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16 Attorney for Defendants

17 UNITED STATES DISTRICT COURT
 18 EASTERN DISTRICT OF CALIFORNIA
 19 FRESNO DIVISION

21 NORBERTO AZUA, JR.
 22 Plaintiff,
 23 v.
 24 CITY OF PARLIER, a municipal corporation; and
 DOES 1 through 20, inclusive,
 25 Defendants.
 26
 27

Case No. 1:14-CV-00198-AWI-SMS

**STIPULATION AND ORDER
 GRANTING PLAINTIFF LEAVE
 TO FILE FIRST AMENDED
 COMPLAINT**

Complaint filed: February 12, 2014

1 Plaintiff Norberto Azua, Jr. and Defendants City of Parlier and Does 1 through 20,
2 through their respective counsel, make the following stipulation:

3 WHEREAS Plaintiff filed his original complaint in this action before knowing the names
4 of the individual Parlier Police Department officers involved in the events of August 11, 2013
5 referenced in Plaintiff's complaint;

6 WHEREAS Plaintiff has since learned the names of these individual officers during the
7 course of discovery;

8 WHEREAS Plaintiff now desires to amend his complaint to add these individual officers
9 as parties against whom his claims are asserted;

10 WHEREAS a copy of the amended complaint to be filed pursuant to this stipulation is
11 attached as Exhibit A;

12 IT IS HEREBY STIPULATED AND AGREED, subject to approval by the Court:

- 13 1. Plaintiff may file an amended complaint naming Parlier Police Department
14 officers Jonathan Pierro and Adolfo Jimenez as defendants in this action; and
- 15 2. Counsel for Defendants will accept service of the First Amended Complaint on
16 behalf of the additional named defendants.

17
18 Dated: April 29, 2015

ARTURO J. GONZÁLEZ
SEAN P. GATES
DEBRA URTEAGA
SAM STEFANKI
Morrison & Foerster LLP

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21 By: /s/ Sean P. Gates
22 SEAN P. GATES
23 Attorneys for Plaintiff
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Dated: April 29, 2015

BRUCE D. PRAET
FERGUSON, PRAET & SHERMAN
A Professional Corporation

By: /s/ Bruce Praet (as authorized on April 29, 2015)
BRUCE PRAET
Attorneys for Defendants

IT IS SO ORDERED.

DATED: 4/30/2015

/s/ SANDRA M. SNYDER
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

1 ARTURO J. GONZÁLEZ (CA SBN 121490)
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10 Attorneys for Plaintiff
NORBERTO AZUA, JR.

11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 FRESNO DIVISION

15
16 NORBERTO AZUA, JR.
17 Plaintiff,
18 v.
19 CITY OF PARLIER, a municipal corporation;
JONATHAN PIERRO, in his individual capacity;
20 ADOLFO JIMENEZ, in his individual capacity;
and DOES 1 through 20, inclusive,
21 Defendants.
22

Case No.
**FIRST AMENDED COMPLAINT
FOR VIOLATION OF THE
FOURTH AMENDMENT TO THE
UNITED STATES
CONSTITUTION;
NEGLIGENCE; BATTERY;
ASSAULT; INTENTIONAL
INFLICTION OF EMOTIONAL
DISTRESS; FALSE
IMPRISONMENT**

[JURY TRIAL DEMANDED]

1 **INTRODUCTION**

2 1. Norberto Azua, Jr. (“Norberto” or “Plaintiff”) was a passenger in a vehicle when
3 he was shot twice in the back by Parlier Police Department officers Jonathan Pierro and Adolfo
4 Jimenez on August 11, 2013. Norberto was unarmed, and no weapons were found on or around
5 him at the time he was shot. He did not pose a threat to anyone. Norberto files this lawsuit
6 seeking to recover damages for the unlawful shooting.

7 **JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over the subject matter of this action under 42 U.S.C.
9 § 1983.

10 3. Venue is proper in the Eastern District of California, under 28 U.S.C. § 1391(b), in
11 that a substantial part of the events and omissions giving rise to Norberto’s claims occurred in this
12 judicial district.

13 **THE PARTIES**

14 4. Plaintiff in this case is Norberto Azua, Jr.

15 5. Defendant City of Parlier is a municipal corporation and a political subdivision of
16 the State of California with the capacity to be sued. The City of Parlier includes the Parlier Police
17 Department.

18 6. Defendant Jonathan Pierro is, and at all times mentioned herein was, a police
19 officer for the City of Parlier. Officer Pierro is sued individually.

20 7. Defendant Adolfo Jimenez is, and at all times mentioned herein was, a police
21 officer for the City of Parlier. Officer Jimenez is sued individually.

22 8. Does 1 through 20, inclusive, are defendants listed under fictitious names because
23 their true names, capacities, and degrees of responsibility for the acts alleged in this complaint are
24 unknown to Plaintiff at this time. When Plaintiff ascertains information regarding the identities
25 of Does 1 through 20, he will amend this complaint accordingly. Plaintiff is informed and
26 believes that Does 1 through 20, inclusive, are legally liable to him in some part for the wrongful
27 acts and omissions of which he complains.

28 9. Plaintiff is informed and believes that at all times mentioned in this complaint,

1 each and every defendant was the agent, servant, employee, and/or representative of each and
2 every other defendant. Plaintiff is informed and believes that, in doing the things complained of,
3 each and every defendant was acting within the scope of that agency, service, employment, and/or
4 representation, and that each and every defendant is jointly and severally responsible and liable to
5 Plaintiff for the damages alleged in this complaint.

6 **GENERAL ALLEGATIONS**

7 10. On August 11, 2013, at around 2:00 p.m., Norberto was a passenger in a vehicle.
8 While he was inside the vehicle, Parlier Police Department officers began to pursue it. For no
9 apparent justification, at least two officers then fired their weapons at the moving vehicle. No
10 reasonable officer would have fired his weapon in those circumstances.

11 11. At least two police bullets hit Norberto in his upper and lower back, one of which
12 barely missed his spine.

13 12. Neither Norberto nor the driver of the vehicle fired any gunshots toward the Parlier
14 Police Department officers during the entire incident, and neither of the men possessed a firearm
15 or had a firearm in the car at the time of the incident.

16 13. Norberto exited the vehicle in extreme pain, after which three officers of the
17 Parlier Police Department approached him from behind. Based on information and belief, these
18 three officers included Defendant Pierro, Defendant Jimenez, and officer Charles Bolding. At
19 least one of the officers threatened to kill Norberto. Norberto feared for his life and requested
20 that the officers provide him with urgently needed medical attention.

21 14. After approximately fifteen or twenty minutes, Norberto was finally airlifted by
22 medical helicopter to a Fresno-area hospital. Police officers later discovered that Norberto had no
23 firearm on his person, the driver had no firearm on his person, no firearm was in the vehicle, and
24 no firearm was near the area where the vehicle came to rest.

25 15. Norberto was charged with four counts of attempted homicide of a police officer
26 and was held in the Fresno County Jail. There was no reasonable basis for charging him with
27 these offenses. After approximately 8 days, these baseless charges were dropped, and Norberto
28 was released.

1 contained in paragraphs 1 through 20 of this complaint.

2 22. The individual Defendants used unreasonable and excessive force when they
3 discharged their firearms toward Norberto, striking him with at least two bullets.

4 23. The individual Defendants' conduct in unjustifiably shooting Norberto violated his
5 Fourth Amendment right to be free from the use of unreasonable and excessive force.

6 24. Similarly, the individual Defendants' conduct in unreasonably arresting Norberto
7 without probable cause or other justification violated his Fourth Amendment right to be free from
8 unlawful arrest.

9 25. The foregoing violations of Norberto's constitutional rights occurred as the result
10 of the deliberate, reckless, and malicious acts, omissions, and practices of the City of Parlier.
11 Plaintiff is informed and believes that the City of Parlier has sanctioned and ratified its police
12 officers' actions to use excessive force during police pursuits in unreasonable ways, including in
13 this case; failed to train and supervise its officers properly to ensure they use force only in lawful
14 ways; and acted with deliberate indifference in failing to adopt policies necessary to prevent
15 constitutional violations.

16 26. These violations are compensable pursuant to 42 U.S.C. § 1983. As a result of
17 Defendants' conduct, Norberto has suffered significant emotional harm, including but not limited
18 to any and all special damages pled below.

19 **SECOND CAUSE OF ACTION**

20 **(Negligence and Negligent Infliction of Emotional Distress)**

21 27. Plaintiff re-alleges and incorporates by reference each and every allegation
22 contained in paragraphs 1 through 26 of this complaint.

23 28. The individual Defendants had a legal duty to use due care, a duty they owed to
24 Norberto.

25 29. The individual Defendants breached this duty by shooting Norberto in the back
26 while he was unarmed. No reasonable officer would have used such force against Norberto under
27 the circumstances.

28 30. As a proximate and direct result of Defendants' actions, Norberto suffered and

1 continues to suffer significant physical harm. Norberto has incurred current and future economic
2 losses, including medical expenses, due to his injuries. The full amount of these expenses is
3 unknown to Plaintiff at this time. Norberto is informed and believes, and therefore alleges, that
4 his injuries will result in some permanent physical and mental disability.

5 31. As a proximate and direct result of Defendants' actions, Norberto also suffered and
6 continues to suffer serious emotional distress.

7 **THIRD CAUSE OF ACTION**

8 **(Battery)**

9 32. Plaintiff re-alleges and incorporates by reference each and every allegation
10 contained in paragraphs 1 through 31 of this complaint.

11 33. The individual Defendants used unreasonable force when they discharged their
12 firearms toward Norberto, striking him with at least two bullets. In doing so, Defendants acted
13 with the intent to initiate contact with Norberto's person.

14 34. At no time did Norberto consent to any of Defendants' actions.

15 35. Defendants' actions caused harmful and offensive contact with Norberto's person.
16 As a result of Defendants' actions, Norberto sustained injuries to his health, safety, and person, all
17 of which have caused and continue to cause him great mental, physical, and emotional pain and
18 suffering. Norberto is informed and believes, and therefore alleges, that his injuries will result in
19 some permanent physical and mental disability.

20 36. As a result of Defendants' acts, Norberto has incurred and will continue to incur
21 medical and related expenses. The full amount of these expenses is unknown to Plaintiff at this
22 time.

23 **FOURTH CAUSE OF ACTION**

24 **(Assault)**

25 37. Plaintiff re-alleges and incorporates by reference each and every allegation
26 contained in paragraphs 1 through 36 of this complaint.

27 38. The individual Defendants threatened to touch Norberto in a harmful and offensive
28 manner when they threatened to kill him while he lay on the ground.

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PRAYER

49. Plaintiff prays for judgment against all Defendants, and against each of them, as follows:

- a. For general damages against all Defendants, jointly and severally, in an amount to be proven at trial;
- b. For special damages against all Defendants, jointly and severally, in an amount to be proven at trial;
- c. For punitive and exemplary damages in an amount to be proven at trial;
- d. For attorneys’ fees under 42 U.S.C. § 1988 and the California private attorney general doctrine;
- e. For costs of suit; and
- f. For whatever further relief, including injunctive relief, as may be just and proper.

JURY DEMAND

50. Plaintiff hereby demands trial by jury on any and all issues triable by a jury.

Dated: _____, 2015

ARTURO J. GONZÁLEZ
SEAN P. GATES
DEBRA URTEAGA
SAM STEFANKI
MORRISON & FOERSTER LLP

By: _____
SEAN P. GATES

Attorneys for Plaintiff
NORBERTO AZUA, JR.