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13
14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

<p>16 George Michael Macias, Jr.,</p> <p>17 Plaintiff,</p> <p>18 vs.</p> <p>19 Steve Cleaver, Cesar Gonzalez, Eric Taifane,</p> <p>20 Angel Velasquez, the City of Clovis and</p> <p>21 DOES 1-10, inclusive,</p> <p>22 Defendants.</p>	<p>Case: 1:13-cv-01819-AWI-BAM</p> <p>SECOND Amended Complaint Seeking Redress for Violation of Civil Rights Pursuant to 28 U.S.C. §1983 and Alleging Various Related State Law Claims.</p> <p>JURY TRIAL DEMANDED</p> <p>Parties Have Stipulated to:</p> <p>U.S. Magistrate Judge Barbara A. McAuliffe</p>
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24 Plaintiff, George Michael Macias, Jr., alleges as follows:

25 **INTRODUCTION**

26 This action arises from an unlawful arrest of Plaintiff on September 30, 2012, by police
27 officers employed by the City of Clovis (hereinafter “City”). At that time, acting under color of
28 law and within the scope of their employment, the aforesaid police officers subjected Plaintiff to
unreasonable force in violation of his rights arising under the Fourth Amendment of the United

SECOND Amended Complaint

Macias v. Cleaver, et al.

USDC (E.D. Cal.) Case No.: 1:13-cv-01819-AWI-GAM

1 States Constitution and the laws of California. Plaintiff is suing the police officers who abused
2 him in their individual capacities. With respect to his claim brought pursuant to 42. U.S.C.
3 §1983, Plaintiff seeks a judgment for an award of both compensatory and punitive damages
4 against each of the police officers who abused him. With respect to his state law claims, Plaintiff
5 seeks a judgment for an award of both compensatory and punitive damages against each of the
6 police officers who abused him and as to the City a judgment for an award of compensatory
7 damages pursuant to Cal. Gov. Code § 815.2.

8 JURISDICTION AND VENUE

9 1. This court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331
10 and 1343. This court has jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C.A. §
11 1367.

12 2. The acts and omissions giving rise to Plaintiff's claims occurred within the City
13 limits and therefore, the appropriate venue for this action is in the United States District Court
14 for the Eastern District of California located in Fresno.

15 IDENTIFICATION OF PARTIES

16 3. Plaintiff is a natural person and of Hispanic origin. At all relevant times, he was a
17 resident of City.

18 4. Defendant City is a municipal corporation duly organized and existing under the
19 laws of the State of California.

20 5. Each of the following Defendants: Officer Steve Cleaver (ID #5469), Officer
21 Cesar Gonzalez (ID #5422) Officer Eric Taifane (ID #5057) and Officer Angel Velasquez (ID
22 #5445) are sued in their individual capacities.

23 6. At all relevant times, all of the Defendants identified in paragraph 5 above, were
24 employed by City and acted within the course and scope of such employment.

25 7. The true names and capacities of the defendants Does 1-10, inclusive, are
26 unknown to the Plaintiff at this time. Plaintiff sues these defendants by such fictitious names.
27 Plaintiff is informed and believes that each of the defendants designated as a Doe acted
28 wrongfully or negligently and is responsible in some fashion for his injuries as herein alleged.

SECOND Amended Complaint

1 a return receipt. The claim named each of the Officers and also described Mr. Macias' injuries.
2 The claim made an unequivocal demand for money damages. A few days after May 13, 2013,
3 Plaintiff's Counsel received a letter, so dated, from the "Personnel/Risk Management Division"
4 of the City of Clovis. The letter was executed under penalty of perjury by "Sam Mann,
5 Management Analyst." The letter stated in part that "Your claim for damages . . . was rejected
6 by the City of Clovis City Council on May 6, 2013." The letter also provided the customary
7 warning that "you have six (6) months from the date this Notice of Rejection of Claim was . . .
8 deposited in the mail to file a court action on this Claim." On November 11, 2013, Plaintiff filed
9 the initial complaint herein.

10 STATEMENT OF FACTS

11 13. At approximately 10:15 on September 30, 2012, Officer Cleaver initiated a traffic
12 stop of Plaintiff. Plaintiff was operating a motorcycle southbound on Willow Ave., approaching
13 Gettysburg Ave. Officer Cleaver stopped Plaintiff, allegedly, because the light illuminating the
14 motorcycle's license plate was not bright enough. After stopping and detaining Plaintiff, Officer
15 Cleaver ascertained that Plaintiff was not properly licensed to operate a motorcycle. Officer
16 Cleaver informed Plaintiff that he was going to issue Plaintiff a citation for this infraction.
17 Officer Cleaver also told Plaintiff that his motorcycle would be impounded pursuant to
18 paragraph (p) of California Veh. Code § 22651.

19 14. During the stop and prior to the issuance of the citation, Officer Gonzalez arrived
20 on scene to "back-up" Officer Cleaver. As Officer Cleaver was preparing the citation, Officer
21 Gonzalez noticed that the keys to the motorcycle were still in the ignition. Officer Gonzalez
22 removed the keys from the ignition and took custody of them. Three keys were on the ring. Only
23 one of the three keys worked the ignition.

24 15. Plaintiff told Officer Gonzalez that he needed one of the keys on the ring. Officer
25 Gonzalez gave Plaintiff the ignition key. Plaintiff then walked up to his motorcycle, inserted the
26 key into the ignition, turned the handle bars and front wheel to the full left or locked position and
27 then removed the key. Plaintiff put the ignition key in his pocket.

28 ///

1 16. After signing the citation and receiving his copy of it, Plaintiff left the scene of
2 the stop on foot. As he walked away, Plaintiff was carrying his motorcycle helmet and gloves
3 which Officer Cleaver had suggested he take with him. Plaintiff left the other two keys with
4 Officer Gonzalez.

5 17. After Plaintiff left the scene of the traffic stop, Officer Cleaver determined that
6 neither of the two keys Plaintiff had left with Officer Gonzalez would unlock the handle bars.
7 Desiring to have the ignition key, Officer Cleaver directed Officer Gonzalez to contact Plaintiff
8 and retrieve the ignition key.

9 18. Officer Gonzalez got into his patrol unit and set out after Plaintiff. Subsequently,
10 Officer Gonzalez found Plaintiff who was approximately one-half mile away walking on the
11 sidewalk of a street. Officer Gonzalez requested that Plaintiff give him the ignition key. Plaintiff
12 refused. Officer Gonzalez advised Officer Cleaver over their radio network that Plaintiff was not
13 complying with his request to return the ignition key.

14 19. Upon being advised that Plaintiff was not complying with Officer Gonzalez's
15 request to surrender the ignition key, Officer Cleaver got into his patrol unit and drove to the
16 location where Plaintiff was. Upon exiting his patrol unit, Officer Cleaver, confronted Plaintiff
17 with his taser drawn and announced that he was under arrest.

18 20. At that time, Officer Cleaver targeted the laser of his taser on Plaintiff's chest and
19 ordered him to get down and his knees. Plaintiff, was so surprised and stunned by Officer
20 Cleaver's extremely aggressive demeanor that he was unable to immediately comply. When
21 Plaintiff did not immediately get down on his knees, Officer Cleaver then said to Plaintiff "If you
22 want to challenge I will fucking shoot you" or words to that effect.)

23 21. After processing Officer Cleaver's demand and realizing the serious nature of the
24 scenario that was unfolding, Plaintiff, having no desire to challenge Officer Cleaver or otherwise
25 provoke him, slowly set his helmet down on the sidewalk. Plaintiff then got down on his knees
26 and crossed his legs (which were now behind him) at the ankles. Plaintiff also, without being
27 ordered to do so, put his hands behind his back anticipating that Officer Gonzalez would "cuff"
28 him. Officer Gonzalez, then did so. Although Plaintiff was now handcuffed and on his knees,

1 Officer Cleaver continued to fix the laser of his taser on Plaintiff while intensely staring at him in
2 a threatening manner.

3 22. After placing handcuffs on Plaintiff, Officer Gonzalez removed Plaintiff's wallet
4 cell phone and the ignition key to the motorcycle from his pockets.

5 23. While Officer Gonzalez was in the process of cuffing Plaintiff, Officer Cleaver
6 accused Plaintiff of "flexing." Notwithstanding the fact that Plaintiff was not "flexing" and had
7 no interest, intention or desire to provoke Officer Cleaver, Officer Cleaver threatened Plaintiff by
8 shouting "if you don't stop flexing I am going to fucking shoot you" or words to that effect.

9 24. After Officer Gonzalez had cuffed and searched Plaintiff and Officer Cleaver had
10 again threatened to tase him, the Officers stood Plaintiff up and walked him over to Officer
11 Cleaver's patrol unit. The Officers carelessly pushed Plaintiff into the rear seat on the passenger
12 side. The Officers' failure to properly position Plaintiff in the back seat of Officer Cleaver's
13 patrol unit, caused Plaintiff physical discomfort. The handcuffs were digging into his wrists and
14 his arms were forced upward into an unnatural and awkward position. Instead of his feet setting
15 flat on the floor he found himself with his feet off the floor and his knees crunched up to his
16 chest. His shoulders were also hurting. Plaintiff was so uncomfortable that he complained to
17 Officers Cleaver and Gonzalez. The Officers ignored Plaintiff's complaint and closed the door.

18 25. Officer Cleaver began to drive toward the Fresno County Jail where he intended
19 to take Plaintiff for booking. A few minutes into the trip, Plaintiff was so uncomfortable that he
20 made a decision to try and re-position himself.

21 26. Plaintiff succeeded in repositioning himself into a comfortable position which
22 included placing his handcuffed hands in his lap in front of him.

23 27. The front of the patrol unit where Officer Cleaver was situated and the rear of the
24 patrol unit where Plaintiff was situated were separated by a heavy duty "prisoner cage"
25 composed of hard plastic and a metal rigid fence or screen. Although the screen allowed Officer
26 Cleaver and Plaintiff to see each other, there was no way for them to touch each other. As
27 Plaintiff was re-positioning himself as described above in paragraph 26, Officer Cleaver,
28 glancing over his right shoulder several times, saw Plaintiff do so. At one point while Plaintiff

1 re-positioned himself, Officer Cleaver and Plaintiff made eye contact. However, Officer Cleaver
2 did not speak to Plaintiff.

3 28. Shortly after Plaintiff had re-positioned himself, as described above in paragraph
4 26, Officer Cleaver steered his patrol unit to a complete stop on West Shaw Ave., directly in
5 front of Hedrick's Chevrolet. At this point, the curb and sidewalk along West Shaw were directly
6 adjacent and parallel to the right side of the patrol unit. The same side on which Plaintiff was
7 sitting.

8 29. After parking along West Shaw as described, Officer Cleaver exited his patrol
9 unit. He walked around the front of his patrol unit and positioned himself just outside the right
10 rear passenger door. Plaintiff knocked on the window of the patrol unit and Officer Cleaver
11 looked over his shoulder at Plaintiff. Having gotten Officer Cleaver's attention, Plaintiff
12 explained again that he had not been properly positioned in the first place and asked Officer
13 Cleaver to adjust his handcuffs. Although Officer Cleaver nodded his head, he ignored Plaintiff's
14 request. Officer Cleaver's back was to Plaintiff. Plaintiff heard Officer Cleaver make a call on his
15 portable radio. However, Officer's Cleaver's voice was muffled and Plaintiff was unable to make-
16 out the content of Officer's Cleaver's communication.

17 30. Based on his experience as a "role-player" for the City of Fresno Police
18 Department and having gone on several "ride-along" experiences, Plaintiff assumed Officer
19 Cleaver had called for "back-up." At this point Plaintiff grew apprehensive. He believed
20 something bad was going to happen to him. He tried to calm himself down by intentionally
21 slowing down his breathing as he went over a mental check-list of things to avoid: no talking, no
22 sudden movements. He wanted to present a perfect picture of compliance and submission.

23 31. A few minutes after Officer Cleaver's radio call, Officers Gonzalez, Taifane and
24 Velasquez arrived upon the scene. The four officers quickly, as if rehearsed, positioned
25 themselves in a half circle formation immediately adjacent to the right rear passenger door of
26 Officer Cleaver's patrol unit. The open end of the half circle formation faced the right rear door.
27 As soon as the formation was established, someone opened the right rear passenger door as the
28 assembled officers - making a show of force - shouted in an extremely aggressive manner "put

1 your fucking hands up now!" "let me see your fucking hands!" "get out of the car now!" and/or
2 words to that effect. This display of force, substantially increased Plaintiff's anxiety.

3 32. Plaintiff, holding his cuffed hands and arms up in front of his face, very slowly
4 maneuvered himself out of Officer Cleaver's patrol unit into the "gutter" and stood up. He then
5 very slowly took two small steps up and forward so that he was standing on the sidewalk facing
6 the aforementioned formation.

7 33. At this point the shouting stopped. Plaintiff was concerned for his welfare.
8 Plaintiff crunched himself over into a standing fetal position with the intention of minimizing his
9 size and presenting body language emphasizing complete submission and compliance.

10 34. Officer Taifane - a huge man (who Plaintiff is informed and believes is of Samoan
11 ancestry) - moved around behind Plaintiff. Plaintiff could feel/sense his substantial mass behind
12 him. A split second later, Officer Taifane viciously attacked Plaintiff with a cross-face punch
13 leading to a choke hold position as he attempted to take Plaintiff down.

14 35. Desiring to protect himself, if possible, Plaintiff, instinctively, tried to maintain
15 and upright position to avoid being violently slammed down onto the concrete parkway. At that
16 moment, Officer Gonzalez grabbed the chain running between the cuffs which were on
17 Plaintiff's wrists and yanked Plaintiff's hands and arms out in front of him and began pulling
18 them in the opposite direction of Officer Taifane's intended take-down maneuver. Almost
19 simultaneously, Officer Velasquez began to punch Plaintiff in and about his face and head.

20 36. While Plaintiff, handcuffed and defenseless, was being pummeled and yanked
21 around by, Officers Gonzalez, Taifane and Velasquez, Officer Cleaver deployed his taser and
22 shot Plaintiff twice. Plaintiff (who felt as if his entire body was on fire) was unable to withstand
23 the crippling force of the taser and, as a result, the Officers were able to slam him down face first
24 into the concrete parkway.

25 37. After slamming Plaintiff down, the Officers removed the handcuffs. Immediately
26 thereafter, Officer Taifane, now in effect on top of Plaintiff, using his knee and massive body
27 weight smashed Plaintiff in the back of his head. At or about this same time, Officer Taifane
28 grabbed Plaintiff's left arm, pulled it to Plaintiff's backside and yanked it violently upward into

1 an unnatural and painful position. The Officers also placed Plaintiff's legs in a "figure four leg
2 lock."

3 38. The torque generated by Officer Taifane's manipulation of Plaintiff's left arm
4 caused Plaintiff's head and torso to turn toward his left and elevate slightly. While in this
5 completely defenseless and compromised position, Plaintiff was punched in the face and Officer
6 Velasquez, using his elbow, repeatedly struck the back of Plaintiff's head smashing Plaintiff's
7 face into the cement sidewalk. Plaintiff was struck about his face and head multiple times by one
8 or more of the assembled Officers.

9 39. As a result of being repeatedly punched in and about his face and head, Plaintiff
10 realized he was starting to lose his ability to stay conscious. At that point the punches stopped
11 and he heard one of the Officers holler, "Fuck that shit. He is big. Hit him a couple more times."
12 or words to that effect. Immediately thereafter, Plaintiff was struck in the head two more times.
13 He then lost consciousness.

14 40. During the beating Plaintiff was, involuntarily, screaming in pain. When he
15 regained consciousness, emergency medical personnel had arrived and Plaintiff's hands were
16 cuffed behind his back.

17 41. After Plaintiff regained consciousness, he was treated by paramedics and
18 transported by ambulance to Fresno Community Hospital. After evaluation and treatment there,
19 Officer Cleaver transported Plaintiff to the Fresno County Jail where Plaintiff underwent the
20 booking process.

21 42. Plaintiff remained in a holding cell until the following morning when his family
22 was able to make bail and arrange for his release. Plaintiff was ultimately charged with a
23 violation of Penal Code section 148, subdivision (a) (1), resisting a peace officer. On March 10,
24 2014, following a trial by jury, Plaintiff was found not guilty.

25 43. Defendants' conduct alleged throughout this Complaint was in retaliation for
26 Plaintiff's exercise of his First Amendment rights to rightfully refuse to provide his key to his
27 motorcycle and/or to his use of profanity in the presence of these officers and/or because of
28 Plaintiff's Hispanic ethnicity.

1 44. Clever was the officer in charge and main protagonist for the aforementioned
2 events. Cleaver also authored the police report which he later presented to superior officers for
3 approval knowing that it included false facts and material misrepresentations. The narrative of
4 the police report was fabricated by Cleaver and then presented to the District Attorney in support
5 of wrongfully prosecuting Plaintiff on criminal charges.

6 45. Clever was the subject of a 2013 Internal Affairs Investigation. The Investigation
7 was regarding an on-duty traffic collision that Cleaver was involved in (that caused injuries to
8 civilians) and Cleaver’s corresponding explanation of the collision. The Investigation proved that
9 previous statements Cleaver gave to superior officers following that collision were false. The
10 officer conducting the Internal Affairs Investigation believed that Cleaver was dishonest in his
11 statements to him and that Cleaver made these dishonest statements in an effort to cover up
12 previous lies he had made to superior officers.

13 46. Clever was the subject of a 2014 Internal Affairs Investigation. The Investigation
14 analyzed sixteen cases in which Cleaver was the arresting officer and had authored the Police
15 report. The sixteen cases spanned from 2011 to 2013 and included the period of time during
16 which the events giving rise to this action occurred. Thirty-five of the Thirty-seven charges in the
17 Investigation against Cleaver were sustained. The results of that investigation were that Cleaver
18 had wholly failed his duties as a police officer, routinely failed to book evidence, made material
19 false statements with the intent to deceive, repeatedly falsified police reports and other work
20 records, and lied to superiors and other investigating officers.

21 47. During the 2014 Internal Affairs Investigation, Cleaver lied repeatedly to
22 investigating officers in an attempt to cover up the police reports he had previously falsified, the
23 material misstatements he had previously made and other police misconduct he was guilty of.
24 Cleaver lied to the investigating officers in total disregard of his duty to tell the truth.

25 48. As a result of the 2014 Internal Affairs Investigation, the Disciplinary Review
26 Board (“Board”) instituted a punishment appropriate for corrupt officers who lie and are guilty of
27 police misconduct—Clever was recommended for termination.
28

1 54. At all relevant times herein described, the conduct of all defendants was subject to
2 42 U.S. C. §1983. At all relevant times herein described, Plaintiff had the right to be secure in his
3 person and effects against unreasonable searches and seizures, and unreasonable use of force via
4 the Fourth Amendment of the United States Constitution.

5 55. Acting under color of law, authority, customs and usage, Officers Cleaver,
6 Gonzalez, Taifane and Velasquez deprived Plaintiff of his rights, privileges, and immunities as
7 guaranteed by the First, Fourth and Fourteenth Amendments of the Constitution of the United
8 States, via their conduct described herein above.

9 56. After the traffic stop detention ended and Plaintiff was released from the scene
10 thereof, he was under no legal obligation to return the ignition key to the Officers or other-wise
11 further cooperate in their confiscation of his motorcycle. Therefore, the Officers did not have
12 probable cause to arrest Plaintiff for any cognizable crime under the totality of the
13 circumstances.

14 57. Even if the Officers did have probable cause to arrest Plaintiff after the original
15 traffic stop detention ended, the force they exerted in beating Plaintiff was wholly unrelated to
16 the arrest. At that point Plaintiff was already in custody, handcuffed and confined. The force
17 applied was excessive, unnecessary and unreasonable under the totality of the circumstances.

18 58. The Officers acted intentionally and their malfeasance and wrongful arrest and
19 imprisonment of Plaintiff was a substantial factor in causing him the harm herein above
20 described.

21 59. The Officers conduct was outrageous, despicable, malicious, oppressive and done
22 with a reckless disregard of the effect that it would have and did have on Plaintiff.

23 **Second Cause of Action**

24 Violation of the Bane Act, California Civil Code §52.1

25 (Against Officers Cleaver, Gonzalez, Taifane and Velasquez and Against the City of Clovis

26 Pursuant to Cal. Gov. Code §815.2)

27 60. Plaintiff re-alleges and incorporates herein by this reference thereto all the
28 allegations set forth above as if the same were repeated verbatim herewith.

Fourth Cause of Action

Battery

(Against Officers Cleaver, Gonzalez, Taifane and Velasquez and Against The City of Clovis

Pursuant to Cal. Gov. Code §815.2)

70. Plaintiff re-alleges and incorporates by this reference thereto the allegations set forth above as if the same were repeated verbatim herewith.

71. As alleged herein, after Plaintiff got out of Officer Cleaver’s Patrol Unit, the Officers, willfully and intentionally, made harmful physical contact with his person for the purpose of harming him.

72. Plaintiff did not consent to this contact.

73. The contact made by the Officers caused loss, damage, injury and harm to Plaintiff as herein alleged.

Fifth Cause of Action

Violation of the Bane Act, California Civil Code §52.1

(Against Officer Cleaver and Against the City of Clovis Pursuant to Cal. Gov. Code §815.2)

74. Plaintiff re-alleges and incorporates by this reference thereto the allegations set forth above as if the same were repeated verbatim herewith.

75. Officer Cleaver’s behavior was threatening and intimidating and his threats and menacing demeanor interfered with Plaintiff’s exercise of his rights under the Fourth Amendment to be free from the use of excessive physical violence and force against his person.

76. At all relevant times, Plaintiff, reasonably believed, that if he exercised his rights under the Fourth Amendment to be free from the use of excessive physical violence and force against his person, Officer Cleaver, would shoot him with his taser.

77. By means of, and as an actual and proximate result of Officer Cleaver’s above described wrongful threats and intimidation, Plaintiff suffered severe emotional distress and mental and psychological injury and damage, including, but not limited to, fear, anxiety, humiliation. Under the totality of the circumstances, Officer Cleaver’s threat to use such painful

1 and immobilizing force in response to Plaintiff's refusal to surrender the ignition key, was so
2 grossly unreasonable it added to Plaintiff's legitimate fear that Officer Cleaver would shoot him.

3 **Sixth Cause of Action**

4 Assault

5 (Against Officer Cleaver and Against The City of Clovis Pursuant to Cal. Gov. Code §815.2

6 78. Plaintiff re-alleges and incorporates herein by this reference thereto all of the
7 allegations set forth above as if the same were repeated verbatim herewith.

8 79. Officer Cleaver drew his taser and "targeted" its laser on Plaintiff's chest with the
9 intent to threaten him with being shot.

10 80. At that same time, Officer Cleaver verbally threatened to shoot Plaintiff.

11 81. Due to Officer Cleaver's apparent ability to shoot Plaintiff at will, and his
12 accompanying aggressive facial expressions and physical posture, Plaintiff reasonably believed
13 Officer Cleaver was going to shoot him even though Plaintiff was not flexing or otherwise
14 threatening Officer Cleaver.

15 82. Plaintiff did not consent to Officer Cleaver's conduct.

16 83. Plaintiff suffered substantial emotional distress, mental and psychological distress
17 in the form of fear, nervousness, anxiety, worry and indignity. Officer Cleaver's unlawful
18 conduct created an extremely detrimental effect on Plaintiff's emotional and physical health.

19 84. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

20 **Seventh Cause of Action**

21 Violation of the Bane Act, California Civil Code §52.1

22 (Against Officer Cleaver and Against the City of Clovis Pursuant to Cal. Gov. Code §815.2)

23 85. Plaintiff re-alleges and incorporates by this reference thereto the set forth above as
24 if the same were repeated verbatim herewith.

25 86. After the emergency medical personnel arrived at the scene of the beat down,
26 Plaintiff, although groggy, had regained consciousness. He was seated on a gurney. As the
27 emergency medical personnel were strapping Plaintiff to the gurney, Officer Cleaver walked
28 over to the gurney. He drew his taser and pressed the head of it directly onto and flush with

1 Plaintiff's shin. After intentionally making eye contact with Plaintiff (who was at this point
2 clearly no threat to anyone), Officer Cleaver, softly whispered under his breath "I dare you to
3 move so I can discharge XXXX volts directly into your shin where it will hurt a lot more" or
4 words to that effect.¹

5 87. Officer Cleaver's verbal threat, accompanied by the stark reality of the taser
6 pressed against his shin, was threatening and intimidating and interfered with Plaintiff's exercise
7 of his rights under the Fourth Amendment to be free from the use of excessive physical violence
8 and force against his person.

9 88. Under the totality of the circumstances, including the fact that Officer Cleaver had
10 tased Plaintiff only moments before the instant threat, caused Plaintiff to, reasonably believe that
11 Officer Cleaver had the present ability to shoot him and that if he exercised his rights under the
12 Fourth Amendment to be free from the use of excessive physical violence and force against his
13 person, Officer Cleaver, would discharge his taser into his shin.

14 89. By means of, and as an actual and proximate result of Officer Cleaver's above
15 described wrongful threats and intimidation, Plaintiff suffered severe emotional distress and
16 mental and psychological injury and damage, including, but not limited to, fear, anxiety,
17 humiliation. Under the totality of the circumstances, Officer Cleaver's threat to use such painful
18 and immobilizing force while Plaintiff lay helplessly on the gurney was so grossly unreasonable
19 it added to Plaintiff's legitimate fear that Officer Cleaver would shoot him.

20 **Eighth Cause of Action**

21 **Assault**

22 (Against Officer Cleaver and Against The City of Clovis Pursuant to Cal. Gov. Code §815.2)

23 90. Plaintiff re-alleges and incorporates herein by this reference thereto all of the
24 allegations set forth above as if the same were repeated verbatim herewith.

25 91. Officer Cleaver drew his taser and pressed it against Plaintiff's shin with the
26 intent to threaten him with being shot.

27 92. At that same time, Officer Cleaver verbally threatened to shoot Plaintiff.

28 ¹ Plaintiff's best recollection is 50,000 volts.

1 93. Due to Officer Cleaver's apparent ability to shoot Plaintiff at will, and his
2 contemporaneous sadistic verbal threat, Plaintiff reasonably believed he was at risk of being shot
3 by him.

4 94. Plaintiff did not consent to Officer Cleaver's conduct.

5 95. Plaintiff suffered substantial emotional distress, mental and psychological distress
6 in the form of fear, nervousness, anxiety, worry and indignity. Officer Cleaver's unlawful
7 conduct created an extremely detrimental effect on Plaintiff's emotional and physical health.

8 96. Officer Cleaver's conduct was a substantial factor in causing Plaintiff's harm.

9 **Ninth Cause of Action**

10 Intentional Infliction of Emotional Distress

11 (Against Officer Cleaver and Against the City of Clovis.)

12 97. Plaintiff re-alleges and incorporates herein by this reference thereto all of the
13 allegations set forth above as if the same were repeated verbatim herewith.

14 98. Officer Cleaver made the aforementioned verbal and physical threat to discharge
15 his taser into Plaintiff's shin with the intent to inflict injury and to cause Plaintiff to suffer severe
16 emotional distress or with reckless disregard of the probability of causing Plaintiff such distress.
17 Either way, Officer Cleaver engaged in the aforementioned conduct with the realization that
18 injury would result.

19 99. Under the totality of the circumstances Officer Cleaver's behavior was so extreme
20 as to exceed all bounds of that usually tolerated in a civilized community. His vicious verbal
21 threat while the head of the taser was pressed against Plaintiff's shin was unambiguously
22 directed at Plaintiff. At this time Plaintiff was especially vulnerable. The extreme pain from
23 being tased twice during the beat down was still fresh. In addition, he was disoriented, having
24 just awoken from a loss of consciousness proximately caused by the beating he received from the
25 Defendants including Officer Cleaver.

26 100. Plaintiff suffered severe emotional distress.

27 101. Officer Cleaver's outrageous conduct was an actual and proximate cause of
28 Plaintiff's emotional distress.

Tenth Cause of Action

Malicious Prosecution in Derogation of Plaintiff's Constitutional Rights Under the
U.S. Constitution

(Against Defendants City of Clovis, Steve Cleaver, Cesar Gonzalez, Eric Taifane,
Angel Velasquez)

102. Plaintiff re-alleges and incorporates herein by this reference thereto all of the allegations set forth above as if the same were repeated verbatim herewith.

103. At all relevant times herein, Defendants Cleaver, Gonzalez, Taifane and Velasquez were sworn peace officers of the City and acted within the scope of their authority and pursuant to their duties as peace officers for the City. Officers Cleaver, Gonzalez, Taifane and Velasquez knowingly caused false criminal charges to be filed against Plaintiff, as part of their pattern of abusing their authority. Based upon information and belief, Officers Cleaver, Gonzalez, Taifane and Velasquez, previous to the subject incident, knowingly caused false criminal charges to be filed against other citizens.

104. Between September 30, 2012 to on or about March 14, 2014, Officers Cleaver, Gonzalez, Taifane and Velasquez falsely and maliciously initiated, maintained, encouraged, facilitated, and completed a criminal prosecution of Plaintiff for the untrue-but-claimed violation of Penal Code §148(a)(1) by the Fresno County District Attorney's Office culminating in their perjured testimony in Plaintiff's aforementioned criminal trial proceeding. Among other things, Officers Cleaver, Gonzalez, Taifane and Velasquez misrepresented the September 30, 2012 event and its subsequent investigation so as to protect themselves from their egregious unlawful abuse of their authority as more particularly set forth hereinabove.

105. Officers Cleaver, Gonzalez, Taifane and Velasquez fabricated evidence, misled prosecutors, falsely reported the September 30, 2012 incident and committed perjury with the improper purpose of procuring said criminal prosecution, maintaining said criminal prosecution, and/or in completing the criminal prosecution pursuant to which Plaintiff was seized, arrested, imprisoned, charged, and unsuccessfully tried.

- 1 4. Pre-judgment interest pursuant to law;
- 2 5. Costs and attorney's fees;
- 3 6. Such other relief as the Court deems just and proper.

4
5
6 Dated: March 29, 2016

PICCUTA LAW GROUP, LLP

7 _____/s/ *C.T. Piccuta*_____

8 Charles Tony Piccuta
9 Charles Albert Piccuta
10 Attorneys For Plaintiff
11 GEORGE MICHAEL MACIAS, JR.

12
13 Dated: March 29, 2016

LAW OFFICES OF PANOS LAGOS

14 _____/s/ *Panos Lagos*_____

15 Panos Lagos, Esq.
16 Attorneys for Plaintiff,
17 GEORGE MICHAEL MACIAS, JR.