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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 DAVID ACEVES,

12 Plaintiff,

13 vs.

14 CITY OF SAN DIEGO;
15 and DOES 1-10,

16 Defendants.

17 Case No.: '16CV0865 BAS DHB

18 **COMPLAINT FOR DAMAGES**
19 **BASED ON:**

- 20 **1. 42 U.S.C. § 1983**
(Excessive Force)
- 21 **2. NEGLIGENCE**

22 **DEMAND FOR JURY TRIAL**

23 This lawsuit arises from law enforcement's use of force against an unarmed
24 person. Plaintiff alleges:

25 **JURISDICTION AND VENUE**

26 1. This is a lawsuit for money damages under 42 U.S.C. § 1983, et seq.,
27 and the Fourth Amendment to the United States Constitution, for the violations of
28

1 Plaintiff's constitutional rights by officers of the San Diego Police Department.
2 Jurisdiction therefore arises under 28 U.S.C. §§ 1331 and 1343.

3 2. Plaintiff also asserts a state law claim of negligence. The Court has
4 supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367(a).

5 3. Venue in this Court is proper under 28 U.S.C. § 1391(b). The
6 incident giving rise to the claims in this lawsuit took place in the County of San
7 Diego.

8 4. Plaintiff submitted his administrative claim to the City of San Diego;
9 the claim was denied on January 21, 2016.

10 **PARTIES**

11 5. Plaintiff is a 25-year-old man who currently resides in San Antonio,
12 Texas. At the time of the incident, Plaintiff was in the County of San Diego for a
13 professional convention.

14 6. At all times relevant to this lawsuit, Defendants DOES 1-10 were
15 employees of Defendant City of San Diego and performed the relevant acts within
16 the course and scope of their employment as police officers. Defendants DOES 1-
17 10 performed these acts under the color and pretense of the statutes, ordinances,
18 regulations, customs and usages of the State of California. Defendants DOES 1-10
19 are sued in their individual capacities (as to the claims under section 1983) and as
20 employees of the City of San Diego (as to the state law claim).

21 7. Defendant City of San Diego is a public entity existing under the laws
22 of the State of California and was the employer of Defendants DOES 1-10 at all
23 times relevant to this lawsuit.

24 8. The true names and capacities of Defendants named as DOES 1
25 through 10 are currently unknown to Plaintiff. Thus, Plaintiff sues these
26 Defendants by fictitious names. Plaintiff will amend this Complaint to identify the
27 true names when ascertained. Plaintiff is informed, believes, and thereon alleges
28

1 that all Defendants sued as DOES are in some manner responsible for the acts and
2 injuries giving rise to this lawsuit.

3 **FACTUAL ALLEGATIONS**

4 9. During the early morning of August 15, 2015, Plaintiff was
5 disoriented and traveling on foot through a canyon park in La Jolla.

6 10. In the canyon, Plaintiff encountered Defendants DOES 1-10, officers
7 of the San Diego Police Department.

8 11. Plaintiff was unarmed and not wearing any clothes.

9 12. Without need or justification, Defendants DOES 1-10 intentionally
10 released a police dog to attack Plaintiff.

11 13. The police dog bit Plaintiff on the right leg, inflicting serious injuries.

12 14. Plaintiff was transported to the hospital.

13 15. Doctors diagnosed Plaintiff with a “large degloving injury” and
14 “multiple lacerations” to his right leg. This included “gross contamination” of the
15 wounds, which required multiple procedures and treatments over the course of
16 more than two weeks in the hospital. Based on the serious nature of the wounds,
17 the recovery process is ongoing. Plaintiff has incurred substantial medical bills,
18 missed work, and experienced emotional distress from the incident.

19
20 **FIRST CAUSE OF ACTION**

21 **Against Defendants DOES 1-10 (individual capacity)**

22 **Excessive Force – 42 U.S.C. § 1983**

23 16. Plaintiff realleges and incorporates by reference the paragraphs stated
24 above.

25 17. Based on these allegations, Defendants DOES 1-10 used
26 unreasonable, unjustified, and excessive force on Plaintiff. Further, Defendants
27 DOES 1-10 used this excessive force under color of law, which constituted an
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1 unlawful seizure in violation of Plaintiff's rights under the Fourth Amendment to
2 the U.S. Constitution.

3 18. As a proximate result of this excessive force, Plaintiff suffered the
4 damages set forth in Paragraph 15. Thus, Plaintiff is entitled to compensatory
5 damages, under 42 U.S.C. § 1983, in an amount to be proven at trial.

6 19. Plaintiff is further entitled to costs and reasonable attorney's fees
7 under 42 U.S.C. § 1988.

8 20. In committing the acts alleged above, Defendants DOES 1-10 acted
9 maliciously and were guilty of a wanton and reckless disregard for Plaintiff's
10 rights. As a result, Plaintiff is entitled to punitive damages in an amount to be
11 proven at trial.

12
13 **SECOND CAUSE OF ACTION**

14 **Against All Defendants**
15 **Negligence – California Law**

16 21. Plaintiff realleges and incorporates by reference the paragraphs stated
17 above.

18 22. Based on these allegations, at least one employee of Defendant City of
19 San Diego was negligent in breaching the reasonable duty of care owed to
20 Plaintiff. Defendants DOES 1-10 were acting within the scope of their
21 employment as law enforcement officers of the San Diego Police Department.

22 23. This negligence directly and proximately caused the harm identified
23 in Paragraph 15. Thus, Plaintiff is entitled to compensatory damages in an amount
24 to be proven at trial.

25 24. Further, as set forth above, Defendants DOES 1-10 acted with
26 unnecessary, cruel, and despicable conduct and in wanton disregard for the civil
27 rights, health, and safety of Plaintiff. As a result, Plaintiff is entitled to recover
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1 exemplary and punitive damages, against Defendants DOES 1-10, in an amount to
2 be proven at trial.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 6 1. Compensatory damages, including both general and special damages;
- 7 2. Punitive damages against Defendants DOES 1-10;
- 8 3. Attorney fees under 42 U.S.C. section 1988(b);
- 9 4. Costs, including expert fees, incurred in this lawsuit;
- 10 5. Prejudgment interest; and
- 11 6. Other relief that the Court deems proper.

12
13
14 Dated: April 11, 2016

Respectfully submitted,
15 /s/Thomas E. Robertson
16 Thomas E. Robertson (SBN 262659)
17 Attorney for Plaintiff

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury trial as to all causes of action.

20
21
22 Dated: April 11, 2016

Respectfully submitted,
23 /s/Thomas E. Robertson
24 Thomas E. Robertson (SBN 262659)
25 Attorney for Plaintiff