

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Dennis Gaydos,)	
Plaintiff,)	
)	
v.)	
)	CIVIL DIVISION.
RIC BRADSHAW, in his official capacity)	
as Sheriff of Palm Beach County and)	CASE NO: 9:11-CV-80301-KLR
The Village of Palm Springs, a municipal)	
corporation,)	
Defendants.)	

_____ /

AMENDED COMPLAINT

COMES NOW, DENNIS GAYDOS by and through his undersigned counsel and seeks money damages in excess of \$15,000.00, exclusive of costs, interest and attorneys' fees and sues RIC BRADSHAW, in his official capacity as Sheriff of Palm Beach County and The Village of Palm Springs, a municipal corporation, and states:

JURISDICTIONAL ALLEGATIONS

1. This is an action in excess of this Court's jurisdictional threshold.
2. DENNIS GAYDOS' claims are made pursuant to 42 U.S.C. Section 1983 and Section 1988, and the 4th and 14th Amendments to the Constitution of the United States of America.
3. DENNIS GAYDOS hereby invokes supplemental jurisdiction of the United States District Court to hear pendent state tort claims arising under Florida law pursuant to 28 U.S.C. Section 1367 and further invokes the jurisdiction of the United States District Court pursuant to 42 U.S.C. 1983; 28 U.S.C. Sections 1331 and 1343.

PARTIES

4. DENNIS GAYDOS [hereinafter, PLAINTIFF] is an adult resident of the State of Florida domiciled in Palm Beach County, Florida.
5. Defendant, RIC BRADSHAW [hereinafter, SHERIFF] is sued, in his official capacity as Sheriff of Palm Beach County. In this cause, Defendant, SHERIFF acted through his agents, employees and servants.
6. Defendant, Village of Palm Springs [hereinafter, PALM SPRINGS], is a subdivision of the State of Florida, located in Palm Beach County, Florida and organized and existing under the laws of the State of Florida. In this cause, PALM SPRINGS acted through its agents, employees and servants.
7. All acts and occurrences material to this cause of action were committed in Palm Beach County, Florida.

CONDITIONS PRECEDENT

8. All conditions precedent to the prosecution of this action have occurred, or have been performed, excused or waived.
9. On or about March 1, 2010, PLAINTIFF forwarded a written notice pursuant to Fla.Stat. 768 to SHERIFF and PALM SPRINGS and the Florida Department of Financial Services, Division of Risk Management.

GENERAL ALLEGATIONS & FACTS COMMON TO ALL COUNTS

10. The PLAINTIFF, on or about March 23, 2007, temporarily sought shelter in a semi-wooded area directly behind a church in the Village of Palm Springs, Florida. He was without a home to reside within on the incident date.

11. The pastor and property agent for the church authorized the PLAINTIFF's presence at the semi-wooded area. The location is a mixed commercial and structural zone with foliage canvassing the area where the PLAINTIFF sheltered himself.
12. On March 23, 2007, the PLAINTIFF contacted a local assistance agency by telephone for the purpose of a referral for residential resources, financial aid and general counseling. Unbeknownst to the PLAINTIFF, a referral to local law enforcement was made by the agency during the phone call when the PLAINTIFF sought the above information and consultation.
13. Tactical law enforcement units from the SHERIFF and PALM SPRINGS, assembled and traveled to the location where the PLAINTIFF was sheltered. The defendants "staged" before approaching the PLAINTIFF to discuss their method of accosting the PLAINTIFF upon making contact with him. The SHERIFF was informed by PALM SPRINGS that the municipal officers, rather than the deputies, would "handle the incident" but that the deputies' assistance would be needed for the action against the PLAINTIFF.
14. Upon the SHERIFF's and PALM SPRINGS' arrival the PLAINTIFF was overtaken by multiple deputies and police officers. Plaintiff was not threatening harm to the officers or other individuals upon the Defendants' arrival.
15. The defendants, SHERIFF and PALM SPRINGS, were armed with shot guns, sage firearms, sage weapons, or sage devices, rifles, side firearms, taser guns, mace, shields and protective gear. In addition, the officers also brought a canine (K-9), and deployed a helicopter to the scene.

16. The officers assumed a military like tactical march to the edge of the foliage clearance where the PLAINTIFF was located. The location was well lit by ambient, artificial and natural light.
17. Upon making eye contact with the PLAINTIFF the defendants were several yards away and saw the PLAINTIFF seated near his encampment. The defendants alleged that the PLAINTIFF held and was utilizing his cellular telephone with one hand while holding what appeared to be a knife in the opposite hand. The PLAINTIFF asserts that this alleged fact is untrue.
18. When the defendants engaged the PLAINTIFF by shouting at him, he attempted to stand up in response. The defendants then suddenly and without warning, discharged a rifle, shot gun or sage firearm or weapon aiming directly at the PLAINTIFF's head region.
19. The PLAINTIFF sustained an injury to his left ear causing the detachment of his lobe region thereby resulting in disfiguring and permanent injury. The projectile struck his ear and destroyed the PLAINTIFF's external auditory meatus, canal and auricle. His hearing was and is presently diminished because of the injury.
20. The defendants then suddenly, without warning and unexpectedly, discharged a second round from a rifle, shot gun or sage firearm or weapon, again while aiming directly at the PLAINTIFF's head region. This round impacted the PLAINTIFF's eye.
21. The PLAINTIFF sustained a devastating injury to his eye. This second round was discharged at close range and went directly into the PLAINTIFF's eye organ entirely destroying its optical components. The PLAINTIFF sustained disfiguring and permanent injury. His eye was surgically removed. He is totally blind in that eye.

22. The deputies and officers from the defendants, SHERIFF and PALM SPRINGS, were veteran or experienced law enforcement officers. Both defendants also deployed supervisory personnel who planned, authorized, participated in and supervised the acts given rise to the present claim.
23. SHERIFF and PALM SPRINGS at all times material to the facts giving rise to the PLAINTIFF's claims was responsible for ensuring that their agents and employees maintained state required certifications in accordance with Florida law to serve as law enforcement officers. SHERIFF and PALM SPRINGS were also responsible for proper training and adequate supervision of their agents and employees up to and including the time frame when employing the use of force resulting in the PLAINTIFF's injuries.
24. The defendants employ men and women as sworn law enforcement officers. Their agencies maintain the following divisions and units: Special Weapons and Tactics (S.W.A.T.), Bomb Squad, Special Operations Unit, Narcotics Unit, Criminal Investigative and Patrol Division.
25. The unit's and division's primary objectives consist of immediate responses to critical matters which oftentimes result in the use of some form of force, including deadly force, or, the type of force used against the Plaintiff.

COUNT I (ONE)
UNNECESSARY OR EXCESSIVE USE OF FORCE CLAIM AGAINST DEFENDANT
SHERIFF, COGNIZABLE UNDER 42 U.S.C. §1983
[Assault]

For his cause of action against Defendant SHERIFF, in Count I, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

26. Defendant SHERIFF's agents or employees under color of law, did intentionally and unlawfully threaten by actions to do violence to the PLAINTIFF coupled with an apparent ability to do so, creating a well-founded fear in PLAINTIFF that such violence was imminent, by pointing and aiming a rifle, shot gun or sage weapon or firearm or device at the PLAINTIFF.

27. The PLAINTIFF was placed in reasonable apprehension of immediately receiving fatal injury resulting from the defendant's actions. The defendant's actions were likely to and actually did result in serious bodily injury.

28. The conduct of Defendant SHERIFF's agents or employees towards PLAINTIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force in violation of PLAINTIFF's clearly established constitutional rights under the 4th and 14th Amendments of the United States Constitution and 42 U.S.C. §1983. The deliberate and actual threat of force under the circumstances resulted from the defendant's customs, policies, practices, procedures, or an agent having final decision making authority, and was the moving force behind the constitutional violation.

29. As a direct and proximate result of the actions of Defendant SHERIFF in violation of 42 U.S.C. §1983, PLAINTIFF suffered past, present and future damages which include: loss of income and ability to work, physical suffering; physical inconvenience and discomfort; mental anguish and future emotional suffering; medical and legal costs and legal fees; all in violation of PLAINTIFF's civil rights.

WHEREFORE, PLAINTIFF demands judgment against the Defendant SHERIFF for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all medical and legal costs related thereto, reasonable attorney's fees pursuant to 42

USC §1988, together with any post-judgment interest, any and all equitable relief allowed by law and further demands trial by jury.

COUNT II (TWO)
UNNECESSARY OR EXCESSIVE USE OF FORCE CLAIM AGAINST DEFENDANT
PALM SPRINGS, COGNIZABLE UNDER 42 U.S.C. §1983
[Assault]

For his cause of action against Defendant PALM SPRINGS, in Count II, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

30. Defendant PALM SPRINGS' agents or employees under color of law, did intentionally and unlawfully threaten by actions to do violence to the PLAINTIFF coupled with an apparent ability to do so, creating a well-founded fear in PLAINTIFF that such violence was imminent, by pointing and aiming a rifle, shot gun or sage weapon or device or firearm at the PLAINTIFF.
31. The PLAINTIFF was placed in reasonable apprehension of immediately receiving fatal injury resulting from the defendant's actions. The defendant's actions were likely to and actually did result in serious bodily injury.
32. The conduct of Defendant PALM SPRINGS' agents or employees towards PLAINTIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force in violation of PLAINTIFF's clearly established constitutional rights under the 4th and 14th Amendments of the United States Constitution and 42 U.S.C. §1983.
33. The deliberate and actual threat of force under the circumstances resulted from the Defendant PALM SPRINGS' customs, policies, practices and procedures and was the moving force behind the constitutional violation. The PALM SPRINGS Public Safety Department Order

GO-12:00 established a use of force policy and procedure regarding the continuum of force inclusive of physical impact and deadly force prescriptions. The Defendant's failure to adhere to the graduated continuum of force within such policy or procedure, and the Defendant's practices when employing the prescribed standards, resulted in the Plaintiff's assault.

34. In the alternative, the manner and strategy employed by the Defendant PALM SPRINGS in engaging PLAINTIFF by failing to exercise a lesser continuum of force before undertaking impact or deadly force, evidences a custom resulting in municipal liability.

35. As a direct and proximate result of the actions of Defendant PALM SPRINGS in violation of 42 U.S.C. §1983, PLAINTIFF suffered past, present and future damages which include: loss of income and ability to work, physical suffering; physical inconvenience and discomfort; mental anguish and future emotional suffering; medical and legal costs and legal fees; all in violation of PLAINTIFF's civil rights.

WHEREFORE, PLAINTIFF demands judgment against the Defendant PALM SPRINGS for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all medical and legal costs related thereto, reasonable attorney's fees pursuant to 42 USC §1988, together with any post-judgment interest, any and all equitable relief allowed by law and further demands trial by jury.

COUNT III (THREE)
UNNECESSARY OR EXCESSIVE USE OF FORCE CLAIM AGAINST DEFENDANT
SHERIFF, COGNIZABLE UNDER 42 U.S.C. §1983
[Battery]

For his cause of action against Defendant, SHERIFF, in Count III, PLAINTIFF alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

36. Defendant SHERIFF's agents or employees under color of law, did intentionally touch and strike PLAINTIFF by discharging a rifle, shotgun or sage weapon, firearm or device without the PLAINTIFF's consent and against his will. Defendant's actions intentionally caused physical harm to PLAINTIFF.

37. The conduct of Defendant SHERIFF towards PLAINTIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force in violation of PLAINTIFF's clearly established constitutional rights under the 4th and 14th Amendments of the United States Constitution and 42 U.S.C. §1983. The deliberate and actual use of force under the circumstances resulted from the defendant's customs, policies, practices, procedures, or an agent having final decision making authority, and was the moving force behind the constitutional violation.

38. As a direct and proximate result of the actions of Defendant SHERIFF in violation of 42 U.S.C. §1983, PLAINTIFF suffered past, present and future damages which include: loss of income and ability to work, physical suffering, permanent disfigurement and loss of use of a bodily function, injury and discomfort; mental anguish and future emotional suffering; expensive medical care and treatment; medical and legal costs and legal fees; all in violation of PLAINTIFF's civil rights.

WHEREFORE, PLAINTIFF demands judgment against the Defendant SHERIFF for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT IV (FOUR)
UNNECESSARY OR EXCESSIVE USE OF FORCE CLAIM AGAINST DEFENDANT
PALM SPRINGS, COGNIZABLE UNDER 42 U.S.C. §1983
[Battery]

For his cause of action against Defendant, PALM SPRINGS, in Count IV, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

39. Defendant PALM SPRINGS' agents or employees under color of law, did intentionally touch and strike PLAINTIFF by discharging a rifle, shotgun or sage weapon, firearm or device without the PLAINTIFF's consent and against his will. Defendant's actions intentionally caused physical harm to PLAINTIFF.
40. The conduct of Defendant PALM SPRINGS towards PLAINTIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force in violation of PLAINTIFF's clearly established constitutional rights under the 4th and 14th Amendments of the United States Constitution and 42 U.S.C. §1983.
41. The deliberate and actual use of force under the circumstances resulted from the Defendant PALM SPRINGS' customs, policies, practices and procedures and was the moving force behind the constitutional violation. The PALM SPRINGS Public Safety Department Order GO-12.00 established a use of force policy and procedure regarding the continuum of force inclusive of physical impact and deadly force prescriptions. The Defendant's failure to adhere to the graduated continuum of force within such policy or procedure and the Defendant's practices when employing the prescribed standards resulted in the Plaintiff's battery.

42. In the alternative, the manner and strategy employed by the Defendant PALM SPRINGS in engaging PLAINTIFF by failing to exercise a lesser continuum of force before undertaking impact or deadly force, evidences a custom resulting in municipal liability.

43. As a direct and proximate result of the actions of Defendant PALM SPRINGS in violation of 42 U.S.C. §1983, PLAINTIFF suffered past, present and future damages which include: loss of income and ability to work, physical suffering; physical inconvenience; physical suffering, permanent disfigurement and loss of use of a bodily function, injury and discomfort; mental anguish and future emotional suffering; expensive medical care and treatment; medical and legal costs and legal fees; all in violation of PLAINTIFF's civil rights.

WHEREFORE, PLAINTIFF demands judgment against the Defendant PALM SPRINGS for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT V (FIVE)
CLAIM AGAINST DEFENDANT SHERIFF,
COGNIZABLE UNDER 42 U.S.C. §1983
(Failure to Train and Supervise)

For his cause of action against Defendant, SHERIFF in Count V, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

44. Defendant SHERIFF is a law enforcement agency, organized and existing under the laws of the State of Florida.

45. On or about March 23, 2007, Defendant SHERIFF's agents or employees, while acting under the color of the law and/or in the course and scope of their duties as law enforcement officers employed by the Defendant SHERIFF, caused assault, battery and the discharge of gunshot or sage weaponry projectiles which resulted in the disfigurement and permanent injury of PLAINTIFF, including but not limited to the use of a bodily function.
46. Defendant SHERIFF's agents or employees violated clearly established law and PLAINTIFF's rights under the 4th and 14th Amendments of the United States Constitution and 42 U.S.C. 1983 as PLAINTIFF was subjected to assault, battery and gunshot or sage weapon injury which resulted from excessive and unjustified force.
47. The actions resulting in PLAINTIFF's assault and battery by Defendant SHERIFF's agents or employees were caused by the SHERIFF's customs, policies, procedures or practices, or resulted from the action of an individual with final decision or policy making authority as implemented by the Palm Beach County Sheriff's Department, and was the moving force behind the constitutional violation of PLAINTIFF's civil rights.
48. Defendant SHERIFF's failed to promulgate, implement and/or oversee clearly established laws or policies pertaining to the use of force by its agents. Defendant SHERIFF's actions rose to the level of a custom or policy through tacit, implied or express authorization, or was a display of deliberate indifference towards the excessive use of such force during law enforcement investigatory detentions and seizures. The failure of Defendant SHERIFF to promulgate, implement and/or provide oversight for the assault, battery and gunshot or sage weaponry usage was the moving force behind the constitutional violation of PLAINTIFF's civil rights.

49. Defendant SHERIFF did not adequately train or supervise the law enforcement officers for the Palm Beach County Sheriff's Department in alternatives to the deployment of appropriate and proportioned force during its investigatory operations, detentions and seizures, and was the moving force behind the constitutional violation of PLAINTIFF's civil rights.
50. The failure of Defendant SHERIFF to adequately train or supervise its employees or agents in the usage, limitations and proportionality of force during such investigatory detentions and seizures, resulted in custom or policy through tacit, implied or express authorization thereby causing the violation of clearly established law and an abridgment of constitutional rights pursuant to the 4th and 14th Amendments of the United States Constitution.
51. Defendant SHERIFF'S customs, policies or practices resulted in, and were proximately and causally connected to a violation of PLAINTIFF's civil rights.
52. The actions of Defendant SHERIFF resulted in PLAINTIFF suffering past, present and future damages, which damages include: loss of income and ability to work, physical suffering, permanent disfigurement, loss of use of a bodily function, injury and discomfort; mental anguish and future emotional suffering; expensive medical care and treatment; medical and legal costs and legal fees; all in violation of PLAINTIFF's civil rights.

WHEREFORE, PLAINTIFF demands judgment against the Defendant SHERIFF for any and all damages allowable by law, including but not limited to compensatory damages and award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT VI (SIX)
CLAIM AGAINST DEFENDANT PALM SPRINGS,
COGNIZABLE UNDER 42 U.S.C. §1983
(Failure to Train and Supervise)

For his cause of action against Defendant, PALM SPRINGS in Count VI, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

53. Defendant PALM SPRINGS is a law enforcement agency, organized and existing under the laws of the State of Florida.

54. On or about March 23, 2007, Defendants PALM SPRINGS' agents or employees, while acting under the color of the law and/or in the course and scope of their duties as law enforcement officers employed by the Defendant PALM SPRINGS, caused assault, battery and the discharge of gunshot or sage weaponry projectiles which resulted in the disfigurement and permanent injury of PLAINTIFF, including but not limited to the use of a bodily function.

55. Defendant PALM SPRINGS' agents or employees violated clearly established law and PLAINTIFF's rights under the 4th and 14th Amendments of the United States Constitution and 42 U.S.C. 1983 as PLAINTIFF was subjected to assault, battery and gunshot or sage weapon injury which resulted from the excessive and unjustified force.

56. The actions resulting in PLAINTIFF's assault and battery by Defendant PALM SPRINGS' agents or employees were caused by the PALM SPRINGS' customs, policies, procedures or practices, or, resulted from the action of an individual with final decision or policy making authority as implemented by the Palm Springs Public Safety Department, Police services, and was the moving force behind the constitutional violation of PLAINTIFF's civil rights.

57. Defendant PALM SPRINGS failed to promulgate, implement or oversee clearly established laws, procedures or policies pertaining to the use of force by its agents, in that, Defendant PALM SPRINGS' Public Safety Department Order GO-12.00 did not incorporate the employment of sage weaponry projectiles in the continuum of force procedures. The order also did not incorporate use of force collaborative operations during multi-agency initiatives where the continuum of force, including but not limited to, sage weaponry projectiles, are employed. The policy and procedure also limits its application to the use of force in making an arrest in accordance with Fla. Stat. 776.05, without amendment for circumstances exclusive of continuum of force for other purposes.
58. Defendant PALM SPRINGS' actions rose to the level of a custom or policy through tacit, implied or express authorization, or was a display of deliberate indifference towards the excessive use of such force during law enforcement investigatory detentions, non custodial confrontations and seizures associated with an arrest. The failure of Defendant PALM SPRINGS to promulgate, implement or provide oversight for the assault, battery and gunshot or sage weaponry usage was the moving force behind the constitutional violation of PLAINTIFF's civil rights.
59. Defendant PALM SPRINGS did not adequately train or supervise the law enforcement officers for the Palm Springs Public Safety Department, Police Services, in alternatives to the deployment of appropriate and proportioned force during its investigatory operations, detentions, non-custodial confrontations, and seizures, and was the moving force behind the constitutional violation of PLAINTIFF's civil rights.
60. The failure of Defendant PALM SPRINGS to adequately train or supervise its employees or agents in the usage, limitations and proportionality of force during such investigatory

detentions, non-custodial confrontations, and seizures, resulted in a custom or policy through tacit, implied or express authorization thereby causing the violation of clearly established law and an abridgment of constitutional rights pursuant to the 4th and 14th Amendments of the United States Constitution.

61. Defendant PALM SPRINGS' customs, policies or practices resulted in, and were proximately and causally connected to a violation of PLAINTIFF's civil rights.

62. The actions of Defendant PALM SPRINGS resulted in PLAINTIFF suffering past, present and future damages, which damages include: loss of income and ability to work, physical suffering, permanent disfigurement, loss of use of a bodily function, injury and discomfort; mental anguish and future emotional suffering; expensive medical care and treatment; medical and legal costs and legal fees; all in violation of PLAINTIFF's civil rights.

WHEREFORE, PLAINTIFF demands judgment against the Defendant PALM SPRINGS for any and all damages allowable by law, including but not limited to compensatory damages and award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT VII (SEVEN)
CLAIM FOR ASSAULT AGAINST DEFENDANT SHERIFF

For his cause of action against Defendant, SHERIFF, in count VII, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

63. Defendant SHERIFF's agents or employees under color of law, did intentionally and unlawfully threaten by actions to do violence to the PLAINTIFF coupled with an apparent ability to do so, creating a well-founded fear in PLAINTIFF that such violence was

imminent, by pointing and aiming a rifle, shotgun or sage weapon or firearm or device at the PLAINTIFF.

64. The PLAINTIFF was placed in reasonable apprehension of immediately receiving fatal injury resulting from the defendant's actions. The defendant's actions were likely to and actually did result in serious bodily injury.

65. The conduct of Defendant towards PLAINTIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force.

66. As a result of the actions of Defendant, SHERIFF's agents or employees, PLAINTIFF suffered past, present and future damages which include: loss of income and ability to work, physical suffering; physical inconvenience; physical discomfort; mental anguish and future emotional suffering; medical and legal costs and legal fees. PLAINTIFF's damages are continuing to this day and are likely to continue in the future.

WHEREFORE, PLAINTIFF demands judgment against the Defendant SHERIFF for compensatory damages in excess of \$15,000.00, and costs of this action together with any post judgment interest, any and all equitable relief and requests a jury trial of all issues so triable.

COUNT VIII (EIGHT)
CLAIM FOR ASSAULT AGAINST DEFENDANT PALM SPRINGS

For his cause of action against Defendant, PALM SPRINGS, in count VIII, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

67. Defendant PALM SPRINGS' agents or employees under color of law, did intentionally and unlawfully threaten by actions to do violence to the PLAINTIFF coupled with an apparent ability to do so, creating a well-founded fear in PLAINTIFF that such violence was

imminent, by pointing and aiming a rifle, shot gun or sage weapon or firearm or device at the PLAINTIFF.

68. The PLAINTIFF was placed in reasonable apprehension of immediately receiving fatal injury resulting from the defendant's actions. The defendant's actions were likely to and actually did result in serious bodily injury.

69. The conduct of Defendant towards PLAINTIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force.

70. As a result of the actions of Defendant, PALM SPRINGS' agents or employees, PLAINTIFF suffered past, present and future damages which include: loss of income and ability to work physical suffering; physical inconvenience; physical discomfort; mental anguish and future emotional suffering; medical and legal costs and legal fees. PLAINTIFF's damages are continuing to this day and are likely to continue in the future.

WHEREFORE, PLAINTIFF demands judgment against the Defendant PALM SPRINGS for compensatory damages in excess of \$15,000.00, and costs of this action together with any post judgment interest, any and all equitable relief and requests a jury trial of all issues so triable.

COUNT IX (NINE)
CLAIM FOR BATTERY AGAINST DEFENDANT SHERIFF

For his cause of action against Defendant, SHERIFF in count IX, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

71. Defendant SHERIFF's agents or employees, acting under color of law, did intentionally touch and strike PLAINTIFF by discharging a rifle, shotgun or sage weapon or firearm or

device without the PLAINTIFF's consent and against his will. Defendant's actions intentionally caused physical harm to PLAINTIFF.

72. The conduct of Defendant SHERIFF, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force.

73. As a direct and proximate result of the actions of Defendant SHERIFF, PLAINTIFF suffered past, present and future damages which include: physical suffering; physical inconvenience; physical discomfort; mental anguish and future emotional suffering; disfigurement; loss of use of a bodily function, expensive medical care and treatment; medical and legal costs and fees. PLAINTIFF's damages are permanent or continuing to this day and are likely to continue in the future.

WHEREFORE, PLAINTIFF demands judgment against the Defendant SHERIFF for compensatory damages in excess of \$15,000.00, and costs of this action together with any post judgment interest, any and all equitable relief and requests a jury trial of all issues so triable.

COUNT X (TEN)
CLAIM FOR BATTERY AGAINST DEFENDANT PALM SPRINGS

For his cause of action against Defendant, PALM SPRINGS in count X, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

74. Defendant PALM SPRINGS' agents or employees, acting under color of law, did intentionally touch and strike PLAINTIFF by discharging a rifle, shotgun or sage weapon or firearm or device without the PLAINTIFF's consent and against his will. Defendant's actions intentionally caused physical harm to PLAINTIFF.

75. The conduct of Defendant PALM SPRINGS, as more fully set forth above, was objectively unreasonable and constituted unnecessary and excessive use of force.

76. As a direct and proximate result of the actions of Defendant PALM SPRINGS, PLAINTIFF suffered past, present and future damages which include: physical suffering; physical inconvenience; physical discomfort; mental anguish and future emotional suffering; disfigurement; loss of use of a bodily function, expensive medical care and treatment; medical and legal costs and fees. PLAINTIFF's damages are permanent or continuing to this day and are likely to continue in the future.

WHEREFORE, PLAINTIFF demands judgment against the Defendant PALM SPRINGS for compensatory damages in excess of \$15,000.00, and costs of this action together with any post judgment interest, any and all equitable relief and requests a jury trial of all issues so triable.

COUNT XI (ELEVEN)
CLAIM AGAINST DEFENDANT SHERIFF
(Failure to Train and Supervise)

For his cause of action against Defendant, SHERIFF in count XI, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

77. On or about March 23, 2007, Defendants SHERIFF's agents or employees, while acting under the color of the law and/or in the course and scope of their duties as law enforcement officers employed by the Defendant SHERIFF, caused the assault, battery and infliction of gunshot or sage weaponry projectiles which resulted in the disfigurement and permanent injury of PLAINTIFF, including but not limited to the use of a bodily function.

78. Defendant SHERIFF failed to promulgate, implement and/or oversee application of Florida Statutes or internal policies pertaining to the use of force by its agents. Defendant's actions were tacit, implied or express authorization or deliberate indifference towards the use of force during law enforcement investigation, investigatory detentions, encounters and seizures.
79. Defendant SHERIFF did not adequately train or supervise the law enforcement officers for the Palm Beach County Sheriff's Department in alternatives to the deployment of appropriate and proportioned force during its investigatory operations, detentions and seizures.
80. The failure of Defendant SHERIFF to adequately train or supervise its employees or agents in the usage, limitations and proportionality of force during such investigatory detentions and seizures resulted in the assault, battery and gunshot or sage weapon injury from the excessive and unjustified use of force.
81. The actions of Defendant SHERIFF resulted in PLAINTIFF suffering past, present and future damages, which damages include: loss of income and ability to work, physical suffering, permanent disfigurement including the loss of use of a bodily function, injury and mental anguish and future emotional suffering; expensive medical care and treatment; costs and legal fees.

WHEREFORE, PLAINTIFF demands judgment against the Defendant SHERIFF for compensatory damages in excess of \$15,000.00, and costs of this action together with any post judgment interest, any and all equitable relief and requests a jury trial of all issues so triable.

COUNT XII (TWELVE)
CLAIM AGAINST DEFENDANT PALM SPRINGS,
(Failure to Train and Supervise)

For his cause of action against Defendant, PALM SPRINGS in count XII, PLAINTIFF re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-25 and would further state as follows:

82. On or about March 23, 2007, Defendants PALM SPRINGS' agents or employees, while acting under the color of the law and/or in the course and scope of their duties as law enforcement officers employed by the Defendant PALM SPRINGS, caused the assault, battery and infliction of gunshot or sage weaponry projectiles which resulted in the disfigurement and permanent injury of PLAINTIFF, including but not limited to the use of a bodily function.
83. Defendant PALM SPRINGS failed to promulgate, implement and/or oversee application of Florida Statutes or internal policies pertaining to the use of force by its agents. Defendant's actions were tacit, implied or express authorization or deliberate indifference towards the use of force during law enforcement investigation, investigatory detentions, encounters and seizures.
84. Defendant PALM SPRINGS did not adequately train or supervise the law enforcement officers for the Palm Springs Public Safety Department, Police Services, in alternatives to the deployment of appropriate and proportioned force during its investigatory operations, detentions and seizures.
85. The failure of Defendant PALM SPRINGS to adequately train or supervise its employees or agents in the usage, limitations and proportionality of force during such investigatory

detentions and seizures resulted in the assault, battery and gunshot or sage weapon injury from the excessive and unjustified use of force.

86. The actions of Defendant PALM SPRINGS resulted in PLAINTIFF suffering past, present and future damages, which damages include: loss of income and ability to work, physical suffering, permanent disfigurement including the loss of use of a bodily function, injury and mental anguish and future emotional suffering; expensive medical care and treatment; costs and legal fees.

WHEREFORE, PLAINTIFF demands judgment against the Defendant PALM SPRINGS for compensatory damages in excess of \$15,000.00, and costs of this action together with any post judgment interest, any and all equitable relief and requests a jury trial of all issues so triable

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF on the date below and upon counsel on the incorporated service list.

DATE: July 22, 2011.

Respectfully Submitted,

s/ Kevin R. Anderson
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SERVICE LIST

Dennis Gaydos v. Ric Bradshaw, Sheriff, Palm Beach County and The Village of Palm Springs.

Case #11-80301-CIV-RYSKAMP\VITUNAC

United States District Court, Southern District of Florida

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