

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Colorado

DAKOTA TYLER MCGRATH

Plaintiff

v.

FORT COLLINS POLICE SERVICES OFFICER NICK RODGERS, in his individual capacity

Defendant

Civil Action No. 17-CV-1177-LTB-NYW

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Nick Rodgers
Fort Collins Police Department
2221 South Timberline Road
Fort Collins, CO 80525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Anthony Viorst, Esq.
Viorst Law Offices, PC
950 South Cherry Street, Suite 300
Denver, CO 80246

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05/12/2017



s/ A. Menza

Signature of Clerk or Deputy Clerk

AO 440 (Rev 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 17-CV-1177-LTB-NYW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JS 44 (Rev. 12/07)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p style="font-size: 1.2em; font-weight: bold;">DAKOTA TYLER MCGRATH</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Larimer</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Anthony Viorst, Esq., Viorst Law Offices, PC, 950 South Cherry Street, Suite 300, Denver, CO 80246, (303) 759-3808</p>	<p><b>DEFENDANTS</b></p> <p>FORT COLLINS POLICE SERVICES OFFICER NICK RODGERS, in his individual capacity</p> <p>County of Residence of First Listed Defendant <u>Larimer</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes		
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 42 U.S.C § 1983

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    **DEMAND \$** \_\_\_\_\_    CHECK YES only if demanded in complaint: **JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 05/11/17    SIGNATURE OF ATTORNEY OF RECORD: Anthony Viorst

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**Complaints and Other Initiating Documents**1:17-cv-01037 Panczner v. Western Adventures, Inc. et al

U.S. District Court

District of Colorado

**Notice of Electronic Filing**

The following transaction was entered by Viorst, Anthony on 4/26/2017 at 8:50 PM MDT and filed on 4/26/2017

**Case Name:** Panczner v. Western Adventures, Inc. et al**Case Number:** 1:17-cv-01037**Filer:** Bruce Panczner**Document Number:** 1**Judge(s) Assigned:** None (please contact the court)**Docket Text:****COMPLAINT and Jury Demand against Western Adventures, Inc., lesley fraser (Filing fee \$ 400,Receipt Number 1082-5489361)Attorney Anthony Jacob Viorst added to party Bruce Panczner(pty:pla), filed by Bruce Panczner. (Attachments: # (1) Civil Cover Sheet, # (2) Summons Summons - Western Adventures, # (3) Summons Summons - Lesley Fraser)(Viorst, Anthony)****1:17-cv-01037 Notice has been electronically mailed to:**

Anthony Jacob Viorst tony@hssspc.com, michelle@hssspc.com

**1:17-cv-01037 Notice has been mailed by the filer to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=4/26/2017] [FileNumber=5972453-0] [922b8b610e31c1cc58f2416b54584b3de9abc1a19b6940f26fd9c71a44366ba9753b24b6f20b65985ae4a17ec4e6e83cb34c0b9ad2539166a88ae440568d6dc0]]

**Document description:**Civil Cover Sheet**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=4/26/2017] [FileNumber=5972453-1] [78a0980027b9c4d22166897067a0b17e7adb4311468e15f1830d3609c93e2071a9adab14085a44e2078dbff79029e9ed7c7e8bde49c0a06795a18a1af789216f]]

**Document description:**Summons Summons - Western Adventures**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=4/26/2017] [FileNumber=5972453-2] [14d7ec856620824d2953e3d56a029c0db05e42321c173e85da6fed90ab6e1dcb78f61d3a262cfabbf2fe76994d827f8bcba659d2637c10d4e64af622e67b35f5]]

**Document description:**Summons Summons - Lesley Fraser**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=4/26/2017] [FileNumber=5972453-3

4/26/2017

CM/ECF - U.S. District Court cod

] [5aea077151ad870c9b0a98f6b84cbcd6af5e3c94d4f206d4d3289abd78bbf3ac2c7  
e5160cd250d7a626c4125ee857f44ea90f4fed414df8ec8f56cff47d02c98]]

**Michelle**

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**From:** paygovadmin@mail.doc.twai.gov  
**Sent:** Wednesday, April 26, 2017 8:49 PM  
**To:** Michelle  
**Subject:** Pay.gov Payment Confirmation: COD CM ECF

Your payment has been submitted to Pay.gov and the details are below. If you have any questions or you wish to cancel this payment, please contact the court you paid at your earliest convenience.

Application Name: COD CM ECF  
Pay.gov Tracking ID: 2623PD5Q  
Agency Tracking ID: 1082-5489361  
Transaction Type: Sale  
Transaction Date: Apr 26, 2017 10:48:58 PM

Account Holder Name: Anthony Viorst  
Transaction Amount: \$400.00  
Card Type: Visa  
Card Number: \*\*\*\*\*2219

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-CV-1177

**DAKOTA TYLER MCGRATH,**

Plaintiff,

v.

**FORT COLLINS POLICE SERVICES OFFICER NICK RODGERS,** in his individual  
capacity,

Defendant.

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**COMPLAINT FOR DAMAGES AND JURY DEMAND**

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Plaintiff, Dakota Tyler McGrath, by and through counsel, Anthony Viorst, of the Viorst Law Offices, P.C., hereby brings this action for damages and jury demand under 42 U.S.C. § 1983 to redress his civil and legal rights, and alleges as follows:

**INTRODUCTION**

1. This is a civil rights action for damages and other relief in which the plaintiff, Dakota McGrath, seeks relief for the defendants' violation of his rights secured by The Civil Rights Act of 1871, 42 U.S.C. § 1983, by the United States Constitution, including its Fourth and Fourteenth Amendments to the United States Constitution, and by the laws and Constitution of the State of Colorado. Defendant violated the rights of Dakota McGrath under the Fourth and Fourteenth Amendments to the United States Constitution, when Defendant Nick Rodgers, without lawful justification, seized and assaulted Dakota McGrath on or about October 20, 2016. Defendant's conduct under color of state law proximately caused the deprivation of Plaintiff's



federally protected rights. Defendant's conduct was done willfully and wantonly and with malicious disregard of Plaintiff's rights, feelings and physical health. Plaintiff seeks compensation for lost wages, loss of quality of life, physical disfigurement, permanent physical impairment and punitive damages, an award of costs, interest and attorney's fees, and such other and further relief as this Court deems proper and just.

### **JURISDICTION AND VENUE**

2. This action arises under the Constitution and laws of the United States, and is brought pursuant to Title 42 U.S.C § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331 and 1343.

3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado.

4. Plaintiff has satisfied all conditions precedent to bringing this action.

### **JURY TRIAL DEMANDED**

5. Plaintiff demands a trial by jury on these claims as pleaded herein.

### **PARTIES**

6. At the time of this incident, Plaintiff Dakota McGrath ("McGrath") was a resident of the State of Colorado, residing in Larimer County, Colorado.

7. At all times relevant to the subject matter of this litigation, Defendant Nick Rodgers ("Officer Rodgers" or "Defendant Rodgers") was a citizen of the United States, and resident of Colorado, and was employed by the Fort Collins Police Services in Fort Collins, Colorado.

8. At all times relevant hereto, Defendant Rodgers, sued in his individual capacity, was acting within the scope of his official duties and employment, under color of state law.

#### FACTUAL ALLEGATIONS

9. On the evening of October 20, 2016, at approximately 6:30 p.m., Mr. McGrath and his brother got into an argument. Mr. McGrath and his brother then parted and went their separate ways.

10. Mr. McGrath's brother then called 911, and told the dispatcher that Mr. McGrath had head-butted him.

11. Defendant Rodgers was dispatched at 6:59 p.m. and observed Mr. McGrath taking things out of his vehicle at approximately 7:05 p.m.

12. Defendant Rodgers called out to Mr. McGrath, but Mr. McGrath was wearing ear-buds and did not hear him, and so he got out of his car and began walking away.

13. Defendant Rodgers pursued Mr. McGrath, who walked into an alleyway. At that time, it was Defendant Rodgers' intent to arrest Mr. McGrath for the crime of third degree assault, a misdemeanor.

14. Another officer then arrived, pulling up to allow the headlights of his police car to light the alleyway.

15. In the alleyway, Defendant Rodgers caught up to Mr. McGrath, and utilized his steel baton to strike Mr. McGrath from behind, in the area of his head and neck. The steel baton struck Mr. McGrath in the head down to the neck area, as he was walking down the alley. This blow rendered Mr. McGrath briefly unconscious, causing him to drop to the ground and hit his head.

16. After being knocked down, Mr. McGrath rolled from his stomach onto his back. At that point, Mr. McGrath was still dazed, and was not actively resisting or obstructing Defendant Rodgers. Nonetheless, while Mr. McGrath was laying on the ground, Defendant Rodgers struck Mr. McGrath's right leg multiple times with the steel baton.

17. Due to the crushing force delivered by Defendant Rodgers' baton strikes, Mr. McGrath's right leg sustained multiple fractures including an open fracture of the proximal end of his right tibia.

18. Mr. McGrath was transported by ambulance to the hospital, where his open tibial fracture was diagnosed. Despite the need for immediate follow-up treatment, Mr. McGrath was then arrested and detained up in the Larimer County Detention Center. At the Detention Center, Mr. McGrath was denied medical care as well as prescribed medications. Further, for a period of several days, Mr. McGrath was confined to a blood-soaked bed, and forced to urinate in a bottle, as the Detention Center staff would not respond to his multiple pleas for assistance.

19. Thereafter, Mr. McGrath underwent extensive medical care, including surgery, in which a titanium nail/rod was driven forcefully down the center of the entire length of the tibia, and screwed in place. Mr. McGrath incurred significant medical expenses in order to treat the injuries caused by Defendant Rodgers. Mr. McGrath has also experienced significant noneconomic damages due to these injuries, including pain, suffering, emotional distress, and loss of quality of life. In addition, Mr. McGrath has suffered and continues to suffer from permanent physical impairment and disfigurement of his right leg.

**FIRST CLAIM FOR RELIEF**

(Excessive Force under Fourth Amendment and Due Process Clause and 42 U.S.C. § 1983 – Officer Rodgers)

20. Plaintiff incorporates the preceding paragraphs by this reference.

21. Defendant Rodgers acted under color of state law, in his capacity as an officer of the Fort Collins Police Services, at all times relevant to the allegation in this claim for relief.

22. Defendant Rodgers is a “person” under 42 U.S.C. § 1983.

23. Although Mr. McGrath was merely a suspected misdemeanor, Defendant Rodgers inflicted a steel baton strike to Mr. McGrath’s head and neck area and, after Mr. McGrath fell to the ground, inflicted multiple unduly forceful baton strikes to Mr. McGrath’s right leg, thereby causing multiple fractures to that leg.

24. The conduct and actions of Defendant Rodgers, acting under color of law, when he inflicted baton strikes to Mr. McGrath’s head/neck area and his right leg, were excessive and unreasonable, were done intentionally, willfully, maliciously, with a deliberate indifference and/or reckless disregard for the natural and probable consequences of his acts, were done without lawful justification or reason, and were designed to and did cause specific and serious physical and emotional pain and suffering in violation of Mr. McGrath’s rights as guaranteed by 42 U.S.C. § 1983, and the Fourth and Fourteenth Amendments to the United States Constitution, including the right to be free from an unreasonable seizure of his person and the right to be free from the use of excessive, unreasonable, and unjustified force.

25. Mr. McGrath is entitled to damages to compensate him for his economic and non-economic losses, as well as any permanent impairment and disfigurement, emotional distress attributable to the violation of his constitutional rights by Defendant Rodgers. In addition, Mr.

McGrath is entitled to costs and attorney fees pursuant to 42 U.S.C § 1988 and requests pre-judgment and post-judgment interests as allowed by law.

WHEREFORE, Mr. McGrath respectfully requests that this Court enter judgment in his favor against the Defendant, and grant:

- Appropriate relief at law and equity;
- Economic losses on all claims allowed by law;
- Noneconomic damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- Damages for permanent impairment and disfigurement;
- Punitive damages on all claims allowed by law in an amount to be determined at trial;
- Attorney's fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- Pre- and post-judgment interest at the lawful rate;
- Any further relief that this court deems just and proper, and any other relief as allowed by law.

Respectfully submitted this 11<sup>th</sup> day of May, 2017.

THE VIORST LAW OFFICES, P.C.

*s/ Anthony Viorst*

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**Complaints and Other Initiating Documents**1:17-cv-01177 McGrath v. Rodgers

U.S. District Court

District of Colorado

**Notice of Electronic Filing**

The following transaction was entered by Viorst, Anthony on 5/11/2017 at 8:06 PM MDT and filed on 5/11/2017

**Case Name:** McGrath v. Rodgers**Case Number:** 1:17-cv-01177**Filer:** Dakota Tyler McGrath**Document Number:** 1**Judge(s) Assigned:** None (please contact the court)**Docket Text:****COMPLAINT for Damages and Jury Demand against Nick Rodgers (Filing fee \$ 400, Receipt Number 1082-5515310) Attorney Anthony Jacob Viorst added to party Dakota Tyler McGrath(pty:pla), filed by Dakota Tyler McGrath. (Attachments: # (1) Civil Cover Sheet Civil Cover Sheet, # (2) Summons Summons)(Viorst, Anthony)****1:17-cv-01177 Notice has been electronically mailed to:**

Anthony Jacob Viorst tony@hssspc.com, michelle@hssspc.com

**1:17-cv-01177 Notice has been mailed by the filer to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=5/11/2017] [FileNumber=5994496-0] [43900d98d225fd9636ae9a8fe5f2164a7e375fd2586f9d468a0e53bd7cf5a833fccb666891920ac902ce100b5bd3559d6eab43586de48a45703146e621e85e4d]]

**Document description:**Civil Cover Sheet Civil Cover Sheet**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=5/11/2017] [FileNumber=5994496-1] [6a92db635404bb1763f8a0e7a3257dc9925089002331cb9250c4404abe9b66d7233e9cbc52bc95a50a812c1163207ef189273167ca2a7774c6b4bed803c8b9cb]]

**Document description:**Summons Summons**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1071006659 [Date=5/11/2017] [FileNumber=5994496-2] [2bf276bd23e640b563cb82ce602c5e81af48f04905904825f70cd780a85846ff6010c12ae83bb572859b7874b4de49f7cae2294e44e8455ef93fdc824501cf4e]]