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11 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 MICHAEL GAMMARIELLO,

No. 1:20-cv-2583

13 Plaintiff,

COMPLAINT

14 v.

(42 U.S.C. 1983 – POLICE
EXCESSIVE USE OF FORCE;
15 FALSE ARREST; MALICIOUS
16 PROSECUTION; VIOLATION OF
THE BANE ACT)

17 CONAN MOORE; HUMBOLDT DEPUTY
MENDES; and HUMBOLDT COUNTY

18 Defendant.

DEMAND FOR JURY TRIAL

19 **JURISDICTION AND VENUE**

20 1. This is a civil action for damages and attorney's fees, for police excessive use of
force under 42 U.S.C. 1983; and for a state-law claim under the Bane Act.

21 2. Jurisdiction for the federal claims exists under 28 U.S.C. 1331 and 1343(a)
22 because this action arises under the laws of the United States.

23 3. Jurisdiction for the state claims exists under 28 U.S.C. 1367.
24

1 4. Venue is proper in this judicial district pursuant to the provisions of 28 U.S.C.
2 1391(b) in that this is a civil action wherein jurisdiction is not founded on diversity of citizenship
3 and plaintiff's claims arise within this judicial district.

4 **PARTIES**

5 5. At all relevant times, plaintiff was a resident of New York and was present in
6 California, as described herein.

7 6. Defendants Conan Moore and Mendes were at all times relevant deputies with the
8 Humboldt County Sheriff's Department, and are sued in their individual capacity.

9 7. Moore's and Mendes' acts which are the subject of this lawsuit were undertaken in
10 the regular course of their employment for the Humboldt County Sheriff's Department.

11 8. Humboldt County is sued only for vicarious liability for the Bane Act claim under
12 state law.

13 **FACTUAL BACKGROUND**

14 9. On June 17, 2019, while on duty as a Humboldt County Sheriff's Deputy,
15 defendant Conan Moore assaulted Mr. Gammariello, and then arrested him, as described in more
16 detail herein.

17 10. Defendant Mendes, while on duty as a Humboldt County Sheriff's Deputy,
18 assisted Moore with the assault and arrest, as described in more detail herein.

19 11. Shortly after Mr. Gammariello filed a tort claim notice (a copy of which is
20 attached, as Exhibit A), he received a letter from the Humboldt County District Attorney's office,
21 advising him that he was being charged with Resisting, Delaying or Obstructing a Public/Peace
22 Officer; and Riot/Rout: Remaining After Warning to Disperse. The letter was dated
23 approximately eight months after his arrest.
24

1 12. Mike Gammariello is an independent journalist who spends 48 weeks a year
2 traveling around the United States documenting activists' work through video and print media.
3 His body of journalism work includes the Standing Rock Water Protector demonstrations and the
4 protests against the Trump inauguration.

5 13. On June 17, 2019, Mr. Gammariello was arrested on public land near Rio Dell, in
6 northern California, while acting as an observer and video journalist at a long-standing protest of
7 logging of an area containing significant old growth. Proposed logging and herbicide use by
8 Humboldt Redwood Company (HRC) within the Mattole watershed has for years raised
9 significant and wide-spread controversy. Community efforts to protect the Mattole forests from
10 industrial logging and herbicide use have been ongoing since the 1990s. The watershed's forests
11 are home to many threatened and rare species. Local residents and other interested activists had
12 taken numerous routes to try to stop or modify the logging/herbicide project, by writing to state
13 regulators and disputing the "eco-friendly" label HRC puts on its redwood lumber.

14 14. These citizens have also for years exercised their First Amendment right to
15 peacefully protest the logging of these forests. In June 2019 protesters began demonstrating in
16 the Rainbow Ridge area, where HRC had started logging after the state approved HRC's plan to
17 log and spray herbicide on 380 acres within a 560-acre parcel within the Mattole River
18 watershed.

19 15. Arriving about two weeks into the protest, Mr. Gammariello was at the protest
20 site to work on a long-form video piece about the Mattole old-growth forest logging controversy.
21 When arrested, Mr. Gammariello was wearing his photo credentials labeled "United Nations,"
22 issued to him by the International Native Tradition Interchange (INTI), which has consultative
23 status with the U.N. Economic and Social Council.

1 16. On the evening of June 16, 2019, Mr. Gammariello was standing nearby, but not
2 with, the group of about 15 protesters. A private security guard hired by HRC, standing directly
3 in front of HRC's gate, told the group that if they stood about four feet away from him, they
4 would be on the public land and not on private land, and would therefore not be trespassing. The
5 group complied and stood even more than four feet away, clearly on public land. Mr.
6 Gammariello stood even further back, in order to videotape the protest.

7 17. In the middle of the night, about 3:45 a.m. on June 17, the security guard said he
8 was "calling my friends in the sheriff's office." A sheriff's vehicle immediately arrived, and
9 proceeded to emit an extremely loud, high-pitched noise from some device.

10 18. At this time, the protesting group and Mr. Gammariello were all well inside of the
11 public property line, on the side of a public roadway. The sheriff's vehicle, which was parked
12 several yards away from the gate, was between Mr. Gammariello and the gate. It was therefore
13 physically impossible for Mr. Gammariello to have been less than four feet from the gate.

14 19. Right after the obnoxious noise, Sheriff's Deputy Conan Moore quickly
15 approached Mr. Gammariello, bypassing protesters who were closer to the HRC gate. Mr.
16 Gammariello clearly stated "Press," showing his credentials, but Moore responded "I don't care,"
17 and, without warning of any sort, grabbed Mr. Gammariello's camera, and knocked him to the
18 ground, face first. Moore then rested his weight on top of Mr. Gammariello with his knee in the
19 back of Mr. Gammariello's neck and head. Defendant Mendes kneeled on Mr. Gammariello's
20 legs while Moore handcuffed Mr. Gammariello.

21 20. The assault on Mr. Gammariello resulted in one fractured rib and several other
22 bruised ribs; a large contusion to his right eye socket; a three-centimeter laceration on his left
23 upper lip, contusions on his nose, and loosening of a tooth. For weeks he had pain with normal
24

1 breathing.

2 21. Mr. Gammariello explained his press status several times while being arrested.

3 22. The police arrested Mr. Gammariello first. Then, again bypassing other
4 protesters, they grabbed and arrested two other people who were filming the protest and (now)
5 the arrests.

6 23. The only other person the police arrested was a person who was barricaded up
7 high in a tripod device, and that was several hours later. They did not arrest the dozen or so
8 other protesters who were not filming.

9 24. Mr. Gammariello was held in jail for five or six hours.

10 25. The Sheriff's Department charged Mr. Gammariello with two misdemeanors –
11 "Trespass/Refuse to Leave"; and "Obstruct/Resist Public Officer" – and an infraction, "Minimum
12 Speed Law Impeding Traffic," and signed an Agreement to Appear in court July 29, 2019 (six
13 weeks later), and was therefore required to stay in California until that date, causing him to lose
14 work opportunities.

15 26. The court later told Mr. Gammariello that those charges were not yet scheduled
16 for court, because there were no charges from the D.A. yet, because there was no finalized police
17 report yet.

18 27. Mr. Gammariello went to the Adventist Emergency Room after being released
19 from jail. The ER documented all of the injuries listed above, noting that even 2 1/2 days after
20 the assault, he still had two centimeters of swelling in his eye socket, five of his ribs were tender,
21 and he had pain with normal breathing.

22 28. Months later, soon after Mr. Gammariello submitted a tort claim notice, he
23 received a letter February 18, 2020, from the Humboldt County District Attorney, stating he was
24

1 charged with three misdemeanors: 1) Resisting; 2) Delaying or Obstructing a Public/Peace
2 Officer; and 3) Riot/Rout: Remaining After Warning to Disperse.

3 29. Now, more than six months after the assault, Mr. Gammariello continues to have
4 pain in his ribs at times, for example when picking up heavy items; and when he has even mild
5 respiratory symptoms.

6 30. As a result of the individual defendants' actions, plaintiff was injured, and some
7 of those injuries are permanent.

8 31. As a result of these actions, plaintiff suffered pain, emotional distress, medical
9 bills, and loss of income.

10 32. Plaintiff is entitled to a jury trial.

11 **FIRST CLAIM FOR RELIEF**
12 **(Violation of Constitutional Right to Substantive Due Process**
13 **Excessive Force - Seizure)**
14 **(42 U.S.C. § 1983, Fourth and Fourteenth Amendments to the U.S. Constitution)**
15 **(Individual Defendants)**

16 33. The foregoing paragraphs are incorporated herein by reference.

17 34. By their actions as described herein, the individual defendants used force on
18 plaintiff that was not objectively reasonable in light of the facts and circumstances confronting
19 them.

20 35. By their actions as described herein, the individual defendants, acting under color
21 of statute, ordinance, regulation, custom, or usage, subjected plaintiff to the deprivation of rights,
22 privileges, or immunities secured by the Constitution and laws, namely, plaintiff's liberty interest
23 in freedom from excessive force.

24 36. As a direct and proximate result of the actions and omissions described in this
complaint, plaintiff sustained actual damages as described herein, to his noneconomic damage in

1 an amount to be ascertained according to proof at trial.

2 37. As a direct and proximate result of the actions and omissions described in this
3 complaint, plaintiff incurred economic damages for medical bills, lost income, and other
4 expenses; all to his damage in an amount to be ascertained according to proof at trial.

5 38. The actions of the individual defendants, as described in this complaint, were
6 malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious
7 disregard of, the harm that would be inflicted upon plaintiff; and as a result of said intentional
8 conduct, plaintiff is entitled to punitive damages against the individual defendants, in an amount
9 sufficient to punish them and to deter others from like conduct.

10 39. Plaintiff was required to hire an attorney to represent him in this matter and is
11 entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

12 40. Plaintiff is entitled to a jury trial.

13 **SECOND CLAIM FOR RELIEF**
14 **(Violation of Constitutional Right to Substantive Due Process**
15 **False Arrest and Imprisonment - Seizure)**
16 **(42 U.S.C. § 1983, Fourth and Fourteenth Amendments to the U.S. Constitution)**
17 **(Individual Defendants)**

18 41. The foregoing paragraphs are incorporated herein by reference.

19 42. By their actions as described herein, in arresting plaintiff without a warrant,
20 probable cause, or other constitutionally adequate lawful provision, the individual defendants,
21 acting under color of statute, ordinance, regulation, custom, or usage, subjected plaintiff to the
22 deprivation of his liberty interest, which constitutes rights, privileges, or immunities secured by
23 the Constitution and laws.

24 43. As a direct and proximate result of the false arrest, plaintiff sustained actual
damages, including loss of his liberty; interference with his employment; mental and emotional

1 suffering; worry; fear; shock; and anxiety; all to his damage in an amount to be ascertained
2 according to proof at trial.

3 44. The actions of the individual defendants, as described in this complaint, were
4 malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious
5 disregard of, the harm that would be inflicted upon plaintiff. As a result of said intentional
6 conduct, plaintiff are entitled to punitive damages against the individual defendants, in an
7 amount sufficient to punish them and to deter others from like conduct.

8 45. Plaintiff was required to hire an attorney to represent him in this matter and is
9 entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

10 46. Plaintiff is entitled to a jury trial.

11 **THIRD CLAIM FOR RELIEF**
12 **Malicious Prosecution in Violation of 42 U.S.C. § 1983**
13 **(Fourth and Fourteenth Amendments)**
14 **(Individual Defendants)**

15 47. The foregoing paragraphs are incorporated herein by reference.

16 48. There was no probable cause to charge Mr. Gammariello with the crimes he has
17 been charged with, for one or more of the following reasons:

- 18 a. The assembly was not unlawful.
- 19 b. Mr. Gammariello was not lawfully warned to disperse.
- 20 c. Mr. Gammariello did not resist, delay, or obstruct a public/peace officer.

21 49. One or both of the individual defendants maliciously or recklessly made false
22 reports to the prosecutor, and those reports were a proximate cause of the prosecutor filing
23 charges against Mr. Gammariello.

24 50. Although the charges are still pending, plaintiff files in order to protect his rights
and avoid any statute of limitations issues, and requests that this claim be held in abeyance

1 pending the outcome of the criminal matter.

2 51. If the criminal matter resolves in plaintiff's favor, the prosecution of Mr.
3 Gammariello violates Mr. Gammariello's rights under the Fourth and Fourteenth Amendments.

4 52. As a direct and proximate result of the false arrest, plaintiff sustained actual
5 damages, including loss of his liberty; interference with his employment; mental and emotional
6 suffering; worry; fear; shock; and anxiety; all to his damage in an amount to be ascertained
7 according to proof at trial.

8 53. The actions of the individual defendants, as described in this complaint, were
9 malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious
10 disregard of, the harm that would be inflicted upon plaintiff. As a result of said intentional
11 conduct, plaintiff are entitled to punitive damages against the individual defendants, in an
12 amount sufficient to punish them and to deter others from like conduct.

13 54. Plaintiff was required to hire an attorney to represent him in this matter and is
14 entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

15 55. Plaintiff is entitled to a jury trial.

16 **FOURTH CLAIM FOR RELIEF**
17 **Retaliation in Violation of 42 U.S.C. § 1983**
18 **(Fourth and First Amendments)**
19 **(Individual Defendants)**

20 56. The foregoing paragraphs are incorporated herein by reference.

21 57. At all times relevant to this cause of action, the individual defendants acted under
22 color of state law.

23 58. The individual defendants were aware Mr. Gammariello was a reporter and was
24 video recording the June 16-17, 2019, protest and police encounter.

59. Retaliatory animus for Mr. Gammariello's exercise of his constitutionally

1 protected right to observe protests as well as his right to report on such events were a
2 substantially motivating factor in the individual defendants' use of excessive force, false arrest,
3 booking into jail, and malicious prosecution.

4 60. The individual defendants engaged in the retaliatory conduct willfully,
5 maliciously, in bad faith, and in reckless disregard of Mr. Gammariello's protected constitutional
6 rights.

7 61. Mr. Gammariello's right to exercise First Amendment freedoms without facing a
8 retaliatory use of force and false arrest is a clearly established right.

9 62. The actions of the individual defendants would chill or silence a person of
10 ordinary firmness from future First Amendment activities.

11 63. The individual defendants' desire to cause the chilling effect were a but-for cause
12 of the individual defendants' actions.

13 64. Even if there was probable cause to arrest (which plaintiff disputes, as discussed
14 *supra*), in the alternative, the excessive force, arrest, and booking were retaliatory and therefore
15 violated Mr. Gammariello's constitutional rights.

16 65. As a direct and proximate cause of the unlawful actions of the individual
17 defendants, Mr. Gammariello's rights under the First and Fourth Amendments were violated.

18 66. The individual defendants' retaliatory acts against Mr. Gammariello caused the
19 economic and noneconomic damages alleged herein.

20 67. The actions of the individual defendants, as described in this complaint, were
21 malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious
22 disregard of, the harm that would be inflicted upon plaintiff. As a result of said intentional
23 conduct, plaintiff are entitled to punitive damages against the individual defendants, in an
24

1 amount sufficient to punish them and to deter others from like conduct.

2 68. Plaintiff was required to hire an attorney to represent him in this matter and is
3 entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

4 69. Plaintiff is entitled to a jury trial.

5 **FIFTH CLAIM FOR RELIEF**
6 **Violation of the Bane Act, Civil Code § 52.1 (California State Law)**

7 70. The foregoing paragraphs are incorporated herein by reference.

8 71. By their acts, omissions, customs, and policies, the individual defendants, acting
9 individually and in concert/conspiracy, as described herein, and with threat, intimidation, and/or
10 coercion, violated plaintiffs' rights under California Civil Code § 52.1 and the following clearly
11 established rights under the United States Constitution and California Constitution and law:

- 12 a. Plaintiff's right to be free from an excessive force, as secured by the
13 Fourth and Fourteenth Amendments to the U.S. Constitution.
- 14 b. Plaintiff's right to protection from bodily restraint, harm, or personal
15 insult, as secured by California Civil Code § 43.
- 16 c. Plaintiff's right to be free from retaliation for First Amendment activity.
- 17 d. Plaintiff's right to be free from unreasonable seizure as a pretrial detainee,
18 as secured by the Fourth and Fourteenth Amendments to the U.S.
19 Constitution and the California Constitution, Article 1, Sections 7 and 13.
- 20 e. The right to enjoy and defend life and liberty, and pursue and obtain
21 safety, happiness, and privacy, as secured by the California Constitution,
22 Article 1, Section 1.

23 72. The individual defendants' violations of plaintiffs' constitutional rights, in and of
24 themselves, constitute violations of the Bane Act.

1 73. The threat, intimidation, and coercion described herein were not necessary or
2 inherent to any legitimate and lawful law enforcement activity.

3 74. Further, all of the individual defendants' violations of duties and rights, and
4 coercive conduct described herein, were volitional acts; none was accidental or merely negligent.

5 75. Further, each of the individual defendants violated plaintiff's rights with the
6 specific intent and purpose to deprive them of their enjoyment of those rights and of the interests
7 protected by those rights.

8 76. Defendant Humboldt County is vicariously liable for the individual defendants'
9 actions, pursuant to Cal. Gov. Code § 815.2.

10 77. As a direct and proximate result of defendants' violation of California Civil Code
11 § 52.1 and of plaintiff's rights under the United States and California Constitutions and law,
12 plaintiff sustained the injuries and damages alleged herein, and against each defendant named in
13 this Claim is entitled to relief as discussed herein, and punitive damages against the individual
14 defendants, including all damages and penalties allowed by California Civil Code §§ 52 and 52.1
15 and California law, three times actual damages, and attorneys' fees.

16 78. Plaintiff is entitled to a jury trial.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff requests a jury trial and demands judgment in his favor and
19 against defendants for the relief sought herein; for his reasonable costs and attorney fees; and for
20 any other relief deemed appropriate by the court.

21 Respectfully submitted April 13, 2020.

22 /s/ Marianne Dugan
23 Marianne Dugan, Oregon State Bar # 932563,
24 *pro hac vice* applied for
 CIVIL LIBERTIES DEFENSE CENTER

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