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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 TERRI ADAMS

13 Plaintiff,

14 vs.

15 CITY OF HAYWARD, a
16 Municipality, GALE EAKIN, a
Police Officer, ANTWAN NGUYEN,
17 a Police Officer, Officer TINA
MILLS, a Community Services
18 Officer, and JONATHAN COLTON,
19 a Community Services Officer

20 Defendants.
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Case No.: C-14-5482 (KAW)

STIPULATION PERMITTING FILING
OF FIRST AMENDED COMPLAINT

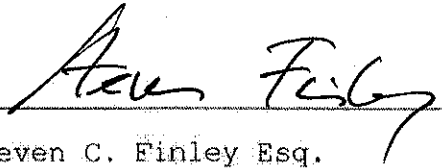
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By and through their attorneys of record in this action, the parties do hereby STIPULATE to the filing of a First Amended Complaint by plaintiff in the form attached hereto as Exhibit A.

DATED: APRIL 20, 2015

HENNEFER FINLEY & WOOD LLP

By



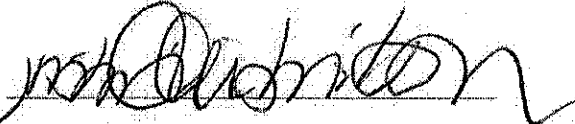
Steven C. Finley Esq.

Attorneys for plaintiff Terri Adams

DATED: APRIL 20, 2015

OFFICE OF THE CITY ATTORNEY

CITY OF HAYWARD



Justin Nishioka Esq.

Deputy City Attorney

Attorneys for defendants

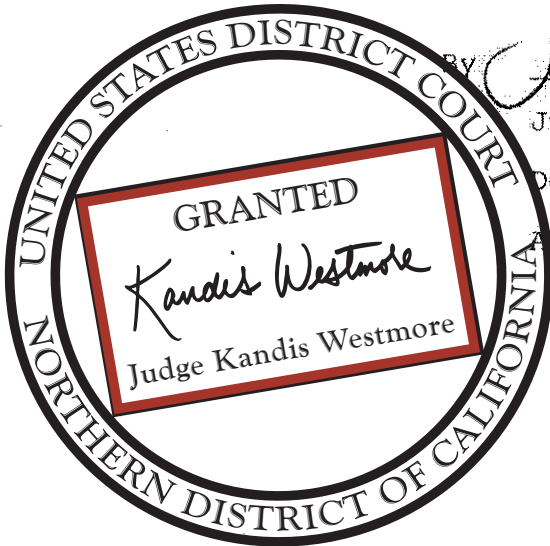


EXHIBIT A

1 Steven C. Finley CSB# 074391
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Case No.: C-14-5482 (KAW)

FIRST AMENDED COMPLAINT FOR
VIOLATION OF CIVIL RIGHTS,
PERSONAL INJURIES AND DAMAGES
(Excessive Force by Police
Officers)

Demand for Jury Trial

23 Plaintiff, by and through her attorneys, alleges:

24 **I. JURISDICTION**

25 1. This is a civil rights action arising from defendants'
26 unreasonable seizure and use of excessive force against plaintiff
27 on November 30, 2013 in the City of Hayward, Alameda County
28

1 California. This action is brought pursuant to 42 USC §§1983 and
2 1988, and the Fourth and Fourteenth Amendments to the United
3 States Constitution. Jurisdiction is founded on 28 USC §§1331 and
4 1343(a) (3) and (4) and the aforementioned statutory and
5 constitutional provisions. Plaintiff further invokes the
6 supplemental jurisdiction of this Court pursuant to 28 USC §1367
7 to hear and decide claims arising out of the same facts under
8 state law.
9

10 **II. VENUE**

11 2. All of the events complained of herein occurred in Alameda
12 County and therefore this action is properly venued in the
13 Oakland division of the United States District Court of
14 California pursuant to 28USC§1391(b)(2).
15

16 **III. FACTS**

17 3. Plaintiff is, and has at all material times been, a citizen
18 and resident of Alameda County California.

19 4. Defendant City of Hayward is a California municipality and
20 defendants Eakin, Nguyen, Mills and Colton are employed police or
21 community service officers acting within the course and scope of
22 their agency and employment and pursuant to the City's policies
23 and procedures.
24

25 5. On November 29, 2013, plaintiff was stopped and arrested by
26 Hayward police on an outstanding traffic warrant. After spending
27 the night in a cell, plaintiff complained of lower back pain due
28

1 to a previous motor vehicle accident and requested medical
2 attention and transport to hospital.

3 6. On the morning of November 30, 2013, plaintiff was
4 handcuffed and led to a police car by defendant Officers Eakin
5 and Nguyen.

6
7 7. Officer Eakin was at that time the Jail Supervisor of the
8 City of Hayward, charged with ultimate responsibility for the
9 safety, security and welfare of prisoners under the Hayward
10 Police Department Policy Manual.

11 8. Officers Nguyen and Eakin directed plaintiff to get in the
12 back of the police car. When plaintiff complained that her back
13 hurt too much to get into the car and asked for an ambulance,
14 Officer Eakin pulled plaintiff down out of the car by her hair,
15 placed her on the ground, put her booted foot on her back, and
16 kicked the side of her body, while Officer Nguyen ground her hand
17 into the floor while she lay prone on the ground. Officer Eakin
18 subsequently filed a false report stating that plaintiff had
19 asked to lay on the ground and that she (Eakin) had placed her
20 foot on plaintiff to stabilize her.
21

22 9. After the paramedics and ambulance arrived, plaintiff was
23 taken to the emergency department of St. Rose Hospital where
24 Officer Nguyen checked her in and provided St. Rose with the
25 details of her admission.
26
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1 10. After plaintiff was released from St. Rose Hospital, she was
2 taken to Santa Rita jail by Officer Nguyen. At the Santa Rita
3 jail, while plaintiff was speaking to jail personnel at the
4 counter, she was physically assaulted from behind by Officers
5 Mills and Colton who forced plaintiff to the floor, dragged her
6 along the floor and threw her into a confinement cell.
7

8 11. Officers Mills and Colton then filed false reports stating
9 that plaintiff had become aggressive and raised her arm towards
10 Officer Mills.

11 12. Plaintiff filed a Claim with the City of Hayward ("the
12 City") on March 28, 2014 and requested retention and production
13 of the City's video tape which recorded the incident or at least
14 some part of the incident at the Hayward police station and the
15 video of the above stated events which occurred at the Santa Rita
16 jail.
17

18 13. On June 16, 2014 the city clerk mailed plaintiff a "Notice
19 of Rejection of Claim." and advised that plaintiff had 6 months
20 to file a claim in court.

21 14. On October 1, 2014 the Records Administrator of the Hayward
22 Police Department advised plaintiff by letter that the
23 surveillance video at the jail would not be disclosed "due to the
24 fact that it would hinder the successful completion of the
25 investigation or related investigation" and to check back after
26 December 1, 2014 "... when the investigation is expected to be
27
28

1 completed", and that the video at the Santa Rita jail was owned
2 and controlled by the Alameda County Sheriff's Department.

3 15. On December 12, 2014 the city produced the video which
4 depicts unreasonable and excessive force committed by defendants
5 against plaintiff. The video may be viewed at control +
6 [http://upgrade-sf.com/finleydata/97hs74hkuj4h7d90d/Screen%2003-
7 16-2015%2019-38-56.avi](http://upgrade-sf.com/finleydata/97hs74hkuj4h7d90d/Screen%2003-16-2015%2019-38-56.avi)

9 16. As part of its Initial Disclosure on or about April 7, 2015
10 the city produced a video of the assault on plaintiff by Officers
11 Mills and Colton. These videos may be viewed at control +
12 [http://www.upgrade-sf.com/finleydata/kuewuv83kjbq23m6/6133-2.avi,](http://www.upgrade-sf.com/finleydata/kuewuv83kjbq23m6/6133-2.avi)
13 and
14 [http://www.upgrade-sf.com/finleydata/7d98h4vsdn920w/6133-3.avi.](http://www.upgrade-sf.com/finleydata/7d98h4vsdn920w/6133-3.avi)

16 **FIRST COUNT - VIOLATION OF CIVIL RIGHTS**

17 **(42 USC § 1983)**

18 17. Plaintiff realleges and incorporates the allegations of
19 paragraphs 1 through 16 above as though fully set forth herein.

20 18. In doing the acts complained of above defendant Officers
21 Eakin, Nguyen, Mills and Colton acted under color of law to
22 deprive plaintiff of her constitutionally protected right to be
23 free from the excessive and unreasonable use of force and the
24 arbitrary and oppressive exercise of governmental power as
25 guaranteed by the Fourth and Fourteenth Amendments to the United
26 States Constitution.
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1 19. Defendant City of Hayward is liable for the actions of
2 officers Nguyen and Eakin, since Eakin was the Jail Supervisor
3 charged with ultimate responsibility for prisoner safety and her
4 actions constituted an act of governmental policy. The City of
5 Hayward also has a custom or practice of filing false police
6 reports and ratifying the abuse committed by its officers after
7 investigation. Upon information and belief, the City failed to
8 properly train and/ or supervise Officers Mills and Colton. As a
9 proximate result of defendants conduct, plaintiff suffered
10 injuries and damages according to proof.

12 20. Defendants acted maliciously, intentionally and
13 oppressively in conscious disregard of plaintiff's rights,
14 entitling plaintiff to an award of punitive damages.

16 **SECOND COUNT - VIOLATION OF CIVIL RIGHTS**

17 **(Cal Civil Code §52.1(b))**

18 21. Plaintiff realleges and incorporates the allegations of
19 paragraphs 1 through 20 above as though set out fully herein.

21 22. Defendants, acting under color of law, have interfered with
22 and violated plaintiff's right to be free of unreasonable seizure
23 and use of excessive force, guaranteed to her by both the
24 California and United States Constitutions and are therefore
25 liable to plaintiff for damages, both compensatory and punitive
26 under Civil Code §§52.1(b) and (h) and 3294.

1 **THIRD COUNT - ASSAULT**

2 23. Plaintiff realleges and incorporates the allegations of
3 paragraphs 1 through 20 above as though set out fully herein.

4 24. Every person has the right of protection from bodily
5 restraint or harm. California Civil Code ¶43. Additionally every
6 person has the right to live without being put in fear of
7 personal harm. *Lowry v Standard Oil Co. of California* 63 Cal. App
8 2d 1, 7(1944).
9

10 25. On November 30, 2013 defendants demonstrated an unlawful
11 intent to inflict or unlawfully allow the infliction of immediate
12 injury on plaintiff.

13 26. Plaintiff was harmed or injured as a result of this
14 unlawful conduct on the part of defendants.
15

16 **FOURTH COUNT - BATTERY**

17 27. Plaintiff realleges and incorporates the allegations of
18 paragraphs 1 through 20 above as though fully set forth herein.

19 28. Defendants' conduct constituted unreasonable and excessive
20 force which was harmful and offensive to plaintiff and would have
21 been harmful and offensive to any reasonable person.
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23 WHEREFORE, plaintiff prays for damages against defendants as
24 follows:

- 25
26 1. Damages for personal injuries, loss of income, humiliation,
27 pain and suffering;
28 2. Punitive damages;

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3. Attorneys fees and costs;

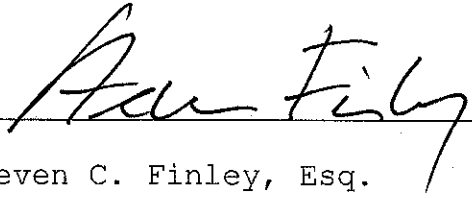
4. Such other damages and relief as the court may deem just and proper.

DEMAND FOR JURY TRIAL:

Plaintiff demands a jury for the trial of this action.

DATED: April 19, 2015

HENNEFER, FINLEY & WOOD, LLP

By: 

Steven C. Finley, Esq.

Attorneys For Plaintiff Terri

Adams