OCT 04 2017

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS **HELENA DIVISION**

JAMES W. McCORMACK, CLERK

JEREMY DUNCAN on behalf of Himself and all Others Similarly Situated

PLAINTIFF

VS.

CASE NO: 2:17-cv-179-KGB

CLIFF SANDERS, Individually and in his Official Capacity as a Police Officer for the City of Elaine, Arkansas, and in his Official Capacity as a Police Officer for the City of Helena-West Helena, Arkansas

DEFENDANT

This case assigned to District Judge _ Baker

and to Magistrate Judge Ray

CLASS ACTION COMPLAINT

COMES the Plaintiff, by and through counsel, and for this Complaint, he states:

PARTIES AND JURISDICTION

Plaintiff is a resident and citizen of the State of Arkansas, who was arrested 1. illegally by the Defendant while Defendant was an uncertified police officer. The Defendant is an Arkansas citizen who was employed as a police officer by the City of Elaine, Marvell, and Helena-West Helena within the three years preceding the filing of this Complaint. Defendant is sued in his individual and official capacities. This is an action brought to redress deprivation of Plaintiff's state and federal constitutional rights, as allowed by 42 USC 1983 and the Arkansas Civil Rights Act of 1993. Since the acts giving rise to this matter arose within Phillips County, Arkansas, venue is proper under 28 USC 1391(b). This Court has personal jurisdiction over the parties, as well as federal question subject matter jurisdiction under 28 USC 1331. This Court has supplemental jurisdiction under 28 USC 1367. The Cities are public entities organized under Arkansas state law. All actions were taken under color of law.

GENERAL ALLEGATIONS OF FACT

2. Defendant, within the past three years, has been acting as a certified police officer.

- 3. Defendant is not, and has not been, a certified police officer, yet he has exercised the powers the Cities granted him under color of law.
- 4. Because Defendant was uncertified, Defendant illegally arrested Plaintiff on multiple occasions for arson using more force than was reasonably necessary to effectuate the arrest. The first time was in 2016. Defendant approached the Plaintiff and attempted to interrogate him. Plaintiff declined, invoking his 5th Amendment rights. Defendant then slammed Plaintiff to the ground in retaliation and peppersprayed the Plaintiff. Defendant then refused to decontaminate the Plaintiff. The last time Defendant arrested Plaintiff was in 2016.
 - 5. In fact, Defendant has arrested hundreds of people illegally.
- 6. As a result, Plaintiff and the Class have had to pay illegal fines and costs and expended attorney's fees.

COUNT I

- 7. Plaintiff re-alleges the foregoing as if fully set out herein.
- 8. Plaintiff is an Arkansas taxpayer. Plaintiff was innocent of arson, yet he was required to pay costs and fees.
- 9. By virtue of the facts alleged herein, Defendant, in his official capacity, has committed an illegal exaction, as well as aided and abetted the illegal exaction in his official capacity.

COUNT II - CLASS ACTION

- 10. The class consists of all persons, who within three years prior to the filing of this lawsuit have been arrested by the Defendant under color of law, while impersonating a certified law enforcement officer. The exact number of the class is unknown, but it is believed to exceed 100 (one hundred).
 - 11. Plaintiff's claims are typical of the class and there are common issues of fact.
- 12. These issues include, but are not limited to whether Defendant has illegally forced Plaintiff pay fines and costs.

- 13. A class action is a superior means of adjudicating this controversy. Indeed, common issues of fact and questions of law predominate over individual issues. Here, the common question is whether Defendant has illegally forced Plaintiff pay fines and costs
- 14. Plaintiff and his counsel are competent to represent the class. She seeks certification under Rule 23 (b)(1), (b)(2), and (b)(3).
- 15. As direct result of the exercise of inappropriate discretion, Plaintiff and the Class have been denied their state and federal constitutional rights and have been forced to pay illegal fees and costs, as well as expended unnecessary money for fees.
- 16. Plaintiff is therefore entitled to an Order certifying the Class, Ordering Defendant to disgorge those fines and costs collected, for an Order requiring the Defendant to cease and desist from any further collection action on said fees and costs, and for an Order requiring Defendant to discontinue these arresting people under the authority of a certified police officer.

COUNT III

- 17. Plaintiff re-alleges the foregoing as if fully set out herein.
- 18. Plaintiff had a clearly established right to remain silent, to be free from excessive force, the right to be arrested only with probable cause, and the right to invoke his constitutional rights without fear of retaliation under both the Arkansas Constitution.
- 19. Defendant falsely accused Plaintiff of arson. After Plaintiff invoked his 5th Amendment rights, Defendant slammed Plaintiff to the ground, seriously injuring Plaintiff's arms, back, and knees and pepper spraying the Plaintiff without probable cause.
 - 20. Plaintiff did not resist.
 - 21. Plaintiff had committed and no crime and was innocent.
 - 22. In fact, another person was convicted of the arson.
- 23. As a result of Defendant's actions and inactions, Plaintiff has incurred legal bills, experienced unnecessary pain, and experienced severe mental and emotional distress.

24. Defendant's actions were so egregious so as to warrant the imposition of punitive damages. In fact, the Cities knew they had failed to train their officers, yet they intentionally refused to train their officers. So, punitive damages should be assessed under the ACRA against in the Defendant both the individual and official capacities.

WHEREFORE, Plaintiff prays for an order awarding him and the Class appropriate compensatory damages, pre-judgment interest, attorney's fees, statutory penalties, costs, for a trial by jury, for an Order certifying the Class, for an Order reinstating benefits in the interim, and for an Order requiring Defendant to discontinue these illegal arrest practices, and all other appropriate and proper relief.

Respectfully submitted,

SUTTER & GILLHAM, P.L.L.C. Attorneys at Law P.O. Box 2012 Benton, AR 72018 501-315-1910 Office 501-315-1916 Facsimile Attorney for the Plaintiff

By:

/s/ Luther One Sutter

Luther neal Sutter, ARBN 95031 luthersutter.law@gmail.com

The JS 44 (Rev. 06/17)

CIVIL COVER SHEET 2:17-cv-179 - KGB

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Jeremy Duncan on behalf of Himself and all Others Similarly Situated				DEFENDANTS Cliff Sanders, Individually, and in his Official Capacity as a Police Officer for the City of Elaine, Arkansas and in his Official Capacity as a Police Officer for the City of Helena-West Helena, Arkansas			
(b) County of Residence of First Listed Plaintiff Phillips				1	of First Listed Defendant		
(EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence	(IN U.S. PLAINTIFF CASES O		
(ENCELLINGS LEGISTRAL CHOOSE)				NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.			
(c) Attorneys (Firm Name, Address, and Telephone Number)				Attorneys (If Known)			
Benton, AR 72015, 501-3	er & Gillham PLLC, 31 315-1910 Firm, 501-31	10 West Conway S	treet,				
luther.sutterlaw@gmail.co	om						
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)				TIZENSHIP OF PI (For Diversity Cases Only)	RINCIPAL PARTIES	(Place an "X" in One Box for Plaintiff and One Box for Defendant)	
☐ 1 U.S. Government				PT	F DEF	PTF DEF	
Plaintiff	(U.S. Government Not a Party)		Citize	en of This State	1 🕱 1 Incorporated or Pr of Business In T		
2 U.S. Government Defendant			Citize	Citizen of Another State			
				Citizen or Subject of a 3 3 5 Foreign Nation 6 6 6 6 Foreign Country			
IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.							
CONTRACT				ORFEITURE/PENALTY		OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine	PERSONAL INJURY 310 Airplane	PERSONAL INJUR 365 Personal Injury -		25 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC	
☐ 130 Miller Act	315 Airplane Product	Product Liability		00 Other	28 USC 157	3729(a))	
☐ 140 Negotiable Instrument	Liability	☐ 367 Health Care/	-			☐ 400 State Reapportionment	
☐ 150 Recovery of Overpayment	☐ 320 Assault, Libel &	Pharmaceutical	1		PROPERTY RIGHTS	☐ 410 Antitrust	
& Enforcement of Judgment		Personal Injury	ŀ		820 Copyrights	430 Banks and Banking	
151 Medicare Act	☐ 330 Federal Employers'	Product Liability 368 Asbestos Personal			830 Patent 835 Patent - Abbreviated	☐ 450 Commerce ☐ 460 Deportation	
☐ 152 Recovery of Defaulted Student Loans	Liability 340 Marine	Injury Product	'		New Drug Application	400 Deportation 470 Racketeer Influenced and	
(Excludes Veterans)	☐ 345 Marine Product	Liability			☐ 840 Trademark	Corrupt Organizations	
☐ 153 Recovery of Overpayment	Liability	PERSONAL PROPE	RTY	+ LABOR	SOCIAL SECURITY	☐ 480 Consumer Credit	
of Veteran's Benefits	☐ 350 Motor Vehicle	370 Other Fraud		10 Fair Labor Standards	☐ 861 HIA (1395ff)	☐ 490 Cable/Sat TV	
160 Stockholders' Suits	☐ 355 Motor Vehicle	☐ 371 Truth in Lending		Act	☐ 862 Black Lung (923)	☐ 850 Securities/Commodities/	
190 Other Contract	Product Liability	☐ 380 Other Personal		20 Labor/Management	☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI	Exchange	
☐ 195 Contract Product Liability ☐ 196 Franchise	360 Other Personal Injury	Property Damage 385 Property Damage		Relations 10 Railway Labor Act	☐ 865 RSI (405(g))	☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts	
D 190 Hallelise	362 Personal Injury -	Product Liability		51 Family and Medical	13 003 Nor (103(g))	☐ 893 Environmental Matters	
	Medical Malpractice			Leave Act		☐ 895 Freedom of Information	
REAL PROPERTY	- CIVIL RIGHTS	PRISONER PETITIO		00 Other Labor Litigation	FEDERAL TAX SUITS	Act	
210 Land Condemnation	★ 440 Other Civil Rights ☐ 441 Voting	Habeas Corpus:	10 79	91 Employee Retirement	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 896 Arbitration ☐ 899 Administrative Procedure	
☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment	441 Voting 442 Employment	☐ 463 Alien Detainee ☐ 510 Motions to Vacat	.	Income Security Act	□ 871 IRS—Third Party	Act/Review or Appeal of	
240 Torts to Land	443 Housing/	Sentence	~		26 USC 7609	Agency Decision	
☐ 245 Tort Product Liability	Accommodations	☐ 530 General			j	☐ 950 Constitutionality of	
290 All Other Real Property	☐ 445 Amer. w/Disabilities -	☐ 535 Death Penalty		IMMIGRATION -	1	State Statutes	
	Employment 446 Amer. w/Disabilities -	Other: 540 Mandamus & Oth		62 Naturalization Application 65 Other Immigration			
	Other	550 Civil Rights		Actions			
	☐ 448 Education	☐ 555 Prison Condition					
		560 Civil Detainee -					
		Conditions of Confinement					
V. ORIGIN (Place an "X" i.	To One Box Onto				L		
X 1 Original □ 2 Re	moved from 3 ate Court	Remanded from Appellate Court	☐ 4 Reir Reo	pened Anothe	r District Litigation	n - Litigation -	
	Cite the U.S. Civil Sta	atute under which you a	are filing ((specify) Do not cite jurisdictional stat		Direct File	
VI. CAUSE OF ACTION	Brief description of ca Redress civil righ						
VII. REQUESTED IN ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		N D	EMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: ▼ Yes □ No			
VIII. RELATED CASI	E(S) (See instructions):						
IF ANY	, , , , , , , , , , , , , , , , , , , ,	JUDGE		110	DOCKET NUMBER		
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Arkansas Plaintiff Claims He Was Illegally Arrested by 'Uncertified' Police Officer</u>