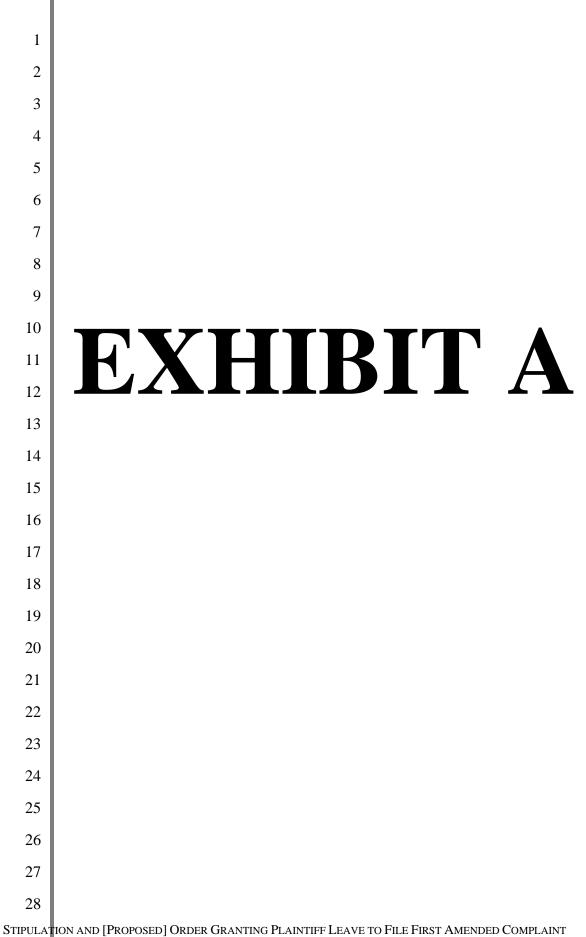
1 2 3	ARTURO J. GONZÁLEZ (CA SBN 121490) AGonzalez@mofo.com SAM STEFANKI (CA SBN 293330) SStefanki@mofo.com MORRISON & FOERSTER LLP			
4 5	425 Market Street San Francisco, California 94105-2482 Telephone: 415.268.7000			
	Facsimile: 415.268.7522			
6	SEAN P. GATES (CA SBN 186247) SGates@mofo.com			
7	DEBRA URTEAGA (CA SBN 278744) DUrteaga@mofo.com			
8	MORRISON & FOERSTER LLP 707 Wilshire Boulevard			
9	Los Angeles, California 90017-3543 Telephone: 213.892.5200			
10	Attorneys for Plaintiff			
11	BRUCE D. PRAET (CA SBN 119430)			
12	bpraet@aol.com			
13	FERGUSON, PRAET & SHERMAN A Professional Corporation			
14	1631 East 18 th Street Santa Ana, California 92705			
15	Telephone: 714.953.5300 Facsimile: 714.953.1143			
16	Attorney for Defendants			
17	UNITED STATES DISTRICT COURT			
18	EASTERN DISTRICT OF CALIFORNIA			
19	FRESNO DIVISION			
20				
21	NORBERTO AZUA, JR.	Case No. 1:14-CV-00198-AWI-SMS		
22	Plaintiff,	STIPULATION AND ORDER GRANTING PLAINTIFF LEAVE		
23	v.	GRANTING PLAINTIFF LEAVE TO FILE FIRST AMENDED COMPLAINT		
24	CITY OF PARLIER, a municipal corporation; and			
25				
26	Defendants.			
27				
28				
	STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF LE CASE NO. 1:14-CV-00198-AWI-SMS sf-3530050	EAVE TO FILE FIRST AMENDED COMPLAINT		

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		
19	DEBRA URTEAGA SAM STEFANKI		
20	Morrison & Foerster LLP		
21	By: <u>/s/ Sean P. Gates</u>		
22	SEAN P. GATES Attorneys for Plaintiff		
23			
24			
25			
26			
27			
28			
	STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF LEAVE TO FILE FIRST AMENDED COMPLAINT CASE NO. 1:14-CV-00198-AWI-SMS sf-3530050		

1	Dated: April 29, 2015	BRUCE D. PRAET FERGUSON, PRAET & SHERMAN
2		A Professional Corporation
3	В	y: <u>/s/ Bruce Praet (as authorized on April 29, 2015)</u> BRUCE PRAET
4		Attorneys for Defendants
5		
6	IT IS SO ORDERED.	
7		
8		
9	DATED: <u>4/30/2015</u>	<u>/s/ SANDRA M. SNYDER</u> UNITED STATES MAGISTRATE JUDGE
10		
11		
12		
13 14		
14		
15 16		
10		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
	STIPULATION AND [PROPOSED] ORDER GE CASE NO. 1:14-CV-00198-AWI-SMS sf-3530050	RANTING PLAINTIFF LEAVE TO FILE FIRST AMENDED COMPLAINT



CASE NO. 1:14-CV-00198-AWI-SMS

1	ARTURO J. GONZÁLEZ (CA SBN 121490)		
2	AGonzalez@mofo.com SAM STEFANKI (CA SBN 293330) SStefenki@mofe.com		
3	SStefanki@mofo.com MORRISON & FOERSTER LLP		
4	425 Market Street San Francisco, California 94105-2482		
5	Telephone: 415.268.7000		
6			
7	DEBRA URTEAGA (CA SBN 278744) DUrteaga@mofo.com MORRISON & FOERSTER LLP		
8	707 Wilshire Boulevard Los Angeles, California 90017-3543		
9	Telephone: 213.892.5200		
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.	Case No.	
17	Plaintiff,	FIRST AMENDED COMPLAINT FOR VIOLATION OF THE	
18	v.	FOURTH AMENDMENT TO THE UNITED STATES	
19	CITY OF PARLIER, a municipal corporation; JONATHAN PIERRO, in his individual capacity;	CONSTITUTION; NEGLIGENCE; BATTERY;	
20	ADOLFO JIMENEZ, in his individual capacity; and DOES 1 through 20, inclusive,	ASSAULT; INTENTIONAL INFLICTION OF EMOTIONAL	
21	Defendants.	DISTRESS; FALSE IMPRISONMENT	
22		[JURY TRIAL DEMANDED]	
23			
24			
25			
26			
27			
28			
	FIRST AMENDED COMPLAINT CASE NO. 1:14-CV-00198-AWI-SMS sf-3480149		

1		INTRODUCTION	
2	1.	Norberto Azua, Jr. ("Norberto" or "Plaintiff") was a passenger in a vehicle when	
3	he was shot t	wice in the back by Parlier Police Department officers Jonathan Pierro and Adolfo	
4	Jimenez on A	August 11, 2013. Norberto was unarmed, and no weapons were found on or around	
5	him at the tin	he he was shot. He did not pose a threat to anyone. Norberto files this lawsuit	
6	seeking to rec	cover 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 substan	tial part of the events and omissions giving rise to Norberto's claims occurred in this	
12	judicial distri	ct.	
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	e 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	e 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,	
		DED COMPLAINT cv-00198-AWI-SMS	

sf-3480149

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.		
	FIRST AMENDED COMPLAINT CASE NO. 1:14-CV-00198-AWI-SMS sf-3480149		

As a direct and proximate result of the acts, omissions, policies, and practices of
 Defendants, Norberto has accumulated (and continues to accumulate) thousands of dollars in
 medical expenses. He also has suffered (and continues to suffer) severe emotional and mental
 anguish and physical pain.

5 17. At all times and in all actions mentioned in this complaint, Defendants were acting
6 under color of law, under color of their authority, and within the scope of their employment with
7 the City of Parlier.

8 18. The individual Defendants' conduct was willful, wanton, malicious, oppressive,
9 and in bad faith. Defendants also acted in reckless or callous disregard for Norberto's rights, and
10 intentionally violated state and federal law. Norberto is thus entitled to an award of punitive
11 damages against each Defendant.

12 19. Plaintiff is informed and believes that the actions of the officers who shot Norberto 13 constitute a grossly disproportionate response to the situation when no reasonable basis exists for 14 the use of deadly force at all. Plaintiff is informed and believes that the Parlier Police Department 15 has, maliciously and with deliberate indifference, taken no effective steps to adopt policies 16 necessary to prevent constitutional violations of using excessive and deadly force in police 17 pursuits; not effectively trained or supervised Parlier police officers with regard to the proper 18 response during police pursuits; and sanctioned and ratified the officers' actions through 19 deliberate or grossly negligent indifference.

20

ADMINISTRATIVE PROCEEDINGS

20. Pursuant to California Government Code §§ 910 *et seq.*, Plaintiff timely filed a
claim with the City of Parlier on December 17, 2013. The City of Parlier has failed to respond to
the claim within 45 days of receiving notice of the claim, as required by the California
Government Claims Act. Plaintiff has complied with the claim filing prerequisites of the
California Government Claims Act prior to initiating this lawsuit.

26

27 28 (Fourth Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1983)
21. Plaintiff re-alleges and incorporates by reference each and every allegation

FIRST CAUSE OF ACTION

FIRST AMENDED COMPLAINT CASE NO. 1:14-CV-00198-AWI-SMS sf-3480149 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

20

SECOND CAUSE OF ACTION

(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 FIRST AMENDED COMPLAINT CASE NO. 1:14-CV-00198-AWI-SMS sf-3480149

4

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.		
	FIRST AMENDED COMPLAINT CASE NO. 1:14-CV-00198-AWI-SMS sf-3480149 5		

1	39.	Because he had already been shot by Defendants at the time they made this threa	t,
2	Norberto reasonably believed that Defendants were going to shoot him again.		
3	40.	Even though he was lying on the ground at the time, Norberto did not consent to	
4	being threatened by Defendants in such a manner.		
5	41.	Defendants' threats caused Norberto harm, by frightening him and making him	
6	fear for his li	fe. Defendants' actions in threatening to kill Norberto were a substantial factor in	
7	causing him	this harm.	
8		FIFTH CAUSE OF ACTION	
9		(Intentional Infliction of Emotional Distress)	
10	42.	Plaintiff re-alleges and incorporates by reference each and every allegation	
11	contained in	paragraphs 1 through 41 of this complaint.	
12	43.	The individual Defendants used unreasonable force when they discharged their	
13	firearms toward Norberto, striking him with at least two bullets. Defendants' conduct in shooting		
14	Norberto—and in threatening to kill him as he was lying on the ground in pain—was outrageous.		
15	44.	In shooting Norberto and then threatening to kill him, Defendants intended to	
16	cause—or rec	cklessly disregarded the probability that they would cause—severe emotional	
17	distress to No	orberto.	
18	45.	As a proximate and direct result of Defendants' conduct, Norberto suffered and	
19	continues to s	suffer severe and extreme mental and emotional distress.	
20		SIXTH CAUSE OF ACTION	
21		(False Imprisonment)	
22	46.	Plaintiff re-alleges and incorporates by reference each and every allegation	
23	contained in	paragraphs 1 through 45 of this complaint.	
24	47.	The individual Defendants intentionally arrested and imprisoned Norberto for	
25	eight days. N	Norberto did not consent to this imprisonment.	
26	48.	No reasonable justification or privilege existed to imprison Norberto for eight	
27	days.		
28			
		DED COMPLAINT cv-00198-AWI-SMS	6

1		-			
1		PRAYER			
2	49.	Plaintiff prays for judgment against all Defendants, and against each of them, as			
3	follows:				
4	a.	For general damages against a	For general damages against all Defendants, jointly and severally, in an amount to		
5		be proven at trial;	be proven at trial;		
6	b.	For special damages against a	ll Defendants, jointly and severally, in an amount to		
7		be proven at trial;	be proven at trial;		
8	с.	For punitive and exemplary da	amages in an amount to be proven at trial;		
9	d.	For attorneys' fees under 42 U	J.S.C. § 1988 and the California private attorney		
10		general doctrine;			
11	e.	For costs of suit; and			
12	f.	For whatever further relief, in	For whatever further relief, including injunctive relief, as may be just and proper.		
13	JURY DEMAND				
14	50.	Plaintiff hereby demands trial	by jury on any and all issues triable by a jury.		
15					
16	D . 1	2015			
17	Dated:	, 2015	ARTURO J. GONZÁLEZ SEAN P. GATES		
18			DEBRA URTEAGA SAM STEFANKI		
19			MORRISON & FOERSTER LLP		
20					
21			By:		
22			Attorneys for Plaintiff		
23			NORBERTO AZUA, JR.		
24					
25					
26					
27					
28					
		DED COMPLAINT cv-00198-AWI-SMS	7		