

**Mayor**  
William Siegel  
**Mayor Pro Tem**  
Lois Wynne  
**Council Members**  
John Gordon  
Eddie Neal  
Willard Rodarmel



**Office of the  
City Clerk**  
  
119 Fox Street  
Lemoore • CA 93245  
Phone ♦ (559) 924-6700  
FAX ♦ (559) 924-9003

## Staff Report

ITEM 2-3

**To:** Lemoore City Council  
**From:** Janie Venegas, City Clerk / Administrative Secretary  
**Date:** May 13, 2014  
**Subject:** Claim for Guadalupe Perico

A handwritten signature in blue ink, appearing to be "J. Venegas", is written over a horizontal line.

### Discussion:

AIMS has suggested the City issue a Notice of Rejection Under Operation of Law in order to establish a six month civil status.

### Budget Impact:

Unknown at this time.

### Recommendation:

That the City Council, by motion, approve the Notice of Rejection for Guadalupe Perico.

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**MYERS LAW OFFICE**

Dorinda J. Myers, Esq.  
DorindaMyersEsq@gmail.com

77-530 ENFIELD LANE, SUITE H-1  
PALM DESERT, CALIFORNIA 92211

BY: *via mail*  
*hardcopy*  
telephone: 760-200-0749  
facsimile: 760-200-4953

April 4, 2014

Mr. Jeff Laws, City Manager  
City of Lemoore  
119 Fox Street  
Lemoore, CA 93245

Re: Tort Claim by Guadalupe Perico

Dear Mr. Laws:

Pursuant to the California Tort Claim's Act, this letter acts as a tort claim by my client Guadalupe Perico arising out of violations of his constitutional rights, false imprisonment, assault and battery, defamation of character, and malicious prosecution resulting out of actions taken by Lemoore Police Department officers on November 26, 2013.

According to Lemoore Police Department Officer Moritz' report, on November 26, 2013, Officer Jonathan Moritz and Officer Kevin Cosper were working patrol about 2316 hours and conducted da premise check of Micky's Bar located at 230 Fox Street in the City of Lemoore. Outside the bar the officers observed a group of females standing the middle of the street and appeared to be verbally arguing and challenging to fight another group of females on the east side of Fox Street. Whent eh group of females in the street sw the patrol vehicle they began to walk away. At that time, Officer Moritz states he observed them get into a vehicle that was parked on the west side of Fox Street in front of the bar.

My client, Guadalupe Perico was seen exiting the driver's seat of that vehicle as the officers approached. Even though Mr. Perico had not been present, or otherwise involved in the verbal altercation between the two groups of females, Officer Cosper detained him. Not only did Officer Cosper detain him, even though he had no articulable suspicion to believe that Mr. Perico was potentially armed and dangerous he conducted a pat down search for weapons.

After the pat down search was conducted by Officer Cosper, Officer Moritz detained Mr. Perico for questioning concerning the disturbance that involved the females that got into the car he was seen exiting. Mr. Perico advised Officer Moritz that he was not involved in any altercation and that he did not wish to talk to the officer about the incident. Even though Mr. Perico had every right to refuse to answer questions, Officer Moritz continued to detain him concerning an

incident he was not in any way involved with, nor even present for. Officer Moritz then asked Mr. Perico if he had any identification on him then demanded that he provide it. Mr. Perico advised Officer Moritz that he did not have to provide the officer with identification as he had not done anything wrong. Officer Moritz then advised Mr. Perico that as he was being detained that he needed to identify himself to the officer, even though that statement is contrary to California law. A detainee has no obligation to identify themselves to law enforcement. He then threatened Mr. Perico that he would be arrested for delaying the officer's investigation if he refused to provide identification. He then demanded the identification one more time.

Mr. Perico reluctantly provided Officer Moritz with his laminated medical marijuana card, advising Officer Moritz that it was the only identification he had on him. In the lower right hand corner of the card was a printed picture of Mr. Perico's California driver's license. Due to the size of the picture, he could only read the license number, Mr. Perico's name, but not his date of birth. Officer Moritz then demanded that Mr. Perico tell him his date of birth. Mr. Perico responded by saying that he had provided the identification, which included his date of birth. The officer told him he couldn't read it and that he needed to verbally tell him the date of birth. Mr. Perico refused to tell the officer, stating it was on the ID provided. Furthermore, Mr. Perico reiterated that he had done nothing wrong, that he had already provided identification and that he did not need to provide his birthdate. Officer Moritz again threatened to arrest Mr. Perico for a violation of Penal Code section 148(a)(1) for delaying his investigation. Ultimately, Mr. Perico would not provide his date of birth to Officer Moritz.

Officer Moritz' report states that he could smell the odor of an alcoholic beverage on Mr. Perico's breath and his eyes were red and watery. The officer asked Mr. Perico if he had been drinking that evening. He answered that he had, but did not elaborate further. Officer Moritz then asked Mr. Perico one final time to provide his date of birth. When he failed to provide it, Officer Moritz arrested him for violations of Penal Code §647(f) (public intoxication) and Penal Code §148(a)(1) (resisting, obstructing or delaying an officer). At that time, Mr. Perico was physically taken into custody, transported to the Kings County Jail and booked into the jail and held there for several hours before he was released on a citation.

At the time of the arrest, there was no probable cause to believe that Guadalupe Perico had committed a criminal offense. The California Penal Code sets forth in section 836.5(a) that an officer can arrest a person without a warrant when the officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or violated a statute or ordinance that the officer or employee has the duty to enforce. Nowhere in Officer Moritz' report is it alleged that he witnessed Guadalupe Perico commit a misdemeanor or violate a specific statute or ordinance.

With respect to the arrest for a violation of Penal Code §647(f) the officer provided no factual basis to show that Mr. Perico was so drunk that he could not care for himself or others, which is the definition of that violation. Officer Moritz' report merely reflects that Mr. Perico had consumed some alcohol that evening, which is not a crime as he was of legal age to drink. Furthermore, given the nature and length of the conversation it is clear that Mr. Perico was competently responding to the questions put to him by Officer Moritz, that he was able to stand and submit to not only questioning, but to a pat down search by Officer Cosper. Nowhere in the report are any facts alleged (because no such facts exist) to show that Mr. Perico's behavior that evening could support an arrest for public intoxication.

With respect to the arrest for a violation of Penal Code Section 148(a)(1), there are no facts in Officer Moritz' report which would support a basis for such a violation. An individual that is correctly detained (which arguably Mr. Perico was not given his lack of involvement or presence during the altercation) can be asked questions by law enforcement, but has no duty to answer the questions put to him. Furthermore, a detainee has no legal duty to provide his name, date of birth, or identification. Mr. Perico simply exercised his legal rights. In exercising his legal rights, his actions, or failures to provide what Officer Moritz wanted him to do, does not constitute a violation of Penal Code §148(a)(1), as the law requires that for the charge to apply the officer must be in the lawful performance of his duties. When an officer demands or requests someone to do something they have no legal obligation to do (quite the contrary they have the absolute right to refuse) they are not in the lawful performance of their duties.

Even if there had been probable cause for the arrest, Officers Moritz and Cosper were not properly acting within the scope of their authority, and therefore not protected from civil liability for their actions. Penal Code §836.5(a) states that "[in] any case in which a person is arrested pursuant to subdivision (a) and the person arrested does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his or her promise to appear, ..." Based on Officer Moritz' own report, it is clear that he did not conduct a lawful arrest. Instead of preparing a written notice to appear and releasing Guadalupe Perico on his promise to appear, Officer Moritz physically handcuffed Mr. Perico, transported him to the Kings County Jail and incarcerated him rather than issuing the required citation and releasing him on his promise to appear.

It is clear that the law required Officer Moritz to simply write a citation rather than actually arrest Guadalupe Perico. Penal Code §853.6(i) provides that for a misdemeanor offense where the individual does not demand to be taken before a magistrate that individual shall be released and given a notice to appear in court, unless there is a basis for nonrelease. The only potential basis for nonrelease in this case would have to be based on section (i)(1) "The person arrested was so intoxicated that he or she could have been a danger to himself or herself or others."

However, as noted before there were no facts in Officer Moritz to support any reasonable person to believe that Mr. Perico was so intoxicated that he posed a danger to himself or others.

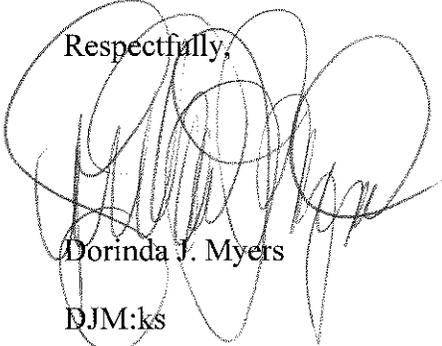
Furthermore, Penal Code §853.6(i) requires that a Lemoore Police Department form be completed by the officers and maintained in Lemoore Police Department records supporting the basis for the nonrelease. No such document has been produced to date. To the extent that no such form was completed on November 26, 2013 supporting the nonrelease of Guadalupe Perico, such failure further establishes unlawful actions by the officers.

Officer Moritz' and Officer Cosper's unlawful actions clearly exceeded their scope of authority which resulted in Mr. Perico being maliciously prosecuted and subjected to defamation of character in having to face criminal prosecution for a crime he did not commit simply because he refused to do what Officer Moritz unlawfully demanded him to do. As a result Guadalupe Perico has been publicly humiliated (and continues to be so), is potentially subject to further incarceration, has the exposure of being convicted of a crime he didn't commit which has affected current employment opportunities and will impact future employment as well. In addition, Guadalupe Perico has had to incur legal expenses in connection to his pending criminal charges. As a result, my client is demanding compensation for the injuries he has suffered, which damages are in excess of \$25,000.

I have enclosed a copy of the complaint filed by the Kings County District Attorney's Office at the request of the Lemoore Police Department, along with a copy of Officer Moritz' report concerning the incident. I am not in receipt of, or aware of, a report completed by Officer Cosper concerning his participation in the illegal detention, search, and arrest of Mr. Perico.

For purposes of this claim all notices should be sent to Dorinda Myers, as Guadalupe Perico's attorney of record and addressed to Myers Law Office, 77-530 Enfield Lane, Suite H-1, Palm Desert, CA 92211.

Respectfully,



Dorinda J. Myers

DJM:ks

Enclosures

cc: Guadalupe Perico

1 GREGORY E. STRICKLAND  
2 District Attorney, County of Kings  
3 Kings County Government Center  
4 1400 West Lacey Boulevard  
5 Hanford, California 93230  
6 Telephone (559) 582-0326  
7 D.A. # M-2013-6120

8 Attorney for Plaintiff

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DEC 16 2013

JEFFREY E. LEWIS, CLERK OF COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF KINGS  
HANFORD DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

GUADALUPE PERICO

Defendant(s)

No. *20130452*

COMPLAINT

The undersigned, verifying upon information and belief, complains that in the County of Kings, State of California, the defendant(s) did commit the following crime(s):

COUNT 1

On or about November 26, 2013, said defendant(s), **GUADALUPE PERICO**, did commit a **MISDEMEANOR**, namely: a violation of Section 148(a)(1) of the Penal Code of the State of California, in that said defendant(s): did willfully and unlawfully resist, delay and obstruct Jonathan Moritz who was then and there a peace officer attempting to and discharging the duty of his/her office and employment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 11, 2013 at Hanford, California.

*Shannon Noel*  
LEMOORE POLICE DEPARTMENT

JL:dmr

**DISCOVERY REQUEST**

Pursuant to Penal Code Section, 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.