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**ENDORSED
FILED**
San Francisco County Superior Court

MAY 10 2019

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8 Attorneys for PLAINTIFFS

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 OLIVER BARCENAS and SOFIA
BARCENAS,
13 Plaintiffs,

14 v.

15 CITY AND COUNTY OF SAN
16 FRANCISCO, a municipal corporation;
17 SAN FRANCISCO POLICE
DEPARTMENT;
18 JOSHUA CABILLO, Officer, San
Francisco Police Department,
19 and DOES 1-60, inclusive,
20 Defendants.

Case No. [NEW]
CGC - 19 - 575896
**COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS**

JURY TRIAL DEMANDED

Trial Date: Not Yet Set

- 1. Unreasonable Seizure;
- 2. Use of Excessive and Unreasonable Force;
- 3. Interference with California Constitutional Rights by Threat, Intimidation, or Coercion;
- 4. Negligence;
- 5. Negligent Hiring, Supervision, and Retention;
- 6. Battery;
- 7. Loss of Consortium.

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1 **INTRODUCTION**

2 1. This case is about the unnecessary and unwarranted shooting of Oliver
3 Barcenas by San Francisco Police Officer Joshua Cabillo, an individual whom the San
4 Francisco Police Department (SFPD) should never have hired in the first place.

5 2. On June 9, 2018, as Mr. Barcenas and others celebrated the Golden State
6 Warriors’ NBA championship victory on the streets of San Francisco’s North Beach
7 neighborhood, Officer Cabillo confronted two of Barcenas’ friends because one of them
8 was holding an open beer bottle. Barcenas showed Cabillo his hands and started to back
9 away since he was not drinking or holding any open containers and had already decided to
10 go home. After Cabillo forcefully and belligerently told the group “none of you are going
11 anywhere,” Barcenas turned and ran away. Cabillo gave chase for several seconds and
12 then shot Barcenas in the back.

13 3. Although Mr. Barcenas possessed a gun, he never brandished it, turned
14 toward Officer Cabillo, or threatened anyone. Instead, he threw it into the street as he ran
15 away from Cabillo. Cabillo nevertheless shot at him multiple times from close range and
16 hit him in the lower back once, knocking him to the ground. At no time did Cabillo ever
17 warn Barcenas that he would shoot. Nor did Cabillo give any warning to bystanders to get
18 down or move until after he had already fired multiple shots at Barcenas. Cabillo’s
19 reckless decision to open fire while running in the middle of a populated sidewalk created
20 danger and unjustifiably risked the lives of Barcenas and bystanders alike.

21 4. At the time he shot Mr. Barcenas, Officer Cabillo’s short temper and
22 aggressive personality had already led to multiple incidents that demonstrated his
23 tendencies to escalate and over react in the line of duty. The City and County of San
24 Francisco (“City”), through its employees, hired and retained Cabillo as a police officer
25 despite learning of multiple disturbing incidents in which Cabillo used excessive and lethal
26 force and abused his authority by targeting, intimidating, threatening, unlawfully detaining,
27 beating, and even killing civilians. Cabillo’s behavior put City officials on notice that he
28 was at high risk to violate the constitutional rights of others, as he had done repeatedly

1 during his career as a police officer in South San Francisco and then in San Francisco. The
2 City was reckless in its hiring, training, and supervision of Cabillo and shares in the
3 responsibility for his unreasonable use of deadly force that almost killed Barcenas.

4 5. Mr. Barcenas is luckier than some of Officer Cabillo’s victims—he survived
5 his encounter with Cabillo. But Barcenas did not deserve to be harassed, illegally
6 detained, chased, and then shot in the back. The trauma inflicted on Barcenas and his
7 family, as well as on the bystanders endangered on that crowded sidewalk, could have
8 been prevented. Cabillo could have prevented it by (1) respecting Barcenas’s
9 constitutional and statutory rights to personal liberty; (2) taking any reasonable and
10 prudent action to assess and address any potential threat; (3) attempting to de-escalate the
11 situation using non-lethal means; or (4) employing reasonable judgment in evaluating the
12 appropriate force necessary to effect an arrest.

13 6. The officials in charge of the police department could have prevented it by
14 (1) refusing to hire Cabillo due to his history of using excessive force and his hotheaded
15 policing tactics; (2) adequately training Cabillo in use of force policies, de-escalation
16 techniques, and the limits of police powers, among other topics; and (3) refusing to retain
17 Cabillo following multiple incidents in which he used excessive and unreasonable force
18 against civilians and otherwise abused his authority in violation of citizens’ rights.

19 7. Mr. and Mrs. Barcenas bring this action to enforce their rights under
20 California law, and to recover damages for the physical and emotional pain they suffered
21 as a result of Defendants’ unlawful conduct. They also seek injunctive relief to reform the
22 police department’s hiring and use of force policies to prevent future harm to themselves
23 and others put in harm’s way by the reckless disregard for public safety displayed in this
24 case.

25 JURISDICTION AND VENUE

26 8. Jurisdiction and venue are proper in this judicial district pursuant to
27 California Code of Civil Procedure § 394, in that the events, omissions, and injuries that
28 give rise to Plaintiffs’ claims occurred in the City and County of San Francisco. In

1 addition, Defendants' violations of law occurred in the City and County of San Francisco.

2 **PARTIES**

3 9. Plaintiffs OLIVER BARCENAS and SOFIA BARCENAS are, respectively,
4 the victim of the shooting by Defendant Cabillo and the wife of the victim. Mr. and Mrs.
5 Barcenas were residents of Richmond, California at the time of the shooting. Mr.
6 Barcenas now resides in federal custody. Mr. Barcenas is suing for the violations of his
7 constitutional, statutory, and common law rights. Mrs. Barcenas seeks to recover for loss
8 of consortium resulting from the physical harm and emotional distress the shooting caused
9 Mr. Barcenas.

10 10. Defendant CITY is a municipal corporation, duly organized and existing
11 under the laws of the State of California. Under its authority, Defendant CITY operates
12 the SFPD, and is and was at all times relevant herein responsible for the SFPD's policies,
13 procedures, customs, and practices, and for the actions and/or inactions of all of its
14 officers, managers, agents, and employees, including Defendant CABILLO.

15 11. Defendant SFPD is a department and agency that operates as an arm of the
16 CITY. The SFPD is responsible for implementing policies, procedures, customs, and
17 practices, and for the actions and/or inactions of all of its officers, managers, agents, and
18 employees, including Defendant CABILLO and those who hired, trained and supervised
19 him.

20 12. Defendant JOSHUA CABILLO is and was at all relevant times herein an
21 Officer of the SFPD. Before working for the SFPD, Defendant CABILLO was an Officer
22 of the South San Francisco Police Department. Acting under the authority of the SFPD
23 and as an officer of the SFPD, Defendant CABILLO detained, chased, shot, and then
24 arrested Plaintiff OLIVER BARCENAS. On information and belief, Defendant
25 CABILLO continues to serve as a sworn SFPD officer, and continues to present a threat to
26 the safety of the public. This action is brought in part to prevent Defendant CABILLO
27 from continuing to abuse his authority and cause harm to the public, and to protect the
28 safety of the community.

1 13. The true names and identities of Defendants DOES 1-20 are presently
2 unknown to Plaintiffs. Plaintiffs allege that DOES 1-20 are the hiring agents within the
3 SFPD who participated in selecting Defendant CABILLO for hire into the SFPD force.
4 While engaged in the hiring process, DOES 1-20 were acting within their professional
5 capacity and as agents of the SFPD and City.

6 14. The true names and identities of Defendants DOES 21-40 are presently
7 unknown to Plaintiffs. Plaintiffs allege that DOES 21-40 are the individuals who trained
8 Defendant CABILLO and supervised him while he was in training, to become an SFPD
9 officer. While DOES 21-40 were training and supervising the training of CABILLO, they
10 were acting within their professional capacity and as agents of the SFPD and City.

11 15. The true names and identities of Defendants DOES 41-60 are presently
12 unknown to Plaintiffs. Plaintiffs allege that DOES 41-60 are the individuals who
13 supervised Defendant CABILLO once he joined the ranks of the SFPD. While DOES 41-
14 60 supervised Defendant CABILLO, they were acting within their professional capacity
15 and as agents of the SFPD and City.

16 16. Plaintiffs are informed and believe and thereon allege that at all relevant
17 times herein, Defendants were the agents, employees, servants, joint venturers, partners,
18 and/or co-conspirators of each of the other Defendants, and that at all times each of the
19 Defendants was acting within the course and scope of said relationship with each other
20 Defendant.

21 **EXHAUSTION OF PRE-LAWSUIT PROCEDURES FOR STATE LAW CLAIMS**

22 17. On September 28, 2018, Plaintiffs filed tort claims pursuant to California
23 Government Code § 910 *et seq.* against Defendants Cabillo, City, SFPD, and all agents and
24 employees thereof. The City and SFPD responded by mail on November 13, 2018,
25 denying the claims. Plaintiffs hereby submit this complaint within six months of the
26 November 13, 2018 denial, as mandated by California Government Code § 945.6(a)(1).

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1 FACTUAL ALLEGATIONS

2 **I. Defendant Cabillo detained Mr. Barcenas without cause and then shot him in**
3 **the back when he tried to escape the unlawful detention.**

4 18. On the night of June 8, 2018, Defendant Cabillo and his partner, Officer
5 Sylvester, were driving in their marked patrol car in San Francisco’s North Beach
6 neighborhood, where Mr. Barcenas and many others were congregating in the street and at
7 bars to celebrate the Golden State Warriors’ victory in the NBA Finals. Officer Sylvester
8 drove the vehicle while Cabillo rode in the passenger seat. Both Cabillo and Officer
9 Sylvester were in full police uniform.

10 19. Based on information and belief, shortly after midnight on June 9, Officer
11 Sylvester pointed out an individual holding an open container of alcohol. The individual
12 with the container was not Mr. Barcenas. That individual was standing with three other
13 individuals, including Mr. Barcenas, at the corner of Vallejo Street and Grant Avenue, an
14 intersection adjacent to multiple bars and restaurants filled with celebrants.

15 20. While the car was still in motion, Defendant Cabillo activated his body worn
16 video camera and asked Officer Sylvester to stop the vehicle. Officer Sylvester pulled
17 over a few feet from the person with the open container, and Cabillo got out of the patrol
18 car and confronted the group.

19 21. Mr. Barcenas and his companions were speaking calmly with one another at
20 the time Defendant Cabillo approached them. On information and belief, there had been
21 no complaints to law enforcement or other sign of any threatening or allegedly illegal
22 behavior involving any of the individuals that night.

23 22. When he saw Defendant Cabillo approaching, the person with the open
24 container asked whether Cabillo wanted the group to leave. Cabillo replied “No, I don’t,
25 you guys are detained. I’m talkin’ to you. What you guys think this is, man?” One of the
26 individuals replied “I don’t know, San Francisco?”; another politely asked “what are we
27 doing?”

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1 23. Defendant Cabillo then became agitated and began to raise his voice.
2 “What? What do you mean we ain’t doing [sic], you guys got open containers out here,”
3 Cabillo asserted, grabbing the bottle from Mr. Barcenas’s friend. One member of the
4 group offered, twice, to pour out the open container to alleviate Cabillo’s concern. Cabillo
5 ignored him.

6 24. At no point during the encounter did Mr. Barcenas possess an open container
7 of alcohol or anything that resembled an open container. Nor did Barcenas do anything
8 during the encounter that suggested he was engaging or had engaged in any illegal activity.
9 To the contrary, he remained quiet while Cabillo questioned the group.

10 25. A few seconds after Defendant Cabillo began speaking to the group, Mr.
11 Barcenas showed Cabillo his empty hands, demonstrating that he did not have an open
12 container, and began to back away from the encounter. Cabillo said “hold on man, you
13 ain’t going nowhere” to Barcenas, and then told the group “no one’s going anywhere.”

14 26. Mr. Barcenas stopped for a few seconds in response to Defendant Cabillo’s
15 command, but then turned and began running away. Cabillo immediately began chasing
16 Barcenas on foot.

17 27. During the chase, Mr. Barcenas never brandished a weapon, and never
18 stopped, turned, or in any way threatened or assaulted anyone, including Defendant
19 Cabillo. While Barcenas ran with his back to Cabillo, and without turning around to face
20 or gesture towards Cabillo, Barcenas tossed a gun into the street, between two parked cars
21 and away from any bystanders. The discarded gun was later recovered in the street by
22 another officer, dozens of feet away from where the shooting took place.

23 28. Even after Mr. Barcenas discarded the gun, Defendant Cabillo continued to
24 run with his gun drawn a few yards behind Barcenas. After Barcenas passed one bystander
25 and then used both hands to move around a garbage can so that he would not run into any
26 other bystanders, Cabillo opened fire.

27 29. Defendant Cabillo fired two or three shots in close succession, hitting Mr.
28 Barcenas in the back with one of the shots and causing Barcenas to fall to the pavement.

1 Only after Cabillo fired at least two shots, and after Barcenas fell to the ground, did
2 Cabillo yell “get down” several times.

3 **II. Defendant Cabillo violated department policy and unnecessarily took actions**
4 **that placed bystanders in harm’s way.**

5 30. At no point before he opened fire on Mr. Barcenas did Defendant Cabillo
6 provide any warning that he was planning to use deadly force, such as yelling “stop or I’ll
7 shoot” or providing any other instruction or command to Barcenas. Nor did Cabillo warn
8 the civilians on the sidewalk ahead of him to take cover.

9 31. Nor did Defendant Cabillo attempt to use any de-escalation techniques to
10 bring the situation under control peaceably, either before or after Mr. Barcenas turned to
11 run away. Instead, at every opportunity Cabillo endeavored to increase the scope of his
12 authority. He ignored that only one of Barcenas’s companions possessed an open
13 container of alcohol, choosing to unlawfully detain the group as a whole. He failed to
14 respond to attempts by Barcenas and his companions to discuss the situation and resolve
15 Cabillo’s avowed concern about the open container. He chose instead to open fire in the
16 middle of a sidewalk, unreasonably endangering the lives of Barcenas and bystanders
17 alike.

18 32. At no point prior to the shooting and during his encounter with Mr. Barcenas
19 and his companions did Defendant Cabillo indicate or do anything to indicate that he
20 suspected Barcenas posed a threat of any kind. Although Barcenas was carrying a weapon
21 in his pants at the time, that weapon was also under a baggy sweatshirt and not visible at
22 any point during the encounter.

23 33. While talking to Mr. Barcenas and his companions, Defendant Cabillo did
24 not suggest he believed any of the individuals he was speaking with was armed, did not
25 call dispatch, did not call for back up, and did not confer with Officer Sylvester about any
26 potential danger. Cabillo did not instruct the group to perform any actions that might
27 minimize any potential threat, such as ordering them to hold their hands up, put their hands
28 behind their heads, sit on the curb, or lie down. He did not return to his patrol car,

1 otherwise take cover, or alert bystanders to the danger of any weapon.

2 34. There is no indication that when Mr. Barcenas fled, Defendant Cabillo
3 believed he was armed. Cabillo did not communicate to anyone that Barcenas possessed a
4 weapon. He radioed “foot pursuit, Adam Thirteen David”—presumably to inform other
5 officers that he was chasing Barcenas on foot—but despite having taken the time to contact
6 dispatch, he did not inform any other officer (including his partner) of any belief that
7 Barcenas possessed a firearm.

8 35. Defendant Cabillo’s failure to notify anyone of his purported belief that Mr.
9 Barcenas was armed was contrary to SFPD policy and basic law enforcement principles
10 intended to ensure the safety of both officers and civilians.

11 36. Defendant Cabillo’s unreasonable detention of Mr. Barcenas and subsequent,
12 unreasonable use of deadly force against him violated SFPD General Order 5.01, which,
13 among other things, requires officers to attempt to de-escalate confrontations with
14 civilians, to use force only for lawful purposes, and to accomplish such lawful purposes
15 with a level of force “proportional” to the threat that a reasonable officer would have
16 perceived under the circumstances known to him at the time.

17 37. Defendant Cabillo’s hot-headed and unprofessional conduct continued in the
18 aftermath of the shooting. As Mr. Barcenas lay semiconscious and unresponsive on the
19 pavement, Cabillo panicked, despite his having served as a police officer for a decade and
20 having previously engaged in multiple serious uses of force, including deadly force.
21 Instead of performing basic first aid techniques or administering medical care to Barcenas,
22 Cabillo shook him, asked if he was alright, and told his stunned partner to call for an
23 ambulance.

24 38. Defendant Cabillo then began yelling for a “406.” On information and
25 belief, “406” is the SFPD emergency code for a request that every police officer in the City
26 come to the requesting officer’s aid. Cabillo continued to request a “406” even after
27 several responding officers had arrived and begun to control the bystanders at the scene.
28 Cabillo’s panic and display of unprofessional behavior was apparent even to his

1 colleagues. One of the responding officers attempted to calm Cabillo, saying: “You’re
2 alright. It’s alright. You’re alright. We don’t need everyone in the city.”

3 **III. Defendant Cabillo already had a long history of abusing his authority and**
4 **using unreasonable force.**

5 39. At the time he unlawfully detained and then shot Mr. Barcenas in the back,
6 Defendant Cabillo already had a long history of conduct amounting to unreasonable uses
7 of deadly force, as well as other abuses of his power as a police officer, both during and
8 before his employment with the SFPD. Based on this history, Defendants City, SFPD, and
9 Does 1-60 knew or should have known about Cabillo’s propensity to lose his temper,
10 overreact, act in an unprofessional and reckless manner, and use excessive and
11 unreasonable force.

12 40. On information and belief, Defendant Cabillo was first hired as a police
13 officer by the City of South San Francisco in or around March or April 2008. Prior to his
14 employment with the SFPD and during his employment with the City of South San
15 Francisco, Cabillo engaged in at least the following incidents that should have raised
16 serious concerns for Defendants:

17 a. In June 2011, Cabillo conducted a “probation” search on an individual
18 not on probation, and then failed to return the non-probationer’s property obtained during
19 the search;

20 b. In June 2012, Cabillo shot and killed a 15-year-old boy after targeting
21 and stopping the teenager and his friend without cause, giving chase when they attempted
22 to flee, striking the teenager on the back of the head with the butt of his service weapon,
23 and then shooting the teenager in the neck when the force of his blow to the teenager’s
24 head caused a gun the teenager had concealed to fall to the ground.

25 41. The details of Defendant Cabillo’s involvement in these incidents were
26 known or should have been known to Defendants City, SFPD, and Does 1-20 at the time
27 they hired Cabillo to work as an SFPD officer, in or around April 2013. Defendants City,
28 SFPD, and Does 1-20 hired Cabillo despite his known involvement in at least the incidents

1 described above, in which Cabillo unreasonably used deadly force and abused his authority
2 as a police officer.

3 42. On information and belief, Defendants City, SFPD, and Does 21-60 received
4 further notice of Defendant Cabillo’s propensity for using excessive force and abusing his
5 authority during the course of his employment with SFPD. Defendants City, SFPD, and
6 Does 21-60 learned or should have learned about this propensity based on at least the
7 following incidents:

8 a. In February 2015, Cabillo retaliated against three individuals who
9 questioned his authority to detain them without sufficient cause, by arranging for the
10 individuals’ car to be towed and arresting one of the individuals for driving with a
11 suspended license, even though he knew that the individual never drove the car. A judge
12 subsequently dismissed all the charges.

13 b. In April 2015, Cabillo detained a young man and his three
14 companions without cause; pulled the young man from a car and threw him to the curb,
15 thereby causing a concussion; punched the young man and threatened to break his arm;
16 and then arrested the young man without cause. All charges against the young man were
17 subsequently dropped.

18 43. On information and belief, Defendant Cabillo’s conduct during these
19 incidents violated various SFPD General Orders, including General Order 5.01, which
20 requires officers to “strive to use the minimal amount of force necessary,” and General
21 Order 2.01, which prohibits “unofficer-like conduct.” Defendants City, SFPD, and Does
22 21-60 nevertheless retained Cabillo as an SFPD officer in spite of his clear history of and
23 propensity for misconduct. Defendants City, SFPD, and Does 21-60 neither adequately
24 disciplined Cabillo for his misconduct nor provided him with sufficient training and
25 supervision to avoid similar incidents in the future, including the incident at issue in this
26 case.

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1 **IV. Defendants' misconduct caused serious harm to Oliver and Sofia Barcenas.**

2 44. Because of Defendants' unlawful conduct, Mr. Barcenas was forced to
3 undergo surgery and was hospitalized for approximately one week after Defendant Cabillo
4 shot him. He then spent approximately ten days in San Francisco County Jail before being
5 released on bail.

6 45. Mr. Barcenas continued to suffer from the injuries he sustained during the
7 shooting for months after his release. He was confined to a liquid diet during this period
8 and consistently suffered from severe pain that necessitated multiple trips to the emergency
9 room. Due to the extent of his injuries, Barcenas was unable to work for nearly three
10 months. Still to this day, he suffers from nerve damage and stomach, digestive, and
11 mobility issues; experiences pain in daily activities; and is unable to engage in normal
12 physical activities.

13 46. Mr. Barcenas' physical and emotional pain placed his marriage with Mrs.
14 Barcenas under heavy strain. They sought professional help from a marital therapist,
15 whom they visited approximately once per week until Mr. Barcenas was taken into federal
16 custody on or about September 4, 2018.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Unreasonable Seizure in Violation of Article I, Section 13 of the California**
20 **Constitution**

21 **(Oliver Barcenas Against Defendants Cabillo, City, and SFPD)**

22 47. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 45
23 above as though fully set forth herein.

24 48. Defendant Cabillo seized Mr. Barcenas when he stopped Barcenas on the
25 corner of Vallejo Street and Grant Avenue to investigate suspicions relating to an open
26 container of alcohol possessed by one of the people on the street near where Barcenas was
27 standing. Cabillo escalated Barcenas's detention beyond the permissible scope of an
28 investigatory stop when he ignored clear evidence that Barcenas did not possess an open

1 container of any kind, but yet commanded to Barcenas: “You’re not going anywhere.”

2 49. At the time he detained Mr. Barcenas, Defendant Cabillo had no reason to
3 suspect, let alone probable cause to believe, that Barcenas was engaged in or had
4 committed any crime whatsoever. Barcenas did not possess an open container of alcohol
5 or anything that resembled an open container of alcohol, and he demonstrated this fact to
6 Cabillo by raising his hands in the air with his open palms facing Cabillo. Although
7 Barcenas possessed a firearm at the time of the seizure, that firearm was not visible to
8 Cabillo and could not have provided Cabillo with the requisite cause to suspect that Mr.
9 Barcenas was engaged in or had committed any crime.

10 50. By detaining Mr. Barcenas without cause, Defendant Cabillo violated the
11 prohibition on unreasonable seizures in Article I, Section 13 of the California Constitution.

12 **SECOND CAUSE OF ACTION**

13 **Use of Excessive and Unreasonable Force in Violation of Article I, Section 13 of the**
14 **California Constitution**

15 **(Oliver Barcenas Against Defendant Cabillo, City, and SFPD)**

16 51. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 49
17 above as though fully set forth herein.

18 52. Defendant Cabillo used deadly force by shooting Mr. Barcenas in the back.

19 53. This use of deadly force was excessive, unreasonable, and unjustified. At
20 the time Defendant Cabillo shot Mr. Barcenas, a reasonable police officer would not have
21 believed that Barcenas was armed and would have known that, because Barcenas had not
22 turned towards Cabillo, brandished a weapon, threatened anyone, or made any threatening
23 gestures towards Cabillo or anyone else, he posed no threat to Cabillo or anyone else. At
24 the very least, Cabillo was required to give a warning before he shot in light of these
25 circumstances, to Barcenas and to the civilians on the sidewalk who could have been
26 injured by a wayward shot.

27 54. Defendant Cabillo’s decision to open fire was unreasonable and amounts to
28 deliberate indifference in violation Article I, Section 13 of the California Constitution.

1 **THIRD CAUSE OF ACTION**

2 **Interference with Rights Secured by Art. I, § 13 by Threat, Intimidation, or Coercion**

3 **(Cal. Civ. Code § 52.1)**

4 **(Oliver Barcenas Against Defendants Cabillo, City, and SFPD)**

5 55. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 53
6 above as though fully set forth herein.

7 56. Defendant Cabillo interfered with Mr. Barcenas’s constitutional rights by
8 threat, intimidation, or coercion when Cabillo detained Barcenas without cause on the
9 corner of Vallejo Street and Grant Avenue. At the time of this unconstitutional seizure,
10 Cabillo knew that Barcenas did not possess an open container of alcohol, and had no
11 reason whatsoever to suspect that any other basis for detaining Barcenas existed. By
12 willfully detaining Barcenas in spite of this knowledge, Cabillo acted with reckless
13 indifference and specific intent to violate Barcenas’s constitutional rights.

14 57. Because Defendant Cabillo was at all times acting within the course and
15 scope of his employment for Defendants City and SFPD when he interfered with Mr.
16 Barcenas’s constitutional rights by threat, coercion, or intimidation, Defendants City and
17 SFPD are liable for those violations under the principle of *respondeat superior*.

18 **FOURTH CAUSE OF ACTION**

19 **Interference with Rights Secured by Art. I, § 13 by Threat, Intimidation, or Coercion**

20 **(Cal. Civ. Code § 52.1)**

21 **(Oliver Barcenas Against Defendants Cabillo, City, and SFPD)**

22 58. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 56
23 above as though fully set forth herein.

24 59. Defendant Cabillo again interfered with Mr. Barcenas’s constitutional rights
25 by threat, coercion, or intimidation when he shot Barcenas in the back to stop him from
26 running away. At the time Cabillo opened fire on Barcenas, Barcenas had discarded his
27 weapon and Cabillo had no reason to believe that he posed a threat to Cabillo or anyone
28 else. By willfully shooting Barcenas, Cabillo acted with deliberate indifference and

1 specific intent to violate Barcenas’s constitutional rights.

2 60. Because Defendant Cabillo was at all times acting within the course and
3 scope of his employment for Defendants City and SFPD when he interfered with Mr.
4 Barcenas’s constitutional rights by threat, coercion, or intimidation, Defendants City and
5 SFPD are liable for those violations under the principle of *respondeat superior*.

6 **FIFTH CAUSE OF ACTION**

7 **Negligence**

8 **(Cal. Gov’t Code § 820)**

9 **(Oliver Barcenas Against Defendants Cabillo, City, and SFPD)**

10 61. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 59
11 above as though fully set forth herein.

12 62. Defendant Cabillo owed a duty to Mr. Barcenas to use deadly force against
13 him only when reasonable under the circumstances.

14 63. Defendant Cabillo used deadly force when he shot Mr. Barcenas in the back
15 to prevent him from leaving the scene where Cabillo had unreasonably and
16 unconstitutionally detained him without cause.

17 64. This use of deadly force was unreasonable, because Defendant Cabillo knew
18 or should have known, from Mr. Barcenas’s conduct both before and during his attempt to
19 flee Cabillo’s attempt to seize him unlawfully, that Cabillo lacked sufficient cause to
20 believe that Barcenas posed a threat to Cabillo or anyone else.

21 65. Defendant Cabillo injured Mr. Barcenas by unreasonably shooting him in the
22 back, in violation of SFPD policy and his duty to use deadly force only when reasonable
23 under the circumstances.

24 66. Defendant Cabillo acted within the course and scope of his employment with
25 SFPD and City when he seized Mr. Barcenas without cause and then unreasonably shot
26 Barcenas in the back to prevent him from fleeing the scene. As a result, Defendants City
27 and SFPD are liable for Cabillo’s negligence under the principle of *respondeat superior*.

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1 **SIXTH CAUSE OF ACTION**

2 **Negligent Hiring, Supervision, and Retention**

3 **(Cal. Gov't Code § 820)**

4 **(Oliver Barcenas Against Defendants Does 1-60, City, and SFPD)**

5 67. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 65
6 above as though fully set forth herein.

7 68. At the times Defendants Does 1-60 hired, supervised, and retained
8 Defendant Cabillo, Does 1-60 knew or should have known about Cabillo's history of and
9 propensity for unnecessarily escalating minor incidents with the public he was supposed to
10 protect and serve, using excessive, disproportionate, and unreasonable force, and otherwise
11 abusing his authority. Defendants also knew or should have known that Cabillo's history
12 and propensity for this behavior meant he was unable to comply with SFPD's policies,
13 including those governing officers' use of force against civilians, and that his unfitness for
14 employment as an SFPD officer created a risk of serious harm to persons with whom
15 Cabillo would interact in the course of his employment with the SFPD.

16 69. Defendant Cabillo's unfitness to serve as an SFPD officer harmed Mr.
17 Barcenas when Cabillo subjected Barcenas to precisely the types of unreasonable seizure
18 and excessive use of force that were the likely, foreseeable consequences of Cabillo's
19 unfitness for the job.

20 70. Defendants' negligence in hiring, supervising, and retaining Defendant
21 Cabillo was a substantial factor in causing the harm to Mr. Barcenas.

22 71. Does 1-60 were acting within the course and scope of their employment at
23 all points in which they negligently hired, supervised, and retained Defendant Cabillo. As
24 a result, Defendants City and SFPD are liable for the negligence of Does 1-60 under the
25 principle of *respondeat superior*.

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SEVENTH CAUSE OF ACTION

Battery

(Cal. Pen. Code § 242)

(Oliver Barcenas Against Defendants Cabillo, City, and SFPD)

72. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 70 above as though fully set forth herein.

73. When Defendant Cabillo shot Mr. Barcenas in the back, he intentionally and unreasonably used deadly force, at a time when Barcenas posed no immediate threat to Cabillo or anyone else, in violation of SFPD policy, to prevent Barcenas from leaving the location where Cabillo had unconstitutionally detained Barcenas.

74. Mr. Barcenas did not consent to this unreasonable and excessive use of deadly force.

75. Mr. Barcenas suffered serious injury as a direct and proximate result of Defendant Cabillo shooting him in the back.

76. Because Defendant Cabillo committed this tortious conduct within the course and scope of his employment for SFPD and City, SFPD and City are liable under the principle of *respondeat superior*.

EIGHTH CAUSE OF ACTION

Loss of Consortium

(Cal. Gov't Code § 820)

(Sofia Barcenas against all Defendants)

77. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 75 above as though fully set forth herein.

78. Plaintiffs Mrs. and Mr. Barcenas were married at the time Defendants recklessly and/or negligently injured Mr. Barcenas by the acts described above.

79. Since Defendant Cabillo shot him in the back on June 9, 2018, Mr. Barcenas has been unable to perform the duties of a husband as he did before his injury by Defendants, including, but not limited to, assisting in maintaining the home he shared with

1 Mrs. Barcenas, and providing love, companionship, affection, society, sexual relations,
2 moral support, and solace.

3 80. As a direct and proximate result of Defendants' unlawful conduct, Mrs.
4 Barcenas has suffered severe emotional harm due to the loss of Mr. Barcenas's
5 companionship and services, including, but not limited to, comfort, care, assistance,
6 protection, affection, society, and moral support.

7 81. Defendants' unlawful conduct described above is the legal cause of Mrs.
8 Barcenas's loss of consortium.

9 **PRAYER FOR RELIEF**

10 WHEREFORE Plaintiffs pray for the following relief:

11 1. For compensatory, general, and special damages against each Defendant,
12 jointly and severally, in an amount to be proven at trial;

13 2. For damages related to loss of familial relations as to Mr. and Mrs.
14 Barcenas, including damages for loss of the services, society, companionship, comfort,
15 care, attention, advice, counsel, and protection;

16 3. For general damages for Mr. Barcenas' conscious, egregious, and needless
17 physical pain and suffering, mental anguish, and emotional trauma and suffering, including
18 fear, extreme emotional distress, and horror;

19 4. For hedonic damages for Mr. Barcenas' physical pain and the loss of
20 enjoyment of life;

21 5. For general damages including damages for physical and emotional pain,
22 emotional distress, hardship, suffering, shock, worry, anxiety, sleeplessness, illness,
23 trauma, and suffering, loss of enjoyment of life, the loss of the services, society, care, and
24 protection, as well as the loss of financial support and contributions, loss of the present
25 value of future services and contributions, and loss of economic security;

26 6. For prejudgment interest;

27 7. For statutory treble damages pursuant to California Civil Code § 52(a);

28 8. For a statutory civil penalty in the sum of \$25,000, pursuant to California

1 Civil Code § 52(b);

2 9. For punitive and exemplary damages against the appropriate Defendants, as
3 set forth herein, in an amount according to proof appropriate to punish Defendants
4 adequately and deter others from engaging in similar misconduct;

5 10. For costs and reasonable attorneys' fees pursuant to California Civil Code §
6 52.1(i), California Code of Civil Procedure § 1021.5, and as otherwise authorized by
7 statute or law; and

8 11. For injunctive, declaratory, and such other relief as the Court may deem
9 proper, including but not limited to addressing and correcting the use of force, hiring,
10 training, and supervision issues alleged in this complaint.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand trial by jury in this action.

13 DATED: May 10, 2019

Respectfully submitted,

14 ROSEN BIEN GALVAN & GRUNFELD LLP

15
16 By: 

17 Jeffrey L. Bornstein

Ernest Galvan

18 Jessica Winter

Alexander Gourse

19
20 Attorneys for Plaintiffs

OLIVER BARCENAS and SOFIA BARCENAS