

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

DANIEL FOLEY,

Plaintiff,

vs.

CIV

**CITY OF ROSWELL, NEW MEXICO,
ROSWELL POLICE DEPARTMENT,
and CRUZ ZAVALA, in his individual
and official capacity, GREG CARRASCO,
in his individual and official capacity, and
PETE HERNANDEZ, in his individual and
official capacity.**

Defendants.

**COMPLAINT FOR DAMAGES FOR VIOLATIONS OF CIVIL AND
CONSTITUTIONAL RIGHTS, FOR DECLARATORY RELIEF, AND
FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff Daniel Foley, by and through below-signed counsel, brings this Complaint for Damages for Violations of Civil and Constitutional Rights, for Declaratory Relief, and for Preliminary and Permanent Injunctive Relief. Plaintiff alleges against Defendants, upon knowledge as to himself and all matters of public record, and upon information and belief as to all other matters, as follows:

**I.
JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

II.
PARTIES

3. Plaintiff Daniel Foley (“Plaintiff”) is a resident of Roswell, New Mexico.

4. Defendant City of Roswell (“Roswell” or “City”) is a political subdivision of the State of New Mexico. At all times material hereto, Roswell was a governmental entity and local public body as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(B) and (C) NMSA 1978, as amended. At all times material hereto, Roswell was the employer and supervisor of the individually named Defendants.

5. Defendant Roswell Police Department (“FPD”) is a department of Defendant Roswell, with its own command and control structure.

6. Defendants Zavala, Carrasco and Hernandez upon information and belief, are now and at all times material hereto have been residents of Chaves County, New Mexico. In addition, at all times material hereto, Zavala, Carrasco and Hernandez were law enforcement officers and public employees as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and were acting within the scope of their duties as well as under color of law. They are sued both personally and in their official capacities.

III.
CLAIMS OF THE NAMED PLAINTIFF

7. Paragraphs 1 through 6 above are incorporated herein by reference as if fully set forth in this paragraph.

8. On June 24, 2007, Plaintiff was watching his son play basketball at a public tournament in Roswell, New Mexico.

9. During the course of the game, Plaintiff's son became involved in an altercation on the basketball court.

10. Plaintiff perceived that his son was in danger, and rushed onto the Court to protect him.

11. Without cause, and without any provocation, Defendants Zavala, Carrasco and Hernandez physically assaulted the Plaintiff.

12. Plaintiff was wrongfully arrested by the individual Defendants.

13. Notice of Dismissal of the Criminal Complaint was filed with the Municipal Court of the City of Roswell on July 20, 2007.

IV.

FIRST CAUSE OF ACTION

(Civil Rights Violations Under 42 U.S.C. § 1983)

14. Plaintiff incorporates by reference into his first cause of action the allegations of paragraphs 1 through 13 above, as fully as if realleged and set forth herein.

15. The above-described acts and omissions of Defendants were unreasonable, shocking to the conscience, and were committed intentionally, maliciously, willfully and/or with reckless or deliberate indifference, and in violation of clearly established constitutional rights of which a reasonable person would have been aware.

16. The above-described acts and omissions of Defendants were motivated by evil motive and intent, and involved recklessness and callous indifference to Plaintiff's federally protected rights, justifying an award of punitive damages.

17. Prior to the acts and omissions alleged herein, Defendants failed to properly create, adopt, inculcate and ensure compliance with appropriate policies and

procedures; failed to properly train, monitor, supervise and discipline officers and supervisory personnel employed by them, and failed to otherwise institute and ensure compliance with adequate procedures and policies that would protect the rights of Plaintiff. These acts and omissions were a direct and proximate causes of the injuries complained of by Plaintiff herein, as set forth below.

18. Defendants, and each of them maintained a custom or policy which permitted or condoned the foregoing violations of Plaintiff's constitutional rights.

19. The acts and omissions of Defendants, and each of them, as set forth above were undertaken under color of state law and operated to deprive Plaintiff of his federal rights.

20. As a direct and proximate cause of Defendants' violations of his constitutional rights, Plaintiff suffered damages and injury to the liberty interest in his reputation.

V.
SECOND CAUSE OF ACTION
(Claims Arising Under the New Mexico Tort Claims Act)

21. Plaintiff incorporates by reference into his second cause of action the allegations of paragraphs 1 through 20 above, as fully as if realleged and set forth herein.

22. The conduct of Defendants, described above, resulted in injury to Plaintiff resulting from deprivation of rights, privileges or immunity secured by the Constitution and laws of the United States and New Mexico.

23. Defendant City of Roswell is the governmental entity which had immediate supervisory responsibility over the actions of employees of Defendant

Roswell Police Department, including but not limited to the individual capacity Defendants.

24. Defendant City of Roswell is jointly and severally liable for all injuries and damages caused by the negligence of any of its officials or employees under the doctrine of vicarious liability.

25. The conduct of Defendants was a direct and proximate cause of the injuries and damages to Plaintiff.

26. All of the acts or omissions which constitute the basis for liability herein come within the scope of the waivers of immunity contained within the New Mexico Tort Claims Act.

27. To the extent required, Defendants have received written notice of the claims contained herein in compliance with the New Mexico Tort Claims Act, §41-4-16(A)-(C) NMSA 1978, as amended. The Notice was sent to Defendants on December 8, 2008.

28. As a direct and proximate cause of Defendants' conduct, Plaintiff suffered damages as set forth below.

VI.
THIRD CAUSE OF ACTION
(Declaratory and Injunctive Relief)

29. Plaintiff incorporates by reference into her second cause of action the allegations of paragraphs 1 through 28 above, as fully as if realleged and set forth herein.

30. Plaintiff seeks a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further retaliation against him.

31. The constitutional violations alleged herein arise from official policies, practices and/or customs sanctioned by Defendants. The harm which the Plaintiff has sustained is directly traceable to these officially sanctioned policies, practices and/or customs.

32. Plaintiff does not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged in this Complaint, and will suffer irreparable injury as a result of Defendants' misconduct unless injunctive and declaratory relief is granted. Plaintiff is in real and immediate danger of sustaining future, direct injury as a result of Defendants' official policies, practices and customs that are ongoing at the time of this suit.

33. No cognizable burden will be placed on Defendants by requiring them to refrain from a constitutional violation. The public interest would be greatly enhanced by enforcement of policies and practices which adhere to the requirements of the state and federal Constitutions. Absent injunctive relief, there is no guarantee that the Defendants will cease their illegal policies, practices and customs as alleged herein.

34. By reason of the foregoing, Plaintiff is entitled to declaratory and injunctive relief as set forth above.

VII. **DAMAGES**

35. Plaintiff incorporates by reference the allegations of paragraphs 1 through 34 above, as fully as if realleged and set forth herein.

36. As a direct and proximate result of the wrongful and unlawful actions of Defendants, described above, Plaintiff is injured and has suffered and is continuing to suffer damages, including but not limited to distress, anguish, suffering, humiliation,

deprivation of constitutional rights, and other incidental, consequential, and special damages.

37. Defendants' acts and omissions, as set forth herein, were malicious, reckless, wanton oppressive, and/or fraudulent, justifying an award of punitive damages against the individually named Defendant in his personal capacity for the purpose of punishment and to deter others for the commission of like offenses.

WHEREFORE, Plaintiff respectfully prays for and demands judgment against the Defendant as follows:

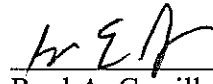
- (a) For judgment against Defendants for compensatory damages, special damages, consequential damages and incidental damages under any or all of the causes of action, in an amount to be determined at the trial of this cause;
- (b) For judgment declaring the rights of the parties;
- (c) For injunctive relief;
- (d) For reasonable attorneys' fees and costs incurred herein;
- (e) For pre-judgment and post-judgment interest in amounts to be determined according to law;
- (f) For an award of punitive and exemplary damages, in an amount to be determined at the trial of this cause; and
- (g) For such other and further relief as the Court deems just and proper.

JURY TRIAL REQUEST

COMES NOW Plaintiff, by and through his counsel, below-listed, and hereby demands trial by jury pursuant to the terms and conditions of Fed.R.Civ.P. 38 in regard to all issues in the above-referenced cause.

Respectfully submitted,

CARRILLO LAW FIRM, P.C.



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