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Zared Suarez Rodriguez

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

ZARED RODRIGUEZ SUAREZ,)	CASE NO.:
)	
Plaintiff,)	COMPLAINT FOR VIOLATION OF
)	CIVIL RIGHTS UNDER 42 U.S.C. § 1983
v.)	AND RELATED STATE LAW CLAIMS
)	
CITY OF SALINAS, a local governing body,)	DEMAND FOR JURY TRIAL
ZACHARY DUNAGAN, individually, and)	
DOES 1–10,)	
)	
Defendants.)	
)	

Plaintiff, Zared Rodriguez Suarez (“Plaintiff” or “Mr. Suarez”), by counsel, alleges as follows:

INTRODUCTION

This action arises from the unlawful use of force by Salinas police officers against Mr. Suarez, a special needs teacher with no criminal history. On July 20, 2017, no less than five or six officers of the City of Salinas Police Department subjected Mr. Suarez to excessive force and unlawful arrest while he was attempting to leave the California Rodeo Salinas at the Salinas Sports Complex. The acts of the officers, **captured on video**, deprived Mr. Suarez of his rights under the First and Fourth Amendments of the United State Constitution. Mr. Suarez is suing the officers in their individual capacities under § 1983 and related state law causes of action. He

1 also brings this action against the City of Salinas, claiming that it is vicariously liable for the
2 state law torts committed by the officers.

3 **JURISDICTION AND VENUE**

4 1. This action arises under 42 U.S.C. § 1983, conferring jurisdiction upon this Court
5 under 28 U.S.C. §§ 1331, 1343.

6 2. A substantial part of the events or omissions giving rise to Plaintiff's claims
7 occurred in the County of Monterey, California. As a result, 28 U.S.C. § 1391(b) confers venue
8 upon this Court.
9

10 **INTRADISTRICT ASSIGNMENT**

11 3. Pursuant to Civil L.R. 3-2(c) and 3-5, this action shall be assigned to the San Jose
12 Division.
13

14 **PARTIES**

15 4. Plaintiff, Zared Rodriguez Suarez, is a natural person and at all relevant times was
16 a resident of the State of California and a citizen of the United States.

17 5. Defendant, Zachary Dunagan, at all relevant times was employed as a police
18 officer by the City of Salinas in the State of California. At all times mentioned herein, he was
19 acting under the color of state law and in the course and scope of his employment as a City of
20 Salinas Police Officer. Officer Dunagan is being sued in his individual capacity.
21

22 6. The true names of Defendants, Does 1 through 10, are presently unknown to
23 Plaintiff, who, therefore, sues these defendants by such fictitious names. Upon ascertaining the
24 true identifies of Does 1 through 10, Plaintiff will amend his Complaint or seek leave to do so to
25 add the defendants. Plaintiff is informed and believes that each Doe Defendant, at all relevant
26 times, was employed as a police officer by the City of Salinas. At all times mentioned herein,
27 the Doe police officers were acting under color of state law and in the course and scope of their
28 employment. The Doe officers are also being sued in their individual capacities.

1 15. Almost immediately, five or six additional Salinas police officers also seized Mr.
2 Suarez and threw him to the ground.

3 16. While on the ground, Mr. Suarez was beaten by the officers with fists, elbows and
4 a metal ASP baton, as can be seen in the video that captured the incident.

5 17. Officers also dropped from a standing position to their knees onto Mr. Suarez's
6 back and head with the full weight of their bodies.

7 18. Mr. Suarez was placed in handcuffs and taken outside of the venue gates where
8 Office Dunagan sat him down on the curb.

9 19. A little while later, Mr. Suarez was released. He was not issued a citation nor
10 was he charged with a crime.

11 20. At no time did Mr. Suarez resist or obstruct the actions of Salinas police officers.
12 Nor did he engage in any act or omission that could reasonably be construed as insubordinate or
13 confrontational. Mr. Suarez showed complete compliance and submission to all officers
14 involved.

15 21. Defendants' unlawful arrest and improper use of force directly and proximately
16 caused Mr. Suarez to suffer past and future disability, disfigurement and loss of enjoyment of
17 life; past and future physical pain, mental suffering and emotional distress; past and future
18 necessary medical care, treatment and services; and past and future lost wages. The resulting
19 harm to Mr. Suarez included injuries to his neck, shoulder, wrist, face, head and left eye, as well
20 as PTSD, anxiety, panic attacks, depression, embarrassment, loss of self-esteem, night terrors
21 and paranoia.

22 22. Defendants' beating of Suarez was driven by an evil motive or intent, or, at the
23 very least, was engaged in with malice and involved a reckless or callous indifference to
24 Suarez's constitutional rights.

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PROCEDURAL REQUIREMENTS

23. On September 25, 2017, Plaintiff mailed his Claim for Damages form to the Salinas City Clerk’s Office. The Claim met the requirements of the California Tort Claims Act. The City of Salinas rejected Plaintiff’s Claim on May 3, 2018.

FIRST CLAIM FOR RELIEF

**42 U.S.C. § 1983 – Deprivation of Right to Free Speech Under the First Amendment
(Against Officer Dunagan and Doe Defendants, individually)**

24. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 23 as though fully set forth herein.

25. Defendants acted under color of state while engaged in the conduct complained of herein.

26. Mr. Suarez was engaged in a constitutionally protected activity, namely the right to freedom of speech, when he informed an officer (believed to be Officer Dunagan) of the conflicting instructions he had received and requested clarification.

27. The defendant officers’ use of force against Mr. Suarez deprived him of his First Amendment right to freedom of speech. Defendants’ use of force would chill a person of ordinary firmness from continuing to engage in the protected activity.

28. Mr. Suarez’s speech was a substantial and motivating factor in Defendants’ decision to use force against him.

29. Defendants’ conduct was the actual and proximate cause of Mr. Suarez’s injuries.

SECOND CLAIM FOR RELIEF

**42 U.S.C. § 1983 – Excessive Force Under the Fourth Amendment
(Against Officer Dunagan and Doe Defendants, individually)**

30. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 29 as though fully set forth herein.

31. Defendants acted under color of state law while engaged in the conduct complained of herein.

1 32. The use of physical force by Defendants when they beat Mr. Suarez in the exit
2 area constituted a seizure of his person under the Fourth Amendment.

3 33. Defendants' use of force against Mr. Suarez was intentional.

4 34. The force used against Mr. Suarez was not objectively reasonable under the
5 circumstances.

6 35. Defendants' use of excessive force against Mr. Suarez deprived him of his right to
7 be secure in his person against unreasonable seizures as guaranteed by the Fourth Amendment.

8 36. Defendants' conduct was the actual and proximate cause of Mr. Suarez's injuries.

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10 **THIRD CLAIM FOR RELIEF**
11 **42 U.S.C. § 1983 – Unlawful Arrest Under the Fourth Amendment**
12 **(Against Officer Dunagan and Doe Defendants, individually)**

13 37. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 36 as though fully set forth herein.

15 38. Defendants acted under color of state law while engaged in the conduct
16 complained of herein.

17 39. The use of physical force by Defendants when they beat Mr. Suarez and
18 restrained him in handcuffs constituted a seizure of his person under the Fourth Amendment.

19 40. Defendants' use of force against Mr. Suarez was intentional.

20 41. Under the totality of the circumstances and facts known to Officer Dunagan and
21 the Doe officers, no prudent person would have believed that Mr. Suarez had committed a crime.

22 42. Defendants' unlawful arrest of Mr. Suarez deprived him of his right to be secure
23 in his person against unreasonable seizures as guaranteed by the Fourth Amendment.

24 43. Defendants' conduct was the actual and proximate cause of Mr. Suarez's injuries.

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FOURTH CLAIM FOR RELIEF

Cal. Civ. Code § 52.1(b) – Violation of the Bane Act
(Against Officer Dunagan and Doe Defendants, individually)

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3 44. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 43 as though fully set forth herein.

5
6 45. Defendants acted violently and with physical coercion against Mr. Suarez to
7 retaliate against him for having exercised his free speech rights under the First Amendment to
8 the United States Constitution and California State Constitution.

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10 46. The violent acts and physical coercion by Defendants against Mr. Suarez also
11 prevented him from exercising his right to be secure in his person against unreasonable seizures
12 as guaranteed by the Fourth Amendment to the United States Constitution and California State
13 Constitution.

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15 47. Mr. Suarez was harmed, and Defendants' conduct was a substantial factor in
16 causing his harm.

FIFTH CLAIM FOR RELIEF

Assault

(Against Officer Dunagan and Doe Defendants, individually)

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18 48. Plaintiff incorporates by reference the allegations contained in paragraphs 1
19 through 47 as though full set forth herein.

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21 49. Defendants acted, intending to cause harmful or offensive contact to Mr. Suarez.

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23 50. Mr. Suarez reasonably believed that he was about to be touched in a harmful or
24 offensive manner by Defendants.

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26 51. Mr. Suarez did not consent to Defendants' conduct.

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28 52. Mr. Suarez was harmed, and Defendants' conduct was a substantial factor in
causing his harm.

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SIXTH CLAIM FOR RELIEF

Battery

(Against Officer Dunagan and Doe Defendants, individually)

53. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 52 as though fully set forth herein.

54. Defendants touched Mr. Suarez with the intent to harm or offend him when they placed him in a control hold, threw him to the ground, kneed, elbowed and punched him, handcuffed him and struck him with a metal ASP baton.

55. Mr. Suarez did not consent to the touching.

56. Mr. Suarez was harmed and offended by Defendants’ conduct.

57. A reasonable person in Mr. Suarez’s situation would have been offended by the touching.

SEVENTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(Against Officer Dunagan and Doe Defendants, individually)

58. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 57 as though fully set forth herein.

59. Defendants’ conduct toward Mr. Suarez was extreme and outrageous and with reckless disregard of the probability of causing emotional distress.

60. Mr. Suarez suffered severe emotional distress, including PTSD, anxiety, depression, panic attacks, embarrassment, loss of self-esteem, night terrors and paranoia, for which he is treating with a mental health professional currently and has been since the incident.

61. Defendants’ extreme and outrageous conduct was the actual and proximate cause of Mr. Suarez’s emotional distress.

VICARIOUS LIABILITY – CAL. GOV’T CODE § 815.2

(Against City of Salinas)

62. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 61 as though full set forth herein.

1 63. Officer Dunagan and the Doe officers were employees of the City of Salinas at
2 the time they engaged in the conduct that gave rise to this lawsuit.

3 64. The conduct complained of occurred while the defendant officers were on duty
4 and exercising their authority as police officers.

5 65. Defendants' conduct resulted from the use of their authority as police officers.

6 66. Because the defendant officers were acting within the scope of their authority as
7 police officers, the City of Salinas is vicariously liable on Plaintiff's state law claims.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Mr. Suarez demands judgment in his favor and against Defendants, and
11 each of them, jointly and severally as allowed by law, as follows:

12 A. For compensatory damages in an amount no less than \$300,000.00 and according
13 to proof at trial;

14 B. For punitive damages in an amount sufficient to punish and deter according to
15 proof at trial;

16 C. For all other damages as provided by Cal. Civil Code § 52.1 and § 52, including
17 treble damages and an automatic civil penalty of \$25,000.00 to be awarded to Plaintiff.

18 D. For pre-judgment interest pursuant to law;

19 E. For costs and attorney's fees; and

20 F. For such other relief as the Court deems just and proper.

21 Dated: __10/24/18__

PICCUTA LAW GROUP, LLP

23 /s/ C.T. Piccuta

24 Charles Tony Piccuta
25 Attorney for Plaintiff
Zared Suarez

26 **JURY TRIAL DEMAND**

27 Plaintiff, by counsel, pursuant to Fed. R. Civ. P. 38 and Civil L.R. 3-6, demands a trial by
28 jury on all issues so triable.