

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-CV-02645

JOHN VAZQUEZ,

Plaintiff,

v.

FOREST ANDERSEN, Timnath Police Officer, in his individual capacity, and
ANDREW TOPE, Timnath Police Officer, in his individual capacity.

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff John Vazquez, by and through his attorney Sarah Schielke The Life & Liberty Law Office, respectfully alleges for his *Complaint and Jury Demand* as follows:

I. INTRODUCTION

1. This is an action for damages and other relief against the Defendants pursuant to 42 U.S.C. § 1983.
2. On October 7, 2017, Defendant officers Forest Andersen and Andrew Tope of the Timnath Police Department violated Plaintiff's constitutional rights under the Fourth, Fourteenth and First Amendments to the U.S. Constitution.
3. Plaintiff, peaceably walking along the road, was stopped and harassed by the Defendants. When he called Defendant Officer Andersen a bully for this harassment, Defendant Andersen retaliated by grabbing Mr. Vazquez's arm and twisting it behind

his back to throw him in handcuffs, without warning. Defendant Andersen then, with Defendant Tope's assistance, began slamming the body of the fully restrained and compliant Mr. Vazquez upon the hood of his patrol car, while also painfully pushing Mr. Vazquez's handcuffed hands and arms away from his body, nearly dislocating his shoulders. Defendant Andersen then concocted false allegations of assault to cover up his own assault and false arrest of Mr. Vazquez.

4. Defendant Officer Tope, Andersen's partner, materially participated in the unlawful arrest and assaults of Mr. Vazquez and throughout also violated his duty to intervene to stop Defendant Andersen.
5. In his misguided attempt to conceal his own civil rights violations upon Mr. Vazquez, Defendant Andersen then made numerous false statements and allegations in official documents to ensure the initiation and continuation of a wrongful and malicious criminal prosecution of Mr. Vazquez.
6. The Defendants' actions caused Plaintiff Mr. Vazquez to endure pain, suffering, humiliation, emotional distress, damage to his reputation, attorneys fees, and other damages.

II. JURISDICTION AND VENUE

7. This action arises under the Constitution and laws of the United States and the State of Colorado, including Article III, section 1 of the United States Constitution and Title 42 U.S.C. § 1983.
8. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331 and 1343(a)(3).

9. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201.
10. Jurisdiction supporting Plaintiff's claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.
11. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado or were directed at individuals within the State of Colorado.

III. PARTIES

12. Plaintiff, John Vazquez, is a citizen of the United States and was at all times relevant hereto a resident of and domiciled in the State of Colorado. He resides at 106 Rock Bridge Court, in Windsor, State of Colorado.
13. Defendant Forest Andersen is a natural person, and was at all times relevant to this Complaint duly appointed and sworn as a police officer for the Town of Timnath in Timnath, Colorado. At all times relevant hereto Defendant Andersen was acting under color of law, including when his actions were in violation of the Constitution and laws of the State of Colorado and the Constitution and laws of the United States of America. Officer Andersen is a named Defendant in his individual capacity.
14. Defendant Andrew Tope is a natural person, and was at all times relevant to this Complaint duly appointed and sworn as a police officer for the Town of Timnath in Timnath, Colorado. At all times relevant hereto Defendant Tope was acting under color of law, including when his actions were in violation of the Constitution and laws of the

State of Colorado and the Constitution and laws of the United States of America.
Officer Tope is a named Defendant in his individual capacity.

IV.FACTUAL ALLEGATIONS

15. Mr. Vazquez is the former Mayor of Windsor (2008-2016). He had a very successful tenure there, having been re-elected in 2012 and helping the town rebuild after it was hit by a tornado in 2008. He is a past member of the Weld County Board of Education (VP of the RE-4 district), has served on a variety of boards and commissions, and owns a consulting firm, JCB Engineering, where he provides services to the Town of Milliken. He has worked very hard over the past decades to become a renowned and involved member of highly-respected reputation within the Northern Colorado community.
16. On October 7, 2017, however, this reputation was destroyed by the willful and wanton actions of Defendant Officer Forest Andersen of the Timnath Police Department, assisted by Defendant Officer Andrew Tope.
17. Following dinner with his wife and children in Fort Collins, Mr. Vazquez decided to walk home to his residence in Windsor. On that walk home, near the 6600 Block of E Harmony Road, he encountered Defendant Officer Andersen who was sitting in his parked patrol vehicle. As he walked past Andersen's patrol car on the opposite side of the street, Mr. Vazquez asked for a ride. Officer Andersen ignored him. Mr. Vazquez continued on his way.

18. Shortly after this, Defendant Andersen overheard his partner, Defendant Officer Tope, call out over the radio that he was going to contact an individual matching Mr. Vazquez's description about a mile or so down the road. Defendant Andersen rushed to the scene.
19. While Defendant Andersen was en route, Defendant Tope pulled his marked patrol SUV up behind Mr. Vazquez on the dark and deserted road, and flipped on his overhead red and blue lights. He drove up behind Mr. Vazquez within a few feet and yelled out his window that Mr. Vazquez needed to "stop walking and come talk to me." Mr. Vazquez complied with Defendant Tope's order. Defendant Tope put his patrol car in park and got out to engage Mr. Vazquez on the side of the road. Within moments, Defendant Andersen arrived. He jumped out of his car and took over the encounter.
20. Defendant Andersen immediately began interrogating and antagonizing Mr. Vazquez, ordering him around, telling him where to stand and where he could and could not position his hands while talking. He demanded that Mr. Vazquez tell him where he was coming from, where he had had dinner, where he was going, and more. These were all questions Mr. Vazquez had already answered with Officer Tope. He informed Defendant Andersen of this and told him he was feeling harassed by the repeated, aggressive questioning. Defendant Andersen did not relent. Mr. Vazquez told Defendant Andersen that he was being rude and abusing his authority as an officer. Mr. Vazquez explained that he had not done anything wrong to warrant such treatment, and that he had just been peacefully walking along the road until stopped against his will

by the Defendant Officers. He told them he was the former Mayor of Windsor and added that Chief Klimek (Chief of the Windsor Police Department) was one of his friends. Defendant Andersen, growing increasingly aggressive in his exchanges with Mr. Vazquez, warned in a threatening tone, “Oh yeah? Well, you’re not in Windsor. This is Timnath.”

21. Mr. Vazquez called Defendant Andersen a bully. Defendant Andersen demanded Mr. Vazquez’s identification. While getting his license out of his wallet to comply with this order, Mr. Vazquez expressed annoyance that Defendant Andersen had ignored him when he asked for a ride earlier, but now was taking the time to hassle him on the side of the road, and stated as such, and told him again he was being a bully. In response, Defendant Andersen sneered at Mr. Vazquez, and, pointing at the side of his patrol vehicle, stated, “it says Police, not Taxi Service, buddy.” In response, Mr. Vazquez, while handing Defendant Andersen his driver’s license, stated to him in a mocking tone: “you’re right, Officer Andersen. It doesn’t say ‘taxi service.’”

22. Hearing this, Defendant Andersen suddenly grabbed Mr. Vazquez’s arm, twisted it behind his back in a painful wristlock maneuver, and put him in handcuffs. As he did this, he said: “You’re going to jail, Mayor.” Mr. Vazquez – and Defendant Tope – simultaneously responded: “For what?!” Defendant Andersen didn’t reply.

23. This was an excessive use of force upon someone for whom there was no probable cause to arrest. It startled and terrified Mr. Vazquez. It also caused him to experience

acute physical pain, which Defendant Andersen himself acknowledged (under oath in court) is to be expected with that maneuver.

24. Prior to grabbing Mr. Vazquez's arm, twisting it painfully, and then handcuffing him, Defendant Andersen did not tell Mr. Vazquez he was going to grab him. He did not tell Mr. Vazquez he was going to handcuff him. He did not ask Mr. Vazquez to turn around and be handcuffed, nor did he order him to submit to being seized and handcuffed. He instead unilaterally elected to undertake this unreasonable seizure by needless painful force.

25. Defendant Tope watched his partner Defendant Andersen assault and unlawfully arrest Mr. Vazquez. He watched Defendant Andersen subject Plaintiff to this excessive force and unwarranted painful contact. He did nothing to intervene. Instead, when Defendant Andersen next began walking Mr. Vazquez over to the patrol cars, Defendant Tope held one of Mr. Vazquez's arms and walked with them, assisting and participating in the unlawful seizure.

26. As Defendant Andersen and Defendant Tope marched Mr. Vazquez's handcuffed and compliant person over to the hood of Defendant Tope's patrol car, Mr. Vazquez, terrified, but assuming that there would be cameras on the patrol cars or on the officers recording audio and video, said aloud: "I am not resisting." Defendant Andersen slammed Mr. Vazquez's upper body down over the hood of the patrol car. Mr. Vazquez exclaimed: "That's going to look good for the cameras!" Defendant Andersen pulled

back on Mr. Vazquez's handcuffed arms and slammed him down onto the car again, and replied: "We don't have cameras in Timnath."

27. Terrified, Mr. Vazquez pleaded with Officer Tope to intervene. Officer Tope continued to maintain one hand on or near Mr. Vazquez, assisting Defendant Andersen, while simultaneously pretending to look off in the other direction so that Defendant Andersen could continue his unchecked assault on Mr. Vazquez.

28. During this portion of the interaction, Defendant Andersen slammed Mr. Vazquez's upper body down onto the hood of Tope's patrol car multiple times. He made no effort to protect Mr. Vazquez's head from impacting the car when he did this, and violently impact the car it did, causing Mr. Vazquez great pain. He at one point jammed his knee between Mr. Vazquez's legs, into his crotch, causing him more pain.

29. While assaulting him on the hood of the patrol car, in the act of slamming Mr. Vazquez's body down, Defendant Officer Andersen would wrench and push upwards on Mr. Vazquez's handcuffs, forcibly separating Plaintiff's fully extended/straight handcuffed arms up away from his body and towards the sky. Mr. Vazquez, who had pre-existing injuries to both of his shoulders, screamed out in pain. It felt like Defendant Andersen was trying to dislocate his shoulders from his body. It was a level of pain that Mr. Vazquez will never forget.

30. Defendant Andersen repeated this painful maneuver on Mr. Vazquez three times. Mr. Vazquez, terrified he would soon be killed, kept his upper body limp on the hood of the car while Defendant Andersen thrashed it about, and he begged Defendant Tope for

help. “I am not resisting,” Mr. Vazquez repeated to Defendant Tope. “Please! Make him stop!” Defendant Tope continued pretending to stare in the other direction.

31. Defendant Andersen later falsely claimed that he was conducting a patdown for weapons of Mr. Vazquez while slamming him on the hood of the patrol car and doing this painful maneuver. Even if this were true, the contact was unlawful as Defendant Andersen did not possess reasonable suspicion to believe that Mr. Vazquez was in possession of any weapon.

32. Defendant Tope failed to intervene and failed to request command authority to terminate Defendant Andersen’s unlawful conduct throughout this entire encounter. Defendant Tope’s presence actively facilitated Defendant Andersen’s violation of Plaintiff’s civil rights. Defendant Tope’s involvement also enabled the continuation of Defendant Andersen’s violation of Plaintiff’s civil rights.

33. Defendant Andersen then put Mr. Vazquez in his patrol car to drive Mr. Vazquez to the Larimer County Detention Center. Mr. Vazquez continued to be fully compliant, offering no physical resistance whatsoever; a fact which both Defendant officers admitted under oath in their trial testimony.

34. Despite this, at the Larimer County Detention Center, Defendant Andersen falsely alleged Mr. Vazquez to be an uncooperative arrestee, ensuring that Mr. Vazquez would continue to be mistreated and further traumatized while detained, as the procedure for booking detainees deemed “physically combative or uncooperative” is much more invasive, painful and humiliating than the usual booking process for normal detainees.

Mr. Vazquez was forced to strip down, be invasively searched, and was painfully restrained while booked into the jail. Put in an orange jumpsuit with the other inmates, Mr. Vazquez was then kept in prison for three days. Mr. Vazquez was so traumatized, terrified and humiliated while in jail that he was unable to eat or sleep for the entire three days.

35. Also while in jail, numerous deputies recognized Plaintiff Mr. Vazquez as the former Mayor of Windsor and made comments revealing their shock that he was now incarcerated as a charged felon. Those officers told other officers in other local police departments and by the time Mr. Vazquez was released he was horrified, but not surprised, to learn that nearly all of his friends and colleagues in law enforcement and government had already heard about his arrest.

36. Defendant Andersen continued his abuse of power and perpetuation of lies to cover up his own misconduct by in fact charging Mr. Vazquez with felony Second Degree Assault on a Peace Officer. Accordingly, for the first 24 hours Mr. Vazquez was in jail, he was held based solely on Defendant Andersen's false word and without any probable cause determination made by a judge.

37. Defendant Andersen then drafted and submitted an Affidavit in Support of Warrantless Arrest to Larimer County Court Judge Thomas Lynch containing his knowingly false representations about Mr. Vazquez to ensure that his false arrest and imprisonment of Mr. Vazquez was perpetuated and continued. The next day, on October 8, 2017, at 6:20 pm, Judge Lynch, relying on those false assertions of assault in the affidavit, signed off

on the probable cause determination, ensuring that Mr. Vazquez would continue to be wrongfully incarcerated.

38. Three days later, on October 10, 2017, bond was set and Mr. Vazquez was finally able to bond out of jail. Based on the false representations of Defendant Andersen, a protection order was entered against Mr. Vazquez, listing Defendant Andersen as the protected party. This compounded Mr. Vazquez's humiliation and anxiety.
39. The Larimer County District Attorney's office, relying solely on the false assertions of Defendant Andersen in his report and other official documents, maintained the prosecution.
40. The district attorney's office told Mr. Vazquez to accept a plea offer to a misdemeanor charge, or they would re-file the case in County Court charging him with Third Degree Assault on a Peace Officer, which is an extraordinary risk class 1 misdemeanor that carries a mandatory two-year county jail sentence. Again relying solely on Defendant Andersen's false assertions, the district attorney's office added additional charges against Mr. Vazquez for Resisting Arrest and Obstructing a Peace Officer. Mr. Vazquez, knowing he had assaulted no one and that he was the only real victim of this encounter, refused to plead to any of the charges. In the face of this extraordinary sentencing risk, he summoned up the courage to take the case to trial.
41. Defendant Andersen has been a police officer for decades and is not naïve to the criminal justice processes. He knew that the events that followed his false allegations

and averments regarding Mr. Vazquez (see, e.g., ¶¶34-40, supra) would be the natural consequences of those actions.

42. Beyond the physical harm, pain and suffering caused by Defendant Andersen's assault, Mr. Vazquez incurred enormous expense, stress and psychological trauma while awaiting trial. He was forced to submit to continued monitoring by the state as a standard requirement of his bond. He suffered through embarrassment, trauma and emotional anguish in his community and social circles as word spread and more and more of those he knew and respected learned that he had been charged with felony assault on a peace officer.

43. Mr. Vazquez was also forced during this time to come to grips with the reality that his political career and aspirations – regardless of trial outcome – were now destroyed. He also experienced great difficulty sleeping and going about day-to-day life while having to live with the constant fear that he might be wrongly convicted due to Defendant Andersen's lies and have to go to jail for a mandatory two-year minimum. As a result, during the long eight months between when he was charged and when the case went to trial, Mr. Vazquez plunged into a depression. He also during this time remained constantly fearful of retribution from Defendant Andersen.

44. Defendant Andersen's and Tope's actions as a unit also caused Mr. Vazquez to feel completely unsafe anywhere he went in his community. He lived (and lives) in a state of shock and given his previous role in and great trust for those in positions of power, law enforcement and government, he had (and continues to have) extreme difficulty

processing the great betrayal of this trust he experienced at the hands of the Defendant officers.

45. At the trial held on May 21, 2018 (Larimer County case number 17CR2534), Officer Tope – apparently not eager to wade in any deeper with the mess that Officer Andersen had made – testified that he never saw Mr. Vazquez’s elbow (or any other body part) impact Officer Andersen, despite standing mere inches away. Defendant Tope further testified that, throughout his encounter with Mr. Vazquez, he did not see him violate any criminal law. He also testified that Mr. Vazquez, while plainly frustrated with the officers during the encounter, was nevertheless fully compliant with their orders and commands at all times. Defendant Andersen, on the other hand, continued with his lies, causing Mr. Vazquez more stress and trauma.

46. After hearing the Defendant Officers’ testimony, Larimer County Court Judge Joshua Lehman threw out the Resisting Arrest charge before it even got to the jury. The jury then acquitted Mr. Vazquez of all the remaining charges after just minutes of deliberation.

47. The fact that the jury did not believe Defendant Andersen’s lies does little to undo the damage that those lies and his physical assaults had already done. Mr. Vazquez knows that the fact he was charged with a felony assault on a police officer alone, regardless of the outcome of the trial, has ruined his political career. He has also seen the prominent members of community organizations withdraw from regular contacts with him. The jury verdict also did nothing to assuage the physical pain and psychological

trauma Mr. Vazquez continues to experience to this day from Defendant Andersen's assault.

48. Plaintiff was injured financially, both in the expenses for his legal defense, and through lost future income/employment opportunities, as a result of the Defendants' unlawful conduct.

49. Plaintiff experienced physical pain, trauma and suffering as a result of the Defendants' unlawful conduct and violations of his civil rights.

50. Plaintiff also suffered impairment of reputation, personal humiliation, mental anguish, and suffering by virtue of the unlawful actions of these Defendants as set forth herein, for which he is entitled to compensation.

51. All of Defendant Officers' Andersen's and Tope's actions as described herein were taken under color of state law.

52. Because of the Defendant Officers' actions as described herein, Mr. Vazquez is afraid to drive through or even visit the Town of Timnath.

53. Because of the Defendant Officers' actions as described herein, Mr. Vazquez will never again feel safe in the community or in any interaction with law enforcement officers.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – 4th Amendment Violation – False Arrest/Imprisonment (Arrest Without Warrant or Probable Cause)
(against Defendant Andersen)

54. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

55. When Defendant Andersen suddenly and without warning grabbed Mr. Vazquez's arm, twisted it backwards using a painful rear wristlock maneuver, and handcuffed him, he effected a warrantless seizure and arrest of Mr. Vazquez, without probable cause (or even reasonable suspicion) for such seizure, in violation of the Fourth Amendment.
56. Defendant Andersen knew that Mr. Vazquez had committed no arrestable offense, and that he possessed no probable cause for any criminal offense, and yet he arrested and unlawfully seized him anyway, with deliberate indifference to Mr. Vazquez's rights under the Fourth Amendment to the U.S. Constitution.
57. Defendant Andersen's sudden seizure and assault of Mr. Vazquez caused him to experience great physical pain and terror. The experience of this event caused and continues to cause Mr. Vazquez trauma and emotional distress.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th Amendment Violation – Excessive Force
(against Defendant Andersen)

58. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.
59. When Defendant Andersen suddenly and without warning grabbed Mr. Vazquez's arm, twisted it backwards using a painful rear wristlock maneuver, and handcuffed him, this was an assault upon Mr. Vazquez's person, employing excessive force, in violation of the Fourth Amendment.

60. No officer would consider Defendant Andersen's sudden and unannounced deployment of painful force upon Mr. Vazquez to have been reasonable or justified under the circumstances.

61. Defendant Andersen effected this assault and injury to Mr. Vazquez with deliberate indifference to Mr. Vazquez's rights under the Fourth Amendment to the U.S. Constitution.

62. Defendant Andersen's sudden seizure and assault of Mr. Vazquez caused him to experience great physical pain and terror. The experience of this event caused and continues to cause Mr. Vazquez trauma and emotional distress.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 – 4th Amendment Violation – Excessive Force and Unlawful Search

(against Defendants Andersen and Tope)

63. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

64. When Defendant Andersen marched Mr. Vazquez's handcuffed person over to the hood of Tope's patrol car and began slamming his body and head down upon it, this was an assault and deployment of excessive force, in violation of the Fourth Amendment.

65. When Defendant Andersen put his hands all over Mr. Vazquez's body after slamming it on the hood several times, in a claimed patdown for weapons, it was an unlawful and unreasonable search in violation of the Fourth Amendment.

66. When Defendant Tope assisted in standing next to Mr. Vazquez with a hand on him or near him while Defendant Andersen effected this assault and unlawful search, he was a material participant in the constitutional violation.
67. It would have been apparent to any reasonable officer on scene that the force being used by Defendant Andersen on the fully restrained Mr. Vazquez was excessive and unnecessary.
68. It would have been apparent to any reasonable officer on scene that there existed no legal justification for the invasive search of Mr. Vazquez's person.
69. The Defendants effected this assault and injury to Mr. Vazquez with deliberate indifference to Mr. Vazquez's rights under the Fourth Amendment to the U.S. Constitution.
70. The Defendants' assault of Mr. Vazquez re-aggravated painful pre-existing shoulder injuries that he had, causing him to suffer acute pain and swelling in both shoulders for several weeks afterward.
71. The Defendants' assault of Mr. Vazquez upon the hood of the patrol car and intrusive physical contact all over his person while assaulting him caused him to experience great physical pain and terror. Defendant Andersen's repeated deliberate forced separation upwards of Mr. Vazquez's handcuffed hands and arms from his body caused him particularly excruciating pain. The experience of this event caused and continues to cause Mr. Vazquez trauma and emotional distress.

FOURTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th Amendment Violation – False Arrest/Imprisonment (Arrest Without Warrant or Probable Cause)
(against Defendants Andersen and Tope)

72. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

73. The actions of Defendants as described herein, while acting under color of state law, intentionally deprived Mr. Vazquez of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to be free from unlawful seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. § 1983, in that Mr. Vazquez was arrested without a warrant and without probable cause to believe he had committed any offense.

74. Defendants Andersen and Tope knew that Mr. Vazquez had committed no arrestable offense, that they possessed no probable cause for any criminal offense, and they arrested him anyway, with deliberate indifference to Mr. Vazquez's rights under the Fourth Amendment to the U.S. Constitution.

75. Defendant Andersen falsified his report, claiming that Mr. Vazquez had deliberately assaulted him with his elbow (despite being fully restrained and faced away from Defendant Andersen) to ensure that Plaintiff would be prosecuted for a felony offense he had not committed.

76. Defendant Andersen caused Plaintiff to be arrested without probable cause or a warrant, and his false statements in his report caused Plaintiff to be wrongly imprisoned, and

thereafter wrongly subjected to criminal prosecution. Defendant Andersen's actions were done with malice and caused Plaintiff damages.

77. Defendant Tope failed to intervene and failed to request command authority to terminate Defendant Andersen's unlawful conduct and wrongful charging of Mr. Vazquez. Instead, Defendant Tope pretended he had not seen Defendant Andersen's assault and elected not to report to his supervisor Defendant Andersen's assault and wrongful charging of Mr. Vazquez. Defendant Tope's knowing refusal to intervene to curb the abusive and fraudulent actions of his partner actively facilitated the continued violations of Plaintiff's civil rights.

78. Defendants' conduct proximately caused injuries, damages, and losses to Mr. Vazquez.

FIFTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – Violation of Fourteenth Amendment (Due Process)/Fourth Amendment – Failure to Intervene
(against Defendant Tope)

79. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

80. Defendant Officer Tope had numerous extended realistic opportunities during Defendant Andersen's unlawful seizure, assaults, false arrest and malicious prosecution of Mr. Vazquez to stop the violations.

81. For example, when Defendant Andersen suddenly grabbed Mr. Vazquez's arm, applied a painful wristlock maneuver, and handcuffed him, Defendant Tope knew this was an unlawful arrest without probable cause or a warrant. He knew this was an unconstitutional seizure in violation of the Fourth Amendment. He knew this seizure

had also just been effected via excessive and unnecessary force, also in violation of the Fourth Amendment. He could have intervened at this time to stop the continuation of this assault and unlawful seizure (which did so continue, as described in detail above), but elected not to.

82. As Defendant Andersen's partner and the only other officer on scene with the ability and opportunity to stop the constitutional violations, Defendant Tope had an affirmative duty to intervene and do so.

83. Defendant Officer Tope knew, or had reason to know, that Defendant Andersen's actions with regard to Mr. Vazquez as set forth herein were plain and deliberate violations of Mr. Vazquez's civil rights.

84. Defendant Tope's failure to intervene to stop Defendant Andersen's unlawful arrest and use of excessive force on Mr. Vazquez proximately caused and contributed to Plaintiff's injuries, damages and losses suffered after Defendant Andersen's initial seizure and assault.

85. Defendant Tope knew of the false arrest and malicious prosecution that was going to be pursued by Defendant Andersen upon Mr. Vazquez after he spoke with Defendant Andersen right before Andersen drove Mr. Vazquez to the jail. Despite this knowledge, he did not report Andersen's civil rights violations to their supervisor or the district attorney to ensure that they did not continue. As Defendant Andersen's partner and the only other witness to the violations, Defendant Tope had an affirmative duty to take basic steps to protect Mr. Vazquez from such foreseeable further harms perpetrated by

Defendant Andersen. Defendant Tope's failure to intervene to stop Defendant Andersen's false imprisonment and malicious prosecution of Mr. Vazquez also proximately caused and contributed to Plaintiff's injuries, damages and losses.

SIXTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Fourth Amendment – False Imprisonment
(against Defendant Andersen)

86. All preceding paragraphs of this Complaint are incorporated herein for purposes of this claim.

87. Defendant Andersen's formal arrest of Mr. Vazquez, transport to the jail, and direction to the jail that he be incarcerated for felony assault charges was done without legal process. He lacked both an arrest warrant and probable cause for this arrest.

88. Defendant Andersen's false arrest and charging of Mr. Vazquez proximately caused Mr. Vazquez to be wrongly and falsely imprisoned during the drive to the jail and while a prisoner for three days at the jail.

89. Defendant Andersen falsely arrested and falsely charged Mr. Vazquez to ensure his wrongful imprisonment with deliberate indifference to Mr. Vazquez's rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

90. Defendant Andersen's conduct in this regard proximately caused significant injuries, damages, and losses to Mr. Vazquez.

SEVENTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – Violation of Fourth Amendment – Malicious Prosecution
(against Defendant Andersen)

91. All preceding paragraphs of this Complaint are incorporated herein for purposes of this claim.

92. Defendant Andersen caused Mr. Vazquez's continued confinement in the Larimer County Detention Center by falsely arresting him and thereafter uttering false allegations against him in the Affidavit in Support of Warrantless Arrest he submitted to Larimer County Court Judge Lynch in support of the arrest.

93. In fact, no probable cause supported the original arrest of Mr. Vazquez, a fact that was plainly known to Defendant Andersen.

94. Defendant Andersen's false allegations as contained in the Affidavit in Support of Warrantless Arrest submitted to Judge Lynch were the sole moving force behind Mr. Vazquez's continued confinement in the jail from the moment Judge Lynch signed off on the warrantless arrest, finding probable cause based on Andersen's knowingly false averments, at 6:20 pm on October 8, 2017.

95. Defendant Andersen also caused the criminal prosecution against Mr. Vazquez by memorializing those same false allegations in his police report and providing it to the District Attorney.

96. Defendant Andersen's false allegations of assault against Mr. Vazquez was the sole moving force behind the criminal prosecution against Mr. Vazquez. The District

Attorney's Office prosecuted Mr. Vazquez solely because of the false claims made by Defendant Andersen in these official documents.

97. Defendant Andersen concealed and misrepresented facts, as well as outright lied, in his account of the evening he arrested Mr. Vazquez, in order to ensure Mr. Vazquez's continued detention in jail, as well as the continued criminal prosecution of Mr. Vazquez upon bonding out from jail.

98. Defendant Andersen's actions were done with malice.

99. No probable cause supported the original arrest, continued confinement, or prosecution of Mr. Vazquez.

100. The criminal prosecution initiated and continued by the malicious, deliberate actions of Defendant Andersen resolved in favor of Plaintiff Mr. Vazquez when on May 21, 2018 a jury found Mr. Vazquez not guilty of all the charges that had been brought against Mr. Vazquez based upon Andersen's knowingly false claims.

101. Defendant Andersen's conduct proximately caused significant injuries, damages, and losses to Mr. Vazquez.

EIGHTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of First Amendment – Retaliation for Exercise of First Amendment

(against Defendant Andersen)

102. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

103. It is clearly established that an act taken by law enforcement in retaliation for the exercise of a constitutionally protected right is actionable under 42 U.S.C. § 1983.

104. Mr. Vazquez had a First Amendment right to call Defendant Andersen a bully and to voice to Defendant Andersen his displeasure with his intrusive and aggressive side-of-the-road contact. All citizens maintain a protected First Amendment right to peaceably express dissatisfaction with and to law enforcement officials.
105. At the motions hearing held in Mr. Vazquez's criminal trial, Defendant Andersen admitted that he ordered Mr. Vazquez to keep his hands down because Mr. Vazquez was "not letting me finish a conversation" and was "talking over me." He further admitted that all of the words that came from Mr. Vazquez during the encounter were "words basically related to him being upset about the contact."
106. Defendant Andersen's trial testimony further revealed that he had no specific reason to believe Mr. Vazquez represented any kind of physical threat and that Mr. Vazquez had complied with any and all orders he gave him. Defendant Tope's trial testimony also confirmed that Mr. Vazquez was fully compliant throughout the encounter.
107. Defendant Andersen's decision to grab Mr. Vazquez, subject him to a painful wristlock maneuver without warning, handcuff him, and then slam him on the hood of Tope's patrol car were thus plainly actions taken in retaliation for Mr. Vazquez exercising his First Amendment right to free speech. When Plaintiff called Defendant Andersen a bully and voiced his displeasure with Andersen's abuse of his official authority, Andersen retaliated upon Mr. Vazquez with excessive and painful force, as well as an unlawful and unconstitutional search/seizure.

108. The actions as described herein, taken in retaliation against Mr. Vazquez for his exercise of First Amendment rights, while proximately causing and contributing to the various damages already outlined above, also proximately caused Mr. Vazquez to suffer separate and independent additional damages in the form of chilling his freedom of speech right by foreseeably causing him to fear ever exercising it again in the presence of law enforcement. Indeed, Mr. Vazquez remains abruptly and wholly terrified to this day of any interaction with law enforcement, and of speaking against any officer he encounters, out of the fear and trauma instilled in him by Defendant Andersen's retaliatory actions taken not just physically that day, but in the actions he took thereafter in ensuring the institution and continuation of a false criminal prosecution against Mr. Vazquez.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mr. Vazquez respectfully requests that this Court enter judgment in his favor and against the Defendants and grant:

- a. Appropriate declaratory and other injunctive and/or equitable relief;
- b. Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- c. All economic losses on all claims allowed by law;
- d. Punitive damages on all claims allowed by law and in an amount to be determined at trial;

- e. Attorneys' fees and the costs associated with this action on all claims allowed by law;
- f. Pre- and post-judgment interest at the lawful rate; and
- g. Any further relief that this Court deems just and proper, and any other relief as allowed by law.

VII. REQUEST FOR TRIAL BY JURY

Plaintiff requests a trial to a jury on all issues so triable.

Respectfully submitted this 16th day of October, 2018.

THE LIFE & LIBERTY LAW OFFICE

s/ Sarah Schielke

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Counsel for Plaintiff

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