

1 Steven M. Berki, Esq. SBN 245426
2 **BUSTAMANTE & GAGLIASSO A.P.C.**
3 River Park Tower
4 333 W. San Carlos St., 6th Floor
5 San Jose, California 95110
6 Telephone: (408) 977-1911
7 Sberki@boglawyers.com

8 Counsel for Plaintiff

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 **ALAN CHEN**, an individual,
14 Plaintiff,

15 vs.

16 **TRUSTEES OF THE CALIFORNIA STATE**
17 **UNIVERSITY**, a California Corporation;
18 **SAN JOSE STATE UNIVERSITY POLICE**
19 **DEPARTMENT**, a division of a California
20 Corporation; **OFFICER SEAN FARRELL**,
an individual; **OFFICER JONATHON**
SILVA, an individual; **OFFICER MUNIR**
ADAIS, an individual; **OFFICER TASSIO**,
an individual; and **OFFICER BUCKOVIC**,
and individual.

21 Defendants.

) Case No.:

) **COMPLAINT FOR DAMAGES**

) **1. Excessive Force - 42 U.S.C. § 1983**

) **2. Failure to Provide Reasonable Post-**
) **Arrest Care - 42 U.S.C. § 1983**

) **3. Negligence**

) **4. Battery**

) **5. Intentional Infliction of Emotional**
) **Distress**

) **Jury Demanded**

22 **Nature of Action**

23 1. This action is brought to redress the unlawful violation of Plaintiff Alan
24 Chen's right to be free from excessive force, and his right to freedom of speech, as
25 protected by 42 U.S.C §1983 et. seq. and the United States Constitution, and for
26 associated state intentional tort claims arising from a common set of operative facts.
27
28

1 **Jurisdiction and Venue**

2 2. The jurisdiction of this Court is predicated on 28 U.S.C. §§ 1331, 1343, and
3 1367.

4 3. This Court has jurisdiction over this action as this is a matter dealing with
5 Federal Statutes and Constitutional Provisions, and each of the individuals and/or
6 entities listed as defendants reside, work, and/or can be found within Santa Clara
7 County, California. The jurisdiction of this Court is predicated upon the fact that this
8 Court has an interest in ensuring the rights of its citizens are protected and the events
9 and rights involved in this action involve the application of federal law, including, but
10 not limited to 42 U.S.C. 1983, et seq. and common law torts.

11 4. Venue and jurisdiction is proper in this Court and in this district in that the
12 events and conduct alleged in this complaint occurred in Santa Clara County and
13 involved parties who reside or work in Santa Clara County. The proper venue for this
14 action is the Federal District Court for the Northern District of California, San Jose
15 Division.

16 **Parties**

17 5. Plaintiff **Alan Chen** is an individual, and was at all times relevant to this
18 action, residing within the City of San Jose, County of Santa Clara, State of California and
19 a citizen of the United States.

20 6. Defendant **Trustees of the California State University**, is a California
21 Corporation, operating as **San Jose State University** in Santa Clara County, State of
22 California, and with numerous divisions including Defendant **San Jose State University**
23 **Police Department** which is a department of the California State University System
24 practicing law enforcement and public safety.

25 7. Defendant **Officer Sean Farrell (F2680)** is and was, at all times relevant to
26 this action, an employee of the San Jose State University Police Department, working as
27 a police officer acting under color of authority for the California State University Police
28 Department through Penal Code § 830.2 and Education Code § 89560.

1 8. Defendant **Officer Johnathon Silva (S0473)** is and was, at all times
2 relevant to this action, an employee of the San Jose State University Police Department,
3 working as a police officer acting under color of authority for the California State
4 University Police Department through Penal Code § 830.2(c) and Education Code §
5 89560.

6 9. Defendant **Officer Munir Edais (E7489)** is and was, at all times
7 relevant to this action, an employee of the San Jose State University Police Department,
8 working as a police officer acting under color of authority for the California State
9 University Police Department through Penal Code §830.2 and Education Code §89560.

10 10. Defendant **Officer Buckovic** is and was, at all times relevant to this action,
11 an employee of the San Jose State University Police Department, working as a police
12 officer acting under color of authority for the California State University Police
13 Department through Penal Code §830.2 and Education Code §89560.

14 11. Defendant **Tassio (T5301)** is and was, at all times relevant to this action, an
15 employee of the San Jose State University Police Department, working as a police officer
16 acting under color of authority for the California State University Police Department
17 through Penal Code § 830.2 and Education Code § 89560.

18 12. Plaintiff does not know the true names and or capacities of Defendants not
19 named in this complaint. Plaintiff will amend this complaint to state the true names and
20 capacities of these fictitiously named Defendants when, and if, they are ascertained.

21 13. Plaintiff is informed and believes and thereon alleges that these fictitiously
22 named individuals are legally responsible in some manner for the acts and omissions set
23 forth below and are therefore liable to Plaintiff for the relief requested.

24 14. At all times relevant and mentioned herein, unless otherwise stated, each
25 Defendant was the agent and/or employer of every other Defendant, and in doing the
26 things, acts and omissions alleged below, was acting within the scope and authority of
27 its agency and/or employment. All actions of each Defendant alleged herein were
28

1 ratified and approved by the officers, supervisors, and managing agents of each of the
2 other Defendants.

3 Specific Factual Allegations Regarding the Incident

4 15. On the evening of April 17, 2015, San Jose State University student Alan
5 Chen was standing in line waiting to attend an event at the San Jose Event Center.

6 16. Chen was standing in line with several friends and had a valid ticket to the
7 event taking place.

8 17. While standing in line, one of Chen's friends became involved in an
9 argument with San Jose Event Center security staff.

10 18. Chen was not involved in any kind of argument with Event Center staff until
11 it became clear that Chen and his friends were all being precluded from the event.

12 19. At that point in time, Chen began to complain that he was being barred
13 from the event because of something someone else was doing or based on what others
14 had said.

15 20. Nevertheless, staff escorted Chen out of line and down the front stairs of
16 the Event Center without incident and without any resistance by Chen.

17 21. After leaving the Event Center, Chen decided to return home and began to
18 walk in the direction of his apartment.

19 22. Chen's apartment was in the same direction as the end of the line of people
20 waiting to enter the San Jose Event Center. While walking in that direction, Chen stopped
21 and spoke with several other friends of his who were standing in line and waiting to get
22 into the event. Chen was explaining what had occurred.

23 23. Defendant Silva and Defendant Edais walked up to Chen. Defendant Edais
24 whistled at him and stated, "Sup Bro...Didn't they tell you to go?"

25 24. At that moment, Defendants Edais and Silva grabbed Plaintiff by the arms
26 and bicep area.

27 25. Neither Defendant identified that they were police officers, or the reason
28 they were grabbing Plaintiff.

1 26. Defendants then began pulling on Plaintiff saying “Let’s go, we’re going this
2 way.”

3 27. Defendants collectively then violently hurtled Plaintiff into the concrete
4 pavement. Both the contact with Plaintiff and the takedown of Plaintiff occurred in less
5 than five seconds.

6 28. Because of the sheer force of Defendants’ conduct, Plaintiff was flung into
7 the concrete walkway face first.

8 29. Immediately upon impact, Plaintiff was rendered unconscious. Despite this
9 state, Defendants began yelling “stop resisting” and “give me your hands.”

10 30. At no point in the interaction between Plaintiff and Defendants did Plaintiff
11 engage in any form of resistance, as Plaintiff was disoriented, and in and out of
12 consciousness.

13 31. Just after this, Defendant Farrell also engaged in unnecessary force against
14 Plaintiff by stepping on him and holding him down despite the fact that he was
15 unconscious and not resisting.

16 32. During this time, Plaintiff was punched and physically assaulted by at least
17 three officers. Based on information and belief, Plaintiff believes the offending officers
18 were those that were most closely located to him, including Farrell, Edais, and Silva.

19 33. Additional officers were standing around as this was occurring and were
20 also assisting in the arrest of Plaintiff, including Defendants Buckovic and Tassio.

21 34. Shortly after this, Plaintiff regained consciousness and he began to question
22 Defendants’ actions what was going on. Plaintiff was still disoriented and foggy because
23 of the head injury he had just sustained.

24 35. Defendants determined to remove Plaintiff from the sight of concertgoers
25 who were standing mere feet away from Defendants when the force was used.
26 Defendants did not, at that time, determine to contact ambulatory assistance to pick
27 Plaintiff up and were more concerned with their activities and conduct being seen and
28

1 documented by bystanders. Defendants were more interested in bringing Plaintiff to the
2 booking area and the jail than in getting him immediate medical assistance he required.

3 36. Many bystanders witnessed the entire encounter and saw the excessive
4 force take place.

5 37. At that time, Plaintiff was dragged by his handcuffs to a waiting police car
6 by Edais and Silva and was forced in the back violently and without regard to his injuries.

7 38. No medical services were provided to Plaintiff this point in time while he
8 was dragged and seated in the back of the police car.

9 39. Rather, while seated in the back of the police car, Plaintiff began to spit up
10 and cough up blood. Plaintiff was also bleeding from several areas including his mouth.

11 40. Upon noticing this, several Defendants, including, Edais, Buckovic, and
12 Tassio began to yell at Plaintiff to stop bleeding and spitting up blood in the police
13 cruiser.

14 41. Plaintiff could hear Defendants Edais, Buckovic, and Tassio, and others
15 making fun of him, saying "Oh man, look what you did to his face," "look at the job you did
16 to his face and teeth," and "hey, stop bleeding all over my car." These were not the only
17 comments made to Plaintiff.

18 42. Based on information and belief, Defendants Edais, Buckovic, and Tassio
19 then placed a bag over Plaintiff's head which choked Plaintiff and caused extreme neck
20 pain. This was done solely to prevent further bleeding in the police car. It is believed that
21 these actions were taken by Edais, Buckovic, and Tassio as they were the officers that
22 were monitoring Plaintiff until he was transported for medical assistance.

23 43. While the bag was on Plaintiff's head, an officer pulled the bag to force
24 Plaintiff into an upright position on rather than have Plaintiff lay on his side in the police
25 car. This is still all while Plaintiff was in handcuffs. This pulling action while handcuffed
26 was extremely painful to Plaintiff. Plaintiff is unaware of the name of the person who
27 performed this particular act because he had a bag on his head Based on information and
28

1 belief, Plaintiff believes it to be one of the three officers that were with Plaintiff before
2 medical services arrived, Edais, Buckovic, and Tassio.

3 44. Plaintiff was then driven to an area where he was delivered to paramedics.
4 Only after he was in the ambulance were the handcuffs and bag removed from his face.

5 45. At this point, Plaintiff had pain all over his body and it was difficult to walk
6 without assistance.

7 46. Plaintiff began asking the paramedics if he could leave and go home.
8 Plaintiff was told no by the paramedics and was transported to Valley Medical Center.

9 47. Plaintiff remained on a stretcher, out in the cold in the parking lot of Valley
10 Medical Center, while he waited for medical assistance.

11 48. At one point, after arriving at Valley Medical Center, Plaintiff was allowed
12 to enter the hospital to use the restroom. When Plaintiff attempted to walk to the
13 restroom, he began to realize how badly injured he was.

14 49. Eventually, around 11:30 p.m., and after being let out in the cold, for an
15 extended period of time, Plaintiff was allowed to leave.

16 50. The following day, Plaintiff had bruises all over his body, headaches, neck
17 and back pain, scratches all over his body, swollen elbows, swollen knees, and swelling on
18 his face. Plaintiff also suffered two broken, cracked, and chipped teeth. All of these
19 injuries were the result of the force applied by Defendants.

20 51. The following day, April 18, 2015, Plaintiff sought emergency dental
21 treatment and the two injured teeth required dental implants to be inserted which were
22 expensive and caused Plaintiff to suffer financial loss. These dental implants were
23 required based on the injuries caused by Defendants' use of excessive force.

24 52. Plaintiff also sought treatment from the SJSU Student Health Center on
25 April 20, 2015

26 53. Plaintiff sought medical treatment for his remaining injuries at the San Jose
27 State Health Center.

1 54. Plaintiff was later charged with drunk in public, and resisting arrest
2 amongst other charges.

3 55. The charges were filed on May 11, 2015 by the District Attorney for Santa
4 Clara County.

5 56. Plaintiff filed a California Government Claim Form with Defendant Trustees
6 of the California State University on October 8, 2015.

7 57. The Government Claim was rejected by the Systemwide Risk Management
8 Department of the Trustees of the California State University (“Trustees of the CSU”) on
9 November 19, 2015.

10 58. The criminal case was resolved and charges were pending until and
11 including September 23, 2016.

12 **First Cause of Action**

13 Violation of Fourth Amendment –
14 Right to be Free from Excessive Force

15 42 U.S.C. § 1983

16 Against All Individual Defendants

17 59. Plaintiff incorporates ¶1 through ¶ 58 as if fully set forth herein.

18 60. All Defendants in this cause of action acted under color of law as San Jose
19 State University Police Officers and acted under the authority of the San Jose State
20 University Police Department, under the Trustees of the CSU. Defendants are sued in
21 their individual capacities.

22 61. Plaintiff, as an arrestee, had the rights and privileges of the Fourth
23 Amendment to be free from unreasonable seizures and force.

24 62. Defendants, and each of them, were integral participants in the excessive
25 force and unreasonable actions involving the use of force employed against Plaintiff
26 and/or failed to prevent or intervene in any manner in the unlawful and excessive force.

27 63. The force, as alleged earlier, caused severe damage to Plaintiff’s teeth,
28 head, and face.

1 University Police Department, under the Trustees of the CSU. Defendants are sued in
2 their individual capacities.

3 72. Plaintiff, as an arrestee, had the rights and privileges of the Fourth
4 Amendment to necessary and proper medical care following the Defendants' use of force
5 against him.

6 73. The force, as alleged earlier, caused severe damage to Plaintiff's teeth,
7 head, and face.

8 74. Defendants not only failed to immediately and effectively call for medical
9 care, but certain Defendants delayed the medical care from being administered to
10 Plaintiff by forcing him into the back of a patrol car and placing a bag over his face
11 causing him to choke on his own blood.

12 75. Defendants were required to promptly seek medical care and ensure that
13 Plaintiff's injuries were not exacerbated during the time he remained in police custody.

14 76. Defendants were deliberately indifferent to the severity of his need for
15 medical attention, took actions which are contrary to seeking immediate medical care,
16 and failed to ensure that Plaintiff's medical needs were addressed without further injury.

17 77. Defendants' actions or omissions were a substantial factor in causing
18 Plaintiff harm.

19 78. As a direct and proximate result of these actions, Plaintiff was damaged in
20 an amount to be proven at trial. Plaintiff has suffered damages, including but not limited
21 to: pain and suffering; medical/dental expenses; emotional distress; attorneys' fees; costs
22 of suit; and other damages to be proven at the time of trial.

23 **Third Cause of Action**

24 Negligence

25 Against All Defendants

26 79. Plaintiff incorporates ¶1 through ¶ 78 as if fully set forth herein.

27 80. All Defendants in this cause of action acted under color of law as San Jose
28 State University Police Officers and acted under the authority of the San Jose State

1 University Police Department, under the Trustees of the CSU. Defendants are sued in
2 their individual capacities.

3 81. Defendants have a duty to exercise reasonable care in the manner and type
4 of the force applied in the situation with Plaintiff. Defendants have a duty to ensure they
5 are reasonable and not negligent in their use of force, as well as in their post-arrest
6 treatment of Plaintiff while he remained in their custody. Defendants' actions would not
7 have been done by a reasonably prudent officer in similar circumstances. Defendants
8 have a duty to only use that amount of force that is reasonably necessary and in
9 accordance with procedures approved by law.

10 82. Defendants breached this duty by slamming Plaintiff into the ground
11 without warning, without any resistance from Plaintiff, and without any reasonable need
12 to do so. Defendants' actions constituted a disregard for established police procedures
13 for ensuring the safety of arrestees and preventing unreasonable force.

14 83. Defendants breached their duty by failing to exercise due care in the use of
15 force, failing to promptly seek medical treatment, and/or failing to prevent the
16 unreasonable use of force by other officers.

17 84. Defendants breached their duty by resorting to force in a scenario that
18 required no force at all given the wrong that was alleged against Plaintiff attempting to
19 get back in line at a concert.

20 85. At all times, the individual Defendants were acting within the course and
21 scope of their employment provided by Defendant San Jose State University Police
22 Department and Defendant Trustees of the California State University.

23 86. As a direct and proximate result these actions, Plaintiff was damaged in an
24 amount to be proven at trial. Plaintiff has suffered damages, including but not limited to:
25 pain and suffering; medical/dental expenses; emotional distress; attorneys' fees; costs of
26 suit; and other damages to be proven at the time of trial.

27 **Fourth Cause of Action**

28 Battery

Against Edais, Silva, Farrell, SJSUPD, Trustees of the CSU

1 87. Plaintiff incorporate ¶1 through ¶ 86 as if fully set forth herein.

2 88. Defendants touched Plaintiff by physical force with intent to harm or offend
3 Plaintiff.

4 89. Plaintiff did not consent to be touched by Edais, Silva, or Farrell.

5 90. Defendants committed a battery through the following actions which
6 include, but are not limited to: grabbing Plaintiff's wrists; leg sweeping and throwing
7 Plaintiff into the ground; punching and stepping on Plaintiff; piling on and pulling on
8 Plaintiff with a baton; and throwing Plaintiff in an aggressive manner. These actions
9 were done when Plaintiff was not resisting and/or was unconscious.

10 91. Plaintiff was not threatening or resisting the Defendants during their attack
11 on him.

12 92. Defendants did make offensive contact with the Plaintiff, and Plaintiff was
13 harmed by the contact which a reasonable person would find objectionable and offensive.

14 93. The force used to make contact was excessive and unreasonable and did
15 injure the Plaintiff in an amount to be proven at trial.

16 94. At all times, the individual Defendants were acting within the course and
17 scope of their employment provide by Defendant San Jose State University Police
18 Department and Defendant Trustees of the California State University.

19 95. As a direct and proximate result these actions Plaintiff was damaged in an
20 amount to be proven at trial. Plaintiff has suffered damages, including but not limited to:
21 pain and suffering; medical/dental expenses; emotional distress; attorneys' fees; costs of
22 suit and other damages to be proven at the time of trial.

23 **Fifth Cause of Action**

24 Intentional Infliction of Emotional Distress
25 Against Edais, Silva, Farrell, SJSUPD, Trustees of the CSU

26 96. Plaintiff incorporates ¶1 through ¶ 95 as if fully set forth herein.

27 97. Defendants' conduct in using excessive force and exacerbating and
28 Plaintiff's injuries was outrageous as described above.

1 98. Defendants either intended to cause emotion distress to Plaintiff and/or
2 acted with reckless disregard to the probability that Plaintiff would suffer emotional
3 distress.

4 99. Plaintiff suffered emotional distress as a result of this incident.

5 100. Defendants' conduct as described above, was a substantial factor in causing
6 severe emotional distress to Plaintiff.

7 101. At all times the individual Defendants were acting within the course and
8 scope of their employment provide by Defendant San Jose State University Police
9 Department and Defendant Trustees of the California State University.

10 102. As a direct and proximate result these actions Plaintiff was damaged in an
11 amount to be proven at trial. Plaintiff has suffered damages, including but not limited to:
12 pain and suffering; medical/dental expenses; emotional distress; attorneys' fees; costs of
13 suit; and other damages to be proven at the time of trial.

14 WHEREFORE, Plaintiff demands judgment from the Defendants for:

15 1. Actual damages suffered in an amount to be determined by the evidence
16 presented at trial, but in no event less than the jurisdictional minimum of this court.

17 2. Consequential damages, including but not limited to: attorney's fees and
18 costs incurred to pursue this litigation.

19 3. Punitive damages in an amount to be determined by the evidence
20 presented at trial, and/or nominal damages in the amount of \$1.00.

21 4. Costs of suit and an award of attorney's fees pursuant to California Civil
22 Code § 42 U.S.C. 1988 which are intended to protect and benefit the public against
23 violations of their civil rights.

24 5. Such other and further relief as this Court may deem appropriate under the
25 circumstances.

26 Dated: April 12, 2017

BUSTAMANTE & GAGLIASSO, APC

27 _____/s/_____
28 Steven M. Berki, Counsel for Plaintiff