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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ALLEN KOKA, an individual,
11
12 Plaintiff,

13 v.

14 SAN DIEGO METROPOLITAN
TRANSIT SYSTEM, a public entity;
15 SAN DIEGO TROLLEY, INC., a
California corporation; SAN DIEGO
TRANSIT CORPORATION, a
16 California corporation; UNIVERSAL
PROTECTION SERVICE GP, INC., a
17 California corporation; NMS
MANAGEMENT SERVICES, INC., a
18 California corporation; BILL BUCK,
an individual; CHRIS MINER, an
19 individual; and DOES 1 through 20,
inclusive,

20 Defendants.
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Case No. 15-cv-00763-AJB-KSC

**FIRST AMENDED COMPLAINT
FOR DAMAGES FOR:**

- 1) **VIOLATION OF CIVIL RIGHTS (42 U.S.C. § 1983);**
- 2) **MONELL CLAIM (42 U.S.C. § 1983);**
- 3) **VIOLATION OF CAL. CIVIL CODE § 52.1 (BANE ACT);**
- 4) **VIOLATION OF CAL. CIVIL CODE § 51.7;**
- 5) **BATTERY;**
- 6) **ASSAULT;**
- 7) **FALSE IMPRISONMENT/
FALSE ARREST;**
- 8) **INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS;**
- 9) **NEGLIGENCE; and**
- 10) **NEGLIGENT HIRING,
SUPERVISION, AND
RETENTION OF EMPLOYEES.**

JURY TRIAL DEMANDED

1 Plaintiff Allen Koka (“Plaintiff”), on information and belief, alleges the
2 following:

3 **INTRODUCTION**

4 1. This civil rights action seeks compensatory and punitive damages
5 from the Defendants for seizing, arresting, and brutally beating Plaintiff
6 without justification and in violation of his civil rights under federal and state
7 law.

8 **JURISDICTION AND VENUE**

9 2. This case arises under 42 U.S.C. § 1983 and California law. This
10 Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
11 1331.

12 3. This Court has subject matter jurisdiction over Plaintiff’s state law
13 claims under its supplemental jurisdiction under 28 U.S.C. § 1367.

14 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
15 because the unlawful actions challenged herein occurred in the Southern
16 District of California.

17 **GENERAL ALLEGATIONS**

18 5. At all times mentioned herein, Plaintiff was and is an individual
19 and a resident of the County of San Diego, California. At all relevant times,
20 Plaintiff was an employee of Defendant NMS Management Services, Inc.
21 (“NMS”), a company that contracts with Defendant San Diego Metropolitan
22 Transit System (“MTS”) for employees such as Plaintiff to provide janitorial
23 services to MTS property. Plaintiff, who is not originally from the United
24 States, has dark hair, dark complexion and speaks with a very heavy foreign
25 accent.

26 6. Plaintiff is informed and believes and thereon alleges that, at all
27 times herein mentioned, Defendant MTS was and is a California public entity
28 authorized and existing as such in and under the laws of the State of California,

1 with its headquarters located at 1255 Imperial Avenue, San Diego, CA 92101.
2 MTS is a public entity which provides bus and rail services to the citizens of
3 San Diego directly or by contract with public and private operators.

4 7. Plaintiff is informed and believes and thereon alleges that at all
5 times herein mentioned, Defendant San Diego Trolley, Inc., (“SDTI”) was and
6 is a California corporation and a subsidiary of MTS, acting as the transit
7 authority of the City of San Diego, duly organized and existing under the laws
8 of the State of California and situated in the County of San Diego.

9 8. Plaintiff is informed and believes and thereon alleges that at all
10 times herein mentioned, Defendant San Diego Transit Corporation (“SDTC”)
11 was and is a California corporation and a subsidiary of MTS, acting as the
12 transit authority of the City of San Diego, duly organized and existing under
13 the laws of the State of California and situated in the County of San Diego.

14 9. Plaintiff is informed and believes and thereon alleges that at all
15 times herein mentioned, MTS, SDTI, and SDTC owned, operated, leased,
16 and/or maintained the property located at 1255 Imperial Avenue, San Diego,
17 CA 92101, where all relevant actions and incidents alleged in this Complaint
18 occurred.

19 10. Plaintiff is informed and believes and thereon alleges that at all
20 times herein mentioned, MTS possessed the power and authority to adopt
21 policies and prescribe rules, regulations and practices affecting the operation of
22 MTS and its subsidiaries SDTI and SDTC. Furthermore, MTS possessed the
23 power and authority to adopt policies and prescribe rules, regulations, and
24 practices regarding MTS, SDTI, and SDTC employees, such as hiring
25 employees, training employees, disciplining employees, and conducting
26 internal investigations.

27 11. Plaintiff is informed and believes and thereon alleges that at all
28 times herein mentioned, Defendants Bill Buck (“Buck”), Chris Miner

1 (“Miner”), and Does 1 through 20 were individuals employed by MTS and/or
2 its subsidiaries as transit officers, acting within the course and scope of their
3 employment and also within their actual and apparent authority as officers of a
4 public entity, MTS.

5 12. Plaintiff is informed and believes and thereon alleges that at all
6 times herein mentioned, Defendant Universal Protection Service GP, Inc.
7 (“UPS”) is a California corporation, qualified to do business in California, and
8 is under contract to provide security and code enforcement/law enforcement
9 services to the MTS and/or its subsidiaries. At all times herein mentioned, UPS
10 employees acted under their authority as security and code enforcement/law
11 enforcement employees of a public entity, MTS, and under color of statutes,
12 ordinances, regulations, customs and usages of the State of California, City of
13 San Diego, and the MTS.

14 13. Plaintiff is informed and believes and thereon alleges that at all
15 times herein mentioned, Defendants Buck, Miner, and Does 1 through 20 were
16 also employees of UPS, acting within the course and scope of their
17 employment.

18 14. Plaintiff is informed and believes and thereon alleges that at all
19 times herein mentioned, Defendant NMS is a California corporation, qualified
20 to do business in California, and is under contract with Defendant MTS to
21 provide cleaning services to MTS property. At all times herein mentioned,
22 NMS employees acted within the course and scope of their employment with
23 NMS.

24 15. Plaintiff is informed and believes and thereon alleges that each of
25 the Defendants designated as Doe is intentionally responsible in some manner
26 for the events and happenings herein referred to, and thereby proximately
27 caused injuries and damages as herein alleged. The true names of Defendant
28 Does 1 through 20 are unknown to Plaintiff. Plaintiff will seek leave to amend

1 this Complaint to show the true names and capacities of Does 1 through 20
2 when they have been ascertained.

3 16. Plaintiff is informed and believes and thereon alleges that
4 Defendants, and each of them, did the acts and omissions hereinafter alleged in
5 bad faith and with knowledge that their conduct violated well established and
6 settled law. All Defendants, both public and private, conspired with each other
7 to deprive Plaintiff of his constitutional rights and were acting under color of
8 law.

9 17. In committing the acts hereinafter alleged, Defendants acted
10 knowingly, maliciously, and/or with reckless or callous disregard for the
11 constitutional rights of Plaintiff, justifying an award of punitive damages under
12 federal and California law against each individual Defendant.

13 18. Plaintiff complied with the Government Tort Claims Act and filed
14 a claim with MTS on January 28, 2015. MTS rejected the claim on February
15 10, 2015.

16 19. The incidents complained of herein began on or around November
17 13, 2014, on the MTS premises located at 1255 Imperial Avenue, San Diego,
18 CA 92101 (“MTS Property”).

19 20. As an employee of NMS, who contracts with MTS, SDTI, and
20 SDTC to provide janitorial services to MTS property, Plaintiff was authorized
21 to be on all MTS property, including the MTS Property, for work, to report to
22 work, and for all work-related matters. Additionally, Plaintiff’s supervisor
23 works at and maintains an office located on the MTS Property.

24 21. Even though Plaintiff was an employee of NMS, the company had
25 not yet issued him an identification card verifying his employment with the
26 company.

27 22. On November 13, 2014, at approximately 10:00 p.m., Plaintiff
28 arrived at the MTS Property to meet his brother, Qooka Qooka (“Qooka”), who

1 was also an employee of NMS, and to give his supervisor, Roberto [last name
2 presently unknown], his social security card so that NMS could make an
3 employee identification card for Plaintiff. At that time, Plaintiff had been
4 working for NMS for approximately one week.

5 23. As Plaintiff was walking on the MTS Property, Defendants Buck,
6 Miner, and Does 1 through 20 quickly and contentiously approached Plaintiff,
7 surrounded him, and demanded that he tell them what he was doing on the
8 MTS Property. Defendants told Plaintiff that the area was private property and
9 that no one is allowed on the property other than employees with authorization.

10 24. Plaintiff informed Defendants Buck, Miner, and Does 1 through
11 20 that he was an employee of NMS and was therefore authorized to be on the
12 MTS Property.

13 25. Defendants Buck, Miner, and Does 1 through 20 asked for
14 Plaintiff's work identification. Plaintiff informed Defendants that he, as a new
15 employee of NMS, had not yet been issued an identification card.

16 26. Defendants Buck, Miner, and Does 1 through 20 told Plaintiff that
17 they did not believe him and then told Plaintiff he was trespassing.

18 27. Plaintiff advised Defendants Buck, Miner, and Does 1 through 20
19 that they should speak to Plaintiff's supervisor, who was on the premises at the
20 time. Plaintiff advised those Defendants that his supervisor would confirm that
21 Plaintiff was an employee of NMS and was authorized to be on the MTS
22 Property. Plaintiff even pointed those Defendants in the direction of the
23 supervisor's office and pleaded with them to talk to his supervisor to clear up
24 the matter.

25 28. Defendants Buck, Miner, and Does 1 through 20 still rejected the
26 claim and told Plaintiff that they did not believe him. Defendants also refused
27 to do as little as walk several yards to Plaintiff's supervisor's office to confirm
28 Plaintiff's claim, even though any one of them could have done so while

1 leaving the other Defendants surrounding Plaintiff. In other words, it was a
2 perfectly viable and reasonable solution to the matter for any one of the
3 individual Defendants to go to Plaintiff's supervisor's office and confirm
4 Plaintiff's authorization to be on the MTS Property while the other individual
5 Defendants stayed with Plaintiff. Nonetheless, Defendants refused to confirm
6 or dispel Plaintiff's claim and instead stayed in their positions, surrounding
7 Plaintiff and harassing him.

8 29. Throughout the entire altercation, Defendants Buck, Miner, and
9 Does 1 through 20 relentlessly interrogated and harassed Plaintiff. The number
10 of individual Defendants surrounding Plaintiff grew in numbers; they took
11 Plaintiff's government issued identification card; they repeatedly told him he
12 was breaking the law; they told him he could not talk on the phone, even
13 though Plaintiff was trying to reach his brother or his supervisor to resolve the
14 matter; they mocked him; they agitated him; and they refused to let him leave
15 the circle they created around him. All comments were made with an angry
16 tone of voice and a threatening presence towards Plaintiff, as if they were
17 trying to scare him.

18 30. After many minutes of harassing and intimidating Plaintiff,
19 Defendants Buck, Miner, and Does 1 through 20 told Plaintiff they were going
20 to cite him for trespassing. Defendant Buck began to write up the citation.

21 31. While Defendants Buck, Miner, and Does 1 through 20 were
22 surrounding, detaining, harassing, threatening and intimidating Plaintiff,
23 Plaintiff's supervisor arrived and approached Defendants, informing them all
24 that Plaintiff was a NMS employee and was, in fact, authorized to be on the
25 MTS Property.

26 32. Even in the face Plaintiff's supervisor informing them that
27 Plaintiff was, in fact, authorized to be on the MTS Property, which indisputably
28 dispelled any suspicion that Plaintiff was trespassing or committing any other

1 crime or violation, Defendants Buck, Miner, and Does 1 through 20 still
2 refused to let Plaintiff go. Indeed, Defendant Buck said “[the officers] don’t
3 care about [Plaintiff’s] supervisor.” Defendant Miner told Plaintiff’s
4 supervisor that, instead of letting Plaintiff go, they were going to “hang on to
5 him for a little bit” because they did not like his attitude.

6 33. Plaintiff’s brother approached Defendants Buck, Miner, and Does
7 1 through 20 and informed them that Plaintiff was an employee of NMS and
8 was authorized to be on the premises. Defendants rejected the claim and
9 ordered Plaintiff’s brother to back away and not to interfere with their detention
10 of Plaintiff.

11 34. Plaintiff pleaded to Defendants Buck, Miner, and Does 1 through
12 20 to please let him go, but they all refused. They started simultaneously
13 drawing closer to Plaintiff in a threatening and intimidating fashion, to the
14 point where several individual Defendants were within inches of Plaintiff’s
15 face.

16 35. Defendants Buck, Miner, and Does 1 through 20 then tried to
17 force Plaintiff to sign a citation for trespassing, even though they knew Plaintiff
18 was not trespassing onto the MTS Property.

19 36. Plaintiff refused to sign the citation. Plaintiff stated that he could
20 not read English well and would not sign anything he could not read and
21 understand. Plaintiff additionally refused to sign the citation because it was for
22 trespassing, and Defendants Buck, Miner, and Does 1 through 20 knew that
23 Plaintiff was not trespassing. Plaintiff pleaded with the Defendants to return
24 his ID, leave him alone, and let him go.

25 37. Defendants Buck, Miner, and Does 1 through 20 became even
26 more angered, oppressive, harassing, intimidating and threatening with
27 Plaintiff’s refusal. Those Defendants told Plaintiff that, if he did not sign the
28 ticket, they would arrest him, put him in handcuffs, and take him to jail. They

1 repeatedly pressured Plaintiff to sign the citation. Plaintiff still refused and
2 asked Defendants to let him go.

3 38. Defendants Buck, Miner, and Does 1 through 20 then began
4 viciously and brutally beating Plaintiff.

5 39. Defendant Buck was the first to strike; he grabbed Plaintiff by his
6 throat and slammed him on the ground. At that point, multiple Defendants
7 simultaneously jumped on top of Plaintiff and began hitting Plaintiff's head on
8 the concrete ground. Defendants slammed Plaintiff's head against the concrete
9 so hard that Plaintiff lost consciousness. Defendants also stomped on
10 Plaintiff's chest, back, arms and legs.

11 40. Plaintiff screamed in pain as Defendants Buck, Miner, and Does 1
12 through 20 viciously beat him. Defendants did not cease beating Plaintiff.

13 41. While he was being beaten on the ground, Plaintiff and Qooka
14 pleaded with Defendants not to step on Plaintiff's chest and stomach, as
15 Plaintiff recently had surgery in that area of his body. Defendants ignored the
16 pleas and continued to stomp on Plaintiff's chest and stomach, digging their
17 knees and feet into Plaintiff's chest as he screamed in pain.

18 42. Qooka begged Defendants Buck, Miner, and Does 1 through 20 to
19 stop beating Plaintiff, but Defendant Miner and several Doe Defendants
20 maliciously and forcefully pushed Qooka away and threatened to arrest him if
21 he did not walk away at that moment. Although Qooka heeded the request and
22 walked away, he was chased down by Defendant Miner and several Doe
23 Defendants and arrested. After handcuffing Qooka, Defendant Miner and
24 several Doe Defendants put Qooka in an SUV where he could not see what the
25 other Defendants were doing to Plaintiff.

26 43. Meanwhile, Plaintiff was handcuffed, moved towards a separate
27 vehicle and thrown on the ground. Defendant Buck and several Doe
28 Defendants then tied Plaintiff's legs together and continued to beat him.

1 44. Throughout the incident, Defendants Buck and Miner were both
2 wearing body cameras. Those body cameras captured certain parts of the
3 beating administered to Plaintiff by Defendants.

4 45. Although transit officers and employees issued such body cameras
5 are required to wear the cameras on their chests at all times, Defendant Buck
6 intentionally removed his body camera during Plaintiff's beating and placed it
7 on the hood of a car, facing away from the beating in an effort to conceal the
8 beating from being captured on video. Although not captured on video, the
9 audio portion of the recording reveals Plaintiff screaming in pain from that
10 point on.

11 46. After several minutes of beating Plaintiff, two of the Doe
12 Defendants returned to the vehicle where the body camera had been placed and
13 began discussing the beating. While one Doe Defendant was talking about the
14 beating, another Doe Defendant abruptly interrupted him, directed his attention
15 to the body camera sitting on the car, and said "Sarge, that's still hot." The
16 Doe Defendant turned around, looked at the body camera, and immediately
17 walked away to continue discussing the beating with the other Doe Defendant,
18 away from the camera.

19 47. Plaintiff was beaten so severely that an ambulance was called to
20 transport him to the emergency room.

21 48. Defendants Buck, Miner, and Does 1 through 20 continued to hold
22 and beat Plaintiff until the ambulance and paramedics arrived. Once the
23 paramedics arrived, several Doe Defendants and paramedics took Plaintiff, who
24 was still in handcuffs, put him on a gurney and transported him to the
25 emergency room, where he would spend the remainder of the night. As
26 Plaintiff was being transported away, Defendants joked with each other about
27 how Plaintiff would no longer be working for NMS after the beating.

28

1 49. Defendant Buck then formally issued Plaintiff a citation for: (1)
2 resisting/delaying/obstructing a public officer; and (2) entering MTS property
3 not open to the public.

4 50. For reasons unknown to Plaintiff and unsupported by video and
5 audio evidence, Plaintiff was also issued a citation by the San Diego Police
6 Department (“SDPD”) for misdemeanor battery against a transit employee.
7 Plaintiff is informed and believes and thereon alleges that the citing and
8 arresting SDPD officer’s last name is Pierre-Autoine. Plaintiff is informed and
9 believes and thereon alleges that the San Diego Superior Court later dismissed
10 that charge against Plaintiff.

11 51. In his Emergency Record notes, the ER doctor who treated
12 Plaintiff noted that MTS employees stated they witnessed Plaintiff lose
13 consciousness for approximately 30 seconds.

14 52. At the hospital, Plaintiff was examined and treated for multiple
15 injuries caused by Defendants, including but not limited to head, chest, back,
16 wrist, and knee injuries.

17 53. Plaintiff had to go to another hospital the next day, November 14,
18 2014, to undergo further examination and treatment of those injuries.

19 54. On or around November 18, 2014, Plaintiff received notice from
20 MTS that it voluntarily dismissed the charges against Plaintiff.

21 55. Plaintiff is still undergoing treatment for the injuries caused by
22 Defendants to his back. Furthermore, and understandably, Plaintiff quit his job
23 because of the incident. Plaintiff quit his job because he had to report to work
24 in the same general area where Defendants Buck, Miner, and Does 1 through
25 20 work, and Plaintiff feared being beaten again. Plaintiff no longer feels
26 comfortable riding MTS buses or trolleys because he fears he will encounter
27 Defendants Buck, Minor, and/or Does 1 through 20 and be beaten by them
28 again.

1 misconduct, or because they failed to intervene when they had the opportunity
2 and duty to do so to prevent these violations.

3 61. As a direct and proximate result of the above-noted Defendants'
4 acts and omissions, Plaintiff has suffered damages, including but not limited to
5 pain and suffering, extreme mental and emotional distress, severe physical
6 injuries, medical expenses, attorneys' fees, costs of suit, loss of his job, loss of
7 earnings, and other pecuniary losses not yet ascertained.

8 62. Plaintiff alleges that the acts of the individual Defendants were
9 willful, malicious, intentional, oppressive, reckless, and/or were done in willful
10 and conscious disregard of Plaintiff's rights, welfare and safety, thereby
11 justifying the awarding of punitive and exemplary damages in an amount to be
12 determined at trial.

13 **SECOND CAUSE OF ACTION**

14 ***MONELL VIOLATION - UNLAWFUL CUSTOM AND PRACTICE***

15 **UNDER 42 U.S.C. § 1983**

16 **(Against Defendants MTS, SDTI, SDTC, and UPS)**

17 63. Plaintiff incorporates by reference the allegations contained in
18 paragraphs 1 through 62 of this Complaint, and each and every part thereof,
19 with the same force and effect as though set out at length herein.

20 64. Defendants MTS, SDTI, and SDTC are and at all times herein
21 mentioned have been public entities duly authorized and existing as such in and
22 under the laws of the State of California, and at all times herein mentioned,
23 MTS possessed the power and authority to adopt policies and prescribe rules,
24 regulations, and practices affecting the operation of the MTS, SDTI and SDTC
25 and its practices and customs related to training employees, disciplining
26 employees, internal investigations, personnel supervision, records maintenance,
27 and the proper uses of force by its transit officers and other employees.

1 65. At all times herein mentioned, Defendant UPS was acting under
2 color of state law pursuant to *Dennis v. Sparks*, 449 U.S. 24 (1980).

3 66. Defendants MTS, SDTI, SDTC and UPS have condoned an
4 ongoing pattern of misconduct and brutality committed by its transit officers
5 and other employees. Defendants MTS, SDTI, SDTC, and UPS maintained or
6 permitted one or more of the following official policies, customs, or practices:

7 A. Failure to provide adequate training and supervision to
8 transit officers and other employees with respect to constitutional limits on use
9 of force, detention, and arrests;

10 B. Failure to adequately discipline or retrain officers and
11 employees involved in misconduct;

12 C. Selection, retention, and assignation of officers with
13 demonstrable propensities for excessive force, violence, dishonesty, and other
14 misconduct;

15 D. Condonation and encouragement of officers in the belief
16 that they violate the rights of persons such as Plaintiff with impunity, and that
17 such conduct will not adversely affect their opportunities for promotion and
18 other employment benefits;

19 E. Regaining, assigning, and selecting transit officers and
20 employees with known propensities for excessive force, violence, dishonesty
21 and other misconduct, and failing to take adequate steps to discipline such
22 persons;

23 F. Failure to practice and enforce proper reporting and
24 investigation of use of force by transit officers and other employees;

25 G. Enforcing a “code of silence,” whereby transit officers and
26 other employees protect each other from investigation and consequences of
27 their wrongdoing;

28

1 H. Ratification by the highest levels of authority of the specific
2 unconstitutional acts alleged in this Complaint.

3 67. Defendants Buck, Miner, and Does 1 through 20 were employees
4 of MTS, SDTI, SDTC and UPS, acting under color of law and under the
5 direction and control of their employers, knowingly and intentionally acted
6 pursuant to these aforementioned policies, customs, and practices when they
7 unlawfully seized, arrested, and viciously beat Plaintiff.

8 68. By reason of the policies, customs, and practices, Plaintiff's rights
9 under the Fourth and Fourteenth Amendments of the United States Constitution
10 were violated.

11 69. As a direct and proximate result of these illegal policies, customs,
12 and practices, Plaintiff has suffered damages, including, without limitation,
13 pain and suffering, extreme mental and emotional distress, severe physical
14 injuries, medical expenses, attorney's fees, costs of suit, loss of his job, loss of
15 earnings and other pecuniary losses not yet ascertained.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATION OF CAL. CIVIL CODE § 52.1 (BANE ACT)**

18 **(Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20)**

19 70. Plaintiff incorporates by reference the allegations contained in
20 paragraphs 1 through 69 of this Complaint, and each and every part thereof,
21 with the same force and effect as though set out at length herein.

22 71. Through the aforementioned acts, Defendants Buck, Miner, and
23 Does 1 through 20 interfered or attempted to interfere with Plaintiff's civil
24 rights guaranteed by the United States Constitution, the California Constitution,
25 and California law by using violence, threats of violence, intimidation, and
26 coercion, thereby violating California Civil Code § 52.1.

27 72. Plaintiff's claims against Defendants MTS, SDTI, SDTC and UPS
28 are based on their maintaining and permitting the policies, customs, and

1 practices described in paragraph 66 that violated Plaintiff's constitutional
2 rights.

3 73. As a result of their conduct, Defendants are liable for Plaintiff's
4 injuries, either because they were integral participants in the misconduct, or
5 because they failed to intervene when they had the opportunity and duty to do
6 so to prevent these violations.

7 74. As a direct and proximate result of Defendants' acts and
8 omissions, Plaintiff has suffered damages, including but not limited to pain and
9 suffering, extreme mental and emotional distress, severe physical injuries,
10 medical expenses, attorneys' fees, costs of suit, loss of his job, loss of earnings,
11 and other pecuniary losses not yet ascertained.

12 75. Plaintiff alleges that the acts of the individual Defendants were
13 willful, malicious, intentional, oppressive, reckless, and/or were done in willful
14 and conscious disregard of Plaintiff's rights, welfare and safety, thereby
15 justifying the awarding of punitive and exemplary damages in an amount to be
16 determined at trial.

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF CAL. CIVIL CODE § 51.7**

19 **(Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20)**

20 76. Plaintiff incorporates by reference the allegations contained in
21 paragraphs 1 through 75 of this Complaint, and each and every part thereof,
22 with the same force and effect as though set out at length herein.

23 77. Defendants Buck, Miner, and Does 1 through 20 intentionally
24 threatened and committed violence against Plaintiff.

25 78. A motivating reason for the threats and violent acts of Defendants
26 Buck, Miner, and Does 1 through 20 was their perception of Plaintiff as a
27 person of foreign national origin.
28

1 79. A reasonable person in Plaintiff's position would have been
2 intimidated by the conduct of Defendants Buck, Miner, and Does 1 through 20,
3 and Plaintiff was in fact intimidated by their conduct.

4 80. The violent acts of Defendants Buck, Miner, and Does 1 through
5 20 caused Plaintiff to suffer severe physical injuries, extreme emotional
6 distress, fear, trauma, and humiliation.

7 81. In causing such harm to Plaintiff, Defendants Buck, Miner, and
8 Does 1 through 20, acted under color of authority, within the course and scope
9 of their employment, and in conspiracy with each other, and pursuant to the
10 established policies, practices, and customs of Defendants MTS, SDTI, SDTC,
11 and UPS.

12 82. The conduct of Defendants Buck, Miner, and Does 1 through 20,
13 and all other Defendants, was consented to, ratified, approved, concealed,
14 covered up, condoned, accepted, and/or encouraged by each other, for their
15 own benefit and gain, knowing that the conduct would result in harm to
16 Plaintiff and other similarly situated members of the general public who are of
17 foreign national origin.

18 83. As a direct and proximate result of Defendants' acts and
19 omissions, Plaintiff has suffered damages, including but not limited to pain and
20 suffering, extreme mental and emotional distress, severe physical injuries,
21 medical expenses, attorneys' fees, costs of suit, loss of his job, loss of earnings,
22 and other pecuniary losses not yet ascertained.

23 84. Plaintiff alleges that the acts of the individual Defendants were
24 willful, malicious, intentional, oppressive, reckless, and/or were done in willful
25 and conscious disregard of Plaintiff's rights, welfare and safety, thereby
26 justifying the awarding of punitive and exemplary damages in an amount to be
27 determined at trial.

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FIFTH CAUSE OF ACTION

BATTERY

(Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20)

85. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 84 of this Complaint, and each and every part thereof, with the same force and effect as though set out at length herein.

86. Defendants committed battery against Plaintiff when they intentionally and brutally beat him without justification or consent.

87. Defendants' battery caused Plaintiff to suffer severe physical injuries, extreme emotional distress, fear, trauma, and humiliation.

88. As a result of their conduct, Defendants are liable for Plaintiff's injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent the battery from occurring.

89. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered damages, including, without limitation, pain and suffering, extreme mental and emotional distress, severe physical injuries, medical expenses, attorney's fees, costs of suit, loss of his job, loss of earnings and other pecuniary losses not yet ascertained.

90. Plaintiff is informed and believes and thereon alleges that the acts of the Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff's rights, welfare and safety, thereby justifying the awarding of punitive and exemplary damages in an amount to be determine at time of trial.

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SIXTH CAUSE OF ACTION

ASSAULT

(Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20)

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 90 of this Complaint, and each and every part thereof, with the same force and effect as though set out at length herein.

92. Defendants committed assault against Plaintiff when they intentionally and unlawfully placed Plaintiff in reasonable fear of his safety and physical and emotional wellbeing.

93. As a result of their conduct, Defendants are liable for Plaintiff's injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent the assault from occurring.

94. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered damages, including, without limitation, pain and suffering, extreme mental and emotional distress, severe physical injuries, medical expenses, attorney's fees, costs of suit, loss of his job, loss of earnings and other pecuniary losses not yet ascertained.

95. Plaintiff is informed and believes and thereon alleges that the acts of the Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff's rights, welfare and safety, thereby justifying the awarding of punitive and exemplary damages in an amount to be determine at time of trial.

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SEVENTH CAUSE OF ACTION

FALSE IMPRISONMENT/FALSE ARREST

(Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20)

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4 96. Plaintiff incorporates by reference the allegations contained in
5 paragraphs 1 through 95 of this Complaint, and each and every part thereof,
6 with the same force and effect as though set out at length herein.

7 97. Through the aforementioned acts, Plaintiff was unlawfully
8 confined, seized and arrested by Defendants.

9 98. Defendants did not have a warrant, reasonable suspicion of
10 criminality afoot about Plaintiff, or probable cause to believe that Plaintiff had
11 committed a crime.

12 99. The confinement of Plaintiff by Defendants was without Plaintiff's
13 consent.

14 100. Defendants intentionally confined Plaintiff, and the confinement
15 and detention of Plaintiff was without lawful privilege, especially following
16 Plaintiff's supervisor's informing Defendants that Plaintiff was authorized to be
17 on the premises in question.

18 101. Defendants' confinement of Plaintiff was for an appreciable length
19 of time.

20 102. Defendants' false arrest caused Plaintiff to suffer physical injuries,
21 extreme emotional distress, fear, trauma, and humiliation.

22 103. As a result of their conduct, Defendants are liable for Plaintiff's
23 injuries, either because they were integral participants in the misconduct, or
24 because they failed to intervene when they had the opportunity and duty to do
25 so to prevent the false arrest from occurring.

26 104. As a direct and proximate result of Defendants' acts and
27 omissions, Plaintiff has suffered damages, including, without limitation, pain
28 and suffering, extreme mental and emotional distress, severe physical injuries,

1 medical expenses, attorney's fees, costs of suit, loss of his job, loss of earnings
2 and other pecuniary losses not yet ascertained.

3 105. Plaintiff is informed and believes and thereon alleges that the acts
4 of the Defendants were willful, malicious, intentional, oppressive, reckless,
5 and/or were done in willful and conscious disregard of Plaintiff's rights,
6 welfare and safety, thereby justifying the awarding of punitive and exemplary
7 damages in an amount to be determine at time of trial.

8 **EIGHTH CAUSE OF ACTION**

9 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

10 **(Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20)**

11 106. Plaintiff incorporates by reference the allegations contained in
12 paragraphs 1 through 105 of this Complaint, and each and every part thereof,
13 with the same force and effect as though set out at length herein.

14 107. Defendants' aforementioned conduct was extreme, unreasonable
15 and outrageous.

16 108. In engaging in the aforementioned conduct, Defendants recklessly
17 disregarded the foreseeable risk that Plaintiff would suffer extreme emotional
18 distress as a result of their conduct.

19 109. Defendant's conduct caused Plaintiff to suffer severe emotional
20 distress.

21 110. As a direct and proximate result of Defendants' extreme and
22 outrageous conduct, Plaintiff has suffered damages, including, without
23 limitation, pain and suffering, extreme mental and emotional distress, severe
24 physical injuries, medical expenses, attorney's fees, costs of suit, loss of his
25 job, loss of his job, loss of earnings and other pecuniary losses not yet
26 ascertained.

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NINTH CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

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4 111. Plaintiff incorporates by reference the allegations contained in
5 paragraphs 1 through 110 of this Complaint, and each and every part thereof,
6 with the same force and effect as though set out at length herein.

7 112. Defendants owed a duty of care toward Plaintiff.

8 113. Defendants breached their duty of care owed to Plaintiff when
9 they negligently and unjustifiably seized, arrested, and beat Plaintiff, causing
10 Plaintiff to suffer physical injuries, extreme emotional distress, fear, trauma,
11 and humiliation

12 114. Specifically with regard to Defendant NMS, Plaintiff is informed
13 and believes and thereon alleges that NMS breached its duty of care to Plaintiff
14 by failing to adequately train and supervise Plaintiff and failing to issue
15 Plaintiff an identification card prior to commencing employment at the MTS
16 Property.

17 115. As a result of their conduct, Defendants are liable for Plaintiff's
18 injuries either because they were integral participants in the negligent conduct,
19 or because they failed to intervene when they had the opportunity and duty to
20 do so to prevent Plaintiff's injuries.

21 116. As a direct and proximate result of Defendants' negligence,
22 Plaintiff has suffered damages, including, without limitation, pain and
23 suffering, extreme mental and emotional distress, severe physical injuries,
24 medical expenses, attorney's fees, costs of suit, loss of his job, loss of his job,
25 loss of earnings and other pecuniary losses not yet ascertained.

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TENTH CAUSE OF ACTION

**NEGLIGENT HIRING, SUPERVISION, AND RETENTION OF
EMPLOYEES**

(Against Defendants MTS, SDTI, SDTC and UPS)

117. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 116 of this Complaint, and each and every part thereof, with the same force and effect as though set out at length herein.

118. On or about November 13, 2014 and for several years prior to the incidents alleged in this Complaint, Defendants MTS, SDTI, SDTC and UPS were aware, or in the exercise of due care should have been aware, that Defendants Buck, Miner, and Does 1 through 20 had propensities for excessive force, violence, dishonesty, and other dangerous misconduct that made them unfit to serve as transit officers or any other employee responsible for MTS, SDTI, SDTC and/or UPS code and policy enforcement.

119. Defendants MTS, SDTI, SDTC and UPS knew or reasonably should have known that Defendants Buck, Miner, and Does 1 through 20 were likely to cause harm and injury to members of the public, including Plaintiff.

120. Notwithstanding such knowledge, Defendants MTS, SDTI, SDTC and UPS negligently, carelessly and recklessly hired, trained, employed and failed to properly supervise and control Defendants Buck, Miner, and Does 1 through 20, and assigned these Defendants to duties which enabled each of them to violate the law and written policies, including but not limited to assaulting and battering innocent people, illegally detaining innocent people, falsely arresting innocent people, using excessive force against people, and taking steps to “cover up” their misconduct, such as taking off their body cameras off during altercation in order to hide their actions during such altercations.

1 121. Defendants Buck, Miner, and Does 1 through 20 acted pursuant to
2 these violent and dangerous propensities when they unjustifiably seized,
3 arrested and beat Plaintiff, causing Plaintiff to suffer physical injuries, extreme
4 emotional distress, fear, trauma, and humiliation.

5 122. As a direct and proximate result of MTS', SDTI's, SDTC's and
6 UPS' negligent hiring, supervision and retention of Defendants Buck, Miner,
7 and Does 1 through 20, Plaintiff has suffered damages, including, without
8 limitation, pain and suffering, extreme mental and emotional distress, severe
9 physical injuries, medical expenses, attorney's fees, costs of suit, loss of his
10 job, loss of his job, loss of earnings and other pecuniary losses not yet
11 ascertained.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests entry of judgment in his favor and
14 against Defendants as follows:

- 15 A. For general damages in an amount to be determined at trial;
16 B. For special damages, including but not limited to, past, present
17 and/or future wage loss, income and support, medical expenses
18 and other special damages in a sum to be determined at trial;
19 C. For punitive and exemplary damages against individual
20 Defendants in an amount to be proven at trial;
21 D. For reasonable attorneys' fees and costs of suit; and
22 E. For such further relief as the Court may deem just, proper, and
23 appropriate.

24 Dated: November 2, 2015

LAW OFFICES OF DALE DIXON

25
26
27 By: s/R. Dale Dixon, Jr.

R. Dale Dixon, Jr.

Attorneys for Plaintiff Allen Koka

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: November 2, 2015

LAW OFFICES OF DALE DIXON

By: s/R. Dale Dixon, Jr.

R. Dale Dixon, Jr.

Attorneys for Plaintiff Allen Koka

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