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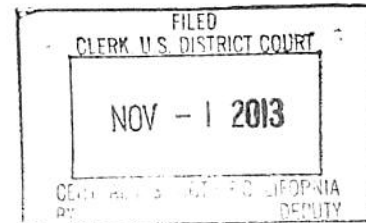
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

WILLIAM GAGAN, SHAWN NEE ;

Plaintiffs,

CITY OF LOS ANGELES, CHIEF  
CHARLIE BECK, individually and in his  
official capacity, LIEUTENANT GAVIN,  
SERGEANT RUDY VIDAL, OFFICER  
FOSTER, OFFICER PALMER, DOES 1-  
10

Defendants.

CASE NO. 13-08088-DSF

ACTION FOR DAMAGES,  
INJUNCTIVE AND  
DECLARATORY RELIEF;  
JURY DEMAND

CIVIL RIGHTS:

42 U.S.C §1983;  
FIRST AMENDMENT  
FOURTH AMENDMENT  
FOURTEENTH AMENDMENT

CALIF. CONSTITUTION,  
ARTICLE I, §§2,3,13  
CA CIVIL CODE §52.1  
FALSE ARREST  
NEGLIGENCE  
PRIVACY PROTECTION ACT

1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28  
3 U.S.C. § 1331 (in that they arise under the Constitution of the  
4 United States), § 1343(a)(3) (in that they are brought to redress deprivations, under  
5 color of state authority, of rights, privileges, and immunities secured by the United  
6 States Constitution), § 1343(a)(4) (in that they seek to secure equitable relief under  
7 42 U.S.C. § 1983), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and  
8 2202.

9  
10 2. Venue is proper in the Central District of California under 28 U.S.C.  
11 § 1391(b) because the events or omissions giving rise to the  
12 claims herein occurred in this District.

13  
14 3. This Court has the authority to grant damages, declaratory and  
15 injunctive relief, and any other appropriate relief pursuant to 28 U.S.C. § 1331; 28  
16 U.S.C. § 1343; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

17  
18 **INTRODUCTION**

19 4. Mr. Gagan was wrongfully arrested and incarcerated by the Los Angeles Police  
20 Department on September 29, 2012. This arrest occurred due solely to the fact that  
21 Mr. Gagan was observing and photographing the detention and arrest of several  
22 people in Van Nuys. Mr. Gagan was not interfering with the police investigation  
23 or detention in any way.

24  
25 5. Similarly, Mr. Nee was taken into custody, handcuffed and transported to the  
26 police station on June 2, 2013. This arrest occurred due solely to the fact that Mr.  
27 Nee was observing and photographing the police as they questioned several  
28 individuals. Mr. Nee was not interfering with the police's activities in any way.

1 6. At the time of each incident, both Mr. Gagan and Mr. Nee were approximately  
2 80 to 90 feet from where the officers were conducting their investigations, with  
3 physical barriers between them and the investigation.

4  
5 7. Their arrests were pursuant to the custom, practice, and policy of the Los Angeles  
6 Police Department of threatening "citizen" photographers and journalists who  
7 attempt to record public police activity, and arresting and detaining those  
8 photographers and journalists.

9  
10 8. The intimidation and detention of persons recording police activity prevents the  
11 public from monitoring police behavior and determining whether the police are  
12 complying with the law.

13  
14 **PARTIES**

15 9. William Gagan was at the time a resident of the City and County of Los Angeles.

16  
17 10. Shawn Nee was at the time a resident of the City and County of Los Angeles.

18  
19 11. Defendant City of Los Angeles is, and at all times relevant herein was, a  
20 municipal entity duly organized under the laws of the State of California, with the  
21 capacity to sue and be sued. The City is a Charter City and subject to the Charter  
22 and the City Administrative Code. The Los Angeles Police Department is a  
23 subdivision of the City of Los Angeles. The City is sued on the basis of its policies,  
24 customs and/or practices which gave rise to plaintiffs' federal civil rights claims, as  
25 well as on the basis of *respondeat superior* for the state law claims.

26  
27 12. Chief Charlie Beck is the head of the Los Angeles Police Department. He is  
28 a policy maker for the Los Angeles Police Department and the City of Los Angeles

1 on the issues raised by plaintiffs' claims. Beck ratified and/or condoned the  
2 policies, practices and customs which caused the arrest and detention of plaintiffs,  
3 the seizure of plaintiffs' recording equipment, and the deletion of Plaintiff Gagan's  
4 videos, as complained of herein.

5  
6 13. Lieutenant Gavin is a supervisor in the Los Angeles Police Department. At  
7 the time of Mr. Gagan's arrest, he was the watch commander on duty. He  
8 personally ordered Mr. Gagan to move along when Mr. Gagan was filming police  
9 activity from behind a locked gate on a public sidewalk, and then arrested Mr.  
10 Gagan when Mr. Gagan asserted his right to film police activity. On information  
11 and belief, Lt. Gavin is the individual who deleted plaintiff Gagan's video of the  
12 incident, including Gagan's encounter with Lt. Gavin, from plaintiff's cell phone.

13  
14 14. Sergeant Rudy Vidal is a supervisor in the Los Angeles Police Department.  
15 At the time of Mr. Nee's detention, he was assigned to patrol in the Hollywood Area  
16 station. He personally ordered Mr. Nee to be taken into custody and transported in  
17 handcuffs to Wilcox Station when Mr. Nee was on a public sidewalk, filming police  
18 activity from a distance of approximately 90 feet, across several backyards.

19  
20 15. Officer Foster and Officer Palmer are police officers who detained and  
21 arrested Mr. Nee for photographing police officers from a public sidewalk and in  
22 retaliation for Mr. Nee's assertion of his first amendment rights. Plaintiff does not  
23 know the first names of Officer Foster or Officer Palmer at this time.

24  
25 16. Does 1-10 are other police officers present at the location of plaintiffs'  
26 detention or at the police station who caused, participated in, and/or failed to  
27 intervene to prevent Mr. Gagan and Mr. Nee's arrests and detentions and the seizure  
28 of their recording equipment. Plaintiffs are ignorant of the true names and/or

1 capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore  
2 sue said defendants by such fictitious names. Plaintiffs will amend this complaint  
3 to allege their true names and capacities when ascertained.  
4

5 17. Each of the defendants, including defendants DOES 1 through 10, caused,  
6 and is responsible for, the unlawful conduct and resulting injuries suffered by  
7 plaintiffs and the class they represent by, among other things, personally  
8 participating in the unlawful conduct, or acting jointly, or conspiring with others  
9 who did so; by authorizing, acquiescing in, or setting in motion policies, plans or  
10 actions that led to the unlawful conduct; by failing to take action to prevent the  
11 unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's  
12 rights to initiate and maintain adequate training and supervision; by failing to enact  
13 policies to address the First Amendment rights of citizen "journalists" despite the  
14 obvious need for such a policy; and by ratifying the unlawful conduct that occurred  
15 by agents and officers under their direction and control, including failing to take  
16 remedial or disciplinary action.  
17

18 18. In doing the acts alleged herein, defendants, and each of them, acted within  
19 the course and scope of their employment.  
20

21 19. In doing the acts and/or omissions alleged herein, defendants, and each of  
22 them, acted under color of authority and/or under color of law.  
23

24 20. In doing the acts and/or omissions alleged herein, defendants, and each of  
25 them, acted as the agent, servant, employee and/or in concert with each of said other  
26 defendants.  
27  
28

**STATEMENT OF FACTS**

21. On September 29, 2012, Mr. Gagan observed police officers arresting a number of people in a parking lot at 7330 Van Nuys Boulevard. At the time Mr. Gagan came upon the scene, there were two police units present. Mr. Gagan believed that the men being arrested were Latino and thought that he might be witnessing an instance of racial profiling. Mr. Gagan remained on the public sidewalk and began filming the police with his cell phone. He was separated from the police by a metal fence and a large parking lot. He was at least eighty feet away from the arrests.

22. Mr. Gagan remained in this location, behind the fence, for several minutes, filming without interruption. A police officer asked Mr. Gagan whether he knew the men being arrested shortly after Mr. Gagan first began filming the scene. Mr. Gagan replied that he did not know them and he was just filming. That officer did not give Mr. Gagan any orders and responded only, "Just filming? Check you out." The officer then walked away from Mr. Gagan. There was nothing in this interaction to indicate that Mr. Gagan was interfering with police activity.

23. Some minutes later, Lieutenant Gavin arrived on the scene and came up to Mr. Gagan and told him "Move along." Mr. Gagan responded that he had a right to be on a public sidewalk. Lieutenant Gavin said he was blocking the sidewalk and that he had to move along. Mr. Gagan, starting to move away down the sidewalk, responded, "Look, I'm walking." Lieutenant Gavin repeated that he had to move along and then arrested Mr. Gagan and took his cell phone.

24. At the time of his arrest, Mr. Gagan was on Van Nuys Boulevard, a major thoroughfare in the City with wide sidewalks. Another member of the public was standing on the sidewalk observing the arrest, a few feet away from Mr. Gagan. He was not filming the officers and was not arrested for blocking the sidewalk.



1 25. There was no lawful basis to believe that Mr. Gagan was interfering with  
2 police activity or blocking the sidewalk. No one was blocked from passing freely  
3 on the sidewalk.

4  
5 26. Lieutenant Gavin used force and intimidation to arrest Mr. Gagan. Mr.  
6 Gagan had begun to move along when Lieutenant Gavin grabbed Mr. Gagan by the  
7 arm and by the hand where he was holding his camera-phone. Lieutenant Gavin  
8 took away Mr. Gagan's camera-phone by force. Lieutenant Gavin and another  
9 officer then forcefully pulled Mr. Gagan off of his bike and pushed him against a  
10 nearby police car. Mr. Gagan was scared and intimidated by these actions.

11  
12 27. Lieutenant Gavin and the other officer searched Mr. Gagan, tightly handcuffed  
13 him, placed him into a patrol car, and drove him to the Van Nuys station. When Mr.  
14 Gagan arrived at the station, he was given an inventory list of the property he had  
15 with him. Mr. Gagan realized that his cell phone, which was in Lieutenant Gavin's  
16 possession, was not on the list. Mr. Gagan refused to sign the property list until his  
17 cell phone was located. After a short while, the cell phone was produced and  
18 booked.

19  
20 28. Mr. Gagan was charged with a misdemeanor, Penal Code 148(a). He was not  
21 released after booking on his own recognizance; instead, bail was set at \$10,000.

22  
23 29. Mr. Gagan was arraigned on October 1, 2012, at 8:30 AM. He was released  
24 by Los Angeles Sheriff's Department deputies approximately two hours after he was  
25 arraigned only because of overcrowding at the county jail, to which he was being  
26 transferred after his arraignment. Ultimately, all charges against Mr. Gagan were  
27 dismissed following his first post-arraignment appearance.

28

1 30. When Mr. Gagan's cell phone was returned to him, all of the video he had taken  
2 that night was deleted.

3  
4 31. Mr. Gagan was later able to recover two videos taken that night using special  
5 software for the recovery of deleted files.

6  
7 32. Lieutenant Gavin targeted Mr. Gagan because he was recording the police.  
8 Lieutenant Gavin arrested Plaintiff in retaliation for videotaping the police and for  
9 asserting his First Amendment rights. Lieutenant Gavin also wrongfully seized  
10 Plaintiff's cell phone and deleted the videos he had taken that night.

11  
12 33. Mr. Gagan had intended to publish the video he was taking that night on  
13 YouTube, where he was active in publishing instances of both police and protestor  
14 conduct. Mr. Gagan is an independent "citizen" journalist who had been covering  
15 police brutality and local activism for over a year before this incident. Since the  
16 events recounted in this incident, Mr. Gagan has been too afraid to videotape or post  
17 videos of the police.

18  
19 34. On June 2, 2013, Shawn Nee was working on a book project documenting the  
20 life of a homeless person in Los Angeles. Mr. Nee was visiting a homeless friend  
21 of his and photographing and recording the events in his life. His friend was in a  
22 van parked on a public street, and Mr. Nee was standing next to the van on the  
23 public sidewalk.

24  
25 35. While Mr. Nee was standing on the sidewalk, the police arrived at a building  
26 located approximately 90 feet away from Mr. Nee. Mr. Nee was on a perpendicular  
27 street, separated from the officers by two fences which enclosed the backyard of  
28 another residence. The police began talking to an acquaintance of Mr. Nee's and



1 to her neighbors. Mr. Nee began photographing and recording the public activity  
2 of the police.

3  
4 36. When the police became aware that Mr. Nee was photographing them, Officer  
5 Foster and Officer Palmer approached Mr. Nee from the other side of the fence and  
6 asked him to identify himself and why he was photographing. Mr. Nee said that he  
7 was working. Officer Foster asked who he worked for. Officer Foster and Officer  
8 Palmer then came around the fence and detained and handcuffed Mr. Nee. Mr. Nee  
9 identified himself to the officers, providing his full name and date of birth. He also  
10 told Officer Foster that he had the right to take photographs from a public sidewalk.

11  
12 37. The officers ran Mr. Nee's information at the site and found no warrants or  
13 other reasons to detain Mr. Nee. Nonetheless, they continued to detain and  
14 handcuff Mr. Nee. After Office Palmer detained Mr. Nee, Officer Foster kicked  
15 Nee's bag with his recording equipment in it.

16  
17 38. When Sergeant Vidal arrived at the location, Officer Foster told the sergeant  
18 that Nee was "talking all this nonsense" about his First Amendment rights. Nee told  
19 Sergeant Vidal that he thought he was being detained for taking photographs in a  
20 public space. When questioned further by Sergeant Vidal, Nee asserted his right to  
21 remain silent.

22  
23 39. In response to Nee's assertion of his right to remain silent and in retaliation for  
24 invoking his constitutional rights, Vidal ordered the officers present to take Nee into  
25 custody for "interfering." There was no probable cause to believe that Nee had  
26 committed any act constituting "interference" pursuant to Penal Code 148 and  
27 Sergeant Vidal knew this when he ordered Nee taken into custody in retaliation for  
28 the exercise of his constitutional rights. At no time did Nee come closer than

1 approximately 90 feet to the area where the police investigation was taking place.

2  
3 40. At the Wilcox station, Nee was handcuffed to a bench until he was taken into  
4 an interrogation room and questioned by a detective. Nee was in custody for  
5 approximately one and one-half hours before he was released with no charges filed.  
6 Throughout most of that time, he was handcuffed.

### 8 **MONELL ALLEGATIONS**

9 41. The Los Angeles Police Department has a custom and practice of deterring  
10 independent photographers and members of the public from recording the police by  
11 intimidating, threatening, detaining, and arresting them. There is an endemic  
12 custom and practice inside the police department of harassing, arresting,  
13 intimidating, and using force against independent journalists and members of the  
14 public who attempt to videotape or otherwise record police activity.

15  
16 42. The city was on notice prior to September 29, 2012, that members of the police  
17 department were illegally harassing and, in some instances, arresting photographers  
18 and journalists, but did nothing to stop this conduct by its officers. .

19  
20 43. Following the assault on journalists at the Democratic National Convention in  
21 Los Angeles in 2000, the City agreed to settle a lawsuit, *Crespo v. City of Los*  
22 *Angeles*, by establishing a specified area at protests and other significant incidents  
23 for credentialed journalists employed by media organizations. Despite the  
24 agreement to adopt such a policy, the police again assaulted journalists during an  
25 unlawful action to disperse a lawful protest on May 1, 2007, in Mac Arthur Park.  
26 After this incident, the LAPD again agreed to implement the settlement in *Crespo*  
27 and provide a specific location from which the media could observe police activity  
28 in public places. The City's existing policy fails to recognize that the First

1 Amendment rights of credentialed journalists are no greater than the First  
2 Amendment rights of "citizens," which encourages the police to mistreat  
3 independent journalists and members of the public they encounter outside of that  
4 context.

5  
6 44. These rights were clearly established long before the detentions, arrests,  
7 seizure of Mr. Gagan's cellphone, and deletion of Mr. Gagan's videos that took  
8 place in this case. The Department of Justice filed a Statement of Interest in May  
9 2012 in *Sharp v. Baltimore City Police Department, et. al*, explaining that any  
10 person has the right to photograph the police from a public sidewalk.

11  
12 45. In response to a civil rights lawsuit filed against it, the District of Columbia  
13 Police Department promulgated a comprehensive policy in July 2012 that explained  
14 that people have the right to photograph the police from a public sidewalk and  
15 cannot be detained, hassled, or asked for their identification based on their lawful  
16 First Amendment Activity. The DC Police Department further specified to its  
17 officers that it was unlawful to seize a cellphone based on recording members of the  
18 department, and that a warrant was necessary to seize a cellphone or search its  
19 contents. Moreover, the policy of the DC Police Department specifically stated that  
20 it was unlawful to delete the contents of a cellphone. The Los Angeles Police  
21 Department failed to adopt any such policy or adequately train its officers on the  
22 requirements of the First Amendment.

23  
24 46. Based upon the principles set forth in *Monell v. New York City Department*  
25 *of Social Services*, 436 U.S. 658 (1978), CITY is liable for all injuries sustained by  
26 Plaintiff as set forth herein. CITY bears liability because its policies, practices  
27 and/or customs caused Plaintiff's injuries. CITY and its officials maintained or  
28 permitted one or more of the following official policies, customs, or practices:

1 A. Failure to provide adequate training and supervision to police officers  
2 with respect to the First Amendment rights of the public to monitor and record  
3 police activity;

4 B. Failure to adequately discipline or retrain officers involved in misconduct;

5 C. Selection, retention, and assignation of officers with demonstrable  
6 propensities for misconduct;

7 D. Condonation and encouragement of officers in the belief that they can  
8 violate the rights of persons such as Plaintiff with impunity, and that such conduct  
9 will not adversely affect their opportunities for promotion and other employment  
10 benefits;

11 E. Ratification by the highest levels of authority of the specific  
12 unconstitutional acts alleged in this complaint.

13  
14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 47. Plaintiffs have each filed a tort claim with the City of Los Angeles.

16  
17 **FIRST CAUSE OF ACTION**

18 **Violation of the Fourth Amendment (42 U.S.C. §1983)**

19 **(Against All Defendants)**

20 48. Plaintiffs reallege and incorporate paragraphs 1-47 as if set forth herein.

21  
22 49. Defendants' actions violated Plaintiffs' Fourth Amendment rights by subjecting  
23 Plaintiffs to unlawful searches and seizures. There was no lawful basis for  
24 detaining or for arresting Plaintiffs Gagan and Nee.

25  
26 50. Defendants' actions violated Plaintiff Gagan's Fourth Amendment rights by  
27 seizing his phone, searching his phone, and seizing the videos on the phone by  
28 deleting them.

1 51. Defendants' actions violated Plaintiff Gagan's Fourth Amendment rights by  
2 falsely arresting him, handcuffing and detaining him for over two days.

3  
4 52. Defendants' actions violated Plaintiff Nee's Fourth Amendment rights by  
5 falsely imprisoning him and transporting him to the police station in handcuffs,  
6 where he was then interrogated.

7  
8 53. Defendants knew or should have known that their conduct in arresting and  
9 detaining Plaintiffs Gagan and Nee, and in seizing and searching Plaintiff Gagan's  
10 phone and destroying his videos, violated Plaintiffs' clearly established  
11 constitutional rights.

12  
13 54. As a direct and proximate result of their arrest and detention, Plaintiffs suffered  
14 pain and suffering and physical harm.

15  
16 **SECOND CAUSE OF ACTION**

17 **Violation of the First Amendment (42 U.S.C. §1983)**

18 **(Against All Defendants)**

19 55. Plaintiffs reallege and incorporate paragraphs 1-54 as if fully set forth  
20 herein.

21  
22 56. Defendants' actions violated Plaintiffs' rights to freedom of expression under  
23 the First Amendment to the United States Constitution by prohibiting Plaintiffs  
24 from exercising their constitutional right to free speech and expression in a public  
25 forum, as well as freedom of the press.

1 **THIRD CAUSE OF ACTION**

2 **Retaliation in Violation of the First Amendment (42 U.S.C. §1983)**

3 **(Against All Defendants)**

4 57. Plaintiffs reallege and incorporate paragraphs 1-56 as if fully set forth herein.

5  
6 58. Defendants knew or should have known that both prohibiting the recording of  
7 police activity from a safe and non-obstructive distance, and retaliating against  
8 someone for exercising their First Amendment rights, were clearly established as  
9 violations of the First Amendment at the time of the incident.

10  
11 59. Defendants' actions also violated Plaintiffs' First Amendment rights when they  
12 arrested them in retaliation for their statements insisting that they had a right to  
13 photograph from a public sidewalk that was located on the other side of a physical  
14 barrier a significant distance from the police activity. Plaintiffs had a First  
15 Amendment right to tell the officers about their First Amendment rights. It was  
16 unlawful to arrest them in response to this speech.

17  
18 60. Defendants knew or should have known that retaliating against someone for  
19 asserting his First Amendment rights was a clearly established violation of the First  
20 Amendment at the time of the incident.

21  
22 **FOURTH CAUSE OF ACTION**

23 **Violation of California Constitution Art. I §2, 3, Cal. Civ. Code 52.1**

24 **(Against All Defendants)**

25 61. Plaintiffs reallege and incorporate paragraphs 1-60 as set forth herein.

26  
27 62. Defendants' actions violated Plaintiffs' right to freedom of expression and their  
28 right to information about the activity of public employees under the California



1 Constitution.

2

3 63. Defendants used force, intimidation, and coercion and/or threats of force and  
4 intimidation to violate Plaintiffs' right to freedom of expression. Lieutenant Gavin  
5 detained Plaintiff Gagan as he tried to walk away, pushing him against the side of  
6 the police car. Lieutenant Gavin also forcefully snatched and seized Mr. Gagan's  
7 phone during an intimidating and unlawful arrest. Lieutenant Gavin did these  
8 things to prevent Mr. Gagan from exercising his constitutional rights and in  
9 retaliation for his assertion of his constitutional rights. This violated Plaintiff  
10 Gagan's right to be free of threats, force, and intimidation in the exercise of rights  
11 granted to Plaintiff by the U.S. and California constitutions.

12

13 64. Sergeant Vidal, Officer Foster, Officer Palmer, and the Doe defendants also  
14 used force, intimidation, and coercion and/or threats of force and intimidation to  
15 violate Plaintiff Nee's right to freedom of expression. Sergeant Vidal ordered that  
16 Plaintiff Nee be detained because he was exercising his constitutional rights and in  
17 retaliation for his assertion to Officer Foster of his constitutional rights. Plaintiff  
18 Nee was searched, handcuffed, and detained. Officer Palmer detained Plaintiff Nee  
19 and held his arm, forcing him to stand by the fence to be frisked and to go over to  
20 the patrol car and be searched again. Officer Foster kicked Plaintiff Nee's bag,  
21 containing his camera equipment, after he was detained.

22

23

#### **FIFTH CAUSE OF ACTION**

24

**Violation of California Constitution Art. I §13, Cal. Civ. Code 52.1**

25

**(Against All Defendants)**

26

65. Plaintiffs reallege and incorporate paragraphs 1-64 as set forth herein.

27

28

66. Defendants' actions violated Plaintiffs' right to be free of unreasonable

1 searches and seizures under the California Constitution.

2  
3 67. Defendants used force, intimidation, and coercion and/or threats of force and  
4 intimidation to unreasonably search and seize Plaintiff Gagan without a lawful  
5 basis. Lieutenant Gavin used force to detain Plaintiff as he tried to move away;  
6 Lieutenant Gavin did not allow Mr. Gagan to move along as he was telling him to  
7 do. Lieutenant Gavin also took away Plaintiff's phone during an intimidating and  
8 unlawful arrest. This violated Plaintiff's right to be free of threats, force, and  
9 intimidation in the exercise of rights granted to Plaintiff by the U.S. and California  
10 constitutions.

11  
12 68. Sergeant Vidal, Officer Foster, Officer Palmer, and the Doe defendants also  
13 used force, intimidation, and coercion and/or threats of force and intimidation to  
14 unreasonably search and seize Plaintiff Nee without a lawful basis. Officer Palmer  
15 held Plaintiff Nee's arm and directed him to remain by the fence and be frisked.  
16 Officer Palmer continued to hold Mr. Nee's arm and detain him, and forced him  
17 over to the patrol car to be searched again. Officer Foster kicked Plaintiff Nee's bag  
18 after he was detained. Plaintiff Nee was taken into custody although there were no  
19 outstanding warrants for his arrest and there was no basis to arrest him.

20  
21 **SIXTH CAUSE OF ACTION**  
22 **FALSE ARREST AND/OR FALSE IMPRISONMENT**  
23 **(Against All Defendants)**

24 69. Plaintiffs re-allege and incorporate by reference the preceding paragraphs  
25 of this complaint.

26  
27 70. Plaintiffs were arrested and/or imprisoned without reasonable or probable  
28 cause to believe that they committed any crime. There was no warrant for the arrest

1 of either of the Plaintiffs.

2

3 71. Mr. Gagan was detained in the Los Angeles County Jail from September 29,  
4 2012 to October 1, 2012. Mr. Nee was detained at the police station in handcuffs  
5 for about an hour and a half before he was released. The unjustified detention of the  
6 plaintiffs caused them emotional distress and pain and suffering.

7

8

### **SEVENTH CAUSE OF ACTION**

9

#### **Violation of Privacy Protection Act, 42 U.S.C. §2000aa(a)**

10

#### **(Against the City of Los Angeles and Lieutenant Gavin)**

11

72. Plaintiffs reallege and incorporate paragraphs 1-71 as set forth herein.

12

13

14

15

16

73. Defendants' actions violated Plaintiff Gagan's right to privacy protection under  
42 U.S.C. §2000aa(a). That statute bars government officials from searching for and  
destroying documentary materials possessed by a person who plans to present those  
materials to the public.

17

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28

74. Lieutenant Gavin, a government official employed by the City of Los Angeles,  
searched Plaintiff Gagan's phone and deleted the videos on it. Mr. Gagan was  
documenting police activity for the purpose of determining if the police were  
committing misconduct. Mr. Gagan would have disseminated this video publicly.  
Mr. Gagan was unable to document the police activity because he was arrested and  
detained, and Lieutenant Gavin searched for and attempted to destroy the video he  
had taken.

**EIGHTH CAUSE OF ACTION**

**NEGLIGENCE**

**(Against All Defendants)**

75. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this complaint.

76. Defendants have a duty of care to plaintiffs to ensure that defendants did not cause unnecessary or unjustified harm to plaintiffs, and a duty of care to hire, train, supervise and discipline their officers and employees so as to not cause harm to plaintiffs and to prevent violations of plaintiffs' constitutional, statutory and common law rights.

77. The above-described acts and omissions of defendants breached the duty of care defendants owed to the named individual plaintiffs.

78. Plaintiffs were harmed as a result of the failure of the Defendants to hire, train, supervise, and discipline their officers appropriately.

**PRAYER FOR RELIEF**

79. Plaintiffs therefore respectfully request that the court enter a judgment providing:

a) a declaration that detentions and arrests based solely on photographing police activity are unlawful under the First and Fourth Amendments.

b) a declaration that the Fourth Amendment applies to searches of the contents of a suspect's cellphone, even after the cellphone is seized;

c) a declaration that it is unlawful to delete the contents of a suspect's cellphone;

d) compensatory and statutory damages in an amount to be determined at

1 trial;

2 e) reasonable attorneys' fees and costs;

3 f) any other relief that might be just and proper.

4

5 Dated: November 1, 2013

Respectfully submitted,

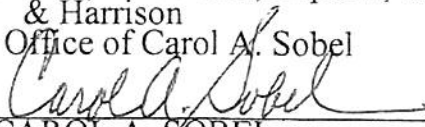
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Schonbrun, DeSimone, Seplow, Harris, Hoffman  
& Harrison

7

Law Office of Carol A. Sobel

8

  
By: CAROL A. SOBEL

9

Attorneys for Plaintiffs

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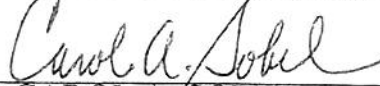
**JURY TRIAL DEMAND**

Plaintiffs hereby demand a jury trial.

Dated: November 1, 2013

Respectfully submitted,

Schonbrun, DeSimone, Seplow, Harris, Hoffman  
& Harrison  
Law Office of Carol A. Sobel



By: CAROL A. SOBEL  
Attorneys for Plaintiffs



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Dale S. Fischer and the assigned  
Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

2:13-CV-8088-DSF (SSx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 1, 2013

Date

By MDAVIS  
Deputy Clerk

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NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:



Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012



Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701



Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

WILLIAM GAGAN, SHAWN NEE

*Plaintiff(s)*

v.

CITY OF LOS ANGELES, CHIEF CHARLIE BECK,  
individually and in his official capacity, LIEUTENANT  
GAVIN, SERGEANT RUDY VIDAL, OFFICER  
FOSTER, OFFICER PALMER, DOES 1-10

*Defendant(s)*

Civil Action No

CV 13-08088-DSF  
(SSX)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CITY OF LOS ANGELES, CHIEF CHARLIE BECK, LIEUTENANT GAVIN,  
SERGEANT RUDY VIDAL, OFFICER FOSTER, OFFICER PALMER  
C/O CITY CLERK  
200 N. MAIN STREET  
LOS ANGELES, CA. 90012

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PAUL L. HOFFMAN  
SCHONBRUN DeSIMONE SEPLOW HARRIS HOFFMAN & HARRISON  
732 OCEAN FRONT WALK  
VENICE, CA 90291

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 11/01/2013

CLERK OF COURT

*Mailep. Dem.*  
Signature of Clerk or Deputy Clerk



## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Case 2:13-cv-08088-DSF-SS Document 1 Filed 11/11/13 Page 23 of 25 Page ID #:48

CIVIL COVER SHEET

**I. (a) PLAINTIFFS** ( Check box if you are representing yourself ☐ )

William Gagan, Shawn Nee

**DEFENDANTS** ( Check box if you are representing yourself ☐ )

City of Los Angeles, Chief Charlie Beck, Lt. Gavin, Sgt. Vidal, Officer Foster, Officer Palmer

**(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)**Schonbrun DeSimone Seplow Harris Hoffman & Harrison  
732 Ocean Front Walk  
Venice, CA 90291  
t. 310 396-0731**(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)**City Attorney  
City Hall East 6th Floor  
200 N. Main Street  
Los Angeles, CA 90012**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff  
☒ 3. Federal Question (U.S. Government Not a Party)  
☐ 2. U.S. Government Defendant  
☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only**  
(Place an X in one box for plaintiff and one for defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multi-District Litigation

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ tbd**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
42 U.S.C. sec. 1983 and 1st, 4th and 14th Amendments. Plaintiffs were arrested and detained while photographing LAPD activity in public places. In each instance, plaintiffs were at a significant distance from the police and behind a physical barrier.**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY:

Case Number:

CV 13-08088

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>Question A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

<b>Question B: Is the United States, or one of its agencies or employees, a party to this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>C.1. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D  Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	<b>C.2. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C  Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

<b>Question D: Initial Division?</b>	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western

## CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): 11-cv-08899 DDP

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ NO ☒ YES

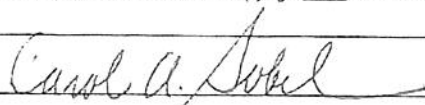
If yes, list case number(s): Nee v. County of Los Angeles

## Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

## X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT):



DATE: November 1, 2013

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

## Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))