

1 Luke Hasskamp (280872)
2 luke.hasskamp@bonalawpc.com
3 Jarod Bona (234327)
4 jarod.bona@bonalawpc.com
5 BONA LAW PC
6 4275 Executive Square, Suite 200
7 La Jolla, CA 92037
8 858.964.4589

9 *Local Counsel for Plaintiff*

10 Jeffrey Redfern
11 (*phv* application forthcoming)
12 jredfern@ij.org
13 Suranjan Sen
14 (*phv* application forthcoming)
15 ssen@ij.org
16 INSTITUTE FOR JUSTICE
17 901 N. Glebe Road, Suite 900
18 Arlington, VA 22203
19 703.682.9320

20 *Counsel for Plaintiff*

21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA

23 Carlos Pena,
24 *Plaintiff,*
25 v.
26 City of Los Angeles, California,
27 *Defendant.*

Case No.:

**Complaint for Compensatory
Damages**

28

INTRODUCTION

1
2 1. This lawsuit seeks compensation, under the United States
3 Constitution, for the intentional destruction of private property for public use by
4 the City of Los Angeles (the “City”).

5 2. Plaintiff Carlos Pena has owned and operated a business called NoHo
6 Printing & Graphics for over 30 years. For the last 13 of those years, he ran his
7 business out of a shop at 5009 Lankershim Boulevard, North Hollywood,
8 California.

9 3. On August 3, 2022, the Los Angeles police were pursuing a fugitive
10 near Mr. Pena’s shop. While attempting to evade the police, the fugitive forced
11 his way inside the shop, violently threw Carlos out the door, and barricaded
12 himself inside. The City’s SWAT team then surrounded Carlos’s shop and
13 ordered him to remain outside.

14 4. Eventually, the SWAT team assaulted the store in an effort to subdue
15 the fugitive. They fired dozens of tear gas cannisters that tore through the walls,
16 doors, roof, and windows. The resulting teargas permeated the entire shop, ruining
17 virtually everything inside and rendering it uninhabitable. The estimated cost of
18 repairs exceeds \$60,000. The damage is excluded from Carlos’s insurance
19 coverage, which like most policies does not cover damage caused by the
20 government. Carlos has repeatedly requested compensation from the City (the
21 first time immediately after the incident, the second time shortly before filing this
22 complaint), to no avail. Unable to afford the repairs to his shop, Carlos’s shop is
23 still closed—nearly one year later. His livelihood—a business that he spent
24 decades building and which he hoped to pass on to his son—has been destroyed.

25 5. When the government intentionally or foreseeably destroys an
26 innocent person’s private property to accomplish a public good, the Fifth
27 Amendment to the United States Constitution requires that the government give
28 just compensation for that damage. Thus, although Carlos does not question the

1 City's officers' decision to destroy his property, he is nevertheless entitled to
2 compensation for that damage.

3 **JURISDICTION AND VENUE**

4 6. Plaintiff brings this civil-rights lawsuit pursuant to the Fifth and
5 Fourteenth Amendments to the United States Constitution and 28 U.S.C. § 1983.

6 7. Under *Knick v. Township of Scott*, 139 S. Ct. 2162, 2179 (2019), this
7 claim is ripe, and Plaintiff is not required to exhaust state remedies prior to filing
8 this action.

9 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 9. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b) because
11 Defendant resides in this District and because a substantial part of the events
12 giving rise to this complaint occurred in this District.

13 **PARTIES**

14 10. Plaintiff Carlos Pena is a citizen of the State of California.

15 11. Defendant City of Los Angeles is a municipal corporation in Los
16 Angeles County, California.

17 **FACTUAL ALLEGATIONS**

18 12. For over 30 years, Plaintiff Carlos Pena has owned and operated a
19 print shop called NoHo Printing & Graphics.

20 13. Carlos printed a wide range of products, including: commercial signs
21 and banners, T-shirts and hats, head shots (for actors and models), business cards,
22 and even simple photocopies.

23 14. He also offered personal graphic design services—for instance,
24 designing logos for businesses.

25 15. He has served a wide range of clients, from large businesses that
26 place repeat orders, to frequent walk-in customers with small orders.

27
28

1 16. Walking around his neighborhood, Carlos can see his work displayed
2 everywhere, in front of businesses and in shop windows, and he is proud of the
3 impact he has had on his community.

4 17. Producing high quality prints on a wide variety of items requires a
5 great deal of expensive equipment, including high volume motorized paper
6 cutters, banner printers, high-volume color printers, and more. Many of Carlos's
7 machines cost tens of thousands of dollars.

8 18. For the last 13 years, until August 3, 2022, Carlos operated his
9 business out of a location in North Hollywood, at 5009 Lankershim Boulevard.

10 19. On the afternoon of August 3, 2022, Carlos was working inside his
11 shop when he heard loud noises outside.

12 20. When Carlos opened his shop door to investigate, he was astonished
13 to see a man running towards him, pursued by U.S. Marshals with weapons drawn.

14 21. Before he could react, the man struck Carlos on the shoulder and
15 tossed him out of the shop, then slammed the door shut.

16 22. The U.S. Marshals ordered Carlos to stay back while they
17 surrounded the building.

18 23. Later, officers from the Los Angeles Special Weapons and Tactics
19 (SWAT) team arrived and took over the siege from the U.S. Marshals.

20 24. Attempting to subdue the fugitive, the City's SWAT team eventually
21 assaulted Carlos's shop.

22 25. As part of that assault, the City's officers fired more than thirty
23 rounds of teargas cannisters into the shop.

24 26. Those cannisters emitted toxic gas that permeated the shop.

25 27. After a total of thirteen hours, the City's officers entered the shop
26 and discovered that the fugitive had somehow escaped.

27 28. The damage to Carlos's shop was (and is) extensive.

28

1 29. The teargas cannisters tore through the walls, roof, and doors of
2 Carlos’s shop.

3 30. The gas itself rendered the shop uninhabitable until a hazmat
4 remediation team could clean it.

5 31. Moreover, the gas ruined virtually everything inside the shop—
6 anything with porous surfaces (e.g., wood, paint, cloth) or motors (e.g.,
7 electronics) was destroyed or seriously damaged.

8 32. All of his inventory was destroyed.

9 33. The specialized commercial printing equipment that was essential to
10 Carlos’s business was both very expensive and very fragile.

11 34. Many of Carlos’s machines could not be repaired. Others could be
12 repaired only at great cost.

13 35. The total cost of the damage—which includes replacing lost
14 inventory, repairing damaged equipment, and replacing destroyed equipment with
15 second-hand models—is at least \$60,000.

16 36. Carlos’s insurance provider told him that the damage would not be
17 covered because his policy—as is common—excludes damage caused by
18 the government.

19 37. Shortly after the assault, in August 2022, Carlos requested
20 compensation from the City.

21 38. The City never formally responded to that request.

22 39. Mr. Pena next contacted the City by telephone around April 2023,
23 but he was simply told “sorry, we’re not liable.”

24 40. Then, in June 2023, Carlos again requested compensation from
25 the City.

26 41. The City did not respond to his request, and Carlos has still not
27 received a formal denial from the City.
28

1 42. Starting in January 2023, Carlos has been able to resume operating
2 his business at a fraction of its prior capacity.

3 43. He operates out of his garage with a single, second-hand printer that
4 a generous individual sold him at a steep discount.

5 44. Without the full suite of functioning equipment that he previously
6 owned, he cannot operate as a full-service print shop.

7 45. He cannot do the same volume of business that he did before because
8 he now must manually do much of the work that his destroyed machines could do
9 automatically (such as collating copies, cutting paper, and printing hats and t-
10 shirts).

11 46. With his current setup, there are some jobs he simply cannot do, such
12 as large banners, envelopes, anything requiring lamination, and shrink wrapping.

13 47. Carlos cannot afford to replace most of his equipment.

14 48. Additionally, because Carlos no longer has a convenient storefront
15 location, he has lost all of his walk-up business, which was once significant.

16 49. Consequently, Carlos has lost months of revenue while his shop is
17 closed, and he is continuing to lose revenue each day his shop remains closed.

18 50. Carlos fears that the longer his business is closed, the harder it will
19 be to reacquire his once-loyal customer base.

20 51. Carlos had hoped to pass his business on to his son eventually.

21 52. Carlos feels that his life's work has been nearly destroyed and that
22 he is starting from scratch.

23 53. Carlos does not question the City's officers' determination that the
24 public good required the destruction of his shop, but he does not believe that he
25 should be left to bear the resulting costs.

26 **INJURY TO PLAINTIFF**

27 54. The City caused approximately \$60,000 of damage to Carlos
28 Pena's property.

1 55. The City’s continued failure to compensate Mr. Pena has caused him
2 to suffer significant lost revenue, and that injury increases each day that Carlos is
3 unable to reopen.

4 **CLAIM**

5 **Count I**

6 **(28 U.S.C. § 1983; Fifth Amendment to the U.S. Constitution:**
7 **Taking of Private Property Without Just Compensation)**

8 56. The Fifth Amendment to the United States Constitution provides that
9 “private property [shall not] be taken for public use, without just compensation.”

10 57. This requirement has been incorporated against the states via the
11 Fourteenth Amendment. *Chi., Burlington, & Quincy R.R. v. City of Chicago*, 166
12 U.S. 226 (1897).

13 58. The Takings Clause, including its Just Compensation provision, is
14 not limited to government action that directly appropriates private property for
15 public use; it also applies to government action that intentionally or foreseeably
16 destroys private property for public use. *Pumpelly v. Green Bay & Miss. Canal*
17 *Co.*, 80 U.S. 166 (1871).

18 59. These provisions ensure that government does not force “some
19 people alone to bear public burdens which, in all fairness and justice, should be
20 borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49
21 (1960).

22 60. Apprehending a dangerous fugitive is in the public interest, and “in
23 all fairness and justice,” the cost of apprehending such fugitives should be borne
24 by the public, and not by an unlucky and entirely innocent property owner.

25 61. The City’s officers intentionally or foreseeably destroyed Mr. Pena’s
26 shop for the public purpose of apprehending a fugitive.

27 62. The City, under color of law, failed to compensate Mr. Pena for that
28 destruction.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

63. The City’s failure to promptly compensate Mr. Pena has caused him ongoing financial injury due to his inability to fully operate his business. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 717 (1999) (“When the government repudiates this duty . . . by denying just compensation . . . it violates the Constitution. In those circumstances the government’s actions are not only unconstitutional but unlawful and tortious as well.”).

64. This constitutional claim is brought under both 28 U.S.C. § 1983 and the incorporated Fifth Amendment itself, which is self-executing. *Knick*, 139 S. Ct. at 2171.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

- A. Compensatory damages to include costs of repairing Mr. Pena’s shop, as well as revenues Mr. Pena has lost (and continues to lose) being unable to re-open his shop.
- B. An award of reasonable attorney’s fees and costs under 28 U.S.C. § 1988 against Defendant.
- C. All further legal and equitable relief as the Court may deem just and proper.

Dated: July 19, 2023

/s/ Luke Hasskamp
Luke Hasskamp
luke.hasskamp@bonalawpc.com
Jarod Bona
jarod.bona@bonalawpc.com
BONA LAW PC
4275 Executive Square, Suite 200
La Jolla, CA 92037
858.964.4589

Local Counsel for Plaintiff

Jeffrey Redfern (phv forthcoming)
jredfern@ij.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Suranjan Sen (*phv* forthcoming)
ssen@ij.org
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, VA 22203
703.682.9320

Counsel for Plaintiff