

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

5 Semnar & Hartman, LLP
6 Babak Semnar, Esq. (#224890)
Bob@sandiegoconsumerattorneys.com
7 Jared M. Hartman (#254860)
Jared@sandiegoconsumerattorneys.com
8 400 S. Melrose Drive, Suite 209
Vista, California 92081
9 Telephone: (951) 293-4187
10 Fax: (888) 819-8230

11 Attorneys for Plaintiff, LUCAS MOORE

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 LUCAS MOORE, an individual,
15 Plaintiff,

16 v.

17 COUNTY OF SAN DIEGO; DEREK
SANDERS; DANIEL FABINSKI;
18 NOAH IVICEVIC; ALEXANDER
ROTI and DOES 1-10,
19 Defendants.

Case No.: 3:15-cv-02002-AJB-NLS

**FIRST AMENDED 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. False Arrest
6. 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 Derek Sanders (#5379), Daniel Fabinski (#1706), Noah
6 Ivicovic (#9271), and Alexander Roti (#0286). Jurisdiction is founded on 28 U.S.C.
7 Section 1331 and 1343 and the aforementioned statutory and constitutional provisions.
8 State law claims of negligence, battery, false arrest and Civil Code section 52.1 civil
9 rights violations are alleged as well. Plaintiff invokes the Court's supplemental
10 jurisdiction to consider these state law claims.

11 **GENERAL ALLEGATIONS**

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

14 3. At all times mentioned herein Defendants Derek Sanders, Daniel Fabinski,
15 Noah Ivicovic, and Alexander Roti were employees of Defendant County of San Diego
16 and in doing the acts hereinafter described acted within the course and scope of their
17 employment. The acts of all Defendants, and each of them, were also done under the
18 color and pretense of the statutes, ordinances, regulations, customs and usages of the
19

1 State of California. The individual Defendants named above are sued individually and
2 in their capacities as employees of the County of San Diego.

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

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

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

11 7. Plaintiff is informed and believes, and therefore alleges, that at all times
12 mentioned herein, each of the Defendants was the agent, servant and/or employee of
13 each of the remaining Defendants and were, in doing the acts herein alleged, acting
14 within the course and scope of this agency and/or employment and with the permission,
15 consent and authority of their co-defendants and each of them, and each is responsible
16 in some manner for the occurrences hereinafter alleged; and that Plaintiff's injuries
17 were proximately caused by the actions of each.

1 8. On or about July 14, 2015, Plaintiff filed a claim with the County of San
2 Diego for the injuries alleged herein. On or about August 20, 2015, the claim was
3 denied.

4 **FACTUAL ALLEGATIONS**

5 9. Plaintiff is a 31-year old law abiding citizen, a 9 year veteran of the U.S.
6 Marine Corps with Top Security Clearance, is a Top Gunnery Sergeant, and he works
7 closely with the National Security Agency on a regular basis.

8 10. On or about April 5, 2015, at approximately 8:30 p.m., Plaintiff was
9 walking south on Pacific Coast Highway in the City of Encinitas with a female friend.

10 11. When they turned left on “E” street, a marked County of San Diego Sheriff
11 cruiser stopped beside them less than two feet from where they were walking.

12 12. The Deputy driving (later identified as Deputy Derek Sanders #5379)
13 asked “Is there a problem here?”.

14 13. This conduct by Deputy Sanders amounts to a detention because no
15 reasonable person would feel free to leave and would feel compelled to stop and answer
16 the Deputy’s question.

17 14. Plaintiff and his female companion stopped and Plaintiff explained there
18 was no problem and explained the two were walking to Plaintiff’s vehicle.

1 15. Deputy Sanders exited his vehicle, displaying that he was in full standard
2 County of San Diego Sheriff's uniform clearly indicating that he was law enforcement
3 acting within law enforcement capacity.

4 16. Deputy Sanders also was wearing a standard issue utility belt with various
5 weaponry and handcuffs being visible.

6 17. Deputy Sanders immediately began accusing Plaintiff of being intoxicated
7 and stated his intention was to arrest Plaintiff for being drunk in public.

8 18. Plaintiff had not had a single drink of alcohol that day.

9 19. Plaintiff requested a breathalyzer test, which was given by Deputy Sanders
10 and failed to register any alcohol consumption by Plaintiff.

11 20. When Plaintiff requested that he be allowed to leave, Deputy Sanders then
12 claimed he was arresting Plaintiff for resisting arrest.

13 21. Deputy Sanders then forced Plaintiff around so that Plaintiff was facing
14 away from Deputy Sanders, and Deputy Sanders then grabbed Plaintiff's wrists in
15 preparation for handcuffing them.

16 22. Plaintiff knew this was wrong, as he had done nothing illegal, so Plaintiff
17 turned and walked away towards Pacific Coast Highway solely to prevent an unlawful
18 arrest.

1 23. Apparently, Deputy Sanders requested additional units, as more County of
2 San Diego Sheriff's Deputies arrived after Plaintiff had walked approximately 30 yards
3 away and still in sight of Deputy Sanders.

4 24. Once additional Deputies arrived, Plaintiff felt it would be safe to engage
5 in conversation to explain that he had done nothing wrong and this incident had been a
6 misunderstanding.

7 25. Unfortunately, upon approaching the area where the Deputies had gathered,
8 Deputies Derek Sanders, Daniel Fabinski, Noah Ivicovic, and Alexander Roti grabbed
9 Plaintiff as he walked towards them and threw him on top of the hood of the cruiser,
10 handcuffed him, then threw him onto the ground.

11 26. Deputy Noah Iviceni began punching Plaintiff repeatedly in the back of the
12 head, the torso, and the ribcage.

13 27. Concurrently, Deputy Daniel Fabinski was choking Plaintiff from behind
14 with one arm around Plaintiff's neck so that Plaintiff's trachea was forced into the nook
15 area between the Deputy's bicep and forearm and the force of the Deputy's full body
16 weight being pressed down onto the back of Plaintiff's head and neck caused Plaintiff's
17 trachea to be pressed even further into the Deputy's arm, thereby causing Plaintiff
18 shortness of breath and fear of fainting and losing consciousness and possibly death.

1 28. Furthermore, at least one Deputy placed his foot on the back of Plaintiff's
2 head and used the force of his foot to grind Plaintiff's face and head into the blacktop
3 and concrete that contained loose stones, dirt, and broken shards of glass.

4 29. This was all done despite the fact that Plaintiff threatened no force or
5 assaultive behavior towards these deputies and despite the fact that he committed no
6 crime at all.

7 30. Plaintiff is 5 feet, 8 inches tall and weighs only 160 pounds.

8 31. The Defendants who physically manhandled Plaintiff are all much larger
9 than him, and they were not at risk of any threat by Plaintiff at all.

10 32. During their manhandling of Plaintiff, the Defendants laughed at Plaintiff
11 and made comments such as, "Got another dirtbag Marine off the street".

12 33. This seizure of Plaintiff's person and preventing his freedom of movement
13 by the Deputies' use of force amounted to a detention of Plaintiff.

14 34. Deputy Sanders issued a citation to Plaintiff to appear in court for an
15 alleged violation of P.C. 148(a)(1).

16 35. At the arraignment date of June 25, 2015, no charges were filed by the
17 District Attorney's Office so Plaintiff's proposed court case was not on calendar.

18 36. The arrest and citation of Plaintiff as explained above by the Defendants
19 forced Plaintiff to notify his commanding officer of the incident, which caused him
20

1 mental distress by way of nervousness, anxiety, embarrassment, humiliation, and fear
2 over the thought of possibly being disciplined within the U.S. Marine Corps by way of
3 demotion and/or deprivation of his Top Security Clearance.

4 37. The arrest appears on Plaintiff's background checks, and poses a threat to
5 Plaintiff losing his Top Security clearance.

6 38. Plaintiff's background check shows that his only other infractions have
7 been minor traffic infractions, and he has no other arrests or citations for misdemeanors
8 or felonies.

9 39. In early April 2015, Plaintiff's commanding officers spoke with Deputy
10 Sanders' superior telephonically, who provided Plaintiff's commanding officer with a
11 copy of the police report for him to read to determine if internal discipline was
12 warranted.

13 40. After reading the police report, it was determined by Plaintiff's
14 commanding officers that Plaintiff had done nothing wrong and Plaintiff was thankfully
15 not disciplined internally.

16 41. As a result of the forceful beating inflicted upon Plaintiff, he suffered
17 severe pain and injuries to his head, face, torso, and ribcage, as well as damage to his
18 rotator cuff and shoulder-area.

1 42. Plaintiff still to this day suffers pain and limited mobility to his shoulder
2 and rotator cuff, and he still has to seek physical therapy and rehabilitation on a regular
3 basis.

4 43. This injury may cause Plaintiff to be considered too disabled for his
5 service to the U.S. Marine Corps, and he may still be forced into discharge against his
6 wishes.

7 44. Moreover, Plaintiff suffered a large abrasion to his forehead and
8 cheekbone area due to that area being ground into the pavement by a Deputy's foot
9 causing Plaintiff's forehead and face to be stripped of several layers of skin down to the
10 flesh.

11 45. Plaintiff also suffered a chunk of skin being ripped off his finger from
12 being thrown to the ground by the Deputies.

13 46. As a result of the above, Plaintiff has suffered significant emotional
14 distress by way of embarrassment, humiliation, loss of trust of law enforcement, fear of
15 law enforcement, damage to his reputation within the U.S. Marine Corps, fear over still
16 losing either his Top Security Clearance and/or discharge from the Marine Corps, lack
17 of sleep, anxiety, and nervousness.

1 47. Plaintiff has also suffered out of pocket loss for his medical expenses as a
2 result of having to seek on-going treatment for the shoulder injury inflicted upon him by
3 the Deputies.

4 **FIRST CAUSE OF ACTION**

42 U.S.C. § 1983 Violations-

5 Unlawful Seizures and Excessive Force, Against
6 Defendants Sanders, Fabinski, Ivcevic, and Roti

7 48. Plaintiff re-alleges and incorporates by reference each and every allegation
8 contained in Paragraphs 1-47 above as though fully set forth herein.

9 49. As a result of the acts alleged above, particularly the unlawful detentions
10 and false arrest of Plaintiff (detentions without reasonable suspicion and arrests without
11 probable cause) Plaintiff was unlawfully seized by Defendants Sanders, Fabinski,
12 Ivcevic, and Roti. These unlawful seizures violated Plaintiff's constitutional rights as
13 guaranteed by the Fourth Amendment to the United States Constitution. As a result,
14 Plaintiff is entitled to damages pursuant to Title 42 U.S.C. § 1983, et seq. in an amount
15 to be proven at trial.

16 50. As a further result of the acts alleged above, particularly the unjustified and
17 unnecessary use of force on Plaintiff, Defendants Sanders, Fabinski, Ivcevic, and Roti
18 used unreasonable, unjustified and excessive force upon Plaintiff. This unreasonable
19 and excessive force constituted unlawful seizures of Plaintiff, in violation of Plaintiff's
20 constitutional rights as guaranteed by the Fourth Amendment to the United States

1 Constitution. As a result, Plaintiff is entitled to damages pursuant to Title 42 U.S.C. §
2 1983 in an amount to be proven at trial.

3 51. Defendants Sanders, Fabinski, Ivcevic, and Roti are liable for the
4 constitutional violations alleged above, either directly and/or as a result of their failure
5 to intervene and prevent or stop the constitutional violations of other Defendants.

6 52. As a proximate result of the acts and constitutional violations alleged
7 above, Plaintiff was injured in mind and body. Plaintiff suffered the physical injuries to
8 his face, forehead, shoulder, rotator cuff, and finger as described above. Plaintiff also
9 suffered severe emotional distress and economic losses as a result of their wrongful
10 arrests, as explained above.

11 53. In committing the acts alleged above, Defendants Sanders, Fabinski,
12 Ivcevic, and Roti acted maliciously and/or were guilty of a wanton and reckless
13 disregard for the rights, feelings and safety of Plaintiff, and by reason thereof Plaintiff is
14 entitled to exemplary and punitive damages in an amount to be proven at trial.

15 **SECOND CAUSE OF ACTION**

16 42 U.S.C. § 1983 Constitutional Violations via Unlawful Policies,
17 Customs or Habits, Against Defendant County of San Diego

18 54. Plaintiff realleges and incorporates by reference each and every allegation
19 contained in Paragraphs 1-53 above as though fully set forth herein.
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1 55. On information and belief, Plaintiff alleges that Defendant County of San
2 Diego, through its Sheriff's department, has unlawful policies, customs and habits of
3 improper and inadequate hiring, training, retention, discipline and supervision of its
4 Sheriff's Deputies, proximately causing the constitutional deprivations, injuries and
5 damages alleged in the First Cause of Action.

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

13 57. Further, on information and belief, Plaintiff alleges that Defendant County
14 of San Diego, through its Sheriff's department, has an unlawful policy, custom or habit
15 of permitting or condoning unlawful searches and seizures, false arrests and the
16 unnecessary and excessive use of force by Sheriff's Deputies, including Deputies
17 Sanders and DOES 1-25, and of permitting, condoning and failing to take action against
18 deputies who commit acts of excessive force or unlawful search and seizure.

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

10 59. Plaintiff is informed and believes that the defendant deputies have received
11 grossly inadequate training regarding a citizen's constitutional right to question or
12 protest the acts of deputies without thereby risking arrest or assaults by Deputies as a
13 result of doing so.

14 60. Defendant County has a further unlawful policy, custom and habit of
15 discouraging citizen complaints against errant deputies and failing to properly
16 investigate citizen complaints against Sheriff's Deputies, including complaints of false
17 arrest, excessive force and unlawful searches and seizures.

18 61. Plaintiff is informed and believes that Defendant County and its Sheriff's
19 department have refused to investigate, or have inadequately investigated, numerous
20

1 complaints of false arrest, excessive force and unlawful searches and seizures made by
2 citizens against its Sheriff's deputies over many years, including complaints that
3 resulted in substantial jury verdicts against the Deputies and the County.

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

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

19 ///

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 64. Plaintiff re-alleges and incorporates by reference the allegations contained
6 in paragraphs 1 through 63 above as though fully set forth herein.

7 65. By the acts alleged above, Defendants Sanders, Fabinski, Ivcevic, and
8 Roti 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 66. 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 67. 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 68. Plaintiff re-alleges and incorporates by reference the allegations contained
20 in paragraphs 1 through 67 above as though fully set forth herein.

1 69. By the acts alleged herein, particularly the acts of excessive force and
2 violence committed against Plaintiff by Defendants Sanders, Fabinski, Ivcevic, and
3 Roti as described in the Factual Allegations and the First Cause of Action, Defendants
4 committed batteries upon Plaintiff, for which the individual Defendants and Defendant
5 County of San Diego are liable, entitling Plaintiff to damages pursuant to California
6 law.

7 70. Defendant County of San Diego is vicariously liable for these batteries and
8 Plaintiff's injuries, under the doctrine of *respondeat superior* and pursuant to the
9 California Government Code, including, but not limited to, sections 815.2 and 820(a) of
10 the Government Code.

11 71. As a result of these acts, Plaintiff suffered the injuries and damages
12 described in the Factual Allegations and the First Cause of Action above and severe
13 pain, suffering and emotional distress, entitling him to damages in an amount to be
14 proven at trial.

15 72. In committing the acts alleged above, Defendants Sanders, Fabinski,
16 Ivcevic, and Roti acted maliciously and/or oppressively and were guilty of a wanton
17 and reckless disregard for the rights, feelings and safety of Plaintiff, and by reason
18 thereof, Plaintiff is entitled to exemplary and punitive damages in an amount to be
19 proven at trial.

FIFTH CAUSE OF ACTION
False Arrest, As Against All Defendants

1
2 73. Plaintiff re-alleges and incorporates by reference the allegations contained
3 in paragraphs 1 through 72 above as though fully set forth herein.

4 74. By the acts alleged herein, particularly Defendants Sanders, Fabinski,
5 Ivicevic, and Roti acts of arresting Plaintiff without a warrant or probable cause,
6 Plaintiff was falsely arrested, entitling him to damages pursuant to California law.

7 75. Defendant County of San Diego is vicariously liable for these false arrests
8 under the doctrine of *respondeat superior* and pursuant to the California Government
9 Code, including, but not limited to, sections 815.2 and 820(a) of the Government Code.

10 76. As a result of these acts, Plaintiff suffered the injuries and damages
11 described in the Factual Allegations and First Cause of Action above and severe pain,
12 suffering and emotional distress, entitling him to damages in an amount to be proven at
13 trial.

14 77. In committing the acts alleged above, Defendants Sanders, Fabinski,
15 Ivicevic, and Roti acted maliciously and/or oppressively and were guilty of a wanton
16 and reckless disregard for the rights, feelings and safety of Plaintiff, and by reason
17 thereof, Plaintiff is entitled to exemplary and punitive damages in an amount to be
18 proven at trial.

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SIXTH CAUSE OF ACTION

Civil Code § 52.1 Civil Rights Violations, Against All Defendants

1
2 78. Plaintiff re-alleges and incorporates by reference the allegations contained
3 in paragraphs 1 through 77 above as though fully set forth herein.

4 79. The acts alleged above, particularly Defendants Sanders, Fabinski,
5 Ivicevic, and Roti's acts of excessive force, unlawful detention, false arrest and
6 retaliation, constituted violation of Plaintiff's rights guaranteed by the California
7 Constitution (Article I, Section 13) and the United States Constitution, particularly the
8 Fourth Amendment thereto.

9 80. These acts were committed by threats, intimidation and/or coercion by said
10 Defendants. Therefore, Plaintiff is entitled to damages pursuant to California Civil
11 Code section 52.1(b).

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

16 82. As a result of these acts, Plaintiff suffered the injuries and damages
17 described in the Factual Allegations and First Cause of Action above and severe pain,
18 suffering and emotional distress, entitling him to damages in an amount to be proven at
19 trial.

1 83. In committing the acts alleged above, Defendants Sanders, Fabinski,
2 Ivicevic, and Roti acted maliciously and/or oppressively and were guilty of a wanton
3 and reckless disregard for the rights, feelings and safety of Plaintiff and by reason
4 thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be
5 proven at trial.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them
8 as follows:

- 9 1. For general and compensatory damages against Defendants and each of them
10 in an amount to be proven at trial;
- 11 2. For exemplary and punitive damages against Defendants Sanders, Fabinski,
12 Ivicevic, and Roti only, in an amount to be proven at trial;
- 13 2. For costs of suit herein, including reasonable attorneys' fees; and
- 14 3. For such other relief as the Court deems proper.

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

17 SEMNAR & HARTMAN, LLP

18 Dated: 4/25/2016

19 By: /s/ Babak Semnar, Esq.
Babak Semanar, Esq.
Attorney for Plaintiff