

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

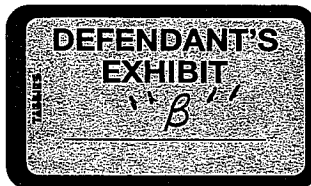
MILAGROS ELIZONDO)	
)	Case No. 06 C 4843
Plaintiff,)	
)	Judge Holderman
v.)	
)	Magistrate Judge Brown
OFFICER BRIAN BRENDAI,)	
individually, and)	
OFFICER MICHAEL DUBINKA,)	
individually,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT

NOW COMES the Plaintiff, MILAGROS ELIZONDO, by and through her attorneys, GREGORY E. KULIS AND ASSOCIATES, and complaining against Defendant, OFFICER BRIAN BRENDAI, individually, and Defendant OFFICER MICHAEL DUBINKA, individually, states as follows:

COUNT I – EXCESSIVE FORCE

1. This action is brought pursuant to the Laws of the United States Constitution, specifically 42 U.S.C. §1983 and §1988, and the laws of the State of Illinois, to redress deprivations of the Civil Rights of the Plaintiff and accomplished by acts and/or omissions of the Defendants committed under color of law.
2. Jurisdiction is based on Title 28 U.S.C. §1331 and §1343.
3. The Plaintiff, MILAGROS ELIZONDO, was at all relevant times a United States Citizen and a permanent resident of the State of Illinois.



4. The Defendant, OFFICER BRIAN BRENDA, was at all relevant times, a duly appointed police officer of the Summit Police Department and was acting within his scope of employment and under color of law.

5. The Defendant, OFFICER MICHAEL DUBINKA, was at all relevant times, a duly appointed police officer of the Summit Police Department and was acting within his scope of employment and under color of law.

6. On May 21, 2006, the Plaintiff was at a bar in the vicinity of 63rd & Archer in Summit, Illinois.

7. A fight started in the bar and then carried outside when police arrived.

8. The Plaintiff was not committing any crime or breaking any laws.

9. Without just cause or provocation, Defendant OFFICER BRENDA rushed at the Plaintiff to grab and push her.

10. Without just cause or provocation, Defendant OFFICER BRENDA used pepper spray or mace on the Plaintiff.

11. As a result, the Plaintiff was injured.

12. The force used by Defendant OFFICE BRENDA was unprovoked, unnecessary and excessive.

13. Said actions of Defendant OFFICER BRENDA were intentional, willful and wanton.

14. Said actions of Defendant OFFICER BRENDA violated Plaintiff MILAGROS ELIZONDO's Fourth Amendment Rights of the United States Constitution and were in violation of said rights protected by 42 U.S.C.§1983.

15. As a direct and proximate consequence of said conduct of Defendant OFFICER BRENDA, the Plaintiff, MILAGROS ELIZONDO, suffered a violation of her constitutional rights, fear, emotional anxiety, humiliation, pain, suffering and monetary loss.

WHEREFORE, the Plaintiff, MILAGROS ELIZONDO, prays for judgment in her favor and against Defendant, OFFICER BRENDA, individually, in an amount in excess of FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000.00) in compensatory damages and FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) in punitive damages, plus attorney's fees and costs

COUNT II - FALSE ARREST

16. The Plaintiff, MILAGROS ELIZONDO, hereby realleges and incorporates her allegations of paragraphs 1-12 of Count I as her respective allegations of paragraph 16 of Count II as though fully set forth herein.

17. In order to cover up any use of excessive force, Defendant OFFICER BRENDA and Defendant OFFICER DUBINKA placed the Plaintiff, MILAGROS ELIZONDO, under arrest.

18. The Plaintiff was not breaking any laws or committing any crimes.

19. Said actions of the Defendants violated the Plaintiff's Fourth Amendment rights of the United States Constitution and were in violation of said rights protected by 42 U.S.C. §1983.

20. The actions of the Defendants were intentional, willful and wanton.

21. As a direct and proximate consequence of said conduct of the Defendants, the Plaintiff, MILAGROS ELIZONDO, suffered a violation of her constitutional rights, emotional anxiety, humiliation, fear, pain, suffering and monetary loss.

WHEREFORE the Plaintiff, MILAGROS ELIZONDO, prays that this Honorable Court grant judgment against Defendant, OFFICER BRENDA, individually, and against Defendant, OFFICER DUBINKA, individually, for compensatory damages in an amount in excess of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) and TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) punitive damages, plus attorney's fees and costs.

COUNT III – MALICIOUS PROSECUTION

22. The Plaintiff, MILAGROS ELIZONDO, hereby realleges and incorporates her allegations of paragraphs 1-12 of Count I as her respective allegations of paragraph 22 of Count III as though fully set forth herein.

23. The Defendant, OFFICER BRENDA, proceeded with the criminal charges against the Plaintiff knowing they were false.

24. The criminal charges were resolved in favor of the Plaintiff.

25. As a result thereof, the Plaintiff suffered emotional anxiety, fear and monetary loss.

WHEREFORE, the Plaintiff, MILAGROS ELIZONDO, prays for judgment in her favor and against the Defendant, OFFICER BRENDA, individually, in an amount in excess of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) in compensatory damages and TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00)

in punitive damages, plus attorney's fees and costs.

JURY DEMAND

The Plaintiff, MILAGROS ELIZONDO, hereby requests trial by jury.

Respectfully submitted,

/s/ David S. Lipschultz

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