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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 CHRISTIAN RODRIGUEZ, ALBERTO
16 CAZAREZ, individually and as class
representatives

17 *Plaintiffs,*

18 vs.

19 CITY OF LOS ANGELES, CARMEN
20 TRUTANICH, CHARLES BECK,
ALLAN NADIR, ANGEL GOMEZ AND
21 DOES 1 THROUGH 10.

22 *Defendants.*

Case No.: CV11-01135 DMG (JEMx)

**[PROPOSED] SECOND AMENDED
CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

42 U.S.C. §1983 [Fourteenth Amendment]
California Constitutional Claim
Cal. Civ. Code §52.1
False Imprisonment
Violation of Mandatory Duties

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This action concerns the unlawful deprivation of liberties of young people labeled “gang” members through unconstitutionally vague curfew regulations, violating their First, Fourth and Fourteenth Amendment rights under the United States Constitution and their corollaries under the California Constitution.

2. The gravamen of this complaint concerns the curfew regulations imposed upon persons, prohibiting them from going outdoors after a certain time in the evening until sunrise of the next morning, in violation of the Constitutions and laws of the United States and the State of California.

3. Of particular concern is that many persons are routinely mis-labeled, arrested, subjected to criminal charges and incarcerated pursuant to vague regulations, merely for being outside and engaging in constitutionally protected activity. Many persons are also made to fear venturing outside in the first place and forego exercising and enjoying their constitutional rights. The Constitutions of the United States and State of California forbid the use such laws that trample on well-established rights.

II. JURISDICTION AND VENUE

4. Plaintiffs present federal claims for relief under 42 U.S.C. §1983. Accordingly, federal jurisdiction in conferred upon this Court by 28 U.S.C. §§ 1331 and 1343. Plaintiffs' state law claims are so related to their federal law claims that they form part of the same case or controversy. Accordingly, supplemental jurisdiction over the state law claims is conferred upon this Court by 28 U.S.C. §1367. Plaintiffs' claims arise out of acts of the City of Los Angeles’ City Attorney’s Office and the Los Angeles Police Department in the County of Los Angeles, State of California. Accordingly, venue is proper within the Central District of California.

5. Plaintiffs’ state law causes of action arise under the general laws and Constitution of the State of California. Plaintiffs have complied with the California Tort Claims Act requirements.

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1 **III. PARTIES**

2 A. PLAINTIFFS

3 6. Plaintiffs Christian Rodriguez and Alberto Cazarez are students who have
4 been mis-labeled as “gang” members and subjected to the curfew terms of the Culver
5 City Boys Gang Injunction, one of more than 20 City of Los Angeles gang
6 injunctions which contain the same and/or substantially similar unlawful curfew
7 provisions.

8 B. DEFENDANTS

9 7. Defendant City of Los Angeles (“City”) is a public entity organized and
10 existing under the laws of the State of California. Defendants Los Angeles City
11 Attorney’s Office and Los Angeles Police Department are duly formed agencies of
12 City. These defendants are sued in their own right for City policies, practices and/or
13 customs which cause plaintiffs’ injuries in violation of one or more federal
14 constitutional guarantees, and on plaintiffs’ state law claims based on respondeat
15 superior, under California Government Code §815.2 and mandatory duties under
16 California Government Code §815.6.

17 8. Defendant Carmen Trutanich (“Trutanich”) is the elected City Attorney of
18 Los Angeles, and is the policy maker for the City Attorney’s Office. He is sued in his
19 official and individual capacities.

20 9. Defendant Charles Beck (“Beck”) is the Chief of the Los Angeles Police
21 Department, and is the policy maker for the LAPD. He is sued in his official and
22 individual capacities.

23 10. Defendant Allan Nadir (“Nadir”) is an Assistant City Attorney with the Los
24 Angeles City Attorney’s Office. He is sued in his official and individual capacities.

25 11. Defendant Angel Gomez (“Gomez”) is a police officer with the LAPD. He
26 is sued in his official and individual capacities.

27 12. Plaintiffs are ignorant of the true names and capacities of defendants sued
28 herein as DOES 1 through 10, inclusive, and therefore sue these defendants by such

1 fictitious names. Plaintiffs will give notice of this complaint, and of one or more
2 DOES' true names and capacities, when ascertained. Plaintiffs allege, based on
3 information and belief, that defendants DOES 1 through 5 are responsible in some
4 manner for the damages and injuries hereinafter complained of.

5 13. DOES 6 through 10 (hereinafter collectively referred to as "Supervisory
6 defendants") were and are now responsible for formulating policy regarding gang
7 injunction procurement, arrests, prosecutions and, among other things, are
8 responsible for the training, supervision, control, assignment and discipline of the
9 sworn and civilian personnel of the Los Angeles Police Department and City
10 Attorney's Office who work in relation to policy and/or action regarding gang
11 injunction procurement, enforcement, arrests, and/or prosecutions.

12 14. Upon information and belief, plaintiffs further allege that, at all times
13 relevant herein, Beck, Trutanich and/or the Supervisory defendants participated in,
14 approved, and/or ratified the unconstitutional and/or illegal acts complained of
15 herein.

16 15. Plaintiffs are informed and believe, and thereupon allege that, at all times
17 relevant herein, the individual defendants, and each of them, were the agents,
18 servants and employees of each other and/or their respective employers and were
19 acting at all times within the scope of their agency and employment, and with the
20 knowledge and consent of their principals and employers. At all times herein,
21 defendants, and each of them, acted in coordination with, approval of, and in
22 conspiracy with one another. At all times herein, defendants, and each of them,
23 were acting under the color of law. All said defendants, and each of them, ratified
24 the aforesaid conduct committed under color of law. All entity defendants are liable
25 for the acts of their public employees, the individual defendants herein, for conduct
26 and/or omissions herein alleged, pursuant to the doctrine of Respondeat Superior,
27 codified at California Government Code § 815.2.

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IV. CLAIMS OF CLASS REPRESENTATIVES

16. Plaintiff Christian Rodriguez was served by the Los Angeles Police Department with the Culver City Boys gang injunction (Los Angeles Superior Court Case No. SC056980) on or about February 25th of 2006.

17. Plaintiff Alberto Cazarez was served with the Culver City Boys gang injunction by the Los Angeles Police Department on or about December 20th of 2009.

18. The terms of the injunction prohibit Plaintiffs Rodriguez and Cazarez from being outside between 10 p.m. and sunrise.

19. Numerous other injunctions, also secured by the Los Angeles City Attorney's Office, contain similar and/or identical provisions, all of which are unconstitutional. To wit, those injunctions include Los Angeles Superior Court Cases: BC397522; BC332713; BC305434; BC313309; BC319166; BC326016; BC287137; BC335749; LC020525; BC267153; BC358881; SC056980; BC359945; NC030080; BC330087; BC359944; BC282629; LC048292; BC311766; BC351990; BC298646; BC349468; BC319981; SC060375; SC057282; BC353596.

20. Violations of these injunctions are the bases for harassment and arrests of the class members by the Los Angeles Police Department (hereafter "LAPD") and other agencies. Violations of these injunctions are prosecuted by the Los Angeles City Attorney's office as misdemeanors and carry monetary penalties, as well as jail time.

21. On or about June 20, 2009, near midnight, Plaintiffs Rodriguez and Cazarez were outside and seized and detained by LAPD officers for suspicion of violating the Culver City Boys gang injunction.

22. Plaintiffs Rodriguez and Cazarez were both arrested by defendant Gomez on suspicion of violating the curfew provision of the gang injunction and jailed pending arraignment. Plaintiff Rodriguez was charged and subjected to prosecution by defendant Nadir for violating the curfew provision of the gang injunction.

1 23. The charges against Plaintiffs Rodriguez and Cazarez for violating the
2 curfew provision of the gang injunction on June 20, 2009, were dismissed.

3 24. Plaintiffs Rodriguez and Cazarez are regularly informed by LAPD officers
4 that they are subject to the terms of the Culver City Boys gang injunction and that
5 they will be arrested if they violate those terms.

6 25. Other than on the June 20, 2009 occasion cited herein, and since being
7 served with the injunction, Plaintiffs Rodriguez and Cazarez have refrained from
8 going outside after 10 p.m., for fear of being seized, detained, arrested, jailed and
9 prosecuted for violating the injunction.

10 **V. CLASS ACTION ALLEGATIONS**

11 **A. COMMON FACTUAL ALLEGATIONS**

12 26. Plaintiffs are informed and believe that numerous persons are routinely
13 served by the LAPD with gang injunctions, prohibiting them from being outside
14 between 10 p.m. and sunrise of the next day, and/or substantially similar curfew
15 provisions.

16 27. Plaintiffs are informed and believe that the LAPD collaborates with and/or
17 gives and/or takes direction from the Los Angeles City Attorney's Office as to
18 which persons to serve with the injunctions.

19 28. Plaintiffs are informed and believe that LAPD officers routinely threaten
20 with enforcement, seize, detain, arrest and/or jail persons who have been served with
21 gang injunctions, for violating provisions prohibiting them from being outside after
22 10 p.m. and/or substantially similar curfew provisions.

23 29. Plaintiffs are informed and believe that the Los Angeles City Attorney's
24 Office, and its agents and assigns, routinely prosecute persons who have been served
25 with gang injunctions, for violating provisions prohibiting them from being outside
26 after 10 p.m. and/or substantially similar curfew provisions.

27 30. Plaintiffs are informed and believe that persons served with gang
28 injunctions containing the curfew provisions referred to herein remain against their

1 will confined indoors between 10 p.m. and sunrise of the next day for fear of being
2 seized, detained, arrested, jailed and/or prosecuted.

3 31. Plaintiffs are informed and believe that in instances where persons served
4 with gang injunctions containing the curfew provisions referred to herein do not
5 remain confined, they are seized, detained, arrested, jailed and/or prosecuted by
6 LAPD and the City Attorney's Office, respectively.

7 32. On information and belief, plaintiffs allege the curfew provisions, seizure,
8 detention, arrest, jailing and/or prosecution to which they and class members were
9 and are subjected, are/were done pursuant to defendants' policy and practice of
10 failing to conform their gang injunctions and actions pursuant thereto to the
11 requirements of the law under the First, Fourth, and Fourteenth Amendments to the
12 federal Constitution, similarly applicable provisions of the California Constitution,
13 and applicable state and federal law.

14 33. On information and belief plaintiffs allege that defendants have a policy of
15 ignoring the decisional law of the state and federal courts as to the use and validity of
16 gang injunctions and/or certain of their provisions. Defendants know that the curfew
17 provisions complained of herein are unconstitutional, yet defendants continue to use
18 and enforce them. Further, defendants subject plaintiffs and class members to the
19 curfew provisions of the injunctions because of their perceived membership in and/or
20 association with groups of persons identified by defendants as gangs.

21 34. Plaintiffs bring this action:

22 (i) on their own behalf, and on behalf of a class of all other persons similarly
23 situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class is
24 defined as those persons who have been served with a Los Angeles City Attorney's
25 Office gang injunction [of those set forth in Paragraph 19 herein above] prohibiting
26 such persons from being outside between 10 a.m. and sunrise, and/or containing
27 substantially similar curfew provisions, and who remained inside or curtailed their
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1 outside activities for fear of being seized, detained, arrested, jailed and/or prosecuted
2 for violation of the curfew provision of the injunction;

3 (ii) on their own behalf, and additionally on behalf of a sub-class of all other
4 persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil
5 Procedure. The sub-class is defined as those persons who have been served with a
6 Los Angeles City Attorney's Office gang injunction [of those set forth in Paragraph
7 19 herein above] prohibiting such persons from being outside between 10 a.m. and
8 sunrise, and/or containing substantially similar curfew provisions, and who went
9 outside and were seized, detained, arrested, jailed and/or prosecuted by the LAPD
10 and/or LA City Attorney's Office for violation of the curfew provision of the
11 injunction.

12 35. On information and belief, plaintiffs allege that defendants will continue their
13 aforementioned policy and practice of unlawful service, use and enforcement of these
14 curfew provisions unless enjoined and restrained by the court. Without injunctive
15 relief applicable to the class and sub-class (hereinafter collectively referred to as
16 "class") as a whole, the class members will suffer irreparable harm for which there is
17 no adequate remedy at law in that their constitutional and statutory rights will be
18 systematically violated.

19 B. RULE 23 PREREQUISITES

20 I. Numerosity

21 36. In accordance with FRCP Rule 23(a) the members of the class are so
22 numerous that joinder of all members is impracticable. Plaintiffs do not know the
23 exact number of class members. Plaintiffs are informed and believe and thereon
24 allege that there are more than 300 persons per day who remain inside after 10 p.m.
25 for fear of being seized, detained, arrested, jailed and/or prosecuted, and/or who
26 venture outside and are seized, detained, arrested, jailed and/or prosecuted due to the
27 service and/or violation of the curfew provisions referenced herein. Plaintiffs are
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1 informed and believe and thereon allege that the number of persons in the proposed
2 class is in the thousands.

3 II. Common Issues of Fact or Law

4 37. In accordance with FRCP Rule 23(a), there are questions of fact common
5 to the class. Plaintiffs are informed and believe and thereon allege that the common
6 questions of fact include, but are not limited to the following: (1) Whether the LA
7 City Attorney's Office and/or LAPD pursues and/or serves gang injunctions
8 containing curfew provisions upon persons; (2) Whether the persons served with
9 such injunctions are thereby compelled to not go outside after 10 p.m.; (3) Whether
10 the persons served with such injunctions are seized, detained, arrested, jailed and/or
11 prosecuted if they go outside after 10 p.m.

12 38. In accordance with FRCP Rule 23(a), there are questions of law common
13 to the class. Plaintiffs are informed and believe and thereon allege that the common
14 questions of law include but are not limited to the following: (1) Whether the LA
15 City Attorney's Office and/or LAPD may lawfully pursue and/or serve gang
16 injunctions containing curfew provisions restricting persons from going outside after
17 10 p.m. and/or substantially similar curfew provisions; (2) Whether the compulsion
18 of persons served with such injunctions not go outside in violation of the complained
19 of curfew provisions is lawful; (3) Whether the seizure, detention arrest, jailing
20 and/or prosecution of such persons, if they go outside in violation of the complained
21 of curfew provisions, is lawful; (4) Whether the LA City Attorney's Office's and/or
22 LAPD's policy of pursuing and/or serving and/or gang injunctions containing curfew
23 provisions restricting persons from going outside after 10 p.m., and/or substantially
24 similar curfew provisions, violates the First, Fourth and/or Fourteenth Amendments,
25 and/or California Constitution Article I, §§1, 2, 7 and/or 13; (5) Whether the LA City
26 Attorney's Office's and/or LAPD's policy of seizing, detaining, arresting, jailing
27 and/or prosecuting persons for violating gang injunctions containing curfew
28 provisions restricting persons from going outside after 10 p.m., and/or substantially

1 similar curfew provisions, violates the First, Fourth and/or Fourteenth Amendments,
2 and/or California Constitution Article I, §§1, 2, 7 and/or 13; (6) Whether the conduct
3 described above constitutes a policy or custom of the defendants; (7) Whether any
4 individual defendant is entitled to qualified immunity on the federal claims, or state
5 law immunity on the state law claims, for the practices complained of herein; and (8)
6 Whether determination of damages suffered by a statistically representative sample
7 of the class provides the basis for determination of all class members' damages
8 except those who opt out of the class: or whether category damages may
9 appropriately be determined for the class members.

10 III. Typicality

11 39. In accordance with FRCP, Rule 23(a) the claims of the representative
12 plaintiffs are typical of the class. Plaintiffs were served with a gang injunction
13 prohibiting them from being outside after 10 p.m.; plaintiffs were compelled to not
14 go outside after 10 p.m.; when plaintiffs went outside after 10 p.m., plaintiffs were
15 seized, detained, arrested, jailed and/or prosecuted for violation of the curfew
16 provision.

17 40. Thus, plaintiffs have the same interests and have suffered the same type of
18 damages as the class members. Plaintiffs' claims are based upon the same or similar
19 legal theories as the claims of the class members. Each class member suffered actual
20 damages as a result of being subjected to a "do not go outside" type of curfew
21 provision of a gang injunction. The actual damages suffered by plaintiffs are similar
22 in type and amount to the actual damages suffered by each class member.

23 41. In accordance with FRCP Rule 23 (a), the representative plaintiffs will
24 fairly and adequately protect the interests of the class. The interests of the
25 representative plaintiffs are consistent with and not antagonistic to the interests of the
26 class.

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1 IV. Maintenance and Superiority

2 42. In accordance with FRCP Rule 23(b)(1)(A), prosecutions of separate
3 actions by individual members of the class would create a risk that inconsistent or
4 varying adjudications with respect to individual members of the class would establish
5 incompatible standards of conduct for the parties opposing the class.

6 43. In accordance with FRCP Rule 23(b)(1)(B), prosecutions of separate
7 actions by individual members of the class would create a risk of adjudications with
8 respect to individual members of the class which would, as a practical matter,
9 substantially impair or impede the interests of the other members of the class to
10 protect their interests.

11 44. In accordance with FRCP Rule 23(b)(2), plaintiffs are informed and
12 believe, and thereon allege that the defendants have acted on grounds generally
13 applicable to the class.

14 45. In accordance with FRCP Rule 23(b)(3), the questions of law or fact
15 common to the members of the class predominate over any questions affecting only
16 individual members, and this class action is superior to other available methods for
17 the fair and efficient adjudication of the controversy between the parties. Plaintiffs
18 are informed and believe, and thereon allege that the interest of class members in
19 individually controlling the prosecution of a separate action is low in that most class
20 members would be unable to individually prosecute any action at all. Plaintiffs are
21 informed and believe, and thereon allege that the amounts at stake for individuals are
22 such that separate suits would be impracticable in that most members of the class will
23 not be able to find counsel to represent them. Plaintiffs are informed and believe and
24 thereon allege that it is desirable to concentrate all litigation in one forum because all
25 of the claims arise in the same location, i.e., the County of Los Angeles. It will
26 promote judicial efficiency to resolve the common questions of law and fact in one
27 forum, rather than in multiple courts.

28

1 46. Plaintiffs do not know the identities of the class members. Plaintiffs are
2 informed and believe, and thereon allege that the identities of the class members are
3 ascertainable from LA City Attorney's Office and/or LAPD records, in particular
4 computer records used to track who injunctions have been served upon and/or which
5 persons have been prosecuted for violations of injunctions. Plaintiffs are informed
6 and believe, and thereon allege that LA City Attorney's Office and/or LAPD records
7 reflect the identities, including addresses and telephone numbers, of the persons who
8 injunctions have been served upon and/or which persons have been prosecuted for
9 violations of injunctions, and when.

10 47. Plaintiffs know of no difficulty that will be encountered in the
11 management of this litigation that would preclude its maintenance as a class action.
12 The class action is superior to any other available means to resolve the issues raised
13 on behalf of the class. The class action will be manageable because reliable records
14 systems exist from which to ascertain the members of the class. Liability can be
15 determined on a class-wide basis. Damages can be determined on a class-wide basis
16 using a damages matrix set by a jury, or by trying the damages of a statistically valid
17 sample of the class to a jury and extrapolating those damages to the class as a whole.
18 Moreover, plaintiffs are represented by counsel with class action litigation
19 experience, particularly against the City of Los Angeles and the Los Angeles Police
20 Department.

21 48. In accordance with FRCP Rule 23(b)(3), class members must be furnished
22 with the best notice practicable under the circumstances, including individual notice
23 to all members who can be identified through reasonable effort. Plaintiffs are
24 informed and believe that LA City Attorney's Office and/or LAPD computer
25 records, and certainly police reports and F.I. cards etc., contain a last known address
26 for class members. Plaintiffs contemplate that individual notice be given to class
27 members at such last known address by first class mail. Plaintiffs contemplate that
28 the notice inform class members of the following:

- 1 A. The pendency of the class action, and the issues common to the class;
- 2 B. The nature of the action;
- 3 C. Their right to 'opt out' of the action within a given time, in which event
- 4 they will not be bound by a decision rendered in the class action;
- 5 D. Their right, if they do not 'opt out,' to be represented by their own counsel
- 6 and enter an appearance in the case; otherwise, they will be represented by the
- 7 named plaintiffs and their counsel; and
- 8 E. Their right, if they do not 'opt out,' to share in any recovery in favor of the
- 9 class, and conversely to be bound by any judgment on the common issues
- 10 adverse to the class.

11 49. Plaintiffs restate and incorporate by reference each of the foregoing and
12 ensuing paragraphs in each of the following causes of action as if each paragraph was
13 fully set forth therein.

14 **COUNT ONE - 42 U.S.C. §1983**
15 **[FOURTEENTH AMENDMENT]**
16 **(All Defendants)**

17 50. The foregoing allegations are repeated and incorporated as though fully
18 set forth herein.

19 51. The curfew provisions challenged here permit local law enforcement
20 officials to seize, detain, and prosecute individuals for being outdoors after a
21 particular time at night, thereby depriving them of their liberties protected by the
22 First, Fourth, and Fourteenth Amendments without due process of law.

23 52. The challenged curfew provisions are vague and ambiguous and fail to
24 provide sufficient notice of what is prohibited in order to allow individuals to
25 conform their conduct to the requirements of the law and prevent arbitrary and
26 discriminatory enforcement.

27 53. In subjecting plaintiffs and class members to the unnecessary, unlawful,
28 demeaning, and outrageous confinement and prohibition from going outside pursuant

1 to impermissibly vague regulations, defendants, and each of them, violate plaintiffs'
2 and class members' rights to free association and expression, to travel and move
3 freely about this state and/or the several states, and to be free from unlawful seizures,
4 detentions, arrests, jailing and/or prosecution, as guaranteed by the United States
5 Constitution.

6 54. Therefore, plaintiffs and class members are entitled to bring suit and
7 recover damages pursuant to 42 U.S.C. §1983.

8 55. As a direct and proximate cause of the aforementioned acts, plaintiffs and
9 class members were damaged in an amount to be proven at trial.

10 **COUNT TWO - ARTICLE 1, §§ 1,7 OF THE CALIFORNIA**
11 **CONSTITUTION [FOURTEENTH AMENDMENT ANALOGUE]**
12 **(All Defendants)**

13 56. The foregoing allegations are repeated and incorporated as though fully set
14 forth herein. Plaintiffs filed a Govt. Code §910 claim for damages against the
15 defendants for the matters set forth in this complaint.

16 57. The curfew provisions challenged here permit local law enforcement
17 officials to seize, detain, and prosecute individuals for being outdoors after a
18 particular time at night, thereby depriving them of their liberties protected by Articles
19 1, 2, 7, and 13 of the California Constitution without due process of law.

20 58. The challenged curfew provisions are vague and ambiguous and fail to
21 provide sufficient notice of what is prohibited in order to allow individuals to
22 conform their conduct to the requirements of the law and prevent arbitrary and
23 discriminatory enforcement.

24 59. In subjecting plaintiffs and class members to the unnecessary, unlawful,
25 demeaning, and outrageous confinement and prohibition from going outside pursuant
26 to impermissibly vague regulations, defendants, and each of them, violate plaintiffs'
27 and class members' rights to free association and expression, to travel and move
28 freely about this state and/or the several states, and to be free from unlawful seizures,

1 detentions, arrests, jailing and/or prosecution, as guaranteed by the United States
2 Constitution.

3 60. As a result of defendants' conduct, plaintiffs have been injured in an
4 amount subject to proof at trial.

5
6 **COUNT THREE - Cal. Civ. Code §52.1**

7 **(All Defendants)**

8 61. The foregoing allegations are repeated and incorporated as though fully
9 set forth herein.

10 62. The unnecessary, unlawful, demeaning, and outrageous confinement and
11 prohibition from going outside and/or seizure, detention arrest, jailing and/or
12 prosecution when plaintiffs and class members went outside as alleged herein were
13 accomplished via threat, intimidation or coercion and/or threats of the same.

14 63. The unnecessary, unlawful, demeaning, and outrageous confinement and
15 prohibition from going outside and/or seizure, detention arrest, jailing and/or
16 prosecution when plaintiffs and class members went outside, deprived plaintiffs and
17 the class they represent of the protections afforded by provisions of federal
18 constitutional and state constitutional and statutory law, including but not limited to
19 rights protected under the First, Fourth, and Fourteenth Amendments to the United
20 States Constitution; Article I, §§ 1, 2, 7 and 13, of the California state constitution,
21 California Civil Code §53, and California Penal Code §236. Therefore, plaintiffs and
22 the class are entitled to bring suit and recover damages pursuant to Cal. Civ. Code
23 §52.1(b).

24 64. As a direct and proximate cause of the aforementioned acts, plaintiffs
25 and class members were damaged in an amount to be proven at trial but in any event
26 not less than the statutory monetary amount set forth per violation, pursuant to the
27 provisions of California Civil Code §52, *inter alia*.

28 65. The aforementioned acts of defendants directly and proximately caused

1 plaintiffs to be deprived of their California constitutional rights as stated above,
2 thereby entitling plaintiffs and class members to recover damages proximately
3 caused by defendants' wrongful acts.

4 **COUNT FOUR - Tort In Essence**
5 **[FALSE IMPRISONMENT - Penal Code § 236]**
6 **(All Defendants)**

7 66. The foregoing allegations are repeated and incorporated as though fully
8 set forth herein.

9 67. In subjecting plaintiffs and class members to the unnecessary, unlawful,
10 demeaning, and outrageous confinement and prohibition from going outside and/or
11 seizure, detention arrest, jailing and/or prosecution when plaintiffs and class
12 members went outside, defendants, and each of them subjected plaintiffs and class
13 members to false imprisonment as prohibited by California Penal Code §236.
14 Plaintiffs and class members fall within the class of persons intended to be protected
15 from harm, and suffered the harm intended to be prevented, by Penal Code §236.
16 Tort in essence claims are authorized by *Stop Youth Addiction v. Lucky Stores*
17 (1998) 17 Cal.4th 553, 572.

18 68. The aforementioned acts of defendants directly and proximately caused
19 the plaintiffs and the class members to be deprived of their rights as stated above,
20 thereby entitling plaintiffs and class members to recover damages proximately
21 caused by defendants' wrongful acts.

22
23 **COUNT FIVE - Violation of Mandatory Duties**
24 **(All Defendants)**

25 69. The foregoing allegations are repeated and incorporated as though fully
26 set forth herein.

27 70. The Fourteenth Amendment to the United States Constitution; Article I,
28 §§1, and 7 of the California state constitution; California Penal Code §236; and

1 California Civil Code §§52.1 and 53 are enactments. Enactments form the basis of a
2 mandatory duty under California Government Code §815.6.

3 71. Any California constitutional provision is mandatory and prohibitory,
4 per Article 1, §26, of the California Constitution.

5 72. These constitutional provisions and statutes apply to all members of the
6 general public, including plaintiffs, and were all designed to prevent the kind of
7 injuries alleged herein.

8 73. Defendants did not exercise reasonable diligence in discharging their
9 duty to refrain from violating the constitutional rights of plaintiffs and class
10 members.

11 74. As a direct and proximate cause of the aforementioned acts of
12 defendants, plaintiffs and class members were damaged in amounts to be determined
13 at trial.

14
15 **VI. KNOWING AND WILLFUL ACTION**

16 75. Plaintiffs specifically allege that Defendants' policies, customs and/or
17 practices, as described herein above, were within the control of Defendants and
18 within the feasibility of Defendants to alter, adjust and/or correct so as to prevent
19 some or all of the unlawful acts and injury complained of herein by Plaintiffs.

20 76. Plaintiffs specifically allege that Defendants, and each of them, made a
21 calculated, knowing and voluntary choice not to alter, adjust and/or correct their
22 policies, customs and/or practices, as described herein above, so as to prevent some
23 or all of the unlawful acts and injury complained of herein by Plaintiffs. The conduct
24 by Individual Defendants CARMEN TRUTANICH, CHARLES BECK, ALLAN
25 NADIR, ANGEL GOMEZ was with malice, fraud and/or oppression, and said
26 defendants are therefore liable for punitive damages.

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VII. PRAYER

WHEREFORE, plaintiffs, on behalf of themselves and the class members they represent, request damages against each defendant as follows:

1. General and special damages according to proof;
2. Temporary, preliminary and permanent injunctive relief prohibiting defendants from continuing to engage in the unlawful practices complained of herein;
3. As against the individual defendants only, punitive damages according to proof;
4. In addition to actual damages, statutory damages as allowed by law and treble damages under California Civil Code §§52 and 52.1;
5. Attorneys' fees and costs under 42 U.S.C. §1988; California Civil Code §§52(b)(3), 52.1 (h); California Code of Civil Procedure §1021.5, and whatever other Statute or law may be applicable;
6. The costs of this suit and such other relief as is just and proper.

Respectfully submitted,

DATE: June 29, 2011

/S/

Olu K. Orange, Esquire
Attorney for the Plaintiffs

JURY DEMAND

Plaintiffs hereby demand trial by jury in this action.

Respectfully submitted,

DATE: June 29, 2011

/S/

Olu K. Orange, Esquire
Attorney for the Plaintiffs