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 11 United States of America

12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 ALTON JONES,
 15 Plaintiff,
 16 v.
 17 U.S. BORDER PATROL AGENT
 18 HERNANDEZ; DOE U.S. BORDER
 PATROL AGENTS #1 through #4, each
 19 sued in their individual capacities; and the
 UNITED STATES OF AMERICA,
 20 Defendants.

Case No.: 16-cv-1986-W (WVG)

**COUNTERCLAIM FOR MONEY
 DAMAGES: (1) ASSAULT;
 (2) BATTERY; and (3) NEGLIGENCE
 BY UNITED STATES OF AMERICA**

21
 22 UNITED STATES OF AMERICA,
 23 Counter-Claimant,
 24 v.
 25 ALTON JONES,
 26 Counter-Defendant.

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1 **COUNTERCLAIM**

2 COMES NOW Counter-Claimant, United States of America (“the United States”),
3 by and through its attorneys, Alana W. Robinson, Acting United States Attorney,
4 David B. Wallace, Assistant United States Attorney, and Samuel W. Bettwy, Assistant
5 United States Attorney, and files this Counterclaim against Counter-Defendant, Alton
6 Jones (“Jones”), and alleges on personal knowledge as to its own acts, and on information
7 and belief as to all other matters, as follows:

8 **NATURE OF THE ACTION**

9 1. On February 3, 2017, Jones filed his First Amended Complaint (“FAC”)
10 against the United States under the Federal Tort Claims Act (“FTCA”) for alleged tortious
11 conduct by U.S. Border Patrol (“USBP”) agents, occurring on August 9 and 10, 2014.

12 2. By way of this Counterclaim, the United States seeks money damages from
13 Jones for his tortious action against USBP agent Jodan Johnson (“Johnson”) on August 9,
14 2014.

15 3. This Counterclaim is brought pursuant to Fed. R. Civ. P. 13(a)(1), as it arises
16 out of the transaction or occurrence that is the subject matter of Jones’ claims.

17 4. This is a civil action brought pursuant to an assignment of right to recover
18 under the authority of the Federal Employees Compensation Act (“FECA”), particularly
19 5 U.S.C.A. § 8131, to seek compensation for injuries sustained by an employee of the
20 USBP while performing official duties.

21 **THE PARTIES**

22 5. Upon information and belief, Jones is, and at all times relevant was, a
23 United States citizen and California resident, residing at 1646 Leon Avenue, San Diego,
24 California 92154.

25 **JURISDICTION AND VENUE**

26 6. This Court has original jurisdiction over an action commenced by the
27 United States pursuant to 28 U.S.C. § 1345. Jurisdiction similarly arises under 28 U.S.C.
28 § 1331. In the alternative, the United States invokes subject matter jurisdiction under

1 28 U.S.C. § 1367, as it forms part of the same case or controversy as Jones’ claims. *See*
2 also Fed. R. Civ. P. 13(a)(1).

3 7. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
4 § 1391(b), because a substantial part of the events giving rise to Jones’ and the United
5 States’ claims occurred within this district and it is the district in which Jones resides.

6 **FACTUAL ALLEGATIONS**

7 8. On or about August 9, 2014, Jones was traveling on foot on a restricted paved
8 road that runs immediately parallel to the U.S.-Mexico border fence in Border Field State
9 Park/Tijuana Estuary (“the park”), San Diego, California (“the paved road”).

10 9. Plaintiff received a State Park map (“the map”) upon his arrival to the park
11 on or about August 9, 2014. (FAC at ¶ 18.)

12 10. The map directs visitors to use only officially designated trails and not to
13 trespass beyond special area closure signs.

14 11. The paved road was not a designated trail on the map.

15 12. Rather, the map designates the paved road as a “Reserve Boundary.”

16 13. While Jones was traveling on foot on the paved road on August 9, 2014,
17 more than one USBP agent made more than one attempt to direct him off the paved road
18 and onto the park’s designated trails.

19 14. First, a USBP agent, who was driving in the opposite direction of Jones,
20 stopped his patrol vehicle next to Jones.

21 15. The USBP agent told Jones to get off the paved road and onto the park’s
22 designated trails.

23 16. In response, Jones did not stop and continued traveling on foot in the same
24 direction on the paved road.

25 17. Second, USBP Agent Hernandez, driving in the same direction as Jones,
26 stopped his vehicle in front of Jones.

27 18. USBP Agent Hernandez told Jones to get off the paved road and onto the
28 park’s designated trails.

1 19. In response, Jones altered his course and continued traveling on foot in the
2 same direction on the paved road.

3 20. Third, USBP Agent Hernandez continued forward and stopped his patrol
4 vehicle in front of Jones.

5 21. This time USBP Agent Hernandez got out of his vehicle and told Jones that
6 he needed to get off the paved road and onto the park's designated trails.

7 22. Jones responded by stating, "What's your fucking problem?"

8 23. Jones then turned and began traveling the same paved road on foot in the
9 opposite direction.

10 24. Fourth, another USBP agent traveling in the opposite direction of Jones
11 stopped his ATV in front of Jones and waved his arms in an attempt to stop Jones from his
12 continued foot travel on the paved road.

13 25. Jones went around the ATV and continued traveling on the paved road.

14 26. Fifth, yet another USBP agent stopped his ATV to block Jones.

15 27. Jones went around him as well, continuing his foot travel on the paved road.

16 28. Eventually, USBP agents were able to block Jones, preventing him from
17 traveling any farther on the paved road.

18 29. Jones assumed a fighting position and tried to find a way past the USBP
19 agents.

20 30. At this time, USBP agents attempted to restrain Jones.

21 31. Jones then charged toward Johnson with his head down, rammed into
22 Johnson and caused himself, Johnson, and other USBP agents to fall to the ground.

23 32. Johnson, an employee of the USBP and the United States, was acting within
24 the course and scope of his employment with the USBP and the United States when he
25 assisted other USBP agents in their attempt to restrain Jones.

26 33. As a result of Jones' conduct, Johnson sustained physical injuries, which
27 resulted in medical bills.

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1 34. As a result of Johnson’s physical injuries, which were caused by Jones’
2 conduct, Johnson sustained lost earnings, which resulted in Federal Employees’
3 Compensation Act (“FECA”) compensation payments.

4 35. Johnson’s right of recovery included costs, both past and future, of medical
5 care, lost earnings and compensation for past and future physical pain, mental suffering,
6 loss of enjoyment of life, disfigurement, physical impairment, inconvenience,
7 grief/anxiety/humiliation/emotional distress.

8 36. Johnson has assigned his right of recovery to the United States pursuant to
9 the provisions of FECA and, therefore, the United States is the proper party to bring this
10 Counterclaim for damages to the extent permitted by law.

11 37. Federal law prohibits forcibly assaulting, resisting, opposing, impeding,
12 intimidating, or interfering with a person designated in 18 U.S.C. § 1114, namely a USBP
13 agent, while the agent is engaged in or on account of the performance of official duties.
14 *See* 18 U.S.C.A. § 111(a).

15 38. California law provides that every person who attempts, by means of any
16 threat or violence, to deter or prevent an executive officer from performing any duty
17 imposed upon such officer by law, or who knowingly resists, by the use of force or
18 violence, such officer, in the performance of his duty. *See* Cal. Penal Code § 69.

19 39. On or about August 9, 2014, within the Southern District of California, Jones
20 did knowingly and intentionally, willfully and forcibly assault, resist, oppose, impede, and
21 interfere with Johnson while Johnson was engaged in the performance of his official
22 duties; in violation of 18 U.S.C. § 111(a)(1) and Cal. Penal Code § 69.

23 **CLAIMS FOR RELIEF**

24 40. Counter-Claimant incorporates by reference the allegations of paragraphs
25 1 through 39, above, as though fully set forth herein.

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Count One – Assault

Against Counter-Defendant for Damages

41. Through the actions described herein, on or about August 9, 2014, Jones intended to cause harmful contact with Johnson.

42. Johnson reasonably believed that Jones was about to touch him in a harmful manner.

43. Johnson did not consent to Jones’ conduct.

44. Jones’ conduct was a substantial factor in causing harm to Johnson.

45. As a proximate result of the acts alleged herein, Johnson suffered harm, as herein described, resulting in damages in an amount to be proven at trial to the extent permitted by law.

Count Two – Battery

Against Counter-Defendant for Damages

46. Through the actions described herein, on or about August 9, 2014, Jones intentionally touched Johnson with an attempt to harm or offend Johnson.

47. Johnson did not consent to this touching.

48. A reasonable person in Johnson’s situation would have been offended by the touching.

49. Johnson was harmed by Jones’ conduct.

50. As a proximate result of the acts alleged herein, Johnson suffered harm, as herein described, resulting in damages in an amount to be proven at trial to the extent permitted by law.

Count Three – Negligence

Against Counter-Defendant for Damages

51. Jones had a legal duty to act reasonably when Johnson and other USBP agents attempted to stop and restrain him.

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1 52. To comply with this duty, Jones was required to refrain from forcibly
2 assaulting, resisting, opposing, impeding, intimidating, or interfering with Johnson while
3 Johnson was engaged in the performance of his official duties. *See* 18 U.S.C.A. § 111(a).

4 53. Through the actions described herein, on or about August 9, 2014, Jones was
5 negligent.

6 54. Johnson was injured, and Jones' conduct was the proximate or legal cause of
7 Johnson's injuries.

8 55. As a direct and proximate result of the Jones' negligence, Johnson suffered
9 harm, entitling him to damages in an amount to be proven at trial to the extent permitted
10 by law.

11 WHEREFORE, the United States prays for:

- 12 1. Judgment against Jones in an amount to be proven at trial as permitted by
13 law;
- 14 2. Costs and disbursements of this action; and
- 15 3. Such other and further relief to which the United States might be entitled.

16 DATED: April 7, 2017.

Respectfully submitted,

17 ALANA W. ROBINSON
18 Acting United States Attorney

19 *s/ David B. Wallace*
20 DAVID B. WALLACE
Assistant U. S. Attorney

21 *s/ Samuel W. Bettwy*
22 SAMUEL W. BETTWY
Assistant U.S. Attorney

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24 Attorneys for Defendant/Counter-Claimant
25 United States of America
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