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6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

9 Alexsey Predybaylo, an individual,
10 Plaintiff

11 v.

12 Sacramento County, California, a
13 county government and the
14 operator of the Sacramento County
15 Sheriff's Department and its
16 Correctional Health Services
17 Division; and
18 Does 1-20,
19 Defendants.

CASE NO.: 2:19-CV-01243-MCE-CKD

**FIRST AMENDED COMPLAINT FOR
INDIVIDUAL AND MUNICIPAL
VIOLATIONS OF 42 U.S.C. §1983**

JURY TRIAL DEMANDED

20 **I.**
21 **INTRODUCTION**

22 This is a civil rights action arising out of the use of excessive force by the
23 Sacramento County Sheriff's Department ("SCSD") against Plaintiff Alexsey
24 Predybaylo ("Plaintiff") that resulted in serious medical injury. Plaintiff, while
25 undergoing a post booking strip search and with his hands held behind his back,
26 was violently pulled to the concrete floor at the Main Jail, suffering a concussion.
27 Medical personnel at the Main Jail failed to provide adequate medical care or to
28 report the use of excessive force to senior SCSD personnel.

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**II.
JURISDICTION AND VENUE**

1. Jurisdiction over the federal causes of action under Title 42 U.S.C. §1983 are proper in this Court under 28 U.S.C. §1331.

2. Venue is proper in this Court under 28 U.S.C. §1391(b) because all of the defendants reside, and the acts complained of occurred, within the territorial boundaries of this United States District Court.

3. Intra-district venue is proper in the Sacramento Division of this Court under Local Rule 120(d) because the acts and omissions that are the basis of this complaint occurred within Sacramento County.

**III.
PARTIES**

4. Plaintiff Alexsey (“Predybaylo”) was a single male, age 24 at the time of the events alleged in this Complaint. As of the date of filing of this Complaint, Plaintiff is detained at the Wayne Brown Correction Facility in Nevada County, California.

5. Defendant Sacramento County, California, established and operates the Sacramento County Sheriff’s Department (“SCSD”) which is responsible for the staffing and operation of the Main Jail at 651 I Street, Sacramento, California (“Main Jail”) and the Rio Cosumnes Correctional Center in Elk Grove, California (“RCCC Jail”). Plaintiff is informed and believes, and on that basis alleges, that the SCSD provides first response and day to day medical care to the inmates at the RCCC Jail and the Main Jail through its Correctional Health Services Division. The SCSD will employ outside medical contractors on an “as-needed” basis.

6. The true names and capacities of defendants sued herein as Does 1-20, inclusive, whether individual, corporate, or otherwise are unknown to Plaintiff who, therefore sues such defendants by such fictitious names. When their true names and capacities are ascertained, Plaintiff will amend this complaint by asserting

1 their true names and capacities herein. Plaintiff is informed, believes and thereon
2 alleges, that at all times herein mentioned, all defendants, including Does 1-20,
3 inclusive: (i) are qualified to do business in California, and/or did, in fact, do
4 business in California; (ii) jointly perpetrated the acts herein with their
5 co-defendants; (iii) were the successors in interest to, or agents, alter egos,
6 principals, co-tenants, partners, joint venturers, or co-conspirators of their
7 co-defendants in doing the things herein alleged; and/or (iv) were acting within the
8 scope of their authority or in furtherance of a common scheme or design with the
9 knowledge, permission, consent or ratification of their co-defendants in doing the
10 things herein alleged, and therefore are liable, jointly and severally, for all damages
11 and other relief or remedies sought by complainant in this action.

12 **IV.**
13 **BACKGROUND ALLEGATIONS**

14 **Duties of Sacramento County and the SCSD**

15 7. Defendants Sacramento County and the SCSD are obligated to have policies,
16 practices, and procedures to: (a) prevent the unlawful use of force against detainees
17 and inmates; and (b) provide timely and effective response to the medical needs of
18 inmates (“PPPs”).

19 8. Defendants Sacramento County and the SCSD are obligated to adequately
20 train their deputy sheriffs, correctional officers, and medical personnel in the PPPs
21 to: (a) prevent the unlawful use of force against detainees and inmates; and (b)
22 provide timely and effective response to the medical needs of inmates.

23 9. Defendants Sacramento County and the SCSD are obligated to adequately
24 supervise their deputy sheriffs, correctional officers, and medical personnel to verify
25 the effectiveness and enforcement of the PPPs and training to: (a) prevent the
26 unlawful use of force against detainees and inmates; and (b) provide timely and
27 effective response to the medical needs of inmates.

1 10. Defendants Sacramento County and the SCSD are obligated to have an
2 adequate and effective “Chain of Command” so that when incidents involving the
3 unlawful use of force and/or the inadequate provision of medical services occur,
4 SCSD operational management learns about the incident and can take timely
5 corrective action.

6 11. Defendants Sacramento County and SCSD personnel are obligated to prepare
7 complete and truthful Incident Reports about the unlawful use of force and/or the
8 provision of effective medical care for a detainee or inmate that has sustained a
9 serious injury.

10 12. The obligations and duties set forth in paragraphs 9 to 11 will hereafter be
11 collectively referred to as the “Supervisory Duties”.

12 13. Defendants Sacramento County and the SCSD maintain a video surveillance
13 system at the Jail (“VSS”). Plaintiff is informed and believes, and on that basis
14 alleges, that the VSS was installed, in part, to verify that the PPPs are being
15 followed, that training has been adequate, and that supervisors are monitoring the
16 conduct of deputies, correctional officers, and medical personnel. Plaintiff is further
17 informed and believes, and on that basis alleges, that the VSS also provides a ready
18 means for the SCSD to investigate and prepare Incident Reports about the unlawful
19 use of force and/or failure to provide adequate medical care at the Main Jail.

20 **The Unlawful Use of Force**

21 [Note: the following allegations are not intended to include every detail of the use of
22 force against Plaintiff, but to cover the more significant aspects of the use of
23 unnecessary force against Plaintiff by the SCSD.]

24 14. On or about July 5, 2017, Plaintiff was taken to the Sacramento County Main
25 Jail. There he was processed in the booking room and underwent an initial medical
26 screening. Plaintiff was at all times compliant and cooperative.

1 15. After leaving the booking area, Plaintiff was no longer in handcuffs and he
2 was escorted to the photo area. After having his picture taken, Plaintiff was then
3 escorted to a room for a strip search. Plaintiff remembers a male officer telling him
4 that Plaintiff's clothes would be taken as evidence and Plaintiff expected that he
5 would have to remove his clothing and undergo a strip search. However, what
6 happened next was completely unexpected.

7 16. Plaintiff was taken to a windowless room with the window in the door
8 covered over. As he was brought into the room by the officers, Plaintiff saw one of
9 them put something like a sticky note over a camera that was up on the wall of the
10 room.

11 17. Plaintiff then recalls that there were three white male officers with him in
12 this room and Plaintiff recalls that one of them had a shaved head. One of these
13 officers then told Plaintiff to put his hands behind his back and relax his thumbs.
14 Plaintiff complied and stood with his legs spread apart (this officer will hereafter be
15 referred to as Doe 1). Then Doe 1 wrapped his hands around Plaintiff's thumbs
16 again said "relax your thumbs". Plaintiff complied and said "I am relaxing my
17 thumbs." Doe 1 then yelled: "I fucking said relax your thumbs." Plaintiff tried to
18 relax his thumbs even more, but Doe 1 became more angry because Doe 1 said that
19 Plaintiff was not sufficiently relaxing his thumbs.

20 18. While Plaintiff was continuing to stand with his legs spread and hands
21 behind his back, each of the other two officers (hereafter Doe 2 and Doe 3) grabbed
22 one of Plaintiff's legs from behind. Doe 2 and Doe 3 then simultaneously pulled
23 backwards on each leg causing Plaintiff to fall face first onto the concrete floor.
24 Plaintiff was unable to put his hands out in front to block his fall because Doe 1 still
25 had hold of Plaintiff's hands behind his back. Fortunately, Plaintiff was able to
26 turn his head to prevent his face from striking squarely on the floor. Plaintiff hit
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1 the floor with the left side of his head. Immediately, one of the three officers (Does
2 1-3), dropped his knee onto Plaintiff's right temple. At this time, Plaintiff lost
3 consciousness. Plaintiff does not think that he lost consciousness for a long time,
4 but he is uncertain and his best estimate is 10-30 seconds.

5 19. When he awoke, Plaintiff was on the floor. Two of the three officers held
6 Plaintiff by his legs in a hog tied fashion with ankles crossed and lower legs bent
7 back up towards his head, while the third officer held Plaintiff's arms. Plaintiff was
8 not resisting and he repeatedly yelled stop, but all three officers, Does 1-3, kept
9 applying pressure.

10 20. Finally, Officers Does 1-3, stopped pulling on Plaintiff and then took off his
11 clothes. Officers Does 1-3 inspected Plaintiff and then told him to put his boxer
12 shorts back on. Officers Does 1-3 then gave Plaintiff his paper jail clothing and
13 escorted Plaintiff back to the booking area. While in the booking area, some other
14 inmates commented to Plaintiff that they heard him yelling and said that the
15 officers, Does 1-3, must have been "whopping your ass in there".

16 21. Although Plaintiff was in pain and somewhat disoriented from the fall to the
17 floor, he was not allowed to stop and check his injuries until after he was placed in
18 a cell on the 5th floor. Plaintiff was then able to observe that he had an abrasion
19 behind his right ear and a cut on his right ear, the left side of his face was swollen
20 and his wrists and left knee hurt. Plaintiff is informed and believes, and on that
21 basis alleges, that these injuries happened as the result of the excessive and
22 unnecessary force used by officers Does 1-3 described in paragraphs 14-19.

23 22. Plaintiff then filed a kite for medical attention.

24 **The Failure to Provide Medical Care**

25 [Note: the following allegations are not intended to include every medical detail, but
26 to cover the more significant aspects of Plaintiff's medical care.]

1 23. Plaintiff was not seen by medical staff at the Main Jail until the late
2 afternoon of July 6, 2017. Plaintiff complained of headaches and sharp head pains,
3 abrasions on his head, sensitivity to light and sound, swelling of his right temple,
4 dizziness, difficulty sleeping, some nausea and vomiting, and pain in his wrists and
5 knee. The SCSD medical staff (RN Carl Hank) recorded these symptoms in the
6 medical record, noting that Plaintiff reported that they resulted from an altercation
7 at the Mail Jail. However, RN Carl Hank did not provide any further evaluation or
8 care. Plaintiff is informed and believes, and on that basis alleges, that RN Carl
9 Hank did not inform SCSD supervisory staff (either medical or jail), that Plaintiff
10 claimed to have been injured by officers Does 1-3 in the booking process.

11 24. Plaintiff was seen again by medical at the Main Jail on or about the
12 afternoon of July 7, 2017. Plaintiff reported the same medical problems as he had
13 on July 6, 2017. This time, the SCSD medical staff (NP Maria Malasan) observed
14 and noted these symptoms in more detail. In addition, NP Maria Malasan noted a
15 significant difference in the size of Plaintiff's pupils and that his left wrist was
16 tender. Plaintiff was then assigned to the medical unit (2E) for observation.
17 Plaintiff is informed and believes, and on that basis alleges, that NP Maria Malasan
18 did not inform SCSD supervisory staff (either medical or jail), that Plaintiff claimed
19 to have been injured by officers Does 1-3 in the booking process.

20 25. Plaintiff was kept in the observation unit for several days. His symptoms
21 improved, but he continued to have bad headaches and pain in his wrists and knee.
22 He was seen by a Dr. Janet Abshire on July 10, 2017 who observed a continued
23 difference in pupil size and diagnosed Plaintiff with a concussion. Plaintiff was
24 then given Elavil for his concussion and was told that he might not see all of the
25 effects of the concussion until a later date. Plaintiff is informed and believes, and
26 on that basis alleges, that Dr. Janet Abshire did not inform SCSD supervisory staff

1 (either medical or jail), that Plaintiff claimed to have been injured by officers Does
2 1-3 in the booking process.

3 26. Despite having a concussion, Plaintiff was never examined by a neurologist
4 and did not receive appropriate follow-up medical care for his concussion. In fact,
5 Plaintiff was re-assigned to the general population on July 11, 2017 even though he
6 continued to have headaches, trouble with sleep, occasional dizziness, and
7 sensitivity to light and sound. Plaintiff's headaches became worse about two weeks
8 after the July 5, 2017 incident and his pupils continued to differ in size.

1 **FIRST CAUSE OF ACTION**

2 **Defendant SCSD Officers Does 1-3**

3 **Individual Liability for Violation of Plaintiff's**
4 **Constitutional Rights Under 42 U.S.C. §1983**
5 **(Unlawful Use of Force)**

6 27. Plaintiff hereby incorporates by reference paragraphs 1-26, inclusive, as
7 though set forth fully herein.

8 28. Defendant SCSD officers Does 1-3 committed acts of unprovoked and
9 unwarranted excessive force against Plaintiff as alleged in paragraphs 14-21 in
10 violation of his rights under the Fourth, Eighth and Fourteenth Amendments to the
11 U.S. Constitution.

12 29. The foregoing conduct of Defendant Does 1-3 constituted acts and omissions
13 under the color of state law that were the direct and proximate cause of the
14 violation of the constitutional rights of Plaintiff.

15 30. As a direct and proximate result of the wrongful conduct of Defendant Does
16 1-3, Plaintiff Predybaylo sustained general damages in excess of \$200,000,
17 according to proof, including, but not limited to the: (a) physical pain and suffering
18 from the injuries to his body; and (b) severe emotional and mental distress caused
19 by the use of excessive force and from the resulting physical injuries to his body,
20 including feelings of helplessness, anxiety, humiliation, and the loss of a sense of
21 security, dignity, and pride.

22 31. As a direct and proximate result of the foregoing conduct of Defendant Does
23 1-3, Plaintiff has been forced to file this action under 42 U.S.C. §1983, and is
24 entitled to recover his attorney's fees and costs under 42 U.S.C. §1988.

25 32. The foregoing acts and omissions of Defendant Does 1-3 were committed with
26 malice that was despicable and done with callous disregard for Plaintiff's physical
27 and mental person. As a result, punitive damages should be awarded against
28 Defendant Does 1-3.

1 **THIRD CAUSE OF ACTION**

2 **Defendant Sacramento County and the SCSD**
3 **Municipal Liability for Violation of Plaintiff's Constitutional Rights**

4 **(Deliberate and Callous Disregard for Repeated Acts of Excessive Force and**
5 **Deliberate Indifference to Medical Needs of Inmates)**

6 39. Plaintiff hereby incorporates by reference paragraphs 1-26, inclusive, as
7 though set forth fully herein.

8 40. Defendant Sacramento County and the SCSD have failed to have PPPs (as
9 alleged in paragraphs 7-11) that are adequate to prevent the use of excessive force
10 against inmates and to provide adequate medical care for inmates.

11 41. Defendant Sacramento County and the SCSD have failed to adequately train
12 its personnel in the PPPs regarding the use of unnecessary or excessive force
13 against inmates and the provision of adequate medical care for inmates.

14 42. Defendant Sacramento County and the SCSD have failed to adequately
15 monitor and/or enforce the PPPs regarding the use of excessive force against
16 inmates and the provision of adequate medical care for inmates.

17 43. Defendants Sacramento County and the SCSD have failed to adequately
18 supervise its personnel regarding following the PPPs about the use of excessive
19 force against inmates and the provision of adequate medical care for inmates.

20 44. Defendant Sacramento County and the SCSD have failed to have PPPs that
21 adequately require SCSD jail and medical personnel to report inmate allegations of
22 excessive force to senior SCSD staff.

23 45. Defendants Sacramento County and the SCSD have failed to adequately
24 train its SCSD jail and medical personnel in the PPPs regarding the reporting of
25 inmate allegations of excessive force to senior SCSD staff.

26 46. Defendant Sacramento County and the SCSD have failed to adequately
27 supervise SCSD jail and medical personnel's adherence to the PPPs that require
28 reporting allegations of excessive force against inmates to SCSD senior staff.

1 47. Defendant Sacramento County and the SCSD have allowed a failure in the
2 “Chain of Command” for SCSD jail and medical personnel such that incidents
3 involving the use of excessive force and the resulting medical injuries are not being
4 properly transmitted so that senior SCSD staff can take timely corrective action;
5 and/or

6 48. Defendant Sacramento County and the SCSD jail and medical personnel are
7 not preparing complete and truthful reports about the use of excessive force against
8 inmates or the resulting medical injuries.

9 49. Defendant Sacramento County and the SCSD personnel are failing to
10 properly and/or adequately utilize the VSS (as alleged in paragraph 13) to prevent
11 the use of excessive force against inmates.

12 50. Plaintiff is aware of other instances of deliberate and callous indifference by
13 Defendants Sacramento County and the SCSD to the excessive use of force against
14 inmates and/or the failure to provide adequate medical care for inmates, including
15 *inter-alia*, *Mkrtchyan v. County of Sacramento*, et al., Case No. 2:17-CV-2366, and
16 *Estate of Marshall Miles v. County of Sacramento*, et al., Case No. 2:19-CV-00910.
17 The deliberate and callous indifference experienced by Plaintiff demonstrates a
18 continuing pattern of wrongful conduct by Defendants Sacramento County and the
19 SCSD.

20 51. It was known and/or obvious to Defendants Sacramento County and the
21 SCSD that the acts and omissions described in paragraphs 40-49 would be likely to
22 cause serious violation of the constitutional rights of inmates.

23 52. The acts and omissions in paragraphs 40-49 were done under the color of
24 state law and they were the direct and proximate cause of the violation of the
25 constitutional rights of Plaintiff. These acts and omissions continued for at least a
26 year prior to the institution of this action and Plaintiff is informed and believes, and
27 on that basis alleges, that these acts and omissions continue until the present time.

1 As a consequence, the acts and omissions of Defendant Sacramento County and the
2 SCSD in paragraphs 40-49 constitute deliberate indifference to, and a callous
3 disregard for, the constitutional rights of inmates in the Sacramento County Jails.

4 53. As a direct and proximate result of the wrongful acts and omissions of
5 Defendant Sacramento County and the SCSD as set forth above, Plaintiff has
6 sustained general damages in excess of \$200,000, according to proof, including, but
7 not limited to the: (a) physical pain and suffering from the injuries to his body; and
8 (b) severe emotional and mental distress caused by the use of excessive force and
9 from the resulting physical injuries to his body, including feelings of helplessness,
10 anxiety, humiliation, and the loss of a sense of security, dignity, and pride.

11 54. As a direct and proximate result of the foregoing conduct of Defendant
12 Sacramento County and the SCSD, Plaintiff has been forced to file this action under
13 42 U.S.C. §1983, and is entitled to recover his attorney's fees and costs under 42
14 U.S.C. §1988.

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PRAYER

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. For general, consequential, and special damages in the sum set forth in each count according to proof;
2. For punitive damages in a sum according to proof in Counts 1 and 2;
3. For reasonable attorney's fees and costs pursuant to 42 U.S.C. §1988 in Counts 1- 3;
4. For cost of suit herein incurred for all counts; and
5. For such other and further relief as the Court deems just and proper.

Dated: August 29, 2019

Respectfully,

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