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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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VALERIE ALLEN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VALERIE ALLEN, an individual,

Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal entity;
LOS ANGELES POLICE DEPARTMENT, a
municipal entity; OFFICER N.PHAN, OFFICER
BRENT HOULIHAN, OFFICER J. BEZAK, and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:10-CV-04695-CAS-RC

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- 1) Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983 (General Allegations)
- 2) Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983 (Failure to Implement Appropriate Policies, Customs, and Practices)
- 3) Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983 (Failure to Train and/or Supervise)
- 4) Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983 (Use of Excessive Force)
- 5) The California Tort Claims Act- Government Code §§ 810-996.6- Negligence

Plaintiff, for causes of action against defendants, and each of them, alleges as follows:

JURISDICTION

1. The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1342. Plaintiff brings this action pursuant to 42 U.S.C. §§ 1983, and 1988.
2. Venue over Plaintiff's claims are proper in the Central District of California because one or more of the Defendants' principal place of business is in the County of Los Angeles, and the events giving rise to the claim occurred in this district. 28 U.S.C. §1391(a)(1) and (b)(2).

1 3. Plaintiff Valerie Allen brings this action against the CITY OF LOS ANGELES, LOS ANGELES
2 POLICE DEPARTMENT, OFFICER N.PHAN, OFFICER BRENT HOULIHAN, OFFICER J.
3 BEZAK, and DOES 1 through 100, Inclusive, and alleges as follows:

4 **PARTIES**

5 4. At all times herein mentioned Plaintiff was and is a resident of the County of Los Angeles, State
6 of California.

7 5. At all times herein mentioned, Defendant CITY OF LOS ANGELES (hereinafter "CITY") was
8 and is a municipal entity organized and existing under its laws and the laws of the State of
9 California.

10 6. At all times herein mentioned, Defendant LOS ANGELES POLICE DEPARTMENT
11 (hereinafter "LAPD") was and is a municipal entity organized and existing under its laws and the
12 laws of the State of California.

13 7. Venue is proper in the Central District for the County of Los Angeles because all of the acts and
14 omissions complained of occurred within said District, to wit, within the State of California,
15 County of Los Angeles.

16 8. The true names and capacities of Defendant DOES 1 through 100, inclusive, are unknown to
17 Plaintiff. Therefore, Plaintiff sues said defendants by fictitious names and will ask leave of court
18 to amend this Complaint to set forth their true names and/or capacities when the same are
19 ascertained.

20 9. At all times herein mentioned, each of the defendants was the agent, servant, and employee of
21 each of the remaining defendants and was at all times acting within the purpose and scope of said
22 agency and employment.

23 10. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned the Defendants
24 named herein as DOES 1 through 100, and each of them, were in some way responsible for the
25 injuries suffered by Plaintiff.

26 11. Said fictitiously Doe Defendants are so identified pursuant to California Code of Civil Procedure §
27 474, California Government Code § 950.4, and the decisions in, *e.g.*, *Merritt v. County of Los*
28 *Angeles*, 875 F.2d 765, 768 (9th Cir. 1989) (citing *Cabrales v. County of Los Angeles*, 864 F.2d

1454, 1463 (9th Cir. 1988)), and *Motley v. Parks*, 198 F.R.D. 532, 534-535 (C.D.Cal. 2000), *see also* *Olden v. Hatchell*, 154 Cal. App.3d 1032, 1037-1938, 201 Cal.Rptr. 715, 719-720 (1984) (Cal. Civ. Pro. Code § 474 applicable to government employee defendants.) Said Defendants are sued in, and only in, their individual capacities pursuant to, *inter alia*, *Hafer v. Melo*, 502 U.S. 21, 31, 112 S. Ct. 358, 365, 116 L.Ed.2d. 301 (1991) (“ We hold that state officials, sued in their individual capacities, are ‘persons’ within the meaning of § 1983. The Eleventh Amendment does not bar such suits, nor are officers absolutely immune from individual liability under §1983 solely by virtue of the ‘official’ nature of their acts.”).

12. In performing and engaging in the acts alleged herein, each individual Defendant was acting under color of law, to wit, under the statutes of the State of California and the ordinances, regulations, customs, practices of the State of California, County of Los Angeles, and Los Angeles Police Department.

13. The fictitious defendants, together with the named defendants, are responsible for the unlawful conduct hereinafter alleged, which actually caused, proximately caused, or was a substantial factor in causing the injuries and loss to plaintiff as hereinafter set forth. Because of the unlawful conduct of the defendants and the DOES, the plaintiff is entitled to money damages as compensation.

PRELIMINARY ALLEGATIONS

14. Plaintiff has complied with the tort claims act in that he submitted a tort claim to the CITY OF LOS ANGELES on December 21, 2009.

15. At all times relevant to the facts alleged herein, all individual Defendants, including Does 1 through 100 who were duly appointed, qualified and acting officers, employees, and/or agents of CITY and LAPD, employed by such Defendants, and acting within the course and scope of their employment and/or agency and under color of state law.

16. Each of the Defendants and Doe Defendants caused and is responsible for the unlawful conduct and result by acting jointly and in concert with others who did so by authorizing, acquiescing, condoning, acting, omitting or failing to take action to prevent the unlawful conduct by promulgating or failing to promulgate policies and procedures pursuant to which the unlawful

conduct occurred; by failing and refusing, with deliberate indifference to Plaintiff's rights, to initiate and maintain adequate supervision, security, training, compliance with responsibilities and duties, and staffing; by failing to maintain proper and adequate procedures and protocols; and by ratifying and condoning the unlawful conduct performed by agents and officers, deputies, medical staff, and employees under their direction and control.

17. Whenever and wherever reference is made in this Complaint to any act by Defendants and Doe Defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant individually, jointly, or severally.

FACTUAL ALLEGATIONS

18. Sometime prior to and on or about September 3, 2009, Plaintiff VALERIE ALLEN, was walking and was visibly disorientated near or around 5052 Franklin Avenue in Los Angeles California, when she was approached by Officer Bezak, Officer Houlihan, and Officer Phan. Prior to that date, Cheryl Kwon, Plaintiff's sister, filed a missing person's report for Plaintiff with the Buena Park Police Department, which indicated Plaintiff was endangered and could not be located.
19. Plaintiff is informed and believes and thereon alleges that the Defendant officers were informed of the missing persons report and/ or the aforementioned psychological concerns regarding Plaintiff, or should have been so informed, and/or should have been reasonably informed of the missing persons report and/or should have taken steps and/or reasonable steps to discover the missing persons report, and/or knew or should have known based on Plaintiff's appearance that she was disorientated. Defendants should have taken measures such that the unlawful, unreasonable, unwarranted and or excessive force against Plaintiff would not have occurred.
20. Then and there, in the course and scope of their employment as Los Angeles Police Department Officers, defendants Officer N. Phan, Officer Brent Houlihan, and Officer J. Bezak, while wearing uniforms and badges assaulted, battered, and used excessive force on Plaintiff. Specifically, the officers unlawfully shot and tased Plaintiff several times.
21. The foregoing violated Plaintiff's rights under the Fourth Amendment to be secure in her person from unreasonable seizures.

22. The foregoing actions were in violation of Plaintiff's Eighth Amendment right to be free from unusual punishment and/or in violation of Plaintiff's rights.

COUNT I

Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983

(General Allegations)

23. Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint as if set forth in full at this point.

24. In committing the acts complained of herein, Defendants acted under the color of state law to deprive Plaintiff of certain constitutionally protected rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States including, but not limited to: a) the right to be free from unreasonable searches and seizures; b) the right not to be deprived of liberty without due process of law; and c) the right to be free from excessive use of force by persons acting under color of state law.

25. In violating Plaintiff's rights as set forth above and other rights that will be proven at trial, Defendants acted under color of state law used unreasonable and excessive force in violation of Plaintiff's rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

26. As a direct and proximate result of the violation of their constitutional rights by Defendants, Plaintiff suffered general and special damages as alleged in this Complaint and is entitled to relief under 42 U.S.C. § 1983.

27. The conduct of Defendants was willful, malicious, oppressive and/or reckless and was of such a nature that punitive damages should be imposed in an amount commensurate with the wrongful acts alleged herein.

COUNT II

Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983

(Failure to Implement Appropriate Policies, Customs, and Practices)

28. Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint as if set forth in full at this point.

- 1 29. Defendant LAPD, and Defendant CITY, implicitly or explicitly adopted and implemented
2 careless and reckless policies, customs, or practices, that included among other things, of
3 allowing Los Angeles Police Department employees, including Defendants Officer N.Phan,
4 Officer Brent Houlihan, and Officer J. Bezak, to confront disorientated citizens without any
5 reasonably behavioral training and in such a way as to cause physical harm to disorientated
6 citizens without lawful justification.
- 7 30. Defendant Los Angeles Police Department, and Defendant City of Los Angeles, implicitly or
8 explicitly adopted and implemented a careless and reckless policy, custom, or practice of
9 allowing Los Angeles Police Department employees, including Defendants Officer N.Phan,
10 Officer Brent Houlihan, and Officer J. Bezak, to confront disorientated citizens by use of
11 excessive lethal force where less severe alternatives existed.
- 12 31. At all times herein mentioned, Defendants CITY, LAPD, and Does 1 through 10, and each of them,
13 maintained customs or practices that posed a substantial risk of serious harm to residents in
14 Plaintiff's situation and each defendant knew or, by law, should have known, that the following
15 custom or practice posed this risk of harm: (1) inadequate supervision and training of officers,
16 deputies, and employees, especially with regard to citizen contact and reasonable use of force; (2)
17 failure to prevent unreasonable use of force; (4) failure to supervise, investigate, and take corrective
18 actions in incidents of failure to use reasonable force; (5) condoning lax supervision of officer
19 misconduct, unconstitutional conduct, and or dereliction of duty; (6) condoning lax supervision by
20 supervisors who fail to report or investigate officers and other supervisors wrongful,
21 unconstitutional, or dereliction of duty and failure to use reasonable force (7) condoning lax
22 supervision by supervisors who fail to take preventative measures to protect the safety of the
23 citizens of Los Angeles; (8) ratifying wrongful conduct by deputies, officers, and/or supervisors that
24 results in unreasonable use of force and repetition of the wrongful conduct; (9) failure to implement
25 competent and/or appropriate policies and procedures regarding citizen contact and reasonable use
26 of force; (10) failure to enforce policies and procedures regarding citizen contact and reasonable use
27 of force; and (11) failure to comply with policies and procedures regarding citizen contact and
28 reasonable use of force.

32. Plaintiff is informed and believes and thereon alleges that all Defendants each had a history and propensity for acts of the nature complained herein and manifested such propensities prior to and during their employment and/or agency with Defendants CITY and LAPD. Plaintiff is further informed and believes and thereon alleges that all Defendants knew, or in the exercise of reasonable care should have known, of such prior history and propensity at the time such individuals were hired and/or during the time of their employment. Among other things, Defendants' disregard of this knowledge and/or failure to adequately investigate and discover and correct such facts caused the violation of Plaintiff's constitutional rights.

33. In committing the acts complained of herein, Defendants acted under color of state law to deprive Plaintiff as alleged herein of certain constitutionally protected rights including, but not limited to: 1) the right to be free from unreasonable searches and seizures; b) the right to not be deprived of liberty without due process of law; and 3) the right to be free from excessive use of force by persons acting under color of state law.

34. As a result of this deliberate indifference to Plaintiff's rights, Plaintiff suffered personal injuries and is entitled to relief under 42 U.S.C. § 1983.

COUNT III

Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983

(Failure to Adequately Train and/or Supervise)

35. Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint as if set forth in full at this point.

36. Defendant LAPD, and Defendant CITY negligently supervised Defendants Officer N.Phan, Officer Brent Houlihan, and Officer J. Bezak by failing to provide proper training and outline proper procedure in citizen contact, and confronting disorientated citizens, and by failing to provide proper training and outline the proper procedure for using reasonable force.

37. The failure of Defendant LAPD, and Defendant CITY to adequately train and supervise the Defendants Officer N.Phan, Officer Brent Houlihan, and Officer J. Bezak amounts to deliberate indifference to the rights of Plaintiff to be free from excessive force and unreasonable seizures under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

1 38. Plaintiff is informed and believes and thereon alleges that prior to the incident alleged herein, and
2 subsequent hereto, Defendants knew or reasonably should have known, that the deputies, officers,
3 and supervisors employed by CITY and LAPD, in the course and scope of their employment under
4 color of law, committed similar acts of using unreasonable force, ignoring public safety concerns in
5 violation of the Plaintiff's constitutional rights, which wrongful conduct resulted Plaintiff being shot
6 and tased multiple times.

7 39. Further and additionally, Defendants became aware, or should have become aware, and should have
8 taken corrective measures to prevent both this incident and/or repeated incidents of supervisors
9 failing to supervise subordinates who were derelict in their duties and responsibilities and
10 deliberately indifferent as set forth above and to: (1) the necessity to use reasonable force; (2)
11 incidents of deputies and or officers using unreasonable force; (3) incidents of deputies and or
12 officers making improper citizen contact; (4) incidents of deputies and supervisors adhering to a
13 "code of silence" resulting in failures to report deputies, supervisors, and employee wrongful and
14 unconstitutional conduct; (5) incidents of failing to conduct investigations or conducting shoddy
15 investigations of incidents; (6) ratifying wrongful conduct by deputies and supervisor that result in
16 serious injuries or death of citizens, civil litigation, judgments, and settlements by failing to
17 implement corrective action to prevent repetition of ongoing wrongful conduct; (7) incidents of lax
18 or lack of supervision and training; (8) incidents that supervisors were not reporting to their
19 superiors as necessary or required of their duties and responsibilities.

20 40. In committing the acts complained of herein, Defendants acted under color of state law to
21 deprive Plaintiff as alleged herein of certain constitutionally protected rights including, but not
22 limited to: 1) the right to be free from unreasonable searches and seizures; b) the right to not be
23 deprived of liberty without due process of law; and 3) the right to be free from excessive use of
24 force by persons acting under color of state law.

25 41. As a result of this deliberate indifference to Plaintiff's rights, Plaintiff suffered personal injuries
26 and is entitled to relief under 42 U.S.C. § 1983.

27 **Count IV**

28 Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983

(Use of Excessive Force)

42. Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint as if set forth in full at this point.

43. The Defendant CITY has adopted policies, procedure, practices or customs, and has failed to train and or supervise within the LAPD that allow, among other things, the use of excessive force when other more reasonable and less drastic methods are available.

44. The actions of CITY amount to deliberate indifference to the rights of Plaintiff to be free from excessive force and unreasonable seizures under the Fourth and Fourteenth Amendments to the Constitution of the United States.

45. The Defendant LAPD has adopted policies, procedure, practices or customs, and has failed to train and or supervise LAPD employees that allow, among other things, the use of excessive force when other more reasonable and less drastic methods are available.

46. The actions of Defendant LAPD amount to deliberate indifference to the rights of Plaintiff to be free from excessive force and unreasonable seizures under the Fourth and Fourteenth Amendments to the Constitution of the United States.

47. Defendant Officers Bazak, Houlihan, and Phan unlawfully and illegally assaulted, battered, tased and shot Plaintiff multiple times, when more reasonable and less drastic methods were available to them.

48. The actions of Defendant Officers Bazak, Houlihan, and Phan amount to deliberate indifference to the rights of Plaintiff to be free from excessive force and unreasonable seizures under the Fourth and Fourteenth Amendments to the Constitution of the United States.

49. As a result of the deliberate indifference to the Plaintiff's rights by CITY and LAPD, and its agents, servants and employees, including Defendants Officers Bazak, Houlihan, and Phan, the Plaintiff suffered serious and permanent injuries to her health, strength, and activity, sustaining injury to her body and shock and injury to her nervous system and person, which have caused, and will continue to cause, plaintiff great physical, mental, and emotional pain and suffering. Plaintiff is entitled to relief under 42 U.S.C. § 1983.

50. As a direct and legal result of the foregoing, plaintiff was required to, and did, and will in the future, employ health care practitioners to examine, treat, and care for her, and did, and will in the future, incur medical and incidental expenses, including prejudgment interest, as well as past and future loss of earnings. The exact amount of such expenses is presently unknown to plaintiff, and plaintiff will seek leave to amend this complaint to set forth the exact amount thereof when the same has been ascertained.

51. As a direct and proximate result of the acts of Defendants, Plaintiff suffered, and thus Plaintiff seeks to recover, general and special damages, including, but not limited to, the loss of liberty, medical expenses, lost earnings, and the loss of earning capacity, as well as, for the reasons enunciated in, *e.g. Garcia v. Whitehead*, 961 F. Supp. 230, 232-33 (C.D. Cal. 1996), *Williams v. City of Oakland*, 915 F. Supp. 1074, 1079-80 (N.D. Cal. 1996), *Davis v. City of Ellensburg*, 651 F.Supp. 1154, 1166 (N.D. Cal. 1981), disapproved on other grounds, *Peraza v. Delameter*, 722 F.2d 1455, 1457 (9th Cir. 1984), see also, *Ambruster v. Monument 3: Realty Fund VIII Ltd.*, 963 F.Supp. 862, 865-66 (N.D. Cal. 1997) (applying *Williams* in action under Federal Fair Housing Act), physical, mental, and emotional pain, shock, agony, and suffering, in an amount according to proof at trial.

52. The aforementioned conduct of the individual Defendants, including individual Doe Defendants, was done so maliciously, oppressively, recklessly, with callous indifference to Plaintiff's constitutional rights and safety, such that an award of exemplary and punitive damages should be imposed against said individual Defendants and Does in an amount to be proven at trial.

Count V

The California Tort Claims Act- Government Code §§ 810-996.6

(Negligence)

53. Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint as if set forth in full at this point.

54. On or around September 3, 2009, Officer N. Phan, Officer Brent Houlihan, and Officer J. Bezak, while wearing uniforms and badges unlawfully shot and tased Plaintiff several times, causing Plaintiff to sustain serious injuries.

55. Defendants CITY, LAPD, Officer N. Phan, Officer Brent Houlihan, and Officer J. Bezak, and DOES 1 through 100, and each of them negligently and or unreasonably used unreasonable force upon Plaintiff.

56. As a proximate result of the negligence, carelessness, and unlawfulness, of Defendants, and each of them, and the resulting incident, as herein alleged, Plaintiff was injured in her health, strength and activity, and was damaged thereby in a sum to be proven at time of trial.

57. As a further proximate result of said negligence, Plaintiff has been, and in the future will be, required to obtain the services of physicians and to incur other medical expenses in an amount to be proven at time of trial and has further sustained economic losses in an amount to be proven at trial.

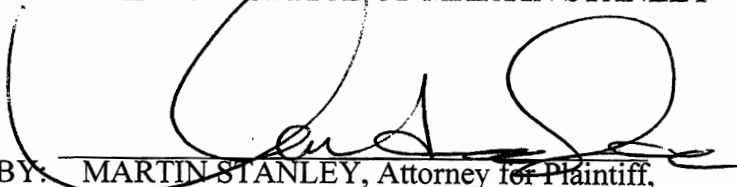
WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

1. Damages, both general and special, in a sum to be proven at time of trial;
2. All medical and incidental expenses in a sum according to proof;
3. Punitive and exemplary damages against all individual defendants, including individual Doe defendants;
4. Reasonable expenses incurred in this litigation, including attorney and expert fees, pursuant to 42 U.S.C. § 1988 (b) and (c);
5. Costs of suit; and
6. For such other and further relief as the court deems just and proper.

DATED: July 9, 2010

Respectfully submitted,

THE LAW OFFICE OF MARTIN STANLEY

BY: 
MARTIN STANLEY, Attorney for Plaintiff,
VALERIE ALLEN, and behalf of all counsels for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 137 Bay Street #2, Santa Monica, California 90405.

On July 9, 2010, I served the foregoing document described as FIRST AMENDED COMPLAINT FOR DAMAGES on the interested parties in this action by placing a true copy thereof in a sealed envelope address as follows:

Kelly Kades
Office of City Attorney
200 N. Main Street 600 CHE
Los Angeles, CA 90012
Fax: ~~213-978-8312~~
213-978-8785

☒ MAIL (C.C.P. §§ 1013a, *et seq.*): I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ PERSONAL SERVICE (C.C.P. §§ 1011, *et seq.*): I delivered such envelope(s) by hand to the offices of the addressee(s).

☒ TELECOPY/FACSIMILE (C.C.P. §§ 1012.5, *et seq.*): I caused said document(s) to be telecopied to each addressee's telecopier ("fax") number.

☐ EXPRESS MAIL (C.C.P. §§ 1013(c)(d), *et seq.*): I caused said document(s) to be deposited with an express service carrier in a sealed envelope designed by the carrier as an express mail envelope, with fees and postage prepaid.

☐ REGISTERED MAIL (C.C.P. §§ 1020, *et seq.*): I caused said documents(s) to be deposited with the United States Mail, postage prepaid, return receipt requested, signed by the addressee(s) that said document(s) were received.

☒ STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ FEDERAL: I declare that I am employed in the office as a member of the bar of this court at whose direction the service was made.

Executed on July 9, 2010 at Santa Monica, California.


CANDACE LEE