

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-03112-RBJ-STV

SEAN SLATTON,

Plaintiff,

v.

TODD HOPKINS, in his individual capacity,
BRANDON BARNES, in his individual capacity,
JOHN HUTTO, in his individual capacity,
CITY OF FORT COLLINS, a municipality,

Defendants.

FOURTH AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Sean Slatton, by and through his attorneys David A. Lane and Helen Oh of KILLMER, LANE & NEWMAN, LLP, respectfully alleges for his Complaint and Jury Demand as follows:

INTRODUCTION

1. On December 3, 2016, Plaintiff Sean Slatton was attending a sorority formal event at a private venue in Fort Collins with his girlfriend. After he was falsely accused of having a flask and told to leave by two off-duty Fort Collins Police Services officers, Defendants Hopkins and Barnes, Mr. Slatton immediately and peacefully exited the building.

2. Defendants Hopkins and Barnes followed Mr. Slatton and told him he needed to leave the property in its entirety. Less than thirty seconds later, as Mr. Slatton was walking away and off the property, Defendant Hopkins, for no legitimate reason, struck Mr. Slatton hard in the lower leg with his baton. Then, less than five seconds after that, as Mr. Slatton was backing away from the officers, Defendant Hopkins sprayed Mr. Slatton in the eyes with pepper spray. At no

point during the encounter did Mr. Slatton act aggressively toward either officer, and he posed no risk to their safety or to the safety of any other individual.

3. Completely afraid for his own safety, Mr. Slatton justifiably believed he had no choice but to flee from Defendant Hopkins because the only alternative was to risk Defendant Hopkins' continuing use of unlawful force physical force against him, which reasonably appeared imminent. Shortly thereafter, other Fort Collins Police officers apprehended Mr. Slatton without any incident or resistance. Fort Collins Police Services investigated Officer Hopkins' use of force against Mr. Slatton and found no wrongdoing.

4. To justify their illegal conduct, Fort Collins Police Services—relying solely on information provided by Officer Hopkins—charged Mr. Slatton with third-degree trespassing, resisting arrest, and obstruction. All charges were ultimately dismissed.

5. This act of brutalization and cover-up by Fort Collins police officers follows a disturbing pattern by officers of the Fort Collins Police Services, under the leadership of Chief Hutto, using excessive force. Over the past few years, Fort Collins police officers have customarily utilized objectively unreasonable force engaged in at most minor misconduct (*e.g.*, third-degree trespassing, a petty offense), often injuring them. In these cases, to justify the excessive use of force, Fort Collins police officers charge their victims with crimes lacking probable cause. Fort Collins then finds no wrongdoing by the officers, and the cycle continues.

6. Mr. Slatton seeks to hold Fort Collins and its police officers accountable for their unconstitutional actions. He brings this Complaint and Jury Demand to vindicate his Fourth Amendment rights to be free from unlawful seizure and excessive force, and his Fourteenth Amendment Substantive Due Process right to be free from the use of excessive force.

PARTIES

7. At all times relevant to this complaint, Plaintiff Sean Slatton was a resident of the

State of Colorado.

8. Defendant City of Fort Collins, Colorado (“Fort Collins”), is a Colorado municipal corporation, and enforces local and state law through its law enforcement agencies, including the Fort Collins Police Services (“FCPS”).

9. At all times relevant to this Complaint, Defendant Officer Todd Hopkins was a resident of the State of Colorado. At all relevant times, Defendant Hopkins was acting within the scope of his official duties and employment and under color of state law in his capacity as a police officer for the Fort Collins Police Services.

10. At all times relevant to this Complaint, Defendant Officer Brandon Barnes was a resident of the State of Colorado. At all relevant times, Defendant Barnes was acting within the scope of his official duties and employment and under color of state law in his capacity as a police officer for the Fort Collins Police Services.

11. At all times relevant to this Complaint, Defendant Chief John Hutto was a resident of the State of Colorado. At all relevant times, Defendant Hutto was acting within the scope of his official duties and employment and under color of state law in his capacity as the chief of police for the Fort Collins Police Services.

12. At all relevant times, Defendant Hutto was in charge of the FCPS and the supervision of all FCPS officers.

JURISDICTION AND VENUE

13. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331.

14. This action arises under the Constitution and laws of the United States and is brought pursuant to 42 U.S.C. § 1983.

15. Jurisdiction supporting Plaintiff’s claim for attorney fees and costs is conferred by

42 U.S.C. § 1988.

16. 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, and all of the parties were residents of the State at the time of the events giving rise to this Complaint.

FACTUAL ALLEGATIONS

Defendant FCPS officers unjustifiably and unreasonably seized Mr. Slatton.

17. On December 3, 2016, Plaintiff Sean Slatton was attending his girlfriend's sorority event at a private venue in Fort Collins.

18. Defendants Hopkins and Barnes were working off-duty at the event, but in full uniform.

19. A woman who was working the event had heard from an attendee, falsely, that Mr. Slatton had brought a flask into the event. The employee confronted Mr. Slatton, who told her that he did not have a flask.

20. Either because the employee signaled Defendant Hopkins and indicated for him to remove Mr. Slatton or because of Defendant Hopkins' own observations of Mr. Slatton's discussion with the employee, Defendant Hopkins decided that Mr. Slatton needed to leave the event.

21. Defendants Hopkins and Barnes approached Mr. Slatton, and Defendant Hopkins instructed him to leave.

22. Mr. Slatton calmly and immediately complied with Defendants' request.

23. As Mr. Slatton was walking toward the exit of the building, Defendants Hopkins and Barnes followed Mr. Slatton through the venue.

24. Mr. Slatton exited the building and began ordering a car service to drive him back to the hotel where he was staying.

25. Defendant Hopkins and Defendant Barnes followed Mr. Slatton when he exited the building. Defendant Hopkins immediately asked Mr. Slatton “what was the property part you didn’t understand,” referring to the instruction to leave the property. Mr. Slatton responded that he was “waiting for his ride.”

26. Defendant Hopkins told Mr. Slatton he needed to leave the property in its entirety, and Mr. Slatton responded, “ok, I will.” But before giving Mr. Slatton a chance to do so, Defendant Hopkins immediately, without legal authorization to do so, demanded to see Mr. Slatton’s identification. When Mr. Slatton asked why Defendant Hopkins was demanding his identification, Defendant Hopkins informed Mr. Slatton that he was “detaining [him].”

27. When Mr. Slatton asked Defendant Hopkins for what he was being detained, Defendant Hopkins responded, “[f]or trespassing,” even though Defendant Hopkins did not have probable cause or reasonable suspicion to believe that Mr. Slatton was trespassing.

28. Mr. Slatton replied, “I’m not trespassing, I’m leaving right now,” and turned away from Defendants Barnes and Hopkins and started walking. Defendant Hopkins then informed Mr. Slatton, “stop, you’re under arrest.”

29. During this brief encounter—which lasted no longer than thirty seconds—Defendant Hopkins repeatedly demanded to see Mr. Slatton’s identification.

30. Despite the lack of reasonable suspicion or probable cause to believe that Mr. Slatton had committed or was about to commit a criminal offense, at no point during this encounter did Defendant Barnes make any attempt to stop Defendant Hopkins from unlawfully asserting authority over Mr. Slatton in order to unjustifiably restrain Mr. Slatton’s liberty.

Defendant Hopkins used violent, unjustified, and excessive force against Mr. Slatton.

31. As Mr. Slatton was walking away from Defendants Barnes and Hopkins—less

than thirty seconds after Defendant Hopkins told him he needed to leave the property in its entirety—completely unprovoked, Defendant Hopkins attacked Mr. Slatton.

32. Defendant Hopkins’ violent actions occurred within a minute of Mr. Slatton being told to exit the building.

33. Approximately five seconds after Defendant Hopkins told Mr. Slatton to “stop” walking away because he was “under arrest,” a command which confusingly was issued approximately twenty seconds after the command to “leave” the property, which Mr. Slatton was in the process of doing, Defendant Hopkins pulled out his baton and struck Mr. Slatton hard in the lower leg.

34. Mr. Slatton posed absolutely no threat to the safety of Defendant Hopkins, Defendant Barnes, or any other individual when Defendant Hopkins delivered the baton strike.

35. Clearly confused about Defendant Hopkins’ completely unjustified use of force against him, Mr. Slatton asked Defendant Hopkins what he “[was] doing.”

36. Reasonably believing that excessive force had been used against him and that Defendant Hopkins would continue to use excessive force against him, and in fear for his safety, Mr. Slatton attempted to move away from Defendant Hopkins.

37. Mr. Slatton started slowly backing away from Defendant Hopkins. Without any warning, and approximately five seconds after striking him with a baton, Defendant Hopkins sprayed Mr. Slatton in the eyes with pepper spray.

38. Contrary to the implication raised by the warrantless arrest affidavit, which was completed by FCPS Officer Harres based solely on information provided by Defendant Hopkins, that Mr. Slatton acted aggressively toward either Defendant Hopkins or Defendant Barnes before Defendant Hopkins pepper sprayed him, Mr. Slatton in fact was hobbling and backing away

from them at that time. At no point during the entire encounter with Defendants Barnes and Hopkins did Mr. Slatton pose any risk of causing bodily harm to either officer or any other individual.

39. Now completely afraid for his safety, Mr. Slatton justifiably believed he had no choice but to flee from Defendant Hopkins because the only alternative was to risk Defendant Hopkins' continuing use of unlawful physical force against him, which reasonably appeared imminent.

40. Defendant Hopkins radioed for assistance in apprehending Mr. Slatton. Defendant Hopkins' description of Mr. Slatton included the statement that Mr. Slatton had "OC on his face" (OC is an abbreviation for the scientific name of pepper spray). Another FCPS officer later told Defendant Hopkins that his description of Mr. Slatton "was fucking classic."

41. Shortly thereafter, Mr. Slatton stopped running because he was struggling to breathe and in intense pain from the pepper spray.

42. Mr. Slatton was then contacted by other FCPS officers, who detained him without any issues. He was compliant with their orders, although clearly still in extreme pain and distress because of the pepper spray. After being put into restraints, Mr. Slatton was taken to the hospital by an ambulance.

43. Predictably, Fort Collins concluded that Defendant Hopkins had engaged in no wrongdoing, and did not discipline him for his use of excessive force.

44. Fort Collins provided no additional training to any Defendant, or other FCPS officers, related to the incident with Mr. Slatton.

FCPS had no probable cause to believe that Mr. Slatton committed the criminal violations with which it charged him.

45. Later that night, Mr. Slatton was taken from the hospital to the Larimer County

Jail.

46. In complete and sole reliance on the information Defendant Hopkins provided, Mr. Slatton was booked into Larimer County Jail on charges of 3rd Degree Criminal Trespassing, Obstructing a Peace Officer, and Resisting Arrest. The information Defendant Hopkins provided Defendant Harres, who completed the warrantless arrest affidavit, did not provide a sufficient factual basis for probable cause to support any of these charges. The information also included several falsehoods; likewise, there are several statements in Defendant Hopkins' report that are clearly contradicted by the facts of the incident, such as Defendant Hopkins' statement that after he struck Mr. Slatton with the baton, Mr. Slatton reacted by taking an "aggressive stance."

47. Defendant Barnes made no attempt to correct the information provided to Defendant Harres in order to prevent Mr. Slatton from being arrested on charges for which no probable cause existed.

48. Mr. Slatton was released from jail in the early morning hours of December 4, 2016, on a personal recognizance bond with payment of \$750. The bond conditions required Mr. Slatton to undergo regular drug tests, for which he was required to pay.

49. All charges against Mr. Slatton were dismissed on September 14, 2017.

50. The actions of Defendants on the night of December 3, 2016, were extremely excessive, unwarranted, and violated Mr. Slatton's clearly established constitutional rights.

Defendant Fort Collins' and Defendant Hutto's policies, customs, practices, and/or failure to adequately train and supervise FCPS officers, caused the violations of Mr. Slatton's constitutional rights.

51. At all times relevant to this Complaint, Defendant Hutto was responsible for overseeing, training, and supervising Defendant Hopkins, Defendant Barnes, and all other FCPS

officers. Defendant Hutto was in charge of the overall management of the police department, setting FCPS policy and practices, and ensuring all FCPS officers complied with the law and the Constitution.

52. At all times relevant to this Complaint, it was the custom and actual practice of FCPS and Defendant Hutto to ratify and condone the use of excessive force by FCPS officers. As a result, it was customary among FCPS officers to use unjustified and excessive force because FCPS and Defendant Hutto communicated to FCPS officers that such force was authorized and, indeed, expected, and when used would be defended or covered up by the supervisory and municipal apparatus of the City.

53. FCPS officers have repeatedly used excessive force against individuals like Mr. Slatton who did not threaten or resist officers. For instance, in December of 2013, FCPS officers similarly brutalized Stanley Cropp, a sixty-one year-old man with Alzheimer's disease and dementia. Mr. Cropp was aggressively, unjustifiably, and unreasonably tackled by FCPS officers while taking a walk in his neighborhood. The excessive force claims against the City of Fort Collins and FCPS settled for \$113,000.

54. In another case, on or about October 20, 2016, FCPS officers seized Dakota McGrath, who was suspected of third-degree assault, a misdemeanor. Mr. McGrath, who had gotten out of his car and was walking in an alleyway, had earbuds in and did not hear the officer approach. The officer caught up to Mr. McGrath and struck him in the head or neck with a steel baton, causing Mr. McGrath to fall to the ground, unconscious. Mr. McGrath regained consciousness but remained on the ground, dazed, when the officer struck Mr. McGrath's leg multiple times with the baton, fracturing his leg in several places. The excessive force case based on the incident settled for an undisclosed amount.

55. In July of 2016, FCPS were called to Joe Heneghan's house for a noise complaint. Mr. Heneghan turned down the music. The officer proceeded to search Mr. Heneghan's home without a warrant and without his consent, and unjustifiably and unreasonably pepper sprayed him in the face when he refused to show officers his ID. The City of Fort Collins settled Mr. Heneghan's case for \$150,000.

56. As further evidence that FCPS and Defendant Hutto had a custom, practice, or policy of tolerating and encouraging excessive force at the time of the events giving rise to this case, incidents that occurred after Mr. Slatton was victimized in December 2016 show that such custom, practice, or policy has continued, unabated.

57. On April 6, 2017, Michaella Surat was outside a bar in Fort Collins celebrating her twenty-second birthday when FCPS officers were called regarding an altercation inside the bar. When Ms. Surat approached officers who were speaking with her boyfriend, one officer told her to "back off" and pushed her shoulder. Ms. Surat told the officer not to touch her. The officer then grabbed and held on to Ms. Surat's wrist and put her in a rear wristlock hold. Ms. Surat repeatedly asked the officer why he was touching her and what she did wrong. The officer responded by slamming Ms. Surat face-first to the ground – clearly an excessive use of force on someone who posed no danger to the officer. Ms. Surat's chin slammed into the sidewalk, causing a concussion, cervical strain, and a large and painful contusion on her chin.

58. After video footage of Ms. Surat's encounter with FCPS surfaced, FCPS spokesperson Kate Kimble told the media that the officer used "standard arrest control." This statement makes explicit Fort Collins' custom and practice of unconstitutional use of force.

59. Soon after the incident with Ms. Surat, on October 6, 2017, Kimberly Chancellor was driving when a man on motorcycle followed her as she pulled into the parking lot of her

apartment complex. She hurried toward the building to get away from him. When the man yelled that she was a cop and she was going to be arrested, she hesitated and stopped even though he still had not proven that he was an officer. After Ms. Chancellor handed the officer her identification, he put his hand on her and she flinched. He slammed Ms. Chancellor to the ground, put his knee in her back, and held her head to the ground, clearly an excessive use of force on someone who posed no danger to the officer.

60. Last but not least, FCPS officers—including Defendant Hopkins—used excessive force in an egregious incident against Natasha Patnode, a woman accused of shoplifting at a Target store on March 29, 2018. Defendant Hopkins struck Ms. Patnode more than sixty times with his fist or baton while she was already on the ground and restrained. Another FCPS officer arrived and the officers tased Ms. Patnode multiple times, again while she was already restrained on the ground. The FCPS officers' use of force blatantly exceeded the Fourth Amendment's scope of reasonableness.

61. Defendant Fort Collins and Defendant Hutto thus knew or had constructive knowledge, based on FCPS's history and widespread practice of its officers using excessive force and FCPS's and Defendant Hutto's condoning of those actions, that FCPS officers would utilize excessive and unnecessary force against people like Mr. Slatton.

62. Defendant Hutto either (1) promulgated, created, implemented, or possessed responsibility for the persistent and widespread practice of FCPS officers' use of excessive force and/or (2) made a deliberate choice to not adequately train FCPS officers in not using excessive force when, given FCPS's history of excessive force, he knew of the need to provide additional or better training in this respect.

63. Because Defendant Fort Collins and Defendant Hutto created and tolerated a

custom of deliberate indifference and continuously failed, despite the obvious need to do so, to adequately train and supervise FCPS officers in these areas, citizens, including Mr. Slatton, were repeatedly been subjected to violations of their constitutional rights.

64. Defendant Fort Collins and Defendant Hutto fostered “a policy of inaction” in the face of knowledge that FCPS officers were routinely violating specific constitutional rights, which constitutes the functional equivalent of a decision by Fort Collins and Defendant Hutto themselves to violate the Constitution.

65. Moreover, FCPS’ and Defendant Hutto’s persistent failure to meaningfully investigate and discipline numerous FCPS officers for their similar uses of excessive force reflects a custom, policy, or practice of encouraging, tolerating, and/or ratifying blatantly illegal and improper conduct. These encouragements, toleration of, and ratifications demonstrate that such police misconduct is carried out pursuant to the policies of and regimen of training provided by FCPS and Defendant Hutto, and that such conduct is customary within FCPS.

66. Indeed, FCPS Sergeant Moore, a supervisor who reviewed Defendant Hopkins conduct toward Mr. Slatton, concluded that Defendant Hopkins’ use of force was within the law and FCPS’s policy, explicitly demonstrating that the excessive force Defendant Hopkins used against Mr. Slatton was consistent with FCPS’s policies.

67. Likewise, FCPS’s and Defendant Hutto’s deliberate and conscious failure to correct prior constitutional violations based on similar conduct constituted an affirmative choice to ratify the conduct, and to send a clear message in doing so to its law enforcement officers that such misconduct is acceptable and approved. It was Defendant Fort Collins’ and Defendant Hutto’s responsibility to properly train its officers to ensure they perform their duties correctly and to discipline, rather than ratify and encourage, their improper conduct, so that officers can

learn from their mistakes and perform their jobs correctly moving forward, and be deterred from engaging in misconduct that violates the constitutional rights of people with whom the police interact. Fort Collins' and Defendant Hutto's failure to do so clearly communicated to FCPS's officers, including Defendant Hopkins, that excessive force is authorized and tacitly (or explicitly) encouraged.

68. Fort Collins' and Defendant Hutto's past ratification and toleration of similar illegal conduct thus caused and was the moving force behind the Defendant Hopkins's use of excessive force against Mr. Slatton.

Defendant Fort Collins and Defendant Hutto are liable for Defendant Hopkins's violation of Mr. Slatton's rights.

69. The unlawful conduct of FCPS officers amounts to a custom and widespread practice so pervasive and well-established as to constitute a custom or usage with the force of law.

70. Given FCPS's history and widespread practice of officers using excessive force, Defendant Fort Collins and Defendant Hutto knew of the need to provide additional or better training and supervision in this respect and made a deliberate choice to not adequately train and supervise FCPS officers in avoiding excessive force.

71. Defendant Fort Collins and Defendant Hutto knew or should have known that their acts or omissions in this regard were substantially certain to cause FCPS officers to violate individuals' constitutional rights, and they consciously or deliberately chose to disregard this obvious risk of harm in adhering to the policy and custom of failing to provide additional or better training and supervision to FCPS officers regarding how to avoid excessive force.

72. Defendant Fort Collins and Defendant Hutto acted recklessly, intentionally, and with deliberate indifference to Plaintiff's constitutional rights because they knew that individuals

in Mr. Slatton's position would be at a substantial risk of suffering dangerous consequences from their failure to properly train and supervise FCPS employees.

73. Defendant Fort Collins and Defendant Hutto could have and should have pursued reasonable methods for the training and supervising of such employees, or disciplining them if they engaged in misconduct, but intentionally chose not to do so.

74. Defendant Fort Collins' and Defendant Hutto's custom, practice, and policy of encouraging, condoning, and ratifying excessive force, failing to act in the face of a history of excessive force against people, and their custom, policy, and practice of failing to properly train and supervise FCPS employees despite such history and knowledge or constructive knowledge of such history, were the moving force and proximate cause of Defendant Hopkins's violation of Mr. Slatton's constitutional rights.

75. Defendant Fort Collin's and Defendant Hutto's acts or omissions caused Mr. Slatton damages in that he suffered physical and mental pain, humiliation, fear, anxiety, loss of enjoyment of life and sense of security and individual dignity, among other injuries, damages, and losses.

76. Defendant Fort Collin's and Defendant Hutto's actions, as described herein, deprived Mr. Slatton of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

Defendants' unlawful actions against Mr. Slatton caused him significant damages.

77. Among other injuries, damages, and losses, Defendants' unlawful actions against Mr. Slatton caused him physical pain. In addition to the pain he experienced immediately after the use of excessive force against him, Mr. Slatton had a large bruise on his leg from the baton strike that took days to fade.

78. The pain and discomfort the pepper spray caused Mr. Slatton also took a few days to fade, but his eyes remained red and irritated-looking for approximately one year, causing Mr. Slatton to feel extremely self-conscious about his appearance.

79. In addition to Defendants' excessive force and unlawful seizure of Mr. Slatton necessitating a trip to the hospital, such unlawful actions also caused Mr. Slatton to spend a night in jail.

80. Defendants' unlawful actions also caused Mr. Slatton significant emotional stress and anxiety, leading him to lose weight, have problems sleeping and issues in his relationships with his family and fiancée, and ultimately stop attending his college classes.

81. Mr. Slatton further suffered financial losses due to Defendants' unlawful actions, including, but not limited to, the money he was required to spend for drug testing approximately three times per week for months and to retain a criminal defense attorney.

82. All of the acts described herein were done by Defendants Hopkins, Barnes, and Hutto intentionally, knowingly, willfully, wantonly, maliciously and/or recklessly in disregard for Mr. Slatton's federally protected rights, and were done pursuant to the preexisting, deliberately indifferent official custom, policy, practice, training, and supervision.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – Fourth Amendment Violation – Unlawful Seizure (Against Defendant Hopkins and Defendant Barnes)

83. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

84. At all times relevant to the subject matter of this Complaint, Defendants Barnes and Hopkins were acting under color of state law in their capacities as officers with FCPS and

within the scope of their employment.

85. Mr. Slatton has a constitutionally protected right to be secure in his person against unreasonable seizures.

86. There was no probable cause or reasonable suspicion to believe that Mr. Slatton had committed or was about to commit any violation of the law prior to Defendant Hopkins' and Barnes' seizing Mr. Slatton and/or causing him to be seized.

87. Neither Defendant Hopkins nor Defendant Barnes had a reasonable belief that there was probable cause or reasonable suspicion to believe that Mr. Slatton had committed or was about to commit any violation of law prior to Defendant Hopkins' and Barnes' seizing Mr. Slatton and/or causing him to be seized.

88. By means of physical force or show of authority, Defendant Hopkins restrained Mr. Slatton's liberty and thereby seized Mr. Slatton.

89. Moreover, Defendant Hopkins caused Mr. Slatton to be seized by knowingly or recklessly communicating false information to other FCPS officers who completed an unreasonable warrantless arrest based entirely on the information provided by Defendant Hopkins.

90. Defendant Hopkins' actions were objectively unreasonable in light of the circumstances confronting him.

91. As a FCPS officer, Defendant Barnes had a duty to intervene when another officer was in the process of committing a constitutional violation against a citizen.

92. Defendants Barnes knew that Defendant Hopkins' conduct toward Mr. Slatton constituted unreasonable seizures, and Defendant Barnes had an opportunity to intervene to stop the unreasonable seizures.

93. Despite his knowledge that Defendant Hopkins' conduct toward Mr. Slatton constituted unreasonable seizures, Defendant Barnes made a conscious and deliberate decision not to take any action to protect Mr. Slatton from unreasonable seizure.

94. Defendant Barnes' conscious and deliberate decisions not to take any action to protect Mr. Slatton from unreasonable seizures by Defendant Hopkins put Mr. Slatton at substantial risk of suffering such seizures.

95. Defendant Barnes' conscious and deliberate decision not to protect Mr. Slatton from this risk was objectively unreasonable in light of the circumstances confronting him, and caused Mr. Slatton to be subject to unreasonable seizures, resulting in substantial damages to Mr. Slatton.

96. Defendants Hopkins and Barnes engaged in the above-described actions recklessly, intentionally, willfully and wantonly.

97. The acts and omissions of Defendants Hopkins and Barnes were the moving force behind and the proximate cause of Mr. Slatton's seizures and injuries therefrom.

98. Existing law at the time of the seizures clearly established that a peace officer violates an individual's Fourth Amendment right to be free from unreasonable seizure if the officer caused the individual to be seized without a warrant and without reasonable suspicion or probable cause. Defendant Hopkins and Barnes knew or reasonably should have known that their actions in seizing Mr. Slatton and/or causing Mr. Slatton to be seized, taken within the scope of their official duties and employment, violated this clearly established constitutional right.

99. As a legal and proximate result of Defendants Hopkins' and Barnes' actions or omissions described herein, Mr. Slatton has suffered and continues to suffer humiliation, lost earnings, emotional distress, loss of enjoyment of life, and other significant injuries, damages

and losses.

100. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages because the actions of Defendants Hopkins' and Barnes' were taken maliciously, willfully or with a reckless or wanton disregard of the clearly established constitutional rights of Plaintiff.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Fourth Amendment – Excessive Force

(Against Defendant Hopkins, Defendant Hutto, and Defendant Fort Collins)

101. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

102. At all relevant times hereto, the Individual Defendants were acting under the color of state law in their capacities as FCPS law enforcement officers.

103. Mr. Slatton had a protected Fourth Amendment (incorporated against the states via the Fourteenth Amendment) interest against being unreasonably seized and victimized by the use of excessive force at the hands of law enforcement personnel.

104. Defendant Hopkins used more force than was reasonably necessary to arrest or gain control of Plaintiff.

105. At no time did Defendant Hopkins have a legally valid basis to seize Mr. Slatton's person under the circumstances and in the manner described herein.

106. Defendant Hopkins unlawfully caused Mr. Slatton to be seized by means of excessive physical force.

107. Defendant Hopkins had no warrant authorizing any seizure of Mr. Slatton's body.

108. Defendant Hopkins' actions were objectively unreasonable in light of the circumstances confronting him.

109. Mr. Slatton had committed no crime (nor could Defendants Hopkins have reasonably believed he had committed any such crime) that would legally justify the use of such force, he gave the officers no reason to fear for their safety, he was obviously unarmed, and he was not resisting arrest or fleeing at the time of the use of force.

110. Defendant Hopkins' acts of striking Mr. Slatton's leg with a baton and spraying Mr. Slatton in the eyes with pepper spray constituted excessive force.

111. Defendant Fort Collins and Defendant Hutto failed to properly train, supervise, and/or discipline their employees regarding the proper use of physical restraint and force, resulting in the use of excessive force. Defendant Fort Collins and Defendant Hutto particularly failed to properly train, supervise, and/or discipline its employees regarding the constitutional limits on use of force.

112. Defendant Fort Collins' and Defendant Hutto's inadequate training, supervision, and/or discipline resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendant Fort Collins and Defendant Hutto.

113. In light of the duties and responsibilities of Defendant Fort Collins and Defendant Hutto—who were responsible for making decisions regarding when forcible restraint and use of physical force is appropriate—the need for specialized training, supervision and discipline regarding such decisions was so obvious, and the inadequacy of appropriate training and/or supervision was so likely to result in a violation of constitutional rights, such as those described herein, that Defendant Fort Collins and Defendant Hutton are liable for their failure to properly train, supervise, and/or discipline their subordinate employees and agents.

114. Such failure to properly train, supervise, and/or discipline constitutes an unconstitutional policy, procedure, custom, and/or practice. It was a moving force behind and

proximate cause of Defendant Hopkins' use of excessive force against Mr. Slatton.

115. Each Defendant's acts or omissions described herein, including the unconstitutional policy, procedure, custom and/or practice described herein, were the legal and proximate cause of Mr. Slatton's damages.

116. At the time when Defendant Hopkins used excessive force against Mr. Slatton and Defendant Hutto's conduct set in motion a series of events that he knew would cause an individual in a similar situation as Mr. Slatton to be the victim of excessive force, Mr. Slatton had a clearly established constitutional right under the Fourth Amendment to the United States Constitution to be secure in his person from unreasonable seizure through excessive force. Defendant Hopkins knew or reasonably should have known that his actions in seizing Mr. Slatton via excessive force, taken within the scope of his official duties and employment, violated this clearly established constitutional right, and Defendant Hutto knew or reasonably should have known that his actions setting in motion a series of events that he knew would cause an individual in a similar situation as Mr. Slatton to be the victim of excessive force, taken within the scope of his official duties and employment, violated Mr. Slatton's clearly established constitutional right to be free from excessive force.

117. The Individual Defendants' actions, as described above, were motivated by intent to harm Mr. Slatton.

118. The Individual Defendants' actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of, or with deliberate indifference to, of Mr. Slatton's clearly established constitutional rights.

119. As a legal and proximate result of Defendants' actions or omissions described herein, Mr. Slatton has suffered and continues to suffer pain and suffering, emotional distress,

and other significant injuries, damages and losses.

120. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages because the actions of Defendants were taken maliciously, willfully or with a reckless or wanton disregard of Mr. Slatton's clearly established constitutional rights.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 – Fourteenth Amendment Violation – Excessive Force
(Against Defendant Hopkins, Hutto, and Fort Collins)

121. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

122. At all relevant times hereto, the Individual Defendants were acting under the color of state law in their capacities as FCPS law enforcement officers.

123. Mr. Slatton had a protected Fourteenth Amendment Substantive Due Process interest against being unreasonably harmed by the use of excessive force at the hands of law enforcement personnel.

124. Defendant Hopkins used more force than was reasonably necessary to gain control of Plaintiff.

125. At no time did Defendant Hopkins have a legally valid basis to seize Mr. Slatton's person under the circumstances and in the manner described herein.

126. Mr. Slatton had committed no crime (nor could Defendants Hopkins have reasonably believed he had committed any such crime) that would legally justify the use of such force, he gave the officers no reason to fear for their safety, he was obviously unarmed, and he was not resisting arrest or fleeing at the time of the use of force.

127. Defendant Hopkins' acts of striking Mr. Slatton's leg with a baton and spraying Mr. Slatton in the eyes with pepper spray constituted excessive force to an outrageous degree.

128. Defendant Hopkins' use of force was highly disproportional to his intent to seize Mr. Hopkins.

129. Defendant Hopkins acted with malice and/or excessive zeal amounting to an abuse of power.

130. Defendant Hopkins acted for the purpose of causing harm unrelated and unnecessary to the goal of apprehending Mr. Slatton.

131. Defendant Hopkins' actions were arbitrary and/or conscience shocking in light of the circumstances confronting him.

132. Defendant Fort Collins and Defendant Hutto failed to properly train, supervise, and/or discipline their employees regarding the proper use of physical restraint and force, resulting in the use of excessive force. Defendant Fort Collins and Defendant Hutto particularly failed to properly train, supervise, and/or discipline its employees regarding the constitutional limits on use of force.

133. Defendant Fort Collins' and Defendant Hutto's inadequate training, supervision, and/or discipline resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendant Fort Collins and Defendant Hutto.

134. In light of the duties and responsibilities of Defendant Fort Collins and Defendant Hutto—who were responsible for making decisions regarding when forcible restraint and use of physical force is appropriate—the need for specialized training, supervision and discipline regarding such decisions was so obvious, and the inadequacy of appropriate training and/or supervision was so likely to result in a violation of constitutional rights, such as those described herein, that Defendant Fort Collins and Defendant Hutton are liable for their failure to properly train, supervise, and/or discipline their subordinate employees and agents.

135. Such failure to properly train, supervise, and/or discipline constitutes an unconstitutional policy, procedure, custom, and/or practice. It was a moving force behind and proximate cause of Defendant Hopkins' use of excessive force against Mr. Slatton.

136. Each Defendant's acts or omissions described herein, including the unconstitutional policy, procedure, custom and/or practice described herein, were the legal and proximate cause of Mr. Slatton's damages.

137. At the time when Defendant Hopkins used excessive force against Mr. Slatton and Defendant Hutto's conduct set in motion a series of events that he knew would cause an individual in a similar situation as Mr. Slatton to be the victim of excessive force, Mr. Slatton had a clearly established constitutional right under the Fourteenth Amendment to the United States Constitution to be free from the use of excessive force by police officers.

138. Defendant Hopkins knew or reasonably should have known that his actions in seizing Mr. Slatton via excessive force, taken within the scope of his official duties and employment, violated this clearly established constitutional right, and Defendant Hutto knew or reasonably should have known that his actions setting in motion a series of events that he knew would cause an individual in a similar situation as Mr. Slatton to be the victim of excessive force, taken within the scope of his official duties and employment, violated Mr. Slatton's clearly established constitutional right to be free from excessive force.

139. The Individual Defendants' actions, as described above, were motivated by intent to harm Mr. Slatton.

140. The Individual Defendants' actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, or with deliberate indifference to, Mr. Slatton's clearly established constitutional rights.

141. As a legal and proximate result of Defendants' actions or omissions described herein, Mr. Slatton has suffered and continues to suffer pain and suffering, emotional distress, and other significant injuries, damages and losses.

142. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages because the actions of Defendants were taken maliciously, willfully or with a reckless or wanton disregard of Mr. Slatton's clearly established constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants, and award him all relief as allowed by law and equity, including, but not limited to the following:

- a. Declaratory relief and injunctive relief, as appropriate;
- b. Actual economic damages as established at trial;
- c. Compensatory damages, including, but not limited to those for past and future pecuniary and non-pecuniary losses, physical and mental pain, humiliation, fear, anxiety, loss of enjoyment of life, loss of liberty, privacy, and sense of security and individual dignity, and other non-pecuniary losses;
- d. Punitive damages for all claims as allowed by law in an amount to be determined at trial;
- e. Issuance of an Order mandating appropriate equitable relief, including but not limited to:
 - i. Issuance of a formal written apology from each Defendant to Plaintiff;
 - ii. The imposition of appropriate policy changes designed to avoid future

similar misconduct by Defendants;

iii. Mandatory training designed to avoid future similar misconduct by Defendants;

f. Pre-judgment and post-judgment interest at the highest lawful rate;

g. Attorney's fees and costs; and

h. Such further relief as justice requires.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED this 16th day of December 2019.

KILLMER, LANE & NEWMAN, LLP

s/ David A. Lane

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