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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 KELVIN HERNANDEZ ROMAN, an  
13 individual,

14 Plaintiff,

15 v.

16 ORANGE COUNTY SHERIFF'S  
17 DEPARTMENT, COUNTY OF  
18 ORANGE, SCOTT SIMONS  
19 CHARETTE, and DOES 1 to 10,  
20 inclusive,

21 Defendants.

Case No.

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF, AND  
DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

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1 **INTRODUCTION**

2 1. In July 2019, the Orange County Sheriff’s Department (“OCSD”)  
3 unlawfully detained Kelvin Hernandez Roman (“Mr. Hernandez”) beyond the time  
4 required to release him solely to facilitate his transfer to U.S. Immigration and  
5 Customs Enforcement (“ICE”). Mr. Hernandez is a 31-year-old father originally  
6 from El Salvador who had been arrested but was scheduled to be released because  
7 no charges were then filed against him. The OCSD’s decision to hold Mr. Hernandez  
8 for additional time on an immigration detainer violated federal and state laws,  
9 including the Fourth and Fourteenth Amendments of the U.S. Constitution, the  
10 California Values Act, and the California Transparent Review of Unjust Transfers  
11 and Holds (TRUTH) Act. Mr. Hernandez subsequently spent nine months in an ICE  
12 detention facility in Adelanto, California separated from his family. He missed the  
13 birth of his daughter Aleeyah and suffered from deep depression and suicidal  
14 ideation during that time. Mr. Hernandez was finally released the following April,  
15 but only as a result of litigation that challenged ICE’s failure to protect detainees at  
16 the facility from COVID-19. *See Hernandez v. Wolf*, No. 20-cv-00617-TJH-KS  
17 (C.D. Cal. Apr. 1, 2020) (Order to Show Cause). Mr. Hernandez seeks damages, as  
18 well as declaratory and injunctive relief, based on these clear violations of federal  
19 and state law.

20 2. The Fourth Amendment of the U.S. Constitution guarantees an  
21 individual the right to be free from unreasonable searches and seizures. The  
22 Fourteenth Amendment of the U.S. Constitution guarantees individuals due process  
23 of law when the state seeks to deprive them of their liberty. Both the Fourth and  
24 Fourteenth Amendments protect individuals from the arbitrary exercise of  
25 government power and apply regardless of immigration status.

26 3. In this case, the OCSD and several of its deputies violated clearly  
27 settled Fourth Amendment law by intentionally detaining Mr. Hernandez without  
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1 legal justification just so ICE agents could grab him after midnight, four days after  
2 his original arrest and with no criminal charges filed against him.

3 4. The OCSD and several of its deputies also violated the Fourteenth  
4 Amendment by unlawfully using a federal immigration detainer to imprison Mr.  
5 Hernandez beyond the time he would have otherwise been released and after all state  
6 law grounds to imprison him had evaporated. *See, e.g., Berry v. Baca*, 379 F.3d 764  
7 (9th Cir. 2004) (recognizing due process violation for intentional delays in  
8 processing individuals for release).

9 5. For these and similar reasons, Defendants’ extended detention to assist  
10 ICE violated Mr. Hernandez’s rights against unlawful detentions under Article 1,  
11 Section 13 of the California Constitution; his due process rights under Article 1,  
12 Section 7 of the California Constitution; and his right to be free from threatening,  
13 intimidating, or coercive unlawful detention in violation of the Bane Act (Cal. Civ.  
14 Code § 52.1). Defendants further engaged in false imprisonment, negligence *per se*,  
15 and intentional infliction of emotional distress.

16 6. In addition, Defendants’ actions violated two significant state laws—  
17 the California Values Act and the TRUTH Act—enacted over the past several years  
18 to build trust between immigrant communities and local law enforcement,  
19 recognizing the valuable role immigrants play in California communities. The  
20 California Values Act (also known as “SB 54”) recognizes that “[e]ntangling state  
21 and local agencies with federal immigration enforcement programs diverts already  
22 limited resources and blurs the lines of accountability between local, state, and  
23 federal governments,” thereby “rais[ing] constitutional concerns.” Cal. Gov. Code  
24 § 7284.2(d)-(e).

25 7. Accordingly, the California Values Act (in effect since 2018) explicitly  
26 prohibits state and local law enforcement from “[d]etaining an individual on the  
27 basis of a hold request,” *id.* at § 7284.6(a)(1)(B), which is precisely what Defendants  
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1 did here. The immigration detainer, which is not a judicial warrant based on probable  
2 cause, requested that the Orange County Jail (operated by Defendants) hold Mr.  
3 Hernandez for up to 48 hours beyond the time when he would have otherwise been  
4 released from local custody to allow ICE to assume custody.

5 8. The TRUTH Act (in effect since 2017) ensures fair notice and  
6 transparency by requiring state and local law enforcement to provide individuals  
7 with a copy of an immigration detainer lodged against them. *See id.* at § 7283.1(b).  
8 That also did not occur in this case. Mr. Hernandez was never informed that an  
9 immigration detainer had been lodged against him. To the contrary, an officer of the  
10 court told him that there was no immigration detainer on file, and at least two OCSD  
11 deputies told him he was going to be released. Had Mr. Hernandez known that ICE  
12 planned to arrest him, he could have at least contacted his attorney and family for  
13 assistance.

14 9. The constitutional harms suffered by Mr. Hernandez are unfortunately  
15 not unique to him. Upon information and belief, the OCSD has an unlawful policy  
16 and/or practice of collaborating with ICE to imprison individuals past the time they  
17 would otherwise be released in order to facilitate their apprehension by ICE in  
18 violation of the U.S. Constitution, the California Constitution, and the California  
19 Values Act. Absent this Court's intervention to hold OCSD accountable, community  
20 members like Mr. Hernandez risk being subjected to similar violations of their rights  
21 in the future.

22 **JURISDICTION AND VENUE**

23 10. This Court has jurisdiction over the claims alleged in this Complaint  
24 under 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights), and 2201  
25 (declaratory relief), as well as Article III of the U.S. Constitution. Supplemental  
26 jurisdiction over state law claims is proper under 28 U.S.C. § 1367 because all of the  
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1 claims arise from a common nucleus of operative facts that are so intertwined that  
2 they cannot be reasonably separated.

3 11. Venue is proper in this Court under 28 U.S.C. § 1391(b) because  
4 Defendants reside in and can be found in this judicial district.

5 **PARTIES**

6 **A. Plaintiff**

7 12. Plaintiff Kelvin Hernandez Roman is a resident of Garden Grove,  
8 California. Defendants unlawfully imprisoned Mr. Hernandez at the Theo Lacy  
9 Detention Facility in Orange, California by detaining him solely on the basis of a  
10 federal immigration detainer beyond the time required for his release. Plaintiff  
11 Hernandez seeks damages and injunctive and declaratory relief for Defendants'  
12 unlawful actions.

13 **B. Defendants**

14 13. Defendant County of Orange (“the County”) is a public entity and  
15 political subdivision duly organized and existing under the laws of the State of  
16 California. The County has a clear and present duty to follow California law. *See,*  
17 *e.g.,* Cal. Const. Art. III § 3.5. The County is sued both in its own capacity pursuant  
18 to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and on the basis  
19 of *respondeat superior* under California Government Code § 815.2.

20 14. Defendant Orange County Sheriff’s Department (the “OCSD” or  
21 “Sheriff’s Department”) is a public entity and law enforcement agency operating in  
22 Orange County, California. Defendant OCSD has a clear and present duty to follow  
23 California law. *See, e.g.,* California Const. Art. III § 3.5. Defendant OCSD is sued  
24 both in its own capacity pursuant to *Monell v. Department of Social Services*, 436  
25 U.S. 658 (1978), and *Shaw v. State of California Dept. of Alcoholic Beverage*  
26 *Control*, 788 F.2d 600 (9th Cir. 1986), and on the basis of *respondeat superior* under  
27 California Government Code § 815.2.

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1           15. Defendant Scott Simons Charette is a sheriff deputy (#7514) and  
2 employee of the County and/or Sheriff’s Department sued in his individual capacity.  
3 In compliance with an immigration detainer, Defendant Charette and other OCSD  
4 deputies imprisoned Mr. Hernandez beyond the time he would have otherwise been  
5 released from their custody and allowed ICE to assume custody of Mr. Hernandez  
6 at the Orange County Jail. Defendant Charette undertook his actions under color of  
7 law, within the course and scope of his respective duties as a sheriff deputy, and with  
8 the complete authority and ratification of the County and the Sheriff’s Department.

9           16. Defendants Does 1 through 10, including “Releasing Deputy RA8484,”  
10 are sheriff deputies and/or employees of the County and/or the Sheriff’s Department  
11 sued in their individual capacities. In compliance with an immigration detainer,  
12 Defendants Does 1 through 10 (also referred to herein as the “OCSD deputies”)  
13 imprisoned Mr. Hernandez beyond the time Mr. Hernandez would have otherwise  
14 been released from their custody and allowed ICE to assume custody of Mr.  
15 Hernandez at the Orange County Jail. Does 1 through 10 undertook their actions  
16 under color of law, within the course and scope of their respective duties as sheriff  
17 deputies, and with the complete authority and ratification of the County and the  
18 Sheriff’s Department.

19           17. In committing the acts and in failing or omitting to act as described in  
20 this complaint, Defendants Charette and Does 1 through 10, inclusive, were acting  
21 on the implied and actual permission and consent of the County and the OCSD.

22           18. Defendants County of Orange and OCSD are vicariously liable for the  
23 wrongful acts of Defendants Charette and Does 1 through 10 under California  
24 Government Code § 815.2(a), which provides that a public entity is liable for the  
25 injuries caused by its employees through acts within the scope of their employment  
26 if the employees’ acts would subject them to liability.

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1 that the hold was “recalled per case decision pertaining to AB 4/RSM.” A separate  
2 database check conducted on the same day at approximately 9:34 p.m., by an OCSD  
3 deputy with the last name McIntosh, also did not seem to show an ICE hold. Mr.  
4 Hernandez did not receive any notice of an immigration hold or detainer at this time.

5 25. AB 4 refers to the TRUST Act, a separate California law that became  
6 effective in 2014 and set a minimum standard under which state and local law  
7 enforcement can respond to immigration holds by ICE. *See* Cal. Gov. Code § 7282.5.

8 26. On either Saturday night or Sunday, July 14, 2019, OCSD deputies  
9 transferred Mr. Hernandez from the Orange County Jail in Santa Ana to the Theo  
10 Lacy Detention Facility in Orange, California.

11 27. Pursuant to California Penal Code § 825(a)(1), Mr. Hernandez had a  
12 right to be taken before the magistrate within 48 hours after his arrest, excluding  
13 Sunday.

14 28. On Tuesday, July 16, 2019, at approximately 3:00 a.m., Mr. Hernandez  
15 prepared himself to go to court. At approximately 6:00 a.m. that morning, OCSD  
16 deputies transported Mr. Hernandez and other inmates to the Orange County  
17 Superior Court for their arraignment.

18 29. Mr. Hernandez was placed in a holding cell with several other detainees  
19 at the courthouse. There, a court interpreter informed detainees if they were subject  
20 to ICE holds. The interpreter did not name Mr. Hernandez, prompting Mr.  
21 Hernandez to ask if he was subject to any hold. The interpreter informed him that he  
22 was *not* subject to an ICE hold but that he had been charged with what the interpreter  
23 considered a “weird” offense of having a stun gun.

24 30. At the courthouse, Mr. Hernandez also met with a private attorney that  
25 his family had hired to represent him at his arraignment. That attorney told Mr.  
26 Hernandez that he was not subject to an immigration hold based on the information  
27 that the attorney had at the time.

1           31. Despite going to court that morning and meeting with his attorney, Mr.  
2 Hernandez was not charged with any crime and ultimately did not appear before the  
3 magistrate that day. An OCSD deputy informed Mr. Hernandez and approximately  
4 five other detainees at the courthouse that no charges were being filed against them  
5 and so they would not see the judge. The same deputy threatened that, while the  
6 detainees were going to be released in the absence of charges, the police would “get  
7 [them] next time.”

8           32. County jail records from July 16, 2019 show that the Orange County  
9 District Attorney’s Office sent a fax to the jail at approximately 8:12 a.m. and again  
10 at 8:47 a.m. notifying Defendants that no case would be filed against Mr. Hernandez  
11 at that time.

12           33. OCSD deputies moved Mr. Hernandez and the other men who were  
13 also not facing criminal charges to a holding cell separate from those detainees who  
14 were being arraigned. They were held there until about 5:00 or 6:00 p.m., at which  
15 point they were all returned to the Theo Lacy Detention Facility. Mr. Hernandez’s  
16 wife, Leslie, was waiting for him outside the jail because the attorney that the family  
17 had hired told them that Mr. Hernandez had not been charged and would likely be  
18 released around 5:00 p.m.

19           34. Upon information and belief, rather than begin the release process for  
20 Mr. Hernandez upon returning from court as would be expected, OCSD deputies did  
21 not begin processing Mr. Hernandez until much later that night, seemingly after they  
22 had confirmed that ICE had requested an immigration hold but before ICE agents  
23 actually arrived at the jail to pick up Mr. Hernandez. Mr. Hernandez waited  
24 anxiously in his cell because, even though he knew he was supposed to be released  
25 in the absence of criminal charges against him, no one was coming to get him or  
26 communicating anything to him. He did not know what to expect.

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1           35. Upon information and belief, Mr. Hernandez's release process began at  
2 approximately 10:00 p.m. Around this time, an OCSD deputy told Mr. Hernandez  
3 that he was being released and would be taken to the processing area. Mr. Hernandez  
4 was relieved that he would finally be able to go home to his family.

5           36. At the processing area Mr. Hernandez was given his street clothes and  
6 allowed to change. Mr. Hernandez recalls that there were approximately 5-6 other  
7 inmates being released at the same time. These other inmates, however, were not the  
8 same inmates with whom Mr. Hernandez had gone to court that morning and who  
9 were also supposed to be released that day. Upon information and belief, those  
10 inmates were likely released earlier in the day.

11           37. Mr. Hernandez's Inmate Cashiering Transaction Log shows that \$6.00  
12 were returned or otherwise released ("6.00-") at 10:01 p.m., which is consistent with  
13 Mr. Hernandez's memory that he was being processed around this time. However,  
14 Mr. Hernandez does not believe the money was ever returned to him.

15           38. While waiting to be processed for release and already in his street  
16 clothes, Mr. Hernandez overheard one OCSD deputy asking another deputy why  
17 they had taken Mr. Hernandez out of his cell, since they "had a time to turn him in."  
18 At this point, the deputies separated Mr. Hernandez from the other inmates in the  
19 processing area and put him in a holding cell all by himself. From the holding cell,  
20 Mr. Hernandez was able to see all the other inmates being processed and released,  
21 all except for him, which confused Mr. Hernandez and caused him significant stress,  
22 fear, and anxiety because he did not know what might happen to him next.

23           39. Defendants never informed Mr. Hernandez that an immigration  
24 detainer had been lodged against him and that OCSD would be holding him for the  
25 purpose of turning him over to ICE. At this point, Mr. Hernandez had been detained  
26 for approximately four days and almost four nights without being charged with any  
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1 crime and without knowing the reason for his continued detention. Mr. Hernandez  
2 simply wanted to go home to his wife and young children.

3 40. County jail records show evidence of an immigration hold at 9:14 p.m.  
4 on July 16, 2019. It is not clear when exactly the detainer was sent by ICE or received  
5 by OCSD that day, or whether OCSD specifically requested the detainer and then  
6 held Mr. Hernandez longer than reasonable awaiting the ICE hold.

7 41. At 10:57 p.m., Sheriff Deputy Scott Simons Charette sent an e-mail to  
8 ICE stating: “The following inmate(s) has/have just entered a pre-release status and  
9 will be released forthwith from Orange County Sheriff’s Department custody.  
10 This/These inmate(s) meet the criteria of the TRUST Act (AB4) and are eligible to  
11 be released to ICE upon completion of the OCSD release process if ICE officials are  
12 not present to take custody of them. OCSD will not hold this/these inmate(s) beyond  
13 the time it takes to complete the release process and will release this/these inmate(s)  
14 from our custody if ICE officials are not present to take custody of them. For  
15 unscheduled releases (i.e. court ordered, bond posted, etc.), the inmate will be  
16 released without delay upon completion of the release process. ICE officials should  
17 contact OCSD as soon as possible for an estimated time of release.”

18 42. Mr. Hernandez was the only inmate identified in the email to ICE and  
19 his release was considered unscheduled, which means he should have been released  
20 “without delay upon completion of the release process” per Deputy Charette’s email  
21 and OCSD written policy. That did not occur. Instead, OCSD both *failed to*  
22 *commence* the release process earlier in the day and *stopped* the release process later  
23 that night, holding on to Mr. Hernandez beyond the time when he would have  
24 otherwise been released solely for the purpose of turning him over to ICE in  
25 deliberate violation of the law.

26 43. At 10:59 p.m., Deputy Charette conducted or updated a database check  
27 showing the following: “CHECK CONDUCTED PER CALIFORNIA VALUES  
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1 ACT DUE TO IMMIGRATION DETAINER ON CURRENT CASE. INMATE  
2 HAS FELONY 236 CONVICTION WITHIN 15 YEARS. AND IS ELIGIBLE FOR  
3 ICE PICK UP. ICE NOTIFIED.”

4 44. While Mr. Hernandez was eligible for *transfer* to ICE under the  
5 California Values Act based on a prior felony conviction (Cal. Gov. Code  
6 §§ 7284.6(a)(1)(C), 7282.5(a)-(b)), the California Values Act is clear that a state or  
7 local law enforcement agency cannot *hold* any individual (regardless of his or her  
8 criminal history) beyond the time when she or he would have otherwise been  
9 released “on the basis of a hold request” (*id.* at § 7284.6(a)(1)(B)). Without any valid  
10 legal authority, the OCSD deputies continued to imprison Mr. Hernandez solely to  
11 comply with the immigration detainer.

12 45. Mr. Hernandez recalls waiting anxiously and fearfully in the holding  
13 cell for a long period of time before ICE agents came to pick him up and drive him  
14 to downtown Los Angeles, where he was booked and processed for immigration  
15 enforcement purposes.

16 46. Mr. Hernandez did not know the reason for his extended detention until  
17 ICE agents wearing green uniforms arrived and arrested him at the jail. These agents  
18 handcuffed his feet and his wrists to his waist before leaving the facility. Even at this  
19 point, none of the OCSD deputies provided Mr. Hernandez with a copy of the  
20 immigration detainer.

21 47. County jail records show that Mr. Hernandez was not released until  
22 Wednesday, July 17, 2019, by OCSD Releasing Deputy “R48484,” which means he  
23 was released after midnight.

24 48. The arrest record (Form I-213) issued by ICE and logged at 1:38 a.m.  
25 on July 17, 2019, also states that Mr. Hernandez was released to ICE by OCSD on  
26 July 17, 2019.

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1           49. Before being transferred to ICE custody, OCSD deputies returned Mr.  
2 Hernandez's belongings to him except for the \$6.00 he had on his person and an LG  
3 tablet device that had been logged on his Property Inventory Receipt. This valuable  
4 item has never been returned to Mr. Hernandez. Notably, the Property Inventory  
5 Receipt shows that the item was crossed out by someone other than Mr. Hernandez.  
6 None of the other items on the receipt were crossed out. Mr. Hernandez believes that  
7 his tablet was in fact stolen from him by OCSD deputies or the Tustin Police  
8 Department officer who originally booked him and his property at the County jail.

9           50. On July 6, 2020, almost exactly one year after Mr. Hernandez was  
10 arrested and detained, the Orange County District Attorney's Office filed  
11 misdemeanor charges against Mr. Hernandez stemming from the July 13, 2019  
12 arrest. They did so even after they confirmed in the past that no charges were being  
13 sought. Mr. Hernandez's criminal case remains pending and is not the reason or basis  
14 for this lawsuit. Nothing about that case affects *this* case because the former does  
15 not alter the fact that Mr. Hernandez was unlawfully detained by Defendants in July  
16 2019.

### 17 **Defendants' Unlawful Policies and/or Practices**

18           51. Mr. Hernandez's illegal imprisonment for the sole purpose of  
19 facilitating his apprehension by ICE custody was caused by the unlawful policies  
20 and/or practices of the County and the OCSD.

21           52. Upon information and belief, the County and/or OCSD have an  
22 unlawful policy and/or practice of collaborating with ICE to imprison individuals  
23 past the time they would otherwise be released in order to facilitate their  
24 apprehension by ICE in violation of the U.S. Constitution, the California  
25 Constitution, and the California Values Act.

26           53. Upon information and belief, it is routine for the OCSD to disregard  
27 federal and state laws and not release an individual who should be released promptly  
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1 until late at night or into the next day when the person has an ICE hold or the OCSD  
2 believes an ICE hold is forthcoming.

3 54. Upon information and belief, the OCSD has failed to adequately train  
4 its deputies regarding prompt releases and not detaining individuals for longer than  
5 is reasonably necessary to process them for release. The County and the OCSD must  
6 have known that their failure to train supervisors and deputies adequately would  
7 predictably result in its deputies engaging in conduct that would deprive individuals,  
8 like Mr. Hernandez, of their constitutional and statutory rights.

9 55. Upon information and belief, the OCSD's recordkeeping is inadequate  
10 in monitoring whether individuals are held any extra time. In Mr. Hernandez's case,  
11 for example, OCSD released him after midnight, but county jail records do not show  
12 exactly when after midnight or how long he was actually held while waiting for ICE  
13 to arrive and arrest him. The County and the OCSD must have known that such  
14 practices would predictably result in constitutional abuses because inmates could be  
15 held for longer than what is reasonable and necessary for their release.

16 **Harm Suffered by Mr. Hernandez**

17 56. The OCSD's unlawful imprisonment of Mr. Hernandez caused him  
18 significant harm, depriving him of his federal and state constitutional and statutory  
19 rights to be free from unreasonable detention.

20 57. As a direct result of the OCSD's actions, Mr. Hernandez was  
21 apprehended by ICE. His removal/deportation case was reopened, despite it having  
22 been administratively closed by an immigration judge in 2015, jeopardizing his life  
23 in the United States.

24 58. The OCSD's actions also resulted in Mr. Hernandez spending nine  
25 months at the Adelanto ICE Detention Facility in San Bernardino County separated  
26 from his family. Notably, Mr. Hernandez missed his wife's pregnancy and the birth  
27 of his daughter Aleeyah during that time. Due to his absence, his wife had to work  
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1 two jobs while pregnant to support their family, including their infant son Jaime and  
2 five-year-old daughter Leslie.

3 59. Mr. Hernandez was finally released from ICE custody in April, but only  
4 as a result of litigation that challenged ICE's failure to protect detainees at the facility  
5 from COVID-19. *See Hernandez v. Wolf*, No. 20-cv-00617-TJH-KS (C.D. Cal. Apr.  
6 1, 2020) (Order to Show Cause). While in detention, Mr. Hernandez, who suffers  
7 from severe asthma, feared for his health and life, not knowing if he would contract  
8 COVID-19 given the lack of social distancing and preventive measures to protect  
9 against contracting the virus at the facility.

10 60. The entire experience also caused Mr. Hernandez severe emotional  
11 distress. He suffered from deep depression and even suicidal ideation while in  
12 immigration detention. Once the COVID-19 pandemic began, Mr. Hernandez was  
13 particularly scared for his new baby and his one-year-old son who, like Mr.  
14 Hernandez, suffers from asthma. He felt helpless that he could not do anything to  
15 protect them.

16 61. Thus, the OCSA's actions were both the but-for and the proximate  
17 cause of Mr. Hernandez's extended imprisonment at the County jail and his  
18 subsequent arrest and detention by ICE.

19 62. Even after being released from Adelanto, Mr. Hernandez has suffered  
20 grave depression and emotional distress. He must wear an electronic monitor at all  
21 times and generally cannot leave his home. His wife alone must work to support the  
22 family during a debilitating pandemic.

23 63. Mr. Hernandez also continues to live in fear as a consequence of the  
24 OCSA's actions. He fears being deported and torn apart from his wife and children,  
25 all of whom are U.S. citizens. He fears, moreover, that the County's law enforcement  
26 agencies may be targeting him because he has tried to enforce his rights. Mr.  
27 Hernandez filed an administrative claim against the County for his unlawful  
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1 detention in January of this year. He was later part of a class action lawsuit against  
2 ICE seeking the release of detainees due to COVID-19. The District Attorney's  
3 Office had previously confirmed in writing that it was not pursuing a criminal case  
4 against Mr. Hernandez stemming from the July 16, 2019, arrest. Still, the District  
5 Attorney's Office filed misdemeanor charges against Mr. Hernandez recently, on  
6 July 6, 2020, almost one year after the initial arrest, which, based upon information  
7 and belief, is a highly uncommon practice.

8         64. Mr. Hernandez is suffering the exact harms that the California Values  
9 Act was enacted to prevent. His safety continues to be threatened because the OCSD  
10 may again imprison him without a lawful justification and turn him over to ICE. Mr.  
11 Hernandez is also more reluctant to interact with the OCSD and more afraid to access  
12 public services due to his fear that OCSD deputies are turning over immigrants like  
13 him to ICE.

14         65. The OCSD deputies who imprisoned Mr. Hernandez knew or should  
15 have known that imprisoning him beyond the time he would have otherwise been  
16 released for no valid justification violated federal and state law.

17         66. The OCSD deputies who imprisoned Mr. Hernandez knew or should  
18 have known that complying with an immigration detainer only to transfer Mr.  
19 Hernandez to ICE violated the California Values Act.

20         67. The OCSD deputies who imprisoned Mr. Hernandez knew or should  
21 have known that their failure to provide him with a copy of his immigration detainer  
22 violated the TRUTH Act.

23                     **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24         68. Mr. Hernandez has complied with the jurisdictional prerequisites under  
25 state law for filing a claim for damages against the County of Orange.

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1 apprehension by ICE in violation of the Fourth Amendment of the U.S. Constitution.  
2 The County and Sheriff's Department are liable pursuant to *Monell v. Department*  
3 *of Social Services*, 436 U.S. 658 (1978).

4 76. The County and the Sheriff's Department are separately vicariously  
5 liable under state law, because their employees, acting within the course and scope  
6 of their duties, are liable for this federal constitutional violation. Cal. Gov. Code  
7 § 815.2.

8 **SECOND CAUSE OF ACTION**

9 **Fourteenth Amendment to the U.S. Constitution (Due Process);**

10 **42 U.S.C. § 1983**

11 **(Against All Defendants)**

12 77. Plaintiff incorporates the allegations of the preceding and subsequent  
13 paragraphs as if fully set forth herein.

14 78. The Due Process Clause of the Fourteenth Amendment of the U.S.  
15 Constitution prohibits deprivations of the right to life, liberty, or property, without  
16 due process of law.

17 79. Defendants violated the Fourteenth Amendment by unlawfully using a  
18 federal immigration detainer to imprison Mr. Hernandez beyond the time he would  
19 have otherwise been released and all state law grounds to imprison him had  
20 evaporated.

21 80. Defendants, therefore, deprived Mr. Hernandez of his liberty without  
22 due process of law. *See, e.g., Berry v. Baca*, 379 F.3d 764 (9th Cir. 2004)  
23 (recognizing due process violation for intentional delays in processing individuals  
24 for release).

25 81. Upon information and belief, the County and the Sheriff's Department  
26 have an unlawful policy and/or practice of collaborating with ICE to imprison  
27 individuals past the time they would otherwise be released in order to facilitate their  
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1 apprehension by ICE in violation of the Fourteenth Amendment of the U.S.  
2 Constitution. The County and Sheriff’s Department are liable pursuant to *Monell v.*  
3 *Department of Social Services*, 436 U.S. 658 (1978).

4 82. The County and the Sheriff’s Department are separately vicariously  
5 liable under state law, because their employees, acting within the course and scope  
6 of their duties, are liable for this federal constitutional violation. Cal. Gov. Code  
7 § 815.2.

8 **THIRD CAUSE OF ACTION**

9 **Art. I, Sec. 13 of the California Constitution (Unlawful Seizure)**  
10 **(Against All Defendants)**

11 83. Plaintiff incorporates the allegations of the preceding and subsequent  
12 paragraphs as if fully set forth herein.

13 84. Article I, Section 13 of the California Constitution guarantees the “right  
14 of the people to be secure in their persons, houses, papers, and effects against  
15 unreasonable seizures and searches . . .”

16 85. Defendants intentionally deprived Mr. Hernandez of his rights under  
17 Article I, Section 13 of the California Constitution by detaining him pursuant to a  
18 federal immigration detainer not supported by a necessary judicial finding of  
19 probable cause and without any state law authority to arrest individuals suspected of  
20 civil immigration violations. By detaining Mr. Hernandez beyond the time that he  
21 would have otherwise been released, Defendants violated his constitutional rights.

22 86. The County and the Sheriff’s Department are separately vicariously  
23 liable under state law, because their employees, acting within the course and scope  
24 of their duties, are liable for this state constitutional violation. Cal. Gov. Code  
25 § 815.2.

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1 **FOURTH CAUSE OF ACTION**

2 **Art. I, Sec. 7 of the California Constitution (Due Process)**

3 **(Against All Defendants)**

4 87. Plaintiff incorporates the allegations of the preceding and subsequent  
5 paragraphs as if fully set forth herein.

6 88. Article 1, Section 7 of the California Constitution prohibits deprivations  
7 of the right to life, liberty, or property, without due process of law.

8 89. Defendants unlawfully used a federal immigration detainer to imprison  
9 Mr. Hernandez beyond the time he would have otherwise been released and all state  
10 law grounds to imprison him had evaporated.

11 90. Defendants, therefore, deprived Mr. Hernandez of his liberty without  
12 due process of law. *See, e.g., Berry v. Baca*, 379 F.3d 764 (9th Cir. 2004)  
13 (recognizing due process violation for intentional delays in processing individuals  
14 for release).

15 91. The County and the Sheriff's Department are separately vicariously  
16 liable under state law, because their employees, acting within the course and scope  
17 of their duties, are liable for this state constitutional violation. Cal. Gov. Code  
18 § 815.2.

19 **FIFTH CAUSE OF ACTION**

20 **Cal. Civ. Code § 52.1 (Tom Bane Civil Rights Act)**

21 **(Against All Defendants)**

22 92. Plaintiff incorporates the allegations of the preceding and subsequent  
23 paragraphs as if fully set forth herein.

24 93. The Bane Act provides for liability when a defendant's threats,  
25 intimidation or coercion interferes or attempts to interfere with "the exercise or  
26 enjoyment by any individual of rights secured by the Constitution or laws of the  
27

1 United States, or of the rights secured by the Constitution or laws of this state.” Cal.  
2 Civ. Code § 52.1(a).

3 94. Defendants engaged in threats, intimidation, or coercive acts that  
4 interfered with or attempted to interfere with the rights of Mr. Hernandez secured  
5 under the U.S. Constitution, the California Constitution, and other state laws.

6 95. Defendants imprisoned Mr. Hernandez beyond the time he would have  
7 otherwise been released and after any state law basis to detain him had expired based  
8 on an immigration detainer in violation of the Fourth and Fourteenth Amendments  
9 of the U.S. Constitution and Article 1, Sections 7 & 13 of the California Constitution.  
10 *See, e.g., Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 843 (2004) (holding  
11 that plaintiffs stated claim under the Bane Act when police officers illegally detained  
12 them in violation of the Fourth Amendment).

13 96. Defendants also deliberately disobeyed the California Values Act and  
14 coercively imprisoned Mr. Hernandez to transfer him to ICE.

15 97. Defendants further coercively interfered with Mr. Hernandez’s rights  
16 by failing to provide him with a copy of the immigration detainer in violation of the  
17 TRUTH Act.

18 98. Defendants are therefore liable under the Bane Act.

19 **SIXTH CAUSE OF ACTION**

20 **Cal. Gov. Code § 815.6**

21 **(Against All Defendants)**

22 99. Plaintiff incorporates the allegations of the preceding and subsequent  
23 paragraphs as if fully set forth herein.

24 100. “Where a public entity is under a mandatory duty imposed by an  
25 enactment that is designed to protect against the risk of a particular kind of injury,  
26 the public entity is liable for an injury of that kind proximately caused by its failure  
27  
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1 to discharge the duty unless the public entity establishes that it exercised reasonable  
2 diligence to discharge the duty.” Cal. Gov. Code § 815.6.

3 101. The duty of a jailor to release a detainee after the expiration of any state  
4 law basis to detain is mandatory under California law.

5 102. State law provided no authority for Defendants to continue to imprison  
6 Mr. Hernandez beyond the time he would have otherwise been released based on a  
7 federal immigration detainer. Indeed, the California Values Act expressly prohibits  
8 Defendants from doing so. *See* Cal. Gov. Code § 7284.6(a)(1)(B). Defendants failed  
9 to discharge their mandatory duty to release Mr. Hernandez.

10 103. Defendants also had a mandatory duty under the California TRUTH  
11 Act to provide Mr. Hernandez with a copy of the immigration detainer. *See* Cal.  
12 Gov. Code § 7283.1(b) (“Upon receiving any ICE hold, notification, or transfer  
13 request, the local law enforcement agency shall provide a copy of the request to the  
14 individual...”). Defendants failed to discharge their mandatory duty by failing to  
15 provide Mr. Hernandez a copy of the immigration detainer.

16 104. Defendants’ decision to hold Mr. Hernandez to turn him over to ICE  
17 caused Mr. Hernandez significant harms, including emotional and potentially  
18 physical injury. Defendants’ failure to provide Mr. Hernandez a copy of the  
19 immigration detainer in particular prevented him from contacting an attorney or  
20 advocating on his own behalf to the Sheriff’s Department deputies that they should  
21 not comply with the immigration detainer because it violated California law.

22 105. Defendants are, therefore, liable under Cal. Gov. Code § 815.6.

23 **SEVENTH CAUSE OF ACTION**

24 **False Imprisonment**

25 **(Against All Defendants)**

26 106. Plaintiff incorporates the allegations of the preceding and subsequent  
27 paragraphs as if fully set forth herein.

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1 Indeed, California state law expressly prohibits Defendants from doing so. *See* Cal.  
2 Gov. Code § 7284.6(a)(1)(B).

3 115. Defendants undertook the aforesaid illegal acts intentionally or with  
4 conscious disregard of the rights of Mr. Hernandez, and did so with malice and/or  
5 oppression. Defendants' actions constituted malice because Defendants acted with  
6 the intent to and did cause injury to Mr. Hernandez, and also because Defendants'  
7 unlawful conduct was despicable and was done with a willful and knowing disregard  
8 of Mr. Hernandez's rights. Defendants' actions constituted oppression as well,  
9 because Defendants' unlawful conduct was despicable and subjected Mr. Hernandez  
10 to cruel and unjust hardship in knowing disregard of his rights.

11 116. Defendants' decision to hold Mr. Hernandez to turn him over to ICE  
12 caused Mr. Hernandez significant harms, including emotional and potentially  
13 physical injury.

14 117. Defendants are therefore liable for negligence *per se*.

15 118. Defendants County of Orange and the Sheriff's Department are  
16 vicariously liable for the tort of negligence, because their employees, acting within  
17 the course and scope of their duties, would have been liable for the tort of negligence.  
18 Cal. Gov. Code § 815.2.

19 **NINTH CAUSE OF ACTION**

20 **Intentional Infliction of Emotional Distress**

21 **(Against All Defendants)**

22 119. Plaintiff incorporates the allegations of the preceding and subsequent  
23 paragraphs as if fully set forth herein.

24 120. Defendants' extreme and outrageous conduct exceeded the bounds of  
25 decency by unlawfully imprisoning Mr. Hernandez without cause and holding him  
26 solely for ICE to pick him up.

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