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DAKARAI ALLEN

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAKARAI ALLEN,

Plaintiff,

vs.

CITY OF ELK GROVE; a municipal corporation, OFFICER SEAN MCPHERSON, individually and in his official capacity as a police officer for the City of Elk Grove; OFFICER EVAN KWAN, individually and in his official capacity as a police officer for the City of Elk Grove, OFFICER KEVIN FINKES, individually and in his official capacity as a police officer for the City of Elk Grove, OFFICER K9 KELLY, individually and in his official capacity as a police officer for the City of Elk Grove; and DOES 1-50, inclusive, individually, jointly, and severally,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This case arises out of City of Elk Grove police officers' unconstitutional use of
3 force against Dakarai Allen ("Plaintiff").

4 2. On October 14, 2022, around 11:17 PM, near Dakarai Allen's home in Elk
5 Grove, California, Mr. Allen was unjustifiably assaulted by Sean McPherson and Evan Kwan
6 both law enforcement officers employed by the Elk Grove Police Department. After attending a
7 work event and consuming two glasses of wine, Mr. Allen headed home after the event.
8 Acknowledging that he was not a frequent drinker and recognizing that he should not be
9 driving, Mr. Allen parked his vehicle on the street in front of a neighbor's house and fell asleep.
10 Concerned neighbors, mistaking him for a shooting victim, called the police. Officer
11 McPherson, along with Officer Evan Kwan, arrived at the scene and woke Mr. Allen, who was
12 disoriented. The officers aggressively removed him from his vehicle, pushed him against his car
13 and attempted to arrest him. A short while later, Mr. Allen was slammed to the ground. During
14 the altercation, Officer McPherson delivered two forceful baton strikes to Mr. Allen's right leg,
15 fracturing his knee in three places. Additional officers, including Officer Finkes and K9 Officer
16 Kelly, arrived and further restrained Mr. Allen using a wrap device before transporting him to
17 Kaiser South Hospital for medical clearance and subsequently to Sacramento County Main Jail
18 for booking and processing.

19 3. The injuries sustained by Mr. Allen have had devastating effects on his career as
20 a professional basketball player for the NBA G League. The severe knee injury has left him
21 unable to perform essential movements required for his profession, such as running, jumping,
22 and standing on his feet for too long.

23 4. This civil rights action seeks compensatory and punitive damages from
24 Defendants for violating various rights under the United States Constitution in connection with
25 the excessive force used against Plaintiff during his encounter with Elk Grove police officers.

JURISDICTION

5. This action arises under Title 42 of the United States Code, § 1983. Title 28 of

1 the United States Code §§ 1331 and 1343 confer jurisdiction upon this Court. The unlawful acts
2 and practices alleged herein occurred in the County of Sacramento, which is within the judicial
3 district of this Court.

4 6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants are
5 believed to reside in this district and all incidents, events, and occurrences giving rise to this
6 action occurred in this district.

7 **PARTIES**

8 7. Plaintiff DAKARAI ALLEN (“PLAINTIFF” or “ALLEN”) has been and is a
9 resident of California and a United States Citizen.

10 8. Defendant CITY OF ELK GROVE (“CITY”) is an incorporated public entity
11 duly authorized and existing as such in and under the laws of the State of California; and at all
12 times herein mentioned, Defendant CITY has possessed the power and authority to adopt
13 policies and prescribe rules, regulations, and practices affecting the operation of the CITY OF
14 ELK GROVE Police Department and its tactics, methods, practices, customs, and usage. At all
15 relevant times, Defendant CITY was the employer of Defendant Officers Sean McPherson,
16 Evan Kwan, Kevin Finkes and K9 Officer Kelly, individually and as peace officers.

17 9. At all times mentioned herein, Defendant SEAN MCPHERSON (hereinafter
18 “MCPHERSON”) was employed by Defendant CITY OF ELK GROVE as a police officer.
19 MCPHERSON is being sued in his individual capacity under 42 U.S.C. § 1983.

20 10. At all times mentioned herein, Defendant EVAN KWAN (hereinafter “KWAN”) was employed by Defendant CITY OF ELK GROVE as a police officer. KWAN is being sued
21 in his individual capacity under 42 U.S.C. § 1983.

22 11. At all times mentioned herein, Defendant FINKES (hereinafter “FINKES”) was
23 employed by Defendant CITY OF ELK GROVE as a police officer. FINKES is being sued in
24 his individual capacity under 42 U.S.C. § 1983. Officer Finkes was an integral participant in the
25 excessive force inflicted on Plaintiff. Officer Finkes assisted with detaining Mr. Allen by

1 helping bring Mr. Allen's arms to his back. Mr. Finkes further assisted in the violent assault on
2 Mr. Allen when Officer Finkes assisted with placing a wrap restraint on Plaintiff.

3 12. At all times mentioned herein, Defendant Officer K9 KELLY (hereinafter
4 "KELLY") was employed by Defendant CITY OF ELK GROVE as a police officer. KELLY is
5 being sued in his individual capacity under 42 U.S.C. § 1983. K9 Officer Kelly was an integral
6 participant in the excessive force inflicted on Plaintiff. K9 Kelly Officer was used to assist with
7 detaining Mr. Allen and gaining control over Mr. Allen.

8 13. Plaintiff is ignorant of the true names and capacities of Defendants DOES 1
9 through 25, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is
10 informed and believes and thereon alleges that each Defendant so named was employed by
11 Defendant CITY OF ELK GROVE at the time of the conduct alleged herein. Plaintiff alleges
12 that each of Defendants DOES 26 through 50 was responsible for the training, supervision,
13 and/or conduct of the Defendant Officers and/or agents involved in the conduct herein. Plaintiff
14 alleges that each of Defendants DOES 26 through 50 were also responsible for and caused the
15 acts and injuries alleged herein. Plaintiff will amend this Complaint to state the names and
16 capacities of DOES 26 through 50, inclusive, when they have been ascertained.

17 **FACTUAL ALLEGATIONS**

18 14. On October 14, 2022, at approximately 11:17 PM, at or near 8488 Camino Vista
19 Way, Elk Grove, CA 95624. City of Elk Grove police officers Sean McPherson, Evan Kwan,
20 Kevin Finkes, and K9 Officer Kelly unjustifiably attacked and restrained Plaintiff Dakarai Allen
21 after finding him unconscious in his car. Mr. Allen had spent the evening at a social work event
22 where he consumed some wine. Acknowledging that he was not a frequent drinker and
23 recognizing that he should not be driving, he responsibly pulled over and parked his car in a
24 residential area close to his home, prioritizing the safety of himself and others.

25 15. Officers Sean McPherson and Evan Kwan were dispatched to 8488 Camino
Vista Way to investigate a 911 call reporting a stopped car with an unresponsive person in the
driver's seat. Upon arrival, the officers approached the vehicle and found Mr. Allen

1 unconscious. Officer McPherson remarked, “I think he’s just drunk.” The officers opened the
2 driver’s side door, announced themselves as “police department,” and immediately began to
3 pull Mr. Allen out of the car. Disoriented, Mr. Allen stumbled out of the car, prompting Officer
4 McPherson to state, “Oh, he’s just hammered.” The officers stood Mr. Allen up against the side
5 of his car and begin to place him in handcuffs. Mr. Allen, who was still waking up, attempted to
6 ask the officers why he was being arrested. However, without reasonable provocation, Officer
7 McPherson and Kwan aggressively slammed Mr. Allen onto the back of his vehicle. Mr. Allen
8 attempted to pull up his pants; however the officers continued to slam him against the car and
9 continued to accuse him of resisting, despite Mr. Allen's compliance.

10 16. Officer McPherson and Kwan begin to forcibly handle Mr. Allen and eventually
11 took him down to the ground causing his face to hit the concrete cement. While taking Mr. Allen
12 down, Officer McPherson tripped on Mr. Allen’s legs, causing both to fall. Agitated, Officer
13 McPherson delivered two forceful baton strikes to Mr. Allen’s right leg, fracturing his knee in
14 three places. Mr. Allen immediately yelled out in agony from the pain. Fearing for his life and
15 safety, Mr. Allen attempted to lay prone.

16 17. Defendant Officers Finkes, and K9 Officer Kelly, who were present at the scene,
17 assisted Officer McPherson and Kwan in detaining Mr. Allen by forcing Mr. Allen’s hands
18 behind his back; despite Mr. Allen's lack of resistance. Officer McPherson further restrained
19 Mr. Allen in a “figure four” position, crossing his ankles and folding his knees so his feet were
20 against his lower back. This caused significant pain to Mr. Allen who had already been struck in
21 his knee with Officer McPherson’s baton. Officer Kwan then brought a WRAP restraint, further
22 immobilizing Mr. Allen. Officers Finkes and Kelly assisted the in placing Mr. Allen in the wrap
23 restraints. Each Officer participated in applying pressure onto Mr. Allen’s upper, lower back
24 and leg area in an effort to subdue him. After a short while, the officers transported Mr. Allen to
25 Kaiser Permanente South Sacramento Medical Center, where a phlebotomist drew his blood
before he was taken to the Sacramento County Main Jail and booked into custody.

18. As a result of the officers' assault and restraint, Mr. Allen suffered physical injuries, including a fracture in his knee, severe knee pain and swelling, and cuts on his elbows and face. Because of his injuries, Mr. Allen is now unable to pursue his plans to play basketball professionally. In addition, Mr. Allen also suffered and continues to suffer from emotional distress because of this encounter.

19. Mr. Allen did not pose a threat of serious injury or harm to the officers or anyone in the neighborhood. The violent assault inflicted on him by the officers was entirely unreasonable, unlawful, and unnecessary.

DAMAGES

20. As a consequence of Defendants' violations of Plaintiff's state constitutional rights and federal civil rights under 42 U.S.C. §§ 1983 and the Fourth Amendment, Plaintiff was physically, mentally, and emotionally injured and damaged as a proximate result of Defendants' wrongful conduct.

21. Plaintiff found it necessary to engage the services of private counsel to vindicate his rights under the law. Plaintiff is therefore entitled to an award of attorneys' fees and costs pursuant to statute(s) in the event that he is the prevailing parties in this action under 42 U.S.C. §§ 1983 and 1988. Plaintiff is also entitled to punitive damages under 42 U.S.C. §§ 1983 and 1988 as the conduct of Defendants was malicious, wanton, and oppressive.

FIRST CAUSE OF ACTION

(Violation of the Fourth Amendment – Excessive Force)

(42 U.S.C. § 1983)

(Plaintiff against Defendants MCPHERSON, KWAN, FINKES, KELLY, FINKES,
and DOES 1-25)

22. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 21 of this Complaint.

23. 42 U.S.C. § 1983 provides in part, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person

1 within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured
2 by the Constitution and laws, shall be liable to the party injured in an action at law, suit at
3 equity, or other proper proceeding for redress.”

4 24. Plaintiff had a firmly established right under the Fourth Amendment to be free
5 from official infliction of physical abuse, assault, battery, and intentional infliction of emotional
6 distress, unreasonable search and seizure, and excessive, unreasonable and/or arbitrary force
7 being used against him.

8 25. Defendants MCPHERSON, KWAN, FINKES, KELLY, and DOES 1-25
9 violated Plaintiff’s above-mentioned rights under the Fourth Amendment when Defendants
10 unreasonably restrained Plaintiff and used excessive and unnecessary force to slam Plaintiff into
11 his car, throw him to the ground, strike him with a baton on his knee twice, and apply weight to
12 his back while he was prone and not resisting. Defendant officers’ actions were in conscious
13 disregard to Plaintiff, who was non-threatening and allegedly intoxicated to the point where he
14 could barely stand up. Plaintiff did not resist and did not attempt to flee. Plaintiff was merely
15 disoriented after being woken up and aggressively removed from his vehicle in assaulted.

16 26. The conduct alleged herein caused Plaintiff to be deprived of his civil rights,
17 which are protected under the United States Constitution. The conduct alleged herein has also
18 legally, proximately, foreseeably, and actually caused Plaintiff to suffer physical injury,
19 emotional distress, pain and suffering, medical expenses, fear, trauma, humiliation, and further
20 damages according to proof at the time of trial.

21 27. As a result, Defendants MCPHERSON, KWAN, FINKES, KELLY and DOES
22 1-25 are liable for using excessive force against Plaintiff.

23 28. Defendants are liable for Plaintiff’s physical, mental, and emotional injuries,
24 either because they were integral participants in the excessive force, or because they failed to
25 intervene to prevent these violations.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(Monell Liability)

(Plaintiff against Defendants CITY OF ELK GROVE and DOES 26-50)

29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 of this Complaint.

30. Plaintiff is informed and believes and thereon alleges that high-ranking CITY OF ELK GROVE officials, including DOES 26-50, and/or each of them, knew and/or reasonably should have known that their police officers, including Defendants MCPHERSON, KWAN, FINKES, KELLY, and DOES 1-25, were either untrained or improperly trained in the use of force in the following areas:

a. Where it is improper to use force against a subject who is already being subdued by multiple officers and not posing a threat to anyone.

b. Where reasonable opportunities for de-escalation of potentially threatening subjects exist, including the reasonable re-deployment and/or re-location of police officers; and the use of effective communication that is not confrontational, escalating, or demanding.

31. These policy, practice, and training failures were a substantial factor and moving force in the violation of Plaintiff's Fourth Amendment right to be free from excessive force being used against him.

32. Plaintiff is informed and believes and thereon alleges that, despite having such notice, Defendants CITY OF ELK GROVE and DOES 26-50, and/or each of them, approved, ratified, condoned, encouraged and/or tacitly authorized the continuing pattern and practice of misconduct and/or civil rights violations by City of Elk Grove Police Department officers.

33. Plaintiff is further informed and believes and thereon alleges that as a result of the deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendants MCPHERSON, KWAN, FINKES, KELLY, and DOES 1-25, Defendant CITY and DOES 26-50, and/or each of them, encouraged these Officers to continue their course of misconduct, resulting in the violation of Plaintiff's rights as alleged herein.

1 34. The aforementioned acts and/or omissions and/or deliberate indifference by
2 high-ranking City of Elk Grove officials, including Grove Police Department supervisors,
3 DOES 26-50, and each of them, resulted in the deprivation of Plaintiff's constitutional rights,
4 including, but not limited to, the right to be free from unreasonable searches and seizures, as
5 guaranteed by the Fourth Amendment of the United States Constitution.

6 35. Said right is a substantive guarantee under the Fourth Amendment to the United
7 States Constitution.

8 36. Plaintiff further alleges that the acts and/or omissions alleged in the Complaint
9 herein are indicative and representative of a repeated course of conduct by members of the City
10 of Elk Grove Police Department tantamount to a custom, policy, or repeated practice of
11 condoning and tacitly encouraging the abuse of police authority, and disregard for the
12 constitutional rights of citizens.

13 WHEREFORE, Plaintiff prays for relief as herein set forth.

14 **JURY DEMAND**

15 Plaintiff hereby demands a jury trial in this action.

16 **PRAYER**

17 WHEREFORE, Plaintiff prays for relief, as follows:

- 18 1. For general damages according to proof;
- 19 2. For special damages, including but not limited to, past, present and/or future
20 wage loss, income and support, medical expenses and other special damages in a sum to be
21 determined according to proof;
- 22 3. For punitive damages and exemplary damages in amounts to be determined
23 according to proof as to Defendants MCPHERSON, KWAN, FINKES, KELLY, and DOES 1-
24 50;
- 25 4. Any and all permissible statutory damages;
5. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and California Code
 of Civil Procedure § 1021.5;

1 6. For cost of suit herein incurred; and

2 7. For such other and further relief as the Court deems just and proper.

3
4 Dated: July 22, 2024

BURRIS NISENBAUM CURRY & LACY

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6 */s/ John L. Burris*

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8 _____
9 John L. Burris
10 Christopher A. Dean
11 Attorneys for Plaintiff
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