

1 James S. Muller, Bar No. 126071
2 LAW OFFICES OF JAMES S. MULLER
3 3435 Wilshire Blvd., Suite 2900
4 Los Angeles, California 90010-2015
5 Telephone: (213) 381-3299
6 Fax: (213) 381-3581
7 jamesmullerlaw@sbcglobal.net

BY: _____
10 AUG 25 AM 11:52
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

8 Attorneys for Plaintiffs

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

11 HERIBERTO RODRIGUEZ,
12 Plaintiff,

13 vs.

14 COUNTY OF LOS ANGELES, LOS
15 ANGELES SHERIFF'S, and DOES 1
16 THROUGH 10,
17 Defendants.

No. CV10 6342

**COMPLAINT FOR DAMAGES
FOR VIOLATIONS OF FEDERAL
CIVIL RIGHTS (EIGHTH AND
FOURTEENTH AMENDMENT)
42 U.S.C. § 1983**

CBM
(AJWx)

18 Plaintiff allege as follows:

19 **JURISDICTION AND VENUE**

20 1. The court has jurisdiction over this action pursuant to 28 U.S.C. §
21 1331 (federal question) and 28 U.S.C. § 1343(3) (civil rights). Venue lies in the
22 Central District of California, the judicial district in which the claim arose,
23 pursuant to 28 U.S.C. § 1392(b).
24

25 **INTRODUCTION**

26 2. This is an action for money damages against defendants and arises
27 out of a mass beating at Men's Central Jail on August 25, 2008. Plaintiff, along
28

1 with fifteen to thirty other jail inmates, either refused to leave their cells in protest
2 of the earlier beating of another inmate or were not given a chance to leave.
3 Defendants' extracted plaintiff, along with other "high power" module inmates,
4 with such extreme and excessive force that eight inmates had to be hospitalized
5 for injuries which included several concussions, a fractured leg, a fractured arm
6 and an orbital fracture, a nasal fracture, and seizures. Plaintiff and the other
7 inmates were beaten 3 weeks after Deputy Juan Escalante, who worked in the
8 "high power" module was killed outside his home in Cypress Park. Prior to the
9 beatings jail deputies told inmates that they were going to beat or kill Hispanic
10 gang members because they (wrongly) believed that a jail inmate had placed a hit
11 on Deputy Escalante. (This theory appears to have been incorrect as the men
12 arrested for Deputy Escalante's death are believed to have mistaken him for a
13 rival gang member.)

14 **PARTIES**

15 3. Plaintiff Heriberto Rodriguez is a competent adult. He was at all
16 times relevant hereto a resident of the County of Los Angeles, California.

17 4. Defendant COUNTY OF LOS ANGELES ("COUNTY") is a county
18 operating pursuant to the laws of the State of California.

19 5. Defendant LOS ANGELES SHERIFF'S DEPARTMENT
20 ("SHERIFF'S DEPARTMENT") is a local government entity created under the
21 laws of the state of California and an agency of defendant COUNTY. The
22 SHERIFF'S DEPARTMENT is responsible for operating the Los Angeles County
23 jail facilities, including promulgating policies and procedures at those facilities.

24 6. Defendant*.

25 7. Defendants whose names and identities are unknown are sued herein
26 under the names Does 1 to 10 (hereinafter "Does"). Plaintiff is informed and
27 believes and on that basis alleges that the Doe defendants are responsible in some
28 manner for the damages and injuries hereinafter complained of. Plaintiff will

1 amend this complaint and give notice to the Doe defendants upon learning of
2 their names and capacities.

3 8. Plaintiff is informed and believes and on that basis alleges that at all
4 times herein mentioned, each defendant was the agent, servant and employee of
5 the other defendants and were acting at all times within the scope of their agency
6 and employment and with the knowledge and consent of their principal and
7 employer. At all times herein, defendants, and each of them, were acting under
8 the color of state law.

9
10 **CLAIM FOR RELIEF**

11 **EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S.**

12 **CONSTITUTION – 42 U.S.C. § 1983**

13 9. Plaintiff hereby re-alleges and incorporates paragraphs 1 through 8,
14 inclusive, of this Complaint as though each allegation was set forth at length
15 herein.

16 10. On August 25, 2008 plaintiff was an inmate at Men’s Central Jail in
17 Module 3300, Cell B-10. On that date, inmates refused to leave their cells in
18 protest of the beating of another inmate. A cell extraction team in full riot gear
19 came to plaintiff’s cell. Plaintiff laid on the floor of his cell and did not respond
20 to deputy commands and covered himself with a mattress. Deputies fired
21 projectiles at his ankles and legs which struck him three to six times. Deputies
22 then entered plaintiff’s cell and began to kick him all over his body as he was laid
23 prone on the floor of his cell. One deputy pulled plaintiff’s shirt tight around his
24 neck and began to choke him. Deputies kicked and punched plaintiff until he
25 was choked into unconsciousness. Plaintiff was then literally shocked back to
26 consciousness by the use of a Taser. Deputies continued to apply the Taser until
27 its entire charge was extinguished. The deputies then used the fully charged
28 Taser to shock plaintiff on his testicles, armpits, back, buttocks, and the backs of

1 his knees. One of the deputies had his knee on plaintiff's right elbow and
2 applied pressure in what plaintiff perceived was an attempt to break his arm.
3 Towards the end of the beating a deputy clubbed plaintiff in the head with a
4 flashlight which opened up a bloody wound.

5 11. Plaintiff sues for violations to the Eighth Amendment to the United
6 States Constitution by defendants who subjected plaintiff to brutal and gratuitous
7 force which was unnecessary for any legitimate penal interest and amounted to
8 punishment.

9 12. Plaintiff sues for violations to the Fourteenth Amendment to the
10 United States Constitution right to be free from gratuitous and excessive force
11 and punishment, and the Fourteenth Amendment right to due process of law.

12 13. Plaintiff and those acting on his behalf attempted to exhaust
13 administrative remedies, however, defendants refused to take or respond to the
14 complaints and the complaints of others who were injured during the mass
15 beatings of August 25, 2008 and also threatened at least one victim who tried to
16 complain.

17 14. At all times herein mentioned, the COUNTY OF LOS ANGELES
18 and the SHERIFF'S DEPARTMENT authorized and ratified the wrongful acts of
19 the individual defendants. The individual defendants' wrongful conduct was the
20 result of policies, practices and customs of the aforementioned defendants to
21 subject persons to outrageous and unreasonable seizures and dehumanizing abuse
22 and to coverup incidents of excessive force by its deputies. Furthermore,
23 plaintiff's constitutional rights were violated as a proximate result of the
24 aforementioned defendants' deliberate indifference in the training and
25 supervision of its officers. Defendants are also liable for the failure to train their
26 employees where the failure to train amounts to deliberate indifference to the
27 rights of inmates, such as plaintiff with whom those employees are likely to come
28 into contact.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

CV10 - 6342 CBM (AJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:
James S. Muller, Bar No. 126071
LAW OFFICES OF JAMES S. MULLER
3435 Wilshire Blvd., Suite 2900
Los Angeles, CA 90010-2015
Telephone: (213) 381-3299; Fax (213) 381-3581

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HERBIERTO RODRIGUEZ,

CASE NUMBER

PLAINTIFF(S)

CV10 6342-4 CBM (AJWx)

v.

COUNTY OF LOS ANGELES, LOS ANGELES
SHERIFF'S, and DOES 1 THROUGH 10,

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, James S. Muller _____, whose address is 3435 Wilshire Blvd., Suite 2900, Los Angeles, CA 90010-2015. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: AUG 25 2010

By: [Signature]
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Herbierto Rodriguez	DEFENDANTS County of Los Angeles, Los Angeles Sheriff's, and DOES 1 through 10
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) James S. Muller, Bar No. 126071, LAW OFFICES OF JAMES S. MULLER 3435 Wilshire Blvd., Suite 2900, Los Angeles, CA 90010-2015 (213) 381-3299	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No
 MONEY DEMANDED IN COMPLAINT: According to proof

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 U.S.C. Section 1983, Excessive Force and Denial of Medical Care

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
---	--	--	--	--	---

CV10 6342

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): CV10-0025

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California, or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California, or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California, or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
 Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date August 25, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))