

1 Michael R. Marrinan (SBN 90484)
 2 Attorney at Law
 3 LAW OFFICES OF MICHAEL R. MARRINAN
 4 225 Broadway, Suite 1460
 5 San Diego, CA 92101
 6 Telephone: (619) 238-6900
 7 Facsimile: (619) 238-1097
 8 E-mail: mrmarrinan@aol.com

9 Semnar & Hartman, LLP
 10 Babak Semnar, Esq. (#224890)
 11 Bob@sandiegoconsumerattorneys.com
 12 Jared M. Hartman (#254860)
 13 Jared@ sandiegoconsumerattorneys.com
 14 400 S. Melrose Drive, Suite 209
 15 Vista, California 92081
 16 Telephone: (951) 293-4187
 17 Fax: (888) 819-8230

Attorneys for Plaintiff, PATRICK BERNARD

18 **UNITED STATES DISTRICT COURT**
 19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 PATRICK BERNARD, an individual,

21 Plaintiff,

22 v.

23 COUNTY OF SAN DIEGO; PATRICK
 24 PRESTON; DAVID ROSENTHAL;
 25 JOSHUA RAMIREZ; BRANDEN
 26 CARLOS; and DOES 1-10,

27 Defendants.

Case No.: '16CV1514 JAH MDD

**COMPLAINT FOR DAMAGES AND
 DEMAND FOR JURY TRIAL FOR
 VIOLATIONS OF:**

1. 42 U.S.C. § 1983--Civil Rights Violations
2. 42 U.S.C. § 1983--Unlawful Policies, Customs or Habits
3. Negligence
4. Battery
5. Civil Code § 52.1 Civil Rights Violations

1 **JURISDICTION**

2 1. This is a lawsuit for money damages and is brought pursuant to 42 U.S.C.
3 § 1983, et seq., and the Fourth Amendment to the United States Constitution, for
4 personal injuries and violation of constitutional rights by defendant County of San
5 Diego and its sheriff's Deputies David Rosenthal, Patrick Preston, Joshua Ramirez, and
6 Branden Carlos. Jurisdiction is founded on 28 U.S.C. Section 1331 and 1343 and the
7 aforementioned statutory and constitutional provisions. State law claims of negligence,
8 battery, and Civil Code section 52.1 civil rights violations are alleged as well. Plaintiff
9 invokes the Court's supplemental jurisdiction to consider these state law claims.

10 **GENERAL ALLEGATIONS**

11 2. Plaintiff was at all material times mentioned herein a legal resident of the
12 County of San Diego, State of California.

13 3. At all times mentioned herein Defendants Rosenthal, Preston, Ramirez,
14 and Carlos were employees of Defendant County of San Diego and in doing the acts
15 hereinafter described acted within the course and scope of their employment. The acts
16 of all Defendants, and each of them, were also done under the color and pretense of the
17 statutes, ordinances, regulations, customs and usages of the State of California. The
18 individual Defendants named above are sued individually and in their capacities as
19 employees of the County of San Diego.

20 4. Defendant County of San Diego is a public entity existing under the laws
21 of the State of California and is the employer of the individual defendants named above.

22 5. The true names or capacities whether individual, corporate, associate or
23 otherwise, of Defendants named herein as DOES 1 through 10 are unknown to Plaintiff,
24 who therefore sues said Defendants by said fictitious names.

25 6. If additional individuals are identified, Plaintiff reserves the right to amend
26 this Amended Complaint to show said Defendants' true names and capacities when the
27 same have been ascertained.

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1 16. Knowing he had done nothing wrong, Plaintiff became fearful of the
2 deputies and stood on top of a rock in the backyard as what he felt to be a “safe zone”.

3 17. While standing on top of the rock, Plaintiff tried filming the deputies’
4 actions on his cell phone to record what he perceived to be a wrongful
5 arrest/detention—unbeknownst to Plaintiff, his cell phone battery had already died.

6 18. Upon information and belief, the deputies became even more
7 confrontational and aggressive towards Plaintiff due to their perception that he was
8 filming them.

9 19. Nevertheless, Plaintiff’s neighbor did record the deputies’ actions on his
10 cell phone without the deputies’ knowledge.

11 20. The cell phone video shows Deputies Ramirez, Preston, and Rosenthal
12 drag claimant down off the rock on which he was standing, which caused Plaintiff to
13 land face down into a bed of cacti.

14 21. The cell phone video shows that Plaintiff was not striking or threatening
15 the deputies in any manner prior to their dragging him off the rock and throwing him
16 face down into the bed of cacti.

17 22. After landing in the bed of cacti, cacti needles embedded deep into
18 Plaintiff as a result of the force of his body being slammed onto the bed of cacti by the
19 deputies.

20 23. Plaintiff’s neighbor witnessed the entire event, and confirms that Plaintiff
21 did not swing a cactus at the deputies and did not threaten the deputies nor resist them.

22 24. After Plaintiff landed face down into the bed of cacti, Deputy Ramirez
23 punched Plaintiff in the back of the head multiple times while Deputy Rosenthal tazered
24 Plaintiff multiple times in the back of the neck/trapezius.

25 25. Despite Plaintiff being physically beaten by the deputies despite his lack of
26 resistance and lack of physical threat upon them, Deputy Carlos nevertheless ordered a
27 dog to attack Plaintiff, even though claimant was facedown and was neither resisting
28 arrest nor assaulting the officers.

1 26. The dog began gnawing its teeth into Plaintiff's inside groin area and
2 lower stomach.

3 27. Plaintiff suffered excruciating pain, which caused him to naturally react
4 with screams and squirming his body in a desperate attempt to avoid further chewing
5 and gnawing by the dog.

6 28. Plaintiff recalls seeing the dog pull the flesh in Plaintiff's stomach area
7 inches away from his body while thrashing its head from side to side as if trying to rip
8 open Plaintiff's flesh.

9 29. In addition, the dog gnawed on Plaintiff's finger and subsequently released
10 its teeth out of plaintiff's stomach. This caused nerve damage to plaintiff's finger.

11 30. The dog bites caused puncture wounds, lacerations, and bleeding to
12 Plaintiff's stomach and groin.

13 31. The cell phone video shows the deputies hesitate for several seconds to
14 allow the dog to continue gnawing and chewing on Plaintiff, even though Plaintiff was
15 not threatening or attacking the officers.

16 32. The cell phone video shows that the Deputies allowed the dog to continue
17 attacking even after Plaintiff was placed in handcuffs.

18 33. Plaintiff still has visible red marks and inflammation to his stomach and
19 groin area from the dog bites.

20 34. As a result of the above, Plaintiff has suffered significant emotional
21 distress by way of embarrassment, humiliation, loss of trust of law enforcement, fear of
22 law enforcement, lack of sleep, anxiety, and nervousness.

23 35. Plaintiff often awakes in the middle of the night from night terrors after
24 having nightmares of a dog attacking him and tearing the flesh from his stomach.

25 36. Most of the times when Plaintiff sees a dog, he becomes fearful and
26 anxious, and he suffers flashbacks of being attacked by the police dog.

27 37. Furthermore, whenever Plaintiff sees a police officer, he becomes fearful
28 and anxious, and he suffers flashbacks of being assaulted and beaten.

1 38. Plaintiff has sought mental health therapy counseling several times
2 specifically for his experiences from this incident, and has since been diagnosed with
3 Post Traumatic Stress Disorder.

4 **FIRST CAUSE OF ACTION**

5 42 U.S.C. § 1983 Violations-
6 Excessive Force, Against
7 Defendants Rosenthal, Preston, Ramirez, and Carlos

8 39. Plaintiff re-alleges and incorporates by reference each and every allegation
9 contained above as though fully set forth herein.

10 40. As a result of the acts alleged above, particularly the unjustified and
11 unnecessary use of force on Plaintiff, Defendants Rosenthal, Preston, Ramirez, and
12 Carlos used unreasonable, unjustified and excessive force upon Plaintiff. This
13 unreasonable and excessive force constituted unlawful seizures of Plaintiff, in violation
14 of Plaintiff's constitutional rights as guaranteed by the Fourth Amendment to the United
15 States Constitution. As a result, Plaintiff is entitled to damages pursuant to Title 42
16 U.S.C. § 1983 in an amount to be proven at trial.

17 41. Defendants Rosenthal, Preston, Ramirez, and Carlos are liable for the
18 constitutional violations alleged above, either directly and/or as a result of their failure
19 to intervene and prevent or stop the constitutional violations of other Defendants.

20 42. As a proximate result of the acts and constitutional violations alleged
21 above, Plaintiff was injured in mind and body. Plaintiff suffered physical injuries to his
22 finger, stomach, groin, and neck area as described above. Plaintiff also suffered severe
23 emotional distress as a result of their excessive force, as explained above.

24 43. In committing the acts alleged above, Defendants Rosenthal, Preston,
25 Ramirez, and Carlos acted maliciously and/or were guilty of a wanton and reckless
26 disregard for the rights, feelings and safety of Plaintiff, and by reason thereof Plaintiff is
27 entitled to exemplary and punitive damages in an amount to be proven at trial.

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SECOND CAUSE OF ACTION

42 U.S.C. § 1983 Constitutional Violations via Unlawful Policies,
Customs or Habits, Against Defendant County of San Diego

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4 44. Plaintiff re-alleges and incorporates by reference each and every allegation
5 contained above as though fully set forth herein.

6 45. On information and belief, Plaintiff alleges that Defendant County of San
7 Diego, through its Sheriff’s department, has unlawful policies, customs and habits of
8 improper and inadequate hiring, training, retention, discipline and supervision of its
9 Sheriff’s Deputies, proximately causing the constitutional deprivations, injuries and
10 damages alleged in the First Cause of Action.

11 46. Plaintiff is further informed and believes that other citizens have been
12 treated unlawfully and abused by Sheriff’s Deputies, but the County, through its
13 Sheriff’s department, has a custom, policy or practice of failing to properly investigate
14 citizen complaints and failing to take corrective or disciplinary action against Deputies
15 who act improperly, thus leading to, and causing, the constitutional violations against
16 Plaintiffs as described above. As a result, Plaintiff is entitled to damages pursuant to
17 Title 42 U.S.C. § 1983, in an amount to be proven at trial.

18 47. Further, on information and belief, Plaintiff alleges that Defendant County
19 of San Diego, through its Sheriff’s department, has an unlawful policy, custom or habit
20 of permitting excessive use of force by Sheriff’s Deputies, including Deputies
21 Rosenthal, Preston, Ramirez, and Carlos, and of permitting, condoning and failing to
22 take action against deputies who commit acts of excessive force or unlawful search and
23 seizure.

24 48. Upon information and belief, Defendant County, through its sheriff’s
25 department, has a further policy relating to its use of police dogs. The sheriff’s
26 department has a policy that all of their canines are trained and deployed to “find and
27 bite”, rather than “find and bark”, as recommended by the International Association of
28 Chiefs of Police Model Policy regarding law enforcement canines.

1 49. Under the San Diego Sheriff Department's policy, canines are trained to
2 always bite when deployed. Unnecessary and unjustified dog bites by sheriff's
3 department canines occur repeatedly in situations where bites are not necessary or
4 justified, resulting in severe injuries to victims. It was pursuant to, and because of, this
5 policy that Defendant Carlos directed his canine to bite Plaintiff in the stomach and
6 groin, when no bites by the dog were necessary or justified.

7 50. The County's policies, customs and habits as described above caused or
8 were a substantial factor in Plaintiffs' injuries.

9 51. Defendants, Preston, Rosenthal, Ramirez, and Carlos were acting pursuant
10 to the policies, customs and/or habits of the County as described above when they
11 committed the acts and inflicted the injuries described in the Factual Allegations and
12 First Cause of Action herein.

13 52. As a proximate result of the unlawful policies, customs and habits alleged
14 above, Plaintiff suffered the constitutional violations, injuries and damages alleged in
15 the First Cause of Action, and thus Plaintiff is entitled to general and compensatory
16 damages against Defendant County of San Diego in an amount to be proven at trial.

17 53. Defendant County has a further unlawful policy, custom and habit of
18 inadequate training, supervision and disciplining of errant officers, including the
19 Deputies involved in this incident. The inadequate training, inadequate supervision and
20 improper policies includes training and policies relating to: 1) warrantless detentions
21 and arrests of citizens who are doing nothing unlawful, 2) use of excessive force by
22 Deputies against a citizen who poses no threat or assaultive behavior, 3) warrantless
23 detentions and arrests of citizens who simply protest unlawful detentions and arrests,
24 and 4) writing false police reports as a method of covering up acts of excessive force
25 and other improprieties by Sheriff's Deputies.

26 54. Plaintiff is informed and believes that the defendant Deputies have
27 received grossly inadequate training regarding a citizen's constitutional right to
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1 question or protest the acts of deputies without thereby risking arrest or assaults by
2 Deputies as a result of doing so.

3 55. Defendant County has a further unlawful policy, custom and habit of
4 discouraging citizen complaints against errant deputies and failing to properly
5 investigate citizen complaints against Sheriff's Deputies, including complaints of false
6 arrest, excessive force and unlawful searches and seizures.

7 56. Plaintiff is informed and believes that Defendant County and its Sheriff's
8 department have refused to investigate, or have inadequately investigated, numerous
9 complaints of excessive force and unlawful searches and seizures made by citizens
10 against its Sheriff's deputies over many years, including complaints that resulted in
11 substantial jury verdicts against the Deputies and the County.

12 57. These policies and failures constituted ratification of, and acquiescence in,
13 acts of excessive force, false arrest, unlawful search and seizure and other improprieties
14 by Sheriff's Deputies, such as those which are alleged in the First Cause of Action.
15 These policies, acts and omissions have encouraged Deputies to continue to make false
16 arrests, use excessive force and commit additional improprieties, then attempt to get
17 away with it by writing false reports and charging the victims with false crimes, which
18 lead the Sheriff's department's internal affairs division to refuse to investigate the
19 victim's legitimate complaint. These policies and failures were the moving force
20 behind the injuries suffered by Plaintiff, constituted ratification by the County and its
21 Sheriff's department, and also constituted deliberate indifference to the rights and safety
22 of Plaintiff and other members of the public.

23 58. As a proximate result of the unlawful policies, customs and habits alleged
24 above, Plaintiff suffered the constitutional violations, injuries and damages alleged in
25 the First Cause of Action, and thus Plaintiff is entitled to general and compensatory
26 damages against Defendant County of San Diego in an amount to be proven at trial.

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1 **STATE LAW CLAIMS**

2 The following causes of action are brought pursuant to California law.

3 **THIRD CAUSE OF ACTION**

4 Negligence, Against All Defendants

5 59. Plaintiff re-alleges and incorporates by reference the allegations contained
6 above as though fully set forth herein.

7 60. By the acts alleged above, Defendants Rosenthal, Preston, Ramirez, and
8 Carlos were negligent and breached their duty of due care owed to Plaintiff, thereby
9 causing the injuries and severe emotional distress as described Factual Allegations and
10 the First Cause of Action above.

11 61. Defendant County of San Diego is vicariously liable for this negligence
12 and Plaintiff's injuries under the doctrine of *respondeat superior* and pursuant to the
13 California Government Code, including, but not limited to, sections 815.2 and 820(a) of
14 the Government Code.

15 62. Plaintiff is therefore entitled to general and compensatory damages in an
16 amount to be proven at trial.

17 **FOURTH CAUSE OF ACTION**

18 Battery, Against All Defendants

19 63. Plaintiff re-alleges and incorporates by reference the allegations contained
20 above as though fully set forth herein.

21 64. By the acts alleged herein, particularly the acts of excessive force and
22 violence committed against Plaintiff by Defendants Rosenthal, Preston, Ramirez, and
23 Carlos as described in the Factual Allegations and the First Cause of Action,
24 Defendants committed batteries upon Plaintiff, for which the individual Defendants and
25 Defendant County of San Diego are liable, entitling Plaintiff to damages pursuant to
26 California law.

27 65. Defendant County of San Diego is vicariously liable for these batteries and
28 Plaintiff's injuries, under the doctrine of *respondeat superior* and pursuant to the

1 California Government Code, including, but not limited to, sections 815.2 and 820(a) of
2 the Government Code.

3 66. As a result of these acts, Plaintiff suffered the injuries and damages
4 described in the Factual Allegations and the First Cause of Action above and severe
5 pain, suffering and emotional distress, entitling him to damages in an amount to be
6 proven at trial.

7 67. In committing the acts alleged above, Defendants Rosenthal, Preston,
8 Ramirez, and Carlos acted maliciously and/or oppressively and were guilty of a wanton
9 and reckless disregard for the rights, feelings and safety of Plaintiff, and by reason
10 thereof, Plaintiff is entitled to exemplary and punitive damages in an amount to be
11 proven at trial.

12 **FIFTH CAUSE OF ACTION**

13 Civil Code § 52.1 Civil Rights Violations, Against All Defendants

14 68. Plaintiff re-alleges and incorporates by reference the allegations contained
15 above as though fully set forth herein.

16 69. The acts alleged above, particularly Defendants Rosenthal, Preston,
17 Ramirez, and Carlos' acts of excessive force constituted violation of Plaintiff's rights
18 guaranteed by the California Constitution (Article I, Section 13) and the United States
19 Constitution, particularly the Fourth Amendment thereto.

20 70. These acts were committed by threats, intimidation and/or coercion by said
21 Defendants. Therefore, Plaintiff is entitled to damages pursuant to California Civil
22 Code section 52.1(b).

23 71. Defendant County of San Diego is vicariously liable for these violations
24 and Plaintiff's injuries under the doctrine of *respondeat superior* and pursuant to the
25 California Government Code, including, but not limited to, sections 815.2 and 820(a) of
26 the Government Code.

27 72. As a result of these acts, Plaintiff suffered the injuries and damages
28 described in the Factual Allegations and First Cause of Action above and severe pain,

1 suffering and emotional distress, entitling him to damages in an amount to be proven at
2 trial.

3 73. In committing the acts alleged above, Defendants Rosenthal, Preston,
4 Ramirez, and Carlos acted maliciously and/or oppressively and were guilty of a wanton
5 and reckless disregard for the rights, feelings and safety of Plaintiff and by reason
6 thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be
7 proven at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them
10 as follows:

- 11 1. For general and compensatory damages against Defendants and each of them
12 in an amount to be proven at trial;
- 13 2. For exemplary and punitive damages against Defendants Rosenthal, Preston,
14 Ramirez, and Carlos only, in an amount to be proven at trial;
- 15 3. For costs of suit herein, including reasonable attorneys' fees; and
- 16 4. For such other relief as the Court deems proper.

17 Pursuant to the seventh amendment to the Constitution of the United States of
18 America, Plaintiff is entitled to, and demands, a trial by jury.

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20 SEMNAR & HARTMAN, LLP

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22 Dated: 06/16/2016

23 By: /s/ Jared M. Hartman
24 Jared M. Hartman, Esq.
25 Attorney for Plaintiff
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