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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, et al.,
Plaintiffs,
v.
CITY OF OAKLAND et al.,
Defendants.

No. C-07-2659 JCS

COURT'S PROPOSED SPECIAL VERDICT FORM

Dated: December 3, 2008



JOSEPH C. SPERO
United States Magistrate Judge

JURY VERDICT

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We, the jury, unanimously find as follows:

I. Liability

A. First 42 U.S.C. § 1983 Claim – Freedom of Expression

1. Do you find by a preponderance of the evidence that defendant Alcantar deprived plaintiff Ortega of his right to freedom of expression by detaining/arresting him?

Yes No

If you answer yes, go to question 2. If you answer no, go to question 3.

2. Do you find by a preponderance of the evidence that defendant Alcantar’s violation of plaintiff Ortega’s right to freedom of expression by detaining/arresting him was a substantial factor in causing plaintiff’s harm?

Yes No

Go to question 3.

B. Second 42 U.S.C. § 1983 Claim – False Arrest

3. Do you find by a preponderance of the evidence that defendant Alcantar detained/arrested plaintiff Benjamin Ortega without probable cause?

Yes No

If you answer yes, go to question 4. If you answer no, go to question 5.

4. Do you find by a preponderance of the evidence that the arrest/detention was a substantial factor in causing plaintiff’s harm?

Yes No

Go to question 5.

C. Third 42 U.S.C. § 1983 Claim – Excessive Force

5. Do you find by a preponderance of the evidence that defendant Alcantar used excessive force when he detained/arrested plaintiff Ortega?

Yes No

If you answer yes, then go to question 6. If you answer no, go to question 7.

1 6. Do you find by a preponderance of the evidence that defendant Alcantar’s use of
2 excessive force in detaining/arresting plaintiff Ortega was a substantial factor in
3 causing plaintiff’s harm?

4 ___ Yes ___ No

5 Go to question 7.

6 **D. Assault**

7 7. Do you find by a preponderance of the evidence that defendant Alcantar assaulted
8 plaintiff Ortega?

9 ___ Yes ___ No

10 If you answer yes, go to question 8. If you answer no, go to question 9.

11 8. Do you find by a preponderance of the evidence that defendant Alcantar’s conduct
12 was a substantial factor in causing plaintiff Ortega’s harm?

13 ___ Yes ___ No

14 Go to question 9.

15 **E. Battery By a Peace Officer**

16 9. Do you find by a preponderance of the evidence that defendant Alcantar committed
17 battery upon plaintiff Ortega?

18 ___ Yes ___ No

19 If you answer yes, go to question 10. If you answer no, go to question 11.

20 10. Do you find by a preponderance of the evidence that defendant Alcantar’s conduct
21 was a substantial factor in causing plaintiff Ortega’s harm?

22 ___ Yes ___ No

23 Go to question 11.

24 **F. Violation of Bane Act – Cal. Civ. Code § 52.1**

25 11. Do you find by a preponderance of the evidence that defendant Alcantar interfered
26 with plaintiff Ortega’s civil rights by threatening to commit or committing violent
27 acts against plaintiff Ortega?

28 ___ Yes ___ No

1 If you answer yes, go to question 12. If you answer no, go to question 13.

2 12. Do you find by a preponderance of the evidence that defendant Alcantar’s conduct
3 was a substantial factor in causing plaintiff Ortega’s harm?

4 ___ Yes ___ No

5 Go to question 13.

6 **G. Violation of Ralph Act – Cal. Civ. Code § 51.7**

7 13. Do you find by a preponderance of the evidence that defendant Alcantar threatened to
8 commit or committed violent acts against plaintiff Ortega because of his national
9 origin?

10 ___ Yes ___ No

11 If you answer yes, go to question 14. If you answer no, go to question 15.

12 14. Do you find by a preponderance of the evidence that defendant Alcantar’s conduct
13 was a substantial factor in causing plaintiff Ortega’s harm?

14 ___ Yes ___ No

15 Go to question 15.

16 **H. Negligence**

17 15. Do you find by a preponderance of the evidence that defendant Alcantar was
18 negligent?

19 ___ Yes ___ No

20 If you answer yes, go to question 16. If you answer no, go to question 17.

21 16. Do you find by a preponderance of the evidence that defendant Alcantar’s negligence
22 was a substantial factor in causing plaintiff Ortega’s harm?

23 ___ Yes ___ No

24 Go to question 17.

25 **I. Intentional Infliction of Emotional Distress**

26 17. Do you find by a preponderance of the evidence that plaintiff Ortega wilfully
27 committed conduct that caused plaintiff to suffer severe emotional distress?

28 ___ Yes ___ No

1 If you answer yes, go to question 18. If you answer no, go to question 19.

2 18. Do you find by a preponderance of the evidence that defendant Alcantar’s conduct
3 was a substantial factor in causing plaintiff Ortega’s harm?

4 ___ Yes ___ No

5 Go to question 19.

6 **II. DAMAGES**

7 19. If you answered “yes” to questions 2, 4, 6, 8, 10, 12, 14, 16, or 18, what is the total
8 amount of compensatory damages, if any, that should be awarded to plaintiff Ortega?

9 \$ _____

10 Proceed to question 20.

11 20. Do you find by a preponderance of the evidence that defendant Alcantar’s conduct
12 was either malicious or committed in reckless disregard of plaintiff Ortega’s rights?

13 ___ Yes ___ No

14 If yes, proceed to question 21.

15 21. Do you award plaintiff Ortega punitive damages?

16 ___ Yes ___ No

17 If yes, proceed to question 22.

18 22. What is the amount of punitive damages against defendant Alcantar?

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SIGN AND DATE THE SPECIAL VERDICT FORM

Signed: _____

Foreperson of the Jury: _____

Dated: _____

After this Verdict Form has been signed and dated, please submit a Jury Note to the Court Security Officer notifying the Court that the Jury has reached a verdict. Please return the Verdict Form to the Courtroom Deputy.