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MAR 27 2013
Richard W. Winking
Clerk, U.S. District Court
Northern District of California

n/a

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LLOYD BEARDSLEY,
Plaintiff,

Case No:
CV 13-01378

vs.

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

COUNTY OF SANTA CLARA,
SANTA CLARA COUNTY
DEPARTMENT OF CORRECTIONS,
CORRECTIONS OFFICER
HAMMOND, CITY OF SAN JOSE,
OFFICER RAMIREZ, ID NO. 2860,
AND DOES 1-50.
Defendants.

1. 42 U.S.C. § 1983 et seq.
(Excessive Force)
2. 42 U.S.C. § 1983 et seq.
(Unlawful Policies, Customs
or Habits)

E-filing

EJD
HRL

Plaintiff alleges:

JURISDICTION

1. This is a lawsuit for money damages and is brought pursuant to 42 U.S.C. §1983, et seq., and the Fourth and Fourteenth Amendments to the United States Constitution, for personal injuries and violation of constitutional rights by defendants COUNTY OF SANTA CLARA, SANTA CLARA COUNTY DEPARTMENT OF CORRECTIONS, CORRECTIONS OFFICER HAMMOND, CITY OF SAN JOSE, OFFICER RAMIREZ, ID NO. 2860, AND DOES 1-50.

1 Jurisdiction is founded on 28 U.S.C. Section 1331 and 1343 and the aforementioned statutory
2 and Constitutional provisions.

3 **GENERAL ALLEGATIONS**

4 2. Plaintiff is and was at all material times mentioned herein a resident of the County of
5 Santa Clara, State of California.

6 3. At all times mentioned herein defendants DOES 1 through 50 were employees of
7 defendant COUNTY OF SANTA CLARA and/or THE CITY OF SAN JOSE and in doing the
8 acts hereinafter described acted within the course and scope of their employment. The acts of all
9 defendants and each of them, were also done under the color and pretense of the statutes,
10 ordinances, regulations, customs and usages of the State of California. The defendant named
11 above and DOES 1 through 50 are sued individually and in their capacities as employees of the
12 CITY OF SOUTH SAN FRANCISCO.
13

14 4. Defendant COUNTY OF SANTA CLARA and/or THE CITY OF SAN JOSE are
15 public entities existing under the laws of the State of California and are the employers of the
16 individual defendants mentioned above.

17 5. The true names or capacities whether individual, corporate, associate or otherwise, of
18 defendants named herein as DOES 1 through 20 are unknown to Plaintiff, who therefore sues
19 said defendants by said fictitious names. Plaintiff will amend this complaint to show said
20 defendants' true names and capacities when the same have been ascertained. Plaintiff is informed
21 and believes and thereon alleges that all defendants sued herein as DOES are in some manner
22 responsible for the acts and injuries alleged herein.
23

24 ///

25 ///

26 ///

1 6. Plaintiff is informed and believes and therefore alleges that at all times mentioned
2 herein each of the defendants was the agent, servant and/or employee of each of the remaining
3 defendants and were, in doing the acts herein alleged, acting within the course and scope of this
4 agency and/or employment and with the permission, consent and authority of their co-defendants
5 and each of them, and each is responsible in some manner for the occurrences hereinafter
6 alleged; and that Plaintiff's injuries were proximately caused by the actions of each.

7 **FACTUAL ALLEGATIONS**

8
9 7. On March 24, 2011, at approximately 9:00 PM San Jose police officer RAMIREZ, ID
10 NO. 2860, arrested Plaintiff LLOYD BEARDSLEY for driving under the influence.

11 8. While booking Mr. BEARDSELY at the facility run by the SANTA CLARA
12 COUNTY DEPARTMENT OF CORRECTIONS, CORRECTIONS OFFICER HAMMOND,
13 without justification, grabbed Mr. BEARDSELY hand and yanked it up behind his back and
14 fractured Mr. BEARDSELY'S WRIST. At the time, Mr. BEARDSELY was still in the custody
15 and control of OFFICER RAMIREZ who did nothing to prevent the physical abuse by
16 HAMMOND.

17 **FIRST CAUSE OF ACTION**
18 **[42 U.S.C. § 1983 Constitutional Violations-**
19 **Unlawful Search and Seizure/Excessive Force**
20 **Against All Defendants]**

21 9. Plaintiff realleges and incorporates by reference each and every allegation contained in
22 Paragraphs 1 through 8 above as though fully set forth herein.

23 20. As a result of the acts alleged above, Plaintiff was unlawfully seized by Defendants
24 DOES 1 through 50. Thus, Plaintiff suffered an unlawful search and seizure in violation of his
25 constitutional rights as guaranteed by the Fourth Amendment to the United States Constitution.
26 As a result, Plaintiff is entitled to damages pursuant to Title 42 U.S.C. S 1983, et seq. in an
27 amount to be proven at trial.

28 10. As a further result of the acts alleged above, Defendants and DOES 1 through 50 used
unnecessary, unjustified and excessive force upon Plaintiff. This unreasonable and excessive

1 force constituted an unlawful seizure, in violation of Plaintiff's constitutional rights as guaranteed
2 by the Fourth Amendment to the United States Constitution. As a result, Plaintiff is entitled to
3 damages pursuant to Title 42 U.S.C. S 1983 in an amount to be proven at trial.

4 11. As a proximate result of the acts alleged above, Plaintiff was injured in mind and
5 body. Plaintiff suffered emotional distress due to the arrest and the humiliation that he felt. As a
6 further result, Plaintiff claims physical damages due to the assault and battery by DOES
7 Defendants.

8 12. In committing the acts alleged above, the Defendants, including DOES 1 through 50
9 acted maliciously and/or were guilty of a wanton and reckless disregard for the rights, feelings
10 and safety of Plaintiff, and by reason thereof Plaintiff is entitled to exemplary and punitive
11 damages in an amount to be proven at trial.

12
13 **SECOND CAUSE OF ACTION**

14 **[42 U.S.C. S 1983 Constitutional Violations via Unlawful Policies, Customs or**
15 **Habits Against the COUNTY OF SANTA CLARA, SANTA CLARA COUNTY**
16 **DEPARTMENT OF CORRECTIONS, CITY OF SAN JOSE]**

17 13. Plaintiff realleges and incorporates by reference each and every allegation contained
18 in Paragraphs 1 through 12 above as though fully set forth herein.

19 14. On information and belief Plaintiff alleges that defendants COUNTY OF SANTA
20 CLARA and THE CITY OF SAN JOSE, through their Department of Corrections and Police
21 Department, have unlawful policies, customs and habits of improper and inadequate hiring,
22 training, retention, discipline and supervision of its highway patrol officers, including the
23 individual defendants named herein, legally causing the constitutional deprivations, injuries and
24 damages alleged in the First Cause of Action. As a result, Plaintiff is entitled to damages
25 pursuant to Title 42 U.S.C. 1983, in an amount to be proven at trial.

26 15. Further, on information and belief Plaintiff alleges that defendants COUNTY OF
27 SANTA CLARA and THE CITY OF SAN JOSE, through their Department of Corrections and
28

1 Police Department, has an unlawful policy, custom or habit of permitting or condoning the
2 unnecessary and unjustified use of force by their employees, including DOE 1 through 20 of
3 permitting or condoning acts of unreasonable force related thereto by its officers, including the
4 individual defendant named herein. Defendants COUNTY OF SANTA CLARA and THE CITY
5 OF SAN JOSE, have further unlawful policies, customs and habits of inadequate training,
6 supervision and disciplining of errant employees. Said unlawful policies, customs and habits
7 proximately caused the constitutional deprivations, injuries and damages alleged in the First and
8 Second Causes of Action. As a result, Plaintiff is entitled to damages pursuant to Title 42 U.S.C.
9 § 1983, in an amount to be proven at trial.

11 17. As a proximate result of the unlawful policies, customs and habits alleged above,
12 Plaintiff suffered the injuries alleged in paragraph 22 above and thus is entitled to general and
13 compensatory damages in an amount to be proven at trial.

14 **STATUTE OF LIMITATIONS HAS BEEN TOLLED**

15 18. The complaint has been filed timely for the following reasons: the statute has been
16 tolled pending the outcome of the criminal prosecution arising from the arrest and detention of
17 Mr. BEARDSELY which gives rise to this lawsuit pursuant to California Government Code §
18 945.3; and finally, the statute has been tolled against the individual defendants for each day they
19 have been absent from the state of California Code of Civil Procedure § 351.

20 **PRAYER FOR RELIEF**


21 WHEREFORE, Plaintiff prays for judgment against defendants and each of them as
22 follows:
23

- 24 1. For general and compensatory damages against defendants and each of them in an
25 amount to be proven at trial;
- 26 2. For exemplary and punitive damages defendants and each of them, in an amount
27 to be proven at trial;

1 3. For costs of suit herein, including reasonable attorneys fees; and

2 4. For such other and further relief as the Court deems proper.

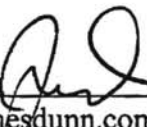
3 Dated: 03-24-2013

4 s/James E. Dunn 
jamesdunn@jamesdunn.com
5 Attorney for LLOYD BEARDSLEY

6 **Demand for Jury Trial**

7 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands
8 trial by jury in this action for all appropriate issues so triable.
9

10 Dated: 03-24-2013

11 s/James E. Dunn 
jamesdunn@jamesdunn.com
12 Attorney for LLOYD BEARDSLEY