

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Juan Martinez and Guadalupe Martinez,
Plaintiffs,

v.

No. 1:16-CV-01115

The City of Buda, Demerriel Young, and Wal-
Mart Stores Texas, LLC
Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs, Juan Martinez and Guadalupe Martinez, bring this action against the City of Buda, Texas for damages pursuant to 42 U.S.C. §1983 and § 1988, the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiffs also bring this complaint against Officer Demerriel Young, police officer of the City of Buda, in his individual capacity pursuant to 42 U.S.C. §1983 and §1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is based upon 28 U.S.C. §§1331 and 1343, and under 28 U.S.C. §1367(a). Plaintiffs also bring this action against Wal-Mart Stores Texas, LLC for negligence and false imprisonment.

The individual police officer defendant, under no threat to himself from an elderly man, viciously tackled and injured Juan Martinez, in violation of the Fourth and Fourteenth Amendments to the United States Constitution. These violations were committed as a result of the policies and customs of the City of Buda. Specifically, the municipal body had inadequate policies regarding hiring, retention, and training that caused the incident in question.

Plaintiff herein complies with the pleading requirements of FRCP Rule 8(a)(2) and the requirements of *Ashcroft v. Iqbal*, 556 U.S. 129 S.Ct. 1937, 1949 (2009) that “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

I. PARTIES

1.1 Juan Martinez and Guadalupe Martinez are individual residing in Hays County, Texas.

1.2 The City of Buda, Texas (“The City”) is a municipal corporation located within the boundaries of the Austin Division of the Western District of Texas. This Defendant will be extended the opportunity to accept service of process pursuant to FRCP 4(d). If this Defendant fails or refuses to accept the service requested, then Plaintiff will request service of process pursuant to FRCP 4(j) upon the City Secretary.

1.3 Defendant, Officer Demerriel Young (“Officer Young”), was at all times relevant to this cause of action a duly appointed and acting officer of the police department of the City of Buda, and working within the course and scope of his employment with the City. This Defendant will be extended the opportunity to accept service of process pursuant to FRCP 4(d). If this Defendant fails or refuses to accept service as requested, then the Plaintiffs will request service of process pursuant to FRCP 4(e) upon the City Secretary.

1.4 WAL-MART STORES TEXAS, LLC, (hereafter sometimes referred to as “WAL-MART” or “Defendant”) is a Delaware Limited Liability Company doing business in Texas and organized and existing under the laws of the state of Delaware, with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716-6209. Service of Process may be obtained on WAL-MART STORES TEXAS, LLC by serving

its Registered Agent, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201 via private process server.

II. JURISDICTION AND VENUE

2.1 42 U.S.C. §1983 and 42 U.S.C. §1988 provide jurisdiction over Plaintiffs' constitutional claims for redress, which are conferred on this Court by 28 U.S.C. §1343(a)(3).

2.2 Federal question jurisdiction is conferred on this Court by 28 U.S.C. §1331, because this action arises under the Constitution and laws of the United States.

2.3 This Court also has pendent jurisdiction over all other claims asserted under the laws of the State of Texas, pursuant to 28 U.S.C. §1367(a).

2.4 Venue is proper in the Western District of Texas, Austin Division, as this is the district where the claim arose in accordance with 28 U.S.C. §1391(b).

III. DUTY AND LAW APPLICABLE

3.1 Plaintiff, Juan Martinez, was subjected to excessive force in violation of his rights guaranteed to him by the Fourth and Fourteenth Amendments of the United States Constitution.

3.2 Plaintiffs commence this action pursuant to 42 U.S.C. §1983, which provides in relevant part for redress for every person within the jurisdiction of the United States for the deprivation, under color of state law, of any rights, privileges, or immunities secured by the Constitution and laws of the United States.

3.3 Officer Demerriel Young, acting under the color of law is liable under 42 U.S.C. §1983.

IV. FACTUAL ALLEGATIONS

4.1 On or about October 3, 2014, Plaintiffs were shopping in Wal-Mart located at 690 Old San Antonio Rd, Buda, TX 78610. Mr. Martinez was 73 years old at the time. Plaintiff and his wife were going through the store in scooters, due to their inability to ambulate easily.

4.2 The Plaintiffs were shopping for goods at Wal-Mart. While shopping, Mrs. Martinez placed goods they needed in the basket at the front of her scooter.

4.3 Though Plaintiffs were initially shopping together, they eventually became separated. Mrs. Martinez went looking for Mr. Martinez in the scooter she was driving. As she looked for husband, Mrs. Martinez may have accidentally exited the Wal-Mart doors. At the time she left the entrance she had items in the front of her scooter for which she had not paid. Wal-Mart security then approached her while she was in the scooter and looking for Mr. Martinez. Wal-Mart security accused her of stealing several items. She was brought to a security room in the Wal-Mart.

4.4 After security apprehended Mrs. Martinez, Juan Martinez approached the room where his wife was being questioned.

4.5 The Wal-Mart security officers, Brionne Guyer and CJ Costa-Dennis, negligently escalated the situation by their actions, contributing to the heated exchange involving Officer Young.

4.6 Officer Young was present in the Wal-Mart office where Mrs. Martinez was being questioned when Juan Martinez arrived to see his wife.

4.7 Officer Young approached Juan Martinez and asked him to leave the office. Mr. Martinez wanted to see his wife. Officer Young unnecessarily escalated the situation, and used force excessive to the need. Specifically, Officer Young tackled the elderly and disabled Mr. Martinez, failing to control the descent of Mr. Martinez and slammed him

hard onto the floor. As a result, Mr. Martinez broke several ribs, and sustained various other injuries and damages and continues to incur medical treatment and physical difficulty related to the injuries caused by Defendants.

V. THE CITY'S POLICIES, CUSTOMS AND PRACTICES

5.1 The City of Buda's policies, customs and practices lead to the incident in question.

5.2 On information and belief Officer Young had a history of uses of excessive force. Despite this fact, The City of Buda hired him and put him on the street as a police officer under color of state law.

5.3 Moreover despite the fact that the City of Buda was aware of Officer Young's prior uses of excessive force it failed to retrain Officer Young or provide adequate supervision to prevent the incident in question.

VI. CAUSES OF ACTION

6.1 The acts and failures of Defendants on the occasion in question were unreasonable and were the proximate and producing cause of the injuries and damages suffered by the Plaintiffs. The City of Buda, Texas is liable to Plaintiff under 42 U.S.C. §1983 for acting with deliberate indifference, thus breaching their duty to Officer Young with inadequate supervision and training regarding the reasonable use of force, and because of the conduct of these officers.

6.2 Defendant Young used excessive use of force, including shoving the Plaintiff, which was a proximate cause of the Plaintiff's injuries, including the lasting effects Juan Martinez continues to suffer from the incident.

6.3 Defendant Wal-Mart falsely imprisoned Guadalupe Martinez, and was negligent in the manner the company and its employees handled the incident in question. Specifically,

Wal-Mart, by and through its employees and managers, engaged in negligent activities, resulting in the escalation of the situation. They failed to exercise reasonable care to avoid a foreseeable risk of harm to Juan Martinez, and failed to take affirmative action to control or avoid increasing the danger from a condition that was at least partially created by the conduct of Wal-Mart's employees. Furthermore, Wal-Mart negligently hired, trained, and supervised their employees.

VII. DAMAGES

7.1 As a direct and proximate result of the Defendants' conduct Plaintiff Juan Martinez suffered the following damages:

- a. Medical expenses reasonably incurred for his care and treatment;
- b. Medical expenses to be reasonably incurred in the future for his care and treatment;
- c. Physical pain and suffering and mental anguish; AND
- d. Physical Impairment.

7.2 Juan Martinez seeks all damages to which he is entitled at law for personal, emotional, physical, and economic injuries sustained as a proximate result of the Defendants' acts and omissions, as well those personal, emotional, physical, and economic damages which he will continue to sustain in the future as a result of the occurrence in question. Plaintiff has suffered severe physical and mental pain and suffering. Plaintiff will, in all reasonable medical probability, incur reasonable and necessary medical and counseling expenses in the future as a direct result of the assault and deprivation of rights. These damages are in excess of the minimal jurisdictional limits of this Court.

7.3 As a direct and proximate result of the Defendants' conduct Plaintiff Guadalupe Martinez suffered the following damages:

- a. Past and future Mental anguish in seeing her husband attacked by the police;
and
- b. Loss of consortium in the past and future.

7.4 These damages are in excess of the minimal jurisdictional limits of this Court.

VIII. ATTORNEY'S FEES

8.1 The Plaintiffs have been required to retain the services of attorneys to represent them in this complex and difficult proceeding and cause of action. The Plaintiffs have retained the undersigned attorneys to represent them, and pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, they are entitled to recover for their reasonable and necessary fees incurred for these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim at the trial level, the Court of Appeals level if the case is appealed to that Court, and in the Supreme Court of the United States, if necessary.

IX. JURY DEMAND

9.1 Plaintiffs respectfully demand a trial by jury.

PRAYER

For these reasons, Plaintiffs ask for judgment against all Defendants for the following

- a. Trial by jury on all issues triable to a jury;
- b. Judgment against Defendants, jointly and severally, on behalf of the Plaintiff for actual damages pursuant to 42 U.S.C. §1983;
- c. Statutory and reasonable attorney fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, pre-judgment interest, post-judgment interest, and all

of their costs herein expended;

- d. Judgment against the City of Buda, Texas on behalf of the Plaintiffs for actual damages, pursuant to Tex. Civ. Prac. & Rem. Code §101;
- e. Judgment against Wal-Mart for false imprisonment and negligence; and
- f. Any and all additional relief to which the Plaintiff may appear to be entitled.

Filed this _____ day of October , 2016.

Respectfully submitted,

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By: /S/ Robert L. Ranco
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Juan Martinez and Guadalupe Martinez

DEFENDANTS

City of Buda, Demerriel Young and Wal-Mart Stores Texas, LLC

(b) County of Residence of First Listed Plaintiff Hays County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hays

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) The Carlson Law Firm, P.C., 11606 N. IH-35 Austin, TX 78753 512-346-56

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 1983

Brief description of cause: Police Excessive force

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/03/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert L. Ranco

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.