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Adrian Jilote

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADRIAN JILOTE,)	CASE NO.:
)	
Plaintiff,)	COMPLAINT FOR VIOLATION OF
)	CIVIL RIGHTS UNDER 42 U.S.C. § 1983
v.)	
)	JURY TRIAL DEMANDED
ZACHARY BRICKELL, SAMUEL)	
FIGUEROA, BRYAN FRANKS, DAVID)	
PAYNE, JUSTIN RICHE and CARLEEN)	
VINUM, individually,)	
)	
Defendants.)	
)	

Plaintiff, Adrian Jilote (“Plaintiff” or “Jilote”), by counsel, alleges as follows:

INTRODUCTION

This action arises from the unlawful use of force against a disabled United States Navy veteran, Adrian Jilote, on September 11, 2016, by officers of the Concord Police Department. On that date, under color of state law, the officers subjected Jilote to excessive and unlawful force. The officers later made false reports concerning the incident and wrongfully caused criminal charges to be filed against Jilote. The acts of the officers deprived Jilote of his rights under the First, Fourth and Fourteenth Amendments of the United State Constitution. Jilote is suing the officers in their individual capacities and seeking a judgment for an award of compensatory and punitive damages against each of the officers involved.

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JURISDICTION AND VENUE

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

4 2. A substantial part of the events giving rise to Plaintiff’s claims occurred in the
5 County of Contra Costa, California. As a result, 28 U.S.C. § 1391(b) confers venue upon this
6 Court.

7 **PARTIES**

8 3. Plaintiff, Adrian Jilote (“Jilote”), is a natural person and at all relevant times was
9 a resident of the State of California and a citizen of the United States.

10 4. Each of the following defendants are sued in their individual capacities: Zachary
11 Brickell (“Brickell”), Samuel Figueroa (“Figueroa”), Bryan Franks (“Franks”), David Payne
12 (“Payne”), Justin Riche (“Riche”) and Carleen Vinum (“Vinum”) (collectively “Defendants”).

13 5. At all relevant times, the individual defendants identified in paragraph 4 above,
14 were employed by the City of Concord in the State of California. Specifically, Payne was
15 employed as a community service officer; all other Defendants were employed as police officers.
16 Upon information and belief, all Defendants were residents of the State of California at all
17 relevant times set forth in the Complaint.

18 6. Defendants were acting under color of state law at all relevant times.

19 **STATEMENT OF FACTS**

20 7. In the early hours of September 11, 2016, Concord Police Officers Riche, Franks
21 and Brickell were dispatched to the Hilton Hotel in Concord, California to investigate a possible
22 disturbance involving Jilote.

23 8. When Officer Riche entered the hotel lobby, he saw Jilote pacing and called for
24 Jilote to come and speak with him. Officers Riche and Franks detained Jilote in handcuffs
25 without any physical resistance.

26 9. Officer Riche then placed Jilote under arrest. Officers Brickell and Franks then
27 transported Jilote to the Concord Police Department jail (“Jail”).

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1 10. Offense reports with supplemental reports were authored by Officers Brickell,
2 Franks, Riche, Hoak, Harvey, Vinum and Figueora regarding their interaction with Jilote at the
3 Hilton Hotel and at the Concord Police Department (collectively “Reports”). The allegations set
4 forth in Paragraphs 11-17 are based upon the Reports.

5 11. Jilote was kept in handcuffs during the entire booking process. Jilote allegedly
6 became agitated and referred to Officers Brickell and Franks as “pig cowards,” and “piece of shit
7 pigs.”

8 12. Officers Franks and Brickell then walked Jilote, still in handcuffs, to a cell. Once
9 in the cell, Officer Franks ordered Jilote to his knees. Around this time, Officer Figueroa also
10 entered the cell.

11 13. In the cell, Figueroa began delivering closed-fist blows and elbows to the face and
12 head of Jilote. Officers Figueroa and Franks then forcibly removed Jilote from the cell while
13 Officer Brickell watched and held the cell door open.

14 14. Officer Vinum then participated at this point. When Jilote had been removed
15 from the cell, Officer Vinum grabbed Jilote by his hair and, along with Officers Figueroa and
16 Franks, slammed Jilote to the ground.

17 15. Jilote was in handcuffs while on the ground outside his cell. Officer Vinum, who
18 allegedly injured her right knuckle in the process, placed Jilote in a “figure four” leg lock as the
19 beating continued.

20 16. A fifth officer, Payne, then joined the four officers engaged with Jilote. Officer
21 Payne brought with him a WRAP restraint device. On the night of the incident, Jilote was a
22 disabled veteran who was recovering from back, knee and clavicle surgeries. The beating he
23 suffered due to the actions of the Defendants, would necessitate multiple additional surgeries and
24 leave him debilitated. However, Defendants still decided to place him in the WRAP device.

25 17. Jilote’s resulting injuries were so severe that he was immediately taken by
26 ambulance to the emergency room at John Muir Medical Center in Concord. Jilote was forced to
27 wait in the WRAP restraint device for the ambulance to arrive.
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1 18. Defendants then intentionally caused false reports to be made to corroborate each
2 other's version of events, mislead prosecutors, retaliate against Jilote for exercising his free
3 speech rights and to cover up the wrongful assault and battery of Jilote. The Report charged
4 Jilote with violations of California Penal Code 148(a) (Obstructing/Resisting a Peace Officer)
5 and 243.1 (Battery on a Custodial Officer).

6 19. The facts falsely reported by Defendants indicated that Jilote had committed the
7 crimes of resisting/obstructing a peace officer and battery on a custodial officer and that the force
8 used against Jilote was reasonable in response to his resistance.

9 20. On or about October 28, 2016, a Criminal Complaint was filed against Jilote,
10 charging him with resisting, obstructing or delaying a peace officer, in violation of Penal Code §
11 148(a)(1).

12 21. Defendants' false reports played an active and material role in causing Jilote to be
13 criminally prosecuted under P.C. § 148(a)(1).

14 22. In September 2017, Jilote was tried for the alleged violation of P.C. § 148(a)(1).
15 A jury returned a verdict in Jilote's favor, finding him not guilty of the charge.

16 23. Jilote was a sailor in the United States Navy and a Gulf War era veteran from
17 1998–2002. During his service, Jilote's body was subjected to a tremendous amount of physical
18 stress, which has had a lasting effect on his physical condition. At the time of the beating by
19 Defendants, the Department of Veterans Affairs had determined Jilote to be disabled because of
20 PTSD and lumbar degenerative disk disease. In the years leading up to Defendants' assault on
21 Jilote, he had undergone four back surgeries. At the time of the subject-incident, he was still in
22 recovery and treating with a physical therapist. Jilote also had problems with his knees and was
23 recovering from knee surgery when the Officers attacked him. Further, because of a condition
24 that required left-clavicle surgery, Jilote's left arm and shoulder were in a weakened state when
25 the events occurred that give rise to this lawsuit.

26 24. Defendants' conduct directly and proximately caused Jilote to suffer extensive
27 injuries and damages, which included, but are not limited to: a fractured right orbital, a crushed
28 nasal cavity (that required surgical repair), a torn right bicep (which needed to be surgically re-

1 attached), exacerbation of a spinal lumbar condition (requiring lumbar surgery with hardware
2 and anticipated future surgeries), exacerbation of a knee injury (requiring pain management shots
3 and physical therapy), exacerbation of a previous clavicle injury, concussion, closed head injury,
4 cuts, bruises, abrasions, exacerbation of PTSD from Jilote's military service, among other things.
5 Defendants' conduct also directly and proximately caused Jilote to suffer past and future
6 disability, disfigurement, loss of enjoyment of life, past and future mental, physical and
7 emotional pain and suffering, and past and future reasonable and necessary medical care,
8 treatment and services.

9 **FIRST CLAIM FOR RELIEF**

10 **42 U.S.C. § 1983 – Deprivation of Right to Free Speech Under the First Amendment**
11 **(Against All Defendants)**

12 25. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 24, as set forth above.

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

16 27. Jilote's speech at the Jail was a constitutionally protected activity, namely the
17 right to freedom of speech protected by the First Amendment.

18 28. Defendants' use of force against Jilote at the Jail deprived Jilote of his First
19 Amendment right to freedom of speech. Defendants' use of force would chill a person of
20 ordinary firmness from continuing to engage in the protected activity.

21 29. Jilote's speech was a substantial and motivating factor in Defendants' decision to
22 use the force described above against Jilote in retaliation for his exercise of free speech.

23 30. The beating of Jilote at the Jail did not advance a legitimate correctional goal.

24 31. Jilote was harmed, and Defendants' conduct was a substantial factor in causing
25 the harm.
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SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 – Malicious Prosecution in Derogation of Plaintiff’s
Constitutional Rights Under the First and Fourth Amendments
(Against All Defendants)

32. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 31, as set forth above.

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

34. Defendants were actively involved in causing Jilote to be prosecuted under Penal Code § 148(a)(1). Defendants fabricated evidence, misled prosecutors, falsely reported the September 11, 2016 incident and committed perjury during Jilote’s trial on this charge.

35. Jilote was found not guilty by a jury at trial on the charge of violating P.C. § 148(a)(1).

36. No reasonable person in Defendants’ circumstances would have believed there were grounds for causing Jilote to be arrested and prosecuted for violating P.C. § 148(a)(1).

37. Defendants acted primarily for a purpose other than to bring Jilote to justice for violating P.C. § 148(a)(1). Defendants’ primary purpose was to cover up their own deliberate misconduct, including retaliation against Jilote for the exercise of his free speech rights and the unlawful use of force against him. Their actions were willful, wanton, malicious and oppressive.

38. Jilote was harmed by Defendants, including by the deprivations of his First and Fourth Amendment rights and the embarrassment, including but not limited to, loss of reputation and public ridicule from having to defend himself against the criminal charge.

39. Defendants’ conduct was a substantial factor in causing Jilote’s harm.

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THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 – Excessive Force Under the
Fourteenth Amendment’s Due Process Clause
(Against All Defendants)

40. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 39, as set forth above.

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

42. The use of force by Defendants against Jilote as a pretrial detainee at the Jail on September 11, 2016, deprived Jilote of his due process rights under the Fourteenth Amendment of the United States Constitution.

43. Defendants’ use of force against Jilote was purposeful or knowing.

44. The force used against Jilote was objectively unreasonable. It amounted to punishment of a pretrial detainee, was not rationally related to a legitimate governmental action or was excessive in relation to that purpose.

45. Jilote was harmed, and Defendants’ conduct was a substantial factor in causing the harm.

JURY TRIAL DEMAND

Plaintiff, by counsel, pursuant to Fed. R. Civ. P. 38, demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Jilote demands judgment in his favor and against Defendants, and each of them, jointly and severally as allowed by law, as follows:

A. For compensatory damages in an amount of no less than \$3,000,000.00 and according to proof at trial;

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

C. For pre-judgment interest pursuant to law;

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- D. For costs and attorney's fees; and
- E. For such other relief as the Court deems just and proper.

Dated: September 10, 2018

PICCUTA LAW GROUP, LLP

/s/ *C.T. Piccuta*

Charles Tony Piccuta
Attorney for Plaintiff
Adrian Jilote