

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

ROPHEAL MCGEE JR,

CASE NO.:

Plaintiff,

v.

**CITY OF GAINESVILLE,
FLORIDA, and CASEY WALSH,
in her individual capacity,**

Defendants.

_____ /

COMPLAINT

Plaintiff, ROPHEAL MCGEE JR, hereby sues Defendants, CITY OF GAINESVILLE, FLORIDA, and CASEY WALSH, in her individual capacity, and alleges:

NATURE OF THE ACTION

1. This is a civil action seeking monetary damages in excess of seventy five thousand dollars (\$75,000.00), declaratory judgment, and legal, equitable, and injunctive relief against Defendants. This is an action brought under the common law of the State of Florida and under the Fourth Amendment to the United States Constitution brought through 42 U.S.C. §1983. Attorneys fees are sought under 42 U.S.C. §1988.

2. Jurisdiction of this Court is invoked pursuant 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1343 (civil rights claim jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction).

PARTIES

3. At all times pertinent hereto, Plaintiff, ROPHEAL MCGEE JR, has been a resident of ALACHUA, County, FL. He is *sui juris*.

4. At all times pertinent hereto, Defendant, CITY OF GAINESVILLE (“CITY”) has been organized and existing under the laws of the State of Florida.

5. At all times pertinent hereto, Defendant CASEY WALSH, was a K-9 officer employed with Defendant City. She is *sui juris*.

CONDITIONS PRECEDENT

6. Written notices of intent to initiate litigation on Plaintiff’s state law claims asserted herein, were submitted to Defendant City pursuant to §768.28(6), Florida Statutes.

STATEMENT OF THE ULTIMATE FACTS

7. On November 7, 2021, Plaintiff was within his residence when he heard his car alarm go off. As Plaintiff went to check on his vehicle, he heard Defendant City’s agents yell for him to get on the ground, to which Plaintiff complied. As Plaintiff was laying down on the ground on his stomach, he was attacked by a canine in the custody of Defendant Walsh, an officer with the Gainesville Police

Department's Canine (K-9) Unit. This officer's use of force was extreme, excessive, unwarranted, and unnecessary as captured on a video recording.

8. Because Plaintiff had already complied with commands to get on the ground at the time the canine was released to attack him, no force was necessary to obtain his compliance with law enforcement commands. Notwithstanding, the canine was released by Defendant Walsh to attack Plaintiff after which he clamped onto Plaintiff's arm.

9. After the attack and while the canine was still biting/clamped on Plaintiff's arm, no, or insufficient, action was taken have the canine release his bite on Plaintiff, as a result of which Plaintiff was seriously injured and began to bleed. The duration of the attack persisted for approximately 28 or more seconds.

10. The body camera footage reveals that the Defendant officer in charge of releasing the canine did so within mere milliseconds of a command being issued to Plaintiff to get on the ground and Plaintiff immediately complying. This premeditated attack occurred without the officer determining whether Plaintiff posed a threat to himself or others, and without knowledge of whether Plaintiff was attempting to escape. Clearly, Plaintiff was complying and no force should have been used on him at all.

11. After the canine released its grip on the heavily bleeding arm of Plaintiff, Defendant City's agents proceeded to handcuff Plaintiff's arms at the back

of his body while he remained on the ground with his stomach against the pavement. Seven minutes later, Defendant City's agents repositioned the handcuffs to the front of Plaintiff's body, enabling him to sit up as they worked to stabilize his blood flow.

12. After this incident, Plaintiff was transported to UF Shands Trauma Center, where he was immediately rushed into surgery and treated for extensive and permanent injuries caused by the canine. More specifically, Plaintiff was admitted for uncontrolled bleeding from the dog bite to his left forearm, among other injuries. He was subsequently arrested and jailed for 40-days, at which time all charges were dropped.

13. Plaintiff's future care will involve extensive rehabilitation and healthcare services for years to come.

14. Notably, there have been other instances of individuals being unnecessarily bitten by the dogs in Gainesville Police Department's Canine (K-9) Unit. Canines have mauled other persons in Gainesville, namely Terrell Bradley in which Mr. Bradley lost an eye and an innocent homeless woman. There appear to be others. The injuries in these and other cases caused the Defendant City to cease using its K-9 program for a period of years, fueled primarily by citizen groups outraged by the actions of the officers and canines in this program.

15. Defendant City was certainly on notice of the mauling by its canines at the time that Plaintiff was injured and failed to rectify the problem at the time that the dog mauled Plaintiff.

16. Plaintiff has retained the undersigned to represent her interests in this cause and is obligated to pay a fee for these services. Defendant should be made to pay said fee under the laws referenced above.

COUNT I
COMMON LAW NEGLIGENCE
(Against Defendant City)

17. Paragraphs 1 through 15 are re-alleged and incorporated herein by reference.

18. This count sets forth a claim against Defendant City for common law negligence. Defendant knew or should have known that Plaintiff was within a zone of risk related to contact with its agents/employees. At all times pertinent hereto, Defendant Walsh was acting inside the course and scope of her employment with Defendant City.

19. Defendant owed a duty of care to Plaintiff due to the nature of the relationship between Plaintiff and Defendant and/or Defendant had a special relationship with Plaintiff and, consequently, a duty of care was attendant thereto. Alternatively, legal duties devolved upon Defendant because Plaintiff was in the foreseeable zone of risk to be harmed by the actions thereof.

20. Defendant further breached its duty to properly supervise its employee and agents, to ensure the safety of the Plaintiff and/or to properly use force only when necessary.

21. The actions of Defendant and a complained of herein were “operational” functions, i.e., functions that were not necessary to or inherent in policymaking or planning, that merely reflected secondary decisions as to how policies or plans were to be implemented.

22. As a direct and proximate result of the above unlawful acts and omissions, Plaintiff sustained economic damages, including bodily injury, lost income and other emoluments, emotional pain, mental anguish, loss of the capacity for the enjoyment of life, humiliation, insult, indignity, loss of self-esteem, inconvenience and hurt, all because of the actions of Defendant L/N/U and is therefore entitled to compensatory damages. These damages have occurred in the past, at present and will certainly occur in the future.

COUNT II
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Defendant Walsh)

23. Paragraphs 1 through 15 are realleged and are incorporated herein by reference.

24. This count sets forth a claim against Defendant Walsh for intentional infliction of emotional distress. For the purpose of this claim, Defendant Walsh was

acting outside the course and scope of her employment with Defendant CITY. This claim is pled in the alternative.

25. Defendant Walsh's conduct set forth in part above, constituted extreme and outrageous conduct that would shock the conscience of a reasonable person and goes beyond all bounds of decency. Defendant's conduct was the proximate cause of Plaintiff's physical injuries and emotional distress and Plaintiff's emotional distress was severe. Defendant Doe's conduct constitutes the actionable tort of intentional infliction of emotional distress.

26. Defendant Doe intentionally and/or recklessly caused Plaintiff emotional distress and physical injury by using releasing her canine to attack and maul Plaintiff after he was already compliant with orders from other law enforcement officers. These actions by Defendant Walsh were made in bad faith and with a malicious purpose and with a willful disregard for Plaintiff's rights.

27. As a direct and proximate result of the above unlawful acts and omissions, Plaintiff sustained economic damages, including bodily injury, lost income and other emoluments, emotional pain, mental anguish, loss of the capacity for the enjoyment of life, humiliation, insult, indignity, loss of self-esteem, inconvenience and hurt, all because of the actions of Defendant L/N/U and is therefore entitled to compensatory damages. These damages have occurred in the past, at present and will certainly occur in the future.

COUNT III
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Against Defendant City)

28. Paragraphs 1 through 15 are hereby re-alleged and incorporated herein by reference.

29. This count sets forth a claim against Defendant City for negligent infliction of emotional distress resulting from actions herein that are “operational” level decision-making activities. As such, Defendant CITY is not immune from tort liability stemming from these incidents and in accordance with Article X, Section 13 of the Florida Constitution, Defendant CITY has waived sovereign immunity from liability. This claim is pled in the alternative to Count III. At all times pertinent hereto, Defendant Walsh was acting inside the course and scope of her employment with Defendant City.

30. Defendant’s conduct described above and incorporated into this Count caused severe emotional distress to Plaintiff.

31. Plaintiff suffered a physical impact and/or injury as described above and incorporated into this count, such that he suffered and continues to suffer both physical and psychological trauma in the form of severe anxiety, depression, and stress.

32. As a direct and proximate result of the above unlawful acts and omissions, Plaintiff sustained economic damages, including bodily injury, lost

income and other emoluments, emotional pain, mental anguish, loss of the capacity for the enjoyment of life, humiliation, insult, indignity, loss of self-esteem, inconvenience and hurt, all because of the actions of Defendant L/N/U and is therefore entitled to compensatory damages. These damages have occurred in the past, at present and will certainly occur in the future.

COUNT IV
EIGHTH AMENDMENT VIOLATION-EXCESSIVE FORCE
(Against Defendant CITY)

33. Plaintiff re-alleges paragraphs 1 through 16 above and incorporates those allegations in this Count.

34. This count sets forth a claim against Defendant City for excessive force in violation of Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution and is brought through 42 U.S.C. §1983.

35. At all times pertinent hereto, Defendant City acted under color of state law and intentionally deprived Plaintiff of his rights under the United States Constitution.

36. Defendant is a person under the laws applicable to this action.

37. Specifically, Defendant intentionally violated Plaintiff's rights as a citizen to be free from the use of excessive force during an arrest.

38. Defendant, through its respective agents and employees, exceeded the level of force necessary to enforce compliance with lawful commands and acted in

bad faith and with malicious purpose and in a manner exhibiting wanton and willful disregard of human rights, safety, and property.

39. Defendant misused its power, possessed by virtue of state law and made possible only because it clothed its agents with the authority of state law. The violation of Plaintiff's rights occurred under color of state law and is actionable under 42 U.S.C. §1983.

40. Defendant City failed to implement adequate procedures to investigate constitutional violations by its officers and to impose discipline on its officers like Walsh and others in the K-9 program when they engage in constitutional violations.

41. Defendant City is an official with final policy-making authority and is responsible for hiring, training, and supervising its law enforcement officers and, when necessary, for investigating alleged wrongdoing by its employees and imposing discipline and/or taking other corrective action. Defendant City utterly failed to adequately train its officers in the K-9 program which it knew both before and after Plaintiff and other citizens were injured.

42. Defendant, after notice of the constitutional violations alleged herein, officially sanctioned these actions and refused to discipline its officers, employees and agents which established a policy, by a final policy-maker, that directly or indirectly resulted in the violation of Plaintiff's constitutional rights.

43. As a direct and proximate cause of Defendant's actions, Plaintiff has been damaged, which damages include: emotional distress, pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, permanent disfigurement, mental anguish, loss of enjoyment of life and other tangible and intangible damages. These damages have occurred in the past, occur at present, and will most likely occur in the future. Defendants are further jointly and severally liable to Plaintiff for the unlawful conduct alleged herein. Plaintiff is entitled to attorneys' fees and costs against Defendant pursuant to 42 U.S.C. §1988.

COUNT V
EIGHTH AMENDMENT VIOLATION-EXCESSIVE FORCE
(Against Defendant Walsh)

44. Plaintiff re-alleges paragraphs 1 through 16 above and incorporates those allegations in this Count.

45. This count sets forth a claim against Defendant for violation of the Fourth and Fourteenth Amendments of the U.S. Constitution, based on excessive force, which claims are brought through 42 U.S.C. §1983.

46. Defendant Walsh used excessive force against Plaintiff, as set forth in part above, without justification, consent, cause or lawful authority.

47. Defendant Walsh intended to damage Plaintiff, in that her harmful acts in releasing the canine to maul Plaintiff and then not acting quickly to get the canine to stop biting Plaintiff were purposeful, although Plaintiff was compliant with

directives from law enforcement officers, and such acts were substantially certain to result in injury and harm to Plaintiff.

48. The Defendant acted to violate Plaintiff's right not to be subjected to the excessive use of force under the Fourth Amendment to the United States Constitution. These violations were of the type and character to which any reasonable person would be aware.

49. Defendant is liable, jointly and severally, to Plaintiff, for the conduct, individually and in concert, in violating Plaintiff's rights under the Fourth Amendment to the U.S. Constitution.

50. Defendant misused her power, possessed by virtue of state law and made possible only because of the authority of state law. The violation of Plaintiff's rights, as described in part above, occurred under color of state law, and is actionable under 42 U.S.C. §1983.

51. The foregoing actions of Defendant were willful, wanton, and in reckless disregard of Plaintiff's rights, and were taken without any lawful justification.

52. The use of excessive force by Defendant is not part of the penalty that citizens have to pay prior to, during and/or after an arrest and determines a cognizable claim in violation of the Fourth Amendment.

53. Defendant knew or should have known that her actions against Plaintiff were excessive given the clearly established law.

54. Based upon the facts presented to Defendant and the applicable law, no reasonable person, company, government agency or law enforcement agency could have concluded that there existed any reasonable cause or legal basis for the mauling of Plaintiff. The law was settled and clearly established that the actions of Defendant constituted excessive force under the Fourth Amendment at the time the acts were engaged in.

55. The actions or inactions of Defendant, set forth in part above, constituted deliberate indifference and/or reckless disregard for Plaintiff when Defendant knew of and disregarded Plaintiff's rights, and thus Defendant's actions or inactions constituted the use of excessive force in violation of the Fourth Amendment.

56. Defendants were acting under color of state law at all pertinent times. Their use of excessive force violated the proscription thereof set forth in the Fourth Amendment. Defendant misused her power, possessed by virtue of state law and made possible only because of the authority of state law. Defendant is a person under applicable law.

57. The foregoing actions of Defendant were willful, wanton, and in reckless disregard of Plaintiff's rights.

58. As a direct and proximate cause of Defendants' actions, Plaintiff has been damaged, which damages include physical pain, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, bodily injury, loss of reputation, lost employment opportunities, lost wages, and the loss of other emoluments. These damages have occurred at present, in the past and will most likely occur in the future. Defendants are jointly and severally liable to Plaintiff under this count. Plaintiff is entitled to awards of punitive damages against Defendants Walsh under this count.

COUNT VI
BATTERY
(Against Defendant Walsh)

59. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

60. This count sets forth claims against Walsh for common law battery. This count is pled in the alternative, and for the purposes of this count alone, Defendant Walsh was acting outside the course and scope of her employment with Defendant CITY.

61. Plaintiff is entitled to relief against Defendant Walsh in that she released her canine to attack Plaintiff in an offensive and harmful manner. Defendant intended to batter the Plaintiff. This unlawful harm of Plaintiff was also accomplished by Defendant without any justification. Defendant intended to cause

harm to Plaintiff and/or knew or should have known there was substantial certainty that harm would occur.

62. Defendant Walsh acted in bad faith, with malicious purpose, and in a manner exhibiting wanton and willful disregard of human rights and safety.

63. As a direct and proximate cause of Defendant's actions, Plaintiff has been damaged, which damages include: grave mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, bodily injury, loss of reputation, lost employment opportunities, lost wages, and the loss of other emoluments. These damages have occurred at present, in the past and will most likely occur in the future.

COUNT VII
BATTERY
(Against Defendant CITY)

64. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

65. This count sets forth a claim against Defendant CITY for common law battery. For the purpose of this Count alone, Defendant Walsh was acting inside the course and scope of employment with Defendant CITY.

66. Plaintiff is entitled to relief against Defendant CITY in that through its officers, employees and agents, Defendant, without justification or the Plaintiff's consent, touched Plaintiff's person in an offensive and harmful manner, in

Defendant CITY's officers, employees and agents battered Plaintiff and caused Plaintiff to sustain injuries. Defendant CITY, through its agents and/or employees, intended to batter Plaintiff. This unlawful action was also accomplished by Defendant CITY, through its agents' and/or employees' releasing a canine to attack Plaintiff without any justification and in the absence of cause. Defendant CITY's officers, employees and agents intended to cause harm to Plaintiff or knew or should've known there was substantial certainty that harm would occur.

67. Defendant CITY ratified the misconduct of its officers, employees and/or agents in that it was aware of their misconduct and sanctioned their decisions.

68. The actions by Defendant Walsh were committed as an agent of CITY and were committed within the course and scope of his employment/agency with Defendant CITY.

69. As a direct and proximate cause of Defendant CITY's actions, Plaintiff has been damaged, which damages include: mental anguish, pain and suffering, bodily injury, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost employment opportunities, lost wages, and the loss of other emoluments. These damages have occurred at present, in the past and will most likely occur in the future.

COUNT VIII
ASSAULT
(Against Defendant Walsh)

70. Paragraphs 1 through 15 are re-alleged and incorporated herein by reference.

71. This is an action against Defendant Walsh. This Count is pled in the alternative and Walsh was acting outside the course and scope of her employment with Defendant CITY at the time of the incident complained of for purposes of this Count alone.

72. Defendant intentionally and unlawfully injured Plaintiff by releasing a canine toward Plaintiff.

73. Defendant created a reasonable fear of imminent peril through the affirmative act of releasing the canine to attack Plaintiff.

74. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing.

COUNT IX
ASSAULT
(Against Defendant CITY)

75. Paragraphs 1 through 15 are re-alleged and incorporated herein by reference.

76. This is an action against Defendant CITY. This Count is pled in the alternative and for purposes of this count alone, Defendant Walsh was acting inside the course and scope of employment with Defendant CITY.

77. Defendant, through its agent Defendant Walsh, intentionally and unlawfully injured Plaintiff by releasing its canine toward Plaintiff.

78. 3. Defendant, through its agent Defendant Walsh, created a reasonable fear of imminent peril through the affirmative act of releasing its canine to attack Plaintiff.

79. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendants under the applicable counts set forth above, mandating Defendants' obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendants and for Plaintiff awarding damages to Plaintiff from Defendants for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendants and for Plaintiff permanently enjoining Defendants from future violations of the state and federal laws enumerated herein;
- (e) enter judgment against Defendants and for Plaintiff awarding Plaintiff attorney's fees and costs; and
- (f) grant such other further relief as being just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demand a trial by jury on all issues set forth herein which are so triable.

Dated this 31st day of January, 2025.

Respectfully submitted,

/s/ Marie A. Mattox
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