Code Section 836.6(b) - a felony;
5 (c) Battery by Gassing (reflecting Mr. Carrillo's purported spitting on Defendant
6 Luviano), a violation of Penal Code Section 243.9(a) - a felony; (d) Battery with
7 injury on a Peace Officer, a violation of Penal Code Section 243(c)(2) - a felony;
8 and (e) Possession of a Wireless Device in Jail / Prison, a violation of Penal Code
9 Section 4575(a) - a misdemeanor.

10 51. Based on the filing of these false and fabricated charges, Mr. Carrillo retained
11 counsel to defend his case.

12 52. On April 14, 2011, a preliminary hearing examination was held by the
13 California Superior Court to determine if there was probable cause for Mr. Carrillo
14 to face felony charges. The Los Angeles County District Attorney's Office
15 represented the People of the State of California and Mr. Carrillo was represented
16 by retained counsel. At that hearing, Defendants Zunggeemoge, Luviano, and
17 Womack testified under oath against Mr. Carrillo. Defendants Zunggeemoge,
18 Luviano and Womack provided false testimony at this hearing and committed
19 perjury under California law. As a result of this false testimony, the California
20 Superior Court held Mr. Carrillo to answer the felony charges set out in the
21 Criminal Complaint.

22 53. Based on the findings of the Superior Court, the Los Angeles District
23 Attorney's Office filed a felony Information with the Superior Court against Mr.
24 Carrillo, charging him with: (a) Resisting an Executive Officer, a violation of Penal
25 Code Section 69 - a felony; (b) Escape from Arrest by force and violence, a
26 violation of Penal Code Section 836.6(b) - a felony; (c) Battery by Gassing
27 (reflecting Mr. Carrillo's purported spitting on Defendant Luviano), a violation of
28 Penal Code Section 243.9(a) - a felony; (d) Battery with injury on a Peace Officer, a

1 violation of Penal Code Section 243(c)(2) - a felony; and (e) Possession of a
2 Wireless Device in Jail / Prison, a violation of Penal Code Section 4575(a) - a
3 misdemeanor.

4 54. These charges subjected Mr. Carrillo to the possibility of 14 years in a
5 California State Prison, plus any additional time in custody for a violation of Penal
6 Code Section 4575(a) – Possession of a Wireless Device in Jail / Prison.

7 55. On July 22, 2011, an evidentiary hearing was held in the Los Angeles
8 Superior Court based on Mr. Carrillo's motion to suppress the cellular telephone
9 seized from him on February 26, 2011, pursuant to Penal Code Section 1538.5. At
10 that hearing, Defendant Zunggeemoge testified under oath on behalf of the People
11 of California. Once again Defendant Zunggeemoge provided false testimony at this
12 hearing and committed perjury under California law. At that hearing, the People of
13 the State of California were represented by the Los Angeles County District
14 Attorney's Office, and Mr. Carrillo was represented by retained counsel.

15 56. On August 16, 2011, Superior Court Judge William Ryan granted Mr.
16 Carrillo's suppression motion and suppressed the cellular telephone seized on
17 February 26, 2011, barring its use as evidence in the case.

18 57. On information and belief, an internal investigation was initiated by the Los
19 Angeles County Sheriff's Department to assess whether deputies involved in Mr.
20 Carrillo's arrest – and prosecution – including Defendants Zunggeemoge, Luviano,
21 Ayala provided false and fabricated evidence and testimony to the District
22 Attorney's Office, and whether excessive force was used by the deputies against Mr.
23 Carrillo.

24 58. On October 14, 2011, the Los Angeles County District Attorney's Office
25 dismissed all charges pending against Mr. Carrillo that were set out in the
26 Information.

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1 **B. AS THE RESULT OF THE UNCONSTITUTIONAL POLICY,**
 2 **PRACTICE AND CUSTOM OF THE LOS ANGELES COUNTY**
 3 **SHERIFF'S DEPARTMENT IN TOLERATING, RATIFYING AND**
 4 **PERMITTING THE UNCONSTITUTIONAL CONDUCT OF**
 5 **DEPUTIES AT THE LOS ANGELES COUNTY MEN'S CENTRAL**
 6 **JAIL, THE DEFENDANTS ACTED WITH IMPUNITY IN ENGAGING**
 7 **IN ACTS OF EXCESSIVE FORCE, FALSIFYING EVIDENCE, AND**
 8 **BRINGING FALSE CHARGES.**

9 59. Pursuant to a consent decree issued in *Dennis Rutherford v. Baca, et al.*, CV
 10 75-4111-DDP, the ACLU of Southern California prepares an annual report
 11 regarding conditions at Los Angeles County's Men's Central Jail. In relation to the
 12 most recent annual report, "Cruel and Unusual Punishment, How a Savage Gang of
 13 Deputies Controls LA County Jails," the ACLU has disclosed multiple declarations
 14 revealing systemic acts of excessive force and fabrication of evidence by sheriff's
 15 deputies at Men's Central Jail. Further, the Report cited to the statements of
 16 multiple civilians who witnessed the unconstitutional, sadistic abuse of inmates by
 17 Sheriff's deputies, while also witnessing the deputies falsely make statements to the
 18 victim inmates of "stop resisting," to cover-up their brutal conduct.

19 60. Beginning on September 25, 2011 the *Los Angeles Times* printed a series of
 20 articles reporting on "allegations of deputy brutality and other misconduct in the
 21 Los Angeles County jail system." *Jails Under Scrutiny Series*, L.A. Times, Sept. 25,
 22 2011-Dec. 25, 2011, available at [http://www.latimes.com/news/local/la-me-jails-](http://www.latimes.com/news/local/la-me-jails-sg,0,4834651.story)
 23 [sg,0,4834651.story](http://www.latimes.com/news/local/la-me-jails-sg,0,4834651.story). The series provides information regarding, *inter alia*: the
 24 widespread use of excessive force by deputies at the Men's Central Jail; memos
 25 detailing the excessive force problem at Men's Central Jail and what Sheriff Baca
 26 and other supervisors knew about the excessive force problem at Men's Central Jail;
 27 an FBI investigation of deputy force at Men's Central Jail; deputy gangs or cliques
 28 within Men's Central Jail; and the removal of Defendant Captain Daniel Cruz from

1 his position overseeing the Men's Central Jail.

2 61. Several articles focus, in particular, on the longstanding nature of the problem
3 of excessive force at Men's Central Jail and what the department has done—or not
4 done—in response. Two such articles are: (1) Robert Faturechi & Jack Leonard,
5 *Sheriff Lee Baca Was Warned About Jail Deputies' Conduct, Retiree Says*, L.A.
6 Times, December 1, 2011 ("*Baca Warned*"); (2) Jack Leonard & Robert Faturechi,
7 *Sheriff's Staff Raised Red Flags About Jail Brutality 2 Years Ago*, L.A. Times,
8 October 29, 2011 ("*Red Flags*").

9 62. Prior to and during the time of the beating of Mr. Carrillo and the fabrication
10 of evidence against him, supervisors of the Los Angeles County Sheriff's
11 Department were aware of the existence of the brutal, unconstitutional practices of
12 the deputies within the Men's Central Jail. Defendant County of Los Angeles had a
13 duty to adequately train, supervise, and control its officers to prevent the deputies'
14 from committing acts of excessive force against individuals within the Men's
15 Central Jail and fabricating evidence intended to cover-up their acts of excessive
16 force.

17 63. In addition, Defendant County of Los Angeles had a duty to disseminate to
18 Deputy District Attorneys prosecuting cases in which a deputy was to testify,
19 including prosecutors who represented Defendant County of Los Angeles during
20 Mr. Carrillo's case, that deputies assigned to the Men's Central Jail had a practice of
21 engaging in acts of excessive force and fabrication of evidence. The County of Los
22 Angeles' failure to do so resulted in the prosecutors in Mr. Carrillo's case filing
23 criminal charges against him, resulting in Mr. Carrillo having to retain counsel and
24 defend himself of false criminal charges.

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FIRST CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 1983

**AGAINST DEFENDANT ZUNGGEEMOGE, DEFENDANT AYALA,
DEFENDANT LUVIANO, DEFENDANT WOMACK, DEFENDANT REED,
DEFENDANT SERGEANT ERIC GONZALEZ, AND DOES 1 THROUGH 10**

64. Plaintiff restates and incorporates by reference Paragraphs 1-63 above, as though fully stated herein.

65. Defendant Zunggeemoge, Defendant Ayala, Defendant Luviano, Defendant Womack, Defendant Reed, Defendant Sergeant Gonzalez, and Does 1 through 10, acting under color of state law, deprived Plaintiff of rights, privileges, and immunities secured by the Constitution and laws of the United States including the Fourth, Fifth and Fourteenth Amendments by:

- a. Subjecting Plaintiff to excessive force and unjustified infliction of harm;
- c. Falsely arresting Plaintiff for: (a) Resisting an Executive Officer, a violation of Penal Code Section 69 - a felony; (b) Escape from Arrest by force and violence, a violation of Penal Code Section 836.6(b) - a felony; (c) Battery by Gassing (reflecting Mr. Carrillo's purported spitting on Defendant Luviano), a violation of Penal Code Section 243.9(a) - a felony; (d) Battery with injury on a Peace Officer, a violation of Penal Code Section 243(c)(2) - a felony; based on deliberately false police reports;
- d. Interfering with Plaintiff's right to seek redress for his injuries by covering up for their officer misconduct;
- e. Denying Plaintiff due process of law, all to Plaintiff's damages as herein above alleged.

66. As a direct and proximate result of the aforementioned acts of Defendants, Plaintiff was injured as set forth above, and is entitled to compensatory and punitive damages according to proof.

SECOND CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 1983

**FOR FAILURE TO SUPERVISE, TRAIN, AND TAKE CORRECTIVE
MEASURES CAUSING CONSTITUTIONAL VIOLATION.**

AGAINST DEFENDANTS SERGEANT GONZALEZ,

DEFENDANT CAPTAIN DANIEL CRUZ,

DEFENDANT CAPTAIN DUANE HARRIS and DOES 1-10

67. Plaintiff restates and incorporates by reference Paragraphs 1-66 above, as though fully stated herein..

68. At all times material herein, Defendant Sergeant Gonzalez, Defendant Captain Daniel Cruz, Defendant Captain Duane Harris and Does 1-10, as supervisors of the Los Angeles County Sheriff's Department, under the color of law, had a duty to supervise and control officers under their command within the Los Angeles County Men's Central Jail to ensure that said officers would not violate the constitutional rights of individuals by using excessive force, fabricating criminal allegations, and testifying falsely in criminal proceedings..

69. Defendant Sergeant Gonzalez was the supervisor inside the break room when the beating of Mr. Carrillo occurred in the visiting section of the Los Angeles County Men's Central Jail on February 26, 2012, and arrived during the beating of Mr. Carrillo. Defendant Sergeant Gonzalez had the opportunity and the duty to take control of the situation and of the deputies beating Mr. Carrillo to prevent an unwarranted use of excessive force, but failed to control the deputies under his supervision, and instead ratified and even encouraged the use of force against Mr. Carrillo.

70. Defendant Sergeant Gonzalez, knowing that the incident reports and the supplemental reports of the deputies who engaged in the beating of Mr. Carrillo on February 26, 2012 were false and fabricated, approved of these false and fabricated reports, thereby causing the filing of false charges against Mr. Carrillo.

71. Defendant Captain Daniel Cruz, stationed at the Los Angeles County Men's Central Jail until December of 2010, and Defendant Captain Duane Harris, stationed at the Los Angeles County Jail on February 26, 2011, knew or should have known of a history and propensity and pattern at the time of this incident for deputies assigned to the Men's Central Jail to engage in acts of excessive force and creating false and fabricated reports in order to cover-up acts of excessive force. In particular, Defendant Captain Cruz and Defendant Captain Harris knew or should have known about Defendant Luviano's history of engaging in acts of excessive force, and fabrication of evidence, and Defendant Ayala's history of engaging in wrongful detention practices and fabrication of evidence. As the Captains of the Men's Central Jail, Defendant Captain Cruz and Defendant Captain Harris failed to comply in implementing policies and procedures or ensuring that acts of excessive force and the creation of false and fabricated reports not occur; failed to train and ensure that deputies refrain from acts of excessive force and the creation of false and fabricated reports.

72. As a direct and proximate cause thereof, Defendant Sergeant Gonzalez, Defendant Captain Cruz, Defendant Captain Harris and supervising Does 1-10 failed to supervise and control Defendant Zunggeemoge, Defendant Ayala, Defendant Luviano, Defendant Womack, Defendant Reed, Defendant Sergeant Gonzalez, and subordinate Does 1 through 10, and by doing so, permitted Defendant Zunggeemoge, Defendant Ayala, Defendant Luviano, Defendant Womack, Defendant Reed, Defendant Sergeant Gonzalez, and subordinate Does 1 through 10, to unlawfully engage in excessive force and the falsification of evidence against Mr. Carrillo.

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THIRD CLAIM FOR RELIEF

CALIFORNIA CIVIL CODE § 52.1

**AGAINST INDIVIDUALLY NAMED DEFENDANT ZUNGGEEMOGE,
DEFENDANT AYALA, DEFENDANT LUVIANO, DEFENDANT WOMACK,
DEFENDANT REED, DEFENDANT SERGEANT ERIC GONZALEZ, DOES
1 THROUGH 10 and THE COUNTY OF LOS ANGELES.**

73. Plaintiff restates and incorporates by reference Paragraphs 1-72 above, as though fully stated herein.

74. The County of Los Angeles is liable for the violations of its employees under California Government Code Section 815.2(a). Furthermore, the County of Los Angeles is liable under California Government Code Section 815.6.

75. The United States Constitution, Amendment IV, Amendment V, and Amendment XIV, and the California Constitution, Article I § 13, guarantee the right of persons to be free from excessive force and to be free from having false and fabricated charges filed against them. Defendants, by engaging in the wrongful conduct alleged herein, interfered or attempted to interfere by threats, intimidation, and/or coercion, with Plaintiff's exercise or enjoyment of these rights, thus giving rise to claims for damages pursuant to California Civil Code § 52.1(b).

76. As a direct and proximate result of the aforementioned acts of defendants, Plaintiff was injured as set forth above, and is entitled to statutory damages under California Civil Code § 52, as well as compensatory and punitive damages according to proof.

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FOURTH CLAIM FOR RELIEF

ASSAULT AND BATTERY

**AGAINST INDIVIDUALLY NAMED DEFENDANT ZUNGGEEMOGE,
DEFENDANT AYALA, DEFENDANT LUVIANO, DEFENDANT WOMACK,
DEFENDANT REED, DEFENDANT SERGEANT ERIC GONZALEZ, DOES
1 THROUGH 10 AND THE COUNTY OF LOS ANGELES.**

77. Plaintiff restates and incorporates by reference Paragraphs 1-76 above, as though fully stated herein..

78. The County of Los Angeles is liable for the violations of its employees under California Government Code Section 815.2(a). Furthermore the County of Los Angeles is liable under California Government Code Section 815.6.

79. Defendant Zunggeemoge, Defendant Ayala, Defendant Luviano, Defendant Womack, Defendant Reed, Defendant Sergeant Gonzalez, and Does 1 through 10, acting within the scope of their employment as law enforcement officers for the Los Angeles County Sheriff's Department, assaulted and battered Plaintiff causing injury.

80. As a direct and proximate result of the aforementioned acts of defendants, Plaintiff was injured as set forth above, and is entitled to compensatory and punitive damages according to proof.

FIFTH CLAIM FOR RELIEF

NEGLIGENCE

**AGAINST DEFENDANTS SERGEANT GONZALEZ,
DEFENDANT CAPTAIN DANIEL CRUZ,
DEFENDANT CAPTAIN DUANE HARRIS and DOES 1-10**

81. Plaintiff restates and incorporates by reference Paragraphs 1-80 above, as though fully stated herein.

82. Defendant Sergeant Gonzalez, Defendant Captain Daniel Cruz, Defendant Captain Duane Harris and Doe supervisors 1-10, acting within the course and scope

1 of their employment had a duty to assure the competence of their employee/agents
 2 Defendants and Does 1-10, but breached their duty and were negligent in the
 3 performance of their duties by selecting, training, reviewing, supervising, failing to
 4 supervise, evaluating the competency and retaining their defendant law enforcement
 5 officers, and/or employees and/or agents. This breach of the duty of careful
 6 selection, training, review, supervision, periodic evaluation of the competency, and
 7 retention of such law enforcement officers and /or employees and /or agents created
 8 an unreasonable risk of harm to persons such as Mr. Carrillo.

9 83. Defendant Sergeant Gonzalez, Defendant Captain Daniel Cruz, Defendant
 10 Captain Duane Harris and Doe supervisors 1-10 breached their duty of care to
 11 observe, report, monitor and discipline their defendant law enforcement officers,
 12 and/or employees and /or agents.

13 84. As a direct and legal result of the aforesaid negligence, carelessness and
 14 unskillfulness of Defendant Sergeant Gonzalez, Defendant Captain Daniel Cruz,
 15 Defendant Captain Duane Harris and Doe supervisors 1-10, and each of them, and
 16 as a result of their breach of duty of care to Mr. Carrillo, he suffered the damages as
 17 alleged herein.

18 SIXTH CLAIM FOR RELIEF

19 **DEPRIVATION OF CIVIL RIGHTS -- 42 U.S.C. §1983**

20 **MONELL LIABILITY**

21 **AGAINST DEFENDANT COUNTY OF LOS ANGELES, DEFENDANT**
 22 **CAPTAIN DANIEL CRUZ IN HIS OFFICIAL CAPACITY, DEFENDANT**
 23 **CAPTAIN DUANE HARRIS IN HIS OFFICIAL CAPACITY**

24 **AND DOES 1 - 10.**

25 85. Plaintiff restates and incorporates by reference Paragraphs 1-84 above, as
 26 though fully stated herein.
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1 86. Plaintiff is informed and believes and thereon alleges that, at all times herein
2 mentioned, Defendant County of Los Angeles, Defendant Daniel Cruz, Defendant
3 Duane Harris and Does 1 - 10, with deliberate indifference, and conscious and
4 reckless disregard to the safety, security and constitutional and statutory rights of
5 Plaintiff, engaged in the unconstitutional conduct and omissions, which consist of
6 the following customs and/or policies:

- 7 a. The knowing presentation of false evidence by deputies;
- 8 b. The deliberately indifferent presentation of false evidence by deputies;
- 9 c. The presentation of false evidence by deputies in reckless disregard for
10 the truth or the rights of the accused;
- 11 d. Subjecting citizens, including Mr. Carrillo, to unreasonable uses of
12 force against their persons;
- 13 e. Selecting, retaining, and assigning deputies with demonstrable
14 propensities for excessive force, violence, and other misconduct;
- 15 f. Failing to adequately train, supervise, and control deputies in the field
16 of law enforcement, including the use of force;
- 17 g. Failing to adequately discipline deputies involved in misconduct,
18 including excessive force and dishonesty;
- 19 h. Condoning and encouraging officers in the belief that they can violate
20 the rights of persons such as Gabriel Carrillo with impunity, and that
21 such conduct will not adversely affect their opportunities for promotion
22 and other employment benefits;
- 23 i. Knowingly failing to disband deputy gangs within the Los Angeles
24 County Sheriff's Department which engage in unconstitutional conduct
25 against individuals at the Men' Central Jail, including, among other
26 things, the fabrication of evidence in criminal cases and engaging in
27 acts of excessive force
28

- j. Condoning and encouraging deputies in the belief that they can violate the rights of persons such as Mr. Carrillo with impunity, and that such conduct will not adversely affect their opportunities for promotion and other employment benefits; and
- k. Condoning and encouraging the fabrication of evidence including but not limited to the filing of materially false police reports, and/or making false statements to prosecution authorities to obtain the filing of false charges.

87. The actions and inactions of the Los Angeles County Sheriff's Department set forth in ¶¶ 59-63 were known or should have been known to the policy makers responsible for the Los Angeles County Sheriff's Department and occurred with deliberate indifference to either the recurring constitutional violations elaborated above, and/or to the strong likelihood that constitutional rights would be violated as a result of failing to train, supervise or discipline in areas where the need for such training and supervision was obvious.

88. The actions of the Los Angeles County Sheriff's Department set forth herein were a motivating force behind the violations of Mr. Carrillo's constitutional rights as set forth in this complaint.

89. As a direct and proximate result of Defendant County of Los Angeles' acts and omissions, condoning, encouraging, ratifying and deliberately ignoring the pattern and practice of Defendants and Does 1 - 10 acts and omissions, Plaintiff sustained injury and damage as proved.

DAMAGES

90. As a direct and proximate result of the aforesaid acts, practices, policies and decisions of Defendant Zunggeemoge, Defendant Ayala, Defendant Luviano, Defendant Womack, Defendant Reed, Defendant Sergeant Gonzalez, Defendant Captain Daniel Cruz, Defendant Captain Duane Harris, Defendant County of Los Angeles and Does 1 through 10, Plaintiff has suffered great mental and physical

1 pain, physical injury, suffering, anguish, fright, nervousness, anxiety, shock,
2 humiliation, indignity, embarrassment, harm to reputation, and apprehension, which
3 have caused Plaintiff to sustain damages in a sum to be determined at trial.

4 91. All Defendants acted outside the scope of their jurisdiction and without
5 authorization of law, and, separately and in concert, the aforementioned acts of the
6 Defendants, and each of them, was willful, wanton, malicious and oppressive, with
7 reckless disregard or with deliberate indifference with the intent to deprive Plaintiff
8 of his rights and privileges, and did in fact violate the aforementioned rights and
9 privileges, entitling Plaintiff to exemplary and punitive damages in an amount to be
10 proven at the trial of this matter.

11 92. By reason of the afore described acts and omissions of Defendants, Plaintiff
12 was required to retain an attorney to defend himself against the false and fabricated
13 criminal charges, thereby incurring damages by way of attorney fees.

14 93. By reason on the afore described acts and omissions of Defendants, Plaintiff
15 was required to retain an attorney to prosecute the within action, and to render legal
16 assistance to Plaintiff that he might vindicate the loss and impairment of his rights,
17 and by reason thereof, Plaintiff requests payment by Defendants of a reasonable sum
18 for attorney's fees pursuant to 42 U.S.C. § 1988.

19 **PRAYER FOR RELIEF**

20 94. WHEREFORE, Plaintiffs pray for judgment against Defendant
21 Zunggeemoge, Defendant Ayala, Defendant Luviano, Defendant Womack,
22 Defendant Reed, Defendant Sergeant Gonzalez, Defendant Captain Cruz, Defendant
23 Captain Harris, Defendant County of Los Angeles, and Does 1 through 10, and each
24 of them, jointly and severally, as described and limited in the Causes of Action set
25 forth above, as follows:

- 26
27 1. For general and compensatory damages according to proof;
28 2. For special damages according to proof;

3. For exemplary and punitive damages against individual Defendant in an amount according to proof;
4. For costs of suit and reasonable attorneys' fees permitted pursuant to 42 U.S.C., §1988; and
5. For such further relief as the court may deem just and equitable.

Respectfully submitted,

KAYE, McLANE & BEDNARSKI, LLP

DATED: November 13, 2013 By: /S/ Ronald Kaye
RONALD O. KAYE
Attorneys for Plaintiff

JURY DEMAND

Trial by jury of all issues is demanded.

KAYE, McLANE & BEDNARSKI, LLP

DATED: November 13, 2013 By: /S/ Ronald Kaye
RONALD O. KAYE
Attorneys for Plaintiff