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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 CRISTOBAL ACOSTA,) Case No.
13 Plaintiff,)
14 vs.) COMPLAINT FOR DEPRIVATION OF CIVIL
15 CALIFORNIA HIGHWAY PATROL) RIGHTS
and DOES 1-50, inclusive,) (42 U.S.C. §§ 1983, 1988)
16 Defendants.) DEMAND FOR JURY TRIAL
17

18
19 Plaintiff hereby alleges as follows:
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21 JURISDICTION AND VENUE

22 1. This is an action for money damages brought pursuant to 42 U.S.C. sections 1983
23 and 1988, the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States
24 Constitution and the common law of the State of California. Jurisdiction is based upon 28
25 U.S.C. sections 1331 and 1343. Venue lies in the Northern District of California, the judicial
26 district in which the claim arose, pursuant to 28 U.S.C. section 1391(b).

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1 INTRADISTRICT ASSIGNMENT

2 2. Pursuant to Northern District Civil Local Rule 3-2(c), this action should be
3 assigned to the San Jose Division because the events in question occurred in Santa Clara County.

4
5 PARTIES

6 3. Plaintiff Cristobal Acosta is a resident of the State of California.

7 4. Defendant California Highway Patrol ("CHP") is a governmental agency in the
8 State of California and employed officers, whose names are currently unknown to plaintiff but
9 whom will be added to this lawsuit as Doe defendants, who violated plaintiff's civil rights as
10 described below.

11 5. Plaintiff is ignorant of the true names and capacities of those defendants, whether
12 individual, plural, corporate, partnership, or associates, sued herein as Does 1 through 50 and for
13 that reason have sued such defendants by fictitious names. Plaintiffs are informed and believe
14 and on that basis allege that each of the fictitiously named defendants was in some manner liable
15 and legally responsible for the damages and injuries set forth herein. The full extent of the facts
16 linking the fictitiously designated Defendants with the causes of action alleged herein are
17 unknown to Plaintiffs at this time. Plaintiffs will ask leave of Court to amend this complaint to
18 allege their true names and capacities when ascertained. Said Defendants are sued as principals
19 and/or agents, and employees of said principals, and all of the acts performed by them as agents,
20 and employees were performed within the course and scope of their authority and employment.
21 Based on information and belief, Plaintiffs allege that each and every Defendant designated as a
22 Doe is negligently and unlawfully responsible in some manner for the events and happenings
23 herein referred to, and negligently, carelessly, tortuously, unlawfully, and proximately caused
24 injury and damages thereby to Plaintiffs as herein alleged. Plaintiffs will hereafter seek leave of
25 Court to amend this Complaint to show said Defendants' true names and capacities after the
26 same have been ascertained. Plaintiffs are alleging causes of action against each Doe Defendants
27 under every theory of recovery set forth below.

28 6. All references hereinafter to Defendants shall be deemed to include defendant

1 California Highway Patrol, the individual officers involved in the incident described below and
2 Does 1-50, inclusive, and each of them.

3 7. At all times herein mentioned, Defendants, and each of them, were the
4 supervisors, agents, servants, employees, and joint venturers of each of the remaining
5 Defendants, and were at all times herein mentioned acting within the course, scope, and purpose
6 of said agency, employment, business, and joint venture. To the extent that the conduct and
7 omissions alleged herein were perpetrated by one or more of the defendants, the remaining
8 defendants confirmed and ratified said conduct and omissions. All allegations made in this
9 complaint to any act or omission on the part of a Defendant or Defendants shall also be deemed
10 to refer to the act and/or omission of each Defendant. At all relevant times, defendants and each
11 of them were the knowing agents and/or alter egos of one another. Defendants and each of their
12 officers, directors and managing agents directed, approved and/or ratified the conduct of each and
13 of their co-defendants, agents and employees, as is more fully alleged herein.

14 8. Each individual defendant acted in a conspiracy, pursuant to 42 U.S.C. section
15 1983, with each other individual defendant to deprive plaintiff of the rights enumerated herein.

16
17 **FIRST CLAIM FOR RELIEF - VIOLATION OF CIVIL RIGHTS**

18 9. Plaintiff hereby incorporates by reference all paragraphs of this complaint as
19 though fully set forth below.

20 10. On January 8, 2017, plaintiff was driving on the connector ramp from northbound
21 U.S. Highway 101 to northbound Interstate 880, in Santa Clara County, when he experienced car
22 trouble and had to pull over to the side of the freeway. As he was attempting to start his car, a
23 CHP vehicle pulled up behind him. Mr. Acosta's car then "backfired." Rather than taking
24 appropriate actions to assess the situation, at least two CHP officers immediately and without
25 warning opened fire on the unarmed Mr. Acosta, apparently under the mistaken and unreasonable
26 belief that he was shooting at them. The officers fired at least 14 rounds, one of which entered
27 Mr. Acosta's skull.

28 11. Even though Defendants soon discovered that Mr. Acosta was not armed, could

1 not have shot at them, posed no threat to them and was seriously injured, Defendants took him
2 into custody and forced him to endure a long confinement. Mr. Acosta was subjected to
3 unnecessary and prolonged questioning and stress. Defendants never charged Mr. Acosta with
4 any crime.

5 12. The CHP officers involved in this incident were, at all times relevant to this
6 Complaint, duly appointed officers of the CHP, acting in the performance of official duties under
7 color of the statutes, ordinances, regulations, policies, customs and usages of the State of
8 California.

9 13. Defendants willfully, intentionally, knowingly, maliciously and concertedly
10 deprived plaintiff of rights, privileges and immunities secured by the Constitution and laws of the
11 United States, including but not limited to the First, Fourth, Fifth, Eighth and Fourteenth
12 Amendments and 42 U.S.C. section 1983, by inter alia:

- 13 a. Acting with deliberate indifference to Mr. Acosta's rights, Defendants used
14 excessive and unreasonable force when they fired numerous shots at him even
15 though he posed no threat to them.
- 16 b. Defendants falsely arrested Mr. Acosta, without probable cause, when they took
17 him into custody even though it was clear that he had committed no crime, but
18 rather had been the victim of excessive and unreasonable force.
- 19 c. Defendants failed to intervene to prevent the use of excessive force, unlawful
20 arrest and other Constitutional violations.
- 21 d. Defendants conspired with each other in the deprivation of the Constitutional
22 rights herein described.
- 23 e. The CHP did not properly train the officers who were involved in shooting at Mr.
24 Acosta, such that they were unprepared to handle a situation such as this and
25 therefore panicked and grossly overreacted. The CHP was deliberately indifferent
26 to the substantial risk that its training policies and procedures were inadequate to
27 prevent violations of law by its officers.

28 14. As a proximate result of Defendants' actions, Mr. Acosta suffered severe physical

1 and psychological injuries, including but not limited to a traumatic brain injury and post-
2 traumatic stress disorder.

3 15. The conduct of the individual CHP Officer defendants was despicable, oppressive
4 and malicious. Defendants intended to injure Mr. Acosta or were recklessly and callously
5 indifferent to the substantial likelihood that their actions would injure him. This justifies an
6 award of exemplary damages against the individual CHP Officer defendants in a sum appropriate
7 to punish and make an example of them.

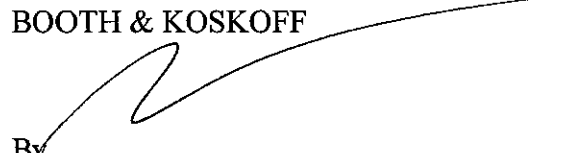
8 16. To the extent that the personal resources of the individual CHP Officer defendants
9 are not sufficient to furnish a suitable recovery to plaintiff, Defendant CHP is liable for such
10 deficiency pursuant to California Government Code section 815.2(a).

11
12 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 13 1. Compensatory general and special damages in the amount of \$10 million;
- 14 2. Exemplary damages against each of the individual CHP Officer defendants;
- 15 3. Reasonable attorney's fees and costs of litigation, pursuant to 42 U.S.C. section
16 1988;
- 17 4. Costs of suit and such other and further relief as the Court deems just and
18 proper.

19
20 Dated: December 13, 2017

BOOTH & KOSKOFF

21
22 By 
23 Roger E. Booth, Esq.
24 Attorney for Plaintiff

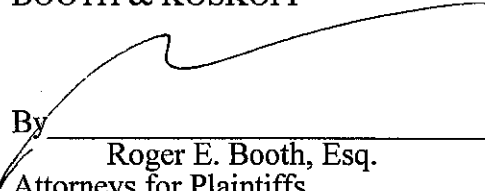
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure, Rule 38(b)(1), plaintiff hereby demands trial by jury in this matter.

Dated: December 13, 2017

BOOTH & KOSKOFF

By 

Roger E. Booth, Esq.
Attorneys for Plaintiffs