

1 Dan Stormer (S.B. #101967)
2 Virginia Keeny (S.B. #139568)
3 HADSELL STORMER KEENY
4 RICHARDSON & RENICK, LLP
5 128 North Fair Oaks Avenue, Ste. 204
6 Pasadena, CA 91103-3645
7 Tel: (626) 585-9600
8 Fax: (626) 577-7079

9 Attorneys for Plaintiff
10 Michael Holguin

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LOS ANGELES, CA

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL HOLGUIN,

Plaintiff,

vs.

COUNTY OF LOS ANGELES, LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT, SHERIFF LEE BACA,
DEPUTY RICO, DEPUTY FERNANDO
LUVIANO, DEPUTY LASCANO,
AND DOES 1-10,

Defendants.

Case No.: CV 10-8011-GW(PLAx)

Honorable George H. Wu-Courtroom 10

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

1. VIOLATIONS OF CIVIL RIGHTS
– 42 U.S.C. § 1983 – Excessive
Force
2. Cal. Civ Code § 52.1
3. Battery
4. Intentional Infliction of Emotional
Distress
5. Negligence

DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1
2 1. This is a police misconduct action filed pursuant to 42 U.S.C. § 1983. The
3 Court has jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §
4 1343(3) (civil rights). Venue lies in the Central District of California, the judicial district
5 in which the claim arose, pursuant to 28 U.S.C. § 1391(b). Plaintiff's state law claims for
6 relief are within the supplemental jurisdiction of the Court, as authorized by 28 U.S.C. §
7 1367.

PARTIES

8
9 2. Plaintiff Michael Holguin is a competent adult, residing in the County of
10 Los Angeles. He is not currently in the custody of any correctional facility.

11 3. Defendant County of Los Angeles was and is a legal political entity
12 established under the laws of the State of California, with all the powers specified and
13 necessarily implied by the Constitution and the laws of the State of California and
14 exercised by a duly elected Board of Supervisors and/or their agents and officers.

15 4. Defendant Los Angeles County Sheriff's Department is a public agency
16 subject to suit herein.

17 5. Defendant Lee Baca is the Sheriff of Los Angeles County.

18 6. Defendant Deputy Rico is an employee of the Los Angeles County Sheriff's
19 Department.

20 7. Defendant Deputy Fernando Luviano is an employee of the Los Angeles
21 County Sheriff's Department.

22 8. Defendant Deputy Lascano is an employee of the Los Angeles County
23 Sheriff's Department.

24 9. Defendant David Ortega, previously identified as Defendant Doe 1, is an
25 employee of the Los Angeles County Sheriff's Department.

26 10. The true names of Defendant Does 2 through 10, inclusive, are presently
27 unknown to Plaintiff, who therefore sues each of these Defendants by such fictitious
28 names. Upon ascertaining the true identity of Doe Defendants, Plaintiff will amend this

1 complaint, or seek leave to do so, by inserting the true name in lieu of the fictitious
2 name. Plaintiff is informed and believes, and on the basis of such information and belief
3 alleges, that each Doe Defendant is in some manner responsible for the injuries and
4 damages herein alleged.

5 11. Plaintiff exhausted his administrative remedies before filing suit by filing
6 the appropriate claim pursuant to California Government Code § 910. He also exhausted
7 any existing grievance procedure available at the Men's Central Jail within the time
8 period provided by jail rules and procedures.

9 **FACTUAL ALLEGATIONS**

10 **A. General Allegations re Policy and Practice**

11 12. Plaintiff is informed and believes, and on the basis of such information and
12 belief alleges, that defendants County of Los Angeles, Los Angeles County Sheriff's
13 Department, and Sheriff Lee Baca, with deliberate indifference, gross negligence, and
14 reckless disregard for the safety, security, and constitutional and statutory rights of
15 plaintiff and all persons similarly situated, maintained, enforced, tolerated, permitted,
16 acquiesced in, and applied policies, practices, or customs of, among other things:

17 a. Subjecting persons to violations of their rights to be free from
18 excessive force and denial of due process;

19 b. Selecting, retaining, and assigning officers with demonstrable
20 propensities for excessive force, violence, dishonesty, and other misconduct;

21 c. Failing to adequately train, supervise, and control officers in the
22 practice of law enforcement;

23 d. Failing to adequately discipline officers involved in misconduct;

24 e. Permitting officers to have extended contact with inmates in areas of
25 the jail which are not monitored with video surveillance or visible
26 from areas staffed by supervisory personnel, thereby creating zones
27 where officers believe they have free rein to engage in excessive
28 force against inmates;

1 f. Allowing seriously overcrowded conditions in the Men's Central Jail
2 which causes officers to engage in excessive force so as to control the
3 inmate population;

4 and

5 g. Condoning and encouraging officers in the belief that they can violate
6 the rights of persons such as plaintiff with impunity, and that such conduct will not
7 adversely affect their opportunities for promotion and other employment benefits.

8 13. Plaintiff is informed and believes and thereupon alleges that the official
9 policymakers for the County of Los Angeles and the Los Angeles County Sheriff's
10 Department knew or reasonably should have known that their deputies have used
11 excessive force on, and violated the due process rights of various individuals, and that
12 they have been deliberately indifferent in the training and supervision of their police
13 officers. Despite this knowledge, defendants failed to take any steps to remedy these
14 violations of constitutional and statutory authority, as well as of the Los Angeles County
15 Sheriff's Department's own written policies, through adequate hiring, training,
16 supervision and/or monitoring. In so doing, defendants exhibited deliberate indifference
17 to plaintiff's constitutional rights.

18 14. Plaintiff is informed and believes, and on the basis of such information and
19 belief alleges, that defendants County of Los Angeles and the Los Angeles County
20 Sheriff's Department ordered, authorized, acquiesced in, tolerated, or permitted other
21 defendants herein to engage in the unlawful and unconstitutional actions, policies,
22 practices, and customs set forth in the preceding paragraphs. Defendants' conduct as
23 alleged herein constitutes a pattern of constitutional violations based either on a
24 deliberate plan by defendants or on defendants' deliberate indifference, gross negligence,
25 or reckless disregard for plaintiff's safety, security, and constitutional and statutory
26 rights.

27 **B. The Incident**

28 15. Plaintiff Michael Holguin was detained in the Los Angeles County Jail,

1 Men's Central Jail, commencing on or about October 6, 2009. During his first three
2 weeks in the jail, he was housed in a one-man cell in unit 3500. As with other inmates in
3 3500 during that period, he was not given a shower for approximately two weeks. On
4 October 18, 2009, he was finally let out of his cell for a shower. After being moved
5 towards the shower area, Mr. Holguin was told he would not be allowed to take a
6 shower. When he asked why he could not shower, one of the deputies, who plaintiff
7 believes to be named Deputy Luviano or Deputy Lascano, stated that he would not be
8 getting a shower. The same guard stated, "turn around and I'll tell you why." Mr.
9 Holguin obeyed by turning around whereupon he was handcuffed by Deputy
10 Luviano/Lascano behind his back. This same deputy then moved Mr. Holguin to a
11 nearby area where he shoved him face first into the bars.

12 16. After slamming Holguin into the bars, Deputy Luviano/Lascano began to
13 beat him on his rib cage. Deputy Luviano/Lascano then struck Mr. Holguin in the head
14 with a hard object and Mr. Holguin fell to the floor. Deputy Luviano/Lascano continued
15 to hit him with the hard object after he had fallen to the floor. Mr. Holguin curled up to
16 protect himself from the blows, but Luviano/Lascano continued to hit or kick him. He
17 was struck repeatedly on his legs, ankle and his head. Deputy Luviano/Lascano kept
18 stating, "stop resisting," though Mr. Holguin was not resisting and was already
19 handcuffed behind his back.

20 17. Another deputy, who plaintiff believes was named Deputy Rico, joined in
21 the beating at this time. Deputy Luviano/Lascano leaned over him and sprayed pepper
22 spray in his face and then proceeded to take his thumb and rub the pepper spray into his
23 eyes to make sure he felt effect of the caustic spray. Deputy Rico began to pull at Mr.
24 Holguin and to drag him around the floor. Although Mr. Holguin could no longer see as
25 a result of the pepper spray and searing pain in his eyes, he continued to receive blows to
26 his body and legs. At some point during the unprovoked beating, other deputies arrived.
27 None of those deputies said anything to enquire what had happened or to restrain Rico or
28 Luviano/Lascano from continuing to hit Mr. Holguin and roughly shove him about the

1 floor.

2 18. During this unprovoked attack, Deputies Luviano/Lascano and Rico used
3 excessive and unreasonable force against Mr. Holguin, including hitting him with a
4 flashlight, kicking and beating him in the ribs, head, torso, and legs. At no point during
5 this assault did Mr. Holguin resist. He was handcuffed at all times and posed no threat to
6 any of the deputies.

7 19. Plaintiff is informed and believes that Deputy David Ortega was one of the
8 deputies who participated in the unprovoked beating and that Ortega, individually and in
9 concert with the other deputies, used excessive force against him and/or exhibited
10 deliberate indifference to his personal safety, civil rights and need for medical care.

11 20. As a result of this beating, Mr. Holguin suffered severe injuries, including
12 but not limited to several deep wounds and lacerations on his head, his right ankle was
13 broken in two places, and his left knee was opened to the bone, among other injuries.
14 These injuries were sufficiently severe to require extended hospital care, staples and
15 stitches for the several wounds to his head and eyes, and orthoscopic surgery for his left
16 knee. He was also required to wear a cast for the two breaks to his ankle for an extended
17 period of time.

18 21. Sometime later in the day on October 18, 2009, Mr. Holguin was taken to
19 the medical ward in the jail and then to the infirmary at the Twin Towers facility where
20 he received preliminary treatment. He received eight suture staples in the center of his
21 head, and four stitches to the right eyebrow. When it was revealed that he had a broken
22 tibia, he was transferred to LA County - USC Medical Center. Deputy Rico
23 accompanied him in the ambulance which transferred him to LA-USC Medical Center.
24 During that trip, Deputy Rico threatened Mr. Holguin, taunting him on several occasions,
25 "Bet you won't ask 'why' anymore, will you?" Over the following days, he was fitted
26 with a cast and required to undergo orthoscopic surgery for the injuries to his left knee.

27 22. After receiving medical care at the hospital, Mr. Holguin was returned to the
28 MCJ, and placed on a 29 day loss of privileges, further punishing him and isolating him.

1 During this period of time, he was confined to a cell which had no grab bars or other
2 assistive equipment and routinely was denied the use of crutches or a wheelchair.
3 Because his leg was in a cast, he either had to drag himself around his cell or place
4 weight on his cast, causing him pain. When he was required to leave his cell for a
5 shower or other inmate movement, on most occasions he was not given any assistive
6 devices, causing him considerable pain and discomfort. His requests for a crutch or cane
7 to assist him as he moved around his cell and in the hallways were ignored by all but one
8 of the guards. These additional injuries were a foreseeable consequence of the severe
9 beating he was administered by the guards.

10 **DAMAGES**

11 23. By reason of the aforementioned acts of defendants, plaintiff was injured in
12 his health, strength and activity and has sustained and in the future will continue to
13 sustain great mental pain and shock to his nervous system, as well as anxiety, anguish,
14 humiliation, and emotional distress, all to his damage in an amount according to proof.

15 24. By reason of the aforementioned acts of defendants, and each of them,
16 plaintiff was or will be required to receive medical care and treatment, and by reason
17 thereof, will incur expenses related thereto in an amount to be proven at trial.

18 25. By reason of the aforementioned acts of defendants, and each of them,
19 plaintiff did or will lose future income, wages and other financial benefits in an amount
20 to be proven at trial.

21 26. Defendants' acts were done and committed by each defendant knowingly,
22 deliberately, and maliciously, with the intent to oppress, injure, and harass plaintiff, and
23 with reckless indifference to the civil rights, personal security and safety of plaintiff, and
24 by reason thereof, plaintiff prays for punitive and exemplary damages from and against
25 the individual defendants, and each of them, in an amount to be proven at trial.

26 **FIRST CLAIM FOR RELIEF – Excessive Force**

27 **(Fourth Amendment, 42 U.S.C. § 1983)**

28 **(Plaintiff v. All Defendants)**

1 27. The conduct complained of herein was undertaken pursuant to the policies,
2 practices and customs of the Los Angeles County Sheriff's Department, an agency of the
3 County of Los Angeles, and was sanctioned and approved by each of the individual
4 named defendants, including the Doe defendants.

5 28. Defendants, acting under color of state law and through their policies,
6 practices and customs, deprived plaintiff of rights, privileges, and immunities secured by
7 the Constitution and laws of the United States under the Fourth Amendment, by
8 subjecting him, or through their deliberate indifference allowing others to subject him, to
9 excessive force.

10 29. As a direct and proximate cause of the aforementioned acts of defendants,
11 plaintiff was injured as set forth above.

12 30. Plaintiff's injuries entitle him to compensatory and punitive damages
13 according to proof as to the individual defendants and compensatory damages alone as to
14 the County defendants.

15 **SECOND CLAIM FOR RELIEF**

16 **(Cal. Civ. Code § 52.1)**

17 **(Plaintiff v. All Defendants)**

18 31. The United States Constitution, Amendment IV, and the California
19 Constitution, Article I, guarantee the right of persons to be free from excessive force.
20 Defendants, by engaging in the wrongful conduct alleged herein, denied this right to
21 plaintiff, thus giving rise to a claim for damages pursuant to California Civil Code §
22 52.1.

23 32. As a direct and proximate cause of the aforementioned acts of defendants,
24 plaintiff was injured as set forth above and is entitled to statutory damages under
25 California Civil Code § 52, compensatory and punitive damages according to proof as to
26 the individual defendants and compensatory damages alone as to the County defendants.

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1 **THIRD CLAIM FOR RELIEF**

2 **(Battery)**

3 **(Plaintiff v. All Defendants)**

4 33. Defendants battered plaintiff, causing his injuries as hereinabove alleged
5 and entitling him to compensatory and punitive damages according to proof as to the
6 individual defendants and compensatory damages alone as to the County defendants.

7 34. As a direct and proximate cause of the aforementioned acts of defendants,
8 plaintiff was injured as set forth above.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Intentional Infliction of Emotional Distress)**

11 **(Plaintiff v. All Defendants)**

12 35. Defendants' conduct was extreme and outrageous, and caused plaintiff to
13 sustain severe emotional distress, all to plaintiff's damage as hereinabove alleged.

14 36. As a direct and proximate cause of the aforementioned acts of defendants,
15 plaintiff was injured as set forth above.

16 37. Plaintiff's injuries entitle him to compensatory and punitive damages
17 according to proof as to the individual defendants and compensatory damages alone as to
18 the County defendants.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Negligence)**

21 **(Plaintiff v. All Defendants)**

22 38. The individual defendants did not exercise ordinary care to ensure that
23 plaintiff would not suffer excessive force while in their custody, thus negligently
24 breaching a duty owed to him and proximately causing his injuries as hereinabove
25 alleged.

26 39. Defendants County of Los Angeles and Los Angeles County Sheriff's
27 Department negligently hired and supervised the individual defendants. As a proximate
28 result thereof, plaintiff has been damaged as hereinabove alleged, and is entitled to

1 compensatory and punitive damages according to proof as to the individual defendants
2 and compensatory damages alone as to the County defendants.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff seeks judgment as follows:

- 6 1. Compensatory general and special damages in an amount in accordance
- 7 with proof;
- 8 2. Punitive damages against each of the individual defendants in an amount
- 9 sufficient to punish and to make an example of said defendants, and to deter others from
- 10 engaging in similar conduct;
- 11 3. Reasonable attorney's fees, expenses, and costs; and
- 12 4. Such other and further relief as the Court deems proper.

13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial on all issues so triable.

16
17
18 DATED: January 21, 2011

19 Respectfully submitted,
20 HADSELL STORMER KEENY
21 RICHARDSON & RENICK, LLP

22
23 By: s/- Dan Stormer
24 Dan Stormer
25 Attorneys for Plaintiff
26 Michael Holguin
27
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