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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAYVAN SABEGHI,

Plaintiff,

v.

OAKLAND POLICE OFFICER FRANK
UU, OFFICER MARCELL
PATTERSON, SGT. PATRICK
GONZALEZ, individually and in their
official capacities; CITY OF OAKLAND;
AND DOES 1 - 100,

Defendants.

FILED

2012 NOV 29 P 2:36

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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JSC

C 12 6057
No. _____

COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS and OTHER
WRONGS

JURY TRIAL DEMANDED

I. INTRODUCTION

1. This is a civil rights complaint arising from Oakland Police officers' wrongful beating and imprisonment of plaintiff Kayvan Sabeghi. These wrongs occurred in the wee hours of November 3, 2011, during political demonstrations initiated by the Occupy Oakland movement. Mr. Sabeghi had participated in the protest activity, gone out to dinner and was making his way home when he encountered a police line blocking his path. When Mr. Sabeghi, a veteran of the war in Afghanistan, questioned and verbally criticized the officers' actions, defendant Officer Frank Uu and other Oakland Police officers brutally beat and arrested him in retaliation for his exercise of his First Amendment rights.

2. Officer Uu and other officers beat plaintiff so viciously that they ruptured his splenic vein, causing severe pain and internal bleeding. Rather than summoning medical attention or taking plaintiff to the hospital, the Oakland Police officers proceeded to detain him at various locations near City Hall for some hours, and then transferred him to the Alameda County Jail, in further unlawful punishment for his First Amendment expression. Police officers, jailers and jail medical personnel mocked and ignored his pleas for help. Plaintiff was not taken to a hospital until approximately 18 hours after the beating. He had been bleeding internally the entire time and was in dire condition necessitating immediate emergency surgery.

3. Defendants' actions deprived plaintiff of his right to freedom of speech and association; his right to be free from unreasonable searches and seizures; his right to equal protection of the laws and to due process of law; and his right to be free from the use of excessive and/or arbitrary force; his right to be free from unreasonable, summary punishment; and his right to personal liberty and freedom of movement, all guaranteed by the United States and California Constitutions; and plaintiff has additional state law claims arising from the police misconduct complained of, as described within.

II. JURISDICTION AND VENUE

4. This action arises under 42 U.S.C. § 1983 and the United States Constitution. This Court has subject-matter jurisdiction over these claims under 28 U.S.C. §§ 1331 and 1343. It has supplemental jurisdiction over state-law claims under 28 U.S.C. § 1367.

5. The individual defendants are all public officials or other employees or agents of the City of Oakland. Each of the defendants resides within this District and/or performs official duties within the State of California. This Court, accordingly, has personal jurisdiction over each of the defendants.

6. Plaintiff has filed an administrative claim with the City of Oakland in compliance with California Government Code sections 910 et seq. The claim has been denied expressly or by operation of law.

7. Venue properly lies within this District under 28 U.S.C. § 1391(b). The named defendants perform their official duties in this District, and the events and omissions giving rise to plaintiff's claims occurred in this District.

III. INTRADISTRICT ASSIGNMENT

8. Pursuant to Local Rule 3-2, this action may properly be assigned to the San Francisco or Oakland divisions of this Court.

IV. THE PARTIES

Plaintiff

9. Plaintiff KAYVAN SABEGHI is an adult citizen of the United States, a United States Army veteran of the war in Afghanistan, and a resident of Oakland, California.

Defendants

10. Defendants OFFICERS FRANK UU and MARCELL PATTERSON, were, at all times relevant herein, members of the Oakland Police Department who participated in the beating and unlawful detention of the plaintiff and the failure to summon medical care for him.

1 11. Defendant SGT. PATRICK GONZALEZ participated in the supervision and
2 execution of the police conduct complained of.

3 12. Defendant CITY OF OAKLAND ("the City") is a municipal corporation, duly
4 organized and existing under the laws of the State of California.

5 13. All of the above individual defendants are sued in their individual and official
6 capacities.

7 14. Plaintiffs are ignorant of the true names and/or capacities of defendants sued herein
8 as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious
9 names. Plaintiffs will amend this complaint to allege their true names and capacities
10 when ascertained. The Doe defendants include other individuals who participated in the
11 conduct complained of herein. Plaintiffs are informed and believe and therefore allege
12 that each of the Doe defendants is legally responsible and liable for the incident, injuries
13 and damages hereinafter set forth, and that each of said defendants proximately caused
14 said incidents, injuries and damages by reason of their negligence, breach of duty,
15 negligent supervision, management or control, violation of constitutional and legal rights,
16 or by reason of other personal, vicarious or imputed negligence, fault, or breach of duty,
17 whether severally or jointly, or whether based upon agency, employment, or control or
18 upon any other act or omission. Plaintiffs will ask leave to amend this complaint to insert
19 further charging allegations when such facts are ascertained.

20 15. In doing the acts alleged herein, defendants, and each of them, acted within the
21 course and scope of their employment.

22 16. In doing the acts and/or omissions alleged herein, defendants, and each of them,
23 acted under color of authority and/or under color of law.

24 17. In doing the acts and/or omissions alleged herein, defendants, and each of them,
25 acted as the agent, servant, employee and/or in concert with each of said other defendants.

V. STATEMENT OF FACTS

18. On November 2, 2011, thousands of people participated in political protest activities in the City of Oakland in support of economic justice and in response to brutality by the Oakland Police Department against the Occupy Oakland movement. Throughout the day on November 2, thousands of people peacefully demonstrated, marched, danced, picketed, and shut down the Port of Oakland, all without interference from the police.

Late that night, however, a large number of Oakland Police and assisting agencies' officers converged on the area around 16th and Telegraph, where some activists had occupied an empty building that had formerly housed a service agency for the homeless.

19. Plaintiff had participated in the demonstration earlier that day, but then went out to dinner with friends. After stopping at the newstand at 14th and Broadway, plaintiff was starting to walk up Broadway to head for his home near 27th Street when his path was blocked by a line of police officers. Plaintiff was alone, and the street at that location was nearly empty, except for the line of officers.

20. Plaintiff asked to be allowed to pass, but the officers refused. Plaintiff was upset by this arbitrariness and began verbally arguing with the officers and criticizing the police. The police line began to move slowly forward, south on Broadway, and two DOE officers jabbed plaintiff repeatedly with wooden clubs. Plaintiff retreated backward at a pace with the police. At no time did plaintiff present a physical threat to the police.

21. Suddenly, defendant Uu came through the police line and confronted plaintiff, cursing at him, and then struck him repeatedly with a club, driving him towards the west sidewalk in front of the police line. Although plaintiff did not resist or fight back and was not physically aggressive in any way, defendants Uu, Patterson, and other officers tackled him at or near the curb with unnecessary and excessive force, piling on top of him and violently twisting his arms. Plaintiff suffered internal injury as well as cuts and bruises. There was no justification for the use of force on plaintiff. Defendant Sgt. Gonzalez and other superiors failed to adequately supervise Ofcr. Uu and other officers, failed to

1 intervene, and approved and condoned the officers' unlawful conduct against plaintiff.

2 22. Defendants Uu, Patterson and other officers then lifted plaintiff up, walked him some
3 distance, and put him in an Oakland Police van, alone. He was left in the van for some
4 period of time, then made to sit on a curb with other handcuffed prisoners. During this
5 time, plaintiff asked the officers to wash the chemical agent from his face and to loosen
6 his painfully tight handcuffs, but they ignored him, and despite the severe force the
7 officers had used on him, the police failed to provide him with medical attention.

8 23. Eventually, defendants caused plaintiff to be put on a Sheriff's bus and taken to the
9 Alameda County Jail, in violation of their California statutory obligation to cite and
10 release a misdemeanor arrestee such as plaintiff and in retaliation for plaintiff's exercise
11 of his First Amendment rights. Defendants failed to communicate plaintiffs' need for
12 medical attention to the Alameda County personnel.

13 24. Plaintiff had been bleeding internally this entire time and once at the jail, he began to
14 experience severe pain and to vomit repeatedly. The Sheriff's personnel and medical
15 personnel at the jail ignored plaintiff's requests for help even though he was vomiting and
16 unable to stand. Rather than providing medical attention, the jail and medical personnel
17 ridiculed plaintiff, accusing him of being a heroin addict. Plaintiff was confined under
18 unreasonably unsanitary conditions, and moved from holding cell to holding cell, each
19 one filthy and stinking, as he continued to bleed internally. Even after a friend paid his
20 bail, he was not released for several more hours. Finally, an ambulance was brought and
21 he was taken to Alameda County Highland Hospital, some eighteen hours or more after
22 he was beaten by defendants. At the hospital, plaintiff received emergency surgery to
23 repair a ruptured blood vessel in his abdomen, caused by the police beating. He remained
24 in the hospital for five days.

25 25. The unreasonable delay in treatment exacerbated plaintiff's medical condition and
26 caused him additional, needless pain and suffering.

27 26. Plaintiff suffered pain and disability for approximately eight months following the
28

1 police beating. He lost earnings as a result of his injuries, and was unable to participate in
 2 many of his customary exercise and leisure activities.

3 **VI. REQUISITES FOR RELIEF**

4 27. Plaintiffs are informed and believe that the violations of the plaintiff's constitutional
 5 and lawful rights complained of herein were caused by customs, policies, directives,
 6 practices, acts and omissions of authorized policy makers of defendant CITY OF
 7 OAKLAND, including Chief Howard Jordan and other supervisory officials of the OPD
 8 and the City of Oakland, who encouraged, authorized, directed, condoned, and ratified the
 9 unconstitutional and unlawful conduct complained of herein. Said customs, policies and
 10 practices include, but are not limited to the use of excessive force and pre-charging
 11 imprisonment under inhumane conditions to disrupt and deter demonstrators and First
 12 Amendment protected activity; the failure to maintain adequate policies, and to
 13 adequately train, supervise and control OPD officers concerning the policing of
 14 demonstrations and other expressive activities with respect to crowd control, and with
 15 respect to the constitutional and statutory limitations on use of force, and with respect to
 16 reasonable provision of medical attention to detainees who have been subjected to police
 17 force or otherwise injured, and the requirements for citation and release of misdemeanor
 18 arrestees.

19 28. As a direct and proximate result of the conduct of defendants described herein,
 20 plaintiff has been denied his constitutional, statutory and legal rights as stated below, and
 21 has suffered general and special damages, including but not limited to, physical injuries
 22 and bodily harm, pain, fear, mental and emotional distress, humiliation, embarrassment,
 23 discomfort, anxiety and other damages in an amount according to proof.

24 29. Defendants' acts were willful, wanton, malicious and oppressive and done with
 25 conscious disregard and deliberate indifference for plaintiff's rights.

VII. CLAIMS FOR RELIEF

ONE - VIOLATION OF FOURTH AMENDMENT (42 U.S.C. § 1983)

30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

31. Defendants' above-described conduct violated plaintiff's rights to be free from unreasonable seizures and unnecessary, excessive and/or arbitrary force, imprisonment without reasonable or probable cause, unreasonable pre-charging punishment, and unreasonable failure to provide medical care, under the Fourth Amendment to the United States Constitution.

TWO - VIOLATION OF FIRST AMENDMENT (42 U.S.C. § 1983)

32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

33. Defendants' above-described conduct violated plaintiff's rights to freedom of speech and association, under the First Amendment to the United States Constitution .

THREE - VIOLATION OF FOURTEENTH AMENDMENT (42 U.S.C. § 1983)

34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

35. Defendants' above-described conduct violated plaintiff's right to not be deprived of liberty without due process of law, and to equal protection of the laws, and to personal liberty and freedom of movement, under the Fourteenth Amendment to the United States Constitution.

FOUR - ASSAULT AND BATTERY

36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

37. Defendants' above-described conduct constituted assault and battery.

FIVE - FALSE IMPRISONMENT

38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

39. Defendants act of intentionally imprisoning plaintiff in the Alameda County Jail, rather than citing and releasing plaintiff, in violation of Penal Code section 853.6, constituted false imprisonment.

SIX - VIOLATION OF CALIFORNIA CIVIL CODE § 51.7

40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

41. Defendants' above-described conduct violated plaintiff's right to be free from violence and intimidation by threat of violence because of his actual or perceived race, color, religion, ancestry, national origin, political affiliation and/or viewpoint, in violation of California Civil Code section 51.7.

SEVEN - VIOLATION OF CALIFORNIA CIVIL CODE § 52.1

42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

43. Defendants' above-described conduct constituted interference, and attempted interference, by threats, intimidation and coercion, with plaintiff's peaceable exercise and enjoyment of rights secured by the Constitution and laws of the United States and the State of California, in violation of California Civil Code section 52.1.

EIGHT - NEGLIGENCE

44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this complaint.

45. Defendants have a duty of care to plaintiff to ensure that defendants did not cause unnecessary or unjustified harm to plaintiff, to provide medical intervention and attention to plaintiff, and a duty of care to hire, train, supervise and discipline OPD and mutual aid officers so as to not cause harm to plaintiff and to prevent violations of plaintiff's

1 constitutional, statutory and common law rights.

2 46. The above-described acts and omissions of defendants breached the duty of care
3 defendants owed to plaintiff.

4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them,
6 as follows:

7 1. For general and compensatory damages for violation of plaintiffs' federal and state
8 constitutional and statutory rights, pain and suffering, all to be determined according to
9 proof;

10 2. For punitive and exemplary damages in amounts to be determined according to proof
11 as to the individual defendants;

12 3. For an award of statutory damages and penalties pursuant to Cal. Civil Code section
13 52 to be determined according to proof;

14 4. For attorneys' fees pursuant to 42 U.S.C. § 1988 and California Civil Code section
15 52(b) and section 52.1(h), and California Code of Civil Procedure section 1021.5;

16 5. For costs of suit;

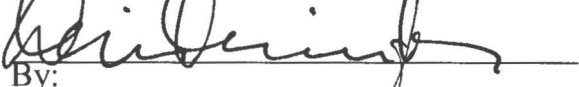
17 6. For pre- and post-judgment interest as permitted by law;

18 7. For such other and further relief as the Court may deem just and proper.

19 DATED: November 27, 2012

Respectfully submitted,

20 DENNIS CUNNINGHAM
21 BOBBIE STEIN
22 RACHEL LEDERMAN



23 By:
Attorney for Plaintiff

24 **JURY TRIAL DEMAND**

25 Plaintiff hereby demands a jury trial.

26 Dated: November 28, 2012



27 Attorney for Plaintiff

28 *SABEGHI v. UU* - COMPLAINT FOR VIOLATION OF CIVIL RIGHTS